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CICA CoST Joint Position Paper

Tackling Inefficiency, Mismanagement and Corruption in Infrastructure Investment

Draft for Review

Infrastructure Transparency Initiative

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Who we are and what we do

CICA is the world's largest, most representative organization for the construction industry. It gathers and defends the concerns of the construction industry worldwide. **CICA** has unrivalled authority in promoting rules to improve the conduct of the construction business across borders. Established in 1974, its mission is to serve, promote and enhance the image of the construction industry across the world.

Infrastructure Transparency Initiative

CoST is a leading international initiative that works with government, the private sector and civil society to improve transparency, accountability and participation in infrastructure investment. It currently works in 20 countries to reduce mismanagement, inefficiency and corruption, obtain better value for money and improve the quality of infrastructure and related services.

CICA and **CoST** share a commitment to tackle mismanagement, inefficiency and corruption in infrastructure investment. We believe that the private sector is an under-leveraged and under-served potential partner in combating corruption. If it is to go further and faster in contributing to effective corruption risk management, it requires a level playing field on which to operate and an open and constructive dialogue with clients and investors.

We welcome your comments on this draft position paper.
All comments received will be reviewed and used to complete a final draft.

Send your comments to CoST@infrastructuretransparency.org or cica@cica.net

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1. Introduction

The changing nature of infrastructure delivery and the consequences for anti-corruption efforts

Addressing these dilemmas requires new ideas, better partnerships and an emphasis on trust-building. It also requires more emphasis on quality relative to cost and concerted efforts to harness digital technologies and AI.

Infrastructure delivery has become more contested, complex and uncertain in recent years. The cast of actors involved has expanded and authority has dispersed upwards to regional and international bodies, downwards to citizens who demand greater accountability and sideways as a result of privatisation and new investors.[1] The public officials, contractors and consultants involved can sometimes experience blurred lines of accountability. This can be time-consuming and difficult to manage, and poses risks for independent and evidence-based decision-making.

The political choices involved have become increasingly contested as the objectives of infrastructure investment have become more ambitious. The demands for example for net-zero economies, building resilience against extreme weather events and meeting the Sustainable Development Goals represent potentially divergent interests that must be managed.

Add to these changes the use of new and emerging technologies, requirements to deliver social value, to be inclusive and meet with local content requirements, delivering infrastructure is rarely a rational and linear process. Important decisions are inevitably shaped for good and ill by the collective action of different stakeholder groups.

It is essential that we understand the consequences of these changes for anti-corruption efforts. How can bad actors be identified within these complex social networks and held to account? How can we prevent uncertainty being exploited as a cover for extortion and bribery? What can be done to inform and empower citizens who might be time-poor and lacking the knowledge, skills and attitudes needed to effectively enhance accountability? And what can be done to protect and support companies that want to act with integrity, compete on a level playing field and deliver value for money to their clients?

Addressing these dilemmas requires new ideas, better partnerships and an emphasis on trust-building. It also requires more emphasis on quality relative to cost and concerted efforts to harness digital technologies and AI. These and other key issues are the subject of this position paper.

2. Key Issues

Dialogue and Trust Building

Corruption erodes trust and adds to the costs and risks of doing business. The construction industry in particular has a tradition of adversarial relationships that have contributed to a trust deficit at all levels of infrastructure delivery.

Traditional forms of contract are sometimes written in a way that reinforces adversarial relationships and as construction projects have become increasingly complex, more collaborative forms of contract have been developed as an alternative. These seek to bring the client, the designer and the contractor together as a team. The members of that team maintain open dialogue, share risks and rewards and work together towards a common goal.

These approaches have been characterised as 'relational' (in contrast to 'transactional') contracts and they have been applied in a number of jurisdictions including the Netherlands, Australia and the UK. In 2021, FIDIC established Task Group 17 to develop a collaborative form of contract to add to its suite of contracts.[2]

Box A:

Factors contributing to adversarial relationships in the construction industry

- Construction projects tend to be unique. The project team may not have worked together before, they may not have worked on this sort of project before, and may not have time to build trust.
- The traditional procurement route separates the client, designers, contractors and suppliers, with only legally-defined, bilateral contractual relationships between them.
- Lowest-cost bidding results in tight margins throughout the supply chain, and successful bidders may try to protect or improve their financial position by making inflated claims, the basis for which can be difficult to justify with objective precision.
- Inappropriate or unfair allocation of risk between the parties to contracts.

Adapted from Designing Buildings, the Construction Wiki: Accessed 27/10/23

These developments have the potential to help address the trust deficit at the project level. Other developments are underway to build trust and confidence at the international level and in relation to attracting investment.

The infrastructure investment gap is set to reach $15 trillion by 2040.[3] A number of initiatives are underway to mobilise private and institutional investment to help close this gap. These rely on building trust and confidence in particular investments through the application of internationally recognised certification frameworks. The investments are scored against standards designed to identify their economic, social, environmental and development impact. Prominent examples include the Blue Dot Network[4] and the FAST-Infra Label.[5]

Open dialogue is an indispensable feature of trust-building efforts. CoST members for example establish multistakeholder groups[6] (MSGs), comprising representatives from government, the private sector and civil society, to oversee the reform process. MSGs are a forum for open dialogue through which differences can be discussed, shared objectives identified and trust built between those involved. The CoST approach, which is endorsed by FIDIC, has saved hundreds of millions of dollars of public money, increased competition and produced the evidence used to reform and in at least one case, close a corrupt public institution. Genuine multistakeholder dialogue and the trust it can generate is a major contributor to this success.

A concerted effort to better understand and address the trust deficit in the construction industry is long overdue. A range of individual initiatives are beginning to address this challenge, but international leadership is needed to scale them up and ensure the need to build trust is fully integrated into the policies, systems and procedures used to deliver infrastructure.

A concerted effort to better understand and address the trust deficit in the construction industry is long overdue.

Recommendations

- **Adopt measures to monitor and build trust throughout the delivery cycle. This will include meaningful stakeholder engagement, more collaborative forms of contract, openness and transparency and the consistent application of international standards.**

Improving standards across the institutional spectrum

Corruption is a transnational and multisectoral problem that requires transnational and multisectoral solutions. Only a collective effort that acknowledges the importance of all actors and avoids assigning disproportionate blame or responsibility to any particular stakeholder group can succeed.

Any act of bribery requires someone willing to pay and someone to receive payment. That's why international anti-corruption conventions, including the United Nations Convention Against Corruption (UNCAC), require signatories to address both the supply and demand sides of bribery.

Box B:

The need for reciprocity in the procedures of MDBs

FIDIC contracts have been widely adopted by the Multilateral Development Banks, including the World Bank and the Asian Development Bank (ADB).

Both banks use the FIDIC Standard Conditions of Contract in combination with their own Conditions of Particular Application (COPA). The former aligns their procedures with international standards whilst the latter reflects key aspects of their particular policies and practice.

The FIDIC Red and Yellow Books enable both the employer and the contractor to terminate the contract if the other party is found, based on reasonable evidence, to have engaged in corrupt practices.

The ADB's COPA retains this clause whilst the World Bank's COPA removes this option for the contractor, whilst retaining it for the employer.

This lack of reciprocity in the World Bank's COPA creates an imbalance in the relationship between contractor and employer. Measures intended to encourage ethical behaviour apply to one party only with inevitable consequences.

Recognition of the fact that 'it takes two to tango' is not always evident in standard forms of contract and the procedures of the MDBs. The World Bank's Conditions of Particular Application (COPA) for example do not include a recommended FIDIC sub-clause aimed at achieving reciprocity. And the experience of many contractors is that MDBs often move quickly to investigate, sanction and debar contractors, but rarely act so quickly, decisively or consistently with regard to borrowers. All parties share responsibility to tackle corruption and to act with integrity and all should be subject to similarly high standards.

Only a collective effort that acknowledges the importance of all actors and avoids assigning disproportionate blame or responsibility to any particular stakeholder group can succeed.

Recommendations

- Consider/explore the development of an Anti-Extortion Convention, similar to the OECD's Anti-Bribery Convention.
- Consider/explore the adoption of asset and interest disclosure procedures by public officials (and their family members) involved in decision-making prior to, during and after tender management and contract award.
- Extend the sanctions regimes of MDBs to include powers to debar and otherwise sanction not only private sector individuals and companies but also public borrowers and civil servants.
- Extend the harmonisation of MDB policies on good governance and anti-corruption to include as much focus on passive corruption as there is on active corruption.

The need to strengthen project preparation

Corruption can occur at all stages of the delivery cycle. However, corruption during the early stages of the cycle, when projects are conceptualised, prioritised, appraised, designed, and budgeted, can be disproportionately damaging. Poor decisions at this stage, be they the result of corruption, a lack of institutional capacity, or a combination of both, can result in built assets that are inappropriate, difficult to maintain and uneconomic. They can also open the door to additional corruption risks in later stages of the delivery cycle.

Whilst corruption during project preparation is a serious problem, equally as serious is a lack of institutional capacity amongst those responsible. The processes involved have become more demanding in recent years as a result of the increasing complexity of infrastructure projects and by the need to consider issues such as sustainability, resilience and inclusivity. Most projects involve years of planning, design, cost benefit analysis and the completion of various impact studies. Even where private finance is involved, responsibility for these processes usually sits with government.

Project preparation facilities (PPFs) have been established to help address the lack of institutional capacity and to help ensure integrity at this critical stage. The goal of PPFs is to develop a pipeline of bankable projects that are 'investment ready'. Whilst they have undoubtedly had a positive impact in many jurisdictions, reviews of PPFs have shown that too often they are

underfunded relative to demand, that a significant number of prepared projects do not go on to implementation and importantly, that they often fail to build capacity in public institutions.[7,8]

Good project preparation is vital to provide value for money for taxpayers, to attract private investment and deliver good quality infrastructure. It can't be rushed and it can't be done on the cheap. PPFs have an important role to play, but they are not a silver bullet. Strengthening project preparation requires a sufficient investment of time and resources and a long-term commitment to strengthening public institutions.

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Recommendations

- Properly resource project preparation in general and regard it as a good investment to reduce future inefficiencies. This should include strengthening the capacity and capability of public institutions to develop an investment-ready pipeline of bankable projects.
- Properly resource project preparation facilities in particular and extend their mandate to include strengthening the public institutions whose relative weakness necessitates their involvement in the first place.
- Make use of existing project development platforms designed to integrate good practice and meet international standards during project preparation and throughout the delivery cycle. This includes SOURCE[9], the multilateral platform for sustainable infrastructure, the development of which was led and funded by the MDBs

Lowest price is not necessarily best value

Competitive tendering has many advantages in theory, including promoting healthy competition, encouraging innovation and new ideas, identifying what alternatives are available in the marketplace and securing value for money. In practice however, low prices are not synonymous with best value. As detailed in **Box C**, low pricing can also give rise to mismanagement, inefficiency and corruption.

Public procurement of infrastructure is usually evaluated and awarded on a combination of quality and price. This is intended to reduce the risk of the lowest price always winning, but in practice a tender with a 60:40 quality to price ratio can result in the lowest priced bid scoring significantly higher than other bids. In simple terms, if the cost is low enough, the quality will rarely tip the balance sufficiently.[10]

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These risks are increased if the client's requirements are so prescriptive that relevant experience of a bidder cannot be brought out. The result can be a stifling of innovation, and reduced potential for distinguishing a high-quality and innovative bid from one that is merely compliant. The introduction of rated criteria by the World Bank in 2016 was

Box C:

The risks of low bidding

- In markets with an unduly large number of bidders, and a lack of trust in the tender management process, there is an increased risk that the quality of bids and associated workplans will be low. This can result in inefficiencies and related corruption risks during the contract implementation stage of procurement.
- Contracts won through low bidding tend to result in a high number of variation orders, some of which may be associated with an attempt to make up the shortfall.
- Low bids can result in low quality work, particularly if the contractor is inexperienced or has cut corners to win the contract.
- Delays occur when the contractor experiences cashflow problems or is unable to pay sub-contractors and suppliers and meet other obligations.
- Contractors might be more inclined to reduce costs through hiring less qualified workers and/or those who don't have a right to work.
- Contractors might have to absorb additional costs that they didn't allow for. This results in financial losses and in extreme cases determination of the contract.

intended in part to address such challenges and help improve the evaluation of quality, sustainability, and innovation.[11] Until recently the Rated Criteria approach has not been widely applied to infrastructure procurement, but as of 1st September 2023 is now mandatory on all World Bank projects. This decision is welcomed, although associated risks means that it is essential that careful consideration is given to how it is operationalised.[12]

Contractors face pressures that can draw them into pricing low. The construction industry is sensitive to fluctuations in investor confidence and in interest and exchange rates. Large contractors have significant overheads and need to keep their teams busy between contracts. They might feel pressure to price low to avoid the risk of losing their teams that have been built over a long period and are vital in winning and delivering future contracts. In addition, developing bids can be very expensive and not winning can increase pressure to be successful on the next bid. Access to a published pipeline of future investments can make it easier for companies to manage the peaks and troughs of demand and less likely that they will be drawn into low pricing with its attendant corruption risks.[13]

The price of a contractor is what they are paid. The value of a contractor is the breadth of skills and the years of experience that they bring to the project; their ability to solve problems, to get things done and to meet and exceed their client's expectations.

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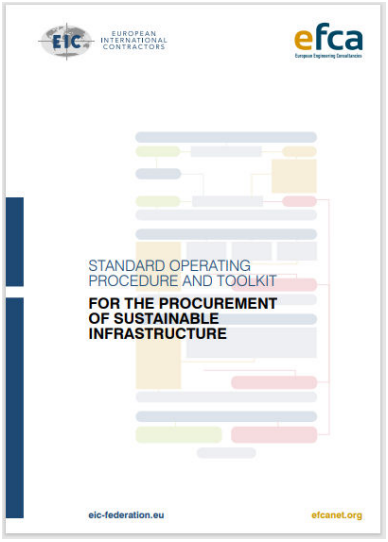
Recommendations

- Procurement procedures should strike a better balance between cost, quality and other non-price factors to avoid the numerous pitfalls associated with low pricing.

- The World Bank and other MDBs should work closely together with the private sector to operationalise the use of Rated Criteria in infrastructure procurement. An important focus for this is the 'Standard Operating Procedure and Toolkit for the Procurement of Sustainable Infrastructure' developed by European International Contractors and European Federation of Engineering Consultancy Associations.[14]



The importance of harnessing new and emerging technologies

Technology is transforming the way that infrastructure and services are delivered. Increasingly, built assets can be controlled remotely, and respond intelligently in notifying, advising on, and tracking their own maintenance and delivery requirements. These developments, described as '*infratech*', have enormous potential to improve operational efficiency and the quality of services.

However, the infratech agenda has not been extended to include anti-corruption and good governance. This is despite the G20's Riyadh Infratech Agenda urging G20 members to do so (See **box D**).

Recommendations

- There are examples of digital technologies and artificial intelligence being used to promote transparency and accountability and help identify corruption risks. These examples need to be nurtured, supported and scaled-up.

Box D:

Extract from the G20 Riyadh InfraTech Agenda

"Adopt InfraTech solutions that enhance governance by reducing corruption, ensuring high standards, strengthening project preparation, and enhancing transparency. Inefficiencies due to poor governance significantly erode the potential returns to their infrastructure investments. Enhanced data collection, tracking, and access enabled by InfraTech can strengthen accountability by public or private stakeholders. Better data will also support sound fiscal planning for major public infrastructure investments."

Transparency as a means to an end, rather than an end in itself

Disclosing good quality data on infrastructure investment is an essential component of transparency. However, if the data is not accessed and used by stakeholders to exercise accountability and drive practical improvements, little has been achieved.

These stakeholders include not only the media and civil society (interested in scrutinising the performance of government and the private sector) but also the private sector (interested in insights into market trends) and oversight bodies (interested in project and sector performance).

Transparency should be understood as a process that involves the disclosure of good quality data, the mobilisation of stakeholders that are empowered to access the data and use it to exercise accountability and the presence of responsive public institutions that are willing to absorb the lessons that emerge. If any of these steps in the process are absent, then transparency will be of only limited value.

Transparency should be understood as a process that involves the disclosure of good quality data, the mobilisation of stakeholders that are empowered to access the data and use it to exercise accountability and the presence of responsive public institutions that are willing to absorb the lessons that emerge.

Recommendations

- Support governments that are committed to transparency and accountability in infrastructure investment. Relatively modest resources invested in building trust, enacting legislative reforms and establishing mechanisms for disclosure can generate savings much greater than the original investment, while also encouraging the private sector to invest in its own capacity.

- International investment frameworks such as the Blue Dot Network and the Fast-Infra Sustainable Infrastructure Label should adopt and promote the leading international standards on data disclosure including the Open Contracting for Infrastructure Data Standard (OC4IDS).[15]

- Tender managers should disclose the reasons why some applicants fail to qualify as part of announcing the prequalification results. In addition, tender evaluation reports should explain the reasons for selecting the preferred bidder and the reasons for rejecting unsuccessful bidders.

3. Conclusion

CICA and CoST share a commitment to working with investors and clients to better unlock the full potential of the private sector.

It is now widely recognised that the private sector has a vital role to play in tackling mismanagement, inefficiency and corruption. However, recognising the importance of its role is not the same as the ability to support it in practice. The companies involved in building, maintaining and operating the critical infrastructure that we all depend on, still remain a relatively under-leveraged potential partner in combating corruption. CICA and CoST share a commitment to working with investors and clients to better unlock the full potential of the private sector. This position paper begins to describe how that can be achieved.

Key considerations include finding ways to build trust and maintain dialogue, working together to establish and consistently apply standards and committing ourselves to being open and transparent in all that we do. Progress has been made in all of these areas in recent years, and yet inefficiency, mismanagement and corruption remain persistent problems. As we commit ourselves to accelerating progress in all these areas, we do so in the knowledge that the stakes could not be higher.

It is estimated that global infrastructure investment needs are $94 trillion between 2016 and 2040. Based on current trends, it is predicted that there will be a $15 trillion shortfall at the end of that period. Efforts to address this shortfall tend to focus on mobilising new investment, with a particular emphasis on private and institutional investors. Whilst undoubtedly important, this approach risks neglecting the potential savings that could be achieved through improvements in efficiency.

On average one third of investment is lost through corruption and other inefficiencies.[16] In low-income countries, where the backlog on investment is greatest, that rises to around half. In theory therefore, up to a third additional productive investment could be achieved without having to mobilise additional investment. That is the prize, that is the opportunity that requires collective action involving all stakeholders for it to be realised.

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