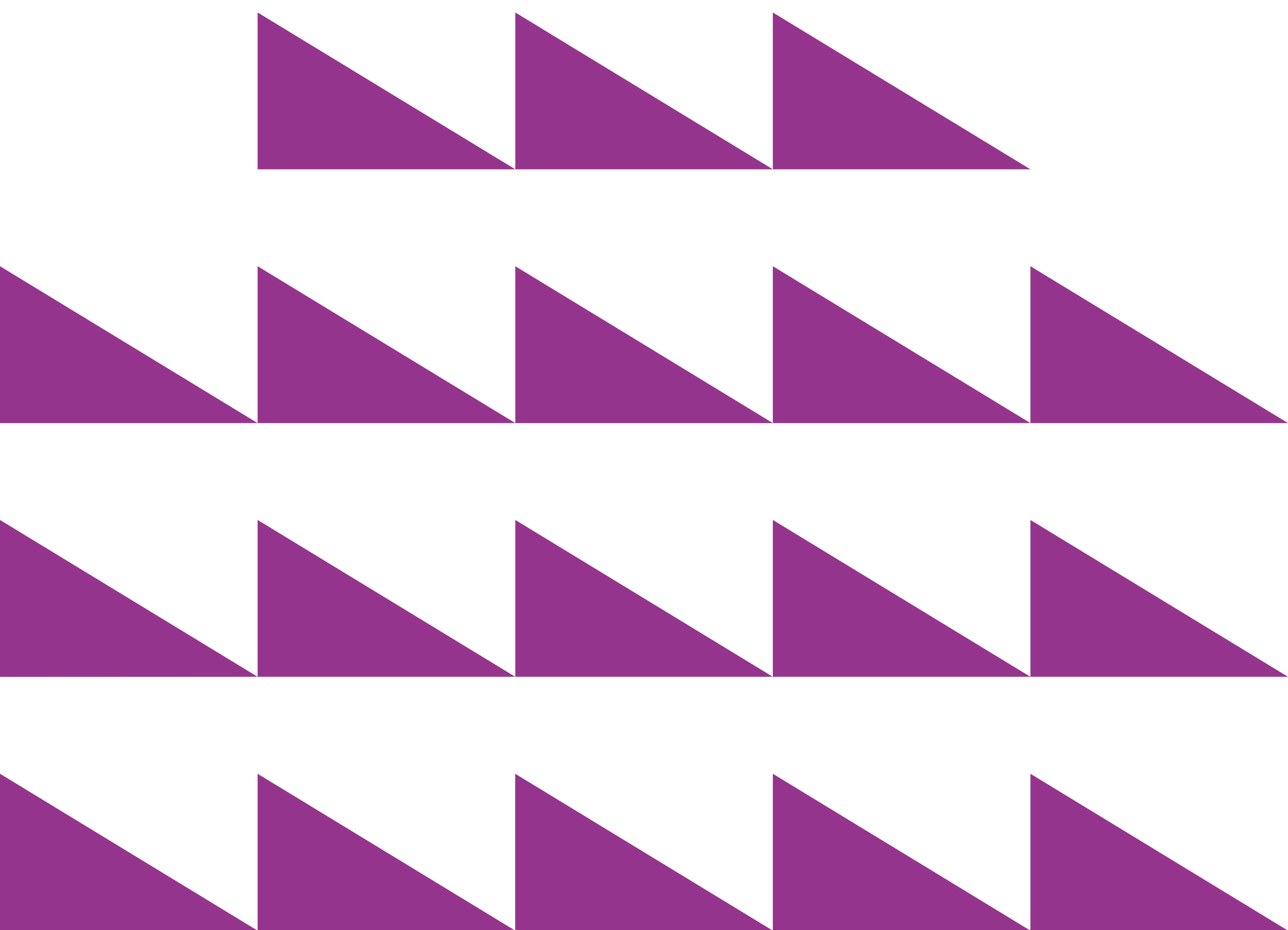


Special report on corruption risks associated with procurement in local government

Operations Dorset, Royston and others

September 2019



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Letter of transmittal

To

The Honourable President of the Legislative Council

and

The Honourable Speaker of the Legislative Assembly

In accordance with section 162(1) of the *Independent Broad-based Anti-corruption Commission Act 2011*, I present IBAC's report on corruption risks associated with procurement in local government: Operations Dorset, Royston and others.

IBAC's findings and recommendations to date are contained in the report.

Yours sincerely



The Honourable Robert Redlich QC
Commissioner

Terms/definitions

Acronym/definition	Explanation
Direct negotiations	Dealings between a council and a supplier without first undertaking a competitive process, for example when a single quote is required.
Primary and ordinary returns	Primary and ordinary returns record details of private interests held by a person. Under section 81 of the <i>Local Government Act 1989</i> , senior officers and any other employees nominated by the council's Chief Executive Officer must lodge a primary return within 30 days of becoming a nominated officer, and an ordinary return biannually thereafter. Section 81 also sets out the information to be included in those returns.
Purchase order (PO)	A form of contract, which is an official document used to authorise and record the purchase of goods or services by a buyer. It is the prime reference confirming the contractual situation between the buyer and supplier.
CEO	Chief Executive Officer
CFO	Chief Financial Officer
IBAC	Independent Broad-based Anti-corruption Commission
MAV	Municipal Association of Victoria
LGV	Local Government Victoria
NSW ICAC	NSW Independent Commission Against Corruption
OHS	Occupational health and safety
RFT	Request for tender
VAGO	Victorian Auditor-General's Office
VGPB	Victorian Government Purchasing Board

1 Summary of investigations and key findings

1 Summary of investigations and key findings

1.1 Introduction

Victorian councils play a pivotal role in providing and maintaining a wide range of services, programs and infrastructure for their communities. With responsibility for the management of community infrastructure worth approximately \$90 billion and delivery of more than \$7 billion in critical public services every year¹, councils spend between 45 per cent and 60 per cent of their annual budgets on procurement.² Considerable power is therefore vested in public officers of councils to source suppliers, manage contracts and authorise payment for goods, services and works – using public money.

The Victorian community rightly expects that council employees will perform their duties with integrity and impartiality, and will act in the public interest rather than their own. When funds allocated to council are misappropriated, this is understandably a cause for significant concern.

Allegations of corruption associated with procurement have been a recurring feature of complaints received and investigations conducted by the Independent Broad-based Anti-corruption Commission (IBAC), as well as other Victorian and interstate integrity agencies.

This report presents specific findings from two investigations by IBAC into allegations of corrupt conduct involving procurement in the Victorian local government sector – namely Operations Dorset and Royston – and discusses general conclusions that may be drawn from these and a number of other investigations. In particular, the report highlights vulnerabilities in council policies, practices and systems that contributed to the conduct, and raises concerns about procurement procedures and controls in the local government sector more broadly.

The *Victorian Local Government Best Practice Procurement Guidelines* define procurement as ‘the whole process of acquisition of external goods, services and works’, noting that:

*It can include planning, design, standards determination, specification writing, preparation of quotation and tender documentation, selection of suppliers, financing, contract administration, disposals, and other related functions. It also includes the organisational and governance frameworks that underpin the procurement function.*³

Five broad principles governing procurement are detailed in the guidelines: value for money; open and fair competition; accountability; risk management; and probity and transparency.⁴ This is broadly consistent with the guiding principles for procurement identified by the Victorian Auditor-General’s Office (VAGO) which also identifies ethical behaviour as a principle that should apply to all procurement-related activities.⁵

¹ Minister for Agriculture, Local Government Bill 2018, Second reading speech, 21 June 2018, Hansard, p 2963.

² MAV, *MAV Procurement LEAP Program*, <www.mav.asn.au/what-we-do/procurement/leap>.

³ Local Government Victoria 2013, *Best Practice Procurement Guidelines 2013*, p 132.

⁴ *Ibid*, p 13.

⁵ VAGO 2007, *Public Sector Procurement: Turning Principles into Practice*, p 3.

In local government, where a range of employees are responsible for procuring a diverse and complex range of goods, services and works dealing with everything from waste management and road construction to stationery and information technology,⁶ procurement processes can be subject to significant corruption risks.

While attention often focuses on the financial impact of corrupt conduct, less tangible outcomes can be equally as damaging and difficult for an organisation to address. These outcomes can include a loss of public confidence, and a negative impact on employee morale and organisational culture. Transparency International noted the potential broad adverse effects of corruption in public procurement:

The cost of corruption in public contracting is not only measured by money lost. Corruption distorts competition, can reduce the quality, sustainability and safety of public projects and purchases, and reduce the likelihood that the goods and services purchased really meet the public's needs. When procurement is corrupted by private interests and not directed by the public good, trust in governments is eroded.⁷

Operations Dorset, Royston and a number of other IBAC investigations examined allegations that employees subverted council procurement processes. Common themes in these investigations included issues with the identification and management of conflicts of interest, poor compliance with policies and procedures, deficient record keeping and issues relating to organisational culture. A greater understanding of these issues may assist other councils to identify and address vulnerabilities in their systems and processes.

1.2 IBAC's investigations

Allegations of corrupt conduct associated with procurement have been a focus of numerous IBAC investigations. This report focuses on two investigations – Operation Dorset and Operation Royston. IBAC considers these investigations are likely to represent a snapshot of broader integrity issues concerning procurement across the local government sector.

Where relevant, this report also refers to other investigations conducted by IBAC into allegations of corrupt conduct involving procurement in councils.

1.2.1 Operation Dorset

In August 2015 IBAC commenced Operation Dorset, which investigated allegations concerning a project manager in the capital works department at Darebin City Council in the inner northern suburbs of Melbourne. It was alleged the project manager subverted procurement processes and failed to declare and manage conflicts of interest when engaging suppliers on behalf of the council. It was also alleged the project manager inappropriately disclosed information to ensure a former colleague's company was successful in obtaining road maintenance contracts with the council.

IBAC found the project manager played a critical role in an associate obtaining a large financial advantage from the council.

1.2.2 Operation Royston

In February 2016 IBAC commenced Operation Royston, which investigated allegations concerning Lukas Carey, who was a manager responsible for sports and recreation at the City of Ballarat Council in regional Victoria. It was alleged Mr Carey subverted procurement processes and failed to declare and manage conflicts of interest when engaging suppliers on behalf of the council. It was also alleged Mr Carey dishonestly represented parts of his own university thesis as work performed by his wife's consultancy.

⁶ MAV Procurement, *Contract Management Guidelines*, p 2.

⁷ Transparency International 2014, *Curbing corruption in public procurement: A practical guide*, p 4.

1 Summary of investigations and key findings

IBAC found that over a two-year period, Mr Carey unlawfully authorised payments totalling \$184,123 and that he obtained \$103,630 in benefits by way of direct pecuniary interest or secret commissions. After due consideration of the evidence, Mr Carey was charged and convicted on his own guilty plea of obtaining financial advantage by deception, attempting to commit an indictable offence and soliciting secret commissions. He was sentenced to three years' imprisonment and ordered to repay \$31,200 to the City of Ballarat Council. Three of Mr Carey's associates were also charged:

- Jasmine Carey (nee Finnigan), Mr Carey's wife, pleaded guilty and was convicted of obtaining a financial advantage by deception and attempting to commit an indictable offence. She was fined \$3000 and ordered to repay \$20,500 to the council.
- Derryn Ladson (an associate) pleaded guilty to charges of paying secret commissions and was fined \$15,000 without conviction.
- Rik McCaig (an associate) pleaded guilty to charges of paying secret commissions for which he was fined \$8000 and sentenced to 200 hours of community work without conviction.

1.3 Key corruption risks

IBAC has identified a number of key corruption risks in procurement processes adopted by councils as a result of investigations involving the local government sector, including Operations Dorset and Royston.

1.3.1 Sourcing suppliers

- Both Darebin City Council and the City of Ballarat Council had procurement policies in place that set out competitive processes for the selection of suppliers. However, the conduct exposed in IBAC's investigations suggests there are opportunities for councils to do more to check compliance with relevant policies and procedures.
- Many of the contracts subject to investigation in Operations Dorset and Royston involved direct negotiations between the council and the supplier, due to the value of the procurement. Relevant controls were not always in place to address risks associated with this type of procurement.

- While both councils had a conflict of interest policy statement, those statements did not clearly state the potential consequences of failing to comply with council policy (eg termination, criminal prosecution) to deter employees from breaching the policy. Nor was it always clear what the council's procedures were to declare and manage conflicts of interest.

1.3.2 Internal controls

- Both councils had procurement policies that set out internal controls to prevent and detect corrupt conduct in their procurement processes. However, not all controls appeared to operate effectively. IBAC's investigations suggest controls should ensure:
 - a genuine segregation of duties so that no single employee has end-to-end control over a given procurement
 - appropriate information management, including requirements around content quality, storage and access to promote accountability and guard against unauthorised use of information
 - audits and financial monitoring reports are generated and any issues identified are addressed
 - appropriate supervision and approval processes are in place.
- Both investigations suggested some elements of the contract management process are more vulnerable to corrupt conduct and should be monitored closely. These elements include contract and/or purchase order variations, use of contingency funds and information management.

1.3.3 Ethical culture and leadership

- Senior managers and supervisors must lead by example and act in a way that highlights that management is committed to integrity in procurement. This includes reinforcing the importance of complying with procurement procedures.
- Appropriate education, training and reminders for employees with responsibility for procurement and potential council suppliers are essential to help employees and suppliers understand proper procedures and community expectations to help identify issues in a timely manner.
- Both investigations demonstrated it is in councils' interests to encourage employees and suppliers to raise issues and concerns about suspected corrupt conduct and questionable procurement practices, and to protect those who report suspected corrupt conduct.

1.3.4 Complaints and investigations

- Actual, potential or perceived conflicts of interest must be appropriately identified, declared and managed in complaint handling and investigation processes to ensure investigations are conducted impartially.
- Complaint investigations must be conducted in a thorough and effective manner to promote confidence in the complaint handling process.
- Identified allegations of corrupt conduct must be notified to IBAC in a timely manner, consistent with mandatory notification requirements under the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act).

1.4 Conclusions

IBAC's Operations Dorset and Royston provide a snapshot of a range of procurement-related corruption risks and vulnerabilities which are likely to be faced by most if not all councils in Victoria. This report highlights ways all councils can review and strengthen their own policies, systems and practices to mitigate these risks.

The matters discussed in this report, along with IBAC's broader intelligence holdings, suggest a range of risk factors that may be particularly relevant to procurement in local government.

Employees working in council operational areas are often required to undertake direct negotiations on lower value procurement (consistent with stated policy) with limited guidance or oversight. In addition, given the sometimes close geographical proximity of council employees to local suppliers, there may be greater scope for personal interests to intersect with those of the council, increasing the likelihood of conflicts of interest emerging. Council employees should be supported with adequate training and guidance to understand their obligations.

1 Summary of investigations and key findings

1.5 Recommendations

Pursuant to section 159(1) of the IBAC Act, IBAC makes the following recommendations:

Recommendation 1

The CEOs of Darebin City Council and the City of Ballarat Council separately report to IBAC within 12 months of this report, to advise how they have strengthened their councils' procurement policies, systems and practices to address the corruption vulnerabilities identified by IBAC in this report, including by ensuring:

- a. robust information management processes are in place to accurately document all procurement activities in an auditable manner
- b. key elements of the procurement process are segregated and regular checks are conducted to test the effectiveness of those mechanisms, which may include periodically rotating managers with significant responsibility for procurement
- c. suppliers are sourced in a way that complies with competition requirements set out in legislation and/or procurement policies and procedures
- d. audits and risk assessments are conducted to help identify system vulnerabilities that may not have been detected through regular monitoring processes
- e. training for all employees involved in procurement effectively covers relevant policies and procedures including the council's procurement policy, conflict of interest procedures, code of conduct, and the responsibilities of financial delegates
- f. regular communication with employees and suppliers regarding their responsibility to report suspected corrupt conduct and how to make a report.

Recommendation 2

Local Government Victoria consider the development of a code of conduct for suppliers to Victorian councils, consistent with the state government suppliers' code of conduct developed by the Victorian Government Purchasing Board, to help local government suppliers understand minimum standards of conduct when conducting business with councils. The code should clearly state what is expected of suppliers in relation to declaring conflicts of interest and the reporting of suspected misconduct or corrupt conduct on the part of council employees and other suppliers.

2 Context

2 Context

2.1 Legislation governing procurement in local government

The *Local Government Act 1989* (LG Act) stipulates that councils must have a procurement policy in place and comply with standard competition requirements for procurement above a certain threshold.

The LG Act states that councils must prepare, approve and publish a procurement policy that must be reviewed at least once every financial year.⁸ A procurement policy is defined as ‘the principles, processes and procedures that will apply to all purchases of goods, services and works by the Council’.⁹ The LG Act specifies a public tender process must be undertaken before entering into procurement equal to or greater than \$150,000 for goods or services, or \$200,000 for works.¹⁰

The LG Act also includes conduct principles which state that in the course of their employment, council employees must:

- act impartially
- act with integrity, including avoiding conflicts of interest
- accept accountability for results
- provide responsive service.¹¹

To give effect to these principles, chief executive officers (CEOs) are required to develop and implement a code of conduct for their employees and ensure that council employees have access to the code.¹²

Detailed requirements for managing conflicts of interest are also included in the LG Act, which are relevant to activities including procurement. The LG Act defines interests in terms of categories of direct and indirect interests, specifies action to be taken in relation to identified conflicts of interest and requires nominated officers to periodically declare their interests by submitting primary and ordinary returns.¹³

2.2 Guidance for procurement practitioners in local government

In 2013, Local Government Victoria published *Best Practice Procurement Guidelines* (LGV Guidelines), which set out five principles that should govern council procurement: value for money, open and fair competition, accountability, risk management, and probity and transparency.¹⁴

The LGV Guidelines are a key resource for councils in relation to procurement policies and practices, against which their practices may be assessed and reported.¹⁵ This resource includes a policy structure to assist with the development of a procurement strategy that complies with the LG Act, as well as guidance on the planning, implementation, management, monitoring and reporting stages of the procurement cycle.

LGPro operates a procurement special interest group, supported by an online community, which acts as a forum for council employees: to network and share ideas, knowledge and achievements, provide input and representation to other levels of government and industry on priority procurement opportunities and challenges, and provides sector-wide procurement training opportunities.

The Municipal Association of Victoria (MAV) also provides a range of training, services and resources to help councils achieve better procurement outcomes, including best practice guides, a model procurement policy, templates and other resources.

⁸ *Local Government Act 1989* ss 186A(1) and (7).

⁹ *Local Government Act 1989* s 186A(10).

¹⁰ *Local Government Act 1989* s 186(1). To align with the state government procurement thresholds, amounts were fixed in an Order in Council, as reported in the *Victoria Government Gazette*, Number G 32, 7 August 2008, p 1908.

¹¹ *Local Government Act 1989* s 95.

¹² *Local Government Act 1989* s 95AA.

¹³ *Local Government Act 1989* Part 4, Division 1A.

¹⁴ Local Government Victoria 2013, *Best Practice Procurement Guidelines 2013*, p 13.

¹⁵ *Ibid*, p 10, notes that ‘councils should expect the Victorian Auditor-General’s Office and the Victorian Ombudsman may assess their practices and report against these guidelines’.

3 Operations Dorset and Royston

3 Operations Dorset and Royston

In Operations Dorset and Royston, IBAC used a broad range of powers and capabilities under the IBAC Act and the *Telecommunications (Interception and Access) Act 1979* (Cth). This included summonses, search warrants, telecommunications intercepts, physical surveillance, witness interviews, financial analyses, high-tech crime analyses, private examinations and criminal interviews. The extent to which these powers were used varied between the two investigations.

3.1 Operation Dorset

In July 2015, IBAC received information concerning the suspected corrupt conduct of a project manager in Darebin City Council's capital works department. In August 2015, IBAC commenced Operation Dorset.

Concerns with the project manager's conduct were identified by the council after a restructure transferred responsibility for road maintenance contracts from the capital works department to the depot operations area. Following that restructure, a road maintenance contractor complained that his company (Company A) had failed to win a council contract, asserting he was confident he had submitted the lowest quote. Council enquiries confirmed Company A had indeed submitted the lowest quote and suggested that many of the contracts previously awarded to Company A were around \$1000 less than the next lowest bid. It was also identified the project manager had been involved in all the contracts awarded to Company A.

3.1.1 The allegations

Allegations made against the project manager were that he:

- obtained or facilitated the obtaining of financial advantage by deception, by failing to disclose his association with two contractors to Darebin City Council (Company A and Company B)
- directed one contractor (Company B) to engage his sister at a rate of \$27.50 per hour and to conceal this information by invoicing the council with limited information
- amended invoices for two contractors (Company A and Company B) to inflate prices previously provided in quotes and/or tenders submitted to the council
- solicited and accepted cash, gifts and other benefits from a contractor (Company B)
- accessed and disclosed council information to assist two contractors (Company A and Company C) to obtain council contracts
- directed two contractors (Company A and Company B) to split invoices to ensure expenditure fell within the delegation of his immediate supervisors.

Definition of corruption

Except where the context suggests otherwise, references in this report to corruption, or corrupt conduct, mean conduct of a public officer or body that is found to have knowingly or recklessly breached, or contributed to a breach of, the public trust or that adversely affects the honest performance of their functions.

Such breaches are ordinarily through misuse of power or position, or information for private gain, or advantage of oneself, or others. IBAC's findings are made on the civil standard, namely the balance of probabilities, based on the principles applied in *Briginshaw v Briginshaw* (1938) 60 CLR 336.

Section 162(6)(a) of the IBAC Act provides that IBAC may not include any finding or statement that a specified person is guilty or has committed any criminal offence.

3.1.2 IBAC's investigation

INFORMATION OBTAINED

Entities and individuals involved in Operation Dorset provided a substantial amount of documentation to IBAC, either voluntarily or by way of summons. IBAC also obtained a number of formal statements from witnesses including current and former employees of Darebin City Council, and relevant contractors. Interviews were also conducted with other witnesses.

EXECUTION OF SEARCH WARRANTS

IBAC executed a search warrant on the project manager's home in March 2016. A number of documentary and digital exhibits were seized.

PRIVATE EXAMINATIONS

IBAC summonsed eight witnesses to attend private examinations to assist the investigation. The private examinations were conducted between April and September 2016.

3 Operations Dorset and Royston

INVESTIGATION OUTCOME SUMMARY

IBAC's investigation concluded the project manager played a key role in Company B obtaining a large financial advantage (of more than \$16 million in contracts between 2002 and 2016). That advantage was obtained in circumstances where the project manager was receiving cash, gifts and other benefits from Company B.

The investigation also established the following:

- The project manager failed to declare his prior association with a number of contractors (Companies A and B).
- The project manager had a controlling and financial interest in Company C.
- The project manager was directly and inappropriately involved in amending invoices submitted by Company A and Company B.
- The project manager accessed confidential information systems that could provide Company C with an unfair advantage.
- The project manager failed to comply with policies in areas including procurement, declaration of conflicts of interest and information management.
- During the period in question, the council did not provide adequate oversight of senior employees. As a result, opportunities to detect and correct the project manager's conduct were missed.

The investigation could not substantiate the allegation that the project manager obtained or facilitated the obtaining of a financial advantage from Company A.

The project manager's conduct was inconsistent with the standards expected of local government employees as outlined in the LG Act.¹⁶ He failed to declare or manage his clear conflicts of interest, and failed to act impartially as he used his power to provide benefits to his friends and family.

In 2017, the project manager resigned while under investigation.

3.2 Operation Royston

In November 2015, IBAC received information alleging that Lukas Carey, the former Manager Sports and Recreation at the City of Ballarat Council, had engaged in suspected corrupt conduct. In February 2016, IBAC commenced Operation Royston.

The suspected corrupt conduct was identified when Mr Carey was seconded to another role with the council. In Mr Carey's absence concerns were identified in relation to some of the contracts he had managed, including invoices that had been paid by the council despite there being no evidence of work having been completed.

3.2.1 The allegations

Allegations made against Mr Carey were that he:

- obtained or facilitated the obtaining of financial advantage by deception in the context of his non-disclosure to the City of Ballarat Council regarding his association with four contractors (Companies D, E, F and G)
- falsified work delivered under the contracts and invoices from Company D to defraud the council
- directed three contractors (Companies E, F and G) to invoice specific amounts to ensure expenditure was subject to minimal scrutiny under the council's procurement policy
- solicited and received secret commissions from three contractors (Companies E, F and G).

¹⁶ Local Government Act 1989 s 95.

3.2.2 IBAC's investigation

INFORMATION OBTAINED

Entities and individuals involved in this investigation provided a substantial amount of documentation to IBAC, either voluntarily or by way of summons. IBAC also obtained a number of formal statements from witnesses, including current and former employees of the City of Ballarat Council, and relevant contractors.

EXECUTION OF SEARCH WARRANTS

IBAC executed a search warrant on Mr Carey's home in March 2016. A number of documentary and digital exhibits were seized.

INTERVIEWS UNDER SECTION 464A OF THE *CRIMES ACT 1958*

Nine criminal interviews were conducted with five persons of interest pursuant to section 464A of the *Crimes Act 1958* (Crimes Act) between March and May 2016.

INVESTIGATION OUTCOME SUMMARY

IBAC substantiated the majority of allegations concerning Mr Carey.

IBAC found that Mr Carey was instrumental in setting up Company D (which was solely owned and operated by his wife) and engaging the company on behalf of council. In doing so, Mr Carey played a critical role in his family obtaining a financial advantage (\$55,885 in contracts awarded to Company D between June and October 2015). This advantage was obtained in circumstances where Mr Carey dishonestly represented parts of his own university thesis as work performed by Company D.

Mr Carey was also actively involved in engaging three associates on behalf of council. Again he played a critical role in those companies obtaining a financial advantage (\$128,238 in contracts between 2013 and 2015) in exchange for which he solicited and received secret commissions totalling \$47,745.

3 Operations Dorset and Royston

The investigation also established the following:

- Mr Carey failed to declare his familial connection with Company D and associations with Companies E, F and G.
- Mr Carey was directly and inappropriately involved in the management of Company D, including its purported work for the council and submitting invoices for payment by council.
- Mr Carey failed to comply with the council's policies in areas including procurement, declaration of conflicts of interest and information management.
- During the period in question, the council did not provide adequate oversight of senior employees. As a result, opportunities to detect and correct Mr Carey's conduct were missed.
- The internal investigation undertaken by the council was poorly conducted and failed to identify clear policy breaches.

Mr Carey's conduct was manifestly inconsistent with the standards expected of local government employees as outlined in the LG Act.¹⁷ He failed to declare or manage his clear conflicts of interest, and failed to act impartially, instead using his power to provide benefits to his family and friends.

Mr Carey resigned while under investigation by the council in 2015.

As a result of IBAC's investigation, Mr Carey was convicted on his guilty plea in relation to the offences of obtaining financial advantage by deception, attempting to commit an indictable offence and soliciting secret commissions. He was sentenced to three years' imprisonment and ordered to repay \$31,200 to the City of Ballarat Council.

In addition:

- Ms Carey (Mr Carey's wife, and the sole director of Company D) pleaded guilty and was convicted of obtaining a financial advantage by deception and attempting to commit an indictable offence. She was fined \$3000 and ordered to repay \$20,500 to the council.
- Mr Ladson (the sole director of Company E) pleaded guilty to charges of paying secret commissions and was fined \$15,000 without conviction.
- Mr McCaig (the sole director of Company F) pleaded guilty to charges of paying secret commissions. He was fined \$8000 and sentenced to 200 hours of community work without conviction.

¹⁷ *Local Government Act 1989* s 95.

4 Key corruption risks and opportunities

4 Key corruption risks and opportunities

The two IBAC investigations detailed in this report – Operations Dorset and Royston – highlight a range of organisational and systemic corruption risks relevant to procurement processes across the broader local government sector. These vulnerabilities are discussed on the following pages. The risks discussed here are not exhaustive and there are likely to be other ways councils can strengthen their procurement policies, systems and practices.

4.1 Sourcing suppliers

A key principle of procurement in local government is open and fair competition. This requires councils to treat all prospective suppliers fairly in an open and transparent way and to go to market in a consistent manner without bias, so potential suppliers and the public can have confidence in the process and outcome.¹⁸

If competitive processes used to source suppliers are compromised, it can undermine a council's ability 'to ensure that resources are used efficiently and effectively and services are provided in accordance with best value principles to best meet the needs of the local community'.¹⁹

This section discusses sourcing issues identified in IBAC's investigations in terms of compliance with competition requirements, and how failure to manage and declare conflicts of interests can adversely affect open and fair competition.

4.1.1 Compliance with competitive process requirements

The way suppliers are sourced depends largely on the size and complexity of the procurement activity. At the time of IBAC's investigations, councils were required to tender for goods and services over \$150,000 and for works in excess of \$200,000, and to set out requirements for procurement under these thresholds in a procurement policy.²⁰ However, policy requirements are of little value if no action is taken to train staff so they understand the requirements, and if insufficient controls are in place to ensure compliance.

In Operation Royston, IBAC found Mr Carey repeatedly failed to comply with the competition requirements in the City of Ballarat Council's procurement policy, by either wilfully ignoring the requirements or providing weak justifications for not conducting a competitive procurement process. This non-compliance went unchecked.

The council's procurement policy states that purchases:

- up to \$5000 require one verbal quote
- between \$5001 and \$15,000 require one written or three verbal quotes
- between \$15,001 and \$99,999 require three written quotes (including at least one quote from a local supplier) which must be registered with the procurement unit
- equal to and above \$100,000 for goods, services and/or works require a publicly advertised request for tender (RFT).²¹

¹⁸ LGV 2013, *Victorian Local Government Best practice Procurement Guidelines 2013*, p 14.

¹⁹ *Local Government Act 1989* s 3C(2)(b)-(c).

²⁰ *Local Government Act 1989* s 186(1). To align with the state government procurement thresholds, amounts were fixed in an Order in Council, as reported in the *Victoria Government Gazette*, Number G 32, 7 August 2008, p 1908.

²¹ City of Ballarat Council 2014, *Procurement Policy*, p 16.

However, IBAC identified a number of payments that were inconsistent with these policy requirements, which failed to trigger any enquiries by the council. This is discussed in the case study below.

Case study 1 – Competitive procurement requirements

The City of Ballarat Council's procurement policy states that at least one written quote or three verbal quotes are required for services valued between \$5001 and \$15,000. However, in Operation Royston, IBAC was unable to locate any quotes to support the majority of work Company D was engaged to do, including a \$14,900 payment made to Company D on 29 July 2015.²² Mr Carey's wife was the sole director of Company D and in this instance, Mr Carey made no attempt to cover up his failure to follow policy.

Mr Carey's procurement practices were subject to an internal investigation. The internal investigators, who considered this particular payment, concluded they were 'satisfied that [Mr Carey] followed the procurement policy of Council'. However, it is clear Mr Carey failed to obtain the requisite number of quotes on a number of occasions.

At other times, Mr Carey sought to justify his failure to comply with policies in ways that arguably should have raised concerns for the council. For example, in relation to a payment of \$11,485 to Company D for which no quotes were obtained, Mr Carey wrote the following note on the invoice:

*Actual document to be completed by [University of Ballarat]/[Victoria University] (Quote for work attached 90K). This take[s] a large portion of the work away from that quote and saves sig \$.*²³

It is possible this reference to significant savings from a larger piece of work was intended to deflect attention away from the smaller payment of \$11,485 to his wife's company.²⁴

Policies that require open bidding above certain thresholds are important to ensure public contracts are subject to genuine competition that serves the public interest.²⁵ However, as demonstrated in Operation Royston, policy alone is not enough. Councils must ensure competitive bidding actually occurs, consistent with legal and policy requirements. The following sections highlight some vulnerabilities in councils' competitive procurement processes, identified in Operations Dorset and Royston.

VARIATIONS AND AMENDMENTS THAT PUSH EXPENDITURE ABOVE STATED THRESHOLDS

Providing access to funds in excess of the original approval without appropriate scrutiny can facilitate corrupt conduct. As such, it is important to monitor the cumulative spend against contracts or purchase orders that are varied or amended multiple times.

In another IBAC investigation concerning a local council, it was found that certain purchase orders had been amended multiple times, pushing the cumulative value of one particular purchase order well over \$300,000 without complying with the requirement to undertake competitive tender processes. IBAC did not identify exceptional circumstances that could have justified those variations within the time period.

Under that council's procurement policy, only one quote and a purchase order are required for purchases under \$5000; however, more competitive processes and approval requirements apply the higher the value of the procurement.

²² Company D invoice for 'Croquet Strategy Consultation'.

²³ Company D invoice for 'Health and wellness profile review and document finalisation'. See Figure 1.

²⁴ The work purportedly completed by Company D for this payment was in fact an extract from a thesis previously prepared by Mr Carey in support of his candidature for a Doctorate of Education, with a few superficial amendments.

²⁵ Transparency International 2014, *Curbing corruption in public procurement: A practical guide*, p 17.

4 Key corruption risks and opportunities

Based on the total amount spent in this case, the purchase orders in question would have required some form of competitive process. Specifically, in relation to one purchase order originally valued at less than \$5000, the council expended more than \$300,000 without going to tender. It is noted that section 186 of the LG Act requires councils to conduct tenders when purchasing goods and services valued at more than \$150,000 and works valued at more than \$200,000, and approval by an employee with a higher level of financial delegation.

These incidents involved multiple breaches of the competition requirements in the council's procurement policy. If not for an audit, the council may not have detected this issue because there were no mechanisms in place at the time to monitor cumulative expenditure against purchase orders. This matter demonstrates the importance of monitoring overall spend as well as the number and value of individual variation. This is discussed further in section 4.2.3.

DISCRETIONARY ALLOCATION OF WORK TO CONTRACTORS ENGAGED UNDER PANEL ARRANGEMENTS

The LGV *Best Practice Procurement Guidelines* note a public tender process can result in the appointment of a panel of tenderers to promote security of supply for maintenance work and similar activities, adding 'the subsequent use of quotes on a job-by-job basis further promotes competition and value for money'.²⁶ This emphasises that panel members should still be required to compete for particular work and not simply be allocated work on a discretionary basis.

However, even if contractors have been sourced for a panel via public tender, if the process for allocating work under the panel arrangements is unclear or highly discretionary, corrupt conduct can occur.

Operation Dorset highlighted issues in relation to the discretionary allocation of work to contractors under panel arrangements. Darebin City Council's procurement policy refers to procurement being based on the principles of best value, open and fair competition, accountability, risk management, probity and transparency.²⁷

However, IBAC considered that the project manager's allocation of work to Company B was inconsistent with these principles, as discussed in the case study below.

Case study 2 – Competitive procurement requirements

During Operation Dorset, IBAC identified that Darebin City Council had a practice of allowing road maintenance works less than \$50,000 to be allocated to contractors who had successfully tendered to be on a panel for minor civil works. Instead of requiring further quotes, allocation of works occurred at the discretion of the project manager. This discretion was exploited by the project manager to allocate minor works to Company B without scrutiny.

In private examinations, the project manager agreed he had 'a great deal of discretion' to choose which panel contractor would do each piece of work, and admitted receiving cash and other benefits from Company B.²⁸ However, he also asserted that work was evenly allocated between the contractors on the panel 'as best I could'.

IBAC analysed payments made to the four contractors appointed to the panel for minor civil works over a 14-year period (from 2002 to 2015) and found 54 per cent of all invoices valued at \$50,000 or less were paid to Company B. IBAC also found Company B received \$13.8 million during that period, \$5.9 million more than the panel contractor who received the next highest amount in the same period. This panel was managed by the project manager during that period.

The project manager's actions are likely to have denied other suppliers business opportunities and may not have delivered value for money.

²⁶ LGV 2013, *Victorian Local Government Best Practice Procurement Guidelines 2013*, p 20.

²⁷ Darebin City Council 2014, *Procurement Policy*, p 4.

²⁸ For details, see case study 3 in Section 4.1.2.

While considerable effort may be expended to set up a panel in a competitive manner, those efforts can be undermined if no real scrutiny is applied once contractors are appointed to the panel.

USING DIRECT NEGOTIATIONS TO AVOID SCRUTINY

Lower value purchases generally involve procurement methods subject to fewer checks and balances – such as obtaining a single quote or a small number of quotes from a select group of potential suppliers. This is referred to as direct negotiations. Understandably, the lower level of scrutiny reflects the perceived lower level of risk and the desire for expedited processes. However, lower value procurement often involves greater discretion on the part of employees who may have limited procurement expertise, while being subject to limited review or oversight – making this type of procurement potentially more susceptible to corrupt conduct.²⁹

As the NSW Independent Commission Against Corruption (NSW ICAC) has observed:

Smaller procurements are managed and administered by employees who may have less experience and overall expertise in procurement. Smaller procurements also fall 'under the radar' of agencies in terms of monitoring and oversight. This seems to be because they are deemed low risk as relatively small budgets are involved. Contrary to some perceptions that very large procurements are particularly vulnerable to corruption because so much money is involved, contracts worth hundreds of millions or billions of dollars tend to receive greater scrutiny... It is when procurement is not so valuable that agencies can become lax.³⁰

In Operation Royston, Mr Carey avoided scrutiny by ensuring the value of the procurement in question only required one verbal quote. In general, he would obtain the single quote required – in accordance with the City of Ballarat Council's procurement policy – then direct his wife or associates to submit invoices for \$5000 or less, recognising manipulation of the system for work requiring three quotes would likely involve greater scrutiny and therefore greater risk of detection.

In Operation Dorset, the project manager in question used his discretion to allocate work to a contractor he was accepting gifts and benefits from without having to account for his decisions, because no reasons were required when allocating work valued at less than \$50,000. Nor were checks conducted to monitor the distribution of those relatively low-value jobs.

In both investigations, the people of interest were aware there was less scrutiny of lower value procurement. Councils should conduct risk assessments and audits to help identify any procurement 'blind spots' that are unique to their processes. This might include work areas that are responsible for a large amount of relatively low-value purchases and areas where there is discretion to allocate work. This does not mean councils should apply the same type of controls to all levels of procurement. The scrutiny of lower value procurement should be tailored to the risks involved.

²⁹ Indeed, IBAC's 2016 suppliers' survey found that direct negotiations and procurement via non-tendered quotations were perceived to be most vulnerable to corruption (considered vulnerable by 69 per cent and 68 per cent of respondents respectively). Also see NSW ICAC 2018, *Direct Negotiations: Guidelines for managing risks*, Sydney.

³⁰ NSW ICAC 2010, *Corruption risks in NSW public sector procurement: Consultation paper*, p 19.

4 Key corruption risks and opportunities

4.1.2 Conflict of interest

A failure to properly identify, declare and manage conflicts of interest can provide fertile ground for corruption to prosper, exposing a council to financial and reputational risk.

The two councils involved in Operations Dorset and Royston had policies in place that required employees and contractors to consider and declare any personal interest that could influence decisions or otherwise conflict with their work as a council employee. Those requirements were set out in the councils' codes of conduct and procurement policies with reference to the LG Act.³¹

Conflict of interest processes are unlikely to stop an individual who intentionally sets out to deceive their employer. However, clear policies and rigorous processes that are actively monitored and tested can help deter employees from engaging in corrupt conduct by increasing the risk of detection and helping other employees to identify possible conflicts.

Councils need to have clear conflict of interest policies and procedures in place because actual, potential or perceived perceptions of partiality can undermine public confidence in local government. In procurement, this can discourage other suppliers from bidding on the assumption a particular supplier is favoured by council. This, in turn, can result in services and infrastructure that are sub-standard in terms of price and/or quality, resulting in a failure of the council to demonstrate it has effectively applied the best-value principles.³²

Conflicts of interests and their potential to allow corrupt conduct to develop is not unique to local government. However, it is arguable the effective identification and management of conflicting interests pose a particular challenge for the sector because engagements can be more local, increasing the likelihood of having and/or developing personal relationships due to the closer proximity to suppliers.³³

In Operations Dorset and Royston, the employees under investigation flouted their council's conflict of interest policies, deliberately hiding their relationships with contractors with whom they colluded.

During Operation Dorset, IBAC examined a number of alleged conflicts of interest involving the project manager's engagement of an associate and a former colleague, as well as his involvement in his brother's company, which was engaged by another area of the council.

Darebin City Council's employee code of conduct advises employees of their responsibilities and the principles governing conflicts of interest in a section on 'Anti-corruption practices', and prompts employees to consider potential conflicts of interest in a section titled 'Challenge yourself' by asking:

- Are you hiring, managing, reviewing or appraising a relative or friend?
- Are you using your position for personal gain?
- Have you personally gained from confidential information?
- Are your personal relationships influencing business decisions?³⁴

In addition, the council's procurement policy states 'it is *mandatory* for all Council staff involved in a procurement process, including evaluation panel members, to sign a conflict of interest declaration form at the commencement of each quotation or tender process'.³⁵

³¹ *Local Government Act 1989*, Part 4, Division 1A sets out the requirements for councillors and council employees in relation to conflicts of interests, defining conflicts of interest in terms of direct interests and six types of indirect interests, specifying when declarations should be made and by whom, as well as action to be taken when a conflict of interest is identified.

³² *Local Government Act 1989*, s 208B(f).

³³ Local engagement is a valid priority for councils, however the risks involved must be recognised. For instance the City of Ballarat Council's *Procurement Policy* requires staff to support local business where possible (section 14.3). Concerns regarding local engagement have been raised repeatedly. See: Transparency International 2014, *Curbing corruption in public procurement: A practical guide*, p 20 and NSW ICAC 2010, *Corruption risks in NSW public sector procurement: Consultation paper*, p 20.

³⁴ Darebin City Council 2014, *Excellence in Governance – Employee Code of Conduct*, pp 14–15.

³⁵ Darebin City Council 2014, *Procurement Policy*, p 7. Emphasis added.

Despite the reference to a conflict of interest 'form', neither of these policy documents contain a link to the form, or otherwise provide guidance on the process for making a declaration. Nor do these policies set out the steps that should be taken to manage an identified conflict, or state what the ramifications are for employees who fail to comply with conflict of interest requirements.

As demonstrated in the case study below, despite having a clear conflict of interest statement in the employee code of conduct and procurement policy, the employees and contractors involved in Operation Dorset did not make any declarations and in fact, expressed views about conflicts of interest that were at odds with the council's policy.³⁶

Case study 3 – Conflict of interest

IBAC identified a number of conflicts of interest involving the project manager in Operation Dorset.

CONFLICT INVOLVING COMPANY B

It was alleged the project manager used his discretion to allocate a significant amount of work to Company B in exchange for gifts and other benefits.

In a private examination before IBAC, the project manager admitted receiving cash payments from Company B, stating 'Well, I was receiving ... if you call it kickbacks for ongoing works for the City of Darebin, yes'.

The project manager also admitted to receiving the following benefits from Company B:

- soil and guttering material delivered to his father's residence
- material and labour to lay four square metres of concrete and construct a retaining wall at his home
- alcohol and grand prix tickets (for three to four years from 2005)
- a GPS valued at \$1500.

The director of Company B separately acknowledged that invoices which referred to 'labourer 1' referred to the project manager's sister, stating that:

[The project manager's sister] was employed by [Company B] to do work as directed by [the project manager]... [he] told me to pay [his sister] \$27.50 per hour... I put her on because [he] asked me to do so and I felt that it would be good to identify work that needed to be done. I also felt obliged to put her on... I was just doing [him] a favour.'

CONFLICT INVOLVING COMPANY A

It was also alleged the project manager used his position to access information to help a former colleague who was the director of Company A win contracts with the council by submitting bids that were often around \$1000 under the next lowest tender bid. In private examinations, both the project manager and the director of Company A denied accessing or using information to benefit Company A.

In private examinations, it was put to the director of Company A that his company received more than \$23.5 million from Darebin City Council over a 16-year period from 2000 and that this was \$8 million more than the next highest paid company undertaking this type of work in the same period. When the director of Company A was asked if he had ever submitted a conflict of interest form, he replied that he always submits the standard form with every tender:

I don't feel there's a conflict of interest, because I'm pricing a job. Yes. If somebody says that's a conflict of interest because you worked there, well, then that's a conflict of interest. Yes. But I don't see it as that.

³⁶ Darebin City Council 2014, *Excellence in Governance – Employee Code of Conduct*, p 3, states that the code applies to all employees and that 'contractors, volunteers and agency staff are also expected to adhere to the principles outlined in the code'.

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Case study 3 – Conflict of interest (continued)

CONFLICT INVOLVING COMPANY C

It was also alleged the project manager used his position to access information to help his brother tender for contracts managed by another area of the council. In private examinations, both the project manager and his brother denied accessing or using information to benefit his brother's company, Company C.

After confirming the project manager had prepared documents for Company C (including tender and occupational health and safety (OHS) documents and invoices), had described himself as the secretary of Company C in a statutory declaration provided to another council, and had access to Company C's bank account, the project manager was asked whether he thought he had a conflict of interest that should have been declared to the council:

COUNSEL ASSISTING: Do you think that you should have declared what your involvement was in [Company C] as a conflict of interest or a potential conflict of interest?

WITNESS: In relation to Facilities and Maintenance? Given that it was another department, given that it was another particular service provided, no.

COUNSEL ASSISTING: Well, you're directly involved in the company, in your brother's company.

...

COUNSEL ASSISTING: You see that there's a conflict there between your role at the council and your role in relation to [Company C]?

WITNESS: Potentially, yes.

COUNSEL ASSISTING: Okay. Do you think that you should've declared that?

WITNESS: Never given it a thought at the time.

In Operation Royston, IBAC examined alleged conflicts of interest involving Mr Carey's engagement of his wife and three associates on behalf of City of Ballarat Council. In August 2012, Mr Carey signed an acknowledgement that he had read and understood the council's code of conduct.³⁷ That code of conduct states 'conflict of interest arises when you encourage Council to develop a working relationship with a business that you, your friends, family or associates: own shares in; have a financial interest in; participate in the business of; (or) conduct private business with'.³⁸

In addition, the council's procurement policy reiterated all employees must comply with the code of conduct, adding 'Council staff must not participate in any action or matter associated with the arrangement of a contract (ie evaluation, negotiation, recommendation, or approval), where that person or any member of their immediate family has a significant interest, or holds a position of influence or power in a business undertaking tendering for the work'.³⁹

IBAC established that the City of Ballarat Council had a conflict of interest register in place, however there was no record of Mr Carey's relationships with any of the associates that he engaged on behalf of the council. Nor were there any other indications that Mr Carey had attempted to notify council of his associations with those suppliers.

However, IBAC's investigation suggested Mr Carey's failure to declare his conflicts of interest was not unique. In a statement to IBAC, the procurement coordinator at the time of the investigation indicated he was responsible for managing conflicts of interest in council dealings and had only been advised of a conflict of interest on 'about six occasions' in the three and a half years that he had occupied the role.

³⁷ City of Ballarat Council, *Acknowledgement form – Employee Code of Conduct*, signed by Mr Carey on 30 August 2012, says 'I have read through and understand the Employee Code of Conduct Policy HR07... I understand my responsibilities with respect to the City of Ballarat and the conduct expected of me at all times'.

³⁸ City of Ballarat Council 2011, *Employee Code of Conduct*, pp 11–12.

³⁹ City of Ballarat Council 2014, *Procurement Policy*, p 12.

This was despite a policy requirement which stipulates at least one quote is to be obtained from a local supplier for procurement between \$15,001 and \$99,999 which increases the risk of employees knowing prospective suppliers. In evidence to IBAC, the Chief Financial Officer (CFO) said he was unaware that a conflict of interest register was maintained by the procurement coordinator, although he said the council recognised risks associated with conflicts of interest. In response to IBAC's report, the CFO indicated he had recently checked and had 'been told by the Procurement Coordinator that he does not and has never kept a register of conflict of interest declarations'.

Once the council became aware of Mr Carey's conflict of interest, the CFO called and arranged to interview him. Mr Carey asserted he sought and obtained permission from his former General Manager to engage his wife's business. However, the CFO noted that Mr Carey failed to advise his current General Manager about the contracts with his wife. As a result, the matter was referred to human resources 'to do a formal investigation' in relation to Mr Carey's possible breach of the code of conduct.

IBAC's investigation showed there was no documentation to support Mr Carey's assertion. Moreover, the former General Manager consistently rejected Mr Carey's claim that Mr Carey had discussed a possible conflict of interest with him.

As a result of his conflict of interest, Mr Carey unlawfully authorised payments by the council totalling \$184,123 (of which he had a pecuniary interest in \$55,885 paid to his wife). Mr Carey also solicited and received kick-backs for those payments totalling \$47,745.

Case study 4 – Conflict of interest

In Operation Royston, Mr Carey's wife, Jasmine Carey (nee Finnigan) sent her first invoice to Mr Carey from an email address that identified her as 'Jasmine Carey' but signed using her middle name 'Carol'.

Seven minutes later Ms Carey sent Mr Carey a revised invoice from an email address under the company name '(Company D)' which did not contain any references to 'Jasmine Carey'.

Mr Carey submitted this second invoice to the council's accounts payable area, by forwarding the email with a note stating 'This is a new company that have had people move from another group we worked with [sic]. ...'. This was false as 'people' referred solely to Ms Carey, who had never been part of another group working for the council.

At a later date Mr Carey sent an email to accounts payable with the comment 'How did it all go yesterday with (Company D)? Carol I think it is?' This was a dishonest attempt to give the impression he was unsure about the details of that company in order to disguise the fact Company D was owned and operated by his wife, Ms Carey.

Neither council clearly documented the processes for declaring or managing identified conflicts of interest – providing unscrupulous employees with an excuse for failing to act appropriately on their conflicts. Nor did the policy documents highlight the potential consequences for non-compliance. The deterrent value of these policies may have been more effective if it was made clear failure to properly declare and manage conflicts of interest could result in disciplinary action, including termination of employment and/or criminal charges.

4 Key corruption risks and opportunities

To address the issue of staff under-reporting or understating the nature of potential conflicts of interest, councils could consider prompting staff to first focus on their personal interests before turning their mind to the issue of whether a conflict exists.⁴⁰ This approach is consistent with the conflict of interest checklist in the LGV guides for councillors and council staff which requires a yes or no response in relation to categories of associations before asking the person to consider whether that association gives rise to a conflict of interest.⁴¹ Councils could also consider requiring staff to acknowledge that they understand the repercussions if the council becomes aware of any conflicts that the employee has failed to disclose.

In terms of the process, to facilitate a more considered declaration, councils could consider requiring staff to complete or review the form in a face-to-face consultation with their supervisor at key stages in the procurement process to promote discussion of any identified associations, rather than only requiring sign-off from a senior officer once completed.⁴²

IBAC's investigations demonstrate the potential for conflicts of interest to give rise to corrupt conduct. Specifically, it is never appropriate for council employees to allocate work to companies in which they have some form of interest, as occurred in Operations Dorset and Royston. These matters highlight the importance of ensuring employees fully understand:

- what it means to act in the public interest
- the processes for identifying, declaring and managing a conflict
- that failure to comply can give rise to serious consequences.

Without clear, well-understood policies, it can be difficult to create a culture in which employees are alert to potential conflicts of interest and respond appropriately when a conflict is identified.

4.2 Internal controls

Under the LG Act, councils are obliged to develop and maintain adequate internal controls consistent with the principle of accountability.⁴³ The LGV Guidelines define internal controls as 'the systems put in place to ensure sound financial management and effective and efficient service delivery',⁴⁴ and include model provisions that have largely been adopted by the City of Ballarat Council.⁴⁵ Equivalent provisions could not be identified in Darebin City Council's procurement policy.

The model provisions in the LGV Guidelines state:

Council will establish, document and maintain a framework of internal controls over procurement processes in order to ensure:

- a framework for supplier engagement is in place
- more than one person is involved in, and responsible for, each transaction
- transparency in the procurement process
- a clearly documented audit trail exists for procurement functions
- appropriate authorisations are obtained and documented
- systems are in place for appropriate monitoring and performance measurement.

All persons engaged in procurement processes must diligently apply all internal controls.⁴⁶

⁴⁰ NSW ICAC 2018, *Direct Negotiations: guidelines for managing risks*, p 17.

⁴¹ LGV 2011, *Conflict of Interest: A Guide for Council Staff*, p 8 and LGV 2012, *Conflict of Interest: A guide for Councillors*, p 7.

⁴² NSW ICAC 2018, *Direct Negotiations: guidelines for managing risks*, p 17.

⁴³ *Local Government Act 1989* s 140(2)(g).

⁴⁴ LGV 2013, *Victorian Local Government Best Practice Procurement Guidelines 2013*, p 70.

⁴⁵ *Ibid*, p 124. Note that City of Ballarat Council 2014, *Procurement Policy*, May 2014, section 10.8 uses wording that is broadly consistent.

⁴⁶ *Ibid*

These controls highlight the importance of:

- segregated duties and employee rotations to ensure one individual does not control the entire procurement process
- accurate and secure information management to ensure transparency and guard against information misuse
- financial monitoring to maintain regular checks on expenditure and interrogate anomalies as they arise
- audits to identify system vulnerabilities and issues that have not been detected through regular monitoring processes
- effective approval processes and meaningful supervision that actively scrutinises procurement activities.

While not exhaustive, the application of these internal controls can help to deter and/or identify potentially corrupt conduct by highlighting irregularities that warrant further consideration. The real challenge is to ensure that these controls are operating effectively, as the Queensland Crime and Corruption Commission (CCC) notes:

It is not sufficient merely to have the controls in place. They must be exercised conscientiously and continuously, and not be allowed to fall into decay or disuse because employees are busy, overloaded or merely lazy. Every manager and supervisor has a primary responsibility to ensure that procedures and controls are followed faithfully.⁴⁷

This section considers a number of internal controls that were identified as deficient in Operations Dorset and Royston, many of which arise during the contract management stage of the procurement cycle.

4.2.1 Segregation of duties and rotation of employees

The segregation of duties can help mitigate the risk of corrupt conduct by ensuring no single person is in a position to initiate, approve and review the same purchase. To ensure effective segregation, the LGV Guidelines suggest different people should be responsible for:

- drafting and approving tender specifications
- raising and approving purchase orders
- receipting goods
- approving related invoices
- reviewing and reconciling financial records
- performing inventory counts.⁴⁸

Operations Dorset and Royston both involved employees who effectively had control over the initiation, approval and review of the procurement activity in question.

In Operation Dorset, the project manager was able to:

- involve himself in the tender process which repeatedly awarded panel contracts to the same contractors, including Company A and Company B
- independently raise multiple purchase orders to make use of money allocated to a particular contract, including contingency funds
- allocate work under \$50,000 to contractors at his discretion
- submit invoices under \$50,000 to his immediate supervisor to authorise payments giving the false impression these roles were segregated, however in practice the process did not involve any real scrutiny.

⁴⁷ Qld CCC 2018, *Fraud and Corruption Control: Best Practice Guide*, p 40.

⁴⁸ LGV 2013, *Victorian Local Government Best Practice Procurement Guidelines 2013*, p 70.

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To obtain authorisation to pay invoices under \$50,000, the project manager was able to get three different managers to approve a large number of small invoices from the same contractor for many years. The fact that three different immediate supervisors did not detect any issues with these requests for payment suggest it may be prudent to involve a central procurement team to facilitate independent monitoring of the cumulative spend before an invoice is forwarded to finance to process the payment.

In Operation Royston, Mr Carey was able to:

- Create the scope of the works, sometimes creating unnecessary work. For example, one piece of work undertaken by Company D involved developing a croquet strategy, however there did not appear to be any rationale for its development. As one employee stated 'Why are we doing a croquet strategy when there are two clubs in Ballarat and there are about ten members at each of them?'
- Authorise payment of invoices he submitted without scrutiny by increasing the financial delegation of one of his subordinates from \$1000 to \$20,000, and then instructing his subordinate to approve payment for invoices he submitted. This created the false impression these roles were segregated.
- Authorise payment for invoices he submitted in excess of \$20,000 by ensuring they fell under his delegation limit of \$100,000, as discussed in the following case study.

Case study 5 – Payment of invoices in advance of services being supplied

In Operation Royston, Mr Carey authorised payment in advance of delivery of most services supplied by his wife and associates. As a result, IBAC found that on occasion, the City of Ballarat Council paid for work which was sub-standard or never completed.

For instance, when Mr Carey was interviewed as part of an internal council investigation, he provided an invoice for \$5600 from his wife's company (Company D) with his handwritten notes that read (in part) 'independent review of documents for value add'.⁴⁹ However, the documents to be reviewed had not yet been completed by another supplier, making it impossible for Company D to have conducted its review. IBAC did not locate any evidence to show this work was ever completed by Company D.

Similarly, in January 2016 the council's finance department contacted Company E requesting a copy of OHS reports completed in relation to seven paid invoices totalling \$35,550. The director of Company E told IBAC investigators that on receiving this request, he consulted with Mr Carey to falsify the reports, while telling the council he had not kept copies. However, neither Mr Carey nor the director of Company E were able to provide evidence to show this work was completed by Company E prior to the payment of invoices.

Had responsibility for confirming receipt of the goods and services or approving the related invoices rested with another employee – genuinely segregating duties – Mr Carey would not have been able to arrange payment of these invoices before the work was received.

⁴⁹ Company D invoice for 'Ballarat Active Women's Strategy Review'.

These investigations demonstrate the importance of having segregation controls and testing to check controls are working effectively. Over-reliance on processes without examining how they are working can create a false sense of security that processes are in place to prevent an individual from controlling purchases from beginning to end, when in fact this is not occurring.

To help identify weaknesses in segregation controls, councils could consider mapping their processes to assess the extent to which a team's procurement processes are consistent with the council's stated policy.⁵⁰ As the NSW ICAC notes:

*The benefit of mapping out a process is that it sets out each step involved in the policy or procedure and allows close analysis of each step to identify those underlying causes or loopholes that may allow corruption to occur.*⁵¹

When segregation of duties is not possible due to the size of the organisation or business unit, councils should enhance other controls. This might include more detailed supervisory oversight, more rigorous review and monitoring of exception reports and budget analyses, and regular audits to verify the accuracy of records and interrogate variances.

The LGV Guidelines also note the importance of ensuring employees rotate duties and undertake regular periods of annual leave when working in positions which are 'more susceptible to fraud'.⁵² The value of rotating employees was highlighted in different ways in Operations Dorset and Royston. In Operation Royston, concerns regarding Mr Carey's procurement practices were identified when he was seconded to another role. In Operation Dorset, the project manager in question had been employed by Darebin City Council (and its predecessor) since 1979 and occupied the role of project manager from 2003. During this time, his procurement practices went unchecked until responsibility for the road maintenance contracts moved to a different area of the organisation.

4.2.2 Information management

Robust information management processes are the cornerstone of open, accountable, impartial and efficient procurement. The LGV Guidelines state:

*The test of accountability is that an independent third party must be able to see clearly that a process has been followed and that the process is fair and reasonable. Every step of the process must be properly documented. Record keeping is also paramount. There must be a sufficient audit trail to account for all procurement decisions.*⁵³

A lack of thorough and accurate record keeping practices was identified in Operations Dorset and Royston. This is consistent with research that shows a lack of transparency or availability of internal records are key indicators of corruption in procurement.⁵⁴

POOR RECORD KEEPING PRACTICES

In its 2010 audit report *Tendering and contracting in local government*, VAGO recommended that councils strengthen the application of probity standards in procurement by 'maintaining sufficiently detailed and secure records of all procurement activities and decisions to reliably acquit transparency and accountability obligations'.⁵⁵ Despite this recommendation, both Operations Dorset and Royston identified issues involving poor record keeping and a lack of transparency.

In Operation Royston, there was evidence of paper files being maintained for contracted work, however key documents such as business cases, quotes, outcomes and contract details were not generated or filed consistently. In particular, IBAC found Mr Carey's efforts to avoid detection of his conflicts of interest included failing to save any records relating to the dealings with his wife and associates on the team's shared network drive – instead storing that information on his personal computer. This was clearly inappropriate and meant there was no opportunity for other employees to review and check details of those projects.

⁵⁰ NSW ICAC 2011, *Corruption risks in NSW government procurement: The management challenge*, pp 10–12. This report notes that following several corruption scandals in the US in the late 1990s and early 2000s, the US Government introduced requirements to document key compliance processes, which led to the development of process mapping.

⁵¹ *Ibid*, p 10.

⁵² LGV 2013, *Victorian Local Government Best Practice Procurement Guidelines 2013*, p 70.

⁵³ *Ibid*, p 67.

⁵⁴ Ferwarda J et al 2017, 'Corruption in Public Procurement: Finding the right indicators', *European Journal on Criminal Policy and Research*, vol. 23, pp 245–267, at p 261. The authors tested 28 potential red flags for corruption and found that 'the amount of information that could be collected appears to be the strongest indicator of corruption', noting that this confirms previous studies.

⁵⁵ VAGO 2010, *Tendering and Contracting in Local Government*, p ix.

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In Operation Dorset, the project manager regularly worked from home, used his private email address to forward work documents to council contractors and repeatedly failed to enter information onto the council's official computer system, restricting access to information about the contracts he managed. When responsibility for road maintenance work was transferred from the project manager's department to the depot, a depot manager asked the project manager to provide all relevant documents; however, the project manager only provided electronic documents.

The hard copies which the project manager retained at his home were ultimately seized by IBAC. IBAC also found that although Darebin City Council's databases are auditable, no proactive auditing was undertaken to identify misuse.

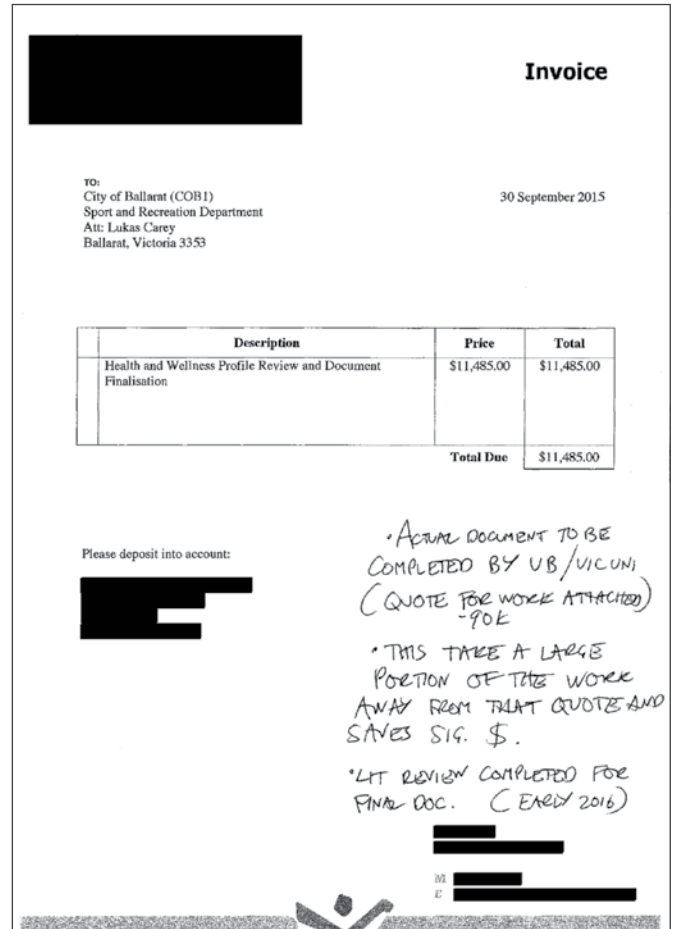
A systematic approach to record keeping can help a council meet its accountability obligations and facilitate auditing activities to detect and prevent corrupt conduct. The Australian National Audit Office notes 'keeping good records should be seen as an integral part of, rather than incidental to, contracting activity'.⁵⁶

LACK OF DETAIL IN INVOICES

IBAC found that the overall standard of invoices in both matters was poor.

In Operation Royston, many of the invoices accepted by Mr Carey simply restated the name of the project without providing information on the activities or resources involved in undertaking the work. For example, as shown in Figure 1, an invoice for \$11,485, submitted by Company D to the City of Ballarat Council for payment, contained a one-line description of the work as 'Health and Wellness Profile Review and Document Finalisation' and did not contain any reference to a purchase order to allow a third party to easily cross-check the details.⁵⁷ The document does not appear to meet the Australian Taxation Office's tax invoice requirements in that it does not include the supplier's Australian Business Number or the amount of GST payable, meaning that GST credits cannot be claimed.⁵⁸

FIGURE 1: INVOICE FROM COMPANY D



In another recent matter investigated by IBAC, investigators asked a former employee who had worked in the relevant unit to review an invoice submitted to the council to help determine whether another company had already completed the work described or whether the amount charged was inflated. The former colleague noted:

The description of the work is very brief so it is difficult to make any comment about the amount charged. There's so little detail ... I would probably not be happy to pay this invoice without more documentation ... it doesn't even tell you where [the work was performed], it doesn't tell you what it's for essentially.

⁵⁶ ANAO 2012, *Developing and Managing Contracts*, p 7.

⁵⁷ See case study 1 in section 4.1.1 for further details. Company D invoice for 'Health and wellness profile review and document finalisation'.

⁵⁸ ATO, *Goods and Services Tax Ruling*, GSTR 2013/1, par 72.

In Operation Dorset, the majority of invoices accepted by the project manager from Company B lacked important details, including the date and location of work, a description of work undertaken, and itemised lists of material and labour. This is highlighted in the case study below.

Case study 6 – Poor quality invoices

Operation Dorset identified a number of invoices submitted by Company B between 2008 and 2010 that referred to ‘labourer 1’ who worked at ‘various’ locations. This concealed an arrangement where the project manager instructed Company B to employ his sister to identify damaged footpaths that required repair. The project manager’s sister received \$36,791 from Company B for the work she performed.

The identification of damaged footpaths was the responsibility of the project manager and his co-workers in the capital works team. At no time did Darebin City Council authorise this role to be contracted or sub-contracted out. At the end of 2009, when an organisational restructure took place and a different team became responsible for footpath inspections, this arrangement ceased.

The lack of information in some invoices prevented the council from determining whether the work was actually carried out or whether a false or inflated invoice had been created. In Operations Dorset and Royston it appears likely that invoices were deliberately prepared with limited information to mask corrupt conduct by the employees in question and their associates.

UNAUTHORISED ACCESS AND DISCLOSURE

Poor information management can allow corrupt conduct to go unchecked by making it more difficult to detect. However, poor information management can also involve unauthorised access to and disclosure of information that can expose a council’s procurement process to manipulation, as discussed in the case study on the next page.

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Case study 7 – Information access and disclosure

Operation Dorset investigated two allegations of unlawful information access and disclosure by the project manager to benefit a former colleague (the director of Company A) and his brother (the director of Company C).

The investigation was prompted by a complaint to Darebin City Council by the director of Company A (the project manager's former colleague) who alleged his company should have won a council contract because he was confident he submitted the lowest quote.

IBAC analysed documents relating to 43 contracts issued to Company A between 1997 and 2003. This analysis found:

- Thirty contracts (70 per cent) were won in circumstances where Company A submitted the lowest bid (which was often around \$1000 less than the next closest bid).
- Six contracts (14 per cent) were won in circumstances where Company A did not submit the lowest bid, but documentation suggested the project manager identified issues with other submissions and argued Company A was the only company capable of completing the works within the required timeframes.

- Seven contracts (16 per cent) were won in circumstances where the reasons for awarding the contract to Company A could not be determined due to a lack of paperwork.

In private examinations, both the project manager and the director of Company A denied accessing or using confidential council information to benefit Company A.

It was also alleged the project manager used his position to access information to help his brother draft tenders for contracts managed by another area of the council. In private examinations, the project manager could not recall why he accessed information about facilities and maintenance contracts (which, by his own admission, were not relevant to his work) a month before his brother's company (Company C) submitted a quote in relation to a facilities and maintenance contract. Company C ultimately received regular work from Darebin City Council, earning \$2,295,355 between August 2009 and January 2015.

In private examinations, both the project manager and his brother denied accessing or using information to benefit his brother.

Conduct or suspected conduct of this kind can discourage potential suppliers from bidding for council work. As highlighted in IBAC's 2016 research into suppliers' perceptions of corruption in the Victorian public sector, 38 per cent of supplier respondents stated they believe it is typical for public agencies (including councils) to give unequal information to suppliers interested in a tender,⁵⁹ while 34 per cent said they had decided not to bid for government work because of concerns about corruption in public sector procurement.⁶⁰

A range of measures may be required to address this issue. Factors to consider may include locking down relevant files until all submissions are received, requiring completion of confidentiality statements from evaluation panel members before releasing documents, and restricting access to certain documents such as proposed costings. In addition, regular auditing of submission files may help to deter employees from subsequently attempting to access documents they are not required to consider for work purposes.

⁵⁹ IBAC 2016, *Perceptions of corruption: Survey of Victorian government suppliers*, p 8. Sixteen per cent of respondents stated it was very typical and a further 22 per cent stated it was typical.

⁶⁰ *Ibid*, p 5.

While it is important to restrict access to information at certain points in the procurement process, access and disclosure concerns can be mitigated in part by proactively publishing information where possible, to promote open and fair competition. The value of transparent procurement processes was highlighted by the director of Company A in private examinations for Operation Dorset. The director referred to Wyndham City Council's public reporting of tendering outcomes as a particularly transparent approach, stating:

Wyndham actually give you the full breakdown of everybody's price. It's not classified like Darebin. They'll tell you how they scored every contractor in that tender ... you can go on the web and have a look. Every contract is specifically broken up. For years. And if you miss out on a job and you think, 'Geez, I only got a score at 80 out of 100, and this guy won the job and beat me by \$1000, and he got a score of 81, oh, geez,' you ring them up and say, 'Come on, what have I got to do next time to get that score up?'

This observation suggests an open approach to procurement can promote greater competition by giving suppliers confidence that the process is impartial and transparent, and encouraging suppliers to engage with the council, reflect on their submissions and bid for future contracts.

4.2.3 Financial monitoring

Ongoing monitoring of expenditure is an internal control that can quickly identify potential issues. IBAC identified instances where monitoring of expenditure – including cumulative spend against contracts and purchase orders, aggregated payments to particular suppliers, and utilisation of contingency funds – could have helped to identify potential corrupt conduct in a timely manner.

The importance of monitoring cumulative spend is well-established. In 2010 VAGO noted:

Where significant amounts are spent in aggregate on one supplier, or for one service, over time ... it is possible to achieve greater savings by leveraging this aggregate spend, rather than treating each discrete arrangement as a separate procurement exercise, whether undertaken competitively or not.⁶¹

As demonstrated in the following case study, issues can quickly escalate, costing councils large sums of money if not monitored in real time.

Case study 8 – Amendments and failure to monitor cumulative spend

In another matter investigated by IBAC, a council employee was able to amend a single purchase order more than a dozen times in less than a year without any scrutiny. As a result, the council paid more than \$300,000 against a purchase order (originally approved in relation to a procurement valued at less than \$5000 which only required a single quote) without going to tender.

Even though payments against the purchase order exceeded both the legislative competition threshold at which a public tender is required and the individual staff member's delegation limit, no red flags were raised within the council's procurement system because the delegation controls only applied to the value of the amendment (each of which was small) rather than the cumulative expenditure against the purchase order.

⁶¹ VAGO 2010, *Tendering and Contracting in Local Government*, p x.

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It is critical that overall spend is monitored in addition to the number and value of individual variations. This might involve configuring systems to:

- base approval requirements on the cumulative value of the purchase order or contract rather than the value of individual variations
- automate the approval process rather than allowing staff to select from a range of possible managers with the requisite level of delegation to prevent 'approver shopping'
- conduct rolling audits to identify purchase orders and contracts that have been amended multiple times.

The importance of ongoing financial monitoring is not limited to detecting questionable variations to contracts or purchase orders. Financial monitoring can also assist to identify other inappropriate procurement activity as discussed in the case study below.

Case study 9 – Failure to detect excessive purchasing

A complaint received by IBAC included an allegation a council employee colluded with a contractor to purchase building materials that were not required by the council. In that matter, it was alleged the employee split invoices to allow him to approve multiple payments to the same supplier, avoiding the need for approval to go to a more senior employee.

As a result, the council purchased an estimated \$400,000 worth of building material it did not require. In an attempt to recoup some of the costs, the council sold the material back to the company for \$150,000. The employee left the council to work for the company in question while under investigation.

To address this issue, the council amended its financial reporting system to generate a report that showed a summary of payments to contractors for review by the executive leadership team on a monthly basis, as well as an annual report for review by the audit committee.

In Operation Dorset, the project manager was able to repeatedly obtain approval to have small invoices paid to the same two suppliers, as highlighted in the case study below.

Case study 10 – Invoice splitting to stay within delegation limits

In private examinations for Operation Dorset, two suppliers (Company A and Company B) admitted the project manager asked them to split invoices to ensure he effectively maintained control over the payment, as discussed in the following exchange between Counsel Assisting and the director of Company A:

COUNSEL ASSISTING: Has [the project manager] ever asked you to split an invoice?

WITNESS: In what way?

COUNSEL ASSISTING: Split an invoice. What does that mean to you?

WITNESS: Well, split an invoice. Yes. If I've got an invoice for \$70,000, can you please split that into two progress payments? Absolutely.

COUNSEL ASSISTING: You'll do that, and you're happy to do that?

WITNESS: Of course. Well, it's the same process. It's just split into two invoices. I think his manager can approve something a bit smaller. Whereas his manager probably can't approve anything larger.

COUNSEL ASSISTING: And has he ever asked you to do that?

WITNESS: Yes. Probably. Yes. Plenty of times. Yes.

The director of Company B also advised IBAC the project manager would ask him to create two invoices for the same work to ensure both amounts were less than \$50,000 and therefore able to be approved by his line manager, who applied little scrutiny.

Contingency funds are often applied to contracts as a safety net to address unforeseen cost overruns and mitigate the risk of being unable to deliver on a council's commitments to its community. However, contingency funds can be abused if not properly monitored. In Operation Dorset, Darebin City Council's contingency funds generally provided a buffer of 10 per cent to 15 per cent in addition to the stated contract amount. In relation to the contracts managed by the project manager, this meant the contingency funds generally averaged \$20,000 per contract. At the time of IBAC's investigation, project managers at the council had full control and authority over their respective contingency funds and were not required to justify use of those funds. The use of contingencies were not monitored by finance or senior managers.

In a statement to IBAC, a staff member at Darebin City Council noted the project manager accessed contingency funds, 'using the variations in 90 per cent of his jobs', an example of which is discussed in case study 11.

When IBAC identified the over-use of contingency funds as a concern in November 2015, Darebin City Council amended its procedures to disallow contingency funds for contracts under \$500,000, and to require project managers to seek the CEO's approval for the use of contingency funds for contracts over \$500,000. The project manager objected to these changes, approaching his director and the senior procurement officer, arguing he would not be able to fulfil his duties.

These matters suggest that if councils are not already doing so, consideration should be given to monitoring changes in the size and scope of procurement activities in terms of cumulative expenditure against contracts, purchase orders and vendors,⁶² and contracts and purchase orders with a large number of variations, including requests to access contingency funds.

Case study 11 – Use of contingency funds

In Operation Dorset, in response to a tender request, seven companies submitted bids, including Company A, which submitted the lowest bid of \$236,065. The total amount invoiced by Company A in relation to this contract was \$252,920 which exceeded their winning bid by \$17,855.

In private examinations, the director of Company A was asked if he was ever paid more than the contract amount for work he did for the project manager. He replied, 'Always got paid more. Always'. Three other contractors submitted bids significantly lower than the final price the council paid for this work, suggesting the council may not have received value for money.

The director also told IBAC the project manager told him about extra money left over in the budget allowing Company A to do additional work, but asserted Company A performed work that was genuinely required. However, this additional work was allocated without any form of competitive process that would have allowed the council to demonstrate it had achieved best value.

Regular financial monitoring by staff can help a council identify emerging issues in a timely manner, if acted on appropriately by the executive. Such monitoring should be undertaken by staff who are independent of those involved in previous phases of the procurement process. The executive must act on those reports to demonstrate to staff that the organisation is committed to continuous improvement, will support staff who require further training and support in relation to honest mistakes, but will not tolerate dishonesty or conduct that lacks integrity.

⁶² For example, the City of Port Phillip, *Procurement Policy*, June 2018, section 5.49 states: 'The Contracts and Procurement Unit will monitor procurement activity on an ongoing basis and provide [amongst other things]... a monthly report to managers outlining... vendors with spend of between \$80,000 and \$150,000 in the last 12 months without a competitive tendering process'.

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4.2.4 Audits

The LGV Guidelines identify audits as a key internal control, noting councils should routinely monitor the performance of procurement activities through random internal checks and an internal audit program. The LGV Guidelines also suggest checks should be conducted by people who are knowledgeable in the function but independent of their operation, and encourages councils to view audits as an opportunity to value-add to the procurement function.⁶³

In Operation Dorset, the former Co-ordinator Capital Works who supervised the project manager for a period advised IBAC '[his] contracts were ... often selected for auditing, and were consistently found to comply with processes and documentation requirements'. However, as noted above, IBAC's investigation identified issues in relation to the quality of invoices, record keeping practices, cumulative spend against certain vendors and misuse of contingency funds – which were often unique to the project manager – suggesting the auditing activities undertaken were not effective.

In Operation Royston, a check of Mr Carey's personnel file indicated that Company D's telephone number was the same as his wife's phone number, which Mr Carey had previously provided to the council in case of personal emergency. Further, the owner of Company F provided a reference check when Mr Carey applied for employment with the council. The fact this information was already available to the council demonstrates the value of audits and other checks such as data analytics to identify potential instances of fraud or corruption in a timely manner.

The value of audits has been recognised and demonstrated in a number of matters investigated by IBAC. In one such matter, an audit commissioned by a council in relation to a specific project quickly identified a weakness in the council's purchase order amendment process, triggering a review that put a stop to a number of suspect payments. As a result, that council made a number of changes to their procurement processes to reduce their risk of corrupt conduct.

In another matter investigated by IBAC, the council undertook to implement a range of scheduled and random audits to strengthen its procurement processes and systems to address a range of issues identified in the course of IBAC's investigation, including inadequate procurement controls and poor record keeping which allowed corrupt conduct to go unchecked.

4.2.5 Supervision and approval processes

In Operations Dorset and Royston, the persons of interest varied in terms of their length of service, experience in the local government sector and area of work within council. However, both matters involved an employee who was able to exercise a significant degree of autonomy in the absence of meaningful supervision or oversight.

The project manager's activities in Darebin City Council went undetected for many years. As a long-term employee (he worked for the council for 38 years), his supervisors afforded him a greater level of autonomy than other staff and did less to monitor his work. For instance, one former manager who supervised the project manager for a short period towards the end of his employment noted:

I thought [he] was doing a great job, he was very efficient and knowledgeable so I continued the current system where he had [a] lot of freedom to just get things done quickly. He got twice as many projects done as other people.

Another former manager who supervised the project manager for 18 years noted he never had any reason to question his actions in dealing with contractors and that IBAC's investigation came 'as a total surprise' to him 'in light of the processes in place' at the council.

⁶³ LGV 2013, Victorian Local Government Best Practice Procurement Guidelines 2013, pp 71–72.

Performance reviews similarly suggest management considered the project manager to be competent; however, it is not clear what, if any, scrutiny was applied to his work or decision making. Knowing he was not required to document reasons or account for decisions, the project manager's manipulation of the council's processes took a number of forms. This included discretionary allocation of work, invoice splitting, exhaustion of contingency funds and directing a contractor to undertake work his area should have been doing.

In Operation Royston, Mr Carey operated with a significant amount of autonomy and limited oversight. Despite having limited local government sector experience, Mr Carey was able to 'talk the talk' (as some colleagues put it) and manipulate circumstances to his advantage, concocting stories to elicit sympathy from colleagues. For example, he told managers and colleagues his infant son was likely suffering from a terminal illness and that he was experiencing marital problems, neither of which was true.

A number of other IBAC investigations involving allegations of corruption in procurement have highlighted the need for adequate supervision and approval processes. For instance, in one matter, a council employee was able to add an associate (to whom he owed money) to the council's vendor master file without providing any explanation why the supplier was needed or indication of how they were sourced. The issue of potential unauthorised procurement from non-approved suppliers and control deficiencies in relation to master file changes was identified as a new medium-risk internal control weakness in VAGO's 2018' audit of local councils.⁶⁴ In another council matter, IBAC found a lack of oversight in the procurement process allowed a program manager to misuse council funds for her personal use over an extended period. The program manager's personal use of council funds included purchasing home appliances that were located in her home and the homes of her relatives, as well as groceries and supermarket gift cards.

In both Operations Dorset and Royston, the councils had systems in place that automatically generated requests for approval, sending emails to the appropriate delegate and creating an official record. However, in a cautionary note regarding systems and procedures to document supervision and oversight, the NSW ICAC has noted:

Chains of 'tick and flick' approvals can create the impression that the procurement is compliant and proper, when in fact the most basic checks were never done in the first place but managers kept signing the paperwork based on the fact that it was signed by the person below them in the hierarchy.⁶⁵

For instance, in Operation Dorset it appears the project manager put invoices forward for approval by his immediate supervisors for years without any real scrutiny. However, his efforts to keep invoices under \$50,000 (to avoid quotation requirements and ensure his immediate supervisors had the financial delegation to authorise payment) suggest he was concerned those invoices may have been queried if reviewed by more senior managers. Darebin City Council has since amended its approval processes and advised IBAC that two approvers are now required before an invoice will be paid. However, to ensure the secondary approver does not simply become part of a chain of 'tick and flick' approvals, managers should also be provided with guidance to make clear what factors they should consider before approving a request for payment, and held to account for the payments they approve.

Managers at all levels must be actively engaged in supervising employees and scrutinise requests in a meaningful way to ensure approval processes are not undermined. Depending on the activity, effective supervision may only require occasional checks. What is important is that those checks actually test that the request for approval can be supported.

⁶⁴ VAGO 2018, *Results of 2017-18 Audits: Local Government*, p 36.

⁶⁵ NSW ICAC 2010, *Corruption Risks in NSW Public Sector Procurement: Consultation Paper*, p 12.

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4.3 Ethical culture and leadership

Approvals and supervision are key activities in the day-to-day management of procurement. However, a broader focus on leadership is also required to cultivate an organisational culture in which procurement activities are conducted in a manner consistent with best practice principles. As noted by the NSW ICAC:

Prevention is not achieved only through a set of policies, procedures and checks choreographed by a governance group. It involves the very DNA of an agency: that is, the way controls are structured, the design of processes, the normative behaviour and skills of staff, and the management of staff.⁶⁶

This section discusses issues identified in Operations Dorset and Royston that concern organisational culture in terms of demonstrably ethical leadership, communication and awareness-raising activities, and the maintenance of ethical standards through internal complaint and investigation processes.

4.3.1 Setting a good example

Failure to instil in employees the importance of the principles of open and fair competition, accountability, risk management, probity and transparency, and value for money in relation to procurement can have serious ramifications. As MAV has observed 'poor procurement can be career ending and even result in the suspension of a council'.⁶⁷ It can also result in substantial financial losses and criminal charges, all of which can be damaging to a council's reputation and employee morale.

It is one thing to have a comprehensive suite of policies in place and another to embed those values within an organisation. As the Queensland CCC's *Fraud and Corruption Control: Best Practice Guide* notes 'Official policies specify what management want to happen. Corporate culture determines what actually happens, and which rules are obeyed, bent or ignored'.⁶⁸

Senior managers and supervisors must lead by example and act in a manner that reflects the values of their organisation. Failure to 'walk the talk' can undermine efforts to promote integrity by suggesting management is not genuinely committed to those principles.

The importance of following procurement procedures should be emphasised with all staff and reinforced through the promotion of:

- transparency, for example by supporting initiatives to publish tender evaluation decisions
- proactive risk management which might involve conducting regular audits and spot checks
- accountability, for instance by recognising employees who consistently conduct procurement in an accountable manner.

4.3.2 Communication, awareness and commitment

EDUCATING AND TRAINING EMPLOYEES

It is incumbent on senior management to ensure employees are provided with appropriate training and to clearly communicate both the standards expected of staff and processes for reporting suspected misconduct or corrupt conduct.

Employees who do not have the required procurement expertise can expose a council to a wide range of risks due to ignorance, uncertainty and the perpetuation of poor practices. In the absence of proper induction and ongoing training, councils cannot assume their employees are aware of and understand relevant policies including:

- processes to identify and manage conflicts of interest
- procurement policies and procedures
- information management requirements
- consequences that could result from an employee's failure to comply with council's procedures
- steps to be taken if an employee witnesses improper conduct on the part of colleagues or suppliers.

⁶⁶ NSW ICAC 2011, *Corruption Risks in NSW Government Procurement: The Management Challenge*, p 4.

⁶⁷ MAV, *Procurement training & events*, <www.mav.asn.au/what-we-do/procurement/training-events>.

⁶⁸ Qld CCC 2018, *Fraud and Corruption Control: Best Practice Guide*, p 84, quoting the Committee of Sponsoring Organisations for the Treadway Commission, 1992.

In Operation Royston, witnesses noted they did not raise concerns, as they were unsure of the proper procurement processes, or they acted on instructions from the person of interest, believing it must be okay if their senior officer was asking them to do certain things.

Employees who are provided with corruption prevention training, and who are regularly reminded of their responsibilities by senior managers who adhere to the expected values, are better placed to detect and report suspect corrupt conduct. Regular education and training can also deter employees from asking colleagues to do something questionable if all staff know others are aware of correct procurement and contract management processes, avenues available to query activities and how to formally report suspected corrupt conduct.

COMMUNICATING WITH SUPPLIERS

Operations Dorset and Royston demonstrate that suppliers are in a unique position to identify suspected corrupt conduct in procurement. Suppliers may observe conduct on the part of other suppliers that gives rise to suspicions. Or they may be approached directly by council employees who are seeking to exploit their official position for personal gain.

However, IBAC's 2016 survey of suppliers found 22 per cent of respondents said they were unlikely to report suspected corruption, citing concerns that doing so would have a negative impact on their organisation, that no action would be taken, confidentiality would not be maintained, or there would be other personal implications.⁶⁹ To address these concerns, information should be provided to current and prospective suppliers, highlighting suppliers' obligations to raise concerns and advising how they can report, both to the council and to external bodies including IBAC.

To assist councils in providing clear guidance to current and prospective suppliers, MAV has developed an e-learning module, *Doing business with local government*. The module includes sections on ethical standards and probity which set out the ethical standards expected of both suppliers and council employees. In particular, the module describes probity as 'a key part of everyone's role', makes clear 'council staff and councillors do not accept gifts, entertainment, inducements or bribes', and stresses 'all parties involved [in procurement] must declare perceived, potential or actual conflicts of interest'.⁷⁰

IBAC notes the VGPB introduced a suppliers' code of conduct in 2017. That code requires suppliers to acknowledge minimum standards of behaviour when conducting business with state government agencies, including a clear statement of expectations regarding the reporting of suspected misconduct or corruption.⁷¹

Clear codes of conduct for suppliers and promotion of reporting options may not stop a supplier from engaging in conduct that intentionally deceives a council. However, it can put all suppliers on notice and may deter individuals from engaging in unscrupulous activities if approached to collude with a council employee. Codes may be included as part of the bidding process or within the terms of the contract.⁷² This could also be accompanied with advice that failure to adhere to those requirements can result in the contract being reviewed, which may in turn result in termination and/or reports being made to the appropriate authority if the supplier's behaviour raises the suspicion that corrupt or criminal conduct has occurred.⁷³

⁶⁹ IBAC 2016, *Perceptions of corruption: Survey of Victorian government suppliers*, pp 6–7.

⁷⁰ MAV, *Doing business with local government*, <www.mav.asn.au/events/e-learning-portal/doing-business-with-local-government>.

⁷¹ VGPB 2017, *Supplier Code of Conduct*, <www.procurement.vic.gov.au/Suppliers/Supplier-Code-of-Conduct>.

⁷² VGPB 2017, *Supplier Code of Conduct – Supplier Fact Sheet*, <www.procurement.vic.gov.au/Suppliers/Supplier-Code-of-Conduct>, which notes that the supplier code of conduct has been incorporated into state government procurement processes by requiring that potential suppliers for large contracts sign a commitment letter as a compulsory element of the supplier's submission and amending the terms and conditions for small, intermittent purchase order procurement to reflect the supplier's acknowledgement and commitment to the code without requiring a separate commitment letter.

⁷³ Old CCC 2018, *Fraud and Corruption Control: Best Practice Guide*, p 37.

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Case study 12 – Organisational culture and secret commissions

Secret commissions are informally known as 'kickbacks' and are a criminal offence under section 176 of the Crimes Act.

The employees at the centre of Operations Dorset and Royston both acted as an agent for the council in sourcing and engaging contractors to perform works. In the course of this duty they each engaged associates from whom they sought payments and other benefits. Requests for kickbacks by a public servant undermine confidence in public sector procurement by suggesting contractors cannot win work on their own merits, and create suspicion that similar activities are occurring elsewhere. Councils must guard against this to ensure best value for the community.

In admitting he made a number of payments to the project manager during private examinations for Operation Dorset, the director of Company A stated:

I cannot remember exactly when, however during the first year that [Company A] tendered for Darebin City Council work in 2002 ... we had this conversation ... and [the project manager] started expecting some sort of payment. [He] would mention to me an increased invoice, or that he had bills to pay. [He] also mentioned to me about 'director's fees' which I took to mean that he wanted me to make a cash payment to him.

In Operation Royston, the director of Company E told IBAC Mr Carey instructed him to increase the invoice amount and to pay the difference to Mr Carey 'for getting the job'. The director accepted this arrangement and made payments to Mr Carey as 'finder's fees'. The director indicated he sent his invoices directly to Mr Carey and, upon receiving payments from the council, withdrew cash and handed it personally to Mr Carey.

4.4 Complaints and investigations

Robust complaint handling and investigation processes are important to help identify possible corrupt conduct in procurement. To be effective, those processes must be known to employees and suppliers, and complaints must be acted on appropriately to engender confidence.

In Operation Dorset, Company A was the subject of numerous complaints from council employees in relation to the way the director had dealt with and spoken to employees. Despite receiving two letters of warning from the Darebin City Council, Company A continued to be awarded work by the council. This arguably gave staff the impression that senior management was willing to tolerate poor conduct on the part of suppliers. While complaints provide an opportunity to identify issues of concern, if that opportunity is missed, inaction can embolden offenders and dissuade staff from raising further concerns.

IBAC's research suggests local council staff would most likely report suspected wrongdoing to their immediate managers.⁷⁴ However, provision should also be made to escalate an issue or indeed circumvent line management where staff have concerns about the conduct of their managers or find their report is met with either resistance or inaction, as discussed in the case study on the next page.

⁷⁴ IBAC 2017, *Perceptions of corruption: Survey of Victorian local government employees*, p 12, in which local government respondents indicated they were most likely to report serious corruption to their immediate manager (33 per cent).

Case study 13 – Reporting and escalating issues

In 2016, IBAC investigated a matter in which a program manager was alleged to have misused petty cash for a community health program that provided a range of meals and other refreshments to program participants.

Numerous employees who reported to the program manager told IBAC that while they checked deliveries against invoices, they assumed they had done the right thing by reporting unusual deliveries to their program manager who was in fact responsible for the questionable purchases. None of the staff interviewed appeared to know or have confidence to report their suspicions to more senior officers.

A number of employees told IBAC the program manager could be aggressive and difficult to deal with if questioned about decisions, and they therefore felt it was easier to stay 'on the good side' of the program manager.

IBAC concluded cash had been mismanaged. However, due to the lack of record-keeping processes, the total amount could not be confirmed.

In Operation Royston, the City of Ballarat Council instigated an internal investigation after concerns were raised regarding Mr Carey's conflict of interest. The investigation was conducted by the CFO and the General Manager. As part of the investigation, Mr Carey was provided with copies of nine questionable invoices in advance of a meeting to discuss the concerns, providing him with an opportunity to construct a response ahead of time. At that meeting, Mr Carey was able to address each of the nine invoices by presenting extracts of a university dissertation he had drafted some years earlier as fabricated evidence of works completed.

The council investigation into the fraud allegations ceased at the conclusion of that meeting. No notes or other records of the meeting could be located.

Although satisfied in relation to the fraud allegations, the council's internal investigators considered further investigation was required in relation to the conflict of interest (namely Mr Carey hiring his wife). The conflict of interest issue was referred to the council's human resources manager who consulted with the protected disclosure coordinator, which resulted in the matter being notified to IBAC a month after the meeting with Mr Carey to investigate the fraud allegations.

In a statement to IBAC, the CFO conceded he was not in a position to assess the quality of the work. This suggests staff with relevant knowledge or expertise should have been consulted as part of those enquiries to assess whether the work was truly required and delivered. In the absence of such advice, the CFO concluded the procurement policy was definitely followed, as shown in the following extract from the CFO's statement to IBAC:

Quality of work, I couldn't comment on. You would have to be in on the conversations to what scope was required to determine whether the quality was good, bad or otherwise. Plus it's not my field. If it doesn't have numbers in it I sort of struggle, so I have no idea in relation to the quality side of it. But definitely the procurement policy was followed. The work was required, work was delivered.

In response to this report both senior officers denied conducting an investigation in relation to allegations of fraud against Mr Carey, stating:

Whilst the statements of both... do mistakenly use the word 'fraud' at times when referring to the nature of the allegations against Mr Carey... it is clear from the entire statements and the evidence that what [they] were really referring to in their statements was an allegation that Mr Carey was procuring from a company his wife was associated with. In other words the "fraud" in question [at the time of their meeting] was whether Mr Carey had breached the conflict of interest policy.

A number of other concerns with the council's internal investigation were also identified. In particular, the two senior officers who conducted the internal investigation failed to identify and manage clear conflicts of interest. Specifically, the General Manager was Mr Carey's direct supervisor; as such, any adverse findings identified in the internal investigation would reflect badly on him as Mr Carey's supervisor.

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In response to this report the senior officers submitted that ‘a more accurate depiction of events would be that there were two separate council enquiries into Mr Carey’s conduct’. Specifically, the senior officers asserted the first enquiry involving the senior officers concerned an allegation of conflict of interest and was ultimately referred to human resources, and the second enquiry concerning allegations of fraud only emerged as a result of human resources subsequent enquiries.

As indicated in the CFO’s statement, quoted above, the internal investigators ultimately concluded the council’s procurement policy had not been breached. This decision was reached without seeking verification or advice from any other parties such as the contractors involved or Mr Carey’s colleagues.

In response to this report the CFO advised that:

It would not have been meaningful... to check with other staff... as Mr Carey clearly stated that he had arranged the work and quotations himself and therefore no other staff members would have had relevant knowledge. In relation to the possibility of seeking confirmation from the contractors in question... any such avenue of enquiry which could have only been to Mr Carey’s wife would merely provide an unreliable confirmation and it was therefore reasonable... to reject such an approach.

The meeting with Mr Carey was not documented and no report was prepared detailing the rationale for dismissing the allegations. In his statement to IBAC, the CFO said:

If we do this kind of stuff I don’t like to rely on what people are giving me, so I did an independent review of the system for a three-year period and I printed out every invoice for that period and that’s what we were starting the review on. I only have very crappy notes. I didn’t even write it on the right day, I wrote it the next day.

The CFO’s decision to conduct an ‘independent review’ of council invoices over a three-year period, suggests the nature of the allegations under consideration warranted documentation of the meeting.

In response to this report, both senior officers asserted the purpose of the meeting was to establish whether Mr Carey had acted in circumstances where a conflict of interest existed and that only brief notes were made of the meeting because it was a preliminary meeting with Mr Carey, noting that council’s records were reviewed ‘to determine what period of time the company in question had been used for procurements’.

The allegations were not reported to IBAC or Victoria Police in a timely manner. Although this matter was first identified by the council before the legislative requirement to mandatorily notify IBAC of suspected corrupt conduct was introduced in December 2016,⁷⁵ the council could have exercised its discretion to do so, to ensure the allegations were subject to independent assessment. IBAC notes other options available to the council included appointing an officer from another business unit independent from the relevant employee/s (such as audit and risk or human resources), or engaging the assistance from another council or private operator with expertise in internal investigations.

In 2016, IBAC and the Victorian Ombudsman published the *Investigations guide: Conducting internal investigations into misconduct*. This guide highlights the importance of conducting internal investigations objectively in an appropriate and timely manner to address allegations of improper conduct and to help set the boundaries of expected standards of behaviour. It recommends all investigations be conducted in an impartial and objective manner.⁷⁶ Specifically, no person with an actual, potential or perceived conflict of interest should be appointed as the investigator. In Operation Royston, the CFO and General Manager should have recused themselves from the investigation of Mr Carey.

⁷⁵ *Independent Broad-based Anti-corruption Commission Act 2011* s 57(1).

⁷⁶ IBAC and Victorian Ombudsman 2016, *Investigations guide: Conducting internal investigations into misconduct*, p 15.

5 Conclusion and recommendations

5 Conclusion and recommendations

5.1 Conclusion

Sound procurement practices are essential to ensure public money is spent judiciously and in a manner that puts the interests of the community first.

In Operations Dorset and Royston, IBAC investigated allegations council managers corrupted their councils' procurement processes. Both matters raised concerns about questionable conduct and procurement practices.

Operation Royston resulted in one employee being charged and convicted of criminal offences relating to obtaining financial advantage by deception, attempting to commit an indictable offence and soliciting secret commissions. Three suppliers were also charged. Two pleaded guilty and received fines without convictions being recorded in relation to charges of paying secret commissions. The third pleaded guilty and was convicted of obtaining financial advantage by deception and attempting to commit an indictable offence.

Importantly, Operations Dorset and Royston, and a number of other matters investigated by IBAC, have highlighted a range of corruption risks and vulnerabilities associated with procurement in local government. Issues were identified in relation to the process of sourcing suppliers, the failure of internal controls, and the importance of ethical leadership and organisational culture.

As a result of Operations Dorset and Royston, IBAC has recommended that Darebin City Council and the City of Ballarat Council review their procurement policies, systems and practices to address the identified vulnerabilities.

IBAC acknowledges Darebin City Council has taken steps to strengthen its systems and processes, and the council considers these reforms have reduced corruption risks associated with procurement at the council. Work undertaken by Darebin City Council in this regard is outlined in Appendix A.

However, IBAC does not believe these vulnerabilities are unique to those two councils. It is well established that procurement is vulnerable to corruption because it involves the distribution of monies and devolved decision making. And as highlighted in this report, local government may be at heightened risk of corruption because of the sometimes close proximity of council employees to local suppliers.

It is therefore critical that all Victorian councils consider their procurement policies, systems and practices to identify how they can strengthen their resistance to corruption.

IBAC also considers there would be merit in local government suppliers being subject to a code of conduct. Such a code of conduct could explicitly outline the standards expected of suppliers, including in relation to reporting suspected misconduct or corrupt conduct on the part of council employees and other suppliers. Therefore IBAC has recommended LGV consider the development of such a code.

5.2 Recommendations

Pursuant to section 159(1) of the IBAC Act, IBAC makes the following recommendations:

Recommendation 1

The CEOs of Darebin City Council and the City of Ballarat Council separately report to IBAC within 12 months of this report, to advise how they have strengthened their councils' procurement policies, systems and practices to address the corruption vulnerabilities identified by IBAC in this report, including by ensuring:

- a. robust information management processes are in place to accurately document all procurement activities in an auditable manner
- b. key elements of the procurement process are segregated and regular checks are conducted to test the effectiveness of those mechanisms, which may include periodically rotating managers with significant responsibility for procurement
- c. suppliers are sourced in a way that complies with competition requirements set out in legislation and/or procurement policies and procedures
- d. audits and risk assessments are conducted to help identify system vulnerabilities that may not have been detected through regular monitoring processes
- e. training for all employees involved in procurement effectively covers relevant policies and procedures including the council's procurement policy, conflict of interest procedures, code of conduct, and the responsibilities of financial delegates
- f. regular communication with employees and suppliers regarding their responsibility to report suspected corrupt conduct and how to make a report.

Recommendation 2

Local Government Victoria consider the development of a code of conduct for suppliers to Victorian councils, consistent with the state government suppliers' code of conduct developed by the Victorian Government Purchasing Board, to help local government suppliers understand minimum standards of conduct when conducting business with councils. The code should clearly state what is expected of suppliers in relation to declaring conflicts of interest and the reporting of suspected misconduct or corrupt conduct on the part of council employees and other suppliers.

6 Appendices

Appendix A: Natural justice requirements and responses

Some parts of this special report were considered to be covered by section 162(4) of the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act) which requires that non-adverse comment or opinion about any person be showed to them in advance. Therefore such persons were extended the opportunity to inspect relevant parts.

To the extent that persons are identified in the report and are not the subject of adverse comment or opinion, IBAC is satisfied in accordance with section 162(7) that:

- it is desirable to do so in the public interest
- it will not cause unreasonable damage to any such person's reputation, safety or wellbeing
- each such person is not the subject, nor for that matter intended to be the subject, of any adverse comment or opinion.

To the extent that public bodies and persons are identified in the report and are the subject of adverse findings⁷⁷, comment or opinion⁷⁸, they have been given a reasonable opportunity to respond to same by being shown draft⁷⁹ material parts relating to them.

In accordance with sections 162(2) and (3) respectively of the IBAC Act, responses that did not result in material relevant changes between the draft report and this report – to the extent they are of the kind provided for in the IBAC Act – are set out on the following pages.

City of Ballarat Council's response

The City of Ballarat Council noted the draft report and accepted the recommendations in the draft report.

⁷⁷ In relation to public bodies.

⁷⁸ In relation to persons.

⁷⁹ Being tentative findings.

Appendix B: Darebin City Council's response

5 July 2019

In reply please quote reference:

Ref: A5126262

Mr Alistair Maclean
IBAC
GPO Box 24234
Melbourne VIC 3001

CONFIDENTIAL

Dear Mr Maclean

Corruption Risks Associated with Procurement in Local Government

I refer to your letter dated 13 June 2019 (reference CD/19/29340) in relation to corruption risks in Local Government and the comments made with respect to the performance of the Darebin City Council.

Thank you for the opportunity to provide a response to your draft report.

General Comments

I wish to reassure you that Darebin City Council is deeply committed to ensuring that corruption is both mitigated and eliminated across our organisation. Since commencing as the Chief Executive Officer at the City of Darebin 18 months ago, this has been a key focus of my attention.

I note that the activities that are the subject of the report occurred more than four years ago and I am confident that a number of significant reforms have been subsequently implemented to Council systems and processes that have substantially reduced our risks of procurement related corruption. Towards this, I request that the findings and recommendations in the final IBAC report reflect this.

Outlined below are some of the key process changes and controls implemented over the last 18 months which demonstrating improved practices, our commitment to continuous improvement, transparency and accountability in procurement. These are offered in response to the specific risks identified in the draft report supplied.

Sourcing Suppliers

In response to risks outlined in the draft report at Section 1.2.1 (page 4), the following new procurement processes and controls implemented since the investigation are outlined for your information;

Inappropriate disclosure of information

All parties involved in the tendering design and procurement process are required to sign a conflict of interest declaration before viewing tendering submissions. Failure to do so will result in the lock of submission folders and documents until such declaration has been completed.



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Darebin City Council
ABN 75 815 980 522

Postal Address
PO Box 91
Preston VIC 3072
T 03 8470 8888
F 03 8470 8877
darebin.vic.gov.au



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Appendix B: Darebin City Council's response

Increased effectiveness in compliance checks regarding policy and procedural correctness.

During the evaluation stage, all panel members are notified that they should not communicate with a tenderer without procurement oversight and involvement. All communication is made via the relevant procurement leader. This is to ensure that only relevant information is disclosed and only reasonable questions are asked.

New Controls and Treatments: Controls in place to support negotiation with suppliers.

All officers involved in the tendering process are required to engage with the procurement team when negotiation is identified. The procurement team will lead such negotiation in accordance with the policy and legal advice will be sought based on the nature of the negotiation.

New Controls and Treatments: Consequences as a result of non-compliance

In situations of non-compliance, officers are subject to the full authority of the Performance Planning and Review policy and the Workplace Standards and Behavior policy. This can result in training and education or termination of employment with Council- all of which has occurred in the past 12 months.

Internal controls

In response to the risks outlined in the draft report at Section 1.2.2 (page 4), the following new procurement processes and controls implemented since the investigation are outlined for your information;

New Controls and Treatments: Segregation of duties.

When a financial delegate (officer) is a scoring member on an evaluation panel, they are not permitted to sign off the Expenditure Approval Report as the final approver (Financial Delegate). This requires sign off from the next line manager for approval, this ensures that there is segregation of duties.

New Controls and Treatments: Corporate records – information management, content quality, storage and access.

All information is recorded and stored in objective (corporate information system). All communication is managed by using Council templates.

New Controls and Treatments: Audit and risk management.

In the past 6 months, a new Internal Auditor - HLB (Mann Judd), was appointed. HLB has recently developed a new risk profile and appetite plan for Procurement.

A new risk management framework and policy has also been developed and supported by the Audit Committee.

As Chief Executive Officer, I have introduced the CEO's Quarterly Audit Report which includes a section reporting on any identified procurement risks for discussion and where appropriate, investigation.

The Audit Committee has unanimously supported the new strategies listed above and has also adopted a new Audit Committee Charter which specifically includes procurement.

In addition, an external probity advisor is regularly engaged to assist in Council procurement.

New Controls and Treatments: RFQ tender process.

We are currently developing a process that addresses conflict of interest in the nomination of suppliers for RFQs.

In addition, we have converted many of our common procurement activities to supply based contracts to reduce risk.

Ethical culture and leadership

In response to risks outlined in the draft report at Section 1.2.3 (page 5), the following activities are outlined for your information;

Leadership: Staff training and education.

In addition to structured staff procurement training programs, every Wednesday, a lunchtime 'pop-up' session is conducted for all staff to attend procurement information sessions. This event is well attended.

Late last year, I hosted a training session for all second, third and fourth level leaders from across the organisation on corruption and integrity. At this session, the CEO of the Local Government Inspectorate, the Ombudsman's Office and you in your capacity as CEO of IBAC addressed staff and then participated in a question and answer panel. This was extremely well received and attended.

Leadership: Supplier and community training and education.

Training and information sessions are now available to our suppliers and the community. This also includes our procurement policy and what it means for suppliers.

Complaints and Investigations

In response to risks outlined in the draft report at Section 1.2.4 (page 5), the following new processes and controls implemented since your investigation are outlined for your information;

Complaints: Investigations and response.

Complaint investigations are conducted thoroughly and include the utilisation of external probity officers and auditors based on the level of risk and nature of the project.

Reporting: IBAC

IBAC is proactively notified when corruption is perceived or alleged.

Additional Information

New Sustainable and Social Procurement policy

A new draft Sustainable and Social Procurement policy was tabled at the June 2019 Audit Committee. It was noted that the draft has set a new standard and was referred to by the Committee as best practice. It is due for Council adoption in August 2019.

Contract Management

The City of Darebin has initiated the development of a new Contract Management System including procurement.

Appendix B: Darebin City Council's response

Conclusion

I note that in Recommendation 2 section (page 6) of the draft report you will require that a separate report be provided to IBAC within 12 months to advise on outcomes that strengthen Councils procurement practices. I request that consideration be given to adjusting (or removing) this requirement as it applies to the City of Darebin, in recognition of the proactive improvements outlined in this letter.

I trust that the recent changes that have been implemented demonstrate our commitment to ensuring procurement compliance and transparency and the importance of vigilance in preventing, identifying and responding to corruption.

I would like to request that this letter is recorded as our formal response to the draft report and is included in the parliamentary report.

Should you require any further information about the steps and/or processes implemented at Darebin City Council, please do not hesitate to contact me again.

Thank you for this opportunity.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Sue Wilkinson', enclosed in a thin black rectangular border.

**Sue Wilkinson
Chief Executive Officer
Darebin City Council**

Appendix C: Previous IBAC special reports

Publications date	Report title
November 2013	Special report concerning certain operations in 2013
February 2014	Special report concerning allegations about the conduct of Sir Ken Jones QPM in relation to his dealings with certain confidential Victoria Police information
April 2014	Special report following IBAC's first year of being fully operational
October 2014	Operation Fitzroy: An investigation into the conduct of former employees of the Department of Transport/Public Transport Victoria, Barry John Wells and Hoe Ghee (Albert) Ooi, and others
August 2015	Special report concerning police oversight
April 2016	Operation Ord: An investigation into the conduct of officers at the Department of Education and Early Childhood Development
May 2016	Operation Darby: An investigation of Mr Nassir Bare's complaint against Victoria Police
October 2016	Operation Exmouth: An investigation into the conduct of former Victorian public servant, Carmine Petrone
November 2016	Operation Ross: An investigation into police conduct in the Ballarat Police Service Area
December 2016	Special report concerning illicit drug use by Victoria Police officers: Operations Apsley, Hotham and Yarrowitch
January 2017	Operation Dunham: An investigation into the conduct of officers of the Department of Education and Training, including Darrell Fraser, in connection with the Ultranet project and related matters
March 2017	Operation Liverpool: An investigation into the conduct of two officers of Bendigo Health, Adam Hardinge and John Mulder
April 2017	Operation Nepean: An investigation into the conduct of former employee of Dame Phyllis Frost Centre, Jeff Finlow
September 2017	Operation Tone: Special report concerning drug use and associated corrupt conduct involving Ambulance Victoria paramedics
December 2017	Operation Lansdowne: An investigation into allegations of serious corruption involving Victorian vocational education and training, and public transport sectors

