

Building Integrity and Reducing Corruption in Defence

A Compendium of Best Practices



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Chapter 9

Opportunities and Risks with Outsourcing, Privatization and Public-Private Partnerships in Defence

Introduction

Many of the same lessons that apply in standard defence procurements to curb corruption also apply in less traditional contracting arrangements such as outsourcing ("market testing" and "competitive sourcing"), privatization and public-private partnerships (PPPs). Two constants are the importance of sustained competition and independent oversight. Applying these two lessons together with a country-specific mix of integrity, transparency and accountability tools can decrease corruption by increasing the expected costs to opportunistic officials of engaging in corrupt behaviour.¹

Modern Ministries of Defence are concerned with two things:

- Effectiveness – producing the best possible defence forces to satisfy both national and collective security demands; and
- Efficiency – making the best use of limited budgets.

Given the current budget environment, this involves rethinking the way defence does business. The challenge of streamlining government to become more efficient and effective has been answered by looking to the private sector.

NATO members and partners find themselves increasingly relying on the private sector in three ways:

1. To provide weapons and support services (outsourcing);
2. To raise revenues by selling excess property and facilities no longer needed (privatization); and, particularly when budgets are tight,
3. To solicit private sector investment in defence projects and operations (public-private partnerships).

¹ Simeon Djankov and Peter Murrell, "Enterprise Restructuring in Transition: A Quantitative Survey," *Journal of Economic Literature* 40:3 (September 2002): 739–92.

Box 9.1. Sourcing Options

Outsourcing: Organizational activities are contracted out to vendors or suppliers who specialize in these activities (usually in a competitive fashion).

Competitive Sourcing: Current public providers and private providers compete (also known as Public-Private Competitions or “Market Testing”).

Privatization: Current government capital equipment, facilities and workers are moved into the private sector – either competitively or on a sole-source basis.

Public-Private Partnerships (PPPs): A cooperative venture between the public and private sectors, built on the expertise of each partner, that best meets clearly defined public needs through the appropriate allocation of resources, risks and rewards. Attempts are made to combine the best of both the public and private sectors—either in a competitive or sole-source environment. One type of public-private partnership is the private finance initiative. With private financing, instead of having the government finance public investments, work is actually financed by the private sector in exchange for a share of savings, or government guaranteed purchases.

Government Entrepreneurship (“Franchising”): One government agency specializes in a given function and provides it to other government agencies or even to the private sector – again, either competitively or on a sole-source basis.

Sources: Jacques S. Gansler and Roger C. Lipitz, *Moving Toward Market-Based Government: The Changing Role of Government as the Provider*, New Ways to Manage Series (Arlington, VA: IBM Endowment for the Business of Government, 2003), 10, http://www.businessofgovernment.org/pdfs/Gansler_Report.pdf; The Canadian Council for Public-Private Partnerships, www.pppcouncil.ca.

Whereas outsourcing, privatization and PPPs offer considerable opportunities to improve the efficiency and effectiveness of defence forces, there is a dark side – corruption. To achieve desired results from outsourcing, privatization and PPPs requires a delicate balance of enlightened and ethical leadership, strong institutions (competitive markets, clear rules and regulations, a competent legal/judicial system) and effective oversight (measurement and monitoring/audit capabilities) to deter corruption without stifling efficiency or effectiveness. Combining basic integrity and good institutions guarantees the best possible outcomes from outsourcing, privatization and PPPs.

Ideally, the objective of each NATO member and partner country would be to find an optimum mix of initiatives to build integrity, increase transparency and improve accountability, in cooperation with other members and partners, to minimize corruption risks in outsourcing, privatization and PPPs. Coordinated anti-corruption initiatives—such as Transparency International’s “Defence Integrity Pacts” (see chapters 7 and 17 for examples)—encourage credible commitments on the part of key players that increase the efficiency and effectiveness of national and collective security obligations.

Corruption Risks in the “Make-or-Buy” Decision

A challenge that every Ministry of Defence (MoD) faces is whether to “make-or-buy” defence equipment, infrastructure, supplies and support services. Should the MoD become more involved in defence business (make), or should it turn more defence business over to the private sector (buy)?

Two key steps are required to solve the “make-or-buy?” decision: the first involves an “effectiveness” review and the second an “efficiency” review. Examples of effectiveness reviews are the US “Quadrennial Defense Review (QDR)” or its “Base Realignment and Closure (BRAC)” process. Effectiveness reviews evaluate the appropriate size and composition of defence infrastructure and support activities in the face of existing and emerging threats, and in cooperation with alliance members and their partners. Given a determination of the appropriate capabilities and force structure, efficiency reviews investigate opportunities to reduce costs and/or improve performance.

Effectiveness reviews result in two categories of assets and activities: “necessary” and “unnecessary.” Unnecessary infrastructure and support activities are candidates for divestiture or privatization. Necessary assets and activities can be further sub-divided into those that are “inherently governmental” and those that are more “commercial” in nature.

Box 9.2. Military “Infrastructure” and Sourcing Options

Military “infrastructure” typically includes:

- Acquisition
- Central logistics
- Central personnel
- Communications
- Force management
- Installations
- Medical functions
- Science & technology
- Education & training.

All three sourcing options discussed in this chapter are utilised by militaries around the world. For example:

- Outsourcing is used to provide logistics services;
- Public-private partnerships for military housing (installations); and
- Privatization in providing many medical functions.

The US Office of Management and Budget Circular A-76 defines an “inherently governmental activity” as:

...an activity that is so intimately related to the public interest as to mandate performance by government personnel. These activities require the exercise of substantial discretion in applying government authority and/or in making decisions for the government.²

Commercial infrastructure and support activities may be discovered to be candidates for outsourcing through “market testing” or “competitive sourcing.” Meanwhile, where tight budgets restrict defence investments, public-private partnerships (PPPs) enable government to take advantage of privately owned infrastructure, technology, capabilities or private investment funding to improve inherently governmental or retained commercial activities (see Figure 9.1). The term private finance initiative (PFI) is used in the United Kingdom.

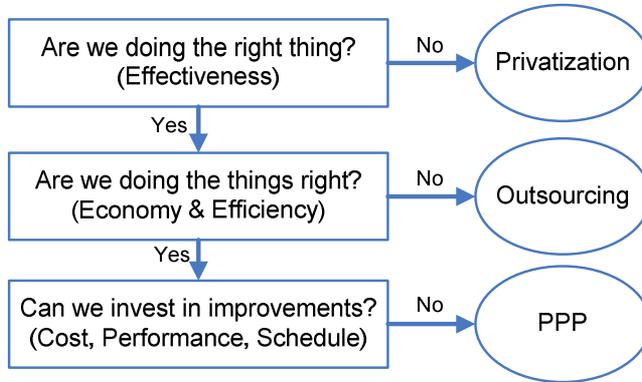


Figure 9.1: Defence Decision Map.

Efficiency assessments require that governments apply internal metrics that allow them to benchmark in-house costs with the costs of commercial providers of defence capabilities and services. This suggests a transition to some form of activity-based costing to determine the complete costs associated with a public function. This “total cost” must include all “indirect” costs that support the particular function being performed, including many costs not currently attributed to that function – such as finance, legal support, personnel management, etc.³ Meanwhile, in anticipating the costs of outsourcing and PPPs, one needs to account not only for government’s costs of obtaining products and services in the contract but also for government’s costs of writing, moni-

² Mitchell E. Daniels, Jr., *Circular A-76 Revised* (Washington, DC: US Office of Management and Budget, May 29, 2003), www.whitehouse.gov/omb/circulars/a076/a76_rev2003.pdf.

³ Gansler and Lipitz, *Moving Toward Market-Based Government* (2003), 11.

Box 9.3. Outsourcing Benefits from Public-Private Competitions

U.K. Ministry of Defence "Market Testing":

- From FY87 to FY92, MoD competed for 246 activities with an average first-year savings of 24 percent.

In 1966, the US Office of Management & Budget (OMB) issued Circular A-76: Performance of Commercial Activities, which established the policy for acquiring commercial activities. In 1979, the OMB issued procedures for A-76 cost comparison studies to determine whether commercial activities should be performed by government, by another federal agency or by the private sector. The objective of A-76 is to provide a "fair" public-private competitive sourcing process, seeking to determine the most cost-effective method of obtaining services that are available from the commercial market.

- From FY79 to FY96, the US Army completed 486 cost comparisons. In-house won 240, contractors won 228. Savings averaged 28 percent of pre-competition costs, saving USD 4 billion over the period.
- From FY78 to FY92, the Department of Defense held 2000 competitions with an average savings of 30 percent.

At present, an A-76 study requires an agency to develop a Performance Work Statement to identify the work to be done; to prepare a government in-house cost estimate based upon a Most Efficient Organization that can accomplish the work; to solicit bids to perform this work from the private sector; and to compare this estimate with the lowest or best-value offer from the private sector. The government converts to performance by the private sector if the offer is lower than the in-house estimate either by 10 percent of direct personnel costs or by \$10 million over the length of the specified performance period. The time period established for cost comparisons is 24 months for a single function and 48 months for multifunction competitions.

By the end of the 1990s, the OMB estimated savings of roughly \$9.2 billion in DoD operating costs between 1997 and 2005 and \$2.8 billion in annual recurring savings after 2005 resulting from A-76 studies.

Source: Gansler and Lipitz, Moving Toward Market-based Government (2003).

toring and managing the contract, including the risk of higher costs later as the government begins to rely more heavily on a winning contractor. Finally, corruption risks need to be addressed early in the assessment process as this can significantly increase transaction costs and destroy public confidence in outsourcing, privatization and PPPs.⁴

⁴ Francois Melese, Raymond Franck, Diana Angelis and John Dillard, "Applying Insights from Transaction Cost Economics to Improve Cost Estimates for Public Sector Purchases: The Case of U.S. Military Acquisition," *International Public Management Journal* 10:4 (October 2007): 357–85.

Box 9.4. Selected Examples of Outsourcing, Privatization and PPPs

Areas used by the Australian defence forces are centrally managed by the Defence Estate Organization (DEO). The mission of the DEO is to manage these assets according to business principles that optimize government revenue. Armed forces are the tenants and many buildings and much of the land has been sold and leased back. Privatizing assets and disposing of unused or underutilised property raises revenues.

Areas used by the Polish defence forces are centrally managed by the Military Property Agency. The mission is to sell off all redundant military property, from hardware to former military installations. Any profits from sales go directly to the MoD, which uses them to modernize the Polish armed forces.

Source: Bonn International Centre for Conversion (BICC), *Conversion Survey 2001—Global Disarmament, Demilitarization and Demobilization* (Germany: NOMOS, 2001).

Public-private competitions should always be structured to take into account the government's need for high-quality, reliable and sustained performance, as well as the opportunity for cost savings and the risk of corruption. Efficiency reviews can encourage innovation and investment. Regardless of whether the public or the private sector wins the cost comparison, Department of Defence officials have noted that savings of 20 percent or more are not uncommon. This is because properly conducted competitions can promote efficiency, minimize corruption and improve the performance of defence activities.⁵

Corruption Risks in Outsourcing, Privatization & PPPs

Selling (privatizing/divesting) un-needed assets allows governments to focus on core activities, and to reduce costly subsidies and the burden on taxpayers. Auctioning unnecessary defence assets and activities can create new business opportunities for the private sector. It can also raise government revenues to recapitalize defence operations or to reduce budget deficits. Alternatively, voucher privatizations encourage widespread share ownership and entrepreneurial initiative to operate assets and activities that benefit shareholders.

The following goals apply to many outsourcing, privatization and public-private partnership initiatives:

- Improve efficiency and reduce government borrowing (cost savings);
- Improve effectiveness (boost performance);
- Encourage share ownership;

⁵ Commercial Activities Panel, *Improving the Sourcing Decisions of the Government* (Washington, DC: Government Accounting Office, 2002).

- Generate auction revenues for defence recapitalization or to reduce public debt; and
- Focus on core activities.

While significant public benefits can result from a competitive and transparent process of outsourcing, privatization and PPPs, there are also serious risks.

The first risk is that if specific assets, activities or resources (land, labour, capital, etc.) are sufficiently valuable to the private sector, special private interests may attempt to bias public results in favour of outsourcing, privatization or PPPs. The risk is that through legal lobbying and illegal bribes or favours, those who stand to gain will attempt to influence the political and bureaucratic process so that valuable assets are determined to be “unnecessary” for future defence forces, leading to their transfer into private hands through privatization. Alternatively, legal and illegal political and bureaucratic influence might be used in order to “purchase” valuable outsourcing or public-private partnership opportunities.

Another factor poses an equally significant risk. Defence ministries are often subjected to intense public pressure and (legal and illegal) lobbying by states, cities, localities and special business interests to prevent base closings or property transfers through privatization, outsourcing or PPPs that might entail the loss of current revenues and jobs – even when those assets or activities are no longer necessary for national security.

In recent decades, the US has been relatively successful in addressing these conflicting risks. In several of its recent “effectiveness” reviews of defence infrastructure and support activities, the US established an independent Base Realignment and Closure (BRAC) commission (see Box 9.6 for details). One key innovation minimized legal lobbying and illegal influence peddling. The commission’s recommendations could not be amended and were non-negotiable. Once presented to the president and Congress, they could only be approved, or rejected, in their entirety.

Outsourcing, privatization & PPPs can take place through several methods:

1. Sole-sourcing or direct sale to, or joint ventures with, a strategic investor;
2. Competitive sealed-bid or online auctions resulting in the sale of assets (or granting of contracts) to the highest (lowest) bidder; and
3. In the case of privatization – initial public share offerings (IPOs), voucher-based distribution or direct sales to the public, employee share ownership plans and/or management buyouts, or some combination.

Each of these methods is vulnerable to corruption.

Box 9.5. Selected Military Value Criteria for U.S. Base Realignment & Closure (BRAC)

The BRAC commission used criteria that were fully transparent to all stakeholders, as well as to the general public. For example, the commission considered:

- The current and future mission requirements and the impact on operational readiness of the Department of Defense's total force;
- The availability and condition of land, facilities and associated airspace at both the existing and potential receiving locations;
- The ability to accommodate contingency, mobilization and future total force requirements at both the existing and potential receiving locations;
- Cost and manpower implications, etc.

Box 9.6. Corrupt Behaviour in Share Privatizations

Following voucher privatization programs, in several countries managers or shareowners with major stakes in firms attempted to gain control of firms through various means. One means used to gain control of firms at the expense of original shareholders is called "dilution." This involves issuing new shares at levels which dilute total equity per share. Some dilution is common in most countries. For example, dilution occurs anytime firms issue options to management to purchase future shares at rates considerably below market prices.

Advice Regarding Personnel of the Privatization Agency and of the Share/Trust Fund to Reduce Corruption Risk:

- Assure that the personnel of the Privatization Agency and of the Share/Trust Fund are fully and adequately trained, both initially and thereafter in regular intervals, as well as effectively supervised and adequately safeguarded against corruptive influences;
- Assure that all officers and staff of the Privatization Agency and of the Share/Trust Fund publicly disclose, in regular intervals, their income, assets and any potential conflicts of interest;
- Assure adequate payment structures for the officers and staff of the Privatization Agency and the Share/Trust Fund;
- Assure clear conflict of interest rules for all staff of both institutions. To be avoided in particular are appointments of staff based not on merit (competence and experience) but on political connections;
- Require ethical commitments ("I will not accept or demand any bribes myself or tolerate bribery by others and will voluntarily disclose any potential conflict of interest") from all officers and selected staff involved in decision making in the privatization process;
- Assure that the privatization institution employs independent outside experts for decisions on technical aspects for which it lacks the necessary expertise;

- Introduce and sustain adequate rotation rules (no officer or staff may remain in a sensitive position long enough to develop improper connections or dependencies with potential bribers); and
- Introduce and assure the obligation of all officers and staff in both institutions, and all other officials involved in privatization matters, to report any suspicion or knowledge of corrupt behaviour to the relevant authorities, irrespective of whether the briber is an official or a private person, and provide corresponding whistleblower protection.

In cases where privatization is managed by technical ministries rather than a special privatization agency, assure that all the safeguards recommended above for the Privatization Agency are applied *mutatis mutandis* to the relevant officials and staff of the respective technical ministry.

Sources: Michael H. Wiehen, *Avoiding Corruption in Privatization: A Practical Guide* (Germany: GTZ, 2004); Excerpts from Division 42 Sector Project: Development and Testing of Strategies and Instruments for the Prevention of Corruption, 20–25: www.u4.no/document/literature/gtzcorruptionandprivatization.pdf; Jeffrey Miller, "Evaluation of Mass Privatization in Bulgaria," William Davidson Institute Working Paper #814 (March 2006).

Corruption often originates either with a bidder (offering an illegal payment to influence the outcome, i.e. bribery) or a public official (demanding a payment to influence the outcome, i.e. extortion). As Rose-Ackerman points out, "... a firm may pay to be included in the list of qualified bidders or to restrict their number. It may pay to obtain a low assessment of the public property to be leased or sold off, or to be favored in the selection process... firms that make payoffs expect not only to win the contract or... auction, but also to obtain inefficient subsidies, monopoly benefits, and regulatory laxness in the future."⁶ Furthermore, the greater the risk of corruption, the more difficult it is to attract foreign direct investment and new technology, the fewer the competitors, and the worse the outcomes.

It may be useful to have a central independent anti-corruption institution to oversee non-traditional procurement, including outsourcing, privatization and PPPs. With strong support from the legislative, executive and judicial branches of government, such an institution should be capable of investigating and prosecuting corruption, wherever it appears.

Conclusions

Corruption risks not only depend on the competitive environment and methods chosen for outsourcing, privatization or PPPs but also on the integrity of public officials and

⁶ Susan Rose-Ackerman, *When is Corruption Harmful* (Washington, DC: World Bank, 1996).

Box 9.7. Principles of a Market-Based Approach for Outsourcing, Privatization & PPPs

Gansler and Lipitz (2003) formulate four principles of a market-based approach for outsourcing, privatization and PPPs:

1. The key to success is shifting from a monopoly to a competitive environment;
2. Competition must be run for “best value” rather than simply low cost;
3. Even when government contracts out work, it does not give up its management responsibilities;
4. There is a critical need for key measures of performance and cost that will be continuously monitored and reported.

Source: Gansler and Lipitz, *Moving Toward Market-based Government* (2003), 9–11.

private contractors, and the transparency and accountability of governance mechanisms and institutions.

The risk of corruption can be significantly reduced through integrity pacts developed by Transparency International. Integrity pacts require that all participants engage in transparent contracting arrangements, which include monitoring and oversight by civil society.

Agreements on Codes of Conduct provide even more leverage, requiring that public officials and private contractors promise to refrain from all corrupt activities and, more importantly, that they are held accountable in case of violations. Parties agree in advance to specific sanctions, which include loss of the contract, forfeiture of bid bonds, liability for damages and blacklisting from future public competitions. Organizations such as the OECD, OSCE, EU and the World Bank offer anti-corruption regulations that can reinforce integrity pacts and include clear rules for public disclosure of assets, income and potential conflicts of interest by politicians and public officials.

In conclusion, making the best use of defence resources often requires outsourcing, privatization and PPPs. Many of the same lessons that apply in standard defence procurements to curb corruption also apply to such “non-traditional” contracting arrangements. The constants are sustained competition, transparent contracting arrangements and independent oversight. Applying these lessons together with a country-specific mix of integrity, transparency and accountability tools can reduce corruption by lowering the benefits and increasing the costs of engaging in corrupt behaviour.

Box 9.8. Avoiding Corruption in Privatization

Risk Indicators for Corruption:

- Parliament/legislature subject to undue influence by the private sector, enabled also by the absence of adequate campaign finance laws and procedures;
- Absence of transparency of public administration in general as well as non-public, non-transparent decision making by the government;
- Inadequate access of the public at large (including civil society) to information about government programs, processes and decisions; absence of opportunity for public discussion of government programs and decision making and of opportunities for the public and civil society to participate in the development of privatization strategy and policy, and of the privatization law, institutions and program;
- Absence of:
 - An effective control system (by the parliament, the administration and/or external, independent institutions) for the privatization program;
 - Accountability systems and controls for the politicians and officials involved in the privatization program;
 - Opportunity for the public or officials to register suspicion of corruption confidentially or anonymously;
 - Criminal, civil and disciplinary processes against politicians and officials who have been implicated in previous cases or have otherwise been suspected of corrupt behaviour;
 - Effective criminal sanctions instruments and institutions, as well as ineffective enforcement of existing sanctions instruments;
 - National rules for the public disclosure of assets, income and potential conflicts of interest by politicians and public officials involved in privatization decisions;
 - Independent, courageous media;
 - Corporate governance instruments and institutions; and
- Continued service of politicians and officials in critical positions, despite obvious conflicts of interest (possibly even despite accusations and/or convictions of previous corruption offences).

Audit and Control Systems to Counter Corruption:

- Install and sustain effective audit and control systems (internal and external audit, parliamentary oversight, etc.) and functions over all decisions of the Privatization Agency and the Share/Trust Fund, including both policy and single-enterprise decisions:
 - The relevant state control and audit institutions should have and exercise authority over all privatization decisions, whether taken in the Privatization Agency or elsewhere;
 - The assessments of the audit and control institutions should be fully transparent;

- Assure that any reports of violations or inadequate compliance are properly followed up and lead to corrections and improvements;
- Give civil society involved in privatization monitoring and control access to all relevant documentation, including normally confidential documents, under a commitment to treat such information as confidential, except when violations are discovered and not corrected;
- Assure and monitor the functioning of the appropriate audit and control institutions and instruments. Furthermore, assure the enforcement of criminal, civil and disciplinary sanctions against politicians and officials caught in breaking laws and rules, including:
 - Disciplinary measures, including removal from current functions and non-eligibility for future public functions;
 - Confiscation of illegally obtained property;
 - Liability for damages; and
 - Confinement and monetary fines.

Source: Michael H. Wiehen, *Avoiding Corruption in Privatization: A Practical Guide* (Germany: GTZ, 2004), www.u4.no/document/literature/gtzcorruptionandprivatization.pdf.

Recommendations:

- Formulate clear and transparent defence guidance, policies, budgets and decision processes, and performance metrics.
- Conduct regular assessments of effectiveness of delivering a defence capability by the defence establishment, starting with support capabilities such as infrastructure development and maintenance, medical support, etc., and moving towards combat support services such as air refuelling, support to deployed forces, etc. Incorporate such assessments into strategic defence reviews or similar processes.
- Conduct regular assessments of efficiency of delivering a defence capability by the defence establishment and through alternative sourcing, e.g. outsourcing or public-private partnership, taking into account cost efficiencies as well as the government's need for high quality, reliable and sustained performance.
- Provide clear and efficiently enforced legal and economic rules and regulations for outsourcing, privatization and public-private partnerships.

Box 9.9. Transparency of PPPs

The Canadian Council for Public-Private Partnerships (<http://www.pppcouncil.ca>) was established in 1993 as a member-sponsored organization with representatives from both the public and the private sectors. As proponents of the concept of public-private partnerships (PPPs), the council conducts research, publishes findings, facilitates forums for discussion, sponsors an annual conference on topics related to PPPs (both domestic and international) and celebrates successful public-private partnerships through a National Awards Program.

As a national, authoritative voice on the topic of public-private partnerships, the council supports political officials and decision makers in exploring and developing partnerships with the private sector. Alternatively, the council strives to create opportunities for the private sector to work with governments on public-private projects that cover the spectrum from simple contracts to full privatizations.

Besides encouraging and providing information on public-private partnerships, the council stimulates dialogue between public and private sector decision makers on the financing and delivery of public services, educates the public, conducts objective research on key issues that influence the effective use of partnerships and publishes research papers, case studies, guidelines, opinion surveys and national inventories on key public-private partnership subjects.

As a transparency measure, the council maintains an open access PPP project database, called "PPP Project Tracker" (available at www.pppcouncil.ca/resources_project_tracker.asp). This database covers projects in the proposal stage, recently conducted projects and cancelled projects. For each ongoing project the public can access the following information: project title, a brief description, the total cost of the project, model of the public-private partnership and project duration, current and next stage of the project, website for additional information and the point of contact.

In May 2009, the minister of defence of Canada announced that a major security infrastructure project will be procured as a public-private partnership. Although security clearances will be required from vendors, the procurement notice is published on the council website.

For the models of public-private partnerships, see: http://www.pppcouncil.ca/aboutPPP_definition.asp.

- Provide for effective and transparent functioning of legislative, judicial and bureaucratic structures, including internal and external audits, parliamentary oversight and public access to information (with due account for sensitivity of some of the information).