



DISCUSSION PAPER

TRANSPARENCY IN PUBLIC SECTOR CONSTRUCTION PROJECTS

The UK Anti-Corruption Forum believes that greater transparency¹ in public sector construction projects² would help reduce corruption³ and that governments should require the provision of such transparency. The Forum is publishing this Discussion Paper to promote discussion of the transparency issue and to receive comments. Following consideration of all comments, the Forum will publish a Position Paper.

There are a number of questions which arise in applying the concept of transparency. These questions are set out below together with the Forum's views:

1. **Should there be disclosure to the public of information on public sector construction projects?** Currently, the extent of public disclosure of project information varies from project to project, and country to country. Overall, there is limited disclosure.

Forum view: The public has a right to disclosure of information in respect of projects which the tax-payer is to own, finance or guarantee. Greater disclosure of project information is necessary to help reduce corruption. Disclosure would make it more difficult to conceal corruption, and would therefore help both to prevent corruption and to uncover corrupt practices. In addition, greater willingness by the public sector to provide transparency would increase public confidence in the integrity of the public sector.

2. **Should all public sector projects disclose project information to the public?** If all public sector projects were required to disclose information, it is possible that the cost and burden of disclosure for very small projects would outweigh any likely benefit, and that the number of projects for which information were to be disclosed would be unmanageable. On the other hand, if disclosure were not provided for all projects, there would be no public scrutiny of smaller projects many of which might directly impact on the public.

Forum view: At least initially, there should not be disclosure for all projects. Disclosure should be provided according to project cost thresholds⁴. The lowest threshold should be set at a level where the project cost can justify the cost and burden of providing a limited degree of disclosure. Due to the variation in project costs from country to country, suitable disclosure thresholds will vary. In the UK context, the Forum recommends the following thresholds. For projects of a cost below £20,000, there should be no disclosure. For projects of a cost above £20,000 but below £1,000,000, there should be a limited degree of disclosure. For projects of a cost above £1,000,000, there should be a greater degree of disclosure. Projects which would qualify for disclosure under these thresholds are referred to below as 'qualifying projects'. The recommended levels of disclosure are discussed in paragraph 4.

¹ 'Transparency' means disclosure of information to the public.

² These are projects that are wholly or partly publicly-owned, publicly-financed, or publicly-guaranteed.

³ For the purposes of this paper, 'corruption' means any activity which includes bribery, extortion, fraud, deception or collusion.

⁴ 'Cost' means the estimated project or contract cost (as applicable) at the outset of a project.

3. **Within a qualifying project, should information be provided only in relation to contracts above a specified cost threshold?** Some qualifying projects will involve many contracts and sub-contracts. Disclosure only of main contract⁵ information may not reveal corruption which occurs at sub-contract level or through joint venture partners and agents. On the other hand, disclosure in relation to all sub-contracts, and joint venture and agency arrangements would impose a significant cost and management burden.

Forum view: There should not be disclosure for all contracts within a qualifying project. Disclosure should be provided according to contract cost thresholds⁴. The lowest threshold should be set at a level where the contract cost can justify the cost and burden of providing a limited degree of disclosure. Due to the variation in contract costs from country to country, suitable disclosure thresholds will vary. In the UK context, the Forum recommends the following thresholds. For contracts below a cost of £20,000, there should be no disclosure. For main contracts above a cost of £20,000 but below £1,000,000, there should be a limited degree of disclosure. For any contract or sub-contract above a cost of £1,000,000, there should be a greater degree of disclosure. Contracts which would qualify for disclosure under these thresholds are referred to below as 'qualifying contracts'. The recommended levels of disclosure are discussed in paragraph 4.

4. **What level of information should be disclosed in relation to qualifying projects and qualifying contracts?** The amount and type of information disclosed needs to be sufficient to help prevent or identify corruption, without imposing a disproportionate cost and management burden. This is a difficult balance to establish.

Forum view: The type and degree of disclosure provided should vary according to the project and contract cost. The Forum's recommendations in this regard are shown in the attached Schedule. By necessity, the Schedule uses generic terms which indicate the general nature of the recommended disclosures. These terms may need to be tailored to suit particular types of project.

5. **Should non-disclosure be permitted in cases of commercial confidentiality or where safety is at stake?** There are cases of genuine commercial confidentiality such as secret manufacturing processes, or information which could prejudice commercial negotiations prior to contract award. There are also genuine safety concerns relating to, for example, the identity of whistle-blowers. Disclosure of such information should not be required.

Forum view: None of the information recommended for disclosure in the attached Schedule is likely to raise issues of safety or commercial confidentiality. However, if a party can establish genuine commercial confidentiality or prejudice to safety in respect of a particular category of information, then non-disclosure of that particular information should be permitted. Otherwise, information should be disclosed. As far as possible, the public interest should override commercial confidentiality concerns.

6. **Who should provide the disclosure?** The information recommended for disclosure in the attached Schedule may be in the possession of a number of project participants. There may also be contractual and confidentiality issues which may affect the ability to disclose.

Forum view: Public sector project owners are accountable to the public to ensure that their projects are properly managed. It should, therefore, be the responsibility of the relevant project owner to ensure that disclosure is provided. Most of the information recommended for disclosure in the attached Schedule will be in the possession of the project owner. To the extent that it is not, the project owner should obtain such information from the project participants. To facilitate this process, the project owner should make it a condition of contract that relevant project participants will provide specified information to the project owner, and that they will consent to its disclosure.

⁵ 'Main contract' means any contract between the project owner and a contractor, supplier or consultant.

7. **How should disclosure be effected?** The method of disclosure to the public may vary from country to country depending on the technology available and the cost of such technology.

Forum view: A method of disclosure should be chosen which is cost effective and easily accessible to the public. Where the technology is available, disclosure should be provided by the project owner on its web-site. In addition, for members of the public who do not have access to the internet, one hard copy of the disclosed information should be available for inspection by the public at the project owner's offices. In all cases, the public should be made aware that the information is available.

8. **When should disclosure be made?** The information recommended for disclosure in the attached Schedule will become available at different stages through the project. Requiring disclosure at too frequent intervals will impose an undue burden. However, disclosure of inadequate frequency may reduce the effectiveness of the disclosure in preventing and revealing corruption.

Forum view: Disclosure should be made at key stages of the project of the information available at that stage. Depending on the project structure, key stages may include project identification, determination of project estimate, agreement of project funding, award of each qualifying contract, completion of each qualifying contract, project completion, and project evaluation. In addition, during the execution of the project, information should be disclosed at regular intervals in relation to major changes concerning price, programme and scope. The length of these intervals will depend on the overall programme.

There is no definitive answer to the above questions. The Forum's views attempt to find a balance between providing sufficient information to the public over a wide range of projects, while trying to keep the administrative task of providing the information at an acceptable level.

The Forum would welcome comments on this Discussion Paper prior to 31st July 2008. If you have any comments, please send them to coordinator@anticorruptionforum.org.uk. Your comments will be discussed among Forum members. They may also be published on the Forum website but only with your prior consent. Consequently, when you submit your comments, please indicate whether you are happy to have your comment together with your identity and/or that of your organisation published.

UK Anti-Corruption Forum

March 2008

The UK Anti-Corruption Forum is an alliance of UK business associations, professional institutions, civil society organisations and companies with interests in the domestic and international infrastructure, construction and engineering sectors. The purpose of the Forum is to promote industry-led actions which can help to eliminate corruption. The members of the Forum believe that corruption can only be eliminated if governments, banks, business and professional associations, and companies working in these sectors co-operate in the development and implementation of effective anti-corruption actions.

www.anticorruptionforum.org.uk

SCHEDULE**RECOMMENDED DISCLOSURES FOR
PUBLIC SECTOR CONSTRUCTION PROJECTS IN THE UK**

<u>PROJECT⁶ DISCLOSURE⁷</u>	
A. <u>PROJECT⁶ COST⁸ OVER £20,000</u>	B. <u>PROJECT⁶ COST⁸ OVER £1,000,000</u>
(1) Name of project owner (2) Description, purpose, location of project (3) Outline specification (4) Original budget (5) Original programme (6) Actual project cost (7) Actual programme (8) Evaluation reports (interim, final, lifetime)	(1) The information in A. (2) Structure and principal shareholders ⁹ of project owner (3) Project approvals (4) Feasibility and cost-benefit studies (5) Financing information: (a) Funding agreement (b) Changes to funding terms (c) Fees paid by/to the funder (d) Funder's cost-benefit/feasibility studies (e) Funder's project evaluation reports (f) For PFI projects, the financing/user agreement between the public sector user and project owner, changes to this agreement, and reasons for these changes.
<u>CONTRACT DISCLOSURE¹⁰</u>	
C. <u>CONTRACT¹¹ COST⁸ OVER £20,000</u>	D. <u>CONTRACT¹¹ OR SUB-CONTRACT¹² COST⁸ OVER £1,000,000</u>
(1) Type of procurement procedure (2) List of pre-qualification applicants/tenderers (3) Procurement evaluation report (4) Name of winning contractor (5) Original contract price (6) Original contract scope of work or services (7) Original contract programme (8) Major changes ¹³ to price, programme and scope of work and reasons for these changes (9) Details of any re-award of contract (10) Final contract price (11) Total contract payment (12) Actual programme and completion date (13) Actual scope of work	(1) The information in C. (2) Invitations to pre-qualify, tender etc. (3) Contract/sub-contract documents (4) Contractor's/sub-contractor's principal shareholders ⁹ (5) Contractor's/sub-contractor's joint venture members (6) Contractor's/sub-contractor's agents ¹⁴ (7) Country where contract/sub-contract payments to be made (8) Currency of payments

⁶ For PFI projects, "project " refers to the project built and operated by the private sector project owner.

⁷ Where information is not available in the categories listed below, the nearest equivalent information should be disclosed.

⁸ "Cost" means the estimated project or contract cost (as applicable) at the outset of the project.

⁹ "Principal shareholder" means any shareholder who owns more than 10% in the company.

¹⁰ In respect of any project referred to in A or B, disclosure must also be made of contract information relevant to the project as provided in C and D.

¹¹ "Contract" means any contract between the project owner and a contractor, supplier or consultant.

¹² "Sub-contract" means any contract between a contractor, supplier or consultant and its joint venture partner, agent or sub-contractor, where the cost of the sub-contract is over £1,000,000. In this case, the information required by Section D must be disclosed in respect of such joint venture partner, agent or sub-contractor.

¹³ "Major changes" mean changes which have an impact of 5% or more on the cost or programme.

¹⁴ "Agent" means any entity or individual which acts as an intermediary or representative in relation to the award of a contract or sub-contract.