

Working Paper

Procuring infrastructure for international sporting events: an outline map and three case studies

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1. Introduction

This paper presents the results of a study of infrastructure procurement for international sport events. The objective was to map both the institutional frameworks and the procedures and governance mechanisms. We were concerned only with the acquisition process and not with prior decisions on whether to host events, what to procure (such as the number and siting of stadiums) or subsequent maintenance¹. The aim was to provide information relevant to studying the implementation of procurement objectives and the risks to attaining those objectives and to lay the foundations for further such work. The study originated in work by some of the authors in collaboration with the OECD to assist the International Partnership Against Corruption in Sport (IPACS)² in managing integrity risks (corruption, fraud and bid rigging). However, the study also provides a map that can facilitate future study of these issues and of others, such as sustainability.

The study sought to map procurement for key sport-specific infrastructure (such as stadiums and swimming pools) and a sample of other infrastructure (sport-specific, sport-related – such as athlete accommodation – and/or other infrastructure procured for the event, such as transport facilities) for 14 international sport events. It covered events of various sizes and types from around the world in the ten-year period to 2018, using public sources. These events were: Summer Olympic and Paralympic Games, London, United Kingdom, 2012 (London); Summer Olympic and Paralympic Games, Rio de Janeiro, Brazil, 2016 (Rio); Winter Olympic and Paralympic Games, Vancouver, Canada, 2010 (Vancouver); Winter Olympic and Paralympic Games, Sochi, Russia, 2014 (Sochi); World Games, Wrocław, Poland, 2017 (Wrocław); Youth Olympics, Buenos Aires, Argentina, 2018 (Buenos Aires); Asian Games, Guangzhou, China, 2010 (Guangzhou); Commonwealth Games, New Delhi, India, 2010 (New Delhi); Central American and Caribbean Games, Veracruz, Mexico, 2014 (Vera Cruz); FIFA [soccer] World Cup, South Africa, 2010 (South Africa); Commonwealth Games, Gold Coast, Australia, 2018 (Gold Coast); FINA World Championships (aquatics), Budapest, Hungary,

¹ All are controversial issues and perhaps more studied than our subject matter. As is well known, the value of funding these events and long term viability of the infrastructure, even when claimed to create a legacy, is often dubious. See e.g. Jens Alm, "World Stadium Index - Stadiums built for major sporting events – bright future or future burden?" (May 2012), <https://www.playthegame.org/knowledge-bank/downloads/world-stadium-index/c714c866-7a44-4501-a9a5-a3af00f4d750>; Steve Menary, 'China's Programme of stadium diplomacy' (2015) ICSS Journal Vol 3 No3; Schoonbee, K., & Brümmer, S. (2010). Public loss, FIFA's gain: How Cape Town got its White Elephant, in C.S. Herzenberg (Ed.). Player and referee: conflicting interests and the 2010 FIFA World Cup (pp 133-168) [e-book]. Pretoria, South Africa: Institute for Security Studies. Retrieved from <http://ccs.ukzn.ac.za/files/ISS%20Player%20and%20Referee.pdf>.

² See <http://www.oecd.org/corruption/multi-stakeholder-sports-integrity-taskforces-established.htm>.

2017 (Budapest); African Games, Brazzaville, Republic of the Congo, 2015 (Brazzaville); and Africa Cup of Nations (soccer), Gabon, 2017 (Gabon). At the time of writing the intended mapping for the Gold Coast (one of the four additional projects) was not quite complete.

Study data from an initial ten projects (the first ten above) was used as the basis for the 2019 IPACS report on procurement standards and risk management in procuring infrastructure for sporting events (IPACS report), publication of which was imminent at the time of writing³. That report analyses the aggregate data to identify and analyse integrity risks and to develop concrete proposals for mitigating them. This paper and the more detailed forthcoming article supplement the IPACS report by giving more information on the methodology; providing data from additional projects, which offer further evidence and insights; and presenting key information through a project-based, rather than aggregate, approach. They aim to illustrate in the context of individual events, and for a wider range of events, both the special circumstances and problems of infrastructure procurement for sporting events, and the risks analysed by IPACS.

We will, first, outline briefly the objectives and importance of the procurement process in this field, other research in the field, and the objectives of IPACS (section 2). There then follows an explanation of the aims and methodology of our mapping exercise (section 3) and a brief summary of IPACS' findings and recommendations that were based on our mapping of the ten initial events (section 4). Section 5 then presents a brief case study analysis of three of the events by way of illustration; the full article that is forthcoming in the Public Procurement Law Review will provide a case study of all fourteen events.

2. Background and context

As we will see, procurement of infrastructure for international sporting events is almost entirely a public sector activity and objectives are largely the same as with public sector procurement in general⁴, notably value for money – securing delivery of what is required and on the best commercial terms – integrity, and sustainability. The *means* for achieving them is also, largely the same, relying on a transaction-based approach with a competition for each transaction, as opposed to the partnering model found in much private sector procurement⁵.

Such literature as exists highlights special features of “event” procurement which magnify both the importance of achieving procurement objectives and the challenges in doing so (see below). However, procurement for sport events – as with sport procurement generally – has attracted little interest as a distinct subject in management or legal literature⁶. Thus textbooks, including those on event management⁷ or sport law⁸

³ IPACS Task Force 1 Report, *Mapping of procurement standards and risk management activities in the construction of infrastructure for sporting events* (forthcoming 2019), citing the study as University of Nottingham and OECD (2018), “Collaborative research on procurement and risk management in infrastructure relating to sporting events for the purpose of IPACS Task Force” (unpublished). Quotations given here are from the draft IPACS report.

⁴ See S. Arrowsmith, J. Linarelli and D. Wallace, *Regulating Public Procurement: National and International Perspectives* (2000; Kluwer International), Ch.1; S. Arrowsmith (Ed.). (2011). *Public Procurement Regulation: An Introduction*. EU Asia Inter University Network for Teaching and Research in Public Procurement Regulation, <https://www.nottingham.ac.uk/pprg/documentsarchive/asialinkmaterials/publicprocurementregulationintroduction.pdf>, Chs.1 and 2; Schooner, S.L., *Desiderata: Objectives for a System of Government Contract Law*. (2002) 11 *Public Procurement Law Review*, 103-110.

⁵ See e.g. D. Parker and K.Hartley, K. (1997). *The Economics of Partnership Sourcing Versus Adversarial Competition: A Critique*. *European Journal of Purchasing & Supply Management*, 3(2), 115-125.

⁶ For a review see S. Arrowsmith, “Procurement and Sport Organizations”, in T. Slack, T. Byers, & A. Thurston (Eds.), *Understanding Sport Organizations* (3rd edition), forthcoming, Champaign, IL: Human Kinetics.Ch.24. The lack of attention to corruption risks in procurement in international events is also highlighted in the IPACS report, which points out that most efforts on corruption in sport have primarily focused on general sports governance and competition manipulation.

⁷ Books on event management only include a brief paragraph or so on procurement and related matters (e.g. M.M. Parent and S. Smith-Swan, S, *Managing Major Sports Events: Theory and Practice* (2013) Routledge.

barely mention it and, while there is an increasing interest in, and research on, corruption and sport, this has not extended to procurement⁹. However, several works do look at procurement from the perspective of one or more of the three objectives above in the context of “mega-events”, notably the Olympics and FIFA World Cups¹⁰; and the United Nations Office on Drugs and Crime (UNODC) guide on corruption in mega-events gives procurement substantial attention¹¹.

The funds involved in such events, their importance to governments and the public, and their high visibility, means that procurement failings can have significant adverse consequences. The extent and nature of such failings are amply illustrated by the mapping. For example, as we will see, of the 12 events in the study for which there was sufficient information for mapping, in seven the procurement gave rise to significant alleged or proven integrity issues (five were the subject of significant corruption findings or allegations (Sochi, Guangzhou, Rio, Veracruz and New Delhi), South Africa involved significant bid-rigging, and Budapest attracted criticism for waste and cronyism, while most were beset by extensive cost overruns beyond the norm for major infrastructure. Conversely, however, some of these same features of high spend and visibility also provide a positive opportunity to both develop and showcase improvements or even excellence¹², with potential benefits not just for future similar events but more broadly. This will be illustrated in the case studies of London, in which a procurement “legacy” (including for integrity) was an explicit objective, and Rio, which has arguably left a positive legacy in terms both of unearthing and pursuing corruption and of modernising the procurement framework.

Literature on specific sporting events also indicates that these features of such events can present some specific challenges. A number of the procurement challenges have been catalogued by, for example, Schultz Herzenberg¹³, and are again illustrated by our study.

One is that international sporting events are generally a “one-off”. As the IPACS report points out, this means that most host governments have no or limited experience in organising such an event, including the procurement. The one-off nature of the work can also make construction work more expensive, including because of large volumes of work on the market in a short timeframe and because of the absence of cost benchmarks. Bidders may also be deterred by the unique nature of the projects and/or high visibility, which create risks for contractors as well as procuring entities – a problem with the London Olympic stadium, as we will see.

p.63; D. Getz, *Event Management & Event Tourism* (2nd ed. 2005). New York, NY: Cognizant Communication Corp., p.118, discussing risk management in general terms without specific reference to procurement).

⁸ E.g. Gardiner, S., O’Leary, J., Welch, R., Boyes, S., & Naidoo, U. (2012). *Sports Law* (4th ed.). London, UK: Routledge Lewis, A. & Taylor, J. (2014), *Sport: Law and Practice* (3rd ed.). Haywards Heath: Bloomsbury; Lewis, A. & Taylor, J. (2014), *Sport: Law and Practice* (3rd ed.). Haywards Heath: Bloomsbury; Sharp, L., Moorman, A. & Claussen, C. (2017). *Sport Law: A Managerial Approach* (3rd ed.). London and New York: Routledge – although this last does briefly discuss finance and ownership models.

⁹ For example, in G., Aleem, A., & Button, M. (2013). *The Extent of Fraud and Corruption in Sport*. In G. Brooks, A. Aleem & M. Button (Eds.). *Fraud, Corruption and Sport* (pp. 30-44). UK: Palgrave MacMillan. Brooks et al (2013), while the authors mention the area in a list of relevant topics, it is not covered in the case studies.

¹⁰ See, for example, the works cited in the summaries of the London and Rio events later below.

¹¹ UNODC (2013). *A Strategy for Safeguarding Against Corruption in Major Public Events*. Retrieved from http://www.unodc.org/documents/corruption/Publications/2013/13-84527_Ebook.pdf.

¹² As UNODC suggests, “The organization of a major event should serve as an opportunity to review and strengthen existing procurement, tendering and contracting rules” (UNODC (2013). *A Strategy for Safeguarding Against Corruption in Major Public Events*. http://www.unodc.org/documents/corruption/Publications/2013/13-84527_Ebook.pdf.p.34).

¹³ C. Schultz Herzenberg (ed.), *Player and referee: conflicting interests and the 2010 FIFA World Cup* (2010) (pp 21-49) [e-book]. Pretoria, South Africa: Institute for Security Studies, <http://ccs.ukzn.ac.za/files/ISS%20Player%20and%20Referee.pdf>.

Another significant problem is the immovable deadline: “when problems arise there can be no trade-off between schedule and cost, as is common for other megaprojects”¹⁴. This may help to explain why cost overruns for Olympic sport-related infrastructure greatly exceed those for other major construction projects¹⁵, as with three of the four Olympics in our study (London, Sochi, and Rio, Vancouver being the exception). It seems uncommon for event-specific infrastructure not to be completed in time: our mapped procurements produced just one example in the athletes’ village for Veracruz (although some appears not to have been completed to a satisfactory standard because of lack of time to deal with problems, as with the athletes’ accommodation for Rio). Time pressures also make it difficult to control costs and prevent corruption, including because of pressure to modify regular procedures or to invoke exemptions - or can provide a pretext for dispensing with regular procedures even when not justified. Of the events in our study, New Delhi was seriously criticised by audit bodies for modifications to regular procedures and other problems caused by preparation delays, while Budapest was criticised by the media for exorbitantly expensive infrastructure against a backdrop of a “blanket” exemption from the usual requirements for open public tender (the stated justification for which, as discussed later, that Budapest replaced another host just two years before the event). Time pressures can also make adequate control of amendments, with attendant corruption risks, more difficult.

Particular challenges also arise from the complexity of institutions involved in the local organising committees (LOCs) and otherwise. Stakeholders often include public institutions, sometimes (as with several of our case studies) at multiple levels (local, regional and/or national), as well as national and international federations, sometimes with conflicting interests, as examined by Schulz Herzenberg et al in more detail in the context of one of our case study events, South Africa¹⁶. The structural challenges have sometimes been addressed by creating one or more bespoke agencies for organisation, including procurement, or at least new teams or units to deal with exceptional procurement demands, as with South Africa (see later). However, as the literature shows, a transient organizational structure also makes it more difficult to transmit lessons learnt¹⁷ (something that the IOC has tried to address with the Olympic Games Knowledge Management Program). The bespoke nature of agencies can also contribute to the difficulty of ensuring transparency, as our study shows. Thus, as described below, in all four cases in which a specific bespoke agency was known to be established for infrastructure procurement (Vancouver, London, Sochi and Budapest) out of the 13 events for which our study is complete, accessing documentation previously available proved largely impossible once the agencies were wound up, and this was also an issue with information on South Africa because of the winding up of both the main organising committee and units that had been set up in Government departments. The involvement of multiple agencies can also create problems in this regard: our study found that with Rio where, as the later summary describes, the central Transparency Portal in theory covers all contracts using federal funding, the required information was simply not included by some agencies. Further challenges for procurement and operations management affecting some events highlighted by Kauppi et al¹⁸ are short duration

¹⁴ Flyvbjerg, Bent and Stewart, Allison and Budzier, Alexander, *The Oxford Olympics Study 2016: Cost and Cost Overrun at the Games* (July 1, 2016). Said Business School WP 2016-20, https://www.researchgate.net/publication/305307721_The_Oxford_Olympics_Study_2016_Cost_and_Cost_Overrun_at_the_Games, p.14.

¹⁵ Oxford Olympics Study 2016, above, p.15.

¹⁶ Schultz Herzenberg, above.

¹⁷ Agarwal, R., & Selen, W. (2009). Dynamic Capability Building in Service Value Networks for Achieving Service Innovation. *Decision Sciences*, 40(3), 431-475.

¹⁸ Kauppi, K., Moxham, C. & Bamford, D. (2013). Should we try out for the major leagues? A call for research in sport operations management. *International Journal of Operations & Production Management*, 33(10), 1368-1399 (drawing on analysis of the Olympic Games by Minis, I., Parashi, M., Tzimourtas, A. (2006). The design of logistics operations for the Olympic Games. *International Journal of Physical Distribution and Logistics Management*, 36(8), 621-642 and on Beis, D., Loucopoulus, P., Pyrgiotis, Y., Zografos, K. (2006), “PLATO

combined with a long planning period, massive size, diversity of activities and services, and the mix of employed and volunteer workforce.

Finally, the environment can involve high corruption risks, in particular the fact that the infrastructure procurement (as our study confirms) is overwhelmingly undertaken by the public sector combined with the increasing tendency for transparent and democratic Governments to eschew expensive events. Corruption and its causes are hard to measure¹⁹ and there may be a higher perception of corruption in public sector activity simply because of greater scrutiny²⁰ but there is also some indication of higher corruption levels²¹, possibly explained by factors such as low pay, pay structures, absence of a profit motive, bureaucratic rules, budgets unrelated to goals, and political involvement²². The last, in particular, can result in entrenched corruption, making it difficult to address by traditional transparency mechanisms which, as Trepte argues, assume a "principled principal" and that corruption is simply about controlling the rogue agent (procurement officer)²³. Some of these features of the public sector are shared by sport federations involved in international events, which often lack even the basic oversight mechanisms found in the public sector²⁴.

Although, as noted, procurement has received little attention in sport integrity literature, the risks it presents have led IPACS to focus on this issue. The globalisation of both sport and corruption that has made the ever-increasing problems of integrity in sport more generally more difficult to address has led to various international cooperative efforts. IPACS, launched in 2017²⁵, is one of these, with a core group of the International Olympic Committee (IOC), Council of Europe, OECD, United Nations Office on Drugs and Crime (UNODC) and UK Government. At its first working group meeting in June 2017 it set up three Task Forces²⁶: Task Force 1 on risks of corruption in procurement relating to events and infrastructure; Task Force 2 on integrity in selecting event hosts; and Task Force 3, concerned with compliance with good governance principles. The objective of Task Force 1²⁷ is to improve the effectiveness and use of methodologies and tools for identifying and assessing risks – in particular, fraud and corruption risks²⁸ – specific to procurement in sporting events and infrastructure projects; and to enhance strategies

helps Athens win gold: Olympic Games knowledge modelling for organizational change and resource management", *Interfaces*, Vol. 36 No.1, pp. 26-42.

¹⁹ See generally Lanyi, A. (2004). *Measuring the Economic Impact of Corruption: A Survey*. Paper No. 04/04. The Iris Discussion Papers on Institutions and Development: The IRIS Center. Retrieved from <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan024055.pdf>; and in the specific context of sport: Brooks, G., Aleem, A., & Button, M, "The Extent of Fraud and Corruption in Sport", in Brooks et al, above.

²⁰ Jenny, F. (2005). Competition and Anti-corruption Considerations in Public Procurement. In OECD, *Fighting Corruption and Promoting Integrity in Public Procurement* (pp.29-35). OECD Publishing.

²¹ e.g. OECD, 2014, *2014 OECD Survey on Managing Conflict of Interest in the Executive Branch and Whistleblower Protection*. Retrieved from <http://www.oecd.org/gov/ethics/2014-survey-managing-conflict-of-interest.pdf>

²² Rose-Ackerman, S. (1999). *Corruption and Government: Causes, Consequences and Reform*. Cambridge, UK: Cambridge University Press.

²³ P. Trepte, "Corruption and Procurement: Recalibrating the Sights" in A. La Chimia and P. Trepte (eds.) *Public Procurement and Aid Effectiveness: a Roadmap under Construction* (Hart Publishing, Oxford, 2019) pp. 137-171.

²⁴ OECD (2016), *ORGANISING SPORTING EVENTS Preventing corruption and promoting responsible business conduct*, <http://www.oecd.org/corruption/Corruption-Responsible-Business-Conduct-Large-Sporting-Events.pdf>.

²⁵ Initially called the International Sports Integrity Partnership, IPACS was launched in February 2017 at the International Forum on Sport Integrity of the International Olympic Committee: (IOC)<https://www.olympic.org/news/international-forum-for-sports-integrity-steps-up-action-to-prevent-competition-manipulation-and-corruption-in-sport>

²⁶ https://www.coe.int/en/web/sport/newsroom/-/asset_publisher/x9nLQ8ukPUk9/content/council-of-europe-hosts-first-meeting-of-international-partnership-against-corruption-in-sport. For the Task Force terms of reference see: <http://www.oecd.org/corruption/multi-stakeholder-sports-integrity-taskforces-established.htm>

²⁷ The terms of reference are at: <https://rm.coe.int/terms-of-reference-of-task-force-1-of-the-international-partnership-ag/16807b6c84>

²⁸ The terms of reference, para 5, refer specifically to fraud and corruption here but para.6 refers to bid rigging also.

and action plans for managing these risks. To this end, IPACS envisaged an exercise for “the mapping of procurement standards to the specific context of sport”²⁹, which would be used to produce i) a tool for managing risks and ii) a pilot project for applying the results to a concrete case³⁰. Our study involved such a mapping exercise, carried out in part (the initial ten projects) in collaboration with the OECD, with this part used as the basis for the IPACS report. The report summarises the results of the mapping and, based on this, draws some conclusions on integrity risks and how to mitigate them, along with practical recommendations that include a checklist for future events. As described below, our study also includes four further projects. As noted, in this summary paper and in our forthcoming longer article we do not seek to replicate in detail the analysis and conclusions of the IPACS report but just to highlight its key points; offer some additional perspectives based on our further work; and then present in a more contextual manner, through an event-by-event approach, the result of the mapping.

3. Methodology

As mentioned, our study involved mapping the institutions and procedures for the procurement of infrastructure for 14 international sporting events by reference to certain standards considered relevant for mitigating risks (particularly integrity risks) in infrastructure projects. The initial work was done in collaboration with the OECD, which was the technical lead for the work of IPACS Task Force 1. The basic methodology was initially devised by IPACS, led by the OCED and was then filled out and refined by some of the current authors. The authors conducted the actual mapping, covering an initial sample of ten events (chosen by IPACS for its study) and also a further four events (with the mapping of the 2018 Gold Coast still to be completed, as noted earlier).

Procurements were selected for analysis at three levels: the event level, the infrastructure level, and the procurement level.

As to the event level, events were chosen from those in 2009-2018, to make the information current. The choice was made from an initial long list of 44 identified by the authors as involving major infrastructure work, which listed simply (where available) the procuring entities and the infrastructure, divided into sport-specific (pools, stadiums etc) and other infrastructure linked to the event (such as, transport infrastructure and athlete villages), and the cost of each piece. This long list now provides a bank of information for further projects (such as a study of social and environmental dimensions). Events for the long list were identified with a view to providing a varied, although not necessarily representative, sample, based on criteria relating to “the variety of infrastructure, geographical balance and size” (IPACS report) and the nature of the event in terms of single-sport /multi-sport, and global/non-global (the latter including regional events, the Commonwealth Games and single-country events). Ten of the events were selected for study by IPACS. Four more were added to our own study to broaden the geographic scope and variety, in particular by including one from the Antipodes, and including additional and single-sport events in both Europe and Africa, to broaden coverage on these continents and extend coverage of single-sport events.

The sample of 14 is influenced by IPACS decision to select the initial ten only from those events - 44 out of 48 initially identified as falling with the IPACS criteria - for which a minimum information referred to above (entity, nature of infrastructure and cost) was publicly available. This limited, in particular, study of events in the Middle East and Africa). This must be taken into account when assessing the information found, since by definition the ten events selected by IPACS all involved a degree of transparency. However, as a result of the decision to cover more events from Africa and further single sport events, the sample of 14 in our own study included two events, the 2015

²⁹ Para.9 of the terms of reference.

³⁰ Para 6 of the terms of reference.

Brazzaville African Games and the 2017 Gabon African Cup of Nations, for which this longlisting information was not available.

A further point to note is that only one event is included from North America. Although the criteria warranted including more events from that region, no event involving significant infrastructure procurement could be identified during the ten-year period covered.

At the infrastructure level, it was considered unnecessary for a significant sample and disproportionate given the IPACS project timescales to map all the infrastructure procured for each event. Mapping was therefore done for each event as follows.

First, where possible, the mapping included the most significant sport-specific infrastructure in terms of value and significance, such as the main stadium and aquatics centres for multi-sport events. Secondly, it sought to cover a range of other sport-specific infrastructure, covering a variety taken from different categories (broken down into outdoor arenas, indoor arenas (including courts, velodromes etc), ski facilities, bobsleigh/luge tracks, golf courses, bike lanes/trails, water sport or other open water facilities, and mixed facilities).

For most events it was possible both to identify all the sport-specific infrastructure and find a reasonable amount of information. Therefore the mapping covered all or substantially all of this infrastructure for smaller events³¹ and the main venues plus some smaller venues for the two summer Olympics (Rio 2016– where 50% by value was mapped – and London 2012), as described later in the event summaries, and for the 2010 New Delhi Commonwealth Games (20% by value being mapped). For both New Delhi and Rio the choice of smaller items was influenced to some degree by availability of information, and more smaller items were mapped for Rio than London because of the greater ease with which the theoretically available information could be accessed.

As explained later, information was not, however, so readily available for six events - the 2014 Sochi Winter Olympics, the 2010 Guangzhou Asian Games, the 2010 Vancouver Winter Olympics, the 2015 Brazzaville African Games and the 2017 Gabon African Cup of Nations. In the first three cases there was limited information available allowing some pertinent procurements to be mapped at least to a limited degree (although in the case of Sochi not relating to the sport venues); in these three cases the selection was made, however, in large part based simply on the fact that information was available. For South Africa, the difficulty of locating the available information limited mapping in the time available to one of the ten stadia used for the event. With the last two there was almost no information so that no mapping was possible for event at all.

The mapping also covered, thirdly, some non-sport-specific infrastructure, in particular other sport-related infrastructure (such as athlete villages) and one or two more indirectly connected with the event, classified under headings of: accommodation; media centres and catering facilities; site preparation, landscaping and utilities; transportation infrastructure; and operation/training infrastructure (for example, infrastructure to house event medical services). As noted, with the 2014 Sochi Winter Olympics all mapped infrastructure fell into this category as there was little information on sport venues. For some events, the choice was selective to give an overall picture, but selection for, in particular, Sochi, Vancouver, Guangzhou and New Delhi, was also influenced to a degree by the information available.

At the procurement level, a particular piece of infrastructure could involve just one (frequently the case) or multiple procurements. In the latter case, to the extent possible, all procurements were analysed for each piece of infrastructure selected for study. Some procurements were organised to cover parts of more than one piece of infrastructure (for

³¹ Budapest, Vera Cruz, Wroclaw and Buenos Aires.

example, track laying at the New Delhi 2010 Commonwealth Games) and, where these were included in the mapping, were categorised as separate pieces of infrastructure since they do not relate to any one specific infrastructure piece.

Altogether, the mapping will have covered 52 pieces of infrastructure and 90 procurements (none being formally mapped for the 2015 Brazzaville African Games and the 2017 Gabon African Cup of Nations, given the absence of information). Of these, 42 pieces of infrastructure and 76 procurements were taken into account for the IPACS report³², with the others (ten pieces of infrastructure involving 14 procurements) relating to two additional events mapped for our own study (the 2018 Gold Coast Commonwealth Games and the 2017 Budapest World Swimming Championships).

In considering the outcome of the mapping both for the IPACS report and for our wider study, the extent to which the sample was influenced by availability of information needs to be kept in mind, in particular the fact that IPACS sample deliberately omitted the most opaque procurements. As explained in the event summaries, it transpired that the infrastructure for both the two further events in our own study that were taken from the four events omitted from IPACS' own long list was financed by China. This reflects an approach which is in international sporting events/infrastructure in Africa (indeed, dominant in the larger events) and also found in other developing countries³³ and which often involves the whole infrastructure project being implemented by China under rules laid down by the Chinese Government³⁴. Clearly this phenomenon needs to be considered when looking at the overall picture of sporting infrastructure. Further, selectivity in selection of infrastructure and procurement within the selected events, as just outlined, also needs to be kept in mind. Thus, for example, the almost universal use of open public tenders in the mapped procurements may not be replicated across event procurement as a whole, since open public tenders are more likely to leave a trace of information in the public domain. However, absence of public information does not necessarily mean that open public tenders were not used since, as explained in the event summaries, there are explanations for absence of information other than absence of transparency in the procedures, including the limited use of electronic communications in the early part of the period and the absence of enduring records for procurements, in particular those conducted earlier in the period and/or by bespoke entities set up for the event. Further, the impact of selectivity within many of the events is likely to be limited at least for the specific-related infrastructure, given the volume and nature of coverage.

The study examined the application in procuring the mapped infrastructure of certain procedural and institutional features considered relevant for achieving procurement objectives in a public sector environment. IPACS work, as we have seen, focused specifically on integrity risks, covering corruption (including bribery), fraud and bid rigging³⁵ - concepts which overlap (for example, where a public official is bribed to ignore bid rigging) but are distinct. Thus, the study focused on matters relevant to mitigating those risks. It did not attempt any comprehensive evaluation of *actual* integrity and the relationship of the mapped features to integrity outcomes. However, it did collate such information as was in the public domain on integrity outcomes, to provide context and to lay the foundations for further study.

³² We have omitted from our figure the contract for the delivery partner for the London 2012 Olympics, which is listed as infrastructure in the IPACS report, since this only involved services relating to the infrastructure procurement, and contracts involving services only (e.g. design services, or auditing services relating to the infrastructure) were not otherwise mapped.

³³ See e.g. Jens Alm, "World Stadium Index - Stadiums built for major sporting events – bright future or future burden?" (May 2012), <https://www.playthegame.org/knowledge-bank/downloads/world-stadium-index/c714c866-7a44-4501-a9a5-a3af00f4d750>; S. Menary, 'China's Programme of stadium diplomacy' (2015) ICSS Journal Vol 3 No3. We found no other evidence of donor funding of the events in our study, although it should be noted that the study did look only at procurement rules and not financing (although a study of the budgetary information for the 2010 South Africa World Cup confirmed that no donor funding was involved)

³⁴ E.g. Menary, above.

³⁵ These concepts have slightly fuzzy boundaries but their core is well understood and clear.

While the study focused on integrity there is, of course, an important relationship between integrity and other procurement objectives, including value for money, in that failing to achieve the former can compromise the latter – for example, where bid rigging leads to above-market prices or a bribery results in a more expensive or even incompetent contractor³⁶. In addition, many tools employed in the public sector to achieve integrity, notably transparency, a transaction-based approach and competition through formal tendering, are also seen as a means to achieve other objectives, including value for money, effective implementation of social and environmental policies, open markets, equal treatment as a substantive value, and accountability³⁷. Thus the information collected may be relevant also to risks to other objectives. There is, as is well known, tension between integrity and value for money (and also social and environmental objectives), in that approaches used to mitigate integrity risks can sometimes hinder such objectives³⁸ - for example, where limits on discretion preclude negotiation that could produce better prices or service design³⁹. However, the information obtained in the study was quite high-level information on matters – such as use of open public tendering⁴⁰ - that are accepted in international standards as central to public procurement systems, and broadly regarded as relevant to various objectives.

The information collected also provides useful foundations for collecting additional information for further studies – for example, on sustainability.

The basic institutional frameworks and the procurement procedures were analysed from information available in the public domain, either directly or on request (including through use of freedom of information laws). A key source for many of the procurements was publicly available (generally on-line) documentation generated by the procedure itself, such as solicitations, tender documentation, and award notices. The study also used public information from other sources, such as government audit reports, the limited academic literature, other literature (such as that of international organisations) and media. Searches were conducted in all main relevant languages (for example, in the case of Chinese-financed procurement in Africa, in Chinese, English and French). Within the samples, both obligations to publish and actual publication (including compliance with publication obligations) varied, as did retention of published information after the event. These points and their significance for integrity risks are briefly considered further later below. We have noted above the extent to which the selection of events themselves affected by availability of public information.

IPACS initially intended that the information obtained from our study of public documentary sources would be supplemented by information from questionnaires by IPACS to those involved in the procedures. In particular, there were information gaps on risk management activities, including the existence and nature of risk assessments and internal control and audit; public information often could not be found but it could not be concluded from this that no activities existed. However, IPACS was not able to collect such information for nine of the ten events in the IPACS study, but only for the 2018 Youth Buenos Aires Youth Olympic Games (perhaps because that was still ongoing). Thus the study of ten of the events described here ultimately provided the main basis for the IPACS report.

³⁶ See e.g. Rose-Ackerman, above.

³⁷ Arrowsmith, *Public Procurement Regulation: An Introduction*, above.

³⁸ E.g. Kelman, S. (1999). *Procurement and Public Management: The Fear of Discretion and the Quality of Government Performance*. Washington, DC: The AEI Press; Anechiarico, F., & Jacobs, J. (1996). *The Pursuit of Absolute Integrity: How Corruption Control Makes Government Ineffective*. Chicago, Illinois: University of Chicago Press.

³⁹ See, for example, Krueger, K. (1999). The Scope for Post-tender Negotiations in International Tendering Procedures. In Arrowsmith, S. & Davies, A., *Public Procurement: Global Revolution*. London: Kluwer Law International

⁴⁰ Such as the UNCITRAL Model Law on Public Procurement 2011, the WTO Agreement on Government Procurement 2012 and the EU procurement directives.

For each procurement information was sought on a range of matters considered most relevant to integrity risks, using a public sector framework, and based (as envisaged in the terms of reference of IPACS Task Force 1⁴¹) on existing international efforts and standards⁴². It needs to be stressed that these reflect the approach to integrity within a public sector procurement framework since, as mentioned, the commercial sector's approach is often quite different, focusing on ongoing supplier relationships rather than individual transactions, and placing much less emphasis on transparency⁴³. IPACs' approach assumed that infrastructure procurement for international sporting events is generally undertaken by the public sector, an assumption verified by the information obtained in the study, as explained later. Collecting information that was comparable across different procurements required a carefully nuanced framework. For example, legal concepts with the similar names in different systems may be quite different in substance – as, for example, with the concepts of “open” tendering/procedures and “restricted” tendering/procedures, as explained later, as well as with concepts such as concessions and Public-Private Partnerships.

4. Outline of the map

4.1. Introduction

In this section we briefly present the key features of the map that emerged from our mapping, along with key findings and recommendations made by IPACS report that were based on the map of ten of our events.

While our study identified 14 events for mapping, the information below is drawn mainly from 11 since, as explained, almost no information was available for the Brazzaville and Gabon and we have not yet completed the mapping for the Gold Coast (although some of our remarks refer, as indicated below, to all 12 events where the relevant information from the Gold Coast is already available). The points made below are in general based solely on the mapped procurements but in some cases (where specified) also use other information drawn from both our study or secondary sources.

4.2. Public availability of information

As mentioned, the findings on availability of information need to be considered in the light of the fact that availability of information influenced the selection of the sample, in favour of events for which information was available. Thus, as we have seen, the IPACS study covers only events for which basic information was available publicly, although our own study also includes two for which this was not the case; and of the 12 events studied in detail in this article both the sporting infrastructure and/or the procurements studied for, in particular, the 2014 Sochi Winter Olympics, the 2010 Guangzhou Asian Games and the 2010 Vancouver Winter Olympics was determined mainly by availability of information.

For those 12 events, as we will see in the event summaries, information on some matters, notably risk management and internal controls and audit, the public information was still sparse or non-existent. However, there was generally significant information on the procedural steps in the award phase. The reasons for this – for example, whether because the former phase has a more direct impact on suppliers and therefore is often subject to greater visibility requirements for their benefit, or because there is better

⁴¹ Paras 7 and 8 of the terms of reference.

⁴² Such as the 2015 OECD Recommendation on Public Procurement , 2012 OECD Recommendation on Fighting Bid Rigging in Public Procurement and 2017 OECD Recommendation on Public Integrity. As noted earlier, the information sought in the context of award procedures reflects also the standards in international instruments such as the UNCITRAL Model Law on Public Procurement 2011, WTO Agreement on Government Procurement 2012 and EU procurement directives.

⁴³ Parker and Hartley, above.

attention to risk management during the latter phase and therefore more to “find” – are not clear.

Since availability of information is itself a mechanism for mitigating of integrity risks, relevant to various dimensions of transparency in public procurement (publicity for opportunities, disclosure of the rules of the process and monitoring and enforcement)⁴⁴, the availability (or otherwise) of public information is itself a potentially important finding from the study. However, the case studies (which will be reported in full in our article) show that absence of public information at the time the study does not necessarily indicate a lack of transparency giving rise to integrity risks (although it limits potential for uncovering issues later): for example, for some events (as possibly in the case of the 2010 Guangzhou Asian Games and 2010 South Africa World Cup) absence of information might be explained by the limited use of electronic means at the relevant time, while for others information that was public at one time may simply not remain in the public domain, as with the 2010 Vancouver Winter Olympics and 2014 Sochi Winter Olympics.

4.3. The procuring entity/entities

Although, as will be seen in the full event summaries in our article, the nature and number of the procuring entities varied greatly, our mapping confirmed that procurement of infrastructure (both sport-related and other) for international sporting events tends to be undertaken by public sector bodies, subject to public procurement frameworks. This was the case with all the mapped procurement as well as for nearly all other infrastructure procurement undertaken for the study events on which information was available (although the procurement of sporting infrastructure for Sochi was carried out by the State Corporation for the Construction of Olympic Venues and the development of the city of Sochi (OlymStroy) set up for the Games, which as a state corporation was subject only to a skeletal procurement regime applying to state companies). Only in very limited cases was infrastructure procurement undertaken by entities not subject to public procurement laws⁴⁵.

As the event summaries show, for the most part the public bodies undertaking this work were established institutions with a remit over the activity in question at federal, state/provincial or municipal level – for example, general authorities, authorities invested with responsibility for public works, or specialist agencies concerned with, for example, transport. Frequently, this meant there was more than one procuring entity, especially where the infrastructure was geographically dispersed and/or when more than one level of government was involved. For example, major procurements for the 2016 Rio Olympics were undertaken by RioUrbe - Municipal Company for Urban Development, the Municipality of Rio de Janeiro and the state government; for South Africa infrastructure procurement (stadiums and roads) was undertaken by nine different host cities as well as numerous specialist agencies, such as national and regional transport agencies; and at New Delhi at least seven entities were involved in major infrastructure procurement for the sporting venues alone. We noted earlier difficulties created by involvement of multiple agencies and some illustrations are found in our study, such as the difficulty of ensuring that all federally-funded procurement for the 2016 Rio Olympics was actually included in the central database.

For some multi-sport events, a specialist agency was set up for the event, either specifically for managing or procuring infrastructure, or with responsibilities in this area:

⁴⁴ Arrowsmith, Wallace and Linarelli, above, pp.73-75.

⁴⁵ Examples of this from the events studied included the athletes' village for the 2014 Sochi Winter Olympics, carried out by a limited liability company not subject to public procurement law; some construction works to finalise venues and install spectator facilities for the London 2012 Olympics, undertaken by the London Organising Committee of the Olympic and Paralympic Games (LOCOG), a private company not considered subject to public procurement law (which was also responsible for most of the supplies and services procurement for the Games); and work on upgrading a tennis stadium undertaken by the All India Tennis Association with finance from a government grant.

this is a popular, although not universal, model for mega-events. All were public bodies for public procurement purposes (or, with Sochi, were semi-public). As the event summaries will explain, such a special body⁴⁶ was set up in four of the 11 events mapped so far - Sochi, as mentioned above; London, where this was the responsibility of the Olympic Delivery Authority; Vancouver, though the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games (VANOC) and Budapest (although in the last case some of the large infrastructure contracts were also undertaken by existing bodies). The information available on these dedicated agencies highlights the possibilities offered for successful and innovative approaches provided by a "blank canvas", as shown at the London (see the event summary) - but also the fact that bespoke agencies may not leave significant records once wound up. The latter contributes to the danger highlighted in literature that a transient organizational structure can make transmission of lessons more difficult⁴⁷; while significant efforts were made in London to counteract this by producing a legacy website⁴⁸ this, of course, results in a version of events edited by the actors from the contemporaneous records.

4.4. The regulatory frameworks

Public procurement procedures are in most countries governed by detailed, and often enforceable, national legal rules⁴⁹. In general, applicable legal frameworks have tended to converge, being increasingly based on international instruments, such as the UNCITRAL Model Law on Public Procurement 2011⁵⁰, World Trade Organisation Agreement on Government Procurement (GPA)⁵¹ or, in Europe, the EU procurement directives (compatible with the GPA and exerting an influence beyond the EU or even its candidate countries)⁵², although significant differences remain; and different rules also frequently apply at national, regional and local level, or between bodies at the same level. The regulatory picture may also be complicated where a project is aid-funded (for example, by Multilateral Development Banks or another state), when the procurement may need to be carried out by domestic authorities using donor procurement rules or directly by the donor in accordance with its own rules⁵³. It is assumed a regulatory framework following the core elements of international models - such as open solicitations and review procedures for suppliers - has a role in limiting integrity risks (although - as we noted earlier - its exact contribution, in particular in countries with integrity problems embedded at a high level, is open to debate). The study therefore

⁴⁶ At the 2017 Wroclaw World Games a bespoke body did most of the non-construction procurement, a model also found with some other events, including the London 2012 Olympics: see the event summary of London below.

⁴⁷ Agarwal and Selen, above.

⁴⁸ <https://webarchive.nationalarchives.gov.uk/20180426101359/http://learninglegacy.independent.gov.uk/>.

⁴⁹ Arrowsmith, Linarelli and Wallace, above; ; Arrowsmith, Public Procurement Regulation: An Introduction., above; Trepte P. (2013). Regulating Procurement: Understanding the Ends and means of Public Procurement Regulation. Oxford, UK: Oxford University Press.

⁵⁰ Currently the UNCITRAL website notes that this text is used for benchmarking public procurement reforms by African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, OECD and the World Bank and lists 25 countries as having "used" the Model Law and its accompanying Guide to Enactment as the basis for their procurement reforms: http://www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure/2011Model_status.html However, anecdotal evidence and other sources indicate that the number is much higher than this e.g. on its influence in Anglophone Africa see generally G. Quinot and S. Arrowsmith (eds), "Public Procurement Regulation in Africa" (CUP; 2013) .

⁵¹ R. D. Anderson and A.C. Müller "The Revised WTO Agreement on Government Procurement (GPA): Key Design Features and Significance for Global Trade and Development," (2017) 48 Georgetown Journal of International Law, pp. 949-1008; R.D. Anderson and N.Sporysheva, "The revised WTO agreement on government procurement: evolving global footprint, economic impact and policy significance" (2019) 28 P.P.L.R.

⁵² The most significant of which is Directive 2014/24/EU of the European Parliament and of the Council on public procurement and repealing Directive 2004/18/EC [2014] O.J. L 94/65 (Public Contracts Directive). On the EU directives see S. Arrowsmith, The Law of Public and Utilities Procurement, 1547pp. (Sweet & Maxwell; 3rd ed vol 1 2014 and Vol.2 2018).

⁵³ La Chimia, A. (2013) "Donors' influence on developing countries' procurement systems, rules and markets" in S. Arrowsmith and G. Quinot (eds.), Public Procurement Regulation in Africa. Cambridge University Press at pp 235-238.

sought information on both the regulatory frameworks and the extent to which certain steps envisaged by international models were applied.

In the events studied, the mapped infrastructure procurement was undertaken by the host nation using national rules and there was no evidence found of donor funding, involving to some degree, and in most cases a very significant degree, of regulation. (On the other hand, the stadium procurements for Brazzaville and the Gabon which, as noted, were funded by China may have been done by the Chinese authorities using their own rules, as is standard for Chinese-funded sport facilities in Africa⁵⁴, or by the national authorities under a framework set by China; there was no public information available, however, to verify the position.) In some of the mapped events, different regimes applying to different levels of government and/or localities (such as with New Delhi and the South Africa), and/or some was quite skeletal (as we mention was the case with procurement by OlymStroy for the Sochi).

As noted, the special challenges of procuring infrastructure for sporting events, including immovable timescales, can create special problems in applying the regulatory framework. These can lead to pressure to modify the usual rules or to use urgency-based exemptions, whether for good reason, because of avoidable problems, or because modifications or exemptions are exploited for illegitimate motives, creating risks for procurement objectives. Some of these points are illustrated in the sample events. Thus, New Delhi involved many "urgent" non-competitive awards justified by reference to urgency because of poor planning – something generally precluded by international models, however,⁵⁵ in view of the risks created by allowing exemptions based on entities own dilatory conduct; while a special Law exempted much of the procurement for Budapest from the usual procurement laws⁵⁶.

The event studies also illustrate, however, that the same factors of high visibility and high spend that create special risks, can also give rise to special opportunities to improve future performance and this applies to the legal framework, among other things. As explained in the event summary, our sample events included one legal initiative of this kind in the enactment of the Differentiated Contracting Regime (Law No. 12462/2011) in Brazil, initially adopted in contemplation of the infrastructure procurement for both Rio (one of our sample events) and the 2014 FIFA Brazil World Cup to eliminate some inefficiencies from the procurement framework, although it was not in the end used for much Olympic procurement.

4.5. Use of electronic procurement and communications

Use of electronic means has the potential to reduce integrity risks and otherwise to enhance performance in many ways, and as Hayman's paper in this workshop explains, fully open contracting has significant potential in this respect. As summarised in the IPACS report, use of electronic means in many events studied for that report was quite limited, being confined largely to publication of the solicitation - in most cases (usually, although not always, required by law) - and of award notices, although in several cases certain other documentation is, or was, available on line (such as the 2016 Rio Olympics

⁵⁴ Menary, above.

⁵⁵ GPA 2012 Art.XIII(1)(d), allowing direct awards only "insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity" the subject matter cannot be obtained through an open public tender in our sense; and, in the EU, e.g. Public Contracts Directive; with similar wording Art.32(2)(c), which also states that "The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting authority". These instruments also provide for very short time period for open public tenders to deal with such cases of urgency: e.g. GPA 2012 XI(2) and (4); Public Contracts Directive Art.27(3) and Art. 28(6). The UNCITRAL Model Law on Public Procurement 2011 is even stricter, providing (in Art.30(4)(a) and (b)) only for a flexible form of competition ("competitive negotiations") in cases of urgency (which is again confined to where the entity is not at fault, except where there is a catastrophe), rather than direct awards (although direct awards are allowed in cases of catastrophe: Art.30(5)(b)).

⁵⁶ See the event summary for Budapest.

and 2018 Buenos Aires Youth Olympics). Even when significant efforts were made to put procurement documentation on line, however, as at Rio, information was often incomplete⁵⁷ (possibly because of the difficulty of securing compliance by multiple agencies there). However, as IPACS notes: “the ten events under consideration took place over a timespan of eight years, which saw a gradual spread of e-procurement system worldwide. ... As such, it is understandable that e-governance tools in general, and e-Procurement systems in particular, were not used.....”. This is an area in which significant developments may be anticipated that could have an impact on future events, as discussed in Hayman’s paper. It is also worth reiterating that even to the extent that electronic processes were involved records were not always retained, as with London⁵⁸ and Sochi, and better retention could facilitate scrutiny for problems, further study of issues, and transmission of lessons learned.

4.6. Nature and design of the procurement

The study also looked at the nature and design of procurements, including the approach to lots (within a single procurement or through multiple procurements); the approach to delivery in terms of packaging of the design, build, operation and ownership elements, and the payment models, including use of private financed. The IPACS report analyses the respective advantages and disadvantages of different approaches in these respects, drawing on the literature, and summarises the findings on the approach of the ten events in the study.

One notable finding was that design and build was generally used. However, as the event summaries show in several cases, at least, an outline design was commissioned separately: for example, the 2012 London Olympics Aquatics Centre illustrates a successful use of this approach (although the initial design was novated to the building contractor)⁵⁹. Secondly, the mapped sporting infrastructure was overwhelmingly built initially with public funds and taken or retained in public ownership; only in a tiny number of cases was the private financing model used. The Central American Village (athletes’ accommodation) for the 2014 Veracruz Central American and Caribbean Games was a rare case of use the private finance and ownership model – somewhat unsuccessfully, since the Village was not ready for the Games.

4.7. Planning phase

As IPACS notes “The early stages of the procurement cycle consisting of project design, budget estimates and understanding of market capabilities are of key importance, as shortcomings in these early phases may open doors for wrongdoings later on in the delivery cycle.” As presented there, based on the data from 75 construction procurements for 43 pieces of infrastructure in ten events, there was little public evidence of such activity. For example, there was evidence of a feasibility study for about half of projects; evidence of a cost-benefit impact of delivery method for only two; and evidence of market analysis for none. However, it is difficult to draw conclusions given that publication of such documents is often not required by the relevant legal frameworks or inherent in the document’s function – although the IPACS report does suggest the evidence supports the conclusion that pre-tendering transparency measures were not “systematically implemented”. In the case of advance publication of notice of opportunities, an inherently public activity in a transparent system, there was evidence of this for 27% of the above procurements⁶⁰.

4.8. Risk management activities

⁵⁷ See the event summary of the 2016 Rio Olympics.

⁵⁸ See the relevant event summary below.

⁵⁹ See the event summary of the London 2012 Olympics below.

⁶⁰ For the additional two projects covered by our own study in detail, such notices were found for all the procurement studied in relation to the 2018 Gold Coast Commonwealth Games, but none of those studied for the Budapest.

As IPACS noted, "There is limited evidence that implementing agencies took a strategic approach to risk management in the events reviewed; however, ad hoc activities to assess risks in some events were identified. Specifically, only three of the ten events reviewed had readily available information on the implementing agency's governance documents that demonstrated risk management objectives, policies or activities" (the 2012 London Olympics, 2010 South Africa World Cup and 2010 New Delhi Commonwealth Games). However, again this does not necessarily mean that such a strategic approach did not exist. Six events were also shown to have conducted risk assessments related to specific procurements or project implementation, but such activities could have existed for other events, too. As explained later, the 2012 London Olympics is of particular interest from the integrity perspective because of its systematic, and apparently quite successful, approach to integrity risks although, importantly, in a country in which corruption is not endemic.

As IPACS highlights, "Periodic integrity risk assessments—incorporated into broader risk assessments or as a stand-alone exercises—are critical to taking a strategic approach to risk management in infrastructure delivery" and this approach is advocated in the in the OECD's Recommendation on Public Integrity "as well as numerous international standards for internal control and risk management." More generally, given the specific features of organisation of sporting events highlighted in the study, the report concludes that "To effectively safeguard integrity related to sporting events, having a dedicated entity to lead, oversee and co-ordinate risk management activities with multiple stakeholders is a critical early step."

The study sought also specific information on the existence of audit and inspection activities for the various events. Six of the twelve events being reviewed in detail were shown to have had both internal and external audit or inspection; five showed evidence just of external audit⁶¹, although the audit reports themselves were found only for three events; and no evidence of audit was uncovered for the 2017 Budapest World Swimming Championships⁶².

Based on some of the events studied, and referring specifically to the 2010 South Africa World Cup and 2012 London Olympics, IPACS also highlights that improving risk management and detection activities in international sporting events can act as a catalyst for more general improvement, including through clarification of respective responsibilities of the implementing parties (who bears primary responsibility for this under accepted standards) and external audits and other mechanisms. Improvement of integrity mechanisms is also an important legacy also of Brazil's experience with the 2016 Rio Olympics, as discussed in the event summary later.

On the basis of the evidence uncovered of limited information in the public domain about risk management, it certainly seems desirable to improve access to such information, at the least to facilitate further study and the transmission of lessons for future events.

4.9. The procurement procedure

The study examined in detail the type of award procedure used⁶³, since theory suggests that this significantly affects integrity risks⁶⁴, although such risks depend also on the

⁶¹ This does not mean that no other audit existed, merely that it was not publicly evidenced.

⁶² Although again this does not necessarily mean that none existed.

⁶³ The analysis looked at the procedure actually followed, where this information was available, as well as the legal "type" of procedure invoked, since a single legal type can cover a variety of forms (e.g. the EU's restricted procedure and competitive dialogue that were used for some events (see the event summary for the London 2012 Olympics) allows both for a form in which all number of qualified suppliers are invited, or merely some of these are selected (the "reduction of numbers" process).

⁶⁴ On the different types of award procedure in legal frameworks see generally see e.g. Arrowsmith, Linarelli and Wallace.

institutional environment (which is a major factor in choosing appropriate procedures)⁶⁵ and, as noted, the impact of transparent award procedures as an integrity tool may also be rather limited, especially where corruption is endemic.

Various classifications of procedures are possible, but for studying integrity risks we chose a three-fold classification. A precise definition of each type was important, since labels such as "open"⁶⁶ or "restricted"⁶⁷ are attached to quite different procedures in different legal systems. All three types have different legal and practical features in different countries – such as whether or not negotiations are allowed/used – some of which were captured in the study, but the classification focused on features that almost universal in international transparency instruments.

The first type we called an "open public tender". This was defined as a tendering procedure in which there is a public solicitation of offers and under which all interested suppliers have a right to be considered in accordance with objective criteria. This definition covers, among other procedures, open tendering under the UNCITRAL Model Law 2011 and the GPA and the open procedure under the EU procurement directives. It covers certain procedures that limit submission of offers to pre-qualified suppliers (those that have undergone a prequalification stage to check that they meet minimum conditions for being acceptable including financial status and technical competence), and to that extent is wider than open tendering/open procedures under the GPA⁶⁸ and EU directives⁶⁹, which (unlike the UNCITRAL concept⁷⁰) do not cover procedures with a pre-qualification stage. This is because the stage at which the qualification exercise is conducted was not considered to have a significant impact on integrity risks (although the existence or otherwise of a pre-qualification stage was identified where possible).

Our definition of open public tender also covered procedures that allow the procuring entity to choose a limited number of qualified suppliers to tender based on objective criteria (a phase the EU directives refer to as reduction of numbers). This is generally done to reduce the costs of preparing and evaluating tenders in complex procurements. This includes procedures referred to as selective tendering under the GPA and restricted tendering, competitive procedure with negotiation and competitive dialogue under the EU directives. This is wider than UNCITRAL's open tendering concept, which does not allow for such a phase, although the Model Law provides for alternatives that do allow it when a specific justification applies⁷¹. Although the extra discretion increases corruption risks and the potentially limited number of participants increases risks of collusion, the former is limited when the tenderers are chosen using pre-stated objective criteria, and this is reflected in the GPA and EU directives allowing such a phase in their "default" procedures (that is, where no justification for use is required). However, again, our study identified the existence of such a phase where possible. Our definition also included procedures involving negotiation or other dialogue. This is potentially valuable in infrastructure procedures – for example, to identify different solutions, to reduce the risk of non-compliant tenders or misunderstandings, or to address collusion risks⁷².

⁶⁵ A point reflected in the variety of procedures provided for in the UNCITRAL Model Law 2011, not all of which are intended to be adopted for every enacting state: see UNCITRAL, *Guide to Enactment of the UNCITRAL Model Law on Public Procurement*, pp.129-130.

⁶⁶ For example, open tendering/procedures in the EU directives and GPA do not provide for a pre-qualification process, whereas open tendering under the UNCITRAL Model Law on Public Procurement allows this.

⁶⁷ For example, the UNCITRAL restricted tendering method merely involves inviting selected suppliers who can be from those known to the procuring entity while the EU's restricted tendering procedure requires an open solicitation and selection of those to be invited to tender from all those replying, use pre-stated and regulated criteria with a transparent selection process.

⁶⁸ GPA 2012 Art.1m.

⁶⁹ For the details of the EU's open procedure see S. Arrowsmith, *The Law of Public and Utilities Procurement* Vol.1 (3rd ed. 2014, Sweet & Maxwell), in particular Ch. 7 and Ch.12.

⁷⁰ UNCITRAL Model Law on Public Procurement 2011 Art.18(1).

⁷¹ E.g., under Art.30, request for proposals with dialogue – which allows this according to notified objective criteria – and competitive negotiations.

⁷² For discussion of some of these points see, e.g., Bajari, P., & Tadelis, S. (2006). Incentives and award procedures: competitive tendering vs. negotiations in procurement. In N. Dimitri, G. Piga & G. Spagnolo (Eds.).

However, it is also considered to increase corruption risks in certain respects, so that UNCITRAL and the main EU directive for the public sector (Directive 2014/24/EU) allow this only in specified circumstances. Again, procedures involving dialogue were thus specifically identified.

The second type of procedure in our classification was a restricted invitation, referring to a competitive procedure involving no open solicitation but merely an approach to suppliers identified by other means. Restricted tendering under the UNCITRAL Model law falls into this category, as do other Model Law procedures that allow direct solicitation of bids in certain circumstances (such as the competitive procedure with negotiations). Such procedures are envisaged by UNCITRAL only in exceptional circumstances, such as urgency, where larger procurements are concerned⁷³ and the EU directives and GPA do not include explicit procedures of this kind (allowing direct awards, however, in some cases in which UNCITRAL prefers this competitive approach)⁷⁴. The absence of openness in terms of who can access the procedure and consequent lack of control over selecting participants means that corruption risks are much greater than with open public tendering.

Our third type of procedure was the direct award, in which a contract is awarded directly without a competitive process. Use of this procedure very significantly increases corruption risks when compared with an open public tender as well as risks to other procurement objectives, and its use is strictly limited by most procurement frameworks – including the UNCITRAL Model Law⁷⁵, the GPA⁷⁶ and the EU directives⁷⁷ – as well as subject to various procedural controls⁷⁸.

As IPACS reports, nearly all the mapped 76 procurements⁷⁹ studied for that report for which information was available (71 of the 75) open public tender was used, with no restricted invitations in a competitive form and a direct award only in three cases⁸⁰. Of the open public tenders for which information was available, 29 of 61 involved prequalification. Sometimes, however, (as with the 2018 Buenos Aires Youth Olympics and South Africa World Cup) participation was limited to suppliers pre-registered on general list, when ease of access to specific “open” procurements depends on ease of access to the list. The limited use of direct awards may reflect that the fact the choice of mapping targets (at event, infrastructure and procurement level) was to some extent influenced by availability of information. For example, this influenced the procurements chosen for mapping at the 2010 New Delhi Commonwealth Games, where other sources highlight that direct awards were used in some cases; and for some events (including the 2010 Vancouver Winter Olympics and 2014 Sochi Winter Olympics) there is simply insufficient information to assess the use of direct awards. However, it is at least clear

Handbook of Procurement (pp 121-142). Cambridge, UK: Cambridge University Press; Krueger, K. (1999). The Scope for Post-tender Negotiations in International Tendering Procedures. In Arrowsmith, S. & Davies, A., *Public Procurement: Global Revolution*. London: Kluwer Law International.

⁷³ It can be noted that the UNCITRAL Guide to Enactment general counsels against such procedures, including for smaller procurements, which can often now be avoided by setting up transparent mechanisms for a more open approach to lower value procurement, for example, using electronic tools.

⁷⁴ UNCITRAL allows direct awards based on urgency only when this arises from a catastrophe, requiring competitive negotiations, at least, for other urgent cases.

⁷⁵ UNCITRAL Model Law on Public Procurement Arts 27-28, and the specific conditions set on use of direct awards in Art.30.

⁷⁶ GPA 2012 Art.XIII.

⁷⁷ E.g. Public Contracts Directive Art.32.

⁷⁸ E.g. the Model Law requires (as in all case when open tendering is not used) justification of reasons in the record (Art.28(3)) and (as for other procurements in which there is no public solicitation) must in most cases publish a public notice to inform interested parties of the procurement: Art.34(5).

⁷⁹ We include here the construction services procurement from the 2016 London Olympics, which IPACS included.

⁸⁰ The Handball Olympic Centre/Future Arena at the Rio 2016 Olympics (but apparently following an open public tender in which there were no bidders, which provides a legal basis for a direct award); the Sambodromo improvement works at the 2016 Rio Olympics, justified by an urgency derogation; and exterior works on the Xalapa Velodrome at the 2014 Veracruz Central American and Caribbean Games (for which a recorded justification was not found).

that for most of the events studied (including New Delhi) an open public tender was used for at least the bulk of significant infrastructure. However, the 2017 Budapest World Swimming Championships presented a very different picture, with a restricted invitation being used for all six major sport-specific infrastructure contracts based on alleged urgency, as the event summary explains. Such a scenario presents a clear red flag for integrity risks, and we will see that this event attracted considerable media criticism over value for money and conflicts of interest.

Events varied on including discussions with suppliers in open public tenders. These featured at the 2012 London Olympics, where the procurement of both the main stadium and aquatics centre used an open public tender in a form that allowed for this (and only one bid was received for the stadium procurement); in two of the three procurements for which information was available for the 2010 Sochi Winter Olympics (not surprisingly given the quasi-public character of the procuring entity and flexible procurement framework); and at the 2010 New Delhi Commonwealth Games, where there were discussions in several of the many infrastructure procurements. However, for most events either there was no information or, as with the 2016 Rio Olympic Games, procedures allowing for discussions were not used. While negotiation is considered a red flag for corruption risk these events varied in the extent of perceptions of integrity, however, with London being generally considered a "clean" Games⁸¹ and use of discussions merely reflecting common UK practice for complex infrastructure procurement⁸². Of the procurements for which information was available only those for London (for the stadium, aquatics centre and velodrome) appeared to use procedures allowing for a reduction of numbers process, which again reflects UK practice⁸³.

As regards award criteria, as IPACS noted, information was not available for 60% of the mapped procurements studied by IPACS, but for those for which information was available 85% used only lowest price. While this can reduce abuse of discretion it can also lead to insufficient attention to non-price dimensions and facilitate supplier collusion.

All the events were conducted under procurement frameworks that provide a formal supplier review system, considered an essential feature of a modern procurement system and required under, for example, the UNCITRAL Model Law⁸⁴, GPA⁸⁵ and EU procurement directives⁸⁶, as well as under the United Nations Convention Against Corruption⁸⁷. As the summaries report, there were challenges to one or two mapped procurements, notably for the 2017 Wroclaw World Games, and to some other procurements in the events studied. There is no information of an adverse impact on the events of such challenges, although at Wroclaw it meant that some infrastructure was only just finished in time.

It is clear from the events studied that for the tendering phase applicable procurement laws generally provide for open public tendering in line with international standards and that this is generally followed. The main issues from an integrity perspective generally arise not from the adequacy of the formal framework but from use of exceptions, whether lawfully or unlawfully, including because of poor planning, and from the manner of conducting procurement within the legal framework, such as planning and choice of award criteria.

⁸¹ See the event summary for the 2012 London Olympics.

⁸² See the event summary for the 2012 London Olympics.

⁸³ S. Arrowsmith and R. Craven, "Competitive dialogue in the United Kingdom", ch.3 (pp.181-271) in S. Arrowsmith and S. Treumer (eds.) *Competitive Dialogue in EU Procurement* (CUP 2012).

⁸⁴ UNCITRAL Model Law on Public Procurement Ch.8.

⁸⁵ GPA 2012 Art.XVIII.

⁸⁶ E.g. Council Directive 89/665/EEC of 21.12.1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts [1989] O.J. L395/33.

⁸⁷ United Nations Convention against Corruption Art.9(1)(d).

4.10. Contract execution

Inadequate control over contract execution gives rise to significant corruption risks, including the controls over the award phase being undermined by amendments (for example, minor extensions for large payments that undermine the contract's economic balance). Infrastructure projects are in general prone to renegotiation and, as IPACS highlights, the time critical nature of sporting infrastructure can produce greater pressures in this regard; and amendment were seen in many of the mapped projects. As IPACS states, since most national procurement regimes impose legal controls over execution phase such controls were generally found to a degree; but – as also highlighted in our section on public information earlier - both governance mechanisms and transparency for identifying amendment problems were often lacking, with much less public information than for award procedures.

4.11. Reported integrity problems

Of the ten events mapped for IPACS, five were the subject of significant corruption allegations by audit bodies, media and/or NGOs, as described in the event summaries, namely Sochi, Guangzhou, Rio, Veracruz and New Delhi, in most cases leading to some arrests or convictions; while South Africa involved significant bid-rigging, as well as allegations of other irregularities⁸⁸. A further event in our study, Budapest, both involved extensive use of non-open procedures and attracted media criticism for extensive waste and cronyism⁸⁹. Of course, it is not necessarily known how far such problems occurred in other events, also, or how widespread the problems were with the events above, but, as noted later, some of the events, notably the London and Vancouver, were praised by external bodies “clean” events and may thus provide useful lessons. Lessons may also be learned, however, from events where integrity problems did occur but were brought to light: Spalding et al have argued that the legacy of the 2014 Brazil World Cup and of Rio has been important for addressing corruption in Brazil, given that, while the events were plagued with integrity problems, new integrity measures were successful in bringing to light and pursuing these problems, which previously would have existed but remained hidden and unaddressed⁹⁰.

4.12. IPACS findings and proposals

As IPACS has reported, the trends and patterns seen by mapping the initial ten events in the study has provided the foundations for IPACS to develop tools and practical guidelines for addressing integrity risks, and its report makes a number of findings and proposals.

First, it concludes that mitigating these risks in procuring sporting infrastructure requires more strategic approaches to collecting information, in light of the limited public information (as we discussed earlier) and the difficulty IPACS experienced in collecting further data (noting that “Evidenced limitations of institutional memory constitute a significant obstacle to learning lessons from previous experiences.....”.) Secondly, it concludes that there is little evidence that strategies fostering competition, such as early market engagement, are systematically applied, despite the importance of genuine competition to mitigate integrity risks and the specific difficulties in ensuring such competition with major events. Thirdly, the IPACS report stresses the importance of oversight in contract execution – an oversight that we have seen was little evidenced in the available information - to ensure that the benefits of tendering are not undermined.

On this basis, the report proposes that stakeholders should consider a number of steps. One is for international federations, governments, implementing agencies and oversight

⁸⁸ See the event summaries of Rio and Budapest below; detail for the other events is provided in our longer article.

⁸⁹ See the later event summary.

⁹⁰ See the event summary of the 2016 Rio Olympics.

bodies to agree on strategies for centralising information on sport-related infrastructure procurement. Information for specific events should include a map of the responsibilities of the (often many, as we have seen) public and private entities involved and ensure a more strategic approach to risk management. Comprehensive information could then also provide lessons for future events.

The report also highlights the need to consider recording procurement data, in a standard, consistent, error-free manner and in a searchable and otherwise usable form, and also allowing for integration of data on award and execution. This will, among other things, allow application of techniques for identifying red flags for integrity risks, including of collusion. It can also, of course, facilitate better monitoring by stakeholders. As Hayman's paper explains, the Open Contracting system is one way in which this can be achieved.

In the light of the limited evidence of activity in this area, the report also recommends giving greater attention to pre-tendering activities, including early market engagement; and considering whether existing standard provisions are adequate for specific events. Likewise, IPACS recommends a significant focus contract execution, including governance mechanisms for amendments (to include clear processes for submitting and assessing amendment claims, and a structured approach to renegotiations. For the tendering stage, an adequate legal framework generally exists, and the main problems concern compliance and use of exceptions, as we have seen; but the IPACS report also highlights some issues relating to practice within the framework, notably extensive use of lowest price, and recommended greater consideration to non-price/cost criteria, to foster a better price/quality mix and also limit the risk of collusion.

Finally, the report stresses the need to consider clear internal and external reporting lines, including clear and communicated procedures for reporting integrity suspicions; and for training on identifying bid rigging.

The report concludes by proposing specific checklists for, on the one hand, implementing agencies and, on the other, governments and sports federations to ensure the above issues are addressed. The checklist for implementing agencies deals with mapping the involvement of different stakeholders through the whole procurement cycle; mapping of plans against delivery; provision of detailed guidance on pre-tender activities tailored to the specific context; consideration of whether there is an understanding of bid rigging and the relevant red flags; collection of information on the actual extent of competition in tendering; collection of information on amendment claims; and provision for periodic risk assessments that include identifying and responding to integrity risks. For governments and federations the checklist covers suitability of the procurement workforce; adequacy of the current legal framework(s) for the agencies; provision of a comprehensive procurement strategy for the infrastructure as a whole; provision of an overall risk management strategy, including a specific focus on risk, a strategic approach, regular monitoring and evaluation and well-defined procedures and mechanisms for a co-ordinated response to problems; and existence of a dedicated entity for risk management of infrastructure procurement (suggesting that Vancouver and London provide good examples); provision of competitive procedures; the extent to which risks of bid rigging are understood and mitigated (including through advance consultation with competition agencies, provision for collecting data to flag up risks, and workforce education); use of appropriate non-price criteria; and provision of updates for the public on financial and physical progress.

5. Events summary

5.1. Introduction

In this section we now outline the key findings relating to three events on an event-by-event basis, to illustrate some of the points above in context.

5.2. Olympic and Paralympic Games, London, England, 2012

(Sue Arrowsmith and Steve Kay)

There was a reasonable amount of public information on the infrastructure procurement for London. First, key information was available for all open public tenders from the public notices (advance notification of the procurement⁹¹, solicitation notice and award notice) required by law in the Official Journal of the European Union (OJEU). While at the time of the research (2018) notices were no longer publicly available online as they are archived after 5 years the OJEU provided these on request. Other significant procurement information was also available online, including on a “learning legacy” event site⁹², with information such as the infrastructure Procurement Policy⁹³, a document on Use of the competitive dialogue procedure⁹⁴ and a Suppliers’ Guide⁹⁵. The site does not contain the annual reports and accounts of the Olympic Delivery Authority (ODA) (the main entity responsible for infrastructure procurement: see below), but some are available elsewhere⁹⁶. Other information was accessible using the Freedom of Information Act 2000 and the government provided some of this in an expedited manner to assist our research⁹⁷. Procurement information was also available in a paper whose

⁹¹ Required at the time for the procurement of the delivery partner (as to which see below) but not other mapped procurements, which were launched after entry into force of the Public Contracts Regulations 2006 SI 2006 No.5 on 31 January 2006, which no longer included such a requirement; thus publication of advance notices for these procurements was on a voluntary basis.

⁹² <https://webarchive.nationalarchives.gov.uk/20180426101359/http://learninglegacy.independent.gov.uk/>.

⁹³ Olympic Delivery Authority, Procurement Policy, < <https://webarchive.nationalarchives.gov.uk/20130403015932/http://learninglegacy.independent.gov.uk/publications/procurement-policy.php> > accessed 9th April 2019.

⁹⁴ [2011] Olympic Delivery Authority, Competitive Dialogue, < <https://webarchive.nationalarchives.gov.uk/20130403015937/http://learninglegacy.independent.gov.uk/publications/competitive-dialogue.php> > accessed 9th April 2019.

⁹⁵ [2011] Olympic Delivery Authority, Supplier Guide < <https://webarchive.nationalarchives.gov.uk/20130403015934/http://learninglegacy.independent.gov.uk/publications/supplier-guide.php> > accessed 9th April 2019.

⁹⁶ Annual report and accounts for each of the financial years 2006-2014 and the accounts for the final months of 2014, published by the Olympic Delivery Authority

2006-7
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/250791/0741.pdf

2007-8
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/250261/0645.pdf

2008-9
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/248269/0636.pdf

2009-10
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/247722/0155.pdf

2010-11
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/247253/1360.pdf

2011-12
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/88754/ODA_Annual_Report_and_Accounts_2011-2012.pdf

2012-13
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/223522/ODA_Annual_Report___Accounts_2012-2013.pdf

2013-14
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336720/ODA_AR_2014_Low_res_composite.pdf

1/4/2014 – 2/12/14
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/412429/ODA_AR_2014_-_Web_PDF.pdf

⁹⁷ Such as a draft of a paper provided by the National Audit Office, *Review of Olympic Delivery Authority: Data Assurance and Reporting. Final Report for the National Audit Office* (May 2009) [name of author redacted by the National Audit Office]. No explanation was given as to why a draft, rather than final, version was provided. The document contains information on the overall governance, process and structure for data reporting as well as a review of the delivery partner’s cost and performance.

authors included key players in the procurement processes⁹⁸ and in other literature and commentary⁹⁹. However, much information that might otherwise have been obtained, including under the Freedom of Information Act, was not available as a result of the fact that the ODA had been wound up and existing public bodies could not locate the information that had, according to anecdotal evidence, been retained and transmitted to permanent government entities¹⁰⁰. In particular, other than as stated above the sources did not reveal primary documentation, including bid documentation, bids or contracts.

Of the 112 significant construction contracts¹⁰¹, mapping covered the three major new permanent sporting venues, namely the Olympic Stadium, Aquatics Centre and Velodrome - all new constructions by a single contractor - and also a procurement for roads, bridges and certain other structures within or adjacent to the Olympic Park¹⁰². The anticipated final cost of each stated in the June 2012 Quarterly Report for the Games was respectively \$596.80m (£428m) United States Dollars (USD), \$349.99m (£251m), 121m USD (£87m; for the Velopark) and 787.84m USD (£565m)¹⁰³.

The body responsible for procuring infrastructure and venues was the ODA, a Non-departmental public body¹⁰⁴ established by statute¹⁰⁵ for the event with nearly 400 personnel. They worked in partnership with a delivery partner, CLM (a consortium), chosen by competition (and open public tender under our definition)¹⁰⁶ to manage the delivery, planning, design, construction, commissioning, maintenance, conversion to legacy mode and cost management of the infrastructure procurement¹⁰⁷ - an innovative approach to ensure suitable human resource capacity for procurement, which the evidence suggests was successful and a potential model for future events, given the success in delivery (see below) and value for money provided by the arrangement¹⁰⁸.

⁹⁸ Cornelius, M., Fernau, J., Dickinson, P., & Stuart, M. (2011). Delivering London 2012: procurement. Proceedings of the Institution of Civil Engineers - Civil Engineering, 164(5), 34-39.

⁹⁹ See, in particular, Mead, J.M., & Gruneberg, S. (2013). Programme Procurement in Construction: Learning from London 2012. Oxford, UK: Wiley-Blackwell; Stanislas, P. (2017). Tackling Corruption and Crime in Public Procurement in the 2012 London Olympics and Paralympics Games The Role of Operation Podium, The Specialist, Organized, and Economic Crime Unit of the Metropolitan Police. In Gottschalk, P. & Stanislas, P. (Eds.) Public Corruption: Regional and National Perspectives on Procurement Fraud (pp.107-127). CRC Press; Smith, P. (2012). The Olympics "Delivery Partner" model - a precedent worth following? (Part 1). Retrieved from <http://spendmatters.com/uk/olympics-delivery-partner-model-precedent-worth-following-part-1/>. Smith, P. (2012). The Olympics "Delivery Partner" model - a precedent worth following? (Part 2). Retrieved from <http://spendmatters.com/uk/oda-2/>.; Timms, J. (2015). A socially responsible business legacy. Raising standards in procurement, supply chains and employment at the London Olympics of 2012. In R. Holt & D. Ruta (Eds.). Routledge Handbook of Sport and Legacy: Meeting the Challenge of Major Sports Events (pp 217-228). London, UK: Routledge; Von Plessen, D. (2015). The procurement strategies for the Olympic Stadium and the Aquatic Centre for the London 2012 Olympic Games. Hamburg, Germany: Anchor Academic Publishing; Carpenter, K. (2016). Preventing corruption ahead of major sports events: learning from the 2012 London Games. In Transparency International, Global Corruption Report: Sport (pp 178-182). Oxford, UK: Routledge. https://www.transparency.org/whatwedo/publication/global_corruption_report_sport

¹⁰⁰ Separate Freedom of Information requests were made to the Department for Culture Media and Sport (DCMS), HM Treasury (HMT) and the Cabinet Office (CO) for procurement records for the Stadium, Velodrome and Aquatics Centre. It was understood that the records may lie with the Infrastructure and Projects Authority, which reports to both the CO and HMT. HMT advised that the ODA records were held by DCMS. However, these requests failed to locate any documentation or definitive knowledge of where it was.

¹⁰¹ Cornelius et al, above.

¹⁰² The actual price is not known as it was withheld in the contract award notice.

¹⁰³ Dept of Culture, Media and Sport, The London 2012 Olympic and Paralympic Games Quarterly Report (June 2012), 17 <

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/78228/DCMS_GOE_QR_JUNE-2012.pdf> accessed 4 May 2019. The respective values are in US\$, converted at \$1.92/£1.

¹⁰⁴ Under the Department for Culture, the Media and Sport, and under the supervision of an overall Olympic Board made up of the Secretary of State for Culture, Media and Sport Mayor of London, Chair of the British Olympic Association, Chair of the Local Organising Committee, LOCOG, and Chair of the ODA itself (a non-voting member). The board of the ODA was appointed by the Minister for Olympics and Paralympics.

¹⁰⁵ The London Olympic and Paralympic Games Act 2006.

¹⁰⁶ The competitive dialogue procedure under the Public Contracts Regulations 2006 SI 2006 No.5, which was one of the first uses of this procedure in the UK.

¹⁰⁷ On this arrangement see Cornelius et al, above.

¹⁰⁸ Smith, P. (2012). The Olympics "Delivery Partner" model - a precedent worth following? (Part 1) <http://spendmatters.com/uk/olympics-delivery-partner-model-precedent-worth-following-part-1/>.

The Local Organising Committee, the London Organising Committee of the Olympic and Paralympic Games (LOCOG), had responsibility for some finalisation works and installation of spectator facilities, as well as procurement of supplies and services used for the Games, but not for major infrastructure¹⁰⁹. The ODA was covered by the regular public procurement legal framework of England and Wales¹¹⁰, deriving almost wholly from EU procurement law. (LOCOG, on the other hand, was a private company limited by guarantee which, because of its make-up, considered itself outside that framework.¹¹¹)

The ODA carefully assessed design options for the sporting infrastructure¹¹², with the method chosen for the stadium being simple Design and Build by a single contractor, whereas with the Aquatics Centre and Velodrome a basic design was obtained separately and then novated to the (single) construction contractor¹¹³. The procurements were financed directly by the ODA and taken into public sector ownership¹¹⁴.

A feature of London was the attention to planning, including market engagement and research; this was used to design careful procurement strategies on issues such as packaging of work to attract bidders¹¹⁵, with an integrated approach facilitated by the centralisation of infrastructure procurement in the ODA. Advance notices ahead of the public solicitation were found in the OJEU for all the mapped procurement other than the stadium¹¹⁶.

In addition, London was one of only four of the 14 projects for which evidence of significant risk management activity was publicly available. It provided perhaps the most comprehensive illustration of such activity, both in general and in relation specifically to both integrity risks and procurement¹¹⁷. In 2005 the Metropolitan Police Economic Crime Command produced a document "Who Will Win Gold?" outlining economic crime risks for the Games and the author was then tasked with further analysis of both previous successful Games and major UK construction projects. The Specialist, Organised and Economic Crime Unit of the Metropolitan Police then established Operation Podium in 2006 to target such risks in the Games and worked in close partnership with the ODA. The Construction Industry Fraud Forum was established by Operation Podium to improve understanding of risks on the part of the industry, police and ODA. Special funds from

Smith, P. (2012). The Olympics "Delivery Partner" model – a precedent worth following? (Part 2), <http://spendmatters.com/uk/oda-2/>

¹⁰⁹ [2012] LOCOG, Learning Legacy, Sustainable procurement – the London 2012 Olympic Games and Paralympic Games 2
<<https://webarchive.nationalarchives.gov.uk/20130228084558/http://learninglegacy.london2012.com/publications/sustainable-procurement-the-london-2012-olympic-games-an.php?stylesheet=normal>> accessed 9th April 2019.

¹¹⁰ At that time the 2004 Public Procurement Directive 2004/18/EC, transposed by the Public Contracts Regulations 2006, SI 2006 No 5.

¹¹¹ LOCOG was formed by the Minister for the Olympics and London, the Mayor of London and the BOA which, like the ODA, was under the overall Olympic Board. LOCOG raised income through sources that included ticket sales, sponsorship, merchandising and the International Olympic Committee as well as receiving some public money.

¹¹² Von Plessen, above.

¹¹³ As indicated in the contract notices; and on the stadium and aquatics Centre see further see Von Plessen, above.

¹¹⁴ None of the mapped procurements planned the use of private financing. Arrangements for the one significant procurement that did, the Olympic Village, collapsed in the credit crunch, resulting in a massive public subsidy and possibly contributing to the affordable housing legacy being curtailed: see A. Zimbalist, *Circus Maximus: the economic gamble behind hosting the Olympics and the World Cup* (Brookings; 2nd ed 2016), pp.121-122.

¹¹⁵ See e.g. Cornelius at al, above.

¹¹⁶ Structures and bridges [2007] OJ/S 020/023201; Aquatics Centre [2006] OJ/S 246/264303; Delivery partner [2005] OJ/S 073/070688; Velodrome [2007] OJ/S 026/031062. These notices are now archived and not available directly online. The solicitation (contract notice) for the stadium confirms there was no advance notice for that.

¹¹⁷ Contained in the ODA's annual reports and accounts and quarterly risk report, required under Section 5 of ODA Procurement Policy Document: [2007] Olympic Delivery Authority, Procurement Policy <<https://webarchive.nationalarchives.gov.uk/20130403015932/http://learninglegacy.independent.gov.uk/publications/procurement-policy.php>> accessed 9th April 2019.

Home Office were used to allocate dedicated crime prevention officers to work with the ODA, and two police officers from Operation Podium were embedded into the ODA's workforce to advise and to support managers in identifying risks and areas of vulnerability in the procurement process and how to mitigate them.¹¹⁸ As the IPACS report concludes: "This example serves as an illustration of an organiser investing resources into a strategic approach for managing corruption risks." This experience also illustrates the potential legacy of sporting events for improved procurement, with the post-event audit concluding that the experience with the Games had enhanced public sector experience and capacity in managing risk¹¹⁹.

The legal framework offered four types of open public tender, the open and restricted procedures – single-stage tendering open to all interested parties and freely available – and the more flexible competitive dialogue and the negotiated procedure with a call for competition, available only in justified cases, which allowed for dialogue and an iterative process, and gave entities considerable freedom in designing the procedure¹²⁰. All but the open procedure allow for pre-qualification and reduction of numbers and such phases were envisaged by the solicitations. Direct awards were available only in exceptional circumstances and were not used for the mapped procurements. The procedures chosen were negotiated for the stadium (the most complex), competitive dialogue for the Aquatics Centre (and also the delivery partner) and restricted for the Velodrome and roads/bridges¹²¹. The use of flexible procedures for the most complex projects was in line with the general approach to complex infrastructure procurements in the UK in the light of what was widely perceived as an appropriate balance between transparency and discretion for achieving value for money in the UK environment¹²². The ODA's procurement policy had a specific focus on overall value rather than cost¹²³, including a comprehensive programme for integrating sustainability concerns¹²⁴. This was reflected in, among other things, the fact that none of the mapped procedures used cost-only award criteria (which was in fact prohibited by law when competitive dialogue was used)¹²⁵. The ODA's Suppliers Guide states that the procurement processes, including document submission, were to be electronic¹²⁶, although some negotiation and other dialogue also took place (as explained below) that may not have been electronic in form. There were no legal challenges relating to the mapped procurements or, indeed, any others¹²⁷, although this should be seen in the context of the low level of procurement litigation in the UK¹²⁸.

¹¹⁸ Stanlislas, above.

¹¹⁹ National Audit Office, *The London 2012 Olympic Games and Paralympic Games: post-Games review* (2012) <https://www.nao.org.uk/wp-content/uploads/2012/12/1213794es.pdf>

¹²⁰ On these procedures in general as they existed at that time and their subsequent legal development see S. Arrowsmith, *The Law of Public and Utilities Procurement* Vol.1 (3rd ed. 2014, Sweet & Maxwell).

¹²¹ The solicitations were: aquatics centre [2006] OJ/S 053/065342; delivery partner [2006] OJ/S 033/036394; stadium [2006] OJ/S 139/149240; roads and bridges [2007] OJ/S 061/074704. These are now archived and not available directly online.

¹²² See generally P. Braun, "Strict Compliance versus Commercial Reality: The Practical Application of EC Public Procurement Law to the UK's Private Finance Initiative" (2003) 9 *European Law Journal* 575-598; S. Arrowsmith and R. Craven, "Competitive dialogue in the United Kingdom", ch.3 (pp.181-271) in S. Arrowsmith and S. Treumer (eds.) *Competitive Dialogue in EU Procurement* (CUP 2012).

¹²³ Olympic Delivery Authority, Procurement policy in full (2007), <https://webarchive.nationalarchives.gov.uk/20120403103002/http://www.london2012.com/publications/oda-procurement-policy-in-full.php>

¹²⁴ This was not specifically a subject of our mapping exercise which, as noted, focused on integrity. For information on this see the Learning Legacy Website, Cornelius et al and Timms, above.

¹²⁵ For example, the advertised criteria and weightings for the Aquatics Centre were price (30%); acceptance of contractual terms (10%); quality and functionality (15%); project delivery (25%); experience and capability (10%); and governance (10%): see Aquatics centre contract award notice: [2008] OJ/S 092/124113.

¹²⁶ [2011] Olympic Delivery Authority, Supplier Guide 9 < <https://webarchive.nationalarchives.gov.uk/20130403015934/http://learninglegacy.independent.gov.uk/publications/supplier-guide.php> >

¹²⁷ Cornelius et al, above.

¹²⁸ As compared with many other countries, including most EU Member States. See European Commission, *Economic efficiency and legal effectiveness of review and remedies procedures for public contracts*, Final Study Report, MARKT/2013/072/C (April 2015), <http://ec.europa.eu/growth/single-market/public->

Although the careful use of market analysis and engagement led generally to a reasonable response¹²⁹ (including three bids for the Velodrome and three and four for the two lots for the road and bridges procurement) this was conspicuously not the case for the key procurements of the Stadium, for which only one plausible bidder expressed interest resulting in an award by negotiation, and Aquatics Centre, involving three bidders in the initial dialogue but only one eventual bid¹³⁰. Those involved have ascribed the poor response to these projects being unattractive in a buoyant market given the high risk arising from their novelty, request for novation of the design of the Aquatics Centre, fixed timescale, and high profile¹³¹. This illustrates that, while the high profile of an event could attract interest because of a chance to build a reputation, it can also reduce interest because of potential reputational damage. It can also be noted that the procurement for the stadium was launched before the procurement structure for the ODA was fully in place. It is difficult to know whether better value would have been obtained from better competition.

There was an extensive formal system for controlling financial payments and reporting progress (including publicly), as well as provision for internal and external audit¹³². Amendments were controlled by legal rules deriving from EU law that, inter alia, prohibit substantial amendments or those changing the economic balance of the contract in favour of the contractor, but otherwise it is not known what rules and processes governed amendments. There was, at the relevant time, no obligation on, or practice of, publishing amendments and other contractual information, although subsequently a policy of proactively publishing this information has been introduced for central government¹³³.

There were very few public suggestions of integrity problems. Some concern was raised over the fact that the contractor for the Olympic Village (not one of the mapped procurements) was originally to be a company previously headed by the then-chief executive of the ODA but the original approach, which involved private finance, collapsed¹³⁴; and there was also a serious incident of fraud in which the ODA was duped into making a payment to a fraudster claiming to represent a contractor¹³⁵, leading the ODA to tighten procedures. There have also been allegations, investigated and explored in detail by Gillard, that concern not to tarnish the reputation of the Olympics influenced a cover-up of broader corrupt activity by and within the host London Borough of Newham¹³⁶. However, the procurement for the event itself appears to have been remarkably successful from an integrity perspective, with Transparency International praising the event's "fair and transparent" procurement and construction activities¹³⁷.

Despite this, based on operation and venue costs and other costs directly relating to the Games (that is, leaving aside indirect infrastructure, such as transportation), according

procurement/studies-networks/index_en.htm; S.Arrowsmith and R. Craven, "Public Procurement and Access to Justice: a Legal and Empirical Study of the UK System" (2016) 25 P.P.L.R. 227.

¹²⁹ Cornelius et al, above.

¹³⁰ Von Plessen, above; Conrelius et al, above.

¹³¹ Von Plessen, above; Conrelius et al, above.

¹³² See for example [2015] Olympic Delivery Authority, Report and Accounts for the period 1 April to 31 December 2014 19-23 <

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/412429/ODA_AR_2014_-_Web_PDF.pdf > accessed 9th April 2019.

¹³³ See *Note – Promoting Greater Transparency Information Note* PPN 02/17 December 2017:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/667054/17_v1.0.docx_1_1.pdf

¹³⁴ Zimbalist, above.

¹³⁵ Detected by police when the fraudsters attempted to transfer funds abroad, and leading to criminal convictions for the fraudsters.

¹³⁶ M. Gillard, *Legacy: Gangsters, Corruption and the London Olympics* (London: Bloomsbury, 2019). The book also discusses integrity and state aid concerns raised over the initial successful tender for use of the stadium post-Games by West Ham United Football Club: see, in particular, Ch.13.

¹³⁷ Barrington, R. (2012). *Corruption and the Olympics*. Transparency International. Retrieved from <http://www.transparency.org.uk/corruption-and-the-olympics/#.W3B5MegzbIU>

to the Oxford Olympics Study¹³⁸ London was easily the most expensive Summer Olympics ever (although not as expensive as the Sochi Winter Olympics)¹³⁹ and also had the highest cost per event and per athlete¹⁴⁰. Overall costs also increased three-fold from the bid to host the Games to completion¹⁴¹; and the operational and sporting costs overran by 76%¹⁴², higher than the 51% median of post-199 Olympics and even higher than the average 75% (which is significantly affected by very high overruns at Sochi¹⁴³). The Stadium and Aquatic Centre cost nearly, or more than, double the original estimate¹⁴⁴. The budget was, however, adjusted accordingly in December 2007 before most work began (although well into the procurement processes for the stadium and Aquatics Centre, after procurement for the design for the latter) and thereafter the final cost of the ODA infrastructure programme came in slightly under budget¹⁴⁵ as did, for example, the stadium¹⁴⁶. The programme was also completed in an appropriate and timely manner¹⁴⁷. (The only major failure related not to infrastructure but to a LOCOG contract for security services: the contracted services were extended significantly by agreement at a late stage, but the service provider then proved unable to supply the revised requirement, so that the armed forces and police were brought in for the work at the last minute¹⁴⁸. The subsequent media coverage again highlighted the potential reputational risks of involvement with high profile events.) There was, however, criticism of the fact that the stadium design was not suited to the legacy use as a football stadium, resulting in a substantial public subsidy¹⁴⁹.

The 2012 London Olympics, like many other mega-events, fell significantly short of both the promise and post-event hype in terms of overall legacy¹⁵⁰. However, it appears that, in contrast with some other events, integrity in the Games procurement itself was not a problem and that the procurement experience left some positive legacy both for UK procurement and for future events.

5.3. Olympic and Paralympic Games, Rio de Janeiro, Brazil, 2016

(Sue Arrowsmith and Jorge Faria Lopes)

A reasonable amount of procurement information for Rio was found in 2018, most on official websites. Of particular importance were: the Transparency Portal for procurement¹⁵¹, which was adopted as part of Brazil's commitment to the Open

¹³⁸ Oxford Olympics Study 2016, above.

¹³⁹ Oxford Olympics Study 2016, above.

¹⁴⁰ Oxford Olympics Study 2016, above.

¹⁴¹ Based on the most conservative estimates: see Zimbalist, above; and for the cost information National Audit Office, The London 2012 Olympic Games and Paralympic Games: post-Games review, HC 794 session 2012-13; Carpenter, above.

¹⁴² Oxford Olympics Study 2016, above.

¹⁴³ Oxford Olympics Study 2016, above.

¹⁴⁴ Von Plessen, above, p.5.

¹⁴⁵ Zimbalist, above, p.118.

¹⁴⁶ Annual report and accounts for the final months of 2014, published by the Olympic Delivery Authority https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/412429/ODA_AR_2014_-_Web_PDF.pdf

¹⁴⁷ Annual report and accounts for the final months of 2014, published by the Olympic Delivery Authority https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/412429/ODA_AR_2014_-_Web_PDF.pdf

¹⁴⁸ National Audit Office, The London 2012 Olympic Games and Paralympic Games: post-Games review, HC 794 session 2012-13; Carpenter, above.

¹⁴⁹ Zimbalist, above, pp.119-120.

¹⁵⁰ See e.g. Gold, J. R., & Gold, M. M. (2015). Framing the future: Sustainability, legacy and the 2012 London games. In R. Holt & D. Ruta (Eds.). *Routledge Handbook of Sport and Legacy: Meeting the Challenge of Major Sports Events* (pp 142-158). London, UK: Routledge. Cohen, P., & Watt, P. (Eds.) (2017). *London 2012 and The Post Olympic City: A Hollow Legacy?* London, UK: Palgrave Macmillan; S. Wagg, The London Olympics of 2012: Politics, Promises and Legacy (Global Culture and Sport Series) (2015); Zimbalist, above, pp.114-125. There were some issues with the sustainability elements of the procurement programme (which, as noted, our mapping did not cover) although this was also successful in many respects: see, for example, Timms, above.

¹⁵¹ <http://portaltransparencia.gov.br>. This Portal has changed in layout and information available. The procurement information for Rio Olympics once available in <http://portaltransparencia.gov.br/rio2016/>

Government Partnership launched in 2011¹⁵² and contains information on all public entities in Brazil, including information on public contracts such as tender documents, contracts, summary of amendments, price paid and completion date; the website of the Public Olympic Authority¹⁵³ - a public consortium of the federal government, state and city hall of Rio de Janeiro¹⁵⁴; the website of local implementing agency RioUrbe - Municipal Company for Urban Development¹⁵⁵; and the official website with a Responsibility Matrix¹⁵⁶ (which followed a 2014 World Cup initiative to provide to the public and Government information on projects and the responsibilities of different government bodies). The electronically available information was in theory quite comprehensive, including tender documents (although, as explained below, there was no e-procurement or even - from available evidence - electronic publication of solicitations). However, theory did not quite match practice and the information that was supposed to be there was often incomplete, unclear and disorganized, with not all entities supplying the required information. For example, there was a tender for the Olympic Park of Barra of around 430 million USD with almost no documentation. There was also no publication of the number of bids submitted in public tenders, name of the bidders or any elements of the winning bid for any of the mapped procedures, information that was required to be collected by Article 38, IV and VII, of Federal Law n.º 8666/93 and some of which (such as number of bids and name of bidders) was within the intended coverage of the Transparency Portal. Most of the mapped contracts were also financed with Federal resources, based on financial agreements that were not always available for consultation. Further, by 2019 the Transparency Portal¹⁵⁷ had been modified, so that tender documents and contract amendments were no longer available and the Public Olympic Authority's website had been removed as a result of its being wound up. Some procurement information was also available in an "Instruction Manual" approved by legislation, which established certain mandatory rules on the conduct of public tenders and financial agreements¹⁵⁸.

The Responsibility Matrix indicates 16 main projects for sport-related infrastructure, each including diverse infrastructure, in four geographical areas in Rio (Barra, Deodoro, Copacabana and Maracanã¹⁵⁹), with both *new* infrastructure (for example, the Aquatics Centre and Olympic Handball Arena/Future Arena) and improvements (for example, the Stadium João Havelange). The mapping covered nine pieces of infrastructure (one mapped procurement for each¹⁶⁰), namely the Tennis Centre, Olympic Handball Centre/Future Arena, Aquatics Centre, Velodrome, Olympic Sports Centre of Deodoro South (Equestrian Centre), Olympic Sports Centre of Deodoro North (Youth Arena, Stadium, Aquatic Centre, Hockey Centre, Shooting Park, Radical BMX Park), Olympic Stadium "João Havelange", Olympic Park of Barra (Arenas 1, 2 and 3), Main Press Centre, Press Hotel, Olympic and Paralympic Village), and Sambódromo. The selection was made with preference to the more valuable procurements and those for which there was a reasonable volume of official information. The Responsibility Matrix put the estimated price for sport-related infrastructure at around 2 billion USD (500 million USD from federal funds and investment in a public-private partnership of approximately 430

(regarding tender documents, contracts, amendments), was apparently removed and hardly any can now be found.

¹⁵² See <https://www.opengovpartnership.org/>

¹⁵³ After the entity was wound up, the website (<http://www.apo.gov.br/index.php/home/>) was removed

¹⁵⁴ Established by Federal Law nº 12.396, March 2011.

¹⁵⁵ <http://www.rio.rj.gov.br/web/riourbe>.

¹⁵⁶ <http://www.brasil2016.gov.br/pt-br/legado/matriz-de-responsabilidades>.

¹⁵⁷ <http://www.portaltransparencia.gov.br/programas-de-governo/19-olimpiadas?ano=2015>.

¹⁵⁸ "Instruction Manual for the Approval and Execution of the Programs and Actions of the Ministry of Sports included in the Growth Acceleration Program - PAC, aiming at the implementation of the necessary infrastructure for the holding of the Rio 2016 Olympic and Paralympic Games" (authors' translation) approved by legal act "Portaria nº 84/2013:

www.esporte.gov.br/arquivos/institucional/.../manualInstrucoesPACSNEAR2.doc.

¹⁵⁹ <http://www.brasil2016.gov.br/pt-br/legado/matriz-de-responsabilidades>.

¹⁶⁰ No additional procurements could be found for any of this infrastructure.

million USD¹⁶¹, with a residual 190 million USD from municipal funds)¹⁶² and the mapping covered 50% of this in value¹⁶³.

Most procurements of both sport-related and other infrastructure were carried out by local public authorities with federal resources¹⁶⁴. The other infrastructure used either a PPP model, or the state government as the implementing agency¹⁶⁵. The body responsible for procuring seven of the pieces of mapped infrastructure was the Municipality of Rio de Janeiro, using RioUrbe - Municipal Company for Urban Development (a wholly owned company of the Municipality) to fulfil its tasks, whereas the other two pieces the Municipality procured directly. All these entities worked alongside the Public Olympic Authority¹⁶⁶ to manage the implementation of the event. With the winding up of the Public Olympic Authority a new entity¹⁶⁷ (Autoridade de Governança do Legado Olímpico - AGLO) was created to replace it and manage the legacy after the event was finished.

Apart from the Olympic Park of Barra (a privately-financed PPP model for which tender documents were not public), all the mapped procurement followed Federal Law n.º 8666/93, with the method being simple Build, or Build and Operate¹⁶⁸, by a single contractor¹⁶⁹, and was financed through federal resources.

There was no evidence available in the websites consulted of early market engagement and research for any of the mapped projects. There was also no information in the Transparency Portal, the Olympic Public Authority's website and the implementing agency's website on any risk assessments, value for money analysis, market analysis, feasibility study, demand analysis or supplier's engagement studies. It was not possible to find any post-event audit reports on procurement issues by the competent entities, such as the Account Court of the Union, despite the problems found in many procedures, such as reserve prices in tender documents exceeding the planned/budgeted amount: see below.

The primary source of the legal framework for public procurement is Federal Law n.º 8666/93, which in various respects did not reflect procurement standards in international instruments¹⁷⁰. The 2014 FIFA World Cup and the Rio Olympics served as the catalyst for calls to modernise the rules and address integrity issues, and this led to a new regime, the *Regime Diferenciado de Contratações Públicas* (Differentiated Contracting Regime), approved by Law n.º 12.462/2011¹⁷¹. This was initially adopted specifically for procuring infrastructure for these events, as an experimental measure, and later extended. The Law included new principles of efficiency, innovation, economy and sustainable development; stressed the need for a cost-benefit analysis¹⁷², including of social and environmental considerations, prior to the decision to procure; addressed e-procurement; delimited the procedural stages more clearly; promoted integration of

¹⁶¹ <http://www.brasil2016.gov.br/pt-br/legado/matriz-de-responsabilidades>.

¹⁶² <http://www.brasil2016.gov.br/pt-br/legado/matriz-de-responsabilidades>.

¹⁶³ <http://www.brasil2016.gov.br/pt-br/legado/matriz-de-responsabilidades>.

¹⁶⁴ <http://www.brasil2016.gov.br/pt-br/legado/matriz-de-responsabilidades>.

¹⁶⁵ <http://www.brasil2016.gov.br/pt-br/legado/matriz-de-responsabilidades>.

¹⁶⁶ As already mentioned, this entity was wound up and its official website removed.

¹⁶⁷ <http://aglo.gov.br/>

¹⁶⁸ No references to ownership was found in the tender documents or contracts analysed.

¹⁶⁹ The available information was not sufficient to determine the extent of integration of design and build.

¹⁷⁰ Examples include public solicitations merely being required to be posted at the headquarters of the public authority, absence of e-procurement and absence of provision for negotiation.

¹⁷¹ See further Andrew Spalding & University of Richmond Law School Anti-Corruption Team, Olympic Anti-Corruption Report, Brazil and the 2016 Rio Games, 2017 <https://law.richmond.edu/olympics/archive-brazil.html>; Renato Monteiro Rezende "O regime diferenciado de contratações públicas, comentários à lei 12.462 de 2011", Núcleo de Estudos e Pesquisas do Senado, 2011.; Marçal Justen Filho. Comentários ao RDC. São Paulo: Dialética, 2013. Marçal Justen Filho, Cesar A. Guimarães Pereira (Orgs.) O Regime Diferenciado de Contratações Públicas (RDC) – Comentários à Lei nº 12.462 e ao Decreto nº 7.581. 3.ed, Belo Horizonte, Fórum, 2014.

¹⁷² Article 4.º, paragraph III, RDC.

design and build elements in infrastructure procurement; and provided for not disclosing the budget prior to bidding to, among other things, address bid-rigging¹⁷³. However, the new regime was made optional and for all the mapped procedures the procuring entities chose to follow the regular regime in Federal Law n.º 8666/93. No formal reasons were found for this.

There has been some disagreement on the merits and constitutionality of the new regime¹⁷⁴. The fact that it granted a wider margin of discretion to pursue efficient, innovative and sustainable procurement was perceived by some as a negative aspect and possible enhancer of illicit activities¹⁷⁵; and Gaffney¹⁷⁶ argues that it causes debt problems as a result of municipal and state governments taking advantage of the situation to build on a massive scale in an accelerated time frame. This implies that this is an example of a problematic exemption from regular procurement rules for sport events rather than a positive development. However, lasting reforms from the new regime have been regarded by others as a positive legacy for Brazil's procurement system¹⁷⁷ and a driving force for beneficial change in the overall public procurement regime in Brazil¹⁷⁸. Over time, the new regime's scope has been significantly expanded¹⁷⁹.

Under Federal Law n.º 8666/93 most of the infrastructure was procured using open public tenders without pre-qualification. Direct awards were available only in exceptional circumstances. They were used for two of the mapped procurements: the Handball Centre, on the grounds there were no bids in the open procedure¹⁸⁰, and improvements in Sambódromo, on the grounds of emergency¹⁸¹. There was a general use of lowest price award criteria without even evidence in the tender documents or contracts of the detailed technical specifications or conditions, which may be considered problematic, as well as other problems including non-compliance with information obligations (see above). No evidence of e-procurement was found on any of the official websites for any of the mapped procurements; even the solicitations were posted at the headquarters of the procuring entity and/or published in the municipal diary/journal of Rio de Janeiro, with no evidence in the Transparency Portal or OPA website of wider publication at Federal level as required by law for federally-funded projects (paragraph 9.5. of Portaria n.º 84/2013).

Numerous amendments were found, including price increases (for example, with the Velodrome) and changes to timescales. These were published but merely with a brief statement of the relevant legal provisions and the title of the amendment (the law

¹⁷³ Etel Berelsawki, A critical analysis of the procedures of the differentiated contracting regimen (RDC) of Brazil: the impact of the disclosure or not of the estimated budget and the use of the estimated budget as a ceiling and contract awarding factor, LL.M dissertation, University of Nottingham, School of Law, 2013

¹⁷⁴ See Renato Monteiro Rezende "O regime diferenciado de contratações públicas, comentários à lei 12.462 de 2011", Núcleo de Estudos e Pesquisas do Senado, 2011, p. 12.

¹⁷⁵ Cristina Mendes Bertoncini Corrêa, Roberta Zumblick Martins da Silva, O regime diferenciado de contratações públicas e um novo panorama licitatório no Brasil, Revista da ESMESC, v.23, n.º 29, Florianópolis, 2016, p. 336.

¹⁷⁶ Gaffney, above.

¹⁷⁷ Spalding, above.

¹⁷⁸ Marçal Justen Filho. Comentários ao RDC. São Paulo: Dialética, 2013, p. 15.

¹⁷⁹ The RDC currently covers the procurement for actions included in the Growth Acceleration Program; works and engineering services under the Unified Health System (included in Law 12.745 / 12); works and engineering services for the construction, expansion, reform and administration of penal establishments and socio-educational assistance units (article 1, VI, of Law 12.462 / 11, amended by Law 13190/15); works and engineering services related to improvements in urban mobility or expansion of logistics infrastructure (article 1, VIII, of Law 12462/11, amended by Law 13190/15); contracts for the lease of movable and immovable property (articles 1, IX and 47-A of Law 12462/11, amended by Law 13190/15); actions in organs and entities dedicated to science, technology and innovation (article 1, X, amended by Law 13243/16); and engineering works and services within the public systems of education and research, science and technology (article 1, paragraph 3, of Law 12462/11, amended by Law 13190/15).

¹⁸⁰ Article 24, 5, of Federal Law n.º 8666/93 (on file with the authors).

¹⁸¹ Article 24, 4, of Federal Law n.º 8666/93.

requiring merely including a vague obligation to publish a “short version” of amendments¹⁸²), without detail or reasons.

As with other mega-events there were cost overruns at various points. For example, the reserve price defined in tender documents was higher than the planned/budgeted amount for some mapped procurements (Tennis Centre, Olympic Velodrome), with no formal justification published in the Transparency Portal or OPA website. However, the Oxford Olympics Study indicates that overrun overall from the event bid to final cost appeared to be¹⁸³, at 51%, no higher than the median for Olympics since 1999¹⁸⁴ and less than the London and Sochi 2014¹⁸⁵, with a cost per athlete similar to previous Summer Games and substantially lower than London¹⁸⁶. On the other hand, it became clear quickly after the Games that many of the plans for using infrastructure that could have justified some of the expenditure would not come to fruition, with the infrastructure being effectively abandoned and falling into disrepair¹⁸⁷. There was also a struggle to complete all the infrastructure on time¹⁸⁸ and it appears that some (including athletes’ accommodation) was not ready to the required standard¹⁸⁹.

Corruption allegations over the infrastructure procurement have been made relating to five contractors (OAS, Odebrecht, Queiroz Galvão, Mendes Júnior and Camargo Correa)¹⁹⁰. These are part of a bigger picture of alleged widespread corruption that is still being investigated as part of “Operation Car Wash”, which commenced in March 2014 over allegations of bribery by construction firms of executives of Petrobras, the state oil company, but has spread much more widely and led to the arrest of many politicians and business persons (including the Governor and several lawmakers of Rio state¹⁹¹) and a lengthy jail sentence for former President Luiz Inacio Lula da Silva. Six of the 12 stadiums built for the 2014 Brazil World Cup have also been under investigation for irregularities and bribery¹⁹², as have alleged payments from politicians to the IOC in connection with the bid to host the Games¹⁹³.

The Differentiated Contracting Regime referred to earlier was just one of four new laws enacted in the run-up to the 2014 World Cup and 2016 Olympics following public protest, the others being Law No. 12.527/2011 on access to information requiring proactive publication of certain procurement information as well as provision of further information on request; a 2013 Anti-Corruption law which, among other things, provides a more extensive scope for bribery and creates a wide corporate liability; and a 2013 law giving enforcement powers to prosecutors¹⁹⁴. Spalding et al have described these as together providing an “Olympic governance legacy” that have “fundamentally reshaped Brazilian anti-corruption enforcement in ways that will endure long after the 2016

¹⁸² Article 61 Federal Law 8666/93.

¹⁸³ The Games had not been competed at the time of the Oxford study and therefore only preliminary data could be used.

¹⁸⁴ After the Olympic Games Knowledge Management Program took effect.

¹⁸⁵ Oxford Olympics Study 2016, above.

¹⁸⁶ Oxford Olympics Study 2016, above.

¹⁸⁷ <https://www.dailymail.co.uk/news/article-4241412/Brazil-s-12-billion-Olympic-legacy-lies-ruins.html>.

¹⁸⁸ On the pre-event delays see Zimbalist, above, pp.108-110.

¹⁸⁹ <https://www.theguardian.com/sport/2016/jul/30/five-stars-to-watch-at-rio-olympics>

¹⁹⁰ <https://esporte.uol.com.br/rio-2016/ultimas-noticias/2014/11/21/operacao-lava-jato-ameaca-73-das-obras-da-olimpiada-de-2016.htm>; <https://br.reuters.com/article/businessNews/idBRKCN0XG2GY> And see also

e.g. “Stadium deals, corruption and bribery: the questions at the heart of Brazil’s Olympic and World Cup ‘miracle’” <https://www.theguardian.com/sport/2017/apr/23/brazil-olympic-world-cup-corruption-bribery>

¹⁹¹ “Rio governor Pezão arrested on corruption charges”, 29 November 2018,

[https://www.bbc.co.uk/news/world-latin-america-](https://www.bbc.co.uk/news/world-latin-america-46384397?intlink_from_url=https://www.bbc.co.uk/news/topics/cr08zpj6lk0t/operation-car-wash&link_location=live-reporting-story)

[46384397?intlink_from_url=https://www.bbc.co.uk/news/topics/cr08zpj6lk0t/operation-car-wash&link_location=live-reporting-story](https://www.bbc.co.uk/news/topics/cr08zpj6lk0t/operation-car-wash&link_location=live-reporting-story)

¹⁹² “Stadium deals, corruption and bribery: the questions at the heart of Brazil’s Olympic and World Cup ‘miracle’” <https://www.theguardian.com/sport/2017/apr/23/brazil-olympic-world-cup-corruption-bribery>.

¹⁹³ Rio Olympic chief arrested in connection with bribery to get the Games

<https://www.theguardian.com/world/2017/oct/05/brazilian-police-arrest-olympics-chief-carlos-arthur-nuzman-bribery-investigation>

¹⁹⁴ For a more detailed summary in English see Spalding, above, Ch.4.

Olympics have ended¹⁹⁵. They argue that discovery of, and action on, corruption should be viewed more as a success than a failure of integrity policy, given that without the reforms, for which the mega-events served as a catalyst, corrupt behaviour would simply have remained hidden¹⁹⁶.

5.3. FINA World Championships, Budapest, Hungary, 2017

(Sue Arrowsmith and Gábor Soós)

Information on the procurement for this event was widely available after the event from the Public Procurement Authority database.¹⁹⁷ Although there were no open public tenders (see below), this did not mean a complete absence of information, since national legislation still requires entities to publish information, including the award notice, a summary of the bid evaluation, the concluded contract and information on execution¹⁹⁸. Although the database does not contain every required document, it does include the award notice for all procedures; the contract and amendments for many; and, in some cases, a summary of the evaluation of tenders and a document containing information on contract execution. The value of bids, value of the signed contracts and amounts finally paid could also be extracted. Information on the procedures, such as the number of bidders, type of procedure and certain timescales was also available. On the other hand, it was impossible or much more difficult to obtain information not directly related to the procurement procedures, including price estimates in the bid to host the event or pre-event analyses by the organisers. For procurements conducted by the Hungarian National Asset Management Inc. information was widely available on its website¹⁹⁹ and this was also so for procurements by the National Sports Centres non-profit organisation. However, very little information was found on BP 2017 World Championship Organising and Conducting Nonprofit (BP 2017)²⁰⁰, which was the main organising body and responsible for most procedures. (On these bodies see below.) Information, including allegations of corruption, was found on websites in Hungarian²⁰¹ and (some) English websites²⁰² and the website of anti-corruption NGO atlatzo.hu was a useful source on costs²⁰³, although the information on these websites was not confirmed by official public sources.

A search based on keywords revealed at least 32 procurement procedures directly related to the organisation and execution of the event, and there were also others, such as for works around the city. The present study mapped the construction of the main infrastructure at the five main competition venues, involving 14 separate procedures: the Danube Arena (swimming, diving), the main piece of new infrastructure; Hajós Alfréd Swimming Pool (water polo) and Lake Balaton (open water swimming), both involving significant refurbishing/development; and City Park (synchronised swimming) and Batthyányi Square (high diving), which were new but temporary venues.

An ad hoc body, BP 2017, was set up as a 100%-owned state company²⁰⁴ specifically for organisational, operational and management aspects of the event. This body was responsible for most procurement, although mapped procurements were also done by the Hungarian National Asset Management Inc., which conducted the procurements for

¹⁹⁵ Spalding, above, Ch.4.

¹⁹⁶ Spalding, above, Ch.4.

¹⁹⁷ <http://www.kozbeszerzes.hu/adatbazis/keres/hirdetmeny>

¹⁹⁸ Act CXLIII of 2015 on Public Procurement, s.43

¹⁹⁹ <http://www.mnvzrt.hu/en>

²⁰⁰ <https://szervezo.fina-budapest2017.com/en>

²⁰¹ These included index.hu, hvg.hu, mno.hu, 444.hu and atv.hu

²⁰² Information in English was available, in particular, at budapestbeacon.com and dailynewshungary.com

²⁰³ <https://atlatzo.hu/2016/05/17/90-milliard-forintba-fog-kerulni-a-2017-es-vizes-vb-kizamoltuk-a-kormany-helyett/>

²⁰⁴ BP 2017 was headed by an Organising Committee that involved key government ministers, the mayor of Budapest and the government commissioner responsible for top priority investments in Budapest. The president was Miklós Seszták, who was Minister for National Development at the time.

construction of the Danube Arena and for works connected to the high diving event, and National Sport Centres (a public body responsible for managing sport venues) for refurbishment works for Hajós Alfréd Swimming Pool. All are listed on the Public Procurement Authority website as entities subject to the public procurement legal framework²⁰⁵ which is based on the EU procurement directives. Of the mapped procurements, the design and construction were undertaken separately for the high diving facility but not for the others. None of the procurements, including the mapped procurements, used private financing.

As regards risk management, Hungarian National Asset Management Inc and National Sports Centres, as permanent organisations, carry out risk management activities generally, and information on their management and finances is published on their websites as required by law; and the former has a published Code of Ethics including on integrity management.²⁰⁶ On the other hand no information was found on any specific risk management activities of BP 2017. Besides the general information²⁰⁷, there was also evidence that BP 2017 procured expert risk management services²⁰⁸; however no published reports were found on risk management relating to the Championships.

As to planning, Budapest originally won the bid for the 2021 Championships but after the Mexican city of Guadalajara withdrew from the 2017 event Budapest offered to step in and was announced as the new host on 11 March 2015, giving just over two years to complete preparations. This was alleged to justify use of the EU's negotiated procedure without a call for competition, allowed by EU procurement law when "extreme urgency" precludes use of other procedures²⁰⁹. No more specific information was found on the planning phase. In this respect, the general national legal framework was supplemented with specific legislation, Act XXXIII of 2015 on the Development of Installations Necessary for the Swimming, Water Polo, Diving, Synchronised Swimming and Open Water World Championships to be Organised in Budapest (FINA Act)²¹⁰, permitting the contracts for the event to be procured in general through this exceptional procedure. The Hungarian rules for this type of procedure (supplementing those of EU law) were followed under Act CXLIII of 2015 on Public Procurement²¹¹, with usually 3 three contractors being invited to bid and the award almost always based on lowest price. It is notable that for most procedures where this information was available the time from soliciting bids to contract signature was extremely short, often only 8-9 days, so that bidders who received no advance information would have had an extremely short time to prepare bids. Electronic procurement procedures were not used²¹².

As noted, contract information was published as required by law for some but not all of the procurements. The Public Procurement Authority has a general right to control contract execution²¹³, based on a sample and involving checking documents and site visits, but no information was found on the exercise of this control here.

Hungary managed to complete the necessary procurements on time but, as discussed, there was a notable lack of transparency and the perception in some media was that the costs were extraordinarily high and that many contracts were awarded to persons

²⁰⁵ As falling within the definition of contracting authorities under Public Contracts Directive 2014/24/EU.

²⁰⁶ http://www.mnvzrt.hu//data/cms939218/Etikai_Kodex.pdf

²⁰⁷ See also the general financial information available through the national register of companies: <https://nemzeticegtar.hu/nemzeticegtar/cegadat/0109206809/Bp2017-Vilagbajnoksag-Szervezo-es-Lebonyolito-Nonprofit-Korlatolt-Felelossegu-Tarsasag>

²⁰⁸ https://www.kozbeszerzes.hu/adatbazis/megtekint/hirdetmeny/portal_7324_2017/

²⁰⁹ Art. 32(2)(c) of Directive 2014/24/EU

²¹⁰ The Act is available (in Hungarian) at http://njt.hu/cgi_bin/njt_doc.cgi?docid=174909.323292

²¹¹ The Public Procurement Act can be accessed (in English) through the following link: <http://www.kozbeszerzes.hu/cikkek/hungarian-public-procurement-rules>

²¹² These are now (since April 2018, as envisaged under EU law) required by law.

²¹³ Under Government Decree 308/2015 of 27 October

(<https://net.jogtar.hu/jogszabaly?docid=a1500308.kor&qetdoc=1>)

connected with Government ministers.²¹⁴ The event's initial cost estimate was a modest HUF 24.5 billion (91.26 million USD) but the final bill was around HUF 170 billion (633.15 million USD)²¹⁵. The largest increase was for the Danube Arena, the design of which was altered significantly from the original plans. However, there are no cases known where allegations of corruption were proven before a court or state authority.

²¹⁴ For a summary in English on the rising costs and contracts awarded see: <https://budapestbeacon.com/fina-2017-story-behind-biggest-expensive-sports-event-hungarys-history/>. Articles in Hungarian include: <https://mno.hu/belfold/oriasit-kaszaltak-a-vizes-vb-első-nyertesei-2401779>, https://hvg.hu/sport/20170710_igy_szabadult_el_a_vizes_vb_koltsegetese

²¹⁵ One article mentions that the same event in Kazan in Russia, cost only RUB 3.5 billion (HUF 16 billion, USD 54 million), although those costs do not include any related works around the city (https://hvg.hu/sport/20170710_igy_szabadult_el_a_vizes_vb_koltsegetese). See in English: <https://budapestbeacon.com/fina-2017-story-behind-biggest-expensive-sports-event-hungarys-history/>