

Combating procurement conspiracies: some lessons from Thailand

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Sirilaksana Khoman¹

Abstract

Corruption in procurement runs the gamut from simple kickbacks to awarding of contracts to connected parties, involving key players in strategic positions. The paper argues that although procurement regulations may be clear and strict, loopholes can be found that allow conspirators within patron-client networks to engage in wrongdoing with impunity, to the detriment of Thailand's development. Actual cases of procurement corruption are studied and lessons gleaned. Particular attention is focused on key cases involving networks of connected persons, as well as 'political corruption' where projects are designed and initiated to benefit specific suppliers within connected networks, possibly identified prior to project initiation. Certain projects may even be initiated in order to siphon public funds into private coffers. The paper discusses Thailand's pre-emptive, pro-active approaches to combating these procurement conspiracies.

1. Introduction

Public procurement budgets play an important role in the world economy. It is estimated that these budgets average about 10-20 per cent of Gross Domestic Product in many countries and that the economic crisis in the United States and beyond, has further increased the role of government spending, as affected countries grapple with the aftershocks by using stimulus packages of their own.

Thailand is no exception, with stimulus packages adding to the already upward trend in government spending. The government investment budget, not including state enterprises and local administration, had already seen huge successive increases, by an average of 40 per cent per annum, from about 53 billion Baht (US\$ 1.6 billion) in fiscal year 2005 to approximately 134 billion Baht (US\$ 4.01 billion) in fiscal year 2008. As the worldwide financial crisis threatened to engulf countries large and small, Thailand's stimulus packages shepherded through in early 2009, totaled 1.6 trillion Baht (US\$48.5 billion). Huge budget deficits were seen in 2009 and 2010, and already in the works for 2011.

Procurement refers to all contracts between a government agency and public or private companies or individuals, and includes all consultancies and professional

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services, construction, maintenance and material supply contracts, as well as facilities contracts, capital equipment and property and leasing arrangements. The size of these contracts and the general lack of 'private sector discipline', means that procurement is a lucrative market that could offer vast opportunities for wrongdoing.

This paper argues that the weaknesses in the performance of the government or public sector are not due to lack of competency and know-how, but rather that the weaknesses stem from the leakages and inefficiencies as a substantial volume of resources is allocated on the basis of patron-client networks. Public procurement is fertile ground for both petty corruption and 'grand state capture'.

This paper asks (and seeks to answer) the following questions. What are the procurement problems in Thailand? What is the pattern of patron-client networks that affect procurement? How are procurement problems related to the institutional and legal framework? What can be done to alleviate current problems? And what are the stumbling blocks? The paper argues that although procurement regulations are clear and seemingly strict, loopholes can be found that allow patron-client networks to engage in wrongdoing with impunity, to the detriment of Thailand's development.

2. What are the procurement problems in Thailand?

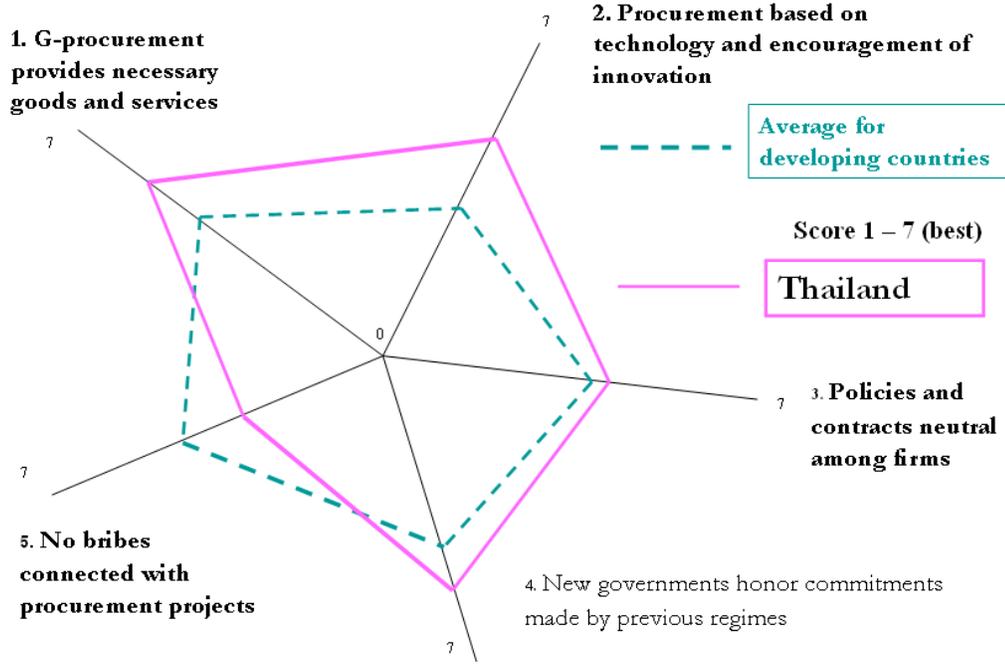
A quick overview of Thailand's procurement can be seen from the procurement assessment in the Global Competitiveness Report, as represented in Figure 2.1. Thailand's procurement appears to perform well in providing necessary goods and services, scoring 4.3 for 'composition of government spending', compared with the mean for developing countries of 3.1 and even higher than the OECD mean of 4.0 out of a maximum of 7. Table 2.1 presents the scores for selected countries included in the report. Technological innovation also appears to be encouraged in Thailand, with a score of 4.0, compared with the developing-countries' mean of 3.6.

However when evaluated according to whether favour is given to connected firms or individuals, Thailand's score is below the developing countries' mean. In addition, when assessed on how commonly firms give 'irregular extra payments' in connection with public contracts and investment projects, Thailand scores a dismal 3.7 compared to the developing countries' mean of 3.9 and the OECD mean of 5.3.²

The problem of non-transparency therefore appears to be paramount when analyzing procurement in Thailand.

² Global Competitiveness Report, 2001-2002. Interview responses to questions by business people familiar with a given economy.

Figure 2.1: Global Competitiveness Report assessment of procurement



Source: constructed by author from Table 2.1

Table 2.1 Global Competitiveness in Procurement, selected countries.

Non-OECD economy	The composition of government spending in your country (1=is wasteful, 7=provides necessary goods and services not provided by the market)	Government decisions on the procurement of advanced technology products are based on (1=price alone, 7=technology and encouraging innovation)	When deciding upon policies and contracts, government officials (1=usually favor well-connected firms and individuals, 7=are neutral among firms and individuals)	New governments honor the contractual commitments and obligations of previous regimes (1=not true, 7=true)	How commonly do firms in your industry give irregular extra payments or bribes connected with public contracts/investment projects (1=common, 7=never)
Peru	28	27	29	39	4.2
Philippines	28	34	27	4.8	3.0
Romania	25	33	3.7	3.2	4.1
Russia	25	3.6	3.7	4.0	3.8
Singapore	5.9	5.7	5.1	6.3	6.4
Slovenia	3.3	4.2	3.5	4.5	4.1
South Africa	3.8	3.9	3.1	5.6	4.4
Sri Lanka	2.6	3.5	2.7	4.1	4.3
Taiwan	4.3	5.1	3.9	3.6	5.6
Thailand	4.3	4.0	3.5	4.9	3.7
Trinidad and Tobago	4.1	4.0	2.7	4.8	4.2
Ukraine	2.1	3.9	2.1	2.5	2.9
Uruguay	2.9	3.8	3.6	5.4	4.4
Venezuela	2.2	3.1	2.6	3.9	3.5
Vietnam	3.1	4.0	3.0	3.7	3.5
Zimbabwe	1.4	3.3	1.9	4.1	2.5
Mean for these developing countries	3.1	3.6	3.0	4.3	3.9
Mean for the OECD economies	4.0	4.4	4.2	5.5	5.3

Source: *The Global Competitiveness Report, 2001-2002*. Interview responses to questions above by business people familiar with a given economy.

Notes:

number in italics signifies the reported value is less than the average for those developing countries reported here
 signifies the reported value is more than the average for the OECD countries surveyed

From various interviews of foreign companies, corruption is often considered a major impediment to doing business in Thailand, along with hidden costs related to red tape, government and policy instability and inefficient government bureaucracy.³

A survey of Thai businesses also echoes the prevalence of corruption. Confining our attention to procurement only, Table 2.2 shows that in 2009, about 34 per cent of the survey respondents felt that government procurement is not conducted in a transparent and efficient way. Those who felt that government procurement is frequently conducted in a transparent and efficient way decreased from more than 90 per cent in 2003 to only about 66 per cent. Of course these are subjective responses, and could reflect the fact that there has been greater exposure of corrupt practices and more prosecutions in later years.

Table 2.2 Opinions of Thai businesses regarding transparency in government procurement contracts

How often do you think government procurement contracts are conducted in a transparent and efficient way?	Year (percent of respondents)	
	2003	2009
Never	0.4	4.8
Hardly ever	0.6	15.8
Not frequently	7.9	13.1
Quite frequently	47.0	28.1
Very frequently	42.7	34.0
Every time	1.5	4.2

Source: adapted from Saovane Thairungroj et.al. (2010)

A more objective question whose answer is presented in Table 2.3 is asked of those who actually paid kickbacks to government officials to acquire contracts, how much they had to pay, and what per cent of the value of the contract was paid. Table 2.3 shows that more than half the respondents said they had to pay bribes; the largest number of businesses (34 per cent) said that they had to pay less than 6 per cent of the contract value in order to obtain the contract, and only less than 4 per cent said they did not have to pay at all.

³ <http://www.business-anti-corruption.com/country-profiles/east-asia-the-pacific/thailand/snapshot/> accessed July 16, 2010.

Table 2.3 “Special payment” as percentage of value of government contract

“Special Payment” (% of value of contract)	Year (percent of respondents)		
	2001	2003	2009
0%	3.8	0.4	3.9
Less than 6 %	18.0	27.9	34.3
6 - 10%	11.0	36.1	16.7
11 - 15%	4.8	10.1	0.9
16 - 20%	2.8	0.4	0.9
More than 20%	2.3	0.2	0.3
Don’t know	57.5	25.1	43.0

Source: Adapted from Saovane Thairungroj et.al. (2010)

The procurement methods and procedures, though laid down in detail and strictly enforced, allow several loopholes. The problems can be classified into four categories:

1) No uniform regulations

Thailand’s structured procurement system dates back more than a century, and is highly decentralised. There is currently no central procuring authority, although some Ministries had dabbled into centralised procurement for supplies, with unsatisfactory results. Therefore each of Thailand’s 200 government agencies individually procures the goods, services, and works it needs.

There is a plethora of legislation concerning government procurement. The main legislation is the Regulation of the Office of the Prime Minister (OPM) on Procurement, enacted in 1992 and amended six times, the latest being No. 6, 2002. The OPM Regulation stipulates procurement procedures and standardised contracts. In principle, all government agencies in central administration must comply with these regulations.

Procurement by local government agencies is governed by the Regulation of the Ministry of Interior on Provincial Administration Procurement. The key principles in the Regulation are similar to those of the OPM, but thresholds for authorization are different from the OPM. Large state-owned enterprises can set their own procurement regulations, if they were created under their own Act, as can public organisations, set up under the Public Organisations Act of 1999. Cabinet Decisions can also lay down policy

guidelines, and these also need to be consulted. Laws, regulations, and policy guidelines on public procurement are published in the Royal Gazette. They are also posted on the websites of the Ministry of Finance, the State Legal Council, and the Ministry of Interior.

Since 2006, procurement over THB2 million (USD60, 000) has had to be conducted through an electronic auction (under the OPM Regulations regarding Electronic Procurement, 2006).

The only legislation that has the status of a parliamentary law is the Act on Offences Relating to the Submission of Bids or Tender Offers to Government Agencies (1999). This law, administered by the National Anti-Corruption Commission (NACC), criminalises collusion and bid-rigging and imposes sanctions on both public officials and private entities for criminal offenses. It is designed to ensure fairness and transparency in the awarding of contracts. However, in the eleven years of its existence, only about 15 cases have been prosecuted under this law.⁴

Oversight of procurement rests with the Comptroller-General's Department (CGD), established in 1890, and this office can be consulted in case of uncertainty or ambiguity. The Public Procurement Management Office (PPMO) in the Comptroller General's Department within the Ministry of Finance, theoretically controls, monitors, and evaluates procurement by all central government agencies. It also determines regulations and guidelines related to government procurement. In addition, the Committee in Charge of Procurement (CCP), established under the OPM regulations, interprets the regulations, makes recommendations concerning its enforcement and amendment, grants exemptions, and hears complaints. For specific procurements, the procurement personnel of the agency involved must prepare a proposal to be approved by the head of the agency. Selection committees evaluate offers and select the winning bids. Individual agencies are encouraged to publish projects and awards of contracts on their websites, and compliance is one of the key performance indicators by which the agency is evaluated annually.

All procurement is subject to audit and evaluation by the Office of the Auditor-General (established in 1932 and transformed from the Inspection Department, formerly the Royal Audit Office set up in 1875, and became an autonomous and independent statutory body in 1999 after the 1997 Constitution). A copy of all contracts valued at one million Baht (US\$30,000) or above, have to be submitted to the Auditor-General's Office. The Bureau of the Budget also plays a role in overseeing government procurement by stipulating standards for commonly-used items; for others, the procuring agency can set its own specifications. The Prosecutor-General also plays a role in reviewing any bidding document and contract which does not follow standardised forms, especially for mega-projects.

⁴ Information from interview of NACC legal personnel.

It can be seen that there is no uniform core set of regulations that apply to all government agencies, state-owned enterprises, and public organisations. Large state-owned enterprises that have become public companies, such as PTT Public Company Limited, formerly known as the Petroleum Authority of Thailand, which owns extensive submarine gas pipelines in the Gulf of Thailand, a network of LPG terminals in the country, and is involved in electricity generation, petrochemical products, oil and gas exploration and production, and the gasoline retailing businesses, as well as affiliated companies such as PTT Exploration and Production, PTT Chemicals, PTT Aromatics and Refining and PTT Green Energy, are able to make their own regulations, with approval from the Board of Directors. Likewise, AOT (Airports of Thailand Public Company Limited) and Thai Airways Public Company Limited fall under the same category. Complaints regarding procurement in state-owned enterprises are regularly submitted to the National Anti-Corruption Commission and uncovered by the Auditor-General's Office. Currently there are 58 state-owned enterprises, with total assets of about 6 trillion Baht. In addition, there are 56 companies/enterprises that have the legal status of a state-own enterprise, and another 109 subsidiaries not legally defined as state-owned enterprises.

As for public organisations, these were created by law in 1999 and currently number 59. These are organisations set up using the government budget to provide services in a non-profit manner, but with more flexibility than government departments. They range from a science-oriented high school, learning centers, science laboratories, to trade institutes. But because they can draft their own regulations, questionable practices have been remarked on.

2) Existing regulations do not foster efficiency

The process of approval of procurement is generally cumbersome, and law-abiding procurement officers are likely to select suppliers offering the lowest price, when quality considerations are vague. When specifications are required to be laid down in minute detail, together with the time lag between approval and purchase, this often prevents purchase of the most efficient or up-to-date products.

3) Methods of procurement allow irregularities

The OPM regulations require the use of standardised contracts and tender documents in order to strengthen the transparency of procurement procedures. In addition, the procuring agency is required to publish the prequalification criteria and method of selection, and inform the CCP. The OPM regulations provide only very general selection criteria, namely, price, bidder's qualifications, and quality. This is ostensibly designed to increase participation and reduce the risk of collusion or failure of tendering. In addition, procuring units must notify other public agencies such as the Mass Communication Authority of Thailand, the Broadcasting Authority, and the Office of the Auditor-General, as well as print media such as daily newspaper offices about

specific procurement. The minimum period allowed for submitting a tender is 21 days. For specific procurements, the procurement personnel of the agency is required to prepare a proposal to be approved by the head of the agency. Selection committees are tasked with the evaluation and selection of offers, and the name of the winning bidder is announced on the website of the procuring agency. Requests for explanation can be made if the results appear unsatisfactory. If none of the tendered bids meets the requirements, the tender is reopened.

The OPM allows several methods of procurement, depending on various factors, including the value of the contract, the nature of the goods or services, and the urgency of the procurement. Excluding consultancy and engineering services, six methods of selection/tendering are specified according to the size of the contract:

- (i) negotiation, applying to contracts of not more than 100,000 baht (US \$3,000).
- (ii) price search or selective tendering method, for contracts of 100,000 baht to 2 million baht (US \$60,000).
- (iii) open tendering or competitive bidding, for contracts over 2 million baht; under the international competitive bidding variant, invitations to tender are prepared in English and foreign firms may bid. Bids are evaluated first against the technical criteria stipulated by the procuring agency; the lowest-price bid is then selected from among those that meet the criteria.
- (iv) special method or limited tendering, applies under certain conditions such as urgency.
- (v) special case method applies in the case of direct contract to authorized government agencies or state enterprises, and
- (vi) open electronic tendering for contracts worth 2 million baht and above.

Consultancy and engineering services may be engaged by either direct negotiation with a particular consultant, or by screening qualified consultants down to a short list, inviting proposals and then negotiating on price with the candidate with the best technical proposal. Generally, a project's requirements will indicate qualifications of potential suppliers/contractors. Prequalification may be made for each project or by establishing lists of qualified bidders at the procuring agencies.

The six procurement methods mentioned can be divided into three categories:

- (i) Methods determined by value thresholds:
 - a. *Negotiation* for procurement of less than 100,000 Baht
 - b. *Price search or selective tendering* for procurement between 100,000 Baht and 2 million Baht, and
 - c. *Open electronic tendering* for procurement over 2 million Baht
- (ii) Method determined by conditions:

The *Special case method* is used by government agencies specified in Local Administrative Organisations (LAO) regulations with the following conditions:

- when the LAO is the producer or hirer as approved by the Prime Minister
- when there is a law or a Cabinet Decision approving purchase or hiring, including other agencies specified by law or by Cabinet decision, such as the purchase of pharmaceuticals (Article 61)

(iii) Method determined by value threshold and conditions:

Special method, for procurement for which there is justification (Article 23 and 24) for procurement above 100,000 Baht

The six methods in the OPM Regulations B.E.2535 can be further classified into two groups:

- Without competition: Special method, Special Case method, and negotiation
- With competition: Price search, Open bidding and open bidding through electronic means.

Thresholds for authorization

In terms of administration, there are thresholds that determine the power of authorisation as follows:

(i) For negotiation, price search, and open tendering, authority is given to the following with threshold limits:

- a. Head of department: not exceeding 50 million Baht
- b. Permanent Secretary: 50 – 100 million Baht
- c. Minister: more than 100 million Baht

(ii) For special method

- a. Head of department: not exceeding 25 million Baht
- b. Permanent Secretary: 25 – 50 million Baht
- c. Minister: more than 50 million Baht

(iii) For special case method:

- a. Head of department is able to approve without limit, with prior approval of the Prime Minister or Cabinet

Thresholds for authorisation: Local Administrative Organisations (LAOs)

- a. Provincial Administrative Organisation (PAO): President: not exceeding 100 million Baht, Governor: above 100 million Baht
- b. Pattaya City: Pattaya City Manager: not exceeding 100 million Baht, Governor: above 100 million Baht

- c. Municipality (1) *Municipality Council*: Mayor not exceeding 100 million Baht, Council: not exceeding 300 million Baht, Governor: above 300 million Baht
(2) *Mayor*: mayor not exceeding 300 million Baht, Governor: above 300 million Baht

Value Thresholds (for special method, procurement from ad hoc subsidy, domestic loan, aid, and foreign loan)

- PAO Governor: above 10 million Baht
- Pattaya City Manager: not exceeding 10 million Baht, Governor: above 10 million Baht
- Municipality (1) *Council*: mayor: not exceeding 10 million Baht, Municipality Council: not exceeding 20 million Baht, Governor: above 20 million Baht
(2) *Mayor*: mayor: not exceeding 20 million Baht, Governor: above 20 million Baht
- For special case method: no limit

d. Tambon (sub-district) Administration

- Chairman of the Administration Committee can authorize without limit, except for conditions under Articles 44 and 45
- Under Articles 44 and 45, Chairman can approve amounts not exceeding 50 million Baht, Tambon Administration Committee: 50 – 100 million Baht, District Officer: 100 – 200 million Baht, and Provincial Governor: above 200 million Baht

For Special method, procurement using subsidy, domestic loans, foreign loans, and foreign aid, the Chairman can authorise procurement up to 5 million Baht, the Tambon Administrative Committee: 5-10 million Baht, the District Officer: 10-20 million Baht, and the Provincial Governor: above 20 million Baht

For the Special case method, the Chairman can approve without limit. Thus, in terms of authorization thresholds, it can be seen that even though the intention is to allow flexibility among the semi-autonomous elected local administrators, the thresholds do allow a great deal of leeway.

Table 2.4 breaks down the value of procurement of central government agencies, by method of procurement. It can be seen that ‘open tendering’ and ‘electronic procurement’ (called ‘e-auction’ in Thailand) which is supposed to foster competition, together form less than 50 per cent of the total value of procurement by central government agencies. Data for state-owned enterprises and public organisations are not available at any one agency and there is no central data depository. This is the main problem encountered in assessing efficiency of procurement, and the main problem with respect to transparency.

A breakdown by Ministry in Table 2.5 shows that in 2009 the Ministry of Industry had the lowest combined percentage (3.80 per cent) of procurement undertaken by competitive methods: ‘open tendering’ (2.12 per cent) and ‘e-auction’ (1.68 per cent), followed by the Ministry of Commerce with 0.48 per cent and 8.26 per cent,

respectively, combining to make just 8.74 per cent. The Ministry with the largest percentage of procurement undertaken by these two methods is the Ministry of Tourism and Sports (20.82 and 57.51 per cent respectively, combining to make a total of 78.33 per cent.

Of course there may be extenuating circumstances, and in many cases, use of the 'special method' does foster efficiency (because of its timeliness) and quality (because the lowest bidder is not chosen). Moreover government procurement is subject to fluctuation from year to year due to periodic infrastructural investment, and the nature of investment needs to be taken into account. Yet the low percentages of procurement obtained through competitive methods should perhaps serve as a flag that needs further scrutiny, and indicate that further study and analysis is needed, particularly for the agencies' own internal self-assessment.

Table 2.4 Central Government Procurement, by Method, Fiscal Years 2005-2009.

value unit: million baht

Method	FY 2005		FY 2006		FY 2007		FY 2008		FY 2009	
	Value	(%)	Value	(%)	Value	(%)	Value	(%)	Value	(%)
Negotiation	19,457.15	17.04	28,118.95	13.93	30,074.66	12.91	34,050.14	14.01	14,615.97	16.02
Selective tendering	23,538.89	20.61	30,598.70	15.16	30,073.68	12.91	27,299.01	11.23	10,297.62	11.28
Open tendering	33,599.13	29.42	51,177.13	25.35	36,438.49	15.64	24,417.11	10.05	8,012.27	8.78
Special method	13,430.16	11.76	22,031.71	10.91	30,522.82	13.10	38,700.98	15.92	14,595.01	15.99
Special case method	8,352.94	7.31	11,061.61	5.48	15,600.95	6.70	18,775.06	7.72	7,349.34	8.05
e-Auction	11,021.03	9.65	47,273.16	23.42	73,757.69	31.66	84,652.54	34.83	30,843.83	33.80
Advisory services - negotiation	1,715.12	1.50	2,730.45	1.35	3,335.90	1.43	2,917.38	1.20	1,022.26	1.12
Advisory services - selection	1,493.28	1.31	2,795.91	1.38	3,588.13	1.54	3,391.97	1.40	1,332.09	1.46
Advisory services - limited conditions	1,600.64	1.40	568.96	0.28	321.82	0.14	117.85	0.05	50.04	0.05
	0.00	0.00	5,521.70	2.74	9,268.97	3.98	8,738.96	3.60	3,132.96	3.43
Total	114,208.32	100.00	201,878.27	100.00	232,983.12	100.00	243,061.00	100.00	91,251.39	100.00

Source: calculated from Comptroller-General's Department data

Table 2.5 Percentage Distribution of Procurement by Method and Ministry, FY 2009

unit: per cent (%)

Agency	Method of procurement											
	Negotiation	Selective Tendering	Open Tendering	Special method	Special case method	e-Auction	Advisory services - negotiation	Advisory services - selection	Advisory services - limited conditions	Other	All methods	Opening tendering plus e-auction
Prime Minister's Office	9.92	2.47	1.12	16.70	32.52	9.55	23.77	2.58	1.37	0.00	100.00	10.67
Ministry of Defence	3.27	8.01	3.76	33.51	26.72	24.51	0.01	0.03	0.00	0.18	100.00	28.27
Ministry of Finance	62.58	3.77	2.67	14.09	1.20	15.50	0.15	0.04	0.00	0.00	100.00	18.18
Ministry of Foreign Affairs	1.64	0.03	18.59	70.84	2.06	6.67	0.17	0.00	0.00	0.00	100.00	25.25
Ministry of Tourism and	9.06	6.95	20.82	3.83	1.11	57.51	0.71	0.00	0.02	0.00	100.00	78.33
Ministry of Social Management and Human	36.74	23.79	10.20	13.97	8.69	5.08	0.95	0.58	0.00	0.00	100.00	15.28
Ministry of Agriculture and Cooperatives	15.81	16.13	11.44	5.22	3.23	29.61	1.43	1.61	0.23	15.30	100.00	41.05
Ministry of Transport	8.42	10.28	19.36	3.05	1.19	48.94	0.41	1.35	0.01	7.01	100.00	68.30
Ministry of Natural Resources	14.40	41.36	9.39	3.79	1.20	23.76	1.76	4.24	0.00	0.09	100.00	33.15
Ministry of Information and Communication Technology	1.31	2.26	0.34	17.71	16.30	55.28	6.57	0.24	0.00	0.00	100.00	55.61
Ministry of Energy	7.27	3.30	7.49	7.77	2.92	55.38	2.72	13.14	0.00	0.00	100.00	62.88
Ministry of Commerce	20.29	11.86	0.48	42.47	2.10	8.26	3.96	4.72	0.00	5.85	100.00	8.74

Table 2.5 (continued) Percentage Distribution of Procurement by Method and Ministry, FY 2009

unit: per cent (%)

Agency	Method of procurement											
	Negotiation	Selective Tendering	Open Tendering	Special method	Special case method	e-Auction	Advisory services - negotiation	Advisory services - selection	Advisory services - limited conditions	Other	All methods	Opening tendering plus e-auction
Ministry of Interior	12.40	11.81	2.19	20.13	5.41	42.11	0.02	5.90	0.00	0.04	100.00	44.29
Ministry of Justice	9.16	5.13	11.60	12.73	8.27	52.50	0.57	0.03	0.00	0.01	100.00	64.10
Ministry of Labour	46.15	25.42	0.08	9.96	6.20	11.28	0.30	0.62	0.00	0.00	100.00	11.36
Ministry of Culture	11.75	11.60	3.37	15.97	12.88	44.43	0.00	0.00	0.00	0.00	100.00	47.80
Ministry of Science	53.46	15.43	0.40	7.23	4.03	19.46	0.00	0.00	0.00	0.00	100.00	19.86
Ministry of Education	20.14	10.46	7.39	9.77	1.64	50.35	0.17	0.00	0.06	0.01	100.00	57.75
Ministry of Public Health	37.63	11.12	8.36	15.72	3.48	23.52	0.14	0.00	0.02	0.00	100.00	31.89
Ministry of Industry	12.14	9.07	2.12	10.73	0.83	1.68	34.30	29.07	0.00	0.05	100.00	3.80
Other	18.47	3.96	2.28	25.53	5.62	43.69	0.30	0.00	0.00	0.14	100.00	45.97
Province	12.45	61.89	4.13	3.03	1.74	14.49	0.80	1.48	0.00	0.00	100.00	18.62
Central budget	6.80	11.93	11.04	30.20	8.83	20.45	0.05	6.63	0.00	4.06	100.00	31.49
CEO	2.66	0.23	2.66	52.18	0.00	42.27	0.00	0.00	0.00	0.00	100.00	44.93

Source: calculated from Comptroller-General's Department data

4) Loopholes for non-transparent and corrupt behavior

Actual data on the incidence of transparency problems show that the most vulnerable areas are the following:

- (i) Ad hoc emergency projects, such as relief of natural disasters
- (ii) National security projects that require secrecy
- (iii) Repair and maintenance projects where difficulties occur in assessing work required
- (iv) Non-durable items that are used up
- (v) Large projects where the returns are high

And risks are present at each stage of procurement, namely project initiation, technical specifications and reference prices, canvassing suppliers, the tendering process, contract design and management, and verification and acceptance of work.

Even though e-procurement was intended to increase transparency, analysis of projects procured by electronic means in 2009 reveals that several irregularities occurred. First even though the time period from announcement to submission of tender offers is stipulated to be from 3 to 30 days, in many cases this did not occur. It could be gleaned from the electronic records that some announcements were even made after the contract had been awarded.

Somkiat (2009) devised a transparency index for electronic procurement, giving scores to projects on the following bases: timely announcement of project tender, appropriateness of the tendering period, and reasonable qualifications of supplier.

The following scores are given for announcement of project tender: number of days before tendering:

- 1.00 for more than 30 days
- 0.75 between 16- 30 days
- 0.50 between 7-15 days
- 0.25 less than 7 days
- 0.00 if no website announcement or announcement after bid tendering,

minus 0.25 if the supplier's track record is excessive compared with the size of the project. For example, if suppliers are required to have previously undertaken billion-baht projects, to qualify for a million-baht project, this is considered excessive. The scale of the index is between 0 and 1.

Based on this index, it was found that more than 54 per cent of the projects had a score of zero, and only 3 per cent received the maximum score of 1.

Because the OPM regulations do not have the status of a Parliamentary Act, exemptions abound, and Cabinet decisions can override the regulations. This was designed to allow for contingencies and emergencies, but can allow for irregularities. Table 2.6 shows that the quasi-fiscal budget that was approved by the Cabinet without

Parliamentary scrutiny jumped from 10.1 per cent in 2002 to 49 per cent in 2004 at the height of the premiership of Thaksin Shinawatra.

Table 2.6 Quasi-fiscal budget as a proportion of total government budget and GNP

	2002	2003	2004
Quasi-fiscal budget (million Baht)	103,669.0	295,993.0	569,597.9
% of GNP	1.9	5.0	8.7
% of total government budget	10.1	29.6	49.0
GNP	5,446,043	5,930,362	6,576,023
Total government budget	1,023,000.0	999,000.0	1,163,500.0

Source: calculated from budget and expenditure data, Ministry of Finance.

Corruption in procurement runs the gamut from simple kickbacks to awarding of contracts to connected parties, involving key players in strategic positions. It is believed that, when it occurs, kickbacks dominate dealings with foreign contracts, while involvement with connected parties occurs mainly among domestic players. For simplicity, wrongdoing in procurement is divided here into three main categories: (i) collusion among private-sector suppliers; (ii) simple kickbacks from suppliers to government officials; and (iii) systemic corruption, involving networks of connected persons, as well as 'political corruption' where projects are designed and initiated to benefit specific suppliers within connected networks, possibly identified prior to project initiation.

Both the second and third categories involve degrees of conflicts of interests, and there is a fine line between the two. Simple kickbacks could occur through middlemen or brokers between unconnected parties, who could then become connected over time through repetitive dealings.

(i) Collusion among private-sector suppliers

Interviews with contractors who asked to remain anonymous indicate that bid collusion is the norm rather than the exception. Collusion can take on several forms. First there could be the formation of a bidding ring, whether ad hoc or long-standing, between the private contractors themselves. Bid-rigging occurs when members of the bidding ring offer prices within a narrow (inflated) range. Bid rotation often occurs, whereby suppliers take turns offering the lowest bid and therefore getting the contract. This is also called complementary bidding. In some cases, bid suppression occurs, where competitive suppliers are coerced into withdrawing from the bidding process, or

suppliers in the bidding ring abstain. Any of these practices could be coupled with sub-contracting, whereby members of the bidding ring receive sub-contracts from the winning bidder.

(ii) Simple kickbacks from suppliers to government officials

These kickbacks can occur in various forms, involving both domestic and international players. They can occur through a broker, such as in the current case of the alleged bribery of the Thailand Tobacco Monopoly (TTM) officials.⁵ They can also occur because suppliers themselves provide the specifications for the procurement (though this does not always involve kickbacks). And they can occur through direct contact, such as the case of the bribery of the former Governor of Tourism Authority of Thailand (TAT), Juthamas Siriwan, whose bribers, a filmmaking couple in Los Angeles, were sentenced in August 2010 to six months in prison, followed by six months of home detention, for bribery so they could run the Bangkok International Film Festival.⁶ Many other cases are still pending.

(iii) Systemic corruption

What is called 'systemic corruption' here does not mean that every part of the system is involved in the corrupt network. The term is merely used to connote a number of strategically-placed parties that are able to engage in systematic wrongdoing with impunity.

'Political corruption' is used here to refer to situations where projects are designed and initiated to benefit specific suppliers within connected networks. These projects could be previously-initiated, well-designed projects that are hi-jacked and

⁵ In August 2010, the U.S. Securities and Exchange Commission charged two tobacco companies based in Richmond, Virginia, U.S.A, with violations of the Foreign Corrupt Practices Act (FCPA) for paying bribes to government officials in Thailand and other countries to illicitly obtain tobacco sales contracts. The SEC alleges that Richmond, Va.-based Universal Corporation Inc. and two competitors who have since merged to form Alliance One International Inc. engaged in a coordinated bribery scheme in Thailand. Universal allegedly paid approximately \$800,000 in bribes to officials with the government-owned Thailand Tobacco Monopoly (TTM) in exchange for securing approximately \$11.5 million worth of tobacco sales contracts for its subsidiaries in Brazil and Europe. The companies that became Alliance One — Dimon Inc. and Standard Commercial Corporation — allegedly paid more than \$1.2 million in bribes to TTM officials to obtain more than \$18.3 million in sales contracts. To settle the SEC's charges against them, Universal agreed to pay disgorgement of more than \$4.5 million and Morrisville, N.C.-based Alliance One agreed to pay \$10 million in disgorgement. Universal agreed to pay a criminal fine of \$4.4 million and Alliance One agreed to pay a criminal fine of \$9.45 million in separate criminal proceedings undertaken by the U.S. Department of Justice. <http://www.sec.gov/news/press/2010/2010-144.htm>

⁶ Gerald Green, 78, and his 55-year-old wife Patricia were also ordered to jointly pay \$250,000 in restitution. The couple was convicted of conspiracy and money laundering charges in September 2009. A jury found the couple had paid Juthamas Siriwan about \$1.8 million to secure the Bangkok film festival and tourism-related deals between 2002 and 2007 that earned them more than \$13 million in revenue. Prosecutors said the Greens created shell companies to pay off Juthamas Siriwan, the former governor of the Tourism Authority of Thailand. The couple transferred money into bank accounts of Juthamas' daughter and a friend so they would be awarded business contracts.

redesigned. In the past, road construction was notoriously undertaken to benefit certain landowners, but recently multi-billion Baht projects have been 'moved' to technically unsuitable locations that benefit politicians, such as the Klong Dan wastewater treatment project.

In November 1995, the Asian Development Bank (ADB) approved a 150 million USD loan to support the Thai government's Pollution Control Department (PCD) in establishing systems to manage wastewater discharged by factories and residents in the Bangkok metropolitan area, including Samut Prakarn. The initial plan was to build two separate treatment plants close to the main pollution sources, consisting of about 5,000 factories. However, by the time the ADB approved an additional loan of 80 million USD, the project site had been relocated some 20 kilometers away to Klong Dan, situated towards the eastern edge of Samut Prakarn Province. A new plan was devised to build a very centralized, one of the largest wastewater treatment plants in Southeast Asia, to process 525,000 cm³ a day of wastewater with heavy metals and hazardous waste.

Japan's Overseas Economic Cooperation Fund (OECF), later restructured into Japan Bank for International Cooperation (JBIC), and most recently re-restructured to form Japan International Cooperation Agency (JICA) co-financed the project with an additional 50 million USD loan. After the site change, the total cost of the project more than doubled to 687 million USD.

Klong Dan villagers came to know about the project after the construction had started. In late 1998, they saw a sign put up by a joint venture (JV) construction company, in front of the wastewater management facility. They were surprised to learn that a huge wastewater treatment plant was already under construction in their neighborhood. Apart from the total lack of information disclosure to and meaningful participation of the local community, Klong Dan people were able to point out the following major flaws with the project:

- 1) The plant was not equipped to properly treat heavy metals and hazardous waste. They would be discharged into the sea and would destroy local fishing activities;
- 2) The plant was built on soft soil along the coast and would be impacted by flooding and erosion;
- 3) Environmental Impact Assessment (EIA) was not conducted in Klong Dan; and
- 4) The project site included public land, such as canals, which was not for sale. The land for the plant, approximately 1,900 "rai" (1 "rai" is equal to 1,600 m²), was sold at a price much higher than the official price.

The land for this new site belonged to a local politician, and suspicions were raised about whether this could account for the sudden change in the project site. In addition, the transport of waste from the source or pollution, through a long and winding pipeline for some 20 kilometers, was not technically sound.

On January 13, 2004, PCD filed charges against 19 private firms and individuals in the Thai criminal court, including Vatana Asavahame, a former Deputy Minister of Interior for having illegally obtained title deeds to the project site land and sold it to PCD at an inflated price. In March 2004, the Land Department revoked the deeds to the land

of 1,358 “rais”. This invalidated the government’s contract with the JV. On 14 June 2007, the NACC concluded that 9 government officials, including Vatana, had been involved in illegal land deed acquisition and forwarded the case to the Supreme Court’s Criminal Division for Holders of Political Positions. By that time Vatana had fled Thailand, but the court ruled that he was guilty of bribing officials in the land grab connected with the project and sentenced him in absentia to 10 years in prison.⁷

Other cases which might fall under that category of political corruption, that had recently been investigated by the former Assets Scrutiny Committee are presented in Table 2.7.

Table 2.7: Assets Scrutiny Committee corruption investigation

Corruption cases	Million Baht
1. CTX-9000 scanner project for the Suvarnabhumi airport	1,400
2. Electrical power cable-laying project for the Suvarnabhumi airport	2,000
3. Para rubber saplings project	1,440
4. Central Lab acquisition by the Ministry of Agriculture	1,560
5. The State Railway of Thailand paying lending fee for Airport Link Project	1,666
6. Austrian Fire Truck and Fire-fighting Vessels project by the Bangkok Metropolitan Authority	6,687
7. Export-Import Bank lending to Myanmar’s government	4,000
8. Tax evasion related to the sale of Shin Corporation to Temasek	69,000

Another example of a network of systematic wrongdoing in procurement is the case of the government scheme to support agricultural producers. Various intervention schemes have been put in place to assist agricultural producers to reduce the effects of the seasonal variation in prices. Only the example of intervention in the market of a fruit called ‘longan’ will be presented here.⁸

The intervention scheme used in the longan market (as well as previously used in the rice market) is called the ‘pledging’ scheme. Simply put, a government agency operates like a pawn shop, so that just after harvesting when prices are low, producers need not be at the mercy of the market, and can ‘pledge’ or pawn their crop at the government agency, to redeem their produce after prices improve. For longan, the scheme was started in the year 2000. Initially, the buying price was set at 70 per cent of the market price. However, in 2002-3, this scheme was hi-jacked by politicians and turned into a populist scheme, and the buying price was jacked up to be higher than market price, and this encouraged excessive expansion of production. The successive intervention prices are summarised in Table 2.8 below. As a result of the jacked-up price, the level of intervention (defined as the quantity purchased divided by total production) increased from 4.4 per cent in 2000 to 62.2 per cent in 2002 (Jaruk and Issariya, 2010).

⁷ [http://www.mekongwatch.org/english/country/thailand/MW_SMBrief\(2010.02.27\).pdf](http://www.mekongwatch.org/english/country/thailand/MW_SMBrief(2010.02.27).pdf). Another case involving land is that of Somchai Khunpleum, a Chon Buri godfather with powerful political connections, wanted in a local land-conflict case.

⁸ Adapted from Jaruk and Issariya (2010).

Table 2.8 Intervention in the longan market

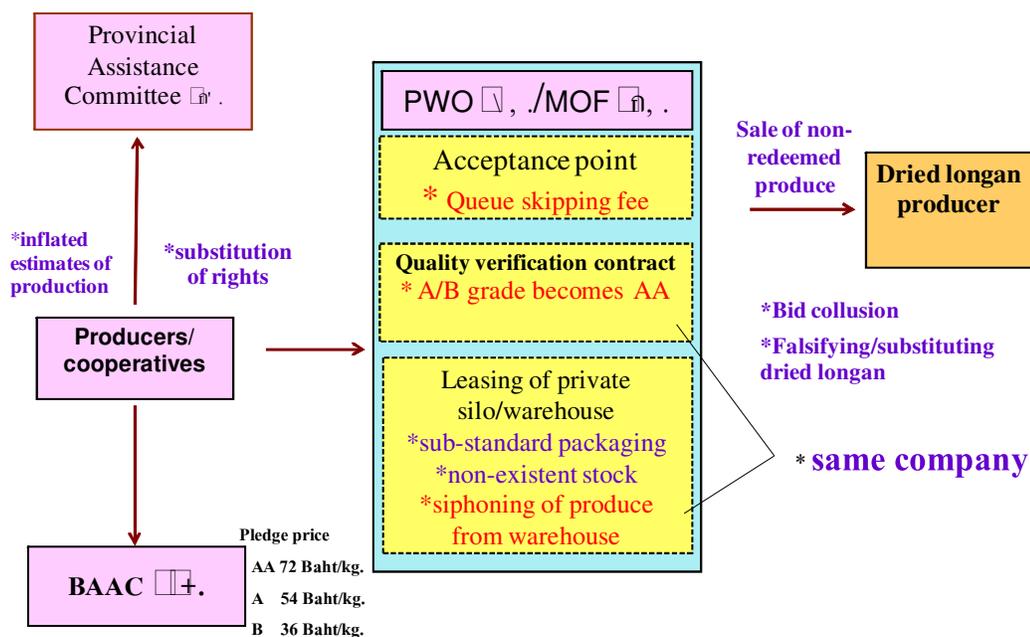
Year	Intervention measure
2000	<ul style="list-style-type: none"> • Bank of Agriculture and Agricultural Co-operatives (BAAC) accepts pledging documents to dry longan • Pays 70% of target price • Receives target of 30,000 tons of longan
2002-2003	<p>Pays a price higher than market price Huge increases in size of scheme</p>
2004	<p>Longan market management, through such schemes as output distribution outside production location, further processing such as canning, promotion of fresh longan export, domestic consumption, and purchase of fresh longan for processing into dried longan.</p>
2005-present	<p>Limited intervention and greater reliance on market mechanism and consumption boosting measures.</p>

Source: Adapted from Jaruk and Issariya (2010)

The corruption ring during the 2002-3 intervention scheme is schematically presented in Figure 2.2. It can be seen that wrongdoing occurred at every stage of the process. The 'pledge' prices of 72 Baht per kilogram for grade AA, 54 Baht per kilogram for grade A, and 36 Baht per kilogram for grade B were well above market prices, and attracted wrongdoers to extract undue benefits from the scheme. Starting from the producers and cooperatives, estimates of production were inflated to take advantage of the high prices offered by the scheme. At this stage, 'substitution of rights' also occurred, whereby legitimate longan producers were asked/coerced/recruited to sign documents falsifying production figures. These documents were subsequently used by non-producers to obtain payment for non-existent stock.

Next, at the level of the government agencies (The Public Warehouse Organisation: PWO and the Marketing Organisation for Farmers: MFO), an illegal 'queue-skipping' fee was charged at the 'acceptance point', where supposed longan producers submitted their pledge. At the quality verification stage and the leasing of private-sector silos and warehouses, the same company was awarded the contract both for quality verification and warehousing, so there was no check or balance. Investigation by the National Anti-Corruption Commission uncovered fraud in the grading process, sub-standard packaging allowing the produce to deteriorate, siphoning of produce from the warehouse, and produce stock that never existed in the first place.

Figure 2.2 Corruption ring in 2002-2003



Source: adapted from Jaruk and Issariya (2010).

The high purchase price also led to low redemption rates, as there was no incentive to redeem the pledged produce. The stock in the warehouse therefore deteriorated, and was sold at a loss to dried longan producers, a process that again involved bid collusion and fraud.

Consequently, in 2004 the intervention scheme was adapted to focus more on market management, output distribution outside the production location, promotion of domestic consumption and fresh longan export, further processing in the form of canning, and purchase of fresh longan for processing into dried longan. This led to another systemic pattern of procurement corruption. Figure 2.3 shows that the inflated production estimates and the substitution of rights continued at the producer level. Krungthai Bank was brought in to replace the Bank of Agriculture and Agricultural Cooperatives (BAAC), and Chiangmai University (CMU) was recruited for quality inspection and grading. However, grading fraud continued, and Por Heng Inter Trade Company was awarded the contract for drying the fresh longan even though the company did not even possess any drying facilities and had no experience in agricultural processing. The scandalous failure to deliver 49 thousand tons of dried longan led to exposure of the corruption ring. The poor quality of dried longan produced as a result of the corrupt practices further damaged the export market.

clients who, in return, provide services, rent collection, and other forms of support to the patron, including facilitating corrupt acts.

Since there are many competing networks of patron and clients, the patron needs to accumulate a large amount of resources to feed the needs of the clan. Corruption then becomes a method to accomplish this task and allows the network to accumulate sufficient funds and attract large numbers to compete successfully against other clans. Members recruited into the corruption ring may actually not be aware of the ring in the beginning. But the cost of leaving the network becomes prohibitive and the option of moving to another network is not available due to the mutual distrust and possible hostility between clans/networks.

In the broadest sense, a transaction consists of activities or transfers of property rights by or between at least two individuals or groups. All individuals engage in two kinds of transactions: personal (where identity dominates) and impersonal (where identity is subsumed). In certain forms of transactions, especially corrupt transactions that take on the nature of conspiracies, the identity of the people engaged in a transaction is vital. Some transactions can take place only between mutually or unilaterally identified parties, and many corrupt practices of significance fall under this category. Parties in an identified relationship invest resources that are specific to that relationship in order to save transactions costs. And there are economies of scale related to these 'set-up' costs. This facilitates activity between them and leads to a concentration of exchange between the same parties. Ben-Porath (1980) calls this 'specialization by identity', and patron-client relationships are repeated relationships of exchange between specific patrons and their clients (Khan, 1998).

In certain corrupt transactions, the network or clan definitely has an advantage over other institutions due to the following characteristics:

(a) Being part of a clan usually involves a lengthy time period, but the duration is often not specified in advance. The expectation of continuing exchange has a favorable effect on the behavior of the members. Abstention from 'cheating' is an investment that could reap gains in the future. Even in a corruption ring, there is some "honor among thieves", but no hesitation in cheating or inflicting harm on others outside the clan.⁹ Anthropologists call this "contextual morality". In some primitive societies, ethical codes forbid internal cheating within a tribe but allow cheating of others (Sahlins, 1965).

⁹ The expectation of continued contact can be analyzed in terms of strategic advantage in a repeated game. In a single, non-cooperative game, parties may fail to achieve a mutually beneficial solution because each party recognizes the opportunities to cheat or to reap a short-term advantage, a typical 'prisoner's dilemma' situation. However, infinite repetition of the transaction can induce the parties to give up short-term benefits in order to realize future gains. Even unscrupulous members, whether patron or client, can appear to act altruistically because of this expectation.

(b) While the scope and importance of various activities change, the connection generally encompasses a large variety of activities.

(c) Not all terms of membership are specified explicitly, and most activities are contingent on events, and are decided sequentially; the response to contingencies remains unspecified, guided by custom or implicit rules of behavior.

(d) The highly interdependent elements of the contract among network members exist as a package, and prices cannot be used as weights for adding up the various elements of the contract.

(e) There is generally no explicit balancing of the exchange in terms of a unit of account, although certain money payments can be interpreted as approximations to the ex-ante differences in the expected value of the packages being exchanged. The individual components need not be balanced at any particular point in time, and there may be no obvious quid pro quo. Instead, large outstanding balances may be tolerated, often because of the unspecified nature of the contract; when and how these balances are liquidated could remain open. This tolerance of outstanding balances reflects the presence of trust or implicit threats.

(f) Enforcement is mostly internal, although the contract may be supported to some extent by the origin of the relationship or the sub-faction head.

(g) To varying degrees, the clan/network creates a collective identity that affects each member's interaction with people outside the network, but members may have unequal benefits, based on some hierarchical structure, as well as different exit opportunities.

(h) The most important characteristic of the network is that any implicit or explicit 'contracts' are embedded in the identity of the partners, without which it loses its meaning. It is thus usually specific and nonnegotiable or nontransferable. Therefore most of the characteristics of the clan are connected with the issue of identity. Identity is important because of imperfect or asymmetric information. That is, there is uncertainty about the quality of the object of exchange or the terms of the transaction. Identity reduces this uncertainty, if personal traits are not completely observable. In addition, in transactions that are not consummated instantly and involve obligations or consequences extending over time, the quality of promises to pay or deliver depends on the identity of the promise giver. In general, contracting for a transaction between strangers over time, requires the contract to be specified in a manner that would allow a third party to adjudicate in case of disagreement. This of course cannot be done in the case of corrupt practices because of the secret and illegal nature of the transaction. Thus, identity is important, or the third-party adjudicator has to be from within the clan.

In order to set up a successful corruption ring, several dimensions in terms of member characteristics are important. There is a built-in bias in favor of homogeneity in

terms of some dimensions but heterogeneity in terms of other dimensions. Routine actions that do not require a great deal of expertise, such as falsifying land deeds, or engaging in protest rallies, favors homogeneity – working with the same people. However, when purchasing sophisticated equipment, trust in friends or relatives cannot compete with the technical know-how of a specialist. Thus it becomes necessary to recruit technical expertise as well. With differences in the importance of identity in various transactions and in the specificity of investment of identity to certain activities, people will be organized in small clusters for some purposes and large ones for others, and these groupings may intersect for different purposes (Ben-Porath, 1980).¹⁰ Parties who have already invested specifically in each other are in a short-run position of bilateral monopoly. If the self-enforcement mechanism is imperfect, trust, or fear, or violence, becomes more important.

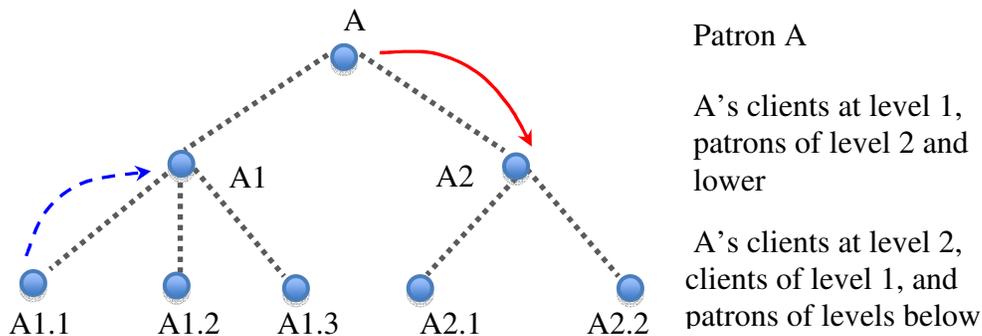
The role of network affiliation, and particularly the family network, is clearly evident during the early stages of economic development. Families played an important part in employment placement whether in nineteenth-century England (Anderson, 1971) or Japan at the onset of the migration to towns (Vogel, 1967). And family affiliation also played an important part in the capital market in reducing the transaction costs of individuals in both Europe and part of the developing world (Benedict, 1968). Family relationships indeed played an important part in the struggle over the establishment of property rights and their physical protection in early American pioneering moves to the West. Business cooperation between members of rich families continues in highly developed economies. Long-term partnerships with nonrelatives simulate some of the properties of the family-type contract, again mutually investing in identity in order to save transaction costs and reap the benefits of joint action. The need to invest in identity to operate efficiently even in developed markets is an element in the high salaries of top executives.

In present-day Thailand, it can be seen that political networks are defined by their head. The head of the network serves as director for communication, trust, and redistribution, and reduces the transaction costs within the network by reducing the need for bilateral relationships. The pairwise investment of each member with the center links him to all the others. In his theory of social interaction, Becker (1974) shows why a central figure who cares, or appears to care, can generate socially optimal behavior from the others, even if the head is an egoist. When the head is absent, miscommunication often occurs, or miscommunication can be blamed for unpopular deeds by the network. The difficulty is to distinguish between the truly benevolent head and the self-serving one.

¹⁰ In Thailand, there is a common saying that defines six different groups of people that comprise a network (especially a corrupt network): family members, school friends or disciples, financial contributors, obsequious followers, marriage ties, and competent specialists (“สายโลหิต ศิษย์ข้างเคียง เสนียงหลังบ้าน กราบกรานสอพลอ ล้อไซ้แดง แก่งงวิชา”).

A corruption ring can be represented in Figure 3.1 where layers of patrons and clients direct the flow of resources.

Figure 3.1: Typical Patron-Client structure



Source: Sirilaksana, et. al. (2010)

From Figure 3.1, Patron A is the ultimate power of the clan. Below Patron A are the clients shown by nodes connected to Patron A with dashed lines. For simplicity, this patron is shown to have two clients at level 1, labeled A1 and A2. Below each level-1 client, there may be many layers of clients that propagate downward. The patron in this clan could also serve as a client of yet another larger patron-client structure located higher up.

Members in the same clan relate to each other in two ways, vertically and horizontally, the former in cooperative exchange and the latter in the form of rivalry. The patron is expected to provide vital resources that the client needs. In Thailand, the patron may provide land to the client for cultivation, give loans for emergency use, settle conflicts with other clients within the clan, provide protection against threats from other clans, promote to a higher client position in the clan, and/or ensure that clients receive government procurement contracts. The solid arrow in Figure 3.1 represents the flow of resources or protection provided by the patron.

In return for the patron's support, the client has the duty to serve the immediate patron, and those located in higher positions, in whatever tasks the patron may assign. If procurement contracts are obtained, usually at inflated prices, then kickbacks are paid up the hierarchy. The dashed arrow in Figure 3.1 shows the flow of returns from the client to the patron. The returns could take the form of simple labor (such as pouring drinks, carrying suitcases), or bodyguards. Or it could be a supporting role against other clans, beating up the patron's enemies, rallying people to support the patron's political ambitions, and extracting economic rent from awarded contracts for the patron. The resources could consist of monetary support or member count. Thai political parties always consist of many factions, or sub-clans, in which the leader of that faction acts as

the patron. If the leader of the faction manages to bring in sufficiently large numbers of elected MPs under his wing, he is entitled to become a minister in the grade A ministry, such as the Ministry of Communications, which commands a large government budget. He would also have the right to nominate members under his wing to be appointed as ministers in grade B or C ministries, or as deputy ministers in grade A ministries.

Because of this quid pro quo, members of the group evaluate actions or policies as being beneficial or detrimental to the group or sub-group's interests, and to a large extent, political loyalties are not directed towards ideas, but towards the identity of the leader. Therefore, for the most part, it is not ideological persuasion, but the identity of individual politicians that determine political structures.

Although members of a clan tend to work cooperatively in the vertical hierarchy, there is often rivalry when they deal with members at the same client level. Many examples can be found in Thai political parties where leaders of factions try to outperform each other in terms of getting more members of parliament under his or her wing. The leader of that faction is then entitled to a cabinet position. And there is of course rivalry between clans, which accounts for why some long-running projects do not get implemented. The plans for a new international airport, for example, were laid down 30 years before construction finally commenced. And a large number of procurement cases connected with the new international airport are currently being investigated.

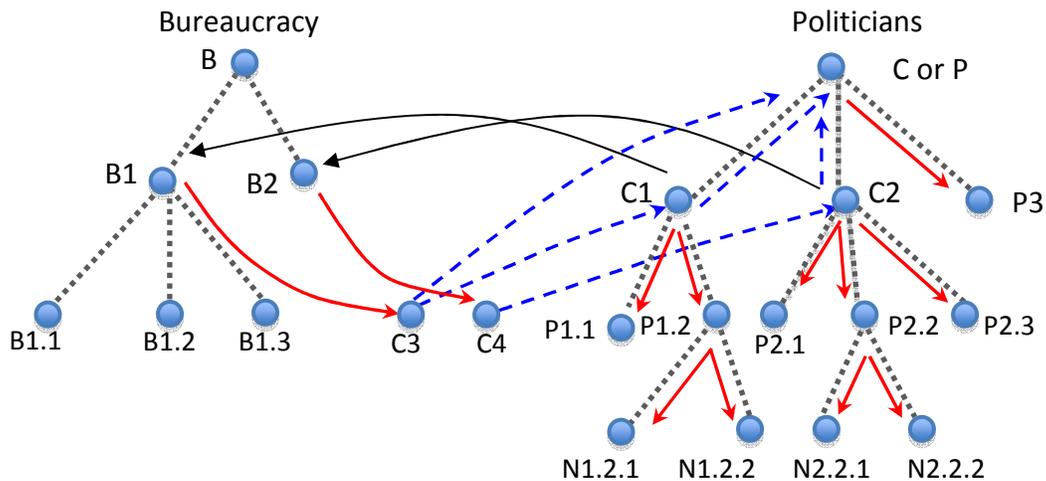
The patron-client network in Thailand is shown in Figure 3.2. The bureaucracy (B) is represented on the left, while network of politicians (P) is depicted on the right. The capitalists (C) refer to big businesses, while the non-politicians (N) include small businesses as well as non-governmental organisations (NGOs), and other social or lobbying groups. The capitalists who act as the patrons of the sub-clans, kickback some of their corrupt benefits to the bureaucracy who originally facilitated the special licenses, concessions, and procurement projects. Thus government procurement became a vehicle for corrupt enrichment. Solid arrows show the flows of the benefits from C1 to B1 and C2 to B2. The patrons of the sub-clan and the non-politician capitalists also need to provide the political and financial support to the highest patron who is either a politician or a capitalist turned politician.

A large number of businessmen made fortunes by receiving favored subsidies, licenses, and concessions from the patron-client network 3-way interaction among politicians, the bureaucracy and business, shown by the solid arrows pointing from B1 and B2 to C3 and C4.

One unique point about the patron-client network in Thailand is that capitalists often place themselves in the politician's network. In fact, the share of businessmen in Thailand's parliament is the highest in the region (Sidel, 1996). A recent trend was the movement of many capitalists, formerly located at high client levels, to become the

highest patron of the political party or the faction leader. Many leaders of Thai political parties are businessmen and tycoons¹¹.

Figure 3.2 : Flows within Patron-Client Networks in Thailand



Notes: B = bureaucracy, C = capitalists, P = politicians, N = non-politicians

The business-politician nexus can be clearly seen from the concessions received by former Prime Minister Thaksin Shinawatra before he became a politician. Indeed he is the most successful businessman turned politician, a former Lieutenant-Colonel in the Police Department. He built his business career by concentrating on government telecommunication concessions as shown in Table 3.1. The Ministers who approved the concessions subsequently became staunch political allies after Thaksin entered politics. They received important political appointments after he became Prime Minister.

Table 3.1: Thaksin Shinawatra's Concessions

Year	Thaksin's Companies	Concessions	Concessions value (million Bht) / number of years	Government/Minister of Transportation
1989	Digital Paging Service	Pager service	200 / 15	Chatichai government / Montree Pongpanit
1989	IBC	Cable television	NA/20	Chatichai government / Chalerm Yoobumrung*

¹¹ For example, Thaksin Shinawatra, former leader of dissolved Thai Rak Thai Party is a telecommunications tycoon. Banharn Silapa-Archa, leader of Chart Thai Party built himself up from government construction contracts. Suwit Khunkitti, leader of Pua Paendin Party owns SK Intergruop 2005 Co., Ltd. the sole distributor of Tupperware in Thailand.

1989	Shinawatra DataCom	Data networking service	400 / 10	Chatichai government / Montree Pongpanit
1990	Advanced Info Service (AIS)	Public Telephone (card phone)	3,000 / 20	Chatichai government / Montree Pongpanit
1990	Advanced Info Service (AIS)	Analog 900 MHz mobile phone	3,000 / 20	Chatichai government / Montree Pongpanit
1991	Shinawatra Satellite	Communications satellites	6,500/30	Chatichai government / Samak Sundaravej
1992	Advanced Info Service (AIS)	Card Phone	NA/10	Anand government / Nukul Prachuabmoh

Source: Pathmanand (2008); Notes: * PM's Office Minister

In this framework of connected relationships, it can be seen that economic policies can be adopted, not to eliminate market failures but because they create corruption opportunities (Aidt, 2003), and procurement offers a lucrative means to take advantage of these opportunities.

4. What can be done to improve procurement in Thailand?

To counter corruption networks, it is important to note that certain types of social action, even if effective, change the types of connections created, but do not necessarily reduce their number or importance. The threat of punitive social action on certain transactions induces connections of mutual dependence within the network at different stages. High penalties on crimes in general increase the mutual dependence of the criminals, but not necessarily their number, if the network is strong.

In addition, the returns to corrupt acts may depend on how diffused corruption is in society, that is, how much corruption is inherited from the past. The larger the share of corrupt agents, the higher the returns to corruption, because of several reasons. First, with widespread corruption in society, the task of auditing corrupt officials is not easy. Second the expected profitability of corruption from an individual point of view is a positive function of the degree to which a society as a whole is corrupt (Andvig and Moene, 1990). Thirdly, corrupt officials have an incentive to establish communication or networking among themselves and will fuel the corruption ring (Sah, 1988). In addition, in societies where rent-seeking and bribery abound, the return to rent-seeking relative to entrepreneurship is high (Murphy et al., 1991, 1993; Acemoglu, 1995). Lastly, when corruption is widespread, individuals may be discouraged from trying to fight it, even if everybody would be better off if corruption were eliminated.

To tackle corruption in procurement, reform or measures are needed in the following areas: (i) legal infrastructure, (ii) corrupt-friendly economic policies, (iii) social mobilization for enhanced transparency. This paper also argues that membership in international conventions, such as the World Trade Organisation's Government

Procurement Agreement (WTO-GPA) could serve as a tool to help alleviate current problems.

(i) Improving the Legal Infrastructure

The legal infrastructure needs to be reformed in many ways, and only a few key points are made here.

First, even though Thai procurement regulations emphasize openness and transparency as the main principles, many improvements can be made. In terms of openness and transparency, announcements and dissemination of information through the Public Relations Department, Mass Communication Organisation of Thailand, the G-Procurement website, etc. are required. Procurement committees have to be formed, often with citizen participation. Contracts worth more than one million baht have to be sent to Office of the Auditor-General and Revenue Department within 30 days of signing. Regulations for e-procurement also include additional criteria: value for money, transparency, efficiency and effectiveness, and accountability and responsibility for completion. At least three tenderers (in the case of standards license or meeting quality control systems) are required. However, Cabinet decisions are only placed on the OPM website in very brief form. Many cases that have led to corruption cases were approved by Cabinet decisions, and more detailed disclosure should be required.

Second, the technical specifications allow what is called ‘locking of specifications’, in order to favor certain suppliers. The dilemma is how to specify enough detail so as to verify suitability and at the same time avoid such specificity that includes/excludes suppliers, particularly for complex, sophisticated procurement that needs customized designs. Often the suppliers themselves are consulted for the expert knowledge. Under the WTO-GPA Article X Technical Specifications and Tender Documentation, it is required that:

- A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

There are similar provisions in Thailand, but enforcement is a problem, especially with projects involving very advanced technology, where the suppliers themselves are often informally invited to write the specifications.

GPA’s Article X is particularly interesting in stating that:

- In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:
 - (a) specify the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics;

The *functional requirements* are not specified in Thai regulations, and technical specifications are invariably related to physical characteristics. This is an area that could be the focus of reform in Thailand, and would require nationwide training of procurement officers.

In terms of the legal infrastructure, it is also necessary to coordinate various law-proposing channels. The 'Cleansing Act' of 2007, for example, allowed criminal proceedings against defendants indicted for procurement corruption to be dropped.

The NACC recently amended the Anti-Corruption Law that allows it to closely monitor large procurement projects, and requires procuring agencies to publish and explain how the reference prices are calculated. Whistle-blowing protection has also been introduced. In addition a new Integrity Index has been constructed to evaluate all government agencies at the departmental level. The index features a procurement component that gives marks for proper procedure and transparency in procurement.

(ii) Targeting corruption-friendly economic policies

At the present time, the National Anti-Corruption Commission is playing an increasingly pro-active role in scrutinizing economic policies and measures that open up opportunities for corruption. Several pre-emptive interventions have been made, such as in the case of the scheme to procure 4,000 natural-gas operated city buses, and the auction of 3-G telecommunications licenses, that have had the effect of subjecting the projects to greater scrutiny. The Cabinet, for example, asked the proposers of the bus scheme to withdraw the project in order to conduct further studies in the areas indicated by the NACC technical committee, when the project was submitted for Cabinet approval in 2009 and 2010.

Reform is also needed in areas such as the intervention schemes in the agricultural sector. At the behest of the NACC, reform in this area had been beginning. But the new government in 2011 seems to be bringing back some of the old risky policies.

(iii) Increased social mobilization for enhanced transparency

Transparency of procurement information is vital to prevent wrongdoing. The Thai OPM regulations actually does require publication of information. For complaint and appeal procedures, the OPM regulations state that aggrieved suppliers or contractors may lodge complaints directly with the procuring agency, the PMO's Committee in Charge of Procurement, or the Petition Council. In the case of the Petition Council, the petitioner must lodge the complaint within 90 days of knowledge of wrongdoing. The Council will then consider the petition 'without delay', and remedial measure(s) (if any) will be recommended within seven days to the Prime Minister. Remedy might include overturning the act that is inconsistent with the law, or that

cannot be supported by 'justifiable reason'. It is also possible for an interim remedy to be issued by the Council itself when appropriate.

However, transparency remains a problem, and efforts are needed to mobilize stakeholders in society. This sounds like a broken record, but the means of mobilization itself has to be overhauled, so that some benefit can be obtained from citizen involvement that would make it worth their while. The Klong Dan case of citizen involvement is a rare 'success story'. With network connections and the possibility of retaliation, Thailand is still grappling with the means to mobilize and incentivize citizens in the fight against procurement corruption.

Sirilaksana Khoman et.al. (2009) and Somkiat Tangkitvanich et.al. (2009) propose that the GPA could be a tool to increase transparency in Thailand's government procurement. Membership could possibly lead to greater transparency, more efficient use of government budget as it would stimulate fair competition, help honest and efficient suppliers, and may foster industrial growth and development.

Major examples of procurement cases initiated by foreign governments include:

- (i) The U.S. Department of Justice and SEC fined Invision Company for bribing a Thai official in the CTX explosive detection device case in 2005.
- (ii) In 2008, the Japanese Government prosecuted Nishimatsu Construction Company for allegedly bribing Thai officials in the case of the Bangkok Metropolitan Administration's drainage tunnel project.
- (iii) In 2009, the Los Angeles court found American defendants guilty under the Foreign Corrupt Practices Act, in the Bangkok Film Festival bribery case (over a period of 2002-2006).
- (iv) In 2010, two U.S.-based tobacco companies were charged with violations of the Foreign Corrupt Practices Act (FCPA) for paying bribes to government officials in Thailand and other countries to illicitly obtain tobacco sales contracts.

Greater foreign involvement and competition can thus help to uncover wrongdoing.¹²

¹² However there is some apprehension about becoming a member of the GPA. First opportunities for Thai suppliers to access GPA member procurement markets remain limited, while domestic suppliers will face stiffer competition. On the other hand, foreign competition may result in difficulties for domestic suppliers in certain sectors. This is the familiar 'infant industry' argument that has both pros and cons. If long-run efficiency is the goal, then gradual expansion of competition may help to attain that objective. Second, there is some concern that opening up may or may not lead to greater competition and efficiency, if it leads to international collusion. Finally, if foreign governments subsidise their service sectors, particularly construction, the GPA does not have any provision for countervailing action or remedy, unlike the case of subsidies under GATT. (Sirilaksana, et. al., 2009)

5. Conclusion

There are various difficulties involved in designing a procurement system due to several factors. First, government procurement usually involves multiple objectives, with efficiency being just one of them. Often procurement is used as a means to effect a geographical redistribution of income, or to favor underprivileged groups such as the disabled. It is also difficult to design a system that aligns with personal incentives with public benefit, as the same observed behavior could be motivated by opposite motives. Strict conformity to rules sometimes results in less efficiency; the “special method” could reflect a sinister motive or a desire to be efficient; the lowest price may involve sacrifice of quality, and detailed specifications could limit competition.

At the societal level, social enforcement of private contracts, ready access to adjudication, morality, and religious pressure for generalized honesty (in contrast to “contextual morality”) cannot be overlooked. These elements all tend to reduce the importance of identity, to facilitate transactions between strangers, and to reduce the need for specific mutual investment by connected parties. But procurement also needs to be accompanied by effective monitoring systems (e.g., corruption report, witness protection, etc.) and sufficiently stringent penalties for the wrongdoers and conspirators. The larger the network of corruption rings, the larger the returns to corrupt acts. The creation of networks of clean officials up to a certain critical mass is absolutely vital to reverse the momentum of historical, entrenched corruption.

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