

## Reform of procurement policies and practices since the adoption of the Thematic Review on Curbing Corruption in Public Procurement (May 2006)

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At the 8<sup>th</sup> Steering Group meeting in May 2006, the member countries of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific adopted the final report of their first thematic review on *Curbing Corruption in Public Procurement in Asia and the Pacific*. At the time, the members of the Initiative agreed to report, two years after the adoption of the document, to report on progress and measures taken to further strengthen procurement frameworks.

This document summarizes the progress reports that the members of the Initiative delivered at the 11<sup>th</sup> Steering Group meeting in May 2008. Countries marked with an asterisk\* were not members of the Initiative at the time of the thematic review.

### **Australia**

- AusAid has amended its standard contracts to expressly (1) prohibit contractors from engaging in foreign bribery, and (2) require contractors to ensure that its personnel and sub-contractors do not engage in foreign bribery, and to include equivalent anti-bribery provisions in sub-contracts.

### **Bangladesh**

- The Public Procurement Act and the Public Procurement Rules were enacted in 2006 and 2008, respectively. Both came into force on 31 January 2008.
- In 2008, financial limits for different levels for public procurement were readjusted with a view to efficient disposal of procurement proposals.

### **Bhutan\***

- The Ministry of Finance regularly updates procurement rules and regulations so as to promote economic growth and to ease the administration of public procurement.
- The Anti-corruption Commission is considering department regulations. As well, the Commission has developed an Integrated Pact that will form part of the procurement procedure.
- There is work in five areas, thanks to assistance from the World Bank: (1) reviewing public procurement rules and regulations, (2) setting up a separate Public Procurement and Policy Division in the Ministry of Finance, (3) developing the capacity of institutions, (4) an E-procurement readiness study (which has been completed), and (5) capacity development courses. Bhutan is studying World Bank reports on these issues and expects to implement the recommendations in the report in 2009.
- A contract law is being drafted.

### **Cambodia**

Information not available.

### **P.R. China**

- P.R. China enacted the Law on Government Procurement of June 2002 and thus improved specific operational procedures. In departments under the Central Government, 70% of official

purchases are made through government procurement. In the view of the Chinese authorities, implementation of the Law on Tendering and Bidding of 1998 has brought tangible improvements, especially in public construction projects. In 2006, the value of public procurement increased from CNY 100 billion to 368 billion and reached 400 billion in 2007. Centralised procurement, department centralized procurement and individual procurement constitute 60%, 22% and 19 % of the total national procurement respectively.

- The Ministry of Finance, which is responsible for public procurement, formulated 630 regulations covering all relevant matters, such as information disclosure, agency qualification assessment etc.
- The public procurement budget has increased and the quality of suppliers has been verified and improved.
- Supervision and auditing are strengthening their audit of public procurement.
- In 2006, the Ministry of Supervision and Transparency International developed a new project called "Promoting Transparent Procurement and Enhancing Enterprises' Social Accountability". The U.K. sponsored the project.
- In September 2007, the Ministry of Supervision and other relevant departments reported that they had taken the following measures:
  - Organizing various regions to conduct special inspections of tendering in government-invested projects and selective examinations of major construction projects;
  - Improving the coordination mechanism between supervisory agencies and competent departments;
  - Investigating and prosecuting breaches of tendering and bidding laws and regulations;
  - Implementing a system to transfer prospecting and mining rights by tendering, auction and listing;
  - Promoting the construction of a system to monitor information on transactions involving state-owned property rights;
  - Expanding the scope and scale of government procurement.

### **Cook Islands**

- The Tender Committee has strengthened procurement procedures by ensuring that all Ministry of Finance and Economic Management instructions on tendering are strictly complied with. In the past, minor infractions were often excused.

### **Fiji Islands**

- Legislation governing stores procurement has been changed. The Finance Act has been replaced by the Financial Management Act 2004 which came into force in mid-2005.
- Fiji has not introduced anti-corruption clauses into tender documents.

### **Hong Kong, China**

- The ICAC regularly reviews government procedures in areas such as public procurement and public works. The ICAC completed 92 reviews in 2007 and 21 in the first three months of 2008. The Financial Services and the Treasury Bureau also regularly reviews government procedures in public procurement with a view to streamlining them.
- In March 2008, the ICAC published a Best Practice Package on management of service contracts to help government officers implement corruption prevention safeguards.

### **India**

- As of May 2006, India was implementing an e-government program to deliver services to all citizens through an "IT for all" scheme by 2008. This would include access to public procurement tender opportunities.
- In 2008, the Central Vigilance Commission issued various guidelines regarding public procurement procedure, such as simplification of the process. The aim was to increase transparency and accountability.

## Indonesia

- Indonesia introduced government Regulation no. 7 2008 which established the Public Procurement Oversight Agency. The Agency head has been appointed and other staff are being recruited. The Agency is expected to be operational in June 2008.
- The National Development Planning Agency has begun to implement e-procurement and e-announcement along with KPK and the Ministry of Communication and Information. The city of Surabaya has introduced an e-procurement system that conforms to ISO 9000 and 20 001. The system has since been adopted by other regional and municipal governments, and the Department of Foreign Affairs in Java.
- KPK has implemented e-announcement and is adopting e-procurement.
- In August-November 2006, KPK involved Indonesian Procurement Watch, an NGO, to raise awareness of anti-corruption in Aceh province. The campaign included explaining the pathology of corruption in procurement of public goods and services. A Toolkit of Anti-Corruption was distributed to government officials in all regencies/cities of Aceh province. Indonesia Procurement Watch also produced the following publications in 2006:
  - Application of the Integrity Pact on Procurement of Goods and Services
  - National Strategy for the Prevention and the Eradication of Corruption on Procurement of Goods and Services
  - Checklist of Monitoring on Procurement of Goods and Services
  - Basic Framework and General Policy on Procurement of Goods and Services
- Transparency International Indonesia conducted a program on the Development of Integrity Islands (May 2007-2008) which was funded by the United Kingdom Foreign and Commonwealth Office. The program has identified the implementation of an integrity pact for procurement as an area of work for 2007.
- The Ministry of State Apparatus Reform took the following steps to amend procurements Regulation no 80 year 2003. The amendments would:
  - Establish a technical team to assist the procurement committee during the procurement process.
  - Engage an independent monitoring team during the procurement process.
  - Require announcement of the procurement plan and pre-qualification result to the public through a web site and national newspaper.
  - Collaboration with National Development Planning Agency to facilitate the establishment of Public Procurement Policy Development Agency.
- The Indonesian National Army implemented Regulation No. 29 year 2007 which requires:
  - Procurement monitoring by the press during tender opening and offer process.
  - Improving the e-announcement system in the mass and electronic media.
  - Extending the regulations concerning the down payment/quotation assurance issued by assigned government bank.
  - Issuing Regulation No. 482/XII/2006 regarding the price index standard for procurements.

## Japan

- On 8 December 2006, the Act Concerning Elimination and Prevention of Involvement in Bid-Rigging (ACEPIBR) came into force on 14 March 2007. The Act's main features are:
  - Introduce a criminal penal provision for officers of procurement agencies.
  - Increase the types of activities prohibited by the Act.
  - Inside bid-rigging and unfairly influencing the public procurement process was made punishable by 5 years' imprisonment or a JPY 2.5 million fine.
  - When a case of bid-rigging involves public officials, the investigation will be publicly announced.
- Based on the ACEPIBR, the Fair Trade Commission demanded on 8 March 2007 that the Minister of Land, Infrastructure and Transport improve measures after bid-rigging in floodgate projects procured by the Ministry.

## Kazakhstan

Information not available.

## **Korea**

No new developments.

## **Kyrgyz Republic**

- New standard procurement procedures were approved in October 2006. The procedures allowed a procuring organization to rely on price quotations and price lists without using the standard package of tender documentation. Failure to comply with procurement procedures is punishable by penalties or warnings.
- The Governmental Resolution on the Law of Public Procurement Realization was approved in January 2007. The Resolution aimed to improve regional use of public funds concerning public procurement of goods and services.
- In 2007, the World Bank assessed Kyrgyzstan's public procurement system using the Bank's methodology. As a result of the assessment, the State Public Procurement Agency issued an Order on the Termination of Procedure Agreement in September 2007. The State Agency on Public Procurement is also drafting a law to implement e-procurement.
- In accordance with the national policy to fight corruption and the Governmental Resolution in October 2007, the Ministry of Justice and the State Agency of Public Procurement were authorized to exclude the agreement procedure in the Law on Public Procurement. As a result, 19 cases had been excluded as of February 2008.
- Based on the Governmental Resolution on a draft law "On the Amendment and Alteration of the Law on Public Procurement," the Agency is developing a plan for a project involving methods of public procurement; termination of procurement procedures; rejection of tenders if inaccurate information on quality and list of items is given while centralized trades are in progress; and cancellation of trades. The draft law is pending in the legislature.
- The government plans to raise penalties for procurement officials engaged in corruption. The project has been agreed by 13 Kyrgyz Ministries and is pending revision at the Ministry of Justice.

## **Macao, China\***

- In 2007, the Commission against Corruption (CCAC) completed a thorough research study on the "System of Procurement of Public Works", providing recommendations to improve the relevant legal system as well as to diminish the loopholes and deficiencies that may exist. The recommendations covered nine areas: including establishing a mechanism to require justification of any decision to exempt public tender or to limit the number of inquiries, and to require the decision to be disclosed to the public; restrict the procedures to purchase in separate part of the construction/work liable to public tender; create a database of contractors; regulate the procurement of service (conception and monitoring) or additional construction; define the mechanism of inclusions, categorizations, and removal according to the contractor's performance and capacity; define general selection criteria; create instructions to regulate the selection committee; establish a mechanism to prevent conflicts of interests; and create instructions to demand that the contents and line of negotiations have to be pre-determined and recorded.
- In the 1st quarter of 2008, the Office of the Secretary for Transport and Public Works promulgated the "Instructions on the Expenditure on Public Works and the Acquisition of Properties and Services." All the public departments in this area are obliged to conform to the Instructions. This effort aims to address different interpretations of legislation and rules by different departments by giving clear, concise and standardized guidelines on the following topics: the selection of procurement method; the setting up of a committee that verifies the eligibility requirements and the setting up of an evaluation committee; the selection criteria; the amount of additional works; the recusal system; and the monitoring mechanism of the execution of works.

## **Malaysia**

- In 2007, the government announced that there will be fewer negotiated tenders because of complaints about projects that were negotiated directly with the vendor.

## Mongolia

- A new Law on Public Procurement by the resolution of the State Great Khural entered into force on 15 February 2006. A number of procedures and orders to implement the law were approved by the Ministry of Finance. All related legislation, procedures, orders, and manuals regarding the Law on Public Procurement are posted on the web site managed by the MoF.
- The IAAC in collaboration with Transparency International Mongolia organized training on preventing corruption in the public procurement process for civil servants, general managers of public budget, and staff of legal institutions. Participants received training manuals.
- The Government discussed recommendations that were made by a consultative workshop that was held in collaboration with Mongolian Employers' Federation. As a result, a working group that included civil society members was established to monitor public procurement and the procedure for providing special licenses.

## Nepal

- Parliament passed the Public Procurement Act in 2007. A Secretary (a special class officer) has been appointed to supervise, monitor and implement public procurement.
- CIAA officers investigate corruption cases involving public procurement and verify whether the procedure conforms to the Public Procurement Act.

## Pakistan

- The Thematic Review Report recommended that Pakistan consider reviewing and modernizing its procurement framework at the sub-national level. In that vein, the Government of Sindh adopted the Public Procurement Rules in 2004 and established a Public Procurement Regulatory Authority (SPPRA) in 2008. The Government of Balochistan Province has also adopted the Rules. The Government of NWFP has promulgated the Procurement of Goods, Services and Consulting Services Ordinance 2002. It has also enacted the Consulting Services Rules 2002 and the Goods, Works, and Services Rules 2003. The government of Punjab promulgated the Punjab Procurement Regulatory Authority Ordinance in April 2007.
- The Thematic Review's Country Report on Pakistan is to be clarified in the following points:
  - The Public Procurement Rules are not applicable to provincial governments unless specifically adopted.
  - The Report states that authorities may exempt any object or class of objects from the Public Procurement Rules. However, Section 21 of the Public Procurement Authority Ordinance, 2002 actually empowers the Federal Government may then grant exemptions; the Authority only provides recommendations to the Federal Government.
  - The present financial limit for the Request for Tender (RFQ) method is PKR 100 000.
  - The term "emergency" is defined in section 2(g) of the Public Procurement Rules to mean "natural calamities, disasters, accidents, war and operational emergency which may give rise to abnormal situation requiring prompt and immediate action to limit or avoid damage to person, property or the environment."
  - The Report states that the Public Procurement Rules do not allow bids to be opened immediately after the tendering period. However, Rule 28(1) states that bids will be opened at least 30 minutes after the deadline for submitting the bid. The date for opening the bids and the last date for submission of bids shall be the same.
  - The Report states that there is no mechanism (except judicial recourse) to review a procuring agency's decision to debar a contractor. In fact, Rule 48 of the Public Procurement Rules 2004 allows a bidder to complain to a committee constituted within the procuring department before seeking judicial review.
  - The Report states that information about pre-qualification procedure and debarment is not available. In fact, Rule 16 requires agencies to announce in the prequalification documents all information required for pre-qualification. This includes instructions for preparing and submitting prequalification documents, evaluation criteria, a list of documentary evidence required, as well as any other information deemed necessary. Rule 16(4) specifically states that the procuring agency shall communicate to an unsuccessful candidate the reasons why he/she was refused prequalification. Rule 19 requires a decision to debar a contractor

or supplier to be publicized and communicated to the Authority. A list of debarred firms is available on the website of the Public Procurement Regulatory Authority.

- The Report recommended that Pakistan provide a clear and uniform definition of conditions for disqualification and debarment, as well as a standardized review mechanism at the administrative level. In fact, Rule 19 requires the establishment of such a mechanism based on the nature and sensitivity of the procurement. Pakistan believes that a uniform mechanism at the central level and at every procuring agency would not be advisable. However, Pakistan is considering the use of standard bidding documents.

### **Palau**

- Congress has passed amendments to the Procurement Law to allow disbarment proceedings against dishonest vendors. On 3 January 2007, Congress also passed legislation streamlining the requirements for small purchases.
- On 25 July 2007, the Office of the Public Auditor and the Palau Chamber of Commerce discussed creating a partnership for curbing corruption in government procurement. The initiative also aimed to provide a mechanism for protesting and mediating improperly awarded procurements. Palau sought technical and financial assistance from ADB to design and implement the project.

### **Papua New Guinea**

- Public procurement is governed by the Public Finance Management Act 1992. The Act establishes a Central Supply and Tenders Board that oversees budgeting of government goods and services. Recently, the threshold for procurements requiring public tender was raised from PGK 300 000 to 1 million.

### **Philippines**

- The Government Procurement Reform Act 2003 has resulted in a simplification of the procurement process; establishment of an electronic procurement system and non-discretionary selection criteria; observance of bidding processes by civil society organizations; presence of clearly defined protest mechanisms; and makes sanctions available. The Government Procurement Policy Board instituted a national training program which covered 16% of national government agencies and 83% of Local Government Units. The Act removes discretion in pre-qualification of suppliers and contractors. It also allows observers from the private sector (such as a professional group) and NGOs.
- There are customized manuals in nine agencies that account for 60-70% of government procurement.
- In 2006, the Office of the Ombudsman (OMB) and Procurement Watch drafted Operational Guidelines on the Bids and Awards Committee to provide observer feedback and a complaints handling mechanism. Reports of deviations from procurement law are submitted to the Office of the Ombudsman, which gives priority to investigating and prosecuting these complaints.
- Also in 2006, the Government Procurement and Policy Board has issued Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants for certain offenses, including “Any documented unsolicited attempt by a bidder to unduly influence the outcome of the bidding in his favor.” The guidelines define blacklisting as “an administrative penalty disqualifying a person or an entity from participating in any government procurement for a given period.”
- The OMB organized the Procurement Training for Trainers, Observers and Monitors from December 2006 to August 2007. The observers are representatives of NGOs. Procurement Watch is responsible for deploying the trained observers. More than 300 observers have been trained.
- In 2007, the OMB, Asia Foundation and G-Watch conducted training seminars on the Procurement Law and on monitoring the implementation and award of contracts.
- The OMB drafted the Tripartite Code, a code of ethics for suppliers, the Bids and Awards Committee, and procurement observers. The Code aims to ensure transparency and fairness. It

also institutes a no-gifts policy. Observers are asked to attend all stages of the bidding procedure.

- A joint project between the OMB and the European Commission produced manuals for observers.

### **Samoa**

- Under the Public Finance Management Act 2001, the Treasury Instructions and the Public Bodies (Performance and Accountability) Act 2001, tender procurement procedures are based on international best practice similar to those set by the World Bank and the ADB. A Tenders Board chaired by the Minister with certain heads of Ministries screen and approve tenders for public procurement of goods and services. Tender is open to all the bidders.

### **Singapore**

No new developments.

### **Sri Lanka\***

- In 2006, cabinet approved the Government Procurement Guidelines 2006 which replaced the previous rules and enhanced transparency.
- In 2007, the National Procurement Agency was established to revise, adopt and monitor procurement procedures. The Agency issued revised guidelines on procurement of goods, works and services. The regulations were implemented in 2006. A manual on the procedure has been prepared.
- In 2004-2007, the Agency trained all government bodies involved in procurement.
- Currently, the Agency's operations have been suspended and its functions have reverted to the Ministry of Finance.

### **Thailand**

- In 2006, Thailand amended the Government Procurement Act and Regulations, including modernizing rules and regulations on government procurement according to the principles established by the United Nations Commission on International Trade Law (UNCITRAL).
- Also in 2006, the National Counter Corruption Commission organized a seminar on "Conflict of Interest and Public Procurement" for 4,000 participants from 14 provinces. Thailand also participated in the APEC Seminar on "Transparency in Procurement and E-Procurement" in Hanoi, Vietnam (5-6 September 2006).
- In September 2007, the Ministry of Finance finished drafting the Decree on Government Procurement and was expected to hold public hearings on this decree.
- Thailand participated in the 10<sup>th</sup> and 11<sup>th</sup> Sessions of the UNCITRAL Working Group I (Procurement) on "Possible Revisions to the UNCITRAL Model Law on Procurement of Goods, Construction and Services" in September 2006 and May 2007.
- In April 2007, Thailand collaborated with the World Bank and assessed the public procurement system in Thailand using the OECD/DAC Baseline Indicator System (BIS). The exercise identified strengths and weaknesses in four areas: (1) Legislative and Regulatory Framework; (2) Institutional Framework and Management Capacity; (3) Procurement Operations and Market Practices and (4) the Integrity of the Public Procurement System. The assessment highlighted areas to improve public procurement, mainly (i) enhancing the existing legislative and regulatory framework; (ii) standardizing procurement practices, and (iii) developing a monitoring system to evaluate the performance of government procurement agencies at the central and local levels.

### **Vanuatu**

Information not available.

### **Vietnam**

Information not available.