ADB/OECD Anti-Corruption Initiative for Asia and the Pacific

Curbing Corruption in Public Procurement in Asia and the Pacific

Progress and Challenges in 25 Countries

Asian Development Bank
Organisation for Economic Co-operation and Development

Publications of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific

- Denying Safe Haven to the Corrupt and the Proceeds Corruption: Enhancing Asia-Pacific Cooperation on Mutual Legal Assistance, Extradition, and Return of the Proceeds of Corruption. Manila: ADB/OECD, 2006.
- Anti-Corruption Policies in Asia and the Pacific: Progress in Legal and Institutional Reform in 25 Countries. Manila: ADB/OECD, 2006.
- Knowledge – Commitment – Action against Corruption in Asia and the Pacific. Proceedings of the 5th Regional Anti-Corruption Conference held in Beijing, People's Republic of China, in September 2005. Manila: ADB/OECD, 2006.
- Anti-Corruption Action Plan for Asia and the Pacific with country endorsing statements. Manila: ADB/OECD (2002; reprinted 2005).
- Curbing Corruption in Tsunami Relief Operations. Manila: ADB/OECD/TI, 2005 (available in English, Bahasa, Sinhala, and Tamil languages).
- Controlling Corruption in Asia and the Pacific: Proceedings of the 4th Regional Anti-Corruption Conference held in Kuala Lumpur, Malaysia, in December 2003. Manila: ADB/OECD, 2005.
- Anti-Corruption Policies in Asia and the Pacific: The Legal and Institutional Frameworks. Manila: ADB/OECD, 2004.
- Effective Prosecution of Corruption. Manila: ADB/OECD, 2003.
- Taking Action Against Corruption in Asia and the Pacific: Proceedings of the 3rd Regional Anti-Corruption Conference held in Tokyo, Japan, in 2001. Manila: ADB/OECD, 2002.
- Progress in the Fight against Corruption in Asia and the Pacific: Proceedings of the 2nd Regional Anti-Corruption Conference held in Seoul, Korea, in 2000. Manila: ADB/OECD, 2001.
- Combating Corruption in Asia and the Pacific: Proceedings of the Manila workshop held in 1999. Manila: ADB/OECD, 2000.

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Contents

Abbreviations and Acronyms

ADB	Asian Development Bank
APEC	Asia-Pacific Economic Co-operation
AUD	Australian dollar
BDT	Bangladesh taka
CFCPP	Committee for Financial Control and Public Procurement (Kazakhstan)
COGS	Controller of Government Supplies (Fiji Islands)
CPAR	Country Procurement Assessment Report (published by the World Bank)
CPGs	Commonwealth Procurement Guidelines, January 2005 (Australia)
CPTU	Central Procurement Technical Unit (Bangladesh)
CVC	Central Vigilance Commission (India)
FMA Act	Financial Management and Accountability Act 1997 (Australia)
GFPPM	Government Financial Policies and Procedures Manual (Cook Islands)
GPL	Government Procurement Law (P.R. China)
HKD	Hong Kong dollar
ICGP	institution for centralized government procurement (P.R. China)
IDR	Indonesian rupiah
INR	Indian rupee
JPY	Japanese yen
KGS	Kyrgyz som
KHR	Cambodia riel
LPP	Law on Public Procurement (Kazakhstan)
MPI	Ministry of Planning and Investment (Vietnam)
MYR	Malaysian ringgit
NGO	nongovernmental organization
NPR	Nepalese rupee
OECD	Organisation for Economic Co-operation and Development
OPA	Office of the Public Auditor (Palau)
PBO	Prevention of Bribery Ordinance (Hong Kong, China)
PFMA	Public Finance Management Act 2001 (Samoa)
PGs	Procurement Guidelines (Samoa)
PKR	Pakistan rupee
PPCD	Procurement Policy and Coordination Department, Ministry of Finance (Mongolia)
PPLM	Public Procurement Law of Mongolia
PPR 2004	Public Procurement Rules 2004 (Pakistan)
PPRA	Public Procurement Regulatory Authority (Pakistan)
PPS	Public Procurement Service (Korea)
PRA	procurement regulatory authority (P.R. China)
PSA	Public Service Act (Samoa)
ROPMP	Regulation of the Office of the Prime Minister on Procurement 1992, as amended to Regulation of the Office of the Prime Minister on Procurement No. 6, 2002 (Thailand)
SGD	Singapore dollar
SOE	state-owned enterprise
SPR	Stores and Procurement Regulations (Hong Kong, China)

THB	Thai baht
UN	United Nations Organisation
UNCITRAL	United Nations Commission on International Trade Law
USD	United States dollar
VND	Vietnamese dong
WST	Samoa tala
WTO	World Trade Organization
WTO-GPA	World Trade Organization Government Procurement Agreement

Foreword

Today, the fight against corruption enjoys governments' and societies' highest attention throughout the Asia-Pacific region. As of September 2006, 27 countries and economies of the region have taken action against corruption and committed to establish and maintain the high standards for safeguards against corruption of the Anti-Corruption Action Plan for Asia and the Pacific.

By endorsing the Action Plan, the Initiative's member countries have committed to establish "appropriate transparent procedures for public procurement that promote fair competition and deter corrupt activity," as defined under the Anti-Corruption Action Plan's first pillar. The countries have also committed to "review laws and regulations governing public licenses, government procurement contracts or other public undertakings, so that access to public sector contracts could be denied as a sanction for bribery of public officials," as stated under the Action Plan's second pillar.

The member countries of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific attach high priority to the fight against corruption in public procurement. In July 2004, member countries of the Initiative decided to dedicate the Initiative's first thematic review to curbing corruption in public procurement. The review seeks to assist governments in understanding better the corruption risks inherent in their countries' institutional settings and procurement practices. It also strives to provide governments with an analytical framework to design rules, procedures, and policies to bolster transparency and integrity in public procurement.

The review was based on self-assessment reports that the Initiative's then 25 member countries submitted to the Secretariat; on discussions that the Initiative's Steering Group had during their 6th, 7th, and 8th meetings in 2005 and early 2006; and on information collected by various international and regional organizations of which the 25 countries are members. Some of these organizations have conducted reviews of procurement systems with regard to aspects other than countering corruption risks. For example, the World Bank has published a series of Country Procurement Assessment Reports; the OECD has conducted roundtables jointly with the World Bank to strengthen procurement capacity in developing countries and has, in November 2004, conducted a Global Forum on Governance: Fighting Corruption and promoting integrity in public procurement; the APEC Government Procurement Experts Group has undertaken a review of its member countries' procurement systems to monitor the application of the APEC Non-binding Principles on Government Procurement; and the World Trade Organization has conducted country studies to assess compliance with its rules and agreements. The present publication complements these studies of procurement systems.

This report was prepared by the Secretariat of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific. It describes the procurement systems as of May 2006; however, changes in Vietnam's regulatory framework that came with the entry into force of Vietnam's Law on Procurement on 1 April 2006, are not reflected in this document. The report was approved in written procedure by the Initiative's Steering Group in September 2006. Given the rapid reform in the area in many Asian and Pacific countries, some of the information contained in this report may quickly require updating.

The report is the result of the collaborative efforts of several individuals, notably Frédéric Wehrlé, Coordinator for Asia-Pacific, Anti-Corruption Division, OECD, and Jak Jabes, then Director of the Capacity Development and Governance Division at ADB, who jointly directed the project. The report was prepared by Joachim Pohl, Project Coordinator, Anti-Corruption Initiative for Asia-Pacific, Anti-

Corruption Division, OECD. Every effort has been made to verify the information contained in this report. However, the authors disclaim any responsibility regarding the accuracy of the information or the effectiveness of the regulations and institutions mentioned therein. ADB's Board and members and the OECD and its member countries cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

The term "country" as used in this report also refers, as appropriate, to territories; the designations employed and the presentation of the material do not imply the expression of any opinion whatsoever concerning the legal status of any country or territory on the part of ADB's Board and members and the OECD and its member countries. For convenience, monetary values mentioned in the document have been converted from the respective national currencies to United States dollars by the reporting countries themselves or according to the approximate exchange rates as of August 2006.

Executive summary

Addressing corruption in public procurement is an important component of any effective anti-corruption strategy. Recognizing this, the 27 member countries of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific have given this area high priority on their reform agenda. To assist governments in understanding better the corruption risks inherent in their countries' institutional settings and procurement practices and to identify priorities for reform, 25 member countries of the Initiative conducted an in-depth thematic review of the mechanisms in place for checking corruption in their procurement frameworks under the umbrella of the Initiative. The thematic review, completed in the first half of 2006, was also done to provide governments with an analytical framework to design rules, procedures, and policies to bolster transparency and integrity in public procurement.

This report is an outcome of that thematic review and is based on the Initiative's member countries' self-assessment reports, publicly available information, and discussions held by experts and policy makers from the Initiative's member countries in 2005 and 2006. The report constitutes the first region-wide analytical review of procurement systems with the goal of identifying and eliminating risks of corruption. It complements the studies of procurement systems conducted by other regional and international institutions and initiatives, such as the OECD[1], the World Bank, APEC, and the WTO.

The report's first section presents a horizontal, cross-regional analysis. The second part contains individual country reports that show the various national mechanisms for ensuring integrity in a given country's procurement framework.

Recent years have brought about significant progress…

The priority that Asia-Pacific countries attach to anti-corruption reform in public procurement is demonstrated by the magnitude of recent efforts to reform procurement systems. These reforms have moved many countries forward in the process of establishing regulations, strengthening institutions, standardizing practices and procedures, and implementing these rules.

Progress has been particularly encouraging in the area of establishing regulatory frameworks. About one-third of the countries that participated in the review passed new or substantially overhauled rules between 2000 and 2006; reform efforts were still ongoing in a number of other countries at the time of publication of this report. In the design of these frameworks, a significant proportion of countries embraced the standards of good practice that were developed internationally. These efforts to establish regulatory frameworks are particularly rewarding, as stable and operational regulations constitute the basis for all efforts to protect public procurement systems against corruption risks.

Significant progress has also been made in the standardization of procurement processes. Standardization makes processes more transparent, reduces room for discretion and malicious altering of procedures, and greatly facilitates external review. A number of countries have established centralized bodies that define and harmonize the development of procurement policies, standard documents, and manuals, and oversee the uniform implementation of these policies and staff training.

1 Such as the OECD "Global Forum on Governance: Fighting Corruption and Promoting Integrity in Public Procurement", 29-30 November 2004 and the roundtables that the OECD conducted jointly with the World Bank to strengthen procurement capacity in developing countries.

As another measure to standardize procurement processes, some countries have introduced anonymous, Internet-based procurement procedures. The Internet is increasingly used to disseminate information about procurement opportunities, transfer documents, and provide information about finalized procedures, thus allowing wide access to information at low cost. Efforts to further enhance the use of the Internet continue.

Most countries recognize the importance of bolstering integrity within procurement entities and among their staff. Institutional arrangements such as staff rotation and the designation of panels entrusted with decisions instead of individual agents are gaining ground. "Integrity pacts," comprehensive agreements concluded for individual procurement procedures, have also become ever more common in many countries, especially in countries where corruption is generally a significant challenge.

Sound frameworks are an indispensable basis for curbing corruption in public procurement; yet if these frameworks are not implemented thoroughly, they will provide no safeguards against corruption. Many countries have made progress in ensuring that regulations are followed strictly and uniformly. Model documentation is being developed and procurement staff in many countries are being trained in the rules and in professional conduct to give the reforms full effect.

…but challenges remain

Despite these efforts, challenges in curbing the risks of corruption inherent in government purchases still lie ahead for many countries in the region. Most of these challenges concern the existence, scope, and thoroughness of regulation of procurement frameworks.

A number of countries have only rudimentary frameworks for procurement. In many countries, spending policies and procedures remain too often dispersed in several decrees, executive orders, or even nonbinding guidelines, and great discretion is left to the lower echelons of the administration. Conflicts with higher-ranking legislation and between numerous executive orders sometimes render these frameworks vulnerable to ambiguity.

Some countries have passed detailed procurement regulations but do not apply these to certain sectors, such as security or military procurement. Other countries exempt certain procuring entities or certain goods and services from the application of procurement rules. These exempt areas may constitute very large proportions of public purchases. However, substitute regulations that define the procurement framework in these exempt areas seldom exist.

Also, the procurement frameworks of a significant number of countries remain somewhat incomplete in the procurement phases they regulate. Instead of covering the whole procurement cycle from planning to implementation control, regulation is often limited in these countries to specific phases of the process, such as selection. Often, planning or implementation is not regulated at all, or is subject to general contract laws that may be decades old. Experience has shown that the definition of "needs" and the delivery of the purchased goods or services are particularly prone to corruption: these procurement phases also often escape the scrutiny of auditors and the general public. Hence, the fight against corruption in procurement would benefit amply from regulatory efforts in these areas.

Particular challenges also remain in the regulation of sanctions for corruption, a popular mechanism to deter corruption. In some countries, the preconditions for the application of sanctions are not regulated diligently enough. Ambiguous preconditions and unclear competencies and procedures for debarment, for instance, create significant new corruption risks, and may affect the trust of honest suppliers in the procurement process, and lack of trust could in turn lead to their abstention.

Many countries must also boost their efforts in ensuring thorough and uniform implementation of procurement regulations. Training, enhanced administrative and judicial review systems, and efforts to tackle bribery on the supply side of corruption all lead the way to significantly reduced corruption in public procurement.

Recommendations for the way ahead

As a result of the findings of this review, member countries of the ADB/OECD Anti-Corruption Initiative have agreed on two sets of recommendations to policy makers. The first set focuses on areas that the horizontal analysis identified as priorities for reform for the whole Asia-Pacific region. The second set of recommendations seeks to encourage anti-corruption reform in public procurement at the country level.

Part 1
Inventory of measures for curbing corruption in public procurement in Asia-Pacific

1. Curbing corruption through comprehensive regulations

A clear and comprehensive regulatory framework for the conduct of public procurement is a fundamental prerequisite for curbing corruption in public contracting. It is the basis for the development and application of equal practice, for transparency and fairness, and for meaningful review and control mechanisms. In some instances, aspects of procurement regulation may be addressed in a broader framework that covers a range of related public sector activities. In the absence of a sound regulatory framework, any form of manipulation and corruption may occur and remedies for such practices may be difficult to implement. A closer analysis of procurement systems reveals that most countries that do not have a comprehensive procurement framework do not dispose of essential features required to curb corruption and to maintain sufficient control mechanisms. In these countries, a very substantial proportion of the public budget—procurement amounts to up to 20 percent of public expenditure in some countries—is at risk of being wasted or embezzled.

a. Existence of procurement rules and legislation

A majority of the countries in the region (Australia; Bangladesh; P.R. China; Hong Kong, China; Indonesia; Japan; Korea; the Kyrgyz Republic; Mongolia; Pakistan; Palau; Philippines; Singapore; Vanuatu; Vietnam) have passed comprehensive and widely applicable public procurement laws or regulations. Some of these frameworks are the fruit of recent efforts to establish or substantially modernize procurement. Indonesia and Mongolia passed new procurement frameworks in 2000; Mongolia, in 2005, was preparing institutional and procedural improvements. The Philippines established new procurement rules in 2002. P.R. China did the same in 2003, as did Bangladesh, the Kyrgyz Republic, and Pakistan in 2004. A similar reform process started in Kazakhstan in 2002. In 2005 India revised its General Financial Rules, which lay down the principles for central government procurement, and passed new procedures for the defense sector. Indonesia has adjusted its procurement framework repeatedly in 2003–2006. Vietnam enacted procurement legislation in mid-2006, and supplementary decrees are expected to be passed in the second half of 2006. Papua New Guinea's procurement system was undergoing reform in 2006, following the promulgation of new legislation on finance instructions in relation to procurement. Bangladesh, the Fiji Islands, and Nepal are preparing new procurement legislation, and Thailand is modernizing its procurement regulations by revising the existing regulation.

Some of the recently adopted laws and regulations—notably those of Bangladesh, the Kyrgyz Republic, Mongolia, and Pakistan—have been strongly inspired by the model law on public procurement of the UN Commission on International Trade Law (UNCITRAL). The proposal to revise Thailand's procurement regulations is also based on the model law. However, regulations on public procurement in Cambodia, Malaysia, and Nepal are still fragmented and are spread over several legal documents.

Procurement rules need to be unambiguous and reliable over time to provide for steady and consistent practice and transparency, and to ensure that training programs in the subject are not made obsolete by constant changes in the procurement framework. Today, there is a growing consensus that the stability of the framework over time clearly benefits from the establishment of the constitutive elements of procurement rules in parliamentary law. Regulation at this level protects the framework against short-lived modifications through government decrees and confusion caused by overriding or conflicting parliamentary laws. Violations of procurement rules laid down as guidelines or in manuals may also fall out of the scope of judicial review and may thus go unsanctioned, as such rules are often not legally binding. Given the specific legal traditions and very particular circumstances of some countries, regulation at a lower level may also achieve the goal of stability.

Many countries (such as Bangladesh; Cambodia; Hong Kong, China; India; Japan; Korea; Malaysia; Nepal; Pakistan; Samoa; Singapore; and Thailand) have passed substantial elements of their procurement regulations or even the entire framework at the level of executive orders or decrees. In Papua New Guinea, the centerpiece of procurement principles and procedures is contained in a "Good Procurement Manual and Operation Manual". While this level of regulation is recommended for less elementary issues such as threshold values, technical requirements, or similar procedural details that may require adaptation to evolving circumstances, regulating the basic rules of public procurement at this level may undermine stability and transparency. As such a compound of parliamentary and executive regulations constitutes a significant legislative challenge, few of the countries covered by this review have for the time being achieved the balance sought.

b. Scope of the procurement rules

In most of the countries surveyed, the reach of the procurement framework is restricted in two dimensions. On the one hand, many frameworks do not cover the full project cycle, i.e., from procurement planning to implementation and delivery. On the other hand, some frameworks do not apply to certain state levels or to certain categories of goods or services. These limitations on the scope of application of sound procurement regulations diminish the effectiveness of these regulations in curbing corruption.

Regulations covering the entire procurement cycle

Experience shows that procurement planning—in particular, needs assessment and definition of technical specifications—and the delivery phase are particularly exposed to corruption. If the process is not controlled and properly regulated, a "need" or requirement can be created arbitrarily, and substandard products or services can be delivered, thus providing margins for kickbacks. Corruption risks in these project phases are particularly difficult to manage. Consequently, the scope of application of a procurement regulation must cover these phases of the project cycle and sets ou clear rules for contract management and implementation control.

In the Asia-Pacific region, the scope of procurement regulations varies from country to country. The entire procurement cycle, from procurement planning to implementation control, is covered by the procurement laws of Hong Kong, China; Korea; the Philippines; and Thailand. Australian and Kyrgyz regulations also cover procurement planning, requiring, for instance, the publication of annual procurement plans. In Australia and Korea, these plans outline forthcoming key procurement projects, while Kyrgyz law does not specify their exact contents. India's Defense Procurement Procedures, which took effect in 2005, also provide for the publication of midterm and short-term procurement plans to increase transparency.

Some other countries' frameworks, in particular those inspired by the UNCITRAL model law (e.g., those of Bangladesh and Pakistan), focus mainly on the mechanism for selecting the supplier—a scope that the model law itself qualifies as incomplete. The remaining issues, such as procurement planning and approval of delivery of the procured goods and services, are to some extent covered by the

countries' budget and general contract laws. Such regulations, designed for more general purposes and often dated, rarely respond to the specific risks of corruption in public procurement.

Regulations applying to all procurement entities

Many general procurement frameworks cover only a part of a given country's purchases of goods, works, and services. Some regulations do not apply to certain procuring entities, or to goods, works, or services for specific uses. This limited coverage may jeopardize the effectiveness of improvements in corruption prevention achieved through reforms of the general procurement framework.

The procurement rules apply to all administrative entities at local and national levels in P.R. China; Korea; the Kyrgyz Republic; Mongolia; the Philippines and Samoa. Except for P.R. China and Korea, these countries, as well as Kazakhstan, also apply the rules to procurement by some or all state-owned or state-controlled enterprises. Recently adopted procurement rules in India, Indonesia, and Pakistan apply only at the central level; in these countries, procurement regulations at lower levels vary in extent and are sometimes significantly less developed. Central-level reforms thus affect only a limited proportion of the procurement in these countries.

Further limitations on the applicability of the regulatory framework concern certain goods and services. Many frameworks explicitly exclude a number of sectors. Goods and services for national defense and security are procured under specific regimes in Bangladesh; P.R. China; India; Indonesia; Korea; the Kyrgyz Republic; Mongolia; and Thailand. Items that are not security-sensitive may also be exempt. Bangladesh, India, and Korea have passed special regulations in this area, but other countries have no consistent regulatory framework for this sector at all—although it makes up a significant proportion of gross public expenditure. The two procurement laws in P.R. China also do not apply to emergency and disaster relief procurement or to procurement below a certain value limit defined by the administration. Indonesia and Mongolia empower the executive to exempt other matters besides security-sensitive goods and services. Vanuatu's procurement law does not apply to purchases below approximately USD45,000, but these purchases are governed by a separate regulation.

c. Harmonization of procurement rules and policies

Consistency of procurement rules and policies throughout a given country is widely considered desirable. Bidders should not face different procedures when bidding on contracts in different parts of the country or dealing with procuring agencies in different ministries. Without uniform rules, the effectiveness of judicial review and the establishment of steady and predictable practice may also suffer. Federal states face particular challenges in this regard, as different procurement rules may apply to federal subjects and at the national level, as is the case, for instance, in India and Pakistan. Indonesia and Thailand also apply different procurement rules at national and subnational levels. However, the Thai procurement rules applied by local government agencies and state-owned enterprises are based on the same key principles as the rules applied at the central level.

Some countries, such as India and Pakistan, empower the individual procuring entities to define a significant range of procurement rules. In India, procurement entities are responsible for developing detailed instructions, handbooks, and model documents. In Pakistan, procurement entities may define, for instance, the mechanisms and manner of debarring companies from future tenders.

To foster the development of uniform procurement practice and policies, many countries (e.g., Bangladesh, Pakistan, Papua New Guinea, Thailand) have established a central procurement authority. Such authorities do not undertake procurement themselves but rather supervise the individual procuring entities, monitor compliance with the regulatory framework, set and harmonize policies, and recommend reforms.

2. Curbing corruption through transparency and fairness

Transparency and fairness are essential preconditions for containing corruption in public procurement. Transparency renders abuse difficult and increases the likelihood of detection. Also, as bidders must trust in the fairness of the process to participate in a tender, the perception of transparency is crucial in attracting the largest possible number of tenderers and increasing competition. Ample participation also protects against bribery, favoritism, nepotism, and collusion—forms of corruption that become difficult to sustain when many actors have stakes in the process.

A transparent and fair procurement process requires legislative and administrative measures in four dimensions: transparency of the proceedings, protection against corruption-induced manipulation of the procurement method, fair prequalification procedures, and transparent and fair selection of the winning tenderer.

a. Transparent proceedings

Transparency requires, first of all, clearly defined procurement parameters—such as conditions of participation, eligibility of suppliers, timelines, requirements, technical specifications for the procured goods or services, criteria for the rejection of a bid or the disqualification of a supplier, criteria for the evaluation of offers, contract terms—and transparent and fair evaluation of all proposals and selection of the winning tenderer. Opaque dimensions create opportunities for corruption-induced manipulation. Thus, all these objective criteria must be clearly defined and stated beforehand. Second, information about the procurement procedures and their regulatory framework must be available to all potential suppliers in understandable terms. Third, transparency requires easy access by potential bidders to information explaining the procurement procedures, which must be comprehensive.

Well-defined parameters

To ensure transparent parameters for a given tender, the procurement regulations in some countries (e.g., Pakistan, Palau, the Philippines) describe in detail the required content of procurement documents. Besides laws defining the minimum information in tender documents, standard tender and contract documents are used to ensure a high degree of transparency and consistency in P.R. China; Hong Kong, China; Korea; Mongolia; Palau; the Philippines; Singapore; and Thailand. Korea has centralized all major government procurement in a single agency to achieve even greater uniformity. Australia leaves the design of procurement documents partly to the procuring entities, but provides guidance in the development of such standard documentation. In India, the contents of bidding documents, as well as various parameters concerning the execution of the bidding and delivery, are prescribed. Indonesia, Japan, and Pakistan have developed model documents for the procurement of certain goods, but their use is not mandatory and therefore spotty. Pakistan and Vietnam prepare standard documents for broader application, and Samoa also plans to draw up such documents.

The use of comprehensive standard contract documents also helps avoid negotiations at the time the contract is awarded. Unlike negotiations that may be required in the implementation of the procurement contract, negotiations during the awarding of the contract can be avoided. Such negotiations provide opportunities to offer or extort kickbacks or bribes. Their goal of clarifying details of a contract can and should be achieved through a comprehensive definition of contract parameters beforehand. To prevent such negotiations, Kyrgyz law requires the procuring entities to provide a model contract with the procurement documents, and procuring agencies in Australia are encouraged to proceed similarly. Indonesia, Japan, the Kyrgyz Republic, Nepal, and Singapore formally forbid post-tendering negotiations but have no specific mechanism that would render them unnecessary. Despite the corruption risks inherent in negotiations during the awarding of the contract, some countries permit such negotiations under certain circumstances or for certain purposes. India, Kazakhstan, and Korea allow post-tendering negotiations with the potential supplier solely to reduce the price. Pakistan and,

for certain types of contract, Vietnam permit post-tendering negotiations on technical issues that might influence the price—a method that might undermine the effect of the preceding tendering.

Availability of documentation

To render complex procurement procedures transparent and clear to potential suppliers, particular efforts to make known rules, regulations, and procedures are commended. Comprehensive procurement manuals for suppliers have been drawn up in Australia; Hong Kong, China; India; Korea; Singapore; and Thailand. These manuals are easily accessible on the Internet.

Transparent proceedings

Many corruption schemes in the tendering and selection process are based on some form of abuse; transparent proceedings and easy access by bidders to essential information on the tenders are thus key deterrents to corruption in this phase. The opening of bids is a particularly crucial stage, as it constitutes a break in the process. Opening the offers in public or at least in the presence of all bidders or their proxies helps ensure that documents have not been altered or destroyed and allows manipulations to be detected at an early stage. To avoid leakage of information on the lowest bid to a preferred supplier and to exclude late bids, the bid opening ideally takes place immediately after the tender period. This procedure is foreseen in the rules of the Kyrgyz Republic and Vietnam. Procurement laws in P.R. China, Korea, Mongolia, the Philippines, and Thailand require the opening of the bids in public but do not specify that it has to take place immediately after the tender period. Japan requires tenderers or their proxies to be present at the bid opening, but allows noninvolved staff of the procuring entity to take their place as witnesses. There is no regulation concerning the presence of bidders during the bid opening in the Cook Islands; Hong Kong, China; and Palau; the procurement legislation only requires the presence of two officials (Cook Islands), at least two "qualified persons" (Hong Kong, China), or two witnesses (Palau), without, however, specifying the qualifications of these witnesses or defining incompatibilities.

Transparency of the criteria and process of bid evaluation is crucial in bolstering the bidders' trust in the fairness of the procedures. Just as bidders should be allowed to be present at the opening of the bids, bidders should also be informed of the outcome of the selection, allowing them to review the evaluation result. Both winning and losing bidders are informed in Australia; the Cook Islands; Hong Kong, China; Japan; the Kyrgyz Republic; Mongolia; Pakistan; Palau; and Vietnam. In addition, the Kyrgyz Republic and Vietnam publicize the evaluation results in a procurement bulletin. Korea and Hong Kong, China publish this information in the government gazette and on the Internet, and make additional information available to those who request it. In Australia, details of awarded contracts valued at more than AUD10,000 (approximately USD7,700) must be published on the Government's central procurement Web site. Hong Kong, China also publishes information on awarded tenders on a central Web site. In Thailand, the identity of the selected supplier is announced on a Web site and the reasons for the award to this supplier are made available on request. On the other hand, legislation in Bangladesh, India, and the Philippines does not explicitly require the announcement of the tendering results to the unsuccessful bidders. In India, the reasons for the selection of the winning bidder must be recorded but are not made available to the bidders.

b. Selection of the procurement method

In most countries covered by this report, procurement by open tendering is the default method of procurement and accounts for the largest share of the value of procured goods and services. But it is not the only method practiced. Most procurement frameworks also provide for other methods, such as restricted tendering, request for proposals, canvassing, reverse auction, and single-source procurement.[2]

[2] Different terms are used for very similar procedures. This report adopts the terminology of the UNCITRAL model law on public procurement.

However, some of these methods, employed to speed up procurement or achieve other advantages, entail specific risks of abuse and corruption. Restricted tendering and single-source procurement, for instance, can be improperly used to select a bribe-paying supplier or to avoid public knowledge and scrutiny. A common corruption scheme is to deliberately create conditions that allow the use of methods such as restricted or single-source procurement, for instance, through deliberate failure of open tendering.

Deviation from standard procedures

The procurement frameworks of various countries foresee conditions under which procurement methods other than open tendering may be used. First, some countries (Australia; Bangladesh; P.R. China; Hong Kong, China; India; Indonesia; Korea; Kyrgyz Republic; Pakistan; Palau; Samoa; Vanuatu) do not require open tendering if the value of the procured goods or services is below a certain threshold and therefore does not warrant a long and complex process like open tendering. To protect against abuse, adequate thresholds must be set and the arbitrary splitting of the purchase into smaller contracts must be prohibited. Furthermore, measures must be taken to prevent repeated orders following an initial lower contract assigned to a certain bidder. Australian, Indian, and Kyrgyz procurement regulations, for instance, explicitly forbid the splitting of purchases. The use of repeated orders is likewise subject to strict conditions in some countries' regulations.

The laws in many countries provide for conditions under which procurement rules do not apply (cases of emergency in P.R. China, Indonesia, Samoa) or alternative methods such as negotiated contracting or limited tendering may be used instead (Australia; P.R. China; Hong Kong, China; India; Kyrgyz Republic; Mongolia). Such provisions, which meet essential practical needs, require sound protection against the deliberate creation of a situation of emergency. Some countries achieve such protection by enumerating the possible grounds for an emergency—as Korea has done—and by excluding delays in procurement scheduling from the definition of an emergency. Other countries (such as Bangladesh; P.R. China; and Hong Kong, China) require the approval of a superior authority for a change in procurement method.

When there are not enough potential suppliers for technical or other reasons, restricted tendering is applied in Bangladesh; India; Indonesia; Palau; and Hong Kong, China; but the justifications for the assumption are not fully clarified in all cases. In addition to the mentioned grounds for changing the procurement method, Bangladesh and Palau allow a change for unspecified reasons, thereby creating a particularly high risk that the default method of open tendering will be circumvented. India similarly permits limited tendering if open tendering is "not in the public interest."

Deliberate failure of tendering

In many countries, receiving an insufficient number of responsive bids—failure of tender—is also often used to justify resorting to negotiated or direct contracting, methods that are particularly vulnerable to corruption. Corrupt procurement personnel can easily stage a failure of tender by setting inadequate bidding conditions or unrealistic or contradictory requirements, specifications, or budgets, or by insufficiently publicizing the bid opening. To protect public procurement against such risks of abuse, tender failure should be avoided as far as possible and mechanisms must be provided for properly managing it if it occurs.

Two measures will help reduce instances of tender failure. One way is to set severe conditions in the procurement regulations for declaring a failed tender. A tender is deemed to have failed if not a single responsive bid was received, in Australia; Hong Kong, China; Korea; Mongolia; the Philippines; Singapore; Thailand; and other countries. In Kazakhstan, a tender failure is declared if only one responsive bid was received. In P.R. China and Vietnam, a failed tender is one where there are less than four bids.

Instances of tender failure can also be reduced by making the bidding known to the greatest number of possible suppliers. While this measure is mainly seen as increasing competition and thus economy in public procurement, it can also help reduce corruption risks. Having a high number of bidders not only increases the chances of receiving responsive bids but also diminishes the risk of collusion and bidding cartels, and reduces opportunities for favoritism and nepotism. Moreover, strong participation typically reinforces scrutiny of the procurement, as more competitors have an interest in the proceedings.

To attract the greatest possible number of bidders, most countries require the publication of tender opportunities in the press (Bangladesh, P.R. China, Cook Islands, India, Indonesia, Kazakhstan, Kyrgyz Republic, Nepal, the Philippines, Samoa, Vietnam), in government gazettes (P.R. China; Hong Kong, China; Fiji Islands; India; Japan; Korea; Kyrgyz Republic; Vietnam), or on Web sites. In addition, procurement departments are also required (Hong Kong, China) or advised (India) to publish tender openings in selected international journals and to notify consulates and overseas trade commissions where appropriate. Pakistan announces tender opportunities of smaller value on a procurement Web site, and publishes the opening of major tenders in the press as well.

Indeed, the publication of bids on the Internet is becoming increasingly common. Bid openings are published on central Web sites in Australia; Bangladesh; Hong Kong, China; India; Korea; Pakistan; Singapore; and Thailand. In Japan, information is available on the Web site of each government entity and through publicly accessible electronic databases; central websites provide more general procurement information. P.R. China, the Kyrgyz Republic and the Philippines, to varying degrees, also use the Internet to announce tenders. Kazakhstan has launched a database to assist procuring entities and suppliers; not all tenders are listed, however. In this context, it is worth noting that the use of information technology in the dissemination of procurement information shows its advantages only if both the procurement services and the potential suppliers have a sufficient and reliable technical infrastructure. In some countries, the mere availability of the Internet does not yet justify relying on this medium alone.

Unrealistically short bidding periods can further limit participation and possibly lead to failure of tender, collusion, and nepotism. In many countries (e.g., Australia; P.R. China; Hong Kong, China; India; Mongolia; the Philippines; Singapore) the procurement frameworks thus prescribe a "sufficient" period for the submission of bids. Many countries also set minimum periods for the preparation of bids—14 days in the Cook Islands and Singapore; 15 days in the Kyrgyz Republic; 20 days in P.R. China; 21 days in India and Thailand; 25 days in Australia; 30 days in Kazakhstan, Mongolia, Pakistan (for unrestricted/international tendering), and Vietnam; 40 days in Japan. In Nepal and to some extent in Korea, the time allowed depends on the value of the procured goods or service. In Australia and Bangladesh, the minimum submission period can be shortened in cases of emergency. Without such provisions, very long minimum submission periods may force procuring entities into applying emergency procurement procedures, which entail the risks mentioned above. Procurement plans as required in Australia, Korea, and Singapore, for instance, help in the timely preparation of bids for major projects and, hence, in the avoidance of the risks. These countries make their plans for upcoming procurement available on the Internet.

The second requirement for curbing corruption in the context of tender failure is proper management of a failed tender. Regulations must take into account the possibility of tender failure and provide protection against risks of corruption in individual procurement projects. Such protective mechanisms will also make it unattractive for corrupt individuals to stage a failed tender and are thus important means of preventing corruption.

The regulatory frameworks established by countries use different means to curb corruption. Some countries require (e.g., Korea, the Philippines, Thailand) or allow (Mongolia) re-tendering; these countries also require an analysis of the reasons for the failure of the tender. In other countries (P.R. China, Palau), if a tender fails, negotiation is the automatic recourse. Procuring agencies in Japan, Mongolia, and Samoa may either repeat the tender or enter into negotiations. Korea and the Philippines

use the direct contracting method when the second attempt to award the contract through tendering fails. In the Cook Islands and other countries, there are no regulatory provisions at all for tender failure.

In Hong Kong, China a tender that would have failed under the circumstances defined by law can be "rescued": in exceptional cases departments can recommend acceptance of a nonconforming tender to avoid re-tendering but must clearly state the reasons in the tender report. Singapore allows negotiations with bidders if no tender appears to be responsive. Vietnam may extend the bidding period if the bids are fewer than three— technically a failed tender.

Oversight of the selection of the procurement method

Setting clear conditions for deviating from the standard procurement method is necessary but not sufficient to contain the risk of arbitrary selection of procurement method. Verification and oversight of this important decision are essential complements, particularly because manipulations at this early stage are difficult to detect, and even if they are detected, repeating a full tender is often impractical. To meet this objective, the Kyrgyz Republic and Vietnam have opted to require prior approval of the change in the procurement method by an administrative unit at a higher level. In Pakistan and Palau, the deviation from open tendering must be justified in writing. India, under its General Financial Rules, requires the reasons for the resort to single-source procurement in cases of emergency to be recorded and approved beforehand by a competent authority. In Korea, the audit body must receive notice of contracts awarded through methods other than the standard procurement method. Bangladesh and the Philippines, in contrast, do not require the procuring entity to justify the deviation from the standard procurement method and, in addition, exempt this decision from administrative and judicial review.

c. Eligibility and certification

Thematically linked to the selection of the procurement method are restrictions on tendering for public contracts, such as eligibility requirements or certification, which also restrict bidders from participating. The restrictions serve various goals, such as support of national suppliers or small and medium enterprises, efficient handling of procurement process, or protection of procuring entities from fraudulent or incompetent suppliers. Certification procedures generally determine who is eligible to bid.

While all these procedures have legitimate purposes, their utility must be weighed against the potentially greater risk of corruption. Besides limiting competition—and thus increasing the risk of corrupt practices—some of these procedures hold inherent opportunities for corruption and favoritism by virtue of their selection function. These risks can be reduced by a clear definition of the applicable criteria in the law. The relevant regulations must ensure that all applicants are qualified as a matter of principle, that qualification lists are updated regularly, and that any exemptions or disqualifications are made on transparent and nondiscriminatory grounds. Where lists of eligible suppliers are kept, their existence must be made known and the names of the listed companies must be publicly available.

d. Selection of the winning offer

In procurement through tendering, the evaluation and selection of the winning offer can also be manipulated for corrupt ends. Most countries apply two types of criteria to the selection process: positive criteria are used to select the most advantageous bid among responsive bids submitted by eligible bidders, while negative criteria concern the eligibility of the bidders. Both criteria can be misused, however, such that undue advantage is granted to a bidder or competitors are arbitrarily eliminated. While the procurement frameworks of most of the countries assessed in this report contain some protection against both forms of misuse, it appears that some countries underestimate the risk of manipulation through unfair elimination.

Positive selection criteria

Clear and predetermined criteria for tender evaluation help ensure fair, impartial, and transparent selection and eliminate the risk of abuse. The procurement frameworks of most of the countries reviewed meet this condition. The number of applicable criteria should be reduced as far as possible to avoid the arbitrary selection of priorities among the criteria to unduly favor a bidder. For the procurement of goods, works, and standard services under normal circumstances, price is often considered the sole criterion for selecting among responsive bids from eligible and qualified bidders. All other criteria can be expressed as requirements and specifications. The best price is sometimes referred to as the "lowest evaluated price" or as "value for money"; these concepts imply a comprehensive assessment of all costs and benefits of the bids received. Where other criteria are unavoidable, these must be predetermined and, to the extent possible, quantifiable. Ideally, the weight of each of these criteria must be fixed in advance, perhaps through marking schemes that attach coefficients to the various criteria, to avoid improper considerations induced by corruption.

Not all of the surveyed countries have procurement frameworks that meet these standards. The procurement law in the Philippines explicitly states that price is the sole permitted selection criterion for the procurement of goods; at the same time, it allows the selection of a bidder other than the one offering the lowest price, on grounds that are not explicitly stated. Hong Kong, China accepts either the lowest tender or makes use of a marking scheme, which must be approved beforehand by a tender board. In the Kyrgyz Republic and Mongolia, the procuring entities use criteria whose relative weight in the selection must be predetermined. Japanese regulations also identify price as the main selection criterion but allow the use of other criteria as well. The procurement frameworks of the Cook Islands, India, Kazakhstan, Mongolia, Palau, and Vietnam, on the other hand, are silent on the possible selection criteria. In addition, India's General Financial Rules explicitly state that only those criteria mentioned in the bidding documents, and no other, may be considered.

Elimination of bidders

Regarding the elimination of bidders in individual tenders, many countries' procurement laws allow or oblige the procuring entities to disqualify bidders for violating rules or providing false information. While disqualification is certainly an adequate means to eliminate bidders who violate the rules, disqualification procedures can also be abused to favor a candidate.

To counter this risk effectively, the conditions for disqualification must be explicit and proportionate to the seriousness of the violation or the error. However, in contrast to the rather detailed regulations on evaluation criteria and procedures, the conditions and procedures for the disqualification of bidders during the tendering process are rather spare. Where clear criteria are stated, they usually cover fraudulent conduct and provision of false information. Australia, Bangladesh, the Kyrgyz Republic, Mongolia, and Pakistan foresee the possibility of disqualifying a bidder for violation of rules, corruption, or improper conduct. The Kyrgyz Republic, Pakistan, and Vietnam allow or require the authorities to disqualify bidders that have submitted false or incomplete information regarding their qualifications; among these countries, only the Kyrgyz Republic expressly disqualifies bidders who deliberately falsify information, unless the falsification is immaterial to the content of the bid and is immediately rectified by the supplier. To counter the risk of abuse of the instrument of disqualification, the Kyrgyz Republic further requires the consent of a higher authority to render the disqualification of a bidder effective. However, only a few countries have provisions for such procedures.

3. Curbing corruption by promoting integrity of individuals involved in the procurement process

Ensuring the proper conduct of buyers and suppliers is another fundamental element of efforts to curb corruption in public procurement. Proper conduct can be fostered through preventive institutional mechanisms, clear rules on conduct, and sanctions for corrupt behavior.

a. Ensuring proper conduct through institutional mechanisms

Corruption can be further contained through institutional design and measures aimed at developing high ethical standards among the individuals involved in the procurement process.

Control and oversight mechanisms

At the institutional level, control and oversight mechanisms are among the most common means of curbing corruption. Bangladesh, P.R. China, the Cook Islands, the Kyrgyz Republic, Mongolia, the Philippines, and Singapore entrust procurement decisions to groups rather than individuals. Crucial procurement decisions, such as procurement plans and bidder disqualifications, must be approved by a body at a superior level in P.R. China; the Kyrgyz Republic; and Hong Kong, China. In Bangladesh and P.R. China, deviation from the standard procurement method in cases of emergency must be reported to a superior authority. In other countries like Vanuatu, the procurement decision itself must be approved by a superior authority; in the case of Vanuatu, such approval is required for contracts beyond a certain threshold value.

To forestall favoritism, public procurement agents are regularly rotated in the Fiji Islands; Hong Kong, China; India; Korea; Nepal; and to some extent Japan and Singapore. P.R. China also requires bid evaluation by randomly chosen experts.

For their public procurement decisions, Indonesia, Palau, the Philippines, and Samoa rely on (ideally independent) participants from civil society, and some of these countries provide training for these individuals. In Palau, the Chamber of Commerce monitors public procurement. Korea has recently included outside members in its price review council, and involves nongovernmental organizations in important procurement decisions.

Some countries like India, Indonesia, and Pakistan use "integrity pacts" to protect procurement processes from corruption. All potential suppliers that bid for a contract have to sign such pacts with the procuring agency; both parties pledge to refrain from any form of corrupt practice and to establish an external monitoring system. The pacts may call for deposits and sanctions that apply in case of breach of the provisions. Indonesia requires the use of integrity pacts in all government procurement, while Pakistan's national procurement framework requires the use of integrity pacts for public purchases worth more than PKR10 million (about USD170,000). India has applied such integrity pacts in defense procurement since 2005 and for major contracts and plans to extend their use further.

Integrity of procurement agency officials

The preventive measures for procurement agency staff entail the setting up, dissemination, and thorough implementation of clear codes of conduct. Proper business practices among the suppliers' personnel can be achieved through corporate codes of conduct that clearly forbid bribery, by means of an explicit anti-corruption clause in the bidding documents, disclosure of fees and gratuities, and clear guidelines for avoiding or managing conflicts of interest.

To ensure the integrity of procurement agency personnel, a number of countries (Australia, Bangladesh, Fiji Islands, India, Indonesia, Japan, Kyrgyz Republic, Mongolia, Nepal, Palau, the Philippines, Singapore, Thailand, Vietnam) have passed extensive codes of conduct for public officials, including staff of procuring entities. Specific codes of conduct for procurement personnel, taking into

consideration the genuine risks, have been passed in Australia; Hong Kong, China; Korea; and Samoa, among others. However, only some of these codes of conduct—for instance, those in Australia; Hong Kong, China; Indonesia; Japan; the Kyrgyz Republic; Mongolia; the Philippines; Singapore; and Vietnam—specifically address corruption and conflicts of interest.

Different schemes are employed to identify, avoid and manage conflicts of interest. Some rely on transparency, others on incompatibility, and still others on a combination of these two. Transparency requires the disclosure of conflicting interests: if a side activity is the source of the conflict, it may require authorization. The incompatibility principle prohibits activities that typically breed conflicts of interest. Australia, the Cook Islands, Japan, Palau, Samoa, Vietnam, and to a limited extent Korea and Pakistan have opted for transparency to protect against inherent risks. These countries require public officials involved in procurement to avoid conflicts of interest and to disclose them when they occur. Samoa excludes from procurement proceedings officials with declared conflicts of interest.

Fewer countries support the adoption of high behavioral standards with systematic training that addresses corruption risks. Notable exceptions are Hong Kong, China; Korea; and Singapore. Korea has also set up a mechanism for regularly monitoring compliance with these codes. India analyzes repeated irregularities in procurement and issues guidelines and instructions on the basis of the findings. Nepal has begun to train procurement personnel in procurement and technical audit.

Integrity of suppliers

In addition to measures specifically aimed at ensuring the integrity of procuring entities, measures targeting *corporate* integrity are needed to reduce the risk of corrupt practice in public procurement. Measures intended to reinforce the integrity of suppliers have been developed to a limited extent in many countries in Asia-Pacific. In Indonesia, Korea, Pakistan, Palau, and Samoa, bidding documents contain an explicit prohibition against exerting undue influence on the procurement proceedings. In Pakistan, this prohibition applies only beyond a certain value limit. Australia has issued guidelines to potential suppliers highlighting the importance of ethical behavior. Furthermore, companies and subcontractors that wish to participate in public tenders in Korea must set up codes of conduct for their employees and prevent whistleblowers within the company from being disadvantaged. The codes of conduct must contain clauses that prevent undue influence on the procurement process. In Bangladesh and P.R. China, bidders have to declare that they will abstain from unduly influencing the procurement process or outcome; this declaration also binds subcontractors and other third parties.

b. Ensuring integrity through dissuasive sanctions

Effective sanctions constitute strong incentives for both bidders and public servants to maintain their integrity in the procurement process. Such sanctions are usually provided in penal or administrative law. In addition, civil liability for damages can serve as economic sanctions against dishonest acts of bidders.

Penal sanctions

Corruption, whether active or passive, is now penalized in almost every country. Different legislative models exist. Corruption in public procurement is penalized under general criminal law in Australia; Bangladesh; the Cook Islands; the Fiji Islands; Hong Kong, China; India; Japan; Kazakhstan; the Kyrgyz Republic; Mongolia; Nepal; Pakistan; and Singapore. In addition, the Philippines, Thailand, and Vietnam have passed laws for procurement-specific offenses. The Philippines' procurement law, for instance, includes penal sanctions for any form of manipulation of the procurement process. Singapore and Hong Kong, China, on the other hand, have not defined procurement-specific criminal offenses but apply particularly harsh sanctions for fraudulent practices in procurement. Indonesia has specific penal provisions for substandard delivery in construction or security-sensitive procurement. However, various corruption schemes prevalent in procurement are not fully penalized in many

countries. Specifically, bribery through intermediaries is of particular concern, as it is most often not covered by the offense of bribery.

Specific detection mechanisms have been developed to enhance the effectiveness of the penal provisions in Hong Kong, China; Korea; Samoa; Singapore; and Thailand. Among these mechanisms is the legal obligation imposed on procurement agency personnel to disclose attempts by bidders to unduly influence procurement decisions. Korea, in addition, provides a channel for passing on information about corrupt practices in procurement anonymously through a special complaint-and-kickback report center.

Contract termination and liability for damages

Only Australia, Indonesia, Thailand, and—for foreign bribery only—Japan and Korea hold legal persons criminally liable for corruption; in all other countries surveyed, the deterrent effect of penal sanctions is limited to the guilty individual, who is often under pressure to secure a contract for his or her employer. Without criminal liability of legal persons, few incentives exist for companies to stay away from corrupt business practices in procurement. Economic sanctions in the form of civil liability for damages and debarment have thus been introduced to press companies to battle corrupt practices in procurement.

A contract won through corrupt practices may be terminated in Bangladesh; Hong Kong, China; Kazakhstan; Korea; the Philippines; and Singapore. The supplier loses the contract and its economic benefit. In addition—and this applies to India, Japan, and Thailand as well—it can be held liable for damages, on the basis of legal provisions or contract clauses. How this sanction is applied varies from country to country. While Philippine legislation requires the conviction of the corrupt supplier or official on criminal charges, opening the way for the liquidation of damages, Korea and Singapore allow the procuring entity itself to terminate the contract, and in Kazakhstan, a procuring entity's decisions may be annulled at the request of a competitor.

Debarment

Debarment from eligibility for public contracts for a certain period is an even stronger economic sanction than the termination of a single contract. However, debarment is a two-edged sword: while it might deter corruption, it could also be part of a corrupt scheme of competitors or corrupt officials to extort bribes or to eliminate honest competitors, especially if the conditions for debarment are not clearly specified. Worse, under certain conditions, qualified and honest companies consider abstaining from bidding to avoid being subject to debarment.

No explicit debarment mechanism has been established in Australia; Hong Kong, China; and Samoa. But the procurement authorities may take past corrupt practices into account when awarding contracts. The possibility of debarring companies found guilty of corruption or collusion from tendering for public contracts has been integrated in different ways and to varying degrees into the legal framework of Bangladesh; P.R. China; India; Indonesia; Japan; Korea; the Kyrgyz Republic; Mongolia; Pakistan; Palau; the Philippines; Singapore; and Vietnam.

The effect of the debarment provisions depends on various factors, such as whether debarment is mandatory or optional, whether it is automatic or it requires a distinct decision, whether disqualification affects contracts with only one procuring agency or with all public procurement agencies nationwide, whether companies eliminated for corruption from a list of approved bidders may re-register. Some of the regulatory frameworks reviewed for this report do not define these elements. The debarment periods are often—but not always—defined: one year in the Philippines; two years in Korea; up to three years in P.R. China, the Kyrgyz Republic, Mongolia, and Palau; at least five years in Singapore; an indefinite period in countries like Bangladesh, Japan, Pakistan, and Vietnam.

Poorly defined and lenient conditions for debarment induces risks of corruption that can easily outweigh the potential benefits of using this mechanism. Yet, many countries set rather broad conditions for the application of this sanction, and some have not even specified the justifications for debarment. The facts of the case must fulfill all the elements of the offence of corruption, in Hong Kong, China; the Kyrgyz Republic; Mongolia; and Nepal. And in some of these countries, as in Nepal, debarment is mandatory if the conditions for the criminal offense are met. In contrast, the Philippines imposes mandatory debarment for the provision of false information about an offer, whether done on purpose or not and regardless of the type of information given, as well as for any other act that "defeats the purpose of competitive bidding." Palau does not state the reasons for debarment or suspension from consideration for award of contracts, and India's regulations are fairly generally worded. Pakistan allows individual procuring agencies to decide how suppliers found to be engaging in corrupt practices should be temporarily or permanently debarred. The debarment proceedings also vary considerably: the Kyrgyz Republic and Mongolia require a court's decision, while Singapore entrusts the decision to a special panel. In most other countries with debarment mechanisms, an administrative decision suffices.

4. Curbing corruption through verification mechanisms

Sound procedures and honest staff, while essential, are not sufficient to contain corruption in public procurement. Effective and swift review of major procurement decisions in response to complaints from aggrieved bidders is just as important in a procurement system that is well protected against corruption. Thorough control of the procurement process and its outcome by auditors, supervisory bodies, and the public must complement this review, to prevent and uncover corruption and collusion.

Complaint and review mechanisms fulfill two functions in curbing corruption. They allow involved bidders and the public to verify the conformity of individual decisions with the established rules and bolster trust in the fairness of the procedures. Sound verification procedures also have an important preventive role: the possibility that decisions can be overturned renders corrupt practices more difficult and therefore constitutes, together with credible sanctions, a strong incentive to respect the procedures.

The effectiveness and functioning of both these control mechanisms depend on the availability of complete and reliable documentation of the proceedings from procurement planning to implementation. Explicit requirements to record acts and decisions in the procurement process exist in Australia; the Cook Islands; Hong Kong, China; India; Indonesia; Japan; the Kyrgyz Republic; Mongolia; the Philippines; and Singapore. Some procurement regulations (e.g., those of the Kyrgyz Republic) provide for the precise contents of the records; others (e.g., those of the Philippines) do not regulate this matter.

Given the long duration of procurement for large projects, especially public infrastructure, and the difficulties involved in detecting fraud and corruption, these documents must be retained long enough. In some countries, records are kept for very short periods. In Hong Kong, China, for instance, procuring agencies may dispose of documents submitted by unsuccessful bidders three months from the date of execution of the contract. Mongolia, and, for certain records, Palau also have rather short record-keeping periods. Korea keeps records for five years; Japan, for at least five years, possibly longer; Thailand, for at least 10 years; and P.R. China for 15 years. India does not prescribe retention periods, and the practice varies among the procurement entities in the country.

To eliminate any possibility of manipulation or later modification of records, Kyrgyz law provides for their immediate transfer to a superior body for storage. Hong Kong, China requires the storage of the documents in a strong room, a practice that does not necessarily protect the documents from intervention by a corrupt official. Many countries have no provisions for protecting documents from arbitrary destruction by procurement agency officials.

a. Complaint mechanisms

Administrative and judicial mechanisms exist for handling complaints or bid challenges from an aggrieved bidder. Such mechanisms typically have complementary functions. Administrative review allows a quick decision and serves primarily to correct errors. Judicial review, while often being much slower, is required to remedy willful misconduct that the administrative body refuses to rectify.

Complaint mechanisms at administrative level

There are provisions for the administrative review of procurement decisions in all countries that have passed procurement laws or regulations except for the Cook Islands and Vanuatu. In India, complaints to the procuring entity are also possible, but the procedure is not specifically regulated. Most of the countries (Australia; Bangladesh; P.R. China; Hong Kong, China; Korea; Kyrgyz Republic; Indonesia; Mongolia; Pakistan; Palau; the Philippines; Samoa; Singapore; Vietnam) direct the initial complaint to the procuring entity itself; many (Bangladesh, P.R. China, Indonesia, Kyrgyz Republic, the Philippines, Samoa) also provide for subsequent appeal to a higher level in the public administration. Australia and Pakistan further ensure a more objective administrative review by assigning the review to officers other than those who made the initial decision (Australia) or to review panels (Pakistan). Bangladesh and Japan have set up independent review bodies to handle bid challenges, as has Hong Kong, China, for procurement conducted under the World Trade Organization Government Procurement Agreement. Some of these bodies have limited authority. In Bangladesh, the review body is not authorized to review decisions made by the Cabinet Committee on Government Purchase, the country's highest-ranking procurement body.

The period allowed for filing an appeal or a request for review is usually short to speed up the procedure. For the review process to be credible and effective, however, the aggrieved party must be given time to verify the facts and to estimate the potential risks and benefits of lodging an appeal; allowing enough time for filing also helps avoid premature and unfounded complaints. The period of filing in some countries is so short as to put in question the effectiveness of the review and due consideration of the merits of the appeal. Bangladesh, for instance, allows only three days and Indonesia five days for an appeal to be submitted. Costs can also discourage aggrieved parties from applying for review. In the Philippines, a non-reimbursable fee of at least 1 percent of the contract value is charged for administrative review.

Complaint mechanisms at the judicial level

While administrative review procedures provide a quick decision, they do not replace the remedial action ordered by an independent body, most commonly the judiciary. But despite the important role of an independent body in the control of administrative decisions, only some countries (Australia, P.R. China, India, Korea, Kyrgyz Republic, Mongolia, Nepal, Pakistan, Palau) explicitly permit judicial review in addition to administrative review or as an alternative. The Philippines does not grant judicial review of decisions concerning procurement below a certain value. P.R. China requires an aggrieved bidder to go through the two-phase administrative review before requesting judicial review. In the Cook Islands and Kazakhstan, judicial review can take place only if a designated administrative body agrees to it beforehand; the independence of the review is thereby compromised. Indonesia and Vietnam exclude judicial review of procurement decisions altogether.

b. Review and audit mechanisms

Complaint mechanisms are not effective if no complaints are lodged; they fail, for instance, in cases of collusion where all the parties are corrupt. In other cases, aggrieved bidders refrain from lodging complaints for fear of future disadvantage and retaliation. Moreover, such mechanisms are not likely to curb corruption in the early phases of procurement (procurement planning or the selection of

the procurement method) or in the delivery phase, when there are no potential complainants. Indeed, the delivery of substandard quality or insufficient quantities—or no delivery at all—is a very common corruption scheme. To detect such forms of corruption and put a stop to them, regular and effective review by an independent audit or supervisory body or the public is an indispensable complement to complaint mechanisms. The review body can intervene during the project cycle or after the project has been fully implemented.

Most countries recognize the role of regular independent external and internal audit in curbing corruption in public procurement. Bangladesh, the Cook Islands, the Fiji Islands, Kazakhstan, Korea, Mongolia, Nepal, Pakistan, the Philippines, Samoa, and Singapore all require regular yearly or half-yearly audits of procuring agencies. In Japan, while internal audit is not mandatory, many procuring entities have established an auditing system. In Bangladesh, such audits have to be done by external consultants and must encompass at least 15 percent of the procurement projects and 30 percent of the value of public procurement in a given period. Mongolia conducts additional audits of projects in response to allegations of corruption. In contrast, Vietnam's legislation does not require internal or external audit of procuring entities.

c. Scrutiny by civil society actors

Civil society can complement institutional oversight bodies, but they need to be granted access to relevant information throughout the project cycle to be effective in this important role. The experience of a number of countries shows that such access to information does not necessarily interfere with the confidentiality of information, contrary to an argument commonly advanced to justify the exclusion of public oversight. Australia and Hong Kong, China, for instance, publish procurement plans and provide, as does Korea, ample information about previous and ongoing procurement on Internet sites. Under India's Right to Information Act 2005, citizens have access to information on procurement processes. Australia, P.R. China, India, Korea, and Singapore make audit reports publicly available for scrutiny. Some countries, like India and Thailand, also empower individuals who are not involved in procurement to bring allegations of corruption to the attention of specialized audit or anti-corruption bodies.

Conclusions and recommendations

Most of the countries that submitted information about their public procurement frameworks have made important progress in developing safeguards against corruption in public procurement. Some have recently enacted regulatory frameworks to curb corruption. In a number of countries, however, adjustments and reforms could help strengthen the safeguards. As discussed during the sixth meeting of the Steering Group on 20 April 2005 in Hanoi, Vietnam, and the seventh meeting on 26–27 September 2005 in Beijing, P.R. China, the countries covered in this report might wish to consider, where necessary, the following points to increase the effectiveness of their legal and institutional frameworks for curbing corruption in public procurement:

(1) Comprehensive legislation for public procurement is a central precondition of clear, transparent, and fair public procurement. Countries are therefore encouraged to ensure that such legislation be in place. To strengthen trust in the fairness of public procurement, public procurement legislation should be unambiguous and reliable over time; core regulations should be passed as parliamentary laws for this purpose.

(2) Certain steps in procurement, such as needs assessment, definition of technical specifications, and contract execution, are particularly vulnerable to corruption as they often involve a high degree of discretionary decision making. Also, control and oversight in these stages are particularly difficult to achieve. Countries are therefore encouraged to ensure that procurement rules cover the entire procurement cycle, from planning to

delivery, and that such comprehensive frameworks exist at all administrative levels. Countries are also asked to review the necessity of exemptions from procurement rules and to ensure that suitably powerful safeguards against corruption are in place in these exempted areas.

(3) Standardized, clear, and concise procedures and easily accessible, comprehensive documentation contribute in important ways to transparency in public procurement. In this regard, countries are encouraged to assess whether standardized procurement documents make government procurement more consistent and transparent.

(4) In most countries, open tendering is the standard method of procurement. While exemptions from this general rule may be necessary for practical reasons, countries are encouraged to assess whether the exceptions they allow are necessary and to ensure that the grounds for such exemptions are precisely defined and there are safeguards and control mechanisms against abuse. Particular attention in this regard should be paid to emergency procurement or exemptions that apply when tendering fails.

(5) Safeguarding the integrity of individuals involved in public procurement, i.e., the staff of procuring entities and employees of suppliers, is a central means of preventing corruption in public procurement. Countries are encouraged to develop or strengthen codes of conduct for public procurement personnel and to consider ways of promoting the development and implementation of corporate codes of conduct that cover procurement-related activities. Countries may also wish to consider requesting companies seeking to participate in a tender to explicitly declare that they will not take part in corruption and the use of other illicit means to influence the procurement process.

(6) To ensure the effective prosecution of corruption in public procurement, it is recommended that countries verify that the penal, administrative, and economic sanctions for corruption cover all corrupt practices that may occur in public procurement, including corrupt practices committed through intermediaries. They are encouraged to verify that such sanctions address with equal importance suppliers' and procurement agencies' staff. To detect attempts of corruption, countries may consider compelling procurement agency staff to report such incidents.

(7) Sanctioning legal persons is often considered particularly dissuasive, particularly in areas such as procurement, where companies rather than individuals try to gain undue advantage through corruption. Some countries have therefore introduced the possibility of temporarily or permanently debarring from public procurement a company found guilty of corruption. As debarment mechanisms can be abused, however, countries that practice debarment are encouraged to ensure that the conditions for applying debarment are precisely and explicitly defined.

Part 2
Country reports: Systems for curbing corruption in public procurement

Australia

Legal and institutional framework

Procurement by the Australian federal Government is governed by the Financial Management and Accountability Act 1997 (FMA Act) and Regulations and the Commonwealth Procurement Guidelines, January 2005 (CPGs). Individual procurement agencies are empowered to define their individual procurement rules and practices; they have to comply, however, with the CPGs' mandatory regulations and principles. The CPGs apply only to Departments of State, Departments of Parliament, and approximately 60 agencies designated by regulation. Statutory authorities and companies in which the Commonwealth has a direct controlling interest are generally not bound by, but may have regard to, the CPGs. The CPGs contain both mandatory procurement procedures and nonbinding suggestions. The mandatory procedures apply only to contracts above a certain threshold. In addition to the CPGs, the FMA Act requires chief executives to promote the efficient, effective, and ethical use of resources. Agencies under the FMA Act may also be subject to Chief Executive's Instructions on procurement matters. The Protective Security Manual also contains policies and procedures to protect official resources, including outsourcing and procurement. The State and Territory governments have their own procurement legislation, policies, and procedures, the scope of which is beyond this report.

Australia at the federal level has a decentralized public procurement system with some centralized planning. The Department for Finance and Administration formulates the federal Government's procurement policy and administers the FMA Act and the CPGs. Within the Department, the Procurement Policy Branch develops and publishes procurement policy guidance. The Procurement Agency Advice Branch assists and advises agencies, and conducts seminars on procurement issues. The Procurement Reporting and Systems Branch maintains systems for the Endorsed Supplier Arrangement and AusTender, a central electronic register. AusTender advises suppliers and agencies on procurement matters and policies. The management of specific procurements, however, is substantially decentralized. Each agency is responsible for its own procurement within the framework of the CPGs and its own rules. The Department recommends that agencies set up a committee to evaluate submissions for each procurement process.

Procurement methods and procedures

The CPGs permit open tendering, select tendering, and, under specified circumstances, direct sourcing. The last method is available only in specified circumstances such as extreme urgency caused by unforeseen events, although the CPGs do not elaborate what amounts to such urgency. After awarding a contract by direct sourcing, the procuring agency must record in writing the circumstances that justified the use of this method. The design of procurement documents is left partly to the procuring entities, with some guidance from the federal Government. With some exceptions (e.g., in emergencies), the minimum deadlines for submitting a tender is 25 days. After calling for a tender, an agency may modify the evaluation criteria or technical requirements upon notice to all potential suppliers. Agencies may create a list of prequalified suppliers. Inclusion on a list may be a precondition for participation in an open or select tender. The Department of Finance and Administration maintains additional lists of suppliers. The CPGs, explanatory manuals, and other documents related to procurement are available on the Government's Web sites.

Wide publication of tenders increases the level of participation by suppliers and thus might contribute to lowering the likelihood of corruption. Under the CPGs, agencies must publish annually their key procurements for the next financial year. In addition, all requests for tender, requests for expressions of interest, and requests for inclusion on a multiuse list must be published on AusTender. The information may also be advertised in other media. Where practicable, request documentation for an open or select tender process must be distributed electronically.

Clear and predetermined criteria for selecting a bid reduce risks of corruption. The CPGs provide some guidance in this regard to the agencies that translate these criteria into their procurement rules. The CPGs state the grounds on which an agency may exclude a potential supplier, but corruption is not specifically mentioned. The core evaluation criterion is "value for money." In addition to price, the CPGs give a non-exhaustive list of seven general factors that a procuring entity may consider. To increase the transparency of the process, once a contract is awarded, an agency must promptly inform all tenderers of the decision and provide reasons for its decision upon request. In addition, tenderers are entitled to a debriefing meeting to review the process. Post-award negotiations are allowed if they fall within the scope of the contract and if they do not affect the "value for money" decision to award the contract. The award must be recorded on AusTender within six weeks after the contract is signed. In some cases, agencies are further required to post details of contracts on their Web site or AusTender or both. Finally, a failure of tendering under the CPGs occurs when there are no bids that conform to the requirements or when no potential supplier satisfies the conditions for participation. In these cases, an agency may cancel or issue another tender, or resort to direct sourcing. The CPGs do not state when an agency must choose one option over another.

Safeguarding and enforcing integrity

Measures that promote high ethical standards among procurement officials can help curtail corruption. The Department of Finance and Administration has issued the Guidance on Ethics and Probity in Procurement, January 2005. The Guidance deals with conflicts of interest and acceptance of gifts and hospitality specific to public procurement. It also offers some practical suggestions to help procurement officials, such as how to behave at social events and seminars held by a tenderer. In addition, the Public Service Act 1999 (PS Act) requires employees of the Australian Public Service to comply with the APS Code of Conduct and the APS Values. The Code requires employees to disclose and avoid conflicts of interest. The PS Act provides penalties for breaches of the Code. Moreover, procuring agencies generally have other policies regarding the acceptance of hospitality and gifts. They are also responsible for training their officials.

In addition to measures promoting the integrity of procuring entities, measures targeting corporate integrity can also reduce the risk of corruption. To this end, Australia has issued guidance to potential suppliers promoting ethical behavior.

Effective sanctions can also contribute to promoting integrity among bidders and public servants involved in procurement. Under the Criminal Code, it is an offense to bribe an official or to give a benefit intended to influence an official in the exercise of his or her duties. Criminal liability applies to both legal and natural persons. The Trade Practices Act provides additional remedies for unfair and unconscionable trading practices.

At the federal level, the procurement process is subject to administrative and judicial review. The Purchasing Advisory and Complaints Service provides information relating to procurement policy to a complainant before referring him or her to the procuring agency. Procuring agencies are required to have processes for handling complaints and to give complainants a fair hearing. The complaints are handled by senior management and officials who are independent of the initial decision. Further, the Commonwealth Ombudsman can hear complaints and recommend remedies such as compensation, changes in the agency's procedures, and amendments to a law. Judicial review is available in the Federal Court of Australia.

A thorough control of the procurement process and its outcome by auditors can help prevent and discover corruption and collusion. The Australian National Audit Office is responsible for conducting mandatory audits. Audit reports are tabled in Parliament and are publicly available. The CPGs require officials to include a contractual provision allowing the National Audit Office to audit a contractor where relevant.

The CPGs require agencies to maintain sufficient documentation to provide an understanding of the reasons for the procurement, the process that was followed, all relevant decisions, and the basis of

those decisions. Documentation must be retained for at least three years after the award of a contract. The Commonwealth Freedom of Information Act 1982 gives the public a right to access information held by agencies and ministers.

A way forward

Australia is invited to consider introducing formal rules on the imposition of administrative sanctions on legal persons and individuals convicted of corruption offenses, so that government procurement contracts can be denied as a sanction for corruption in appropriate cases. Australia is further invited to consider establishing a policy for denying access to government procurement opportunities to individuals and companies convicted of corruption offenses in appropriate cases, besides including provisions for the termination of such contracts in appropriate cases where contractors are convicted of corruption after the contract has been signed.

Relevant documentation

Commonwealth Procurement Guidelines, January 2005:
http://www.finance.gov.au/ctc/commonwealth_procurement_guide.html

Guidance on Ethics and Probity in Procurement, January 2005: http://www.finance.gov.au

Financial Management and Accountability Act 1997: http://www.comlaw.gov.au

Public Service Act 1999: http://www.comlaw.gov.au

AusTender: https://www.tenders.gov.au/federal/index.shtml

Bangladesh

Legal and institutional framework

Bangladesh has recently reformed its legal and institutional framework governing public procurement. In 2003, the Public Procurement Regulations were passed at the executive level, along with binding implementation procedures. These comprehensive regulations were largely inspired by the UNCITRAL Model Law on Procurement of Goods, Construction, and Services. Further reforms that mainly attempt to pass a procurement framework at the level of a parliamentary law are currently under way. The current legal framework is binding for all procuring agencies at all State levels; they also extend to some enterprises that spend government or development funds. The Government can decide not to apply rules in the interest of national security and defense. Like the UNCITRAL model law, the Procurement Regulations do not cover issues like the needs assessment or the project implementation, phases that are particularly exposed to corruption. The framework therefore does not provide for particular safeguards against corruption-induced creation of "needs" or delivery of substandard goods, works, and services.

The Public Procurement Regulations 2003 establish a Central Procurement Technical Unit (CPTU), which evaluates and oversees the implementation of the procurement regulations, issues guidance and policies, coordinates training, and keeps a list of debarred suppliers. Actual purchases are conducted in a decentralized manner by each ministry, department, or other authority. For procurement exceeding BDT25 crore (about USD3,800,000), the approval of the Cabinet Committee on Government Purchases is required.

Procurement methods and procedures

The procurement regulations designate open tendering as the standard procurement procedure. Other procurement methods such as restricted tendering or direct procurement may be applied for low-value procurement and emergency procurement, and under various other conditions enumerated in the regulations. Detailed descriptions of the conditions that allow the application of a procurement method other than open tendering, as well as certain requirements for approval by a superior body, are aimed at ensuring that such conditions are not created or purported in an abusive manner.

To ensure wide participation and thus reduce the risk of collusion or failure of the tender, information about open tenders must be advertised in Bengali- and English-language daily newspapers and, if their value exceeds BDT1 crore (about USD150,000), on the CPTU central Web site. The CPTU Web site also provides information about relevant regulations and guidelines, thereby contributing significantly to the transparency of the regulatory framework.

The bid evaluation and the selection of the winning offer are conducted by committees established within each procuring entity. These committees consist of at least five members, two of whom should be procurement experts not affiliated with the procuring entity. The lowest price is the prime selection criterion, but other criteria can be factored into the evaluated price. The procurement regulations impose mandatory disqualification for the submission of any false information. While this rule may deter dishonest bidders, the fact that the conditions for disqualification are rather broadly defined may also lead to their abuse by corrupt procurement agents to disqualify unwanted suppliers.

Safeguarding and enforcing integrity

Bangladesh applies the general codes of conduct for public officials to procurement personnel; procurement-specific provisions that would take into account the particularities and risks of public procurement have not been adopted. The existing code of conduct prohibits public officials from accepting any advantage or gift.

In addition to the abovementioned mechanism of mandatory disqualification of bidders that have submitted false information for participation in a single tender, such bidders can be generally debarred from access to government contracts for a specified or unlimited period of time. The procuring entities themselves have discretionary power to decide on debarment. The procurement regulations do not provide any further guidance or criteria for the application of this sanction despite its important economic impact and despite the risk that this sanction may be abusively imposed to extort bribes or undermine competition.

Bangladesh has established an administrative complaint mechanism that allows addressing complaints directly to the concerned procuring entity; appeals are handled by a review panel that is independent from the procuring entity. Complaints have to be submitted within seven calendar days and appeals within three calendar days. Judicial review of the procurement decision is possible in addition to the administrative complaint mechanism.

In support of these review procedures, procurement entities are obliged to keep records and documents of the proceedings for at least five years. The minimum content of these documents is stipulated in the procurement regulations. Any concerned person may consult the documents from the moment of the closure of a contract or the proceedings.

A way forward

Bangladesh is encouraged to pursue its plans to pass the constitutive elements of its procurement framework at the level of a parliamentary law. In this context, Bangladesh is invited to consider extending regulations to encompass the phases of needs assessment and the delivery and implementation phase with a view to further strengthening existing anti-corruption measures in these crucial phases of procurement.

Bangladesh is encouraged to review the provisions and conditions for disqualification and debarment of suppliers with a view to specifying proportional conditions in order to protect these sanction mechanisms against corruption-induced abuse.

To strengthen the effectiveness of its administrative review mechanisms, Bangladesh is further encouraged to consider whether enough time is provided for submitting complaints.

Relevant documentation

Central Procurement Technical Unit: http://www.cptu.gov.bd/cptu.aspx

Cambodia

Legal and institutional framework

Cambodia's regulatory framework for public procurement is composed of various decrees, sub-decrees, and guidelines that do not, however, cover all relevant aspects of public procurement. To remedy this situation, Cambodia plans to pass a comprehensive procurement law. Until then, some guidance is provided to procurement personnel in manuals on standard operating procedures. The existing procurement regulations apply to procurement at all state levels and to public enterprises. They assign bodies responsible for procurement and define certain procurement methods. Certain phases of the procurement process that are particularly vulnerable to corrupt practices, such as procurement planning and implementation monitoring, are, however, not covered.

Cambodia has established a decentralized procurement system. The procurement process is conducted by prequalification, evaluation, and awards committees established within the procuring entities. Politically or environmentally sensitive purchases worth more than KHR1.3billion (about USD325,000) require approval by the Ministry of Economics and Finance.

Procurement methods and procedures

The procurement regulations provide for various procurement methods—competitive bidding, domestic canvassing, direct shopping, and direct contracting. The selection of the applicable method depends on the value of the acquired goods or services; competitive bidding is mandatory for the purchase of goods, services or works worth more than USD12,500. Urgent need or procurement after natural disasters, however, justifies resorting to noncompetitive procurement methods such as international shopping or direct contracting; in these cases, direct contracting is permitted regardless of the value of the contract. No explicit mechanism exists to prevent the arbitrary creation of situations justifying direct contracting to create opportunities for corruption.

The ample participation of qualified bidders is a prerequisite for curbing corruption in the tendering phase. Wide publication of tender opportunities is a prime condition for attracting broad participation. In Cambodia, procurement through competitive bidding must be advertised publicly. Difficulties in this context arise from poor information infrastructure. In addition, only those bidders registered with the department for public procurement are permitted to participate in the tendering, and at the provincial level certain prequalification procedures exist.

Pre-bid conferences that have merits in clarifying the requirements, in particular for more complex purchases, are not mandatory in Cambodia. This increases the risk of tender failure in complex projects, which leads to single-source procurement, a method particularly vulnerable to corruption. Regulations on bid opening stipulate that bids have to be opened at the time and place stated in the tender documents. The bids have to be opened no later than one hour after the close of tendering. Such a delay between the closing time and the opening of the bids entails the risk of manipulation of bids.

Safeguarding and enforcing integrity

The various regulations in place result in diverse procedures that render transparent and effective management of the procurement process for both bidders and procuring agencies difficult. Lack of training of procurement personnel and equipment for the efficient and reliable handling of procurement processes adds to this difficulty.

The integrity of bidders and staff handling procurement procedures for the procuring agencies also limits corruption in public procurement. Codes of conduct help define rules that staff have to respect. So far, Cambodia has not passed comprehensive codes of conduct, and existing regulations that contain

provisions on conflict of interest are not fully enforced. However, the winning bidder has to explicitly declare that no bribes have been paid to procurement personnel or any competing bidder.

Administrative and penal sanctions are available to enforce integrity in the procurement process. Mechanisms that are aimed at preventing and prosecuting attempts of corruption from the bidders' side are in place to detect corruption. Procurement personnel are required to report attempts of corruption by suppliers. Improper conduct of individuals or entities in the procurement process can entail debarment from government contracts either temporarily or indefinitely.

Review and complaint procedures are essential preconditions for preventing and detecting malpractices and for bolstering trust in the procurement system. In Cambodia, complaints that arise from the procurement procedures are handled at the administrative level. A review mechanism has been established, entrusting the National Auditing Authority with the audit of procurement procedures; however, this body reportedly lacks the resources needed to fulfill this role satisfactorily. A further obstacle to a meaningful review of procurement decisions and procedures is the absence of regulations on documentation.

A way forward

Since Cambodia has no clear-cut and comprehensive legal framework for public procurement, it lacks a crucial basis for effectively curbing corruption in this field. To remedy this situation, Cambodia is encouraged to swiftly pursue its plans to pass comprehensive procurement legislation. In this context, it is recommended that the principles, structures, and responsibilities of procurement procedures be enacted at the level of a law and more detailed procedural provisions be passed in decrees. Cambodia is also urged to adopt a code of conduct for procurement personnel to clarify the obligations of the staff involved and provide a basis for the enforcement of proper conduct.

Cambodia is invited as well to set up a review mechanism for procurement decisions; this mechanism should include the duty to keep and store records for a meaningful period of time to provide a basis for an effective review of procurement decisions. Cambodia is further encouraged to strengthen the capacities and resources of the auditing authority.

Once this framework in place, Cambodia is invited to take the necessary steps to provide extensive training to staff involved in procurement procedures to ensure the thorough implementation of the framework.

Relevant documentation

Cambodian Ministry of Economics and Finance: http://www.mef.gov.kh/

World Bank Country procurement assessment report (September 2004)

People's Republic of China

Legal and institutional framework

P.R. China has passed two laws that regulate public procurement: the Government Procurement Law (GPL), which took effect in January 2003, and the Law on Bid Invitation and Bidding (LBIB), which came into force in January 2000. Other legal instruments that may apply include the Contract Law, the Law against Unfair Competition, and various regulations concerning the financing of government procurement, the supervision of government procurement agents, and the registration of suppliers. In September 2004, the Government passed regulations "on bidding of goods and services in government procurement", "on information disclosure in public procurement," and "on handling suppliers' complaints in government procurement." The GPL applies to procurement by state organs at all levels, but not by state-owned and state-controlled enterprises. It also applies only to the procurement of specified items and to contracts above a threshold set by a procuring agency. The GPL specifically prohibits procuring agencies from breaking a contract into smaller parts to circumvent this requirement. The GPL does not apply in the following situations: urgent circumstances caused by a serious natural disaster or an unavoidable emergency; procurement involving national security and secrets; and military procurement.

The Chinese procurement system involves several types of institutions and, notably, intermediaries—essentially consultants who manage procurement on behalf of a procuring agency. The GPL regulates when and what type of intermediaries should be used. For certain types of contracts, procuring agencies must use "institutions for centralized government procurement" (ICGPs) as intermediaries for dealing with suppliers. ICGPs are nonprofit legal entities that exist at both the central and local levels. For the remaining types of contracts, a procuring agency has discretion to use an ICGP. Alternatively, it may conduct the procurement itself or use a commercial procuring intermediary that is certified by the relevant central or local authority. Finally, the finance departments of governments at various levels, known as procurement regulatory authorities (PRAs), are responsible for supervising the procurement process. Intermediaries must be independent of the relevant PRA.

Procurement methods and procedures

Public tendering is the standard procurement method under the GPL, and the LBIB requires public tendering for major construction projects. In 2003, procurement through public tendering was estimated at more than half of the value of total government procurement. The following methods are also available under stipulated circumstances: restricted tendering, competitive negotiation, single-source procurement, request for quotations, and other methods permitted by the PRA of the State Council. Competitive negotiation is conducted by a committee, which is responsible for setting the evaluation criteria and the procedure and scope of negotiations, choosing three or more qualified suppliers for negotiations, and selecting the successful supplier. Single-source procurement may be used, for instance, if procurement from other suppliers is not feasible because of an unexpected emergency, though what constitutes an emergency is not defined in the GPL. A PRA must approve the use of a method other than public tendering, and the disqualification of a bidder.

Standard documents, most of which include anti-corruption provisions, are used. Prequalification is possible through lists of suppliers maintained by the intermediaries of the central Government. A supplier will be removed from the list if he or she violates government regulations on qualifications of suppliers. In a public tender, the minimum bidding period is 20 days. All standards for procurement must be published.

The publication of procurement opportunities promotes wide participation, which in turn reduces the risk of collusion or failure of tendering. In P.R. China, information pertaining to a specific procurement that does not involve commercial secrets must be published in a timely fashion in

designated media outlets. These outlets include the *China Financial and Economic News*, the *China Government Procurement Net*, and the *China Government Procurement Journal.*

Clear and predetermined criteria for selecting a bid can reduce opportunities for corruption. The LBIB prescribes the handling and evaluation of bids. The procuring entity or intermediary forms a committee. After bidding is closed, the committee reads out the bids in public before evaluating the technical and financial aspects of the bids in private. The committee must choose the bid with the best value. In addition, the GPL requires ICGPs to choose a bid on the basis of a lower-than-average market price, high efficiency, and good quality. As soon as a bid is selected, all bidders (including unsuccessful ones) are notified. The procuring agency must publish the decision in the designated media outlets. It must also report to the relevant PRA within 15 days. Post-award negotiations on substantive matters are not allowed. A failure of tendering under the GPL arises if one of the following occurs: fewer than three suppliers meet the selection criteria; there have been breaches of laws or rules; the bid offers exceed the government's budget; or the procurement project is canceled because of extraordinary circumstances. In these cases, competitive negotiation may be used upon the approval of a superior authority. This could give rise to possible corruption when coupled with the possibility that failure of tendering can be created.

Safeguarding and enforcing integrity

To prevent corruption, P.R. China has enacted measures that promote integrity among procurement staff. The GPL prohibits procurement officials from receiving illegal benefits and requires those who have a conflict of interest to withdraw from the process. It also prohibits the staff of a procuring entity from accepting bribes, gifts, and hospitality. Intermediaries and government procuring agencies are expected to train their personnel. In addition, local governments and PRAs are expected to establish performance review systems for procurement personnel. Finally, procurement officials are rotated regularly to prevent them from fostering relations with suppliers that could result in favoritism.

Measures to promote integrity among suppliers also contribute to reducing corruption in public procurement. To this end, the GPL expressly prohibits bidders from bribing procurement officials and from damaging the interests of the public and the state. Bidders must declare that they, their contractors, and their representatives will abstain from unduly influencing the procurement process or outcome.

P.R. China provides a range of sanctions for corruption in public procurement. A bidder will be prosecuted if he or she bribes or provides an improper interest or benefit to an official and the conduct amounts to a criminal offense. If the conduct falls short of being a criminal offense but nevertheless constitutes a misdemeanor, then the bidder is fined 0.5–1 percent of the bid. Guilty parties may also be liable for damages. The contract in question is annulled and any illegal gains are confiscated. Since May 2004, a pilot scheme for the debarment of bidders convicted of bribery in the procurement of construction works has been implemented in five provinces. Those convicted for bribery are placed on a blacklist that is made available to authorities responsible for construction projects, and are barred from access to the construction market temporarily or permanently. Debarments are announced in the designated media outlets. If the circumstances are serious, the bidder's business license is revoked. The official involved is subject to similar sanctions and may be given a disciplinary warning, which is circulated.

Administrative and judicial review of the procurement process is available. Anyone may complain to a procuring agency or an intermediary and then to the relevant PRA. The initial complaint must be made within seven days after the complainant comes to know or should have known of the basis of the complaint. Decisions on complaints are published. Complainants who are not satisfied with the outcome may seek further administrative or judicial review. In 2006, some cities have been implementing programs to widen public access to information about procurement.

Auditing can also strengthen the detection of corruption and serve as a deterrent. The GPL requires auditing authorities to audit procurement activities. The parties to procurement and related government authorities must submit to the audits. Audit reports are available to the public.

Procuring intermediaries and entities are required to maintain records of procurements for 15 years. These records include a description of the procurement method, the evaluation criteria, and the reasons for inviting and selecting a supplier. Agencies supervising and managing the procurement process can access the records.

A way forward

P.R. China is encouraged to pursue its efforts to consolidate the regulatory framework for public procurement and notably to clarify the applicability of the various laws and regulations that govern public procurement. Also, P.R. China is encouraged to pass implementing regulations to give full effect to this legislation.

Once this framework in place, P.R. China is invited to take the necessary steps to provide extensive training to staff involved in procurement procedures at all levels of government to ensure the proper implementation of the procurement legislation.

Cook Islands

Legal and institutional framework

The basic public procurement rules of the Cook Islands are contained in the Government Financial Policies and Procedures Manual (GFPPM), which is qualified as rule of law by the Ministry of Finance and Economic Management (MFEM) Act 1995–1996. This manual, which was updated in 2004, also provides a checklist for purchases of goods. While at present available only in hard copy upon request, the MFEM is considering making the Manual available on the Internet. Additional relevant provisions are contained in the Public Expenditure Review Committee and Audit Act 1995–1996. These existing rules apply to procurement at all levels of administration and government, i.e., all Crown Agencies and Outer Island Administrations, and to the procurement of goods and services. The Government of the Cook Islands recognizes that the existing rules are incomplete and lack clarity; consequently, the MFEM is currently undertaking a thorough review of existing procedures with a view to remedying this situation and strengthening public procurement procedures.

The MFEM is responsible for designing procurement policies and standards with the overall purpose of establishing uniform procedures for the purchase of goods and services and ensuring that such purchases are conducted according to certain standards of transparency and accountability. Authority to execute government procurement within the limits of the budget as approved by Parliament lies within the individual ministries and Crown-funded agencies. In most ministries, responsibility for public procurement lies within designated procurement teams composed of finance and administration staff. Any procurement of goods and services of a value equal to or exceeding USD30,000 has to be reviewed by a tender committee composed of the Financial Secretary and the Solicitor General or their respective nominees, and other experts chosen as required.

Procurement methods and procedures

Competitive bidding is the standard method for all major procurements—those worth at least USD30,000. For the procurement of goods or services of a lesser value, quotations have to be obtained from at least three potential suppliers, unless unspecified circumstances dictate that fewer quotes may be obtained. The rules further state that quotations should be obtained only from suppliers who are "genuinely interested" in supplying the required goods or services, to avoid the abuse of the quotation rule for the purpose of illicit selection. No rules exist that would specify the handling of situations in which too few or no bids or quotations are received, or in which no bid or quotation fulfills the technical requirements defined in the call for tender; however, such rules are currently being developed.

The public tendering procedures provide for the announcement of tender opportunities in the local media or, in the absence of such media, on community notice boards. Tenders exceeding USD10,000 must in any event be announced in media published in the capital. "Sufficient time" for preparation of the tenders—14 days at least—must be allowed.

The existing legal framework does not explicitly specify the minimum content of tender documents; it, however, prescribes that certain aspects such as technical specifications, completion dates, place and time for submission of tenders, and other contractual details be worked out before tenders are solicited, and that evaluation criteria be defined before evaluation begins. These evaluation criteria are not explicitly defined but may include, among others, elements such as the ability of a bidder to meet technical specifications, expertise of the bidder, monetary value, and previous performance. Whether or not the weight of such factors is to be predetermined, whether or not the evaluation criteria are to be made available to potential bidders, or whether post-awarding negotiations are permitted is not specified in the existing rules.

Safeguarding and enforcing integrity

To foster the transparency and fairness of the procurement process, the rules of the Cook Islands prescribe that the tendering process be "contestable, transparent, accountable, arm's-length, and without favoritism." Taking specific measures to ensure the integrity of personnel of both bidders and staff handling procurement is crucial in any effort to prevent corruption in public procurement. The Public Tendering Procedure of the GFPPM requires all public officials involved in a given public procurement process to declare any potential conflict of interest. While no specific training for procurement personnel is provided, the GFPPM is included in the training curriculum provided to finance officers of government agencies or departments by the Ministry of Finance and Economic Management.

Specifically addressing the integrity of bidders, the GFPPM further prohibits anyone intending to supply goods and services to the Government from being involved in the evaluation of quotations or tenders. This narrow definition of conflict of interest as related to the sole act of evaluating the tender may, however, have limited effect. There are no other procedures for strengthening the integrity of bidders, such as requirements to declare abstention from corruption or the use of other illicit means to improperly influence the procurement process, or requirements to disclose commissions, gratuities, or fees that have been legally paid to third parties for their services in relation to the bidding in a public tender.

With regard to the transparency of the procurement process, and equal treatment of all potential bidders, the rules stipulate that the same instructions and specifications regarding a bid are applicable to all parties interested in bidding or submitting a quotation. Furthermore, all public tenders must be announced in the local media and a minimum of 14 days are allowed for bids to be submitted. Special provisions applying to regions where no formal media are available, e.g., the Outer Islands, prescribe the use of community notice boards and other appropriate gathering points to advertise tenders. Rules also provide for clear procedures with regard to the submission and opening of tenders.

All bidders are notified in writing about the tender result. Tender details are to be kept by the procuring ministry and are subject to verification by the Audit Department; however, the rules do not specify how long such records have to be kept. A tender report, containing details related to the awarding of the tender, can be accessed upon request at the Ministry of Finance and Economic Management. Audit reports are publicly available. Upon receipt of a complaint of impropriety from any interested party, the Audit Department conducts ad hoc investigations in addition to its annual verification.

While no procurement-specific sanctions are provided for in the legislation of the Cook Islands, the act of accepting a bribe or offering a bribe to a public official is sanctioned by the Cook Islands Crimes Act and may merit imprisonment of up to seven years or three years, respectively. Penal sanctions for bribing a public official applicable to legal persons are not provided for in the legislation of the Cook Islands. At the time of this review, no information was available about possible administrative or civil sanctions applicable to legal persons, such as temporary or permanent exclusion from bidding for public tenders.

A way forward

The Cook Islands is encouraged to continue its ongoing review of existing procurement procedures so as to further strengthen these and enhance their capacity to foster and enhance transparency and integrity in public procurement. Amendments to the existing rules, regulating in particular situations in which there are not enough bids or no bid meets the tender requirements and the related issue of post-award negotiations, and requiring the inclusion of evaluation criteria in the tender, may be considered in this context. The Cook Islands may also want to strengthen and expand existing provisions on conflict-of-interest declarations.

The Cook Islands is further invited to consider establishing standard tender documents and including therein a clause through which bidders explicitly declare that they will abstain from using corruption or other undue means to influence the procurement procedures, and amending its existing legislation to provide for the possibility of applying to legal persons penal sanctions for bribery.

The Cook Islands is also encouraged to pursue its plans to make available the Government Financial Policies and Procedures Manual on the Internet, as well as any documents or rules resulting from the current review process, as wide public knowledge of applicable procedures may significantly contribute to the fairness and transparency of procurement processes.

Relevant documentation

Ministry of Finance and Economic Management (MFEM) Act 1995–1996: http://www.mfem.gov.ck/Assets/Legislation/MFEM Act 1995-96.pdf

Public Expenditure Review Committee and Audit Act 1995–1996

Cook Islands Government Financial Policies and Procedures Manual (rule of law under the MFEM Act)

Fiji Islands

Legal and institutional framework

Public procurement in the Fiji Islands is governed by subsidiary legislation under the Finance Act, namely the Finance (Supplies and Services) General Regulations (FSSR), the Supplies and Services Instructions (SSI), the Government Stores Instruction 1982, the Finance (Control and Management) Regulations (FCMR), and the Finance Regulations 1982. Ministry of Finance Circulars may amend these regulations and instructions from time to time.

Several bodies administer public procurement. The Minor or Major Tenders Board administers the procurement of goods and services, depending on the value of the contract. The Public Works Tenders Board (PWTB) deals with the procurement of building or engineering works. Members of these boards come from various government ministries and relevant departments. The responsibility for calling tenders, and signing and executing contracts, falls on the Controller of Government Supplies (COGS) (for goods and services) and the Secretary of the PWTB (for building or engineering works).

Procurement methods and procedures

Clear definition and publication of procurement procedures enhance transparency and thus reduce the risk of corruption. The Finance Act, the FSSR, and the FCMR prescribe tender procedures for the procurement of goods and services in excess of a threshold. Procurement below the threshold only requires obtaining three quotations. For procurement above the threshold, COGS and the Secretary of the PWTB have discretion to procure contracts through tendering or quotation (in which at least three quotations are obtained). The regulations do not indicate under what circumstances the Major Tenders Board should consider tendering rather than quotation. The unwritten practice for the quotation process is for the officer in charge of a project to seek three or more quotations, evaluate the proposals, and make a recommendation for the consideration of the relevant tenders board. Procurement guidelines and regulations are available in hard copy to agencies and suppliers. Model documents are used for contracts and for tenders of common user items. These documents do not contain anti-corruption clauses, though such clauses may be added once the Cabinet approves a pending anti-corruption bill. The Government has also prepared the Government Tenders – General Conditions and Fiji Government General Conditions of Contract. Preselection procedures are used for procuring specialized items such as drugs that must meet certain government and international standards. Some ministries and departments maintain lists of eligible contractors.

Wide participation in procurement protects against bribery, favoritism, nepotism, and collusion. In Fiji, a tender is normally advertised twice in the daily newspaper and the Government's gazette. Tender documents are also provided to trade embassies to be forwarded to their foreign counterparts.

To prevent corruption, the method of handling and selecting bids must also be clearly prescribed. In Fiji, for the Major Tenders Board, the SSI lays down the procedures for the tendering process but is silent on the quotation process. The selection criteria are prescribed either by law or in tender documents, and may include special criteria when specialized equipment or services are involved. In the future, all selection criteria may be incorporated into tender documents. The selection of bids is based on compliance with the criteria, the quality of samples, and cost. Bids are initially considered by a subcommittee convened by the procuring ministry or department, whose members are recommended by COGS. The subcommittee reviews the bids and forwards a recommendation to the COGS, which in turn sends its recommendation to the relevant tenders board for consideration. The final decision of the board (but not the reasons for the decision) is communicated to the procuring ministry or department and all bidders. The name of the winning bidder is made public. In many countries, post-tender negotiations have given rise to corruption. In Fiji, post-award negotiations are rare. Strict and clear definition of the procedures for dealing with a failure of tendering is also essential in preventing corruption. In Fiji, the Government conducts research to identify suitable suppliers if no bids have

been received. If such suppliers exist, the Government withdraws the previous tender, calls a fresh tender, and informs the suitable suppliers.

Safeguarding and enforcing integrity

Codes of conduct can instill integrity among procurement officials and thus help prevent corruption. All public servants in Fiji must comply with the Public Service Values and the Public Service Code of Conduct in the Public Service Act 1999, but no specific code applicable to public procurement has been adopted. The Public Service Code requires an employee to disclose and avoid conflicts of interest. Breach of the Code may result in disciplinary action by the Public Service Commission. To further strengthen integrity, procurement personnel attend from time to time in-service programs that address integrity issues. In addition, procurement staff are generally rotated every three years, or more frequently if the staff have certain involvements with bidders that may lead to corrupt practices. Fiji is considering statutory protection for whistleblowers in all areas of the public service.

Effective sanctions can deter corruption in procurement. In Fiji, if there is concrete evidence that a bidding company is guilty of corruption related to the bidding procedure, the case is referred to the police. The Penal Code prohibits both giving and accepting bribes, including those made through an intermediary, and provides for imprisonment of up to seven years. A company may also be held liable for any economic damage. Moreover, certain tenders contain a clause that allows the Government to terminate or suspend the contract, although the Government will do so only after seeking the advice of the Solicitor General.

Procedures for complaint and review are important tools in detecting corruption in public procurement. The Ministry of Finance in Fiji may deal with complaints and set up investigative committees to handle specific cases. Complaints about the procurement process are referred to the relevant procuring authority. On rare occasions, complaints may be forwarded to the Ombudsman.

Audits also play an important role in detecting corruption in public procurement. Procuring entities are subject to internal audits by the Ministry of Finance and regular external audits by the Office of the Auditor General. Independent actors and nongovernmental organizations are not involved.

Verification and review procedures are effective only if the procurement process is properly documented. In Fiji, all bids, including those submitted after the deadline, are recorded in the Tender Register. Records of the decision are kept at the office of the COGS and are accessible to the Office of the Auditor General.

A way forward

The Fiji Islands is encouraged to pursue the reform of its procurement framework by introducing anti-corruption clauses into tender documents, disclosing all selection criteria in the tender documents, and passing comprehensive whistleblower protection mechanisms for at least the area of public procurement.

The Fiji Islands is also invited to consider establishing a comprehensive regulatory framework for public procurement; it is recommended that the elements of this framework be enacted as a parliamentary law and passed as executive regulations. Once this framework is in place, the Fiji Islands is urged to take the necessary steps to provide extensive training to staff involved in procurement procedures to ensure the proper implementation of the framework.

Hong Kong, China

Legal and institutional framework

Hong Kong, China recognizes the crucial importance of clear and comprehensive procurement regulations in curbing corruption in public contracting. Government procurement is conducted under the Stores and Procurement Regulations (SPR), issued as administrative regulations under the Public Finance Ordinance (PFO). Financial circulars supplement these provisions. The Prevention of Bribery Ordinance (PBO) has penal provisions for bribery. The procurement rules in the SPR are binding on all government bureaus and departments except financially autonomous public bodies, which are empowered to define their own procurement procedures. This regulatory framework covers the entire procurement process, from needs assessment and specification of corresponding tender requirements to contract management and monitoring. It covers the procurement of goods and services as well as of engineering services and construction works.

In general, the departments of Hong Kong, China's administration are entitled to conduct their own procurement up to a certain value. For purchases of goods and services (excluding engineering and construction services), this threshold is set at HKD1.3 million (about USD170,000), for engineering and construction services it is set at HKD3 million (about USD390,000). For purchases beyond these limits, to ensure the proper conduct of the procurement and to avoid intra-departmental collusion, departments have to seek the approval of particular tender boards before entering into a contract with the successful bidder. These boards, comprising at least three government officials, are appointed by the Financial Secretary to consider and decide independently on the acceptance of tenders.

Procurement methods and procedures

Corruption in public procurement may result from the arbitrary choice of procurement methods and proceedings. Consequently, it is important to provide clear and comprehensive regulations regarding the different methods used for public procurement. In Hong Kong, China, open and competitive tendering is the norm. Selective tendering may be used where the nature of the contract requires tenders from qualified suppliers, especially where there is a frequent need for tenders for such services or articles and not all contractors or suppliers in the market can provide the required services or articles. In these cases, procuring departments may therefore establish lists of prequalified suppliers (i.e., approved contractors). They have to publish up-to-date lists of approved contractors and the application method yearly. To ensure open and transparent competition, in which as many tenderers as possible can participate, single-source or restricted tendering is generally allowed only with the prior approval of the Permanent Secretary for Financial Services and the Treasury. The specific circumstances under which this approach can be chosen are described in detail in the SPR.

The SPR prescribe the content of tender documents, provide mandatory standard contract forms, and the tender terms and general conditions of contract. The standard tender form contains an anti-bribery clause allowing the Government to terminate the contract without incurring any liability for compensation if the contractor or any of its employees or agents is found to have committed an offense under the PBO or any subsidiary legislation made thereunder.

Tender evaluation and notification procedures are outlined in detail in the SPR. The selection criteria are not explicitly defined, as these depend on the requirements deemed fit for each particular tender. Factors such as price, life-cycle costs, performance reliability, quality, and after-sale support may be taken into account. If a marking scheme is used for evaluating a tender, the relevant tender board has to approve the scheme in advance. The use of a marking scheme in tender evaluation and an outline of the selection criteria form part of the tender documents, and are known to tenderers.

Hong Kong, China's procurement regulations allow procurement agencies to conduct pre- and post-award negotiations under certain circumstances and in accordance with the procedures set out in

the SPR. Such negotiations must be nondiscriminatory and the circumstances in which they are allowed must be stated in the invitation to tender.

Transparent and nondiscriminatory qualification criteria and proceedings are a critical precondition of transparency in public procurement. Apart from selective tendering, for which a list of approved contractors may be maintained as described in paragraph 3 above, there may be circumstances that require prequalifying tenderers on the basis of their financial and technical capability to undertake a particular project or supply a particular product. If such a prequalification exercise is required, the criteria may concern only the contractors' ability to meet the requirements of the tendered contract.

All tenderers are informed of the tender result, including the identity of the successful bidder. The tender sum and the date of award of the contract are published in the *Government Gazette* and on the Internet. The reason for the selection of the winning bid is not always stated but unsuccessful tenderers are informed of the reason why their tenders were unsuccessful.

Safeguarding and enforcing integrity

To bolster the integrity of bidders' and agencies' staff in public procurement, Hong Kong, China has put in place conflict-of-interest regulations. Government procurement personnel have to observe the Civil Service Regulations, which lay down stringent provisions to prevent conflicts of interest and acceptance of advantages. Furthermore, the PBO prohibits bribery in the civil service and sets out sanctions such as dismissal, imprisonment, and fines. Particularly harsh sanctions are imposed for fraudulent practices in procurement. Procurement personnel are required to report any attempts of bribery to the Independent Commission against Corruption (ICAC), and specific training in integrity and corruption prevention is conducted for procurement personnel.

While no law explicitly provides for debarment, it is well-publicized administrative practice to remove a company found to have committed offenses under the PBO from the list of approved contractors and to temporarily suspend it from bidding.

In addition, regular audits of the procurement process are conducted through the independent Audit Commission and the Government Logistics Department. Information about procurement processes is kept and stored separately. The requested storing period is three months for unsuccessful tenders for contracts not covered by the World Trade Organization Government Procurement Agreement (WTO-GPA) or not less than three years for all tenders for contracts covered by the WTO-GPA.

To detect any attempt to infringe procurement regulations, contractors or organizations are entitled to complain to the procuring department, the tender board, or the Office of the Ombudsman about the proceedings or the result of a tender exercise; there is no limit on the period allowed to do so. Allegations of corruption can be submitted directly to the ICAC.

Additionally, for contracts covered by the WTO-GPA, contractors or suppliers may file a complaint to the Review Body on Bid Challenges against alleged breaches of the WTO-GPA such as discriminatory qualification or selection procedures. This body comprises 12 members selected from a wide range of groups, including the legal profession. The supplier has 10 days to file the complaint from the time the supplier came to know or reasonably should have known its factual basis. The Review Body may determine the validity of a challenge and the recommended corrective measures or compensation.

A way forward

Hong Kong, China has enacted a comprehensive and detailed procurement framework. For contracts not covered by the World Trade Organization Agreement on Government Procurement (WTO GPA), their storing period in respect of tender document of unsuccessful tenders is three months. Hong Kong, China may wish to review whether the storage period for unsuccessful tenders for contracts not covered by the WTO-GPA (three months) is long enough to allow the law

enforcement agencies to investigate effectively alleged cases of corruption cases in respect of contracts not covered by the WTO-GPA.

Relevant documentation

Bilingual legal information systems containing relevant ordinances such as the PFO and PBO: http://www.legislation.gov.hk/eng/home.htm

Electronic Tendering System: https://www.ets.com.hk/

Government online information center for government procurement (dealing with government tenders, conflict-of-interest regulations, tender procedures, and other such matters): http://www.fstb.gov.hk/tb/eng/procurement/content.html

Online guide to the Review Body on Bid Challenges: http://www.tid.gov.hk/english/trade_relations/tradefora/reviewbody/reviewbody.html

India

Legal and institutional framework

In India, different procurement rules apply at the federal level, in the states and territories, to the central public sector units, and to public sector enterprises. At the federal level, procurement is regulated through executive directives. The General Financial Rules, issued by the Ministry of Finance, lay down the principles for financial management, and—in chapters 6 and 8—broad rules and procedures for the procurement of goods and services and for contract management. The Rules were revised in 2005 to provide greater flexibility while ensuring accountability in government transactions. A Manual on Policies and Procedures for Purchase of Goods has been published to assist the procurement entities and their officers in procurement. An important number of instructions, issued by the Central Vigilance Commission (CVC), supplement these regulations. Specific sectoral procurement regulations exist in some areas, such as defense procurement.

At the federal level, procurement is administered by the individual government agencies. These agencies may issue more detailed instructions in conformity with the Rules; the individual procuring agencies are also responsible for developing their own handbooks, model forms, and model contracts. At the time of writing, most of these agencies had developed model tender documents.

Certain control and oversight functions are carried out by central authorities such as the Comptroller and Auditor General and the CVC. At the federal level, India has not established an authority that is exclusively responsible for defining procurement policies and for overseeing compliance with the established procedures.

Procurement methods and procedures

The applicable procurement method depends on the value of the contracts to be awarded and other factors as stipulated in the Rules. The splitting of purchases into contracts of smaller value is explicitly forbidden. Procurements exceeding INR2.5 million (about USD54,000) must generally be done through open tendering. Limited tendering, which requires a direct request from at least three suppliers, is permitted for contracts of up to INR2.5 million and in other urgent cases, but the reasons for the variation should be recorded in writing. Limited tendering beyond the threshold of INR2.5 million is also allowed if the competent authority indicates that an open tender would not be in the public interest. Grounds that would justify such an assumption are not defined in the Rules, but must be documented in writing by the procuring entity. Direct contracting is permitted for low-value purchases and in emergency situations.

Wide dissemination of tender opportunities is generally considered to help avoid failure of tendering and the increased risk of corruption it entails. In India, tenders are advertised in the *Indian Trade Journal*, at least one national daily newspaper, and on the Web site of the procuring entity, if it has one. Also, the Government of India increasingly displays current and past tenders on a central Web site. The minimum time for submission of bids is three weeks. Late bids may not be considered.

Selection and qualification criteria must be stated in the bidding documents. The selection of the winning bidder follows the principle of value for money. Only the winning bidder is informed about the result of the bid evaluation. The reasons for the selection of this bidder are recorded but not disclosed. Post-tender negotiations, which pose an important risk for corruption in procurement, are explicitly forbidden. The Rules allow two exceptions: post-tender negotiations may be conducted with the bidder offering the lowest price and for ad hoc purchases in exceptional circumstances.

Safeguarding and enforcing integrity

General codes of conduct apply to procurement personnel. They contain conflict-of-interest regulations regarding personal affiliations with bidders and prohibitions against the acceptance of

inducements. Gifts beyond a certain value must be reported to superiors, and administrative sanctions are available to enforce these rules. Other measures aimed at preventing corruption among procurement entities' staff include the rotation of officials. Staff rotation is an established practice in India, especially for personnel in sensitive positions, such as in government procurement.

To enhance integrity in government procurement, the CVC, through its Chief Technical Examiners Organization, conducts systematic analyses of weaknesses and irregularities and issues circulars and instructions to prevent such risks. To strengthen further the mechanisms that ensure integrity and curb corruption in procurement in India, integrity pacts are being introduced in major contracts. At the time of writing of this report, integrity pacts were being used in procurement in the defense sector.

Penal sanctions for any form of corruption, and thus also for corruption in public procurement, are available. Companies may be taken off the list of registered suppliers as a sanction for corruption or other misbehavior in public procurement. Such lists of registered suppliers exist for goods commonly procured. Procuring agencies are not required to select among such registered suppliers, however, and suppliers are not required to register to bid for government contracts.

Aggrieved bidders can seek judicial review of procurement decisions. Public interest litigation provides an additional channel for seeking judicial review of procurement decisions tainted by corruption. However, as the procurement framework does not have the quality of parliamentary law, not all deviations from the rules are subject to judicial review.

Citizens can also lodge complaints with the CVC and its branches or, in some states, with ombudsmen to trigger investigations into alleged acts of corruption in procurement by public officials or politicians. The Right to Information Act 2005, which covers procurement procedures, is a complementary measure. It gives citizens access to information about procurement decisions within a defined period. Internal and external audits of procuring agencies and offices at the federal and local levels are other instruments in place to curb and detect corruption in public procurement. Reports of external audits are publicly available.

Procuring agencies must record the reasons for all procurement decisions to facilitate meaningful judicial review and audit. The records are kept for later consultation; the period of retention is not generally prescribed and varies from organization to organization.

Relevant documentation

General Financial Rules (GFR):
http:/finmin.nic.in/the_ministry/dept_expenditure/GFRS/GFR2005.pdf

Manual on Policies and Procedures for Purchase of Goods may be seen at
http:/finmin.nic.in/the_ministry/dept_expenditure/GFRS/MPProc4ProGod.pdf

Indian Government Tenders Information System: http://www.tenders.gov.in

Indonesia

Legal and institutional framework

The Indonesian framework for public procurement is laid out in various presidential decrees, based on laws 5 and 18/2000. Presidential decree 18/2000 has important provisions, and other decrees and laws contain relevant regulations on certain types of contracts as well as on procurement by local governments. Also, some model tender documents exist. For the time being, however, the regulatory framework remains fragmented and contains contradictory provisions and loopholes that leave room for interpretation and could be exploited for corrupt ends. The framework applies to procurement at all state levels—central, provincial, and local—and to procurement by state-owned enterprises, but not to security-sensitive procurement and emergency procurement. Public contracts amount to roughly 25 percent of Indonesia's central government expenditure.

Procurement falls within the authority of each government department or agency. No centralized procurement entity ensures uniformity of policies and practices or oversees the application of procurement rules. The Ministry of Finance conducts capacity-building programs in public procurement.

Procurement methods and procedures

The risk of corruption varies, depending largely on the type of procurement method chosen for a given public contract. The Indonesian procurement framework provides for open and limited tendering, as well as direct contracting. Open tendering is the standard procurement method. Limited tendering can be used to purchase complex goods, works, or services, where there are only a few suppliers. Direct contracting is permitted under various conditions, notably for security-sensitive procurement, procurements worth up to IDR50,000,000 (about USD5,300), and in urgent cases. The Indonesian procurement framework does not require the use of lists of qualified bidders. Suppliers can, however, be prequalified to assess their capability to meet tender requirements. Prequalification is mandatory for restricted tendering and direct purchase.

To reach a wide range of potential bidders, Indonesia's procurement regulations require tender opportunities to be publicized in the mass media. In cases of limited tendering, the announcement gives the names of the eligible companies. In early 2006, Indonesia was working to strengthen e-procurement, i.e., procurement using modern information technology.

Under Indonesian procurement rules, a tender is deemed to have failed if there are fewer than three bidders (regardless of their bids), if no responsive bid is submitted, or if the lowest bid exceeds the available budget. The project officer selects the winning bid at the recommendation of the procurement committee and has the choice approved by a superior. The procurement committee is ad hoc; its members perform this function in addition to their regular assignments. The selection of the committee must be based on criteria stated in the procurement regulations. Post-award negotiations with the selected bidder are prohibited.

In Indonesia, procurement officers are not assigned specific areas of procurement. Also, decisions on procurements worth more than IDR50 million (USD5,500) must be made by a committee. This provision limits the risk of bias and improper relations with suppliers. At the same time, it increases the need to train staff to make procurement decisions. Such training is provided by each government department or agency engaged in procurement.

Safeguarding and enforcing integrity

Indonesia has put in place a number of mechanisms to bolster the integrity of procurement personnel and bidders. Preventive instruments include integrity pacts that are mandatory for all

procurement. Also, procurement-specific regulations on conduct regulate conflict-of-interest situations and specify how to handle gifts.

Integrity is enforced through sanctions for corrupt acts by procurement officials and suppliers. Procurement personnel found guilty of such acts are dealt administrative and criminal sanctions and have civil liability for damages. Suppliers can be prosecuted as well and held liable for damages. Also, suppliers found to have engaged in corruption in procurement can be debarred from participation in public tenders.

Aggrieved bidders can request administrative review of the procurement decision, which may result in the reopening of tender procedures or the cancellation of the awarded contract. Improper conduct is more easily detected with the help of internal audit and public scrutiny. Any citizen can request information about issues related to procurement planning, evaluation of bids, and contract implementation, and may file a complaint against an erring procurement agency.

The requirement to store procurement documents for 10–30 years allows review and regulatory enforcement even at a much later stage. But because the documents are stored by the procurement personnel, they could be destroyed or tampered with to cover up improper conduct.

A way forward

Indonesia has established various mechanisms that help protect public procurement against corruption. Indonesia is urged to streamline, clarify, and complete this framework and to anchor it in parliamentary law. Indonesia should also further strengthen the mechanisms and expand their range to reduce the risk of corruption in public procurement. In particular, Indonesia would be well advised to consider establishing a distinct procurement entity tasked to define standard documents, procedures, and policies for all types of procurement nationwide.

To ensure thorough and professional implementation of the strengthened framework, it is recommended that Indonesia enhance capacity building for the staff of government departments and agencies that carry out procurement. Indonesia might also wish to consider ways to further professionalize public procurement committees.

Relevant documentation

Indonesian Government e-procurement portal: https://eproc.pu.go.id/

World Bank Country Procurement Assessment Report (March 2001)

APEC Government Procurement Survey (2003)

Japan

Legal and institutional framework

Japan has several laws and ordinances that concern public procurement, including the Accounts Law (Law No. 35 of 1947), the Cabinet Order concerning the Budget, Settlement of Account and Accounting (Imperial Ordinance No. 165 of 1947), and the Local Autonomy Law (Law No. 67 of 1947). Procurement over a certain threshold under the WTO Government Procurement Agreement is governed by the Cabinet Order Stipulating Special Procedures for Government Procurement of Products or Specified Services (Government Ordinance No. 300 of 1980), the Cabinet Order Stipulating Special Procedures for Government Procurement of Products and Specified Services in Local Government Entities (Government Ordinance No. 372 of 1995), and other ministerial ordinances. In 2000, Japan passed the Act for Promoting Properness of Bidding and Contracting in Public Works. In mid-2006, a bill "against government-initiated bid rigging" was under consideration; the bill, if passed, would introduce penalties, including imprisonment, for government officials who initiate, assist, or coordinate bid rigging. The procurement rules apply generally and are not specific to certain sectors (e.g., military procurement). These laws and regulations are published in the Government's compendium of laws and on the Internet. To make the procurement process more transparent and clear to potential suppliers, Japan has prepared a document titled "Questions and Answers on Government Procurement Contracts" for suppliers.

There are no specialized procurement bodies in Japan. Each government authority administers its own procurement process.

Procurement methods and procedures

In Japan, open tendering is the standard method of procurement and is mandatory for public works over a certain threshold. But, like many other countries, Japan permits other methods that have greater potential for abuse and corruption, such as restricted tendering and direct negotiations. Restricted tendering may be used when there are only a few suitable suppliers. For public works, direct negotiation may be used when severe time constraints render other methods impractical. This method can also be used for procurement under the WTO Government Procurement Agreement in situations defined in the Agreement. With some exceptions, procurement through direct negotiations must still be published in advance. In some cases, procurement may also be done through auction. Prequalification is generally a precondition of participation in open or restricted tendering. Procuring entities are required to publish the conditions for prequalification. Candidates are judged according to a scoring system. The list of prequalified suppliers for a restricted tender is published. Japan is reviewing the conditions surrounding restricted tendering to improve the accountability of the process.

Wide publication of procurement opportunities encourages more suppliers to participate and thus decreases the likelihood of corruption. In Japan, such opportunities are advertised in the official gazette (*Kanpo*) or its local equivalent. They are also published in an electronic database that is accessible through the Internet and at the offices of the Japan External Trade Organization. Central government entities have created other Web sites for their own procurement. In addition, voluntary measures drawn up by the Government entail the publication of anticipated procurement for each fiscal year. Participation can also be improved by giving suppliers a reasonable amount of time to prepare their bids. In Japan, the minimum bidding period is 40 days for open tenders and 20 days for restricted tenders. Under the voluntary measures, a bidding period of 50 days has been set for procurement worth more than JPY16 million (USD144,000). The Government also holds yearly seminars to discuss upcoming procurement.

Transparent procedures for handling bids, which allow scrutiny by bidders, are crucial in preventing corruption in procurement. For all tenders in Japan, the notice of tender in the gazette stipulates the place and deadline for submitting and opening bids. All received bids are recorded in a

register. Tenders are opened in the presence of tenderers or their representatives, or by staff of the procuring entity who were not involved in the tendering. The Accounts Law and the Cabinet Order concerning the Budget, Settlement of Account and Accounting specify the bid selection criteria. As a general rule, a contract is awarded to the bidder with the lowest price, but other criteria may also be considered. The winning tenderer and the value of the contract are published in the gazette. While all contract procedures and results of procurement by national agencies are disclosed to the public, disclosure at prefecture and lower levels is less regular. The choice of bids is generally not explained to bidders.

Model contracts can avoid post-award negotiations that could lead to corruption. In Japan, procuring agencies may have standard-form contracts for some types of transactions, but are not required to use them. These standard-form contracts usually do not contain anti-corruption clauses. Failure of tendering arises if all bids exceed the budget ceiling. In these cases, the procuring entity may repeat the tender with modified criteria. Alternatively, the procuring entity may negotiate individually with the tenderers under the same tender criteria. The procuring entity may then award the contract to the tenderer who offers a price lower than the ceiling price.

Safeguarding and enforcing integrity

Codes of conduct for civil servants can reduce corruption by promoting integrity and ethics. In Japan, a number of laws stipulate codes of ethical conduct for national and local government officials, but none are specific to public procurement. These laws include the National Public Service Laws, the Local Public Service Laws, the National Public Service Ethics Law, the Ethics Bylaw, and the Ethics Regulation. These instruments contain provisions on conflict of interest, and the acceptance of gifts and hospitality. Training programs and manuals for officials on these rules have not yet been implemented in Japan. Procuring entities in Japan usually rotate procurement personnel to prevent them from forming relationships that could result in favoritism.

Effective sanctions can also deter corruption. Japan requires procurement officials to report crimes to the judicial police or the prosecutor's office. A procurement official who is found to have accepted or solicited a bribe must surrender the bribe and can be imprisoned for up to seven years under the Penal Code, besides being liable for any economic harm caused by the crime. Officials who violate the codes of conduct for civil servants may be subjected to disciplinary measures. Bribe givers are punishable under the Penal Code by three years' imprisonment or a fine of up to JPY2.5 million (USD22,600). If a procurement is inconsistent with the prescribed rules, the contract may be terminated and the procurement may be conducted again. The contract may also be awarded to another bidder. Finally, a person who bribes an official may be debarred from future bids. Each procuring authority determines the length and terms of the debarment as each case warrants.

Readily accessible complaint and review procedures render procurement more accountable. Japan has created the Government Procurement Review Board (GPRB) to hear complaints about procurement over a certain threshold by central government agencies. Any participant in the procurement may complain. For complaint procedures to be meaningful, the aggrieved parties must be given enough time to verify the facts and to weigh the benefits and risks of an appeal. In Japan, bidders for central government contracts may complain to the GPRB within 10 days of finding cause for complaint. Local procuring entities have similar complaint procedures.

Audits can also be used to detect corruption in public procurement. In Japan, procuring entities are urged to undergo internal audits but are not required to do so. However, external audits by the Board of Audit are mandatory for all entities. The Board submits annual reports to the Diet and these reports are also available to the public. Independent actors and nongovernment organizations are not involved in the audit process.

Proper documentation is crucial in procurement monitoring and verification. In Japan, procurement actions and decisions are recorded and maintained by each procuring entity for at least five years. Anyone may access the documents.

A way forward

Japan is asked to consider introducing formal rules on the imposition of administrative sanctions on legal persons and individuals convicted of corruption offenses, including debarment from bidding for government procurement contracts in appropriate cases. Japan may also wish to consider making it a policy to deny access to government procurement opportunities to individuals and companies convicted of corruption offenses, and to terminate contracts where the contractors are convicted of corruption after the contract has been signed.

Relevant documentation

Suggestions for Accessing the Government Procurement Market of Japan:
http://www.mofa.go.jp/policy/economy/procurement/q_a.pdf

Japanese Procurement Procedures for Public Works:
http://www.mlit.go.jp/sogoseisaku/const/kengyo/kokyo-e.htm

Japan's Government Procurement—Policy and Achievements:
http://www.kantei.go.jp/foreign/procurement/2003/

Home page of the Japanese External Trade Organization (JETRO): www.jetro.go.jp

Kazakhstan

Legal and institutional framework

Public procurement in Kazakhstan is regulated by the Law on Public Procurement (LPP), the Rules for Organization of Public Procurement of Goods, Works and Services, and the Instructions on Special Procedures of Public Procurement. These documents are available on the Internet, in electronic databases, and in the mass media. The rules stipulated in these documents apply to government agencies and departments, state-controlled enterprises, and enterprises in which the state holds more than 50 percent of the shares. Special conditions and procedures apply to procurement in certain sectors, such as security and defense.

The procurement system in Kazakhstan is highly decentralized, with some centralized planning and oversight. Government departments and agencies administer specific procurement projects. The Committee for Financial Control and Public Procurement (CFCPP) enforces the laws and regulations on public procurement. The Ministry of Finance decides procurement policies and develops the legislative framework. Kazakhstan is currently setting up an e-procurement system.

Procurement methods and procedures

While the LPP permits several methods of procurement, open tender is preferred. Restricted tendering may be used with the approval of the CFCPP to procure complicated or specific items that have a limited number of suppliers. Single-source procurement is available in specified circumstances, e.g., in urgent situations or where a supplier holds a dominant market position. A supplier may be selected through price proposals for the annual supply of similar goods below a certain threshold. Procurement through open commodity markets is also possible under certain circumstances. To strengthen consistency and transparency, a Kazakh procuring agency must draft tender documents conforming to the sample prepared by the chairman of the CFCPP. The tender period is 30 days or longer.

Risks of corruption in procurement can be reduced by publicizing procurement opportunities and thus increasing participation. In Kazakhstan, procurement opportunities are published in Russian and Kazakh at least 30 days before the bidding begins. The advertisement must appear in a periodical designated by the CFCPP. Kazakhstan has launched a database to assist in publicizing procurement, but use of the database by procuring agencies has so far been sporadic, and, hence, not all tenders are listed in the database.

The LPP also prescribes procedures for handling, opening, and evaluating bids. The tendering commission receives bids and enters them in a register. The commission may open bids up to two hours after the deadline for submission. The commission also evaluates the bids. The primary criterion is price, although the LPP lists other factors that may also be considered. The commission must record the reasons for its decision. Within seven working days after the winning bid is chosen, the procuring agency publishes the name of the winning bidder and the details of the award in an approved periodical. Post-award negotiations are allowed, but only to reduce the price of the contract. Failure of tendering arises when fewer than two bids meet the tender requirements (i.e., even if there is one responsive bid). In case of failure, the tender may be conducted again with changed requirements. If still no acceptable bids are received, single-source procurement may be used.

Safeguarding and enforcing integrity

Codes of conduct specifically for procurement personnel can help prevent corruption in procurement. Kazakhstan has codes that apply specifically to procurement agencies and their officials. In addition, there are general rules of ethical behavior that apply to all civil servants. Training procurement personnel in integrity issues can also be an effective measure, but Kazakhstan has not yet done so.

To address the issue of integrity of bidders, the CFCPP further prohibits potential suppliers or their close relatives from representing the procuring agency in any state procurement. However, there are no other measures to strengthen the integrity of bidders, such as declarations of abstention from corruption, or disclosure of commissions, gratuities, or fees paid to third parties for services rendered in relation to a tender.

Effective sanctions for corrupt behavior also have preventive effects. The CFCPP may cancel a tender or a contract that has been tainted by a violation of procurement rules. Officials who accept bribes are subject to criminal and administrative sanctions. They may also be liable for civil damages.

Kazakh law also provides means of review and complaint. Aggrieved bidders may first appeal to the CFCPP. If the CFCPP determines that a procuring agency has breached procurement regulations, it will refer the matter to the courts. If the bidder is not satisfied with the CFCPP's decision, it may seek judicial review. Such review is, however, limited to certain grounds, e.g., an aggrieved bidder cannot challenge the choice of procurement method.

To strengthen the verification and monitoring aspects of its procurement framework, Kazakh legislation allows the CFCPP to regularly inspect procuring agencies to ensure compliance with procurement rules. The CFCPP may involve auditors in these inspections.

A way forward

Kazakhstan is encouraged to strengthen its safeguards against corruption in the area of public procurement. It is invited to extend its efforts to publish government procurement opportunities in its central database and to include anti-corruption clauses in procurement documents. Kazakhstan may also want to consider whether the risk of corruption through abuse of tender failure could be reduced by modifying the conditions of tender failure and the procedures to be followed in such cases.

Furthermore, Kazakhstan is encouraged to conduct systematic training of officials involved in public procurement to ensure thorough implementation of the regulatory framework in this matter.

Korea

Legal and institutional framework

Government procurement in Korea—worth USD83 billion a year (based on 2005 statistics by the Small and Medium Business Administration)—is subject to an extensive legislative framework. This consists mainly of the Act on Contracts to which the State is a Party, the Enforcement Decree of the Act on Contracts to which the State is a Party (containing the material rules for government procurement), and the Government Procurement Act (regulating the role and responsibilities of the Public Procurement Service [PPS]). These procurement regulations cover the entire procurement cycle, from procurement planning to implementation control.

This framework for public procurement is implemented at two levels: the procurement of goods, services and construction works above a certain value threshold is centralized in the PPS, while procurement below this threshold is carried out independently by each government organization (central, local, and government-invested organizations included). Furthermore, goods and services used in national defense and security are procured by specific defense procurement agencies. Goods, services and construction works above the established WTO GPA threshold are generally procured through international competitive bidding; however, exemptions from this agreement are applied to single tendering and set-asides for small and medium enterprises.

Procurement methods and procedures

Open tendering is the standard method. However, limited tendering is allowed under certain special conditions, and negotiated contracting, in case of emergency. Exceptions from open tendering are strictly specified in the relevant provisions to prevent the fabrication of circumstances that will justify limited tendering or negotiated contracting. The use of negotiated contracting is permitted for goods and services contracts worth up to USD30,000 and construction works ranging from USD50,000 up to USD100,000 according to construction types. In addition, all negotiated contracts must be made known to the audit institutions. In particular circumstances, the multiple-award method, which broadens options for the end-user organizations by providing a framework contract with qualified suppliers of similar goods, may be used. To avoid the indiscriminate awarding of such types of contracts, an independent contract review council has been set up to control related contracts.

To achieve transparency in procurement, all bid invitations issued by all public institutions must be published on the KONEPS (Korean ON-line E-procurement System according to the relevant law, and procurement plans outline forthcoming key procurement projects. Standard tender and contract documents are used for consistency, as well as transparency. The PPS operates a government-wide e-procurement system, KONEPS, which features standardized public procedures and provides extensive procurement information. It is mandatory for all centralized procurement by government organizations, and it may be used for decentralized procurement as well. All suppliers which may want to participate in bids are required to obtain a certificate from the designated certification authority and then should complete their registration with PPS one day prior to bid opening.

Tenders are awarded to the bidder offering the best price. Other aspects such as delivery time and other specifications and terms considered as "most advantageous to the Government" may also be taken into account, provided that the relevant bid evaluation and award criteria are stated in the bid documents.

Safeguarding and enforcing integrity

To bolster the integrity of government procurement personnel, Korea has adopted a code of conduct that takes the genuine risks into consideration. Korea also supports high standards of behavior through systematic training that addresses corruption risks. A mechanism for monitoring compliance

with the code of conduct has been set up as well. To prevent the establishment of relationships that could lead to favoritism, Korea rotates its public procurement agents every two years.

Korea's procurement framework also includes regulations governing integrity within corporations. To reduce the potential for illicit dealings with public officials, Korea's bidding documents contain a clause that explicitly forbids bidders to unduly influence the procurement proceedings. Additionally, bidding companies and subcontractors are required to establish codes of conduct for their employees that prohibit them from unduly influencing the procurement process. Companies must also undertake to prevent retaliation against whistleblowers within the company.

As an additional measure to discourage corrupt behavior by companies, in public procurement and other contexts, Korea's legal framework makes legal persons responsible for foreign bribery. To strengthen these penal provisions and to counteract the risk of undue influence on procurement decisions, Korea has developed specific mechanisms for detecting corruption by obligating procurement agency personnel to disclose attempts at corruption or collusion. In addition, special centers have been set up to receive complaints from the public, as well as reports of kickbacks.

To ensure that attempts to undermine procurement regulations are detected and properly sanctioned, a bidder or supplier may file a complaint with the PPS, the ombudsman, or the Korea Independent Commission against Corruption within 15 days after the violation is committed or 10 days after it becomes known to the bidder. The procuring entity may correct individual aspects of a decision or terminate an entire contract to deal with a case of corruption. Additionally, economic sanctions such as civil liability for damages and debarment from tendering for public contracts for a period of up to two years may be imposed for corruption or collusion. In case of debarment, the disqualification is published in the e-procurement system.

A case left unresolved after administrative review by the PPS may be referred for judicial review. The tenderer may file an appeal to the Conciliation Committee of International Contract Dispute within 15 days after the administrative review decision is handed down. The decision of the Committee, if not challenged again within 15 days, has the same effect as reconciliation at a court.

Korea requires regular annual audits, to monitor the proper conduct of procurement. Documentation regarding the procurement proceedings has to be kept by the procuring entity for at least five years. During this period, all information about bid invitations, e-bid results, and the contract award is publicly accessible through the Internet.

A way forward

Korea has issued comprehensive and detailed procurement regulations that set a high value on transparency and consistency. However, to ensure the proper conduct of the parties involved in procurement—a central aspect of efforts to curb corruption in public procurement—penal sanctions against legal persons for foreign bribery should apply to domestic bribery as well.

Relevant documentation

Home page of the PPS: http://www.pps.go.kr/english/html/main/

Korea Independent Commission Against Corruption: http://www.kicac.go.kr/eng_content/main.jsp

Kyrgyz Republic

Legal and institutional framework

Regulations for the conduct of public procurement in the Kyrgyz Republic were recently amended in light of their decisive role in curbing corruption in public contracting. Government procurement in the Kyrgyz Republic—worth KGS4.08 billion (about USD100 million) a year—is subject to the Law on Public Procurement, issued as a parliamentary law in 2004 and strongly inspired by the UNCITRAL model law on public procurement. It is supplemented by a number of resolutions and provisions regulating individual aspects of procurement such as threshold amounts and tender commissions. The procurement rules apply to all administrative entities at the local and national levels, as well as to state-owned enterprises where state has more than 50 percent participation in equity. These measures minimize exceptions to the application of the procurement rules to maximize their effectiveness in preventing corruption in public procurement. Goods and services used in national defense and security, however, are procured under specific regimes. Kyrgyz procurement regulations, like those of other countries that were inspired by the UNCITRAL model law, do not encompass issues like procurement planning or implementation control.

Government procurement activities have been decentralized to individual procuring entities at the local level, except for the procurement of manufactured goods, medicines, and solid fuel, which is centralized in tender commissions on state level.

Procurement methods and procedures

The Kyrgyz procurement framework is based on open tendering, which can be done in two stages under certain circumstances. Open tendering is not required, however, if the value of the procured goods or services is below a certain threshold and does not warrant a long and complex tendering process. Kyrgyz procurement regulations explicitly forbid the splitting of purchases into smaller contracts, as the practice could lead to abuse. Limited and negotiated tendering and single-source contracting are allowed under special circumstances, such as an emergency, which are laid down to some extent in the Procurement Law. To contain the risks of arbitrary selection of procurement method, particularly as manipulations are difficult to detect at this early stage, prior approval by an administrative unit at a higher level is required for single-source tendering or for a change in procurement method.

Procurement procedures, regulations, and competencies ought to be transparent for all parties involved and to be overseen properly, as corruption may creep into procurement especially during procurement planning. Kyrgyz procurement rules provide for the mandatory use of standard tender documents, which include a clause prohibiting corrupt acts. Bids are usually opened right after the tender period and late bids are excluded. All bidders or their representatives are expected to be present. The selection is based on the lowest evaluated price, as well as other criteria stated together with their relative weight in the bidding documents.

To prevent indiscriminate renegotiation of the terms of the contract and to avoid the possibility of kickbacks or bribes at the post-tender stage, Kyrgyz law requires the procuring entities to provide a model contract with the procurement documents and forbids post-tender negotiations.

Safeguarding and enforcing integrity

As measures to ensure the integrity of procurement agency personnel, the Kyrgyz Republic has adopted an extensive code of conduct for public officials (including staff of procuring entities) that specifically prohibits corruption and deals with conflicts of interest. The Kyrgyz Republic restricts public officials' involvement in private sector enterprises or investment, and requires shareholders, while in the public service, to transfer their shares into trust governance.

The Kyrgyz Republic provides for the disqualification of bidders for corruption or improper conduct. It disqualifies bidders that knowingly submit false or incomplete information regarding their qualifications, but not if the false information is not material and is immediately rectified by the supplier. To counter the risk of abuse of the instrument of disqualification, a bidder is disqualified only with the consent of a higher authority. The Kyrgyz Republic may debar companies who are found guilty of corruption or collusion from tendering for public contracts for up to three years.

Procurement decisions may be reviewed at the administrative level before and after the contract is signed. A bid participant may lodge a complaint with the procuring entity within 10 days of knowing of the source of the complaint or—if the complaint is about the final decision itself—within 10 days after the publication of the procurement results.

Appeals against decisions made by the procuring entity on the complaints can be brought to a higher level within the public administration. Considering the important role of an independent body in controlling administrative decisions, the Kyrgyz Republic also permits judicial review. The supplier has the right to appeal to the Arbitration Court, as well as to a court of general jurisdiction, which may nullify unlawful acts or decisions of the procuring entities and require these entities to compensate suppliers for costs incurred in connection with the appeal.

The Kyrgyz Republic audits the procurement of selected high-value items to monitor the proceedings and overall service quality in different sectors.

Documentation regarding procurement acts and decisions has to be kept for at least three years; the precise content of the records is defined by law. To eliminate the possibility of the records being manipulated or altered, there is provision for their immediate transfer to a higher body for storage.

A way forward

The Kyrgyz Republic has enacted a comprehensive procurement framework and plans further amendments to the Law on Public Procurement.

To attract the greatest possible number of bidders and to assist in and facilitate procurement, the Kyrgyz Republic is urged to consider, in addition to the current practice of publishing tenders and bid openings on the Internet, expanding online facilities and further promoting e-procurement. The Kyrgyz Republic may also wish to review the necessity of the exceptions to open tendering, and to more clearly define the conditions for single-source procurement.

The Kyrgyz Republic might also introduce regular independent external and internal audits in addition to the current selective audits of procurement. Such auditing bodies may be allowed to intervene during the project cycle or after projects have been fully implemented to detect and deter corruption more efficiently. Finally, to ensure a thorough review of procurement decisions, given the difficulties of detecting fraud and corruption, the Kyrgyz Republic might wish to extend the mandatory storage period for procurement documentation beyond three years.

Relevant documentation

Web site of the State Commission under the Government of the Kyrgyz Republic on State Procurements and Material Reserves listing relevant laws and regulations and providing the platform for online announcements and registrations: http://www.goszakupki.gov.kg/English/

Malaysia

Legal and institutional framework

The legal framework for public procurement in Malaysia consists of the Financial Procedure Act 1957, the Government Contract Act 1949, Treasury Instructions, and Treasury Circular Letters. These instruments apply to procurement by all federal and state governments and semigovernmental agencies but not state-owned enterprises.

Procurement in Malaysia is largely decentralized. The Government Procurement Management Division of the Ministry of Finance sets the procurement policy and rules. The minister of finance or the chief minister for the state procurement boards appoints a tender board in each procuring agency to administer specific procurements.

Procurement methods and procedures

Clear and comprehensive rules help avoid corruption resulting from an arbitrary choice of procurement methods and proceedings. The laws, regulations, and policy guidelines on public procurement in Malaysia are available in print form and on the Web site of the Ministry of Finance. Open tendering is used for procurements above MYR200,000 (USD54,000), closed tendering for procurements between MYR50,000 and MYR200,000 (USD13,500–USD54,000), and direct purchasing for procurements below MYR50,000. For tenders that target local suppliers, the bidding period is 21 days. For international tenders, which arise only for goods and services that are not available locally, the bidding period is 56 days. Model tender documents, which can increase transparency and consistency, are found in the Treasury Instruction, Treasury Circular Letters, and the Procurement Guidelines Book issued by the Ministry of Finance. The Procurement Guidelines Book also explains procurement procedures to government agency staff. For each procurement, the procuring agency sets up a technical committee to determine the technical specifications of the tender.

Wide publication of tenders can help reduce corruption by increasing transparency and participation. Under Malaysian rules, local tenders must be advertised in at least one local newspaper in the Malay language. International tenders must be advertised in at least one Malay-language newspaper and one English-language newspaper. Foreign embassies in Malaysia and High Commissions are also informed. All tenders, whether local or international, are posted on the Web sites of the procuring agencies and the central procurement Web site of the Malaysian Government.

The handling and selection of bids is a crucial stage in the procurement process. Entrusting panels rather than individuals with decisions during this procedure can enhance oversight and thus reduce the risk of corruption. For each tender in Malaysia, a tender opening committee comprising senior government officials opens and records the bids in a register. Two other committees created by the tender board evaluate the technical and financial aspects of the bids according to a scoring system. To enhance fairness, the evaluation committees do not know the identities of the tenderers. The evaluation committees report to the tender board or the Ministry of Finance (depending on the value of the procurement), which makes the final selection. In exceptional cases, the Cabinet will choose the winning bid. Price and non-price factors are considered. The winning bidder is advised by letter. The relevant procurement board records but does not disclose the reason for selecting the winning bid. After awarding the contract, the procuring agency may send the successful bidder a letter of intent to clarify the specifications stipulated in the bid or to require additional contractual terms. Failure of tendering occurs when no bidders meet the technical requirements, in which case the tender may be reopened with the approval of the tender board.

Safeguarding and enforcing integrity

The creation, dissemination, implementation, and enforcement of codes of conduct for procurement personnel can contribute to preventing corruption. There is no code of conduct in

Malaysia that specifically targets procurement personnel. However, the Public Officers (Conduct and Discipline) (Amendment) Regulations 2002 contain conflict-of-interest provisions that apply to all civil servants. Procedures for procurement require procurement personnel with a conflict of interest to declare it and to withdraw from the process. To raise awareness of ethics, the National Institute of Public Administration provides training that includes integrity issues to procurement personnel. To prevent procurement officials from establishing relationships with suppliers that could engender corruption, the Public Services Department recommends rotating staff in sensitive and nonsensitive positions every three and five years, respectively.

Adequate sanctions are equally important in preventing corruption in procurement. The detection of corruption is strengthened by a mandatory requirement for public officials to report all attempts of bribery to the police or the Malaysia Anti-Corruption Agency. Giving or receiving a bribe is a criminal offense under the Anti-Corruption Act and the Penal Code and General Orders. Corrupt officials may also be administratively sanctioned and their assets may be confiscated. Penal action cannot be taken against a legal person, but the Government may debar a company that has engaged in corruption. The Government determines the length of debarment and advises all government agencies of its decision.

Complaint and review mechanisms allow bidders to verify that the procurement process conforms to the prescribed procedures. The possibility of review is also a strong incentive for procurement officials to abide by the rules. Malaysia offers bidders a multitude of channels for complaint. A failed bidder may complain to a procuring agency, which may cancel a tender if it finds any irregularities. An aggrieved bidder may also complain to the Public Complaints Bureau, the Anti-Corruption Agency Malaysia, or the Public Accounts Committee. In addition, the Monitoring and Control Division of the Ministry of Finance monitors adherence to procurement rules, and may also set up special task forces to investigate complaints. The minister of finance, however, has the ultimate decision-making authority regarding complaints.

Audits are also important review mechanisms. All procuring agencies in Malaysia have internal audit units that regularly examine weaknesses in and possible breaches of procurement rules. The Auditor General conducts external audits of procurement procedures and may order corrective actions. The reports of the Auditor General are published and presented annually to Parliament.

Review mechanisms, however, are effective only if the documentation of procurement proceedings is complete and readily available. In Malaysia, all procurement actions and decisions are recorded and the records are kept between one and 20 years, depending on the nature of the document. The records are generally accessible only to authorized procurement personnel.

A way forward

Malaysia is invited to assess whether the measures taken to ensure the integrity of bidders and procurement personnel could be strengthened by codes of conduct and penal provisions that are specifically tailored to procurement personnel and to corrupt practices that typically occur in the procurement process. In this regard, Malaysia is further invited to take remedial action where appropriate.

Relevant documentation

Electronic Procurement System of the Government of Malaysia: http://home.eperolehan.com.my

APEC Government Procurement Survey (2003) and Summary of Government Procurement Resources in Malaysia: www.apec.org

Mongolia

Legal and institutional framework

The Public Procurement Law of Mongolia (PPLM) came into force in May 2000. The law is based on the UNCITRAL model procurement law. The procedures stipulated in the PPLM apply only to contracts above a certain threshold. Procurement related to national defense or security is exempt. To complement the PPLM, Mongolia adopted the General Guidelines for Procurement of Goods and Works and General Guidelines for the Use of Consultant in June 2000. The Government recently reviewed the PPLM and drafted amendments to the law.

Mongolia has a decentralized public procurement system with some centralized supervision. The Procurement Policy and Co-ordination Department of the Ministry of Finance (PPCD) designs procurement policy and standards, provides professional services and training to procuring entities, and reviews complaints from bidders. Specific procurements, however, are administered by the procuring government entity. Evaluation and tender committees are set up for each procurement process. The former is responsible for administering the procurement and evaluating the bids. The latter receives and opens the tenders, approves any exceptional methods of procurement, and ensures that the evaluation committee follows the correct procedures. The head of the procuring entity makes the final decision to award a contract.

Procurement methods and procedures

The PPLM provides for several means of procurement. Open competitive tendering is the main method. A procuring entity may resort to restricted tendering, comparison (price quotations), or direct contracting for contracts of lower value or under circumstances of urgency, which are not defined in the PPLM. Prequalification procedures can be used for large civil works, turnkey contracts, and contracts involving expensive and technically complex equipment. Procuring entities may keep registers of prequalified suppliers, contractors, and service providers for later use in a restricted tendering process, although unregistered entities may also be invited to participate. The PPLM lays down various measures to strengthen the transparency of the procedures, such as the use of model tender documents and form contracts. The PPLM and the procurement methods therein are published in paper form and on the Web sites of the Parliament and the Ministry of Justice and Home Affairs. They will be added to the Web sites of the PPCD and the Ministry of Finance once those websites are created.

Wide participation in procurement reduces the risk of collusion or failure of tendering. To this end, Mongolian government entities must publish a list of goods and works to be procured in the mass media every fiscal year. They must advertise invitations to tender in a mass-circulation daily newspaper or other forms of mass media. In some cases, invitations must also be advertised in the international media. The minimum deadlines for submitting a tender are 30 days for open tendering and 15 days for restricted tendering. To further strengthen the transparency of the system, the Government is considering introducing some e-procurement principles, including publishing procurement notices and results on a Web site.

The PPLM and Guidelines also prescribe the handling of bids. Bids are opened publicly at the place stipulated in the tender documents within two hours after the bid closing time. Bidders have a right to attend. The procuring entity must evaluate all tenders that do not materially deviate from the selection criteria. In addition to price, the procuring entity may consider the date of completion or delivery, running costs and cost-effectiveness, after-sales service and technical assistance, supply and price of spare parts and supplies, the quality and technical merit of the works or supplies, and other supplementary objective and nondiscriminatory criteria. All unsuccessful bidders are notified of the decision but not the reasons for it. Post-award negotiations are not allowed and are in any event unnecessary since model contracts are used. In case of failure of tendering, two courses of action are available. The procuring entity may conduct an open or restricted tender after examining why there

were no appropriate tenders. Alternatively, the procuring entity may proceed immediately to direct contracting. The availability of this latter option poses risks of corruption, since an official could deliberately cause a failure of tendering and then contract directly with a corrupt supplier.

Safeguarding and enforcing integrity

In June 2000, Mongolia adopted the Code of Ethics for the Civil Servants Conducting Procurement. The Code contains procurement-specific conflict-of-interest provisions, which cover, among others, situations when a civil servant is a supplier or a shareholder of a supplier, or a member of his or her family works for a supplier. Procurement staff are also prohibited from accepting gifts or hospitality from a supplier. The PPCD is currently drafting a procurement training strategy to create a national training network that will strengthen the training of procurement professionals.

A number of remedies are available when a procurement decision is tainted by corruption. If the contract has not yet been signed, the PPCD may make a declaration regarding the applicable legal rules or principles, annul or modify any act or decision of a tender committee, or instruct a tender committee to take remedial measures. Violations of the PPLM by a tender committee that do not amount to a criminal offense give rise to remedial action under the Civil Services Law. Sanctions against a bidder are also available. A civil action may be brought when a civil servant accepts or solicits a bribe. A contract is annulled if a court finds that the supplier or contractor has engaged in corrupt or fraudulent practices when competing for the contract. Furthermore, if a court finds that a supplier or contractor has engaged in corrupt or fraudulent practices, the procuring entity will declare the supplier or contractor ineligible for future procurements. The period of ineligibility may be indefinite or for a stated period of time. The procuring entity will also announce the ineligibility of the supplier or contractor to the public.

Administrative and judicial review is available. A bidder may complain to the tender committee and the PPCD before turning to the courts for redress. The Government is currently working on reforms for more effective monitoring of the procurement system.

The procurement system is subject to several audits. The Professional Supervision Agency conducts government internal financial auditing every two years. If the agency discovers a breach of procurement laws, it may apply sanctions under the Civil Services Law and other administrative legislation. Procurements are subject to audits by the State Audit Authority. Some large procuring entities are also subject to audits by the PPCD and other supervising agencies on the implementation of the PPLM.

The PPLM and the General Guidelines require procuring entities to keep all procurement files (including the reasons for a decision, notes, registers, and related documents) for three years after the completion of a contract. Other rules and regulations permit audit, legal, and supervisory authorities to access the information upon written request.

A way forward

Mongolia is encouraged to pursue its efforts to reform its regulatory framework for public procurement. In this context, Mongolia might wish to consider whether the current period for which documents are kept is sufficient to allow verifications or criminal proceedings if suspicions of corruption in the procurement process surface.

Mongolia is further encouraged to pursue its efforts to provide extensive training to staff involved in procurement procedures to ensure proper implementation of the regulatory framework.

Relevant documentation

Public Procurement Law of Mongolia (14 April 2000)
http://www.wto.org/english/tratop_e/gproc_e/monlaw_2000.doc

World Bank Country procurement assessment report (September 2003)

Nepal

Legal and institutional framework

Nepal's government procurement is worth about USD650 million a year. A comprehensive legislative framework governing procurement, however, is yet to be established. Currently, the basic elements of a public procurement framework for the central government level are set out in the Financial Administration (Related) Rules of 1999, a regulation passed at the executive level. Public Procurement Guidelines supplement these rules. Local governments as well as state-owned enterprises conduct procurement under their own rules. To remedy identified deficiencies in the current framework, the Government of Nepal has brought a Public Procurement Bill before the House of Representatives. Among other objectives, the Bill seeks to render the Government's expenditure more transparent and to avoid losses through corruption.

Procurement is carried out by individual government departments or agencies. No central body is responsible for developing procurement policies or supervising procedures.

Procurement methods and procedures

At the central government level, procurement is done through open tendering, sealed quotation, or direct purchase. The choice of the procurement method depends on the value of the contract. Contracts for works and goods worth more than NPR1 million (about USD15,000) have to be awarded through open tendering; contracts worth between NPR100,000 (about USD1,500) and NPR1 million are awarded through sealed quotation; purchases worth less than NPR100,000 are made directly. Prequalification is conducted for the procurement of goods worth more than NPR10 million (about USD150,000) and works worth more than NPR60 million (about USD900,000). When awarding contracts for consulting services, quality and cost must be considered.

To attract the greatest possible number of bidders, tender opportunities must be published at least twice in the national print media. For the sake of transparency, these advertisements must mention the selection criteria. Nepal formally forbids post-tender negotiations.

Safeguarding and enforcing integrity

Specific measures to safeguard integrity in public procurement are of central importance, given the features of this process and the particular corruption risks that prevail therein. In Nepal, most regulations that may provide for preventive or repressive mechanisms to ensure the integrity of bidders and procuring agency staff are not procurement-specific. Procurement staff are required to respect the general code of conduct applicable to all public servants; this code and other regulations that apply to certain areas of procurement regulate the handling of gifts and prohibit the acceptance of facilitation payments. Nepal regularly rotates public officials involved in public procurement to prevent the establishment of relations between procurement staff and potential suppliers that could lead to favoritism.

The mechanisms in place to deter and sanction corruption in public procurement are essentially based on provisions of the criminal code. To date, Nepal has not passed procurement-specific sanctions. While disqualification of a tenderer from bidding for a specific contract is a possible sanction for improper conduct, debarment from future contracts, a mechanism with substantial potential to deter suppliers, is neither regulated nor practiced.

Complaint and review mechanisms, essential ingredients in detecting, preventing, and deterring corruption in public procurement, are not established or regulated by law. It appears that in practice aggrieved bidders can only seek judicial review. Internal and external audit of procurement decisions is conducted at the end of every year to verify the proper conduct of procurement.

All documents relating to the procurement proceedings are recorded and preserved for 20 years, thereby allowing a later review where necessary. Only a restricted number of officials, however, have access to such documents.

A way forward

Nepal is encouraged to pursue its efforts to establish a comprehensive legal framework for fair and transparent public procurement in the form of a parliamentary law applicable to procurement conducted by all public entities.. This framework should notably define procurement procedures, selection criteria and their application, meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms.

Nepal should also consider reviewing the existing codes of conduct for public officials with a view to amending them with procurement-specific rules, and developing specific codes of conduct that take into account the particular mechanisms and corruption risks of public procurement. Nepal is encouraged to establish a central procurement policies office to develop procurement policies and supervise procurement procedures.

Documentation

World Bank Country Procurement Assessment Report (April 2002)

Pakistan

Legal and institutional framework

As a federal state, Pakistan has different procurement regulations that apply at the national level and within each of the four provinces and two territories. The procurement system at the national level was recently overhauled. This reform culminated in the passing of the Public Procurement Regulatory Authority Ordinance 2002 and the Public Procurement Rules 2004 (PPR 2004), the latter being inspired by the UNCITRAL model law. PPR 2004 applies to all procurement by all procuring agencies of the federal and provincial governments. The Public Procurement Regulatory Authority (PPRA) is, however, entitled to exempt the procurement of any object or class of objects from the application of the rules or any other law regulating public procurement.

This regulatory framework empowers individual government agencies to conduct public procurement, and individual procuring entities to define important rules and policies themselves. The PPRA mainly provides oversight, with a view to improving governance, management, transparency, accountability, and the quality of public procurement of goods, works, and services. To this end, the PPRA may monitor the application of laws and regulations, policies, and procedures; recommend to the federal Government policy changes and amendments to existing laws and rules; and propose regulations and lay down codes of ethics and procedures for public procurement. Also, the PPRA maintains a Web site that lists all invitations for tender. Wide-ranging powers to define rules and policies are left to individual procuring agencies, including rules on blacklisting and review procedures.

Procurement methods and procedures

The standard procurement method for contracts worth more than PKR100,000 (about USD1675) is competitive bidding. Direct purchase is permitted for procurement not exceeding PKR25,000 (USD325), and request for quotations, for procurement not exceeding PKR40,000 (USD670), if other conditions are met. The value limits can be extended for specific agencies by the federal Government at the request of the concerned agency. Direct contracting is also permitted for emergency procurement. To prevent abuse of this exemption from the standard procurement procedures, the emergency must be declared by an authority vested with that power. However, what constitutes an emergency is not defined. Negotiated tendering is permitted in cases of extreme urgency that do not result from the procuring agency's action, and other cases. Under such circumstances, to prevent abuse of this method, the reasons for the decision to resort to negotiated tendering must be recorded. Also, the procurement rules require procuring agencies to plan upcoming projects in detail one year in advance, to avoid unnecessary emergency procurement.

Ample participation in tenders contributes to preventing corruption risks. It avoids tender failure, which would result in direct contracting, and typically increases scrutiny of the procedures. The Procurement Rules 2004 require the advertising of tender opportunities in relation to the value of the contracts that are to be awarded. Tenders worth up to PKR2 million (about USD34,000) must be advertised on the PPRA's central Web site and may also be publicized in print media. Tenders beyond this value should be published in both print media and on the central Web site and may in addition be posted on the procuring agency's own Web site. Once approved by the PPRA, procurement related to national security is dispensed from any form of public announcement; this exception is, however, limited to situations in which the publication of the tender would jeopardize national security.

Model tender documents have been developed to increase transparency and uniformity of the procurement process in certain sectors. At present, however, they are not mandatory and are sporadically used.

Procuring authorities are empowered to determine the bidding period, which depends on the complexity of the project. Minimum periods of 15 working days for national competitive bidding and 30 working days for international competitive bidding are mandatory. The bids must be opened in the

presence of bidders on the day the tender period ends. The procurement rules, however, do not provide for bid opening right after the tendering period, and hence court fraud or misconduct.

PPR 2004 defines the procedures for the evaluation of bids. In principle, the lowest evaluated bid has to be accepted unless this results in a "conflict with laws, rules, regulations or policies of the federal Government." This clause can be variously interpreted, and the award decision could become less transparent. Post-award negotiations with the winning bidder are explicitly prohibited.

Safeguarding and enforcing integrity

Pakistan has preventive and repressive mechanisms in place to ensure the integrity of procuring agency staff and bidders. To prevent corruption in procurement, Pakistan's procurement framework at the national level requires the use of integrity pacts for public purchases worth more than PKR10 million (about USD170,000).

As additional mechanisms to deter corrupt practices on the bidders' side, PPR 2004 provides for disqualification and blacklisting for improper conduct. A bidder can be disqualified from participation in a single tender for submitting incomplete information—a rather broad category of noncompliance that may itself lead to abuse for corrupt purposes. Suppliers or contractors who are found to have committed corrupt or fraudulent practices can be debarred temporarily or permanently from future contracts with the procuring entity. As mentioned, the procurement rules leave it to the individual procuring agencies to define procedures for debarment, and this practice could be abused for the purpose of eliminating unwanted competitors. Also, no review mechanism for this decision is established; recourse to the judiciary appears to be available, however.

Complaint mechanisms, important in detecting and deterring corruption in public procurement, exist at the administrative and judicial levels. Judicial review must be preceded by an administrative review. It appears that administrative review only covers decisions made during a tender and cannot be used to challenge, for instance, the choice of the procurement method or decisions made in adjudication procedures other than tendering. Also, no administrative review mechanism was established by the procurement rules. Instead, each procuring agency sets its own procedures. To allow public scrutiny, PPR 2004 grants public access to information regarding awarded contracts. Information about prequalification procedures and debarment is not publicly available. Complete documentation of the procurement procedures and decisions has to be kept by the procuring entity for at least five years to give effect to the complaint and review mechanisms.

A way forward

Pakistan's procurement framework contains various mechanisms that help prevent corrupt practices. Pakistan is invited to stabilize its procurement system by passing a comprehensive framework for public procurement as parliamentary law. Pakistan may also consider reviewing and modernizing the procurement frameworks in place at the subnational levels, where a large percentage of procurement decisions are made.

Pakistan is further encouraged to strengthen some elements of the current framework. Standard tender documents would contribute to greater transparency of bidding. A clear and uniform definition of conditions for disqualification and debarment would limit the risk of abuse of these mechanisms. A standardized review mechanism at the administrative level would ensure greater consistency and is likely to bolster trust in the fairness of the process.

Relevant documentation

Public Procurement Regulatory Authority: http://www.ppra.org.pk

Palau

Legal and institutional framework

Palau has enacted the Procurement Law and Regulations, which apply to the procurement of goods and services by the national and state governments and by most agencies of the national government. Semiautonomous agencies set their own procurement policies, which must at least meet the standards of the Procurement Law and Regulations. Copies of the Government's public procurement policy can be obtained from procurement offices, libraries, and other government offices upon request.

Palau has a centralized procurement system in which all procurements are processed through the Ministry of Finance. The Procurement Law designates procurement officers at the national and state levels to oversee procurement. Also involved are the attorney general and his or her state counterparts, who must certify the form and legality of all contracts.

Procurement methods and procedures

The Procurement Law provides for a number of procurement methods. Competitive bidding is the standard method for procurement of at least USD10,000. Restricted tendering must be used for procurements between USD5,000 and USD10,000. The legislative framework gives procurement personnel considerable discretion, particularly in interpreting undefined terms. The legislation allows competitive negotiation if a procurement officer deems competitive bidding to be "impractical" or "not advantageous," without, however, defining these terms. Single-source procurement can be used for procurement below USD10,000 where there is only one reliable supplier. A procurement officer, with the authorization of the President, may make an emergency procurement if there is a threat to public health, welfare, or safety. For competitive bidding, the bidding period must be at least 30 days, but a procurement officer may reduce it to 15 days if he or she finds the shorter period reasonable. There are model tender documents and contracts with anti-competition clauses. Prequalification is available.

To reduce corruption by increasing participation in procurement, the Procurement Law requires procurement opportunities to be announced in a newspaper of general circulation in Palau. The procurement opportunities are also advertised on all local radio and television stations and posted at designated public buildings. They may be further advertised in a foreign newspaper if the procurement officer decides that publication would be beneficial. In addition, each procurement officer must notify all eligible contractors of every procurement opportunity. Contractors are added to the list of eligible contractors at their request. Procurements must be advertised for 15 days before bidding begins.

The opening and evaluation of bids is a sensitive part of the procurement process. To enhance transparency, the Procurement Law requires a procurement officer or a designated representative to open bids in the presence of at least two witnesses at the time and place stated in the tender documents. Bidders are not present at the bid opening. To further protect against tampering, the officer records the amount of each bid, the name of the bidder, and a summary of the bid opening, which is countersigned by the witnesses. All bids and the summary are available for public inspection. A committee may be set up to evaluate bids, but the procurement officer makes the final decision. Price is only one of several factors that must be considered. The procurement officer must inform all bidders of the result and the reasons for the decision. Post-award negotiations, which are reputed to entail risks for corruption, are usually conducted for construction contracts in Palau. The attorney general must certify all contracts as to legal form and substance. Finally, to prevent corruption through deliberate failure of tendering, the Procurement Law defines the circumstances under which such failure arises. In case of failure, the tender may be canceled. In some cases, a procurement officer may negotiate with a bidder and change bid requirements.

Safeguarding and enforcing integrity

Implementing and enforcing codes of conduct can help prevent corruption among procurement staff. The Procurement Law contains specific provisions dealing with conflict of interest and the offering of gifts and gratuity that apply to all procurement personnel. The Code of Ethics Act contains further provisions that apply to all civil servants. Palau does not train procurement personnel in integrity issues. To strengthen its ability to detect corruption, Palau requires procurement personnel to report attempts to influence their decisions to the attorney general or the special prosecutor.

Additional means of preventing corruption are effective and dissuasive sanctions. In Palau, a procurement officer may terminate or annul a contract that was awarded in violation of the Procurement Law and Regulations. Civil servants who breach the Procurement Law may face administrative and criminal sanctions. Corrupt suppliers may be criminally prosecuted and debarred from participation in future procurements for up to three years. In addition, the Office of the Public Auditor (OPA) and the Government may initiate proceedings against corrupt officials and suppliers to recover damages or proceeds of illegal activities. Finally, a legal person may also be subject to debarment and liability for damages.

The Procurement Law permits an actual or prospective bidder to seek administrative and judicial review of the procurement process. The aggrieved bidder must first complain to the procurement officer concerned. Deadlines for filing a complaint should be long enough to allow a complainant to verify the facts and to estimate the risks of an appeal. In Palau, an aggrieved bidder must complain to a procurement officer within 14 days after knowing the facts underlying the complaint. A complainant who remains dissatisfied with the decision of the procurement officer may seek judicial review.

Effective audits can also detect and deter corruption. The OPA in Palau conducts external audits of procurements. All reports of the OPA are publicly available. In addition, the Chamber of Commerce monitors government procurement activities.

To ensure the effectiveness of these review and audit mechanisms, procurement officers and members of the bid evaluation committee are required to document their evaluations and the basis of their decisions. All documents are kept and disposed of in accordance with rules approved by the minister of administration, except for records relating to emergency and sole-source procurements, which are kept for three years.

A way forward

Palau is encouraged to consider whether it could strengthen the safeguards against corruption in its current procurement framework by reducing discretion and by clarifying the terminology of the regulations.

Palau is further invited to consider whether the transparency of the procurement process might be increased by measures such as allowing bidders to be present during the bid opening. Palau may also wish to consider whether the current period for which documents are kept is sufficient to allow verifications or criminal proceedings, notably for procurements that are exposed to particular corruption risks, such as sole-source and emergency procurements.

Philippines

Legal and institutional framework

In 2003, the Philippines passed a comprehensive act governing public procurement. This law, along with implementing rules and regulations, standardizes public procurement conducted at all government levels, as well as by state-owned or state-controlled companies. The framework covers the procurement process from planning to implementation.

The procurement itself, from needs assessment to implementation, is conducted by the individual government departments, offices, or agencies. Bids and awards committees are established within each procuring entity to conduct the procurement proceedings. The procurement act also established the Government Procurement Policy Board (GPPB). This central body defines policies, implementing regulations, and standard documents; produces guidelines and manuals; and oversees the training conducted by procuring agencies.

Procurement methods and procedures

The Philippines' procurement act designates competitive bidding as the standard procurement method. Exceptions are permitted under conditions enumerated in the law and stipulated in more detail in implementing regulations. No particular institutional mechanisms exist that would routinely subject the list of exceptionally permitted methods to a review.

Procuring agencies are required to publish tender openings twice in nationwide media to attract the greatest possible number of tenders, thereby helping to avoid collusion and failure of tenders. The Internet is also widely used for announcing tender opportunities, and the Government is expanding this instrument with the aim of enhancing transparency. Further mechanisms to ensure transparency comprise the development of standard bidding and contract documents to the extent practical. The use of these documents is compulsory.

To ensure the transparency of the bid opening—a crucial moment in the tendering procedure that allows bidders to verify whether bids have been altered or destroyed—it has to take place in public at a predefined place and time. The law does not require bid opening right after the submission period, a requirement that is generally considered a safeguard against fraudulent alterations of bids during the time between the deadline for submission and the opening of bids.

As regards the evaluation of tenders, the procurement law prescribes the selection of the eligible bidder that has submitted the cheapest responsive offer for the goods and works.

Safeguarding and enforcing integrity

The Philippines has not yet adopted a specific code of conduct for officials in public procurement that takes into consideration the particular corruption risks in this field. Hence, the general law on the conduct of public officials is applicable to procurement personnel. This law does address issues such as conflict of interest and the acceptance of gifts by public officials in the exercise of their duties. The Philippine procurement law provides for a number of institutional mechanisms to prevent favoritism in public procurement. Decisions throughout the procurement process are made by panels composed of five to seven officials. The personnel involved in procurement decisions are regularly rotated. Further, civil society organizations are permitted to monitor all stages of the procurement process, and the Philippines is assessing alleys for involvement of civil society in the monitoring of project implementation. Special training is conducted for these civil society representatives to strengthen their capability to monitor public procurement activities.

No particular measures were reported to safeguard integrity among bidders and their staff. Here, penal and economic sanctions are the main instruments to safeguard and enforce integrity. The Philippine procurement law itself establishes penal sanctions for procurement-specific corruption, in

addition to offenses established by the generally applicable penal law. These offenses cover public officials as well as suppliers' staff. Civil liability is linked to conviction for these acts.

To sanction the economic entity that profits from corruption in public procurement, the procurement act also provides for debarment. It empowers the head of a procuring entity to exclude a bidder for one or two years from public bidding as a sanction for providing false information or unduly influencing the procurement process. The law does not specify whether the debarment decision has any consequences for public tenders by other procuring entities. Blacklisted contractors are listed on the GPPB website.

As regards the prosecution of corruption in public procurement, no reporting duties for public officials exist at this time, nor does a protection mechanism for those who come forward and report corruption in the procurement process or in a particular agency. Efforts to enact comprehensive whistleblower protection legislation or a reward system are ongoing but have not yet resulted in a law.

Irregularities and corruption may also be detected in the course of complaint procedures. Such procedures, which may also help bolster bidders' trust in the fairness of the procedures, exist at the administrative level and, if administrative remedies do not suffice or remain fruitless, through the judiciary. A non-refundable protest fee, amounting to 1% of the contract value, must be paid to trigger the administrative review procedure.

Aside from complaints by aggrieved bidders, which may lead to the detection of corruption in a procurement process, procuring entities are subject to audit. In addition, observers from civil society are entitled to develop and submit their own monitoring reports. These reports, which may be sent to the Office of the Ombudsman, evaluate whether an individual procuring entity did abide by the rules.

A way forward

The Philippines' framework for public procurement contains a number of comprehensive mechanisms that help curb corruption in public procurement. The Government of the Philippines is encouraged to conduct training for procurement personnel to ensure the full implementation of this framework. The Philippines is invited to actively pursue the enactment of a whistleblower protection system, which would facilitate the detection of corruption in public procurement. Furthermore, the Philippines is encouraged to strengthen measures aimed at promoting private sector integrity, to curb corruption in public procurement.

Relevant documentation

Government Procurement Policy Board (GPPB):
http://www.procurementservice.org/gppb/home.htm

Procurement Service, Department of Budget and Management:
http://www.procurementservice.org/ps/index.cfm

Government Electronic Procurement System: https://www.philgeps.net

Department of Budget and Management: http://www.dbm.gov.ph

Samoa

Legal and institutional framework

Samoa's legal framework on public procurement can be found in the Treasury Instructions 1965 and 1977, the Cabinet Directive 98 (19), the Public Finance Management Act 2001 (PFMA), and the Tenders Board Guidelines 2003. The Tenders Board has issued Procurement Guidelines (PGs), which apply to all government ministries using public funds and to all state-owned enterprises in which the government holds more than half of the shares or voting rights. The key legal instruments are available on the Web site of the Ministry of Finance.

Samoa has decentralized its government procurement functions. Individual ministries and state-owned enterprises are responsible for administering procurements below WST50,000 (USD18,000). The Tenders Board assumes responsibility for procurements over this threshold. The Board is chaired by the minister of finance. It is also responsible for establishing procurement rules and procedures for all ministries and state-owned enterprises. In some cases, contract awards must be approved by the minister of finance or the Cabinet.

Procurement methods and procedures

The methods of procurement available in Samoa are open tendering, local and international shopping, single-source procurement, and restricted tendering (for repeat orders). In practice, contracts above WST50,000 (USD18,000) are awarded through open tendering. Other methods can be used only with the approval of the Tenders Board and under circumstances specified in the Procurement Guidelines. Procuring agencies are responsible for preparing tender documents. There are no standard bidding documents except those for projects financed by certain donor organizations. The minimum deadline for bid submission is 14 days. Prequalification based on stipulated criteria is mandatory for the procurement of works and expensive, technically complex equipment. Efforts are under way to develop standard procurement documents and explanatory manuals for procurement staff.

The advertisement of tender opportunities can increase participation and thus reduce the risk of corruption. All open tenders in Samoa must be advertised nationally in a widely circulated newspaper.

The handling and opening of bids is crucial. In Samoa, the Tenders Board keeps a register of all received bids. The Procurement Guidelines require prompt opening after the deadline for submission, but the Board has discretion to act otherwise. To ensure that bids are not altered or destroyed and to detect manipulations at an early stage, the Tenders Board opens all tenders in the presence of bidders or their representatives. Integrity can also be enhanced when key decisions are made by panels rather than individuals. Thus, Samoa entrusts the evaluation of bids to a committee with at least three persons, one of whom is preferably not from the procuring agency. The bid with the lowest evaluated cost is chosen; price is one of several factors that may be considered in evaluating the costs. The evaluating committee submits a report and its recommendation for the approval of the minister of finance, the Tenders Board, or the Cabinet, depending on the value of the procurement. Once the award is made, the procuring agency notifies all bidders of the decision and renders the decision public. Bidders who wish to know the reason for the decision may inquire with the procuring agency or the Tenders Board. Failure of tendering arises in several situations. If none of the submitted bids is responsive, the procuring agency may consider modifying the scope of the contract before calling a new restricted tender. Those who received tender documents previously or, in some cases, those who submitted bids are invited. Tendering may also be declared failed if there is evidence of a lack of competition. In this case, the procuring agency will examine the causes for the failure and consider modifying the bidding conditions or specifications before calling a new tender. If a tender fails because all bid prices substantially exceed cost estimates, the procuring agency may negotiate with the lowest evaluated bidder for a reduction of the bid price.

Safeguarding and enforcing integrity

Codes of conduct for procurement personnel can encourage proper conduct and prevent corruption. The PGs specifically require all persons involved in evaluating bids or awarding contracts to declare any interest in a bidder or close family relationships with the principals of a bidder. Such persons are excluded from the evaluation and awarding process and denied access to any documents or information relating to the procurement. The PFMA, the Public Bodies Transparency and Accountability Act, the Public Service Act (PSA), and the Treasury Regulations and Instructions contain additional anti-corruption and conflict-of-interest provisions. The Ministry of Finance trains procurement personnel in integrity issues. Many countries require their procurement officials to report attempts to unduly influence procurement decisions, a requirement that improves the likelihood of detection of corruption. In Samoa, the PSA and the PFMA require all public officials to report circumstances that lead them to believe that an offense may have occurred.

Measures targeting suppliers can also encourage proper behavior and reduce the risk of corruption in public procurement. Tender documents in Samoa generally require bidders to declare their abstention from any means that could improperly influence the procurement process or decision. Bidders are also required to disclose commissions, gratuities, or fees that have been or will be paid to individuals or subcontractors for their services, for instance in the preparation of a bid or the execution of the contract.

The PFMA imposes a fine against persons who intentionally or recklessly "authorized or permitted a breach of procedures relating to the calling, considering or awarding of tenders." Other violations of the PSA or the PFMA may also result in sanctions. Sanctions against bidders are available as well. Notably, at the recommendation of the Tenders Board, the Cabinet may debar an enterprise from procurement. The decision to debar is communicated to all ministries by Cabinet Directive and to the enterprise concerned.

Review and complaint procedures can inspire public trust in the procurement process and discourage bidders or officials from engaging in corrupt conduct. Under the Procurement Guidelines, any person may complain in the first instance to the procuring agency. He or she may further complain to the Tenders Board, which may appoint an ad hoc committee to address the matter. The Tenders Board may decide to reopen a tender in some circumstances. Decisions of the Board are final.

Auditing can provide a further means to verify the integrity of the procurement system. In Samoa, the Internal Audit and Investigation Division of the Ministry of Finance conducts regular and systematic internal audits. The Controller and Chief Auditor conducts external audits of all ministries annually and reports to Parliament. The report is publicly available. Nongovernment organizations are not involved in audits.

Review and verification can be effective only if decisions in the procurement process are properly recorded. In Samoa, all actions and decisions of the Tenders Board are recorded in the Board's minutes and are accessible by the Controller and Chief Auditor. Each quarter, the Board also reports to the Cabinet all contracts that it has approved and awarded. These documents can be disposed of only with the prior approval of the Controller and Chief Auditor.

A way forward

Samoa is encouraged to consider passing a comprehensive regulatory framework for public procurement. In this context, Samoa is invited to consider passing the constitutive elements of this framework at the level of a parliamentary law.

Relevant documentation

Web site of the Ministry of Finance: www.mof.gov.ws

World Bank Operational Procurement Review (June 2005)

Singapore

Legal and institutional framework

In Singapore, clear and comprehensive regulations for the conduct of public procurement have been seen as the fundamental prerequisite for curbing corruption in public contracting. Government procurement in Singapore—worth SGD7.5 billion (about USD4.5 billion) a year—is subject to regulations of the Government Procurement Act and three decrees: the Government Procurement Regulations, the Government Procurement (Challenge Proceedings) Regulations, and the Government Procurement (Application) Order. Additionally, the Ministry of Finance is entitled to establish regulations regarding a wide scope of procurement aspects, such as the prequalification and awarding procedures or the technical specifications for procurement. Government instruction manuals issued by the Ministry of Finance provide additional guidance to procuring entities and to potential bidders. The whole procurement framework also applies to state-owned enterprises. However, procurement in respect of some security-sensitive purchases, such as contracts made by the Internal Security Department, Criminal Investigation Department, and Security Branch, and procurements by the Ministry that have security considerations, is exempt from the application of tendering regulations. Singapore's public procurement laws apply to all government procurement for purchases worth more than SGD70,000 (about USD40,000).

In general, government procurement activities in Singapore have been decentralized to individual ministries, departments, and statutory boards. Centralized purchasing, however, is carried out for common goods and services used throughout the public service.

Procurement methods and procedures

A key measure to avoid corruption through collusion and arbitrary agreements relating to changes in procurement methods and proceedings is to provide procurement regulations with a wide but well-defined scope of application. Singapore's procurement framework foresees open, selective, and limited tendering. Additionally, sole-source procurement is possible in exceptional cases. Limited tendering may be used for purchases concerning national security, in situations of urgency, or when a tendering has failed. A tender is deemed failed if not a single responsive bid was submitted. To avoid failure of tenders, the Government publishes plans indicating major purchases foreseen for the following fiscal year. As an additional measure to prevent malicious alteration of the procurement method, limited tendering has to be approved by the Permanent Secretary of the ministry concerned or the head of the state-owned enterprise.

As procurement planning may be particularly exposed to corruption, procurement procedures, regulations, and capacities ought to be transparent for all parties involved, and overseen properly to combat corruption through an approach that both prevents and punishes corruption. In this regard, all procurement operations, beginning with the announcement of a tender to the awarding of the contract, are made through an online business center for government electronic business (GeBIZ) where all tender notices containing information on the procuring entity, description of products, services, or works to be procured, dates of tender opening and closing, and venue for the collection of tender documents are published.

The content of tender documents is prescribed by law. The documents must set out all evaluation criteria, but these are not limited by law. As regards the admission of tenderers for selective and limited tendering, the procurement regulations do not explicitly enumerate the applicable criteria.

The selection criterion for the contract to be awarded is the lowest price, if all other tender specifications are met, unless other criteria have been defined and set out in the invitation to tender.

The selection of a bidder and the award of the contract are announced on the GeBIZ Web site. Furthermore, the contracting authority provides, at the request of an eligible supplier, an extensive

explanation of its procurement practices and procedure and pertinent information about the selection of the tender, allowing bidders to review the evaluation result.

Safeguarding and enforcing integrity

Singapore has put in place a number of provisions aimed at bolstering the integrity of procuring agency staff and bidders. Agency staff are subject to a code of conduct, under which they are obliged, among others, to disclose to the relevant department attempts to unduly influence procurement decisions. Additionally, any person affected by procedural lapses or corrupt offenses is entitled to lodge a complaint with these administrative bodies in charge. The informant's identity is protected under the Prevention of Corruption Act.

To underline the priority of integrity in government procurement in Singapore, penal sanctions against procurement personnel found guilty of fraudulent practices such as accepting or soliciting bribes are particularly harsh when compared with the penalties for the offense of bribery in general. Up to seven years' imprisonment may be imposed for active or passive bribery in government procurement. In addition, procurement personnel face civil sanctions. Any gratuity given by any person to an agent in contravention of the law may have to be recovered by the principal as a civil debt either from the agent or from the person who gave the gratuity to the agent.

Sanctions applicable to fraudulent bidders include the possible termination of the awarded contract and the recovery of damages resulting from such termination. Moreover, suppliers convicted of a criminal offense related to the conduct of their business or profession may be debarred by individual procurement entities from future government tenders.

Besides, to ensure the proper sanctioning of any attempt to undermine procurement regulations, anyone who has suffered, or reasonably risks suffering, loss or damage as a result of a breach of a contracting authority's duty is entitled to seek binding judicial decision by appealing to the Government Procurement Adjudication Tribunal. The Tribunal may order the nullification of any decision or action taken by the contracting authority concerned, or the contracting authority may be ordered to make a decision or take action in accordance with the applicable regulations, which include measures involving the termination of contract, re-tendering, liquidation of damages, and debarment from future public tenders. The applicant may lodge a notice of challenge within 15 days from the date on which the facts constituting the basis of the challenge first took place, and pays a fee of SGD500 (about USD300), as well as a deposit of SGD5,000 (about USD3,000). The Tribunal generally has to issue its ruling within 45 days from the date the notice of challenge is lodged. If the contract has already been awarded, the Tribunal may decide only to have the costs of the applicant for the procurement process reimbursed.

Singapore conducts regular mandatory internal and external audits of procurement processes. These audits are performed at least yearly. Audit reports by the Auditor-General's Office are made available to the public. Documentation regarding the procurement proceedings has to be kept by the procuring entity for at least three years.

A way forward

To ensure a thorough review of procurement decisions if allegations of corruption surface, Singapore might wish to find out whether keeping procurement documentation for three years is long enough. It is, however, noted that the mandatory tendering of government contracts through the government procurement Web site since 2004 has greatly facilitated documentation storage. The electronic records are now kept more than three years in the system before they are archived for future reference and audit.

Relevant documentation

Access to Singapore's Government Procurement Act and all related subsidiary legislation:
http://statutes.agc.gov.sg

Singapore's online business center for government electronic business: http://www.gebiz.gov.sg

Thailand

Legal and institutional framework

The main legislation concerning government procurement in Thailand is the Regulation of the Office of the Prime Minister on Procurement 1992, as amended to No. 6, 2002 (ROPMP). The ROPMP does not apply to state-owned enterprises or local government agencies. Procurement by local government agencies is governed by the Regulations of the Ministry of Interior on Procurement of Provincial Administration, whose key principles are similar to those of the ROPMP. State-owned enterprises set their own procurement regulations. Also relevant are the Act on Offences Relating to the Submission of Bids or Tender Offers to Government Agencies, which imposes sanctions for criminal offenses to ensure fair bidding; circulars of the council of the Cabinet; and standards laid down by the State Audit Commission. Thailand is considering overhauling its procurement framework and envisages the drafting of a regulation on procurement for the executive level.

Public procurement in Thailand is decentralized and involves a range of government bodies. The Public Procurement Management Office (PPMO) is in the Comptroller General's Department (CGD) within the Ministry of Finance. The PPMO controls, monitors, and evaluates procurement by government entities. It also determines regulations and guidelines related to government procurement. In addition, the Committee in Charge of Procurement (CCP), established under the ROPMP, interprets the ROPMP, makes recommendations concerning its enforcement and amendment, grants exemptions from the ROPMP to procuring agencies, and hears complaints. For specific procurements, the procurement personnel of an agency involved must prepare a proposal to be approved by the head of the agency. Selection committees evaluate offers and select the winning bids.

Procurement methods and procedures

The publication of a clearly defined legal framework enhances the transparency of procurement and thus reduces the risk of corruption. Thailand's laws, regulations, and policy guidelines on public procurement are published in the *Royal Gazette*. They are also posted on the Web sites of the Ministry of Finance, the State Legal Council, and the Ministry of Interior. The method of procurement depends on several factors, including the value of the contract, the nature of the goods or services, and the urgency of the procurement. Since 2005, procurement over THB2 million (USD50, 000) has had to be conducted through an electronic auction. The ROPMP requires the use of model contracts and tender documents to strengthen the transparency of the procedures. The procuring agency must publish the prequalification criteria and method of selection, and inform the CCP.

The publication of procurement opportunities increases participation and consequently reduces the risk of collusion or failure of tendering. In Thailand, all agencies must advertise their procurements on the Government's central procurement Web site and relevant agencies' Web sites. In addition, they must notify other public agencies such as the Mass Communication Authority of Thailand, the Broadcasting Authority, and the Office of the Auditor General of Thailand, as well as newspaper offices. The minimum period allowed for submitting a tender is 21 days.

Clear definition of the criteria and procedure for bid selection is also important in reducing corruption. The ROPMP provides only very general selection criteria, namely, price, bidder's qualifications, and quality. For specific procurements, the procurement personnel of an agency involved must prepare a proposal to be approved by the head of the agency. Selection committees are tasked with the evaluation and selection of offers. The name of the winning bidder is announced on the Web site of the procuring agency. The reasons for the decision are available upon request. Thailand uses model documents. If none of the received bids meets the requirements, the tender is reopened.

Safeguarding and enforcing integrity

Codes of conduct, particularly those specific to procurement, can reduce corruption by instilling high ethical standards in procurement officials. The ROPMP addresses conflicts of interest, specifically those involving procurement. The Organic Act on Counter Corruption 1999 contains additional conflict-of-interest provisions. The Royal Decree on Good Governance in State Administration 2003, the Civil Service Act 1992, and the Civil Service Ethic Standards apply to civil servants generally. The National Counter Corruption Commission (NCCC) has also issued a "notification" concerning the acceptance of gifts. To strengthen the effect of these documents, specific agencies may train their procurement personnel in integrity issues. If civil servants are offered bribes or other inducements by a supplier, they must report the matter to the head of the procuring agency or the NCCC.

Measures to promote ethical standards among suppliers also strengthen the fight against corruption in public procurement. In this regard, tender documents in Thailand may require bidders to declare that they have no conflict of interest.

Effective sanctions can dissuade bidders and procurement officials from engaging in corruption. A number of sanctions may be applied to corrupt procurement officials in Thailand. The ROPMP contains penal provisions for willful violations or negligence. The Penal Code prohibits the bribery of officials, including bribery done through intermediaries. Additional penal and administrative sanctions for accepting or soliciting bribes can be found in a number of laws such as the Civil Service Act 1992 and the Act on Offences Relating to the Submission of Bids or Tender Offers to Government Agencies. Several of these offenses are punishable by a fine and imprisonment of five years to life. Similar sanctions are available against corrupt bidders. If a complaint is proven before a contract is completed, the bidding is reopened. Otherwise, the bidder will be liable for the economic damage suffered by the procuring entity.

Integrity in the procurement process can be enhanced by allowing aggrieved suppliers to complain and to seek review of procurement decisions. Procurements in Thailand are subject to administrative and judicial review. A complainant may bring a case to the CCP, the NCCC, or the Office of the Auditor General of Thailand. Further appeals to the judicial or administrative court are available.

Auditing can further enhance the integrity of the procurement system, and the risk of later detection can deter corruption in procurement. In Thailand, the Materials Inspection and Acceptance Committee inspects the fulfillment of a procurement contract and verifies the quality and quantity of the procured goods or services. The Auditor General audits the legality and value of procurements. The audit report is provided to the National Assembly, the Senate, the Council of Ministers, and the audited agency. It is also publicly available.

Documents must be retained long enough to allow a review of the procurement system. For each procurement in Thailand, the procuring agency must keep a register of all bids and a record of the decisions for at least 10 years. The Office of the Auditor General has access to the documents.

A way forward

Thailand is encouraged to pursue its efforts to overhaul its procurement framework. In this context, Thailand is invited to consider passing the constitutive elements of this framework at the level of a parliamentary law.

Once this framework in place, Thailand is invited to take the necessary steps to provide extensive training to staff involved in procurement procedures to ensure the proper implementation of the framework.

Relevant documentation

Home page of the Thai Government Procurement Office: http://www.gprocurement.go.th/

Regulation of the Office of the Prime Minister on Procurement 1992, as amended to No. 6, 2002

Act on Offences Relating to the Submission of Bids to State Agencies:
http://www.moj.go.th/Law/MojLaw/EngLaw/Act%20Con.pdf

Vietnam

Legal and institutional framework

Except for one law concerning the construction sector, Vietnamese rules on public procurement are found entirely in subsidiary legislation. These include several government decrees and circulars from the Ministries of Planning and Investment, Construction, and Finance. These instruments apply to procurement in all sectors, though some sectors (e.g., energy and construction) may be subject to additional rules. As the various normative instruments that govern public procurement in Vietnam overlap in scope, a comprehensive Procurement Ordinance has been in preparation over the past several years, but it has not yet been passed. Vietnam's Anti-Corruption Law, passed in 2005, also sets general standards for the conduct of procurement.

Procurement in Vietnam is largely decentralized, with some central control. Specific ministries and provincial governments are responsible for administering their own procurements. In some cases, the Ministry of Planning and Investment (MPI) reviews procurement decisions. The Prime Minister, the minister responsible for the procuring agency, or senior local officials may also be involved.

Procurement methods and procedures

The publication of procurement rules may help curb corruption by increasing transparency. The circulars and regulations that stipulate the rules for procurement are published in the Government's official gazette and the Web site of the MPI. The method of procurement may be open or restricted tender at the discretion of the procuring agency. Direct negotiation may be used for contracts below VND1 billion (USD66,000). The bidding periods are 15 days for domestic tenders and 30 days for international tenders. Model tender documents, which could further enhance transparency, have not yet been issued in Vietnam, but the MPI is considering their preparation.

The risk of corruption can be diminished by wide publication of tender opportunities to increase participation in the process. In Vietnam, all procurements must be published on the procuring agency's Web site and announced in the media or the Bidding Information Bulletin 10 days before tender documents are issued.

Bids are opened in the presence of the public immediately after the bidding period. A project director evaluates the bids and prepares an evaluation report, possibly with the help of a scoring system. The MPI may review the evaluation report, depending on factors such as the nature of the procured item and the value of the contract. These factors also determine whether the Prime Minister, the minister responsible for the procuring agency, or senior local officials give final approval of the selection. The project director must announce the result in the Bidding Information Bulletin and on the Internet. Post-award negotiations are permitted for technical issues, which could alter the price of the contract. Failure of tendering arises when there are fewer than three bids, in which case the procuring agency seeks permission from a higher authority to extend the deadline for closing the tender.

Safeguarding and enforcing integrity

Codes of conduct are vital in preventing procurement officials from engaging in corruption. There are no codes of conduct that apply specifically to procurement officials in Vietnam. Conflict-of-interest provisions are so far rudimentary. They prohibit the bidder's relatives from being involved in the bid evaluation, and, as stated in the Ordinance on Public Employees, prohibit senior officials from holding shares in enterprises that operate in their field of competence. There is no training for procurement staff that particularly addresses integrity issues.

Vietnam has taken measures to ensure that suppliers abide by the rules. It allows the disqualification of a bidder in an ongoing tender for corruption or improper conduct. Furthermore, a procuring entity may disqualify a bidder who submits false information regarding his or her

qualifications. The name of the bidder is published in the Bidding Information Bulletin and on the Internet.

Effective sanctions can also deter procurement officials and suppliers from engaging in corrupt conduct. Bribery is outlawed under two decrees. Violations of the procurement regulations may result in penal or disciplinary sanctions. A corrupt bidder may be held responsible for the economic damage that he or she causes. The authorities may disqualify a bidder that has submitted false or incomplete information regarding their qualifications. Furthermore, a bidder who violates procurement regulations may be debarred from public procurement. The length of debarment depends on the number of infringements, and in the most severe cases may be permanent.

An effective mechanism for processing complaints can verify the integrity of the procurement process and deter wrongdoing. In Vietnam, any individual may complain to a procuring agency. The agency is responsible for reviewing and resolving the complaint. No other avenues of complaint, such as judicial review, are available.

A way forward

Vietnam is encouraged to pursue its plans to pass a comprehensive regulatory framework for public procurement. In this context, Vietnam is invited to consider passing the constitutive elements of this framework at the level of a parliamentary law.

Once this framework is in place, Vietnam is invited to take the necessary steps to provide extensive training to staff involved in procurement procedures to ensure the proper implementation of the framework.

Relevant documentation

World Bank Country Procurement Assessment Report (October 2002)

Web site of the Ministry of Planning and Investment: www.mpi.gov.vn

Decree No. 88/1999/ND-CP promulgating the procurement regulations, followed by amendments

Circular No. 66/2003/TT-BKH containing instructions for implementing the procurement regulations

Circular No. 08/2003/TT-BXD containing instructions for the contents and management of procurement contracts for construction engineering

Circular No. 121/2000/TT-BTC containing instructions for the procurement of furniture, equipment, and instruments for state agencies, the armed forces, organizations, and state-owed enterprises using the national budget

Circular No. 17/2001/TT-BTC containing instructions for the management and use of fees for the review of bidding results

Decree No. 34/2001/ND-CP promulgating procurement regulations for oil and gas exploration and exploitation projects

Law on Construction (chapter on bidder selection and construction contracts)

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