

Making international anti-corruption standards operational:

Fighting Bribery in Public Procurement

Bali, Indonesia, 5-7 November 2007

Program

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Conference venue

Nikko Bali Resort & Spa
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Monday 5 November 2007

08:30 – 09:00 Registration of participants, coffee and pastries

09:00 – 10:15 **Opening and keynote address**

Welcoming remarks

Paskah Suzetta

Minister of the National Development Planning Agency, Republic of Indonesia

Hendarman Supandji

Attorney General, Republic of Indonesia

C. Lawrence Greenwood Jr.

Vice President Operations 2, Asian Development Bank

Frédéric Wehrlé

Coordinator Asia-Pacific, OECD Anti-Corruption Division; Secretariat ADB/OECD Anti-Corruption Initiative for Asia-Pacific

The fight against bribery and corruption ranks high on the reform agenda of Asian and Pacific countries, as corruption constitutes an obstacle to investment, economic development, and welfare. Various reforms have been implemented over the past years to prevent corruption and to establish frameworks to sanction bribery when it occurs. Despite these efforts, bribery and especially bribery in public procurement remain recurrent in many countries, and further strengthening of frameworks and policies in this area is urgent.

International instruments now set standards for anti-bribery policies, legislation and institutions. The OECD anti-bribery instruments and the UN Convention against Corruption (UNCAC) are the most relevant instruments in Asia-Pacific in this regard; they establish specific standards that seek to prevent and sanction bribery, including in public procurement. The Anti-Corruption Action Plan for Asia-Pacific, which supports the principles of both the OECD anti-bribery instruments and the UNCAC, also underscores the importance of mechanisms to prevent, detect and sanction bribery in public procurement.

Translating these international standards into legislation and policies constitutes considerable challenges. This opening session seeks to outline the detrimental effects of corruption in public procurement and to map out risk areas that need to be addressed as a priority by governments of the region.

10:15 – 11:00 Coffee break and group photo – press conference with speakers from opening session

11:00 – 12:45 **Challenges and risk areas for bribery in public procurement**

Chair: **Kathleen Muktan**, Director, Capacity Development and Governance Division; Secretariat, ADB/OECD Anti-Corruption Initiative

Progress and challenges in Asia-Pacific in addressing bribery risks in public procurement

Joachim Pohl

Secretariat, ADB/OECD Anti-Corruption Initiative for Asia-Pacific

Typology of bribery risks in public procurement

Nicola Ehlermann-Cache

Policy analyst, Anti-Corruption Division, OECD

Challenges and risk areas for corruption in public procurement

Joel Turkewitz

Head, Procurement Hub Coordinator South Asia, World Bank

Progress and Challenges in procurement reform in Indonesia

Agus Rahardjo

Head, Public Procurement Policy Development Agency, National Development Planning Agency, Indonesia

Reform of P.R. China's government procurement system and the practices and effects in dealing with bribery in government procurement

Shimin Han

Deputy Section Chief, People's Republic of China

Focusing on the particular bribery risks in public procurement is a cornerstone in developing appropriate procurement and anti-bribery mechanisms. Public procurement frameworks have undergone considerable reform throughout Asia-Pacific over the past 10 years or so. Much of this reform has taken bribery risks into consideration. However, even in countries that have taken actions to ensure that an appropriate framework is in place, bribery often continues to occur, albeit sometimes in unexpected areas or forms. This session seeks to assess bribery risks in procurement frameworks that become apparent after reforms have been passed, despite the reform, or even as a consequence of certain reforms, for the purpose of identifying what governments should do in order to improve their ability to prevent and deter bribery in procurement contracts.

12:45 – 14:15 Lunch

14:15 – 17:00 **The need for clear anti-bribery rules: International standards and national examples for bribery offences in public procurement**

Chair: **Joachim Pohl**, Project Coordinator, Anti-Corruption Initiative for Asia-Pacific, Anti-Corruption Division, OECD

Detering transnational bribery in government contracts: The standards of the OECD anti-bribery instruments

Frédéric Wehrlé

Coordinator Asia-Pacific, Anti-Corruption Division, OECD

Bribery patterns in Indonesia: An analysis of cases

Amien Sunaryadi

Vice-Chairman, Indonesian Corruption Eradication Commission, Indonesia

Detering companies from bribing to win government contracts: experience with criminal responsibility of legal persons for bribery

Lauren Thomas

Criminal Law Branch, Attorney-General's Department, Australia

Experiences with the False Claims Act in the US

Neal Roberts

Lawyer, United States

Addressing effectively bribery risks in public procurement requires first that the appropriate anti-bribery laws are in place. Clear criminal rules with substantial penalties have proven time and time again to be one of the most effective means to combat bribery in public procurement. Enforcement is key of course. Indeed, the fact that businesses continue to pay bribes in order to win government contracts seems, at least in part, to result from doing business in countries without clear anti-bribery rules and effective enforcement. This is why it is important that countries adopt clear rules making bribery a criminal offence.

This session will start by clarifying international standards for measures and procedures to prevent and deter bribery in public procurement set out by the OECD Convention on Bribery of Foreign Public Officials that sets common standards for making bribery in public contracts abroad a criminal offence.

Based on contributions from policy-makers and law enforcement officers, this session will then discuss the experience of countries that have adapted, or are in the process of adapting their legislation to such anti-bribery standards. It will in particular highlight the challenges and the solutions that countries have found when transposing the international standards into national law for the purpose of enabling countries that plan similar reform steps to anticipate possible difficulties and emulate solutions.

[15:00 – 15:15 Coffee break]

19:00 Welcome dinner hosted by the Corruption Eradication Commission, Indonesia

Tuesday 6 November 2007

08:30 – 09:00 Coffee and pastries

09:00 – 10:30 **The role of Specialized Procurement Authorities in defining policies and overseeing their implementation**

Chair: **Mochammad Jasin**, Director of Research and Development, KPK

The role of specialized procurement authorities: experience in OECD member countries

Elodie Beth

Administrator, Innovation and Integrity Division, Public Governance and Territorial Development Directorate, OECD

The role of the specialized central procurement agencies: the example of Bangladesh

Sk A K Motahar Hossain

Secretary, Implementation Monitoring and Evaluation Division (IMED), Ministry of Planning, Government of Bangladesh

The role of the specialized central procurement agencies: the example of the Philippines

Ruby Alvarez

Executive Director, Government Procurement Policy Board Technical Support Office

The role of specialized procurement authorities

Peter Pease

Public Procurement Advisor

Ensuring that appropriate anti-bribery laws are in place and enforced is a first step; a second area of action for governments is the development of adequate procurement rules and controls. Over the past decade, many countries in Asia-Pacific have significantly modernized their regulatory frameworks for procurement and often decentralized the conduct of public procurement. The implementation of modern and complex regulations by procuring entities can constitute insurmountable difficulties, especially at local levels. These difficulties are often aggravated by the absence of standard documents and procedures. This situation may lead to unequal implementation and a wide variance in the application of procurement policies and frameworks. Uncertainty about the application of procurement rules may provide new opportunities for corruption and bribery that the passing of modern legislation was meant to prevent.

Experience in many countries has shown that the thorough and systematic implementation of complex procedures such as procurement by a multitude of independent executing agencies can benefit from the intervention of a specialized authority that supervises the implementation of the regulatory framework, defines policies that respond to recurrent problems and risks, collects and disseminates information on good practice, prepares standard documents, and organizes and conducts training.

Some countries in Asia-Pacific have established such specialized institutions that assume the role to design policies and oversee procuring agencies in their implementation; other countries are setting up such agencies. This session seeks to lay out the potential that specialized procurement agencies bear in curbing corruption risks, and endeavours to identify features and powers that these agencies need to be given to fulfil their mandate.

10:30 – 10:45 Coffee break

10:45 – 12:30 **The role of civil society in controlling and supervising public procurement**

Chair: **Paul McCarthy**, Governance and Civil Society Advisor, World Bank Indonesia

Enabling civil society to participate in monitoring and safeguarding public procurement: the experience of the Partnership for Transparency Fund (PTF)

Michael Wiehen

Member of the Advisory Council, Transparency International

Experience from Indonesia in involving the civil society in public procurement

Rizal Malik

Executive Director, TI Indonesia

Holding governments accountable—experience of reconstruction after the earthquake in Pakistan

Akhtar Ahsan

Director General (Procurement), Pakistan Earthquake Reconstruction and Rehabilitation Authority (ERRA)

Control and supervision are essential to ensure that procurement regulations are respected and that bribery risks are checked. Various actors can contribute to controlling the conduct of public procurement: The above-mentioned specialized procurement offices play an important role, and civil society can complement this institutional approach. In fact, non-governmental actors often have specific advantages such as knowledge and resources, that can, combined with governmental oversight bodies, form a very effective and constructive system of control and oversight over procurement agencies and processes.

This session seeks to identify ways to involve civil society in the control and supervision over procurement processes so that it can contribute to prevent and detect bribery in procurement. The session will draw on experience from countries that have empowered civil society to participate in procurement processes.

12:30 – 14:00 Lunch

14:00 – 15:30 **The potential of new technologies in preventing bribery in procurement: e-announcements, e-bidding and e-procurement**

Chair: **Elodie Beth**, Administrator, Public Governance and Territorial Development Directorate, OECD

The impact of e-procurement on corruption

Paul Schapper

Curtin University of Technology, Australia

Preventing corruption through e-procurement

Miroslav Alilovic

Government E-Procurement Advisor, MCC Control of Corruption Program

India's experience in preventing corruption through e-procurement

V. Ramachandran

Chief Technical Examiner, Central Vigilance Commission, India

Electronic media bears potential to contribute to reducing bribery risks in public procurement in various ways: it limits face-to-face contacts between suppliers and procurement personnel, allows the efficient distribution of information to a wide audience at low cost, increases transparency of forthcoming, current and past tender opportunities, and produces evidence throughout the process that can help discover patterns that may indicate bribery. As electronic media becomes widely available, the use of electronic media in procurement plays an increasing role.

However, it is not technology itself that will help reduce corruption—the potential of technical means to curb bribery only unfolds if these means are employed and tailored for the specific purpose of reducing bribery risks. How this can be done and what pitfalls and risks may arise has been experienced by countries that have been forerunners in the implementation of electronic means in public procurement.

This session will assess the potential of electronic media for the purpose of reducing bribery in procurement. It will highlight features that can contribute to prevent bribery and set out risks that countries would need to anticipate if they seek to introduce or expand the use of e-procurement.

15:30 – 15:45 Coffee break

15:45 – 17:00 **Role and responsibilities of suppliers in curbing corruption in public procurement**

Chair: **Waluyo**, Deputy Commissioner in charge of Prevention, Indonesian Corruption Eradication Commission

What can suppliers do to prevent bribery in procurement?

Soy M. Pardede

Chairman of the Committee on Business Ethics, BTP and Anti-Bribery Movement, Chamber of Commerce and Industry, Indonesia

Corruption risk management by companies and the role of civil society: In particular, the experience of the Integrity Pact

Michael Wiehen

Member of the Advisory Council, Transparency International/ Partnership for Transparency Fund

Bribery concerns for International Businesses

Cliff Rees

PricewaterhouseCoopers Indonesia

Bribery can only occur if there is supply and demand for bribes. Effective measures against bribery hence need to address with equal emphasis the supply and demand sides. So far, many countries have focused their anti-bribery efforts on public officials involved in public procurement; the potential of the business sector as a partner in efforts to fight corruption is oftentimes neglected.

This session seeks to highlight possible contributions that the business sector can make to curb bribery in public procurement. It will feature experiences of individual companies and assess the role of business associations as a standard setter and as a forum for exchange of good practice.

evening free

Wednesday 7 November 2007

08:30 – 09:00 Coffee and Pastries

09:00 – 10:30 **Support from international and regional partners in the development of procurement frameworks to prevent bribery**

Chair: **Joanna Perrens**, Indonesia Group, Australian Agency for International Development

ADB assistance mechanisms towards strengthening procurement frameworks

Jean-Marie Lacombe

Head, Portfolio Management, ADB Resident Mission Indonesia

Assessing public procurement frameworks: the OECD DAC joint venture for public procurement

Ajay S. Guha

Principal Procurement Specialist, Central Operations Services Division 2, ADB

While countries are responsible for strengthening their anti-bribery legislation and regulatory frameworks to mitigate bribery risks in public procurement, they may benefit from support offered by development banks, international organizations and regional processes. Many countries in the Asia-Pacific have in the past taken advantage of these actors' expertise in reforming sectors relevant to the fight against corruption.

As remaining and emerging challenges require further efforts in bolstering policies, legislation and institutions against bribery, international and regional partners remain an important source of support and expertise.

Based on past experience and plans for future cooperation, this session seeks to identify the roles that international and regional partners as well as bilateral assistance programs can play in supporting countries in these countries' efforts to bring their anti-bribery frameworks in line with international standards and in reforming procurement frameworks.

10:30 – 11:00 Coffee break

11:00 – 11:30 **Key outcomes of the seminar and closing**

Frédéric Wehrlé and **Kathleen Mktan**

Secretariat, ADB/OECD Anti-Corruption Initiative

Taufiequrachman Ruki

Chairman, Indonesian Corruption Eradication Commission, Indonesia

This session seeks to draw conclusion on a way forward to bolster the fight against bribery and to strengthen frameworks and practice to prevent, detect and sanction bribery and corruption in public procurement.

11:45 – 13:00 Lunch