

Anti-corruption policies in Asia and the Pacific: Thematic review on provisions and practices to curb corruption in public procurement Self-assessment report Cook Islands

Identifying reform needs, assessing progress and evaluating the effectiveness of anti-corruption policies and practices are central principles enshrined in the ADB/OECD Initiative and its Action Plan. In this context, the present self-assessment report from the Cook Islands was prepared as background to the Initiative's thematic review exercise on measures to curb corruption in public procurement in the Asia-Pacific region.

This thematic review on public procurement was initiated in reaction to the findings of the Initiative's 2003-2004 in-depth analysis of the legal and institutional anti-corruption frameworks of the Action Plan's then 21 endorsing countries against the standards of this Plan ("Anti-Corruption Policies in Asia and the Pacific – the legal and institutional frameworks", November 2004). In this study, public procurement was identified as one of the areas requiring particular attention in the Asia and Pacific region and where consequently the Initiative's Steering Group had a vital interest to promote reform.

With this aim, the group agreed to pursue analytical work on corruption in public procurement through a thorough review of relevant existing policies, practices and rules so as to assist participating governments in better understanding the corruption risks inherent in their countries' institutional settings and procurement practices. This thematic review further seeks to assess how countries translate into practice their commitment made under the Action Plan to curb corruption in public procurement. Eventually, the review's findings will provide governments with an analytical framework to design policies and procedures that ensure greater transparency and integrity in public procurement and to identify priorities for reform in this respect.

In line with the Action Plan's principle of self-assessment, the review is conducted on the basis of information provided by participating countries in reply to a questionnaire specifically prepared for this purpose by the ADB/OECD Initiative. The present document represents the replies submitted by the Cook Islands in this framework.

Further information on the exercise, on other participating countries and on the analysis' outcome is available at the Initiative's website at <http://www1.oecd.org/daf/asiacom/stocktaking.htm#trpp>.



A. General framework

Legal and organizational framework:

1. Please list and briefly describe laws and regulations related to government procurement, including those that give exemption to the standard government procurement rules. Where available, please attach a copy or indicate an internet-site for download of these regulations, if possible in English language. Ensure to include secondary legislation, rules and procedures. Also, please indicate relevant international or regional agreements¹ that your country is committed under, including its level of involvement (e.g. signature, ratification, implementation).

1. Ministry Finance and Economic Management (MFEM) Act 1995-1996
2. Public Expenditure Review Committee and Audit Act 1995-96
3. Cook Islands Government Financial Policies and Procedures Manual (rule of law under the MFEM Act)

2. Please explain the repartition of tasks and responsibilities in the procurement process among centralized, decentralized and specialized authorities (in particular: design of policies and standards; capacity building; definition of needs and terms of individual tenders; execution of different procurement stages from advertising to contract awarding; dispute resolution; control of the fulfillment of the terms and conditions by the contractor).

Refer to Procedures on Purchase & Sale of Goods & Services

Refer to Procedures on Public Tendering

- A Tender Committee is responsible for reviewing tenders \$30,000 and over.
- MFEM is responsible for the design of policies and standards in line with generally accepted accounting policies
- Generally, other functions involved in the tendering process is the responsibility of the Ministries and Island Administrations (decentralized)

3. Is procurement of goods governed by the same procedures as procurement of services?

Yes

4. Does the procurement law establish a Public Procurement Office (PPO)? Is the PPO appropriately staffed against its mandate? In this context, please state the total number of staff involved in public procurement country-wide. Are the procurement entities/PPO provided with adequate financial resources for the execution of their tasks?

There is no specific law on procurement nor does any particular law establish a Public Procurement Office.

¹ e.g. APEC Non-Binding Principles on Government Procurement; WTO Agreement on Government Procurement; etc.

However, the Cook Islands Government Financial Policies and Procedures Manual (rule of law under the MFEM Act) requires a Tendering Committee comprising of the Financial Secretary (or nominee), Solicitor General (or nominee) and others co-opted as required to review tenders in excess of \$30,000

Tender details are to be filed by the Ministry responsible for the tender which is subject to verification by the Audit Office. Staff involved in the tendering, receiving of tenders, evaluation and recording of tender process is nominated by the Ministry concerned; however it is normally the responsibility of the finance and administration staff within that Crown Agency.

5. Please name the sectors, areas or conditions subject to particular procurement rules (if applicable, e.g. military; local governments; state owned enterprises; urgency).

The conditions for procurement applies to all Crown Agencies and Outer Island Administrations

Procurement policies and practices:

6. Do model tender documents exist (e.g. handbooks, model forms, model contracts, etc)? If yes, is their use mandatory, and do they contain a specific anti-corruption clause?

A checklist for purchases of capital expenditure items is included in the Procedures Manual to assist in the procurement process. Checklist for the procurement of services and overheads is still being developed for release in March 2005.

There are no model tender documents.

7. Please provide the latest available economy-wide annual total numbers and values of purchases, with breakdown a) by sector and b) by type of procurement. In this context, please describe the procurement types foreseen by law (e.g. sealed tender, direct purchase; limited tendering) and the policy of your Government towards these types.

We do not have this level of information.

Net Capital appropriation for 2004/2005 budget is \$3,999,621

Net Operating appropriation in 2004/2005 budget is \$47,510,086

8. Please explain under which conditions pre-selection procedures are conducted.

Refer to Public Tendering Procedures

9. If your country is currently engaged in or planning a major reform of its procurement system, please briefly state the scope and objectives of this reform.

An updated Procedures manual was released in January 2004.

MFEM is not planning a reform; however the Ministry of Finance is strengthening the tendering and procurements procedures for release in March 2005.

B. Transparency and Fairness

Transparency of general procurement policies and regulations:

10. Are the existing laws, regulations and policy guidelines on public procurement publicly available and, if yes, where/how?

The MFEM Act is publicly available

The Procedures Manual is a controlled document and is available to Crown Funded Agencies. The Ministry of Finance may release a hard copy to other parties; however they are advised that the Ministry of Finance will not be held responsible for ensuring that they have the latest version of the procedures manual.

The Ministry of Finance is in the process of placing the Procedures Manual on the MFEM Website.

11. In your country, do certain territorial entities or institutions establish lists of eligible contractors (sometimes called “white-lists”)? If yes, please explain the criteria for a company to be included in or excluded from this list, and what use is made of such lists.

No

12. Is a bid security and/or a performance guarantee required from the bidder? What are the procedures for advertisement of procurement opportunities?

Contracts are usually signed before work commences. The contract specifies responsibilities between the parties involved, the contract price and the start and completion dates. Bid securities and/or performance guarantees are not always required from bidders.

Procedures relating to advertisement of procurement opportunities are specified in the Public Tendering procedures.

Transparency of procurement opportunities:

13. Describe where and how tender opportunities are published, including if their publication is mandatory or depends on certain criteria (if so, please list)? Please state if a fee has to be paid to receive tendering documents and – if yes – how this fee is fixed and whether other processing fees apply. Please briefly explain whether your country allows adequate and reasonable time for interested suppliers to prepare and submit responsive bids.

There is no fee to be paid to receive tendering documents.

The Procedures Manual specifies a minimum of 14 days for the advertisement of tenders.

14. Are selection and award criteria prescribed by law? If yes, are they prescribed in an exclusive manner? Please name these criteria a) for procurement of goods, and b) for procurement of services (e.g. technical requirements, qualification of the bidder, evaluated price, expertise/experience, etc.) and those that are explicitly excluded (e.g. nationality of the bidder or other affinity, etc.). Is the description of these criteria in the tender documentation mandatory?

The selection and award criterion is not specified by law. However; the procedure for Public Tendering for Purchase & Sale of Goods and Services requires that the tendering process must comprise the following attributes; “contestable, transparent, accountable, arms length and without favoritism”. This is given the force of law as the procedures are issued under Section 63 of the MFEM Act.

Transparency of contract evaluation and award procedures:

15. What is the procedure if none of the bids or too few – relative to a prescribed limit – fulfill the technical requirements as defined in the call for tender (e.g. reopening of the bid, negotiations, etc.)? Do you keep a register of all bids received?

This procedure is currently being developed for release in March 2005.

The Ministry responsible for the project that is being tendered is required under the Procedures Manual to keep all files relating to the tendering process available for Audit.

16. Where and how are actions and decisions in the procurement process recorded? How long and where are these records preserved, and who can access this information?

The procedure on Purchase & Sale of Goods and Services and Public Tendering requires are all documentation relating to the procurement of goods and services be recorded and filed for audit purposes.

The Tender Team provides necessary documentation of the tenders to the Tender Committee.

There is no specified minimum time for keeping records other than the condition of records being kept for Audit.

17. How and to whom is the final decision on awarding the tender disclosed? Do reasons for the selection of the winning bidder have to be stated? Are post-awarding negotiations allowed and, if yes, under what conditions?

All bidders are notified in writing of whether their tenders are successful or not. A record of all communication is made available for review by the Ministry of Finance and Audit.

The tender report will contain details relating to the awarding of the tender to the successful applicant.

There is no provision for post awarding negotiations in the procedures manual.

18. Are framework contracts allowed? If yes, what measures are taken to control against corrupt or unnecessary demands?

Refer to procedure on Purchase & Sale of Goods and Services and Public Tendering Procedures

C. Integrity

Integrity of procurement personnel:

19. Do codes of ethics or similar instruments exist that explicitly apply to procurement personnel and entities? If yes, do they specifically address corruption risks, and do they contain conflict of interest provisions (e.g. provisions making mandatory the declaration of personal interests by agents and buyers)?

Yes.

The Public Tendering Procedure (Section 3) contains a provision for all parties involved in the procurement process to declare 'conflicts of interest'.

20. Does your country provide for specific training for procurement personnel that include integrity issues? Please list manuals or policy guidelines that might exist to clarify procurement procedures and principles to procurement personnel (if existing please attach a copy or internet-address for download).

The Ministry of Finance conducts training for Finance Officers in Crown Funded Agencies which relates specifically to the Procedures Manual.

Guidelines that clarify procurement procedures are in the Cook Islands Government Financial Policies and Procedures. There is no specific training for procurement personnel, however it is being considered.

21. Is procurement personnel required – and if yes by what regulation and to what institution – to report attempts by suppliers to undermine the impartiality and independence of action by offering bribes, benefits or other forms of inducement?

The Ministry of Finance and Economic Act Section 64 and 65 have specific clauses relating to Offences against the Act and obligation to report, however this law is not specific to procurement.

22. Which penal and/or administrative sanctions are applicable to procurement personnel for accepting or soliciting bribes? Are public officials liable for the economic damage that the procuring entity suffers? What is the policy that applies to procurement personnel for accepting or soliciting small facilitation payments such as gifts, benefits, hospitality (e.g. outright forbidden, accepted under certain circumstances, etc.; please explain).

No specific mention in the MFEM Act and the Procedures Manual in this area, however general provisions for offences and penalties are in Section 64 and 66 in MFEM Act.

Check with PSC (for gifts and donations)

Integrity of bidders and suppliers:

23. Which penal sanctions are applied to a bidding company as a legal person and to its employees if it is found guilty of corruption related to the bidding procedure? Is the company liable for the economic damage that the procuring entity suffers?

Public officials are not liable for economic damage that the processing entity suffers. Check with PSC & Crown Law

24. Do your country's laws and regulations permit authorities to suspend, temporarily or permanently, from competition for public contracts and/or from other commercial activities an enterprise determined to have bribed a public official? If yes, is such disqualification mandatory or optional and which body decides on the disqualification and its exact terms? Which means are employed to implement the disqualification (e.g. publicly available list, declaration in the bidding process...)?

Check with Crown Law

25. Do bidders have to explicitly declare their abstention from any means that could improperly influence the procurement process or decision and, if yes, do such declarations also cover such unlawful practices by subcontractors or other third parties?

There is currently no specific procedure in this area. It is currently work in progress.

26. Do bidders have to disclose commissions, gratuities, or fees that have been or have to be legally paid to individuals or sub-contractors for their services provided for instance in the preparation of a bid or the execution of the contract?

No

D. Accountability

Separation of responsibilities and independent scrutiny:

27. Which means are employed to avoid insulation of procurement staff and to ensure mutual control? (e.g. rotation of officers, decisions taken/validated by more than one actor, etc.)?

Refer to Part D – Purchases and Sale of Goods and Services of Procedures Manual

28. Are there regular and systematic internal and external audits of procuring entities/PPOs? If yes, are they mandatory; which bodies are in charge of this audit; are the audit reports publicly available? Are independent actors/NGOs invited to monitor the procurement procedures and what is the setting prescribed by law?

The Audit Department conducts an annual audit of the transactions and reports of Crown Agencies as required by the Audit Act.

Audited reports are public document once it is published.

Audit Department conducts an earlier investigation if a complaint of impropriety is made.

Review and complaint mechanisms:

29. Do your laws and regulations provide for review and complaints procedures? If yes, are they at administrative and/or judicial levels; what is the time limit for complaint/appeal, if any? How many complaint cases related to procurement are handled per year?

Section 29 of the MFEM Act has a provision for complaints against a Crown Agency of non compliance to the MFEM Act to be submitted to the Public Expenditure Review Committee (PERC) for investigation. This body is an independent body of which Secretarial Assistance is provided by the Audit Department.

Where PERC considers that matters are very serious, they will be referred to the judiciary.

30. Who is entitled to initiate a complaint procedure (e.g. competing bidders, any citizen, etc.) and how are potential informants protected against retaliation (e.g. confidentiality, anonymity)? Are the decisions of the body handling complaints binding? What are the consequences if a complaint is proven valid (e.g. reopening of the bidding, liquidation of damages, etc.)?

The Cook Islands don't have procedures for complaints. It is difficult for a country our size to protect confidentiality of complainants.

There is no legitimate complaint mechanism.

The Audit office will accept complaints from any party and investigate if appropriate.