

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

Government Procurement — Procedures are mainly based on Supplies and Services Instructions and Government Stores Instruction 1982 together with Finance (Supplies and Services) General Regulations, However, amendments are made from time to time to the above vide Ministry of Finance Circulars.

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).

Government Procurement is divided into 2 different categories as follows:

- i. For supply of Goods and Services to be considered by either Minor or Major Tenders Board depending on the value.
- ii. For any building or engineering works to be referred to Public Works Tender Board.

Seeking approval for any of the above, it has to be referred to the respective Board.

For (i) above, Controller of Government Supplies is responsible for calling of Tenders, signing of contracts and execution of certain contracts and the other contracts are executed by the contract.

For (ii) above, the calling of tender is carried out by the Secretary Public Works Tender Board and they are responsible for signing and execution of contract.

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

Same procedures are followed only with amendments to the formats in relation to procurement of goods and procurements of service, where applicable, amendments to the terms and conditions.

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

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?

At present it does not. The commercial entities have their own procurement procedures while the Government has its own procurement procedures but operate on similar lines.

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

Each Ministry and Department, for purchase of specialized equipments or services, have special conditions attached to it.

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?

We do have model Tender documents for common user items together with contracts etc but they do not contain specific anti-corruption clause. Once the anti-corruption bill is approved by the Cabinet which allows for the inclusion of the clause, it would definitely be endorsed in our tender terms and conditions.

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.

Listed hereunder is the breakdown of the award made during the year 2004 for procurement of Goods and Services by Major Tenders Board :-

i) No. of Purchase locally	-	157
TOTAL PURCHASE VALUE	-	\$ 32,648,878
ii) No. of Purchase overseas	-	27
TOTAL PURCHASE VALUE	-	\$ 7,341,310
iii) No. of Contracts	-	37
TOTAL VALUE	-	\$50,111,897 with some based on rates
iv) No. of Indents approved-Australia	-	95 - \$ 12,805,648
No. of Indents approved-NZ	-	70 - \$ 9,479,113
No. of Indents approved-UK&Continental	-	24- \$ 3,557,183 189 \$ 25,841,944
Minor Tenders Board		
No. of Submissions	-	125 - \$2,033,937
No. of Indents	-	352 - \$3,012,575

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

Pie-selection procedures are implemented when tenders are called for specialized items such as drugs whereby the suppliers have to meet the standards set by the Ministry of Health in conjunction with WHO and other related agencies.

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.

Major reform of its procurement system has been carried out by Ministry of Finance and National Planning but awaits implementation. There is also the establishment of Departmental Tenders Board and the Major Tenders Board is to be re-named as Central Tender Board. The new Central Tender Board has its minimum authority level increased from above \$30,000.00 to \$50,000.00. The new Finance Instruction 2005 has provision for an independent person from an anti- corruption institution or a similar body to be a member of the Central Tenders Board.

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 two regulations mentioned in AI are applicable for Government Procurement Policy.

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.

Some Ministries and Departments do have list of such companies/contractors and addition to it is only done if they meet all the requirements of the Department/Ministries and exclusion is only considered if they fail to perform up to expectation.

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

For certain purchases approved performance bond is required to enable the contractor/supplier to fulfil its obligations as per tender terms and conditions. Failure to do so forfeits their performance bond and have slim chances for further consideration unless they provide evidence of their improved capacity.

The tender is normally advertised twice in the daily newspaper and gazette with information such as where to collect the tender document, fees applicable, place, day and date of closing tender with specification and terms and conditions of the tender.

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.

The local tenders are advertised twice in the daily newspaper and Gazette informing the bidders where to collect the tender documents which has all the necessary specification and any special condition if applicable, date, time and place of closing with the marking of the tender. Usually there is a fee applicable to cover the operational cost and some fees are set up by the Ministries/Departments concerned and this is a non-refundable fee. The Trade Embassies are also supplied with tender documents so that they liaise with their counterparts.

The interested parties are given enough time to prepare themselves and for certain specialised tenders, a longer time frame is granted so that they are able to gather necessary information and fulfill the tender requirements.

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?

For certain tenders, selection criteria is prescribed whereas for the other tenders, they have to fully comply with the tender specification, quality of sample and lastly cost is taken into consideration.

For procurement of goods, selection criteria is mainly based on meeting ISO standards, OHS compliance, brand names etc.

For services, selection criteria is mostly based on the companies past performance, company profile and financial status etc.

The above selection criteria is now being incorporated into tender documents.

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?

In the case where no bids have been received for a tender, we carry out our own research to identify if there are any suppliers. Once identified, the previous tender is officially withdrawn and fresh tender called and the identified suppliers are informed for the collection of tender documents. If there are only few bids received, they are evaluated and if they fulfill the criteria, they are taken into consideration.

There is a Tender Register where all the bids are entered as per each tender and if any late tenders received in the tender box, its also entered in the register. The tender bids received within the stipulated time are stamped and signed by the Secretary plus two (2) other members of the board of which Chairman of the Board is a must.

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 tender documents are issued to the originating Ministries/Departments whereby they have to prepare schedule and arrange for Sub Committee meetings with the members recommended by Controller of Government Supplies (COGS). Then on the recommendation of the Sub Committee with Ministries/Departments a covering Memorandum is sent to COGS for Board's consideration. Once approved by the respective Board, the Ministry/Department together with successful and unsuccessful bidders are advised accordingly. The time frame taken to reach a decision is 1 month. The records are kept at the office of Controller of Government Supplies and the Auditor General's Office have access to this information.

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?

Once approved by the Board, then only the Ministry/Department together with bidders are advised of the outcome. At present this is not done but consultation is going on with the authority concerned in regards to the reasons for the selection of the winning bidder. Mostly we do not consider post-awarding negotiations.

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

Under certain circumstances framework contracts are allowed but under strict supervision.

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, all Public Servants have to comply with Public Service Values and Public Service Code of Conduct.

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).

From time to time In-Service Programmes are arranged to address such issues.

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?

Based on the Public Service Values and Public Service Code of Conduct, any one found guilty may be reported to the Public Service Commission for disciplinary action.

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).

None. The Government does not encourage anyone to accept such gifts.

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?

In such cases, it is referred to Police Department provided concrete evidence is available and the company is liable for the economic damage.

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...)?

Yes, for certain tenders, such clause are incorporated and their services may be terminated or put on suspension. In such case, the Solicitor General's advice is also sought in order for the rightful authority to make a fair decision.

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?

Mostly the tenders called are open system of tender closing in the Tender Box and after tender being closed, no alteration is allowed.

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?

Our tender procedures do not allow for such fees.

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.)?

Staff are mostly rotated at intervals of 3 years and in some case earlier if their involvement with the bidders have been identified which may lead to corrupt practices.

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 Auditor General's office carries out external audit regularly and internal audit is also conducted by the Ministry of Finance. At present, independent actors/NGO's are not invited.

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?

Yes, there is always room for review and complaints are referred to the relevant authorities. Only a few complaints are received during the year.

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.)?

Mostly the competing bidders and these are handled by the procuring authority and legislation is still being considered for protection of whistleblowers to cover all areas of the public service.