

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

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 Kyrgyz Republic 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 Kyrgyz Republic 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).

From the moment of enactment of the Law of the Kyrgyz Republic "On Public Procurement of Goods, Works and Services" on 1 June 1997 more than 6 years have passed; during this period amendments and changes to the Law were made in 1998. (During the period of validity of the Law of the Kyrgyz Republic "On Public Procurement of Goods, Works and Services" some questions arise from the practice which are possible to resolve only by making amendments and changes to the Law.) Due to accession of the Kyrgyz Republic to the World Trade Organization, the European Community and the USA raised issues concerning the legislation regulating the state procurement, and gave recommendations for bringing this Law in compliance with "Agreement on Government Procurement". The World Bank in 2002 carried out the review of the government procurement in the country, the Report on assessment of procurements has been prepared and recommendations were given for amending the Law of the Kyrgyz Republic "On Public Procurement of Goods, Works and Services".

With a view of implementation of the program GSAC-GTAC, and also of the Report on assessment of procurements in the Kyrgyz Republic conducted by the World Bank in 2002, a plan of actions/ measures to improve the system of the state procurement in the Kyrgyz Republic approved by the Resolution (Postanovlenie) of the Government of the Kyrgyz Republic dated 2.07.2003 No. 403 and this is where law drafting actions have been determined.

With a view of strengthening the capacity of the State Commission for ensuring transparency, objectivity, cost effectiveness and efficiency of the state procurements more than 60 percent of the current Law of the Kyrgyz Republic "On Public Procurement of Goods, Works and Services" was changed and in this connection in compliance with the Law of the Kyrgyz Republic "On normative and legal acts of the Kyrgyz Republic" the State Commission under the Government of the Kyrgyz Republic on State Procurements and Material Reserves drafted new version of the Law of the Kyrgyz Republic "On Public Procurement".

The Law of the Kyrgyz Republic «On Public Procurement» was signed by the President of the Kyrgyz Republic on 24 May 2004 and it became effective from the moment of its signing;

Resolution (Postanovlenie) of the Government of the Kyrgyz Republic dated 8.05.2003 No. 266. «Provisions/Rules on the State Commission under the Government of the Kyrgyz Republic on State Procurements and Material Reserves»;

Resolution (Postanovlenie) Of the Government of the Kyrgyz Republic «On approval of threshold amounts while carrying out state procurements» dated 9 March 2004 No. 130;

Provisions/Rules «On Department and Tender Commission of a Procuring Entity (buyer) »;

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

Provisions/Rules «On the order /procedures of considering administrative infringements/violations and imposing administrative penalties for infringement/violation of the legislation on state procurement by procuring entities (buyers)»;

Provisions/Rules "On formation of data base of unreliable (unfair suppliers (contractors) and procedures for its application".

Model Standard tender documents for procurement of goods, works and services with different procurement methods;

Resolution (Postanovlenie) of the Government of the Kyrgyz Republic «Order /procedures of carrying out state procurements using state funds»;

Order of the State Commission under the Government of the Kyrgyz Republic on State Procurements and Material Reserves "On approval of the Provisions/Rules "On formation and procedures for application of the data base of suppliers and contractors";

Web-site: www.goszakupki.gov.kg of the State Commission under the Government of the Kyrgyz Republic on State Procurements and Material Reserves, where the above mentioned documents are placed.

Agreement on state procurement within CIS framework (has not been signed)

Agreement on government procurement within WTO (has not been signed)

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).

In compliance with Resolution (Postanovlenie) of the Government of the Kyrgyz Republic dated 3 October 2003 No. 626 "On establishment of centralized tender commissions" the following procurements are carried out in a centralized manner:

- for procurement of foodstuffs and manufactured goods the State Fund of Material Reserves is determined as executing body;
- for procurement of medicaments the executing body is the Ministry of Healthcare of the Kyrgyz Republic;
- for procurement of solid fuel the executing body is the State Enterprise «Kyrgyz Komur».

The rest of procurement is carried out in a decentralized manner by procuring entities (buyers) in compliance with the Law of the Kyrgyz Republic «On Public Procurement».

In compliance with Article 13 of the Law of the Kyrgyz Republic «On Public Procurement», the Department of the Procuring Entity within ten days after the republican budget is approved shall submit a public procurement plan for the next fiscal year to the State Body according to the approved forms.

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

Procurement of goods and services is carried out according to methods in compliance with Article 17 of the Law of the Kyrgyz Republic «On Public Procurement», however procurement of consulting services is carried out in compliance with Chapters 6 and 7.

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?

Article 14 of the Law of the Kyrgyz Republic «On Public Procurement» determines the main functions of the Authorized State Body on Public Procurement.

The structure of the State Commission under the Government of the Kyrgyz Republic on State Procurements and Material Reserves comprises the central apparatus and regional divisions in each oblast (province) center, and in Bishkek city. The total number of staff throughout the Kyrgyz Republic is 69 persons.

State Commission under the Government of the Kyrgyz Republic on State Procurements and Material Reserves is financed from the republican budget.

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 Law of the Kyrgyz Republic «On Public Procurement» in compliance with Article 1 applies to all state organizations, State enterprises, Joint Stock Companies, where the State share constitutes 51%, foundations established with State resources.

However in compliance with Article 2 of the Law of the Kyrgyz Republic «On Public Procurement» This Law does not regulate procurement directly connected with State security, national defense, protection of State secrets, and natural disasters, the order /procedures for which shall be determined by the Government of the Kyrgyz Republic.

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?

- Standard tender documents for procurement of goods using the method of tenders with unlimited participation, two stage tenders;
- standard tender documents for procurement of works using the method of tenders with unlimited participation and tenders with limited participation;
- standard tender documents for procurement of goods using the method of request for quotations;
- standard tender documents for procurement of civil (construction) works and services for construction, repairs and reconstructions of small and medium volumes/amounts;
- standard tender documents for procurement of consulting services;
- standard tender documents for procurement of services for service maintenance of office equipment.

All above listed documents are approved by the Order of the State Agency on Procurement under the Government of the Kyrgyz Republic and registered in the Ministry of Justice of the Kyrgyz Republic. While carrying out competitive tendering/ bidding, the above listed documents are applied by all procuring entities.

A special clause stipulating prohibition of corruption in above listed tender documents is provided for in point 2.2 of the «Instruction of participants of tender».

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.

Ministries, agencies and organizations of the Kyrgyz Republic in 2004 carried out in total 5087 tenders amounting Som 4,084.0 million.

With a breakdown by types of procurements there were:

- with unlimited participation 384 procurements, contracts were concluded for Som 1,483.0 million, which constitutes 36 percent of the total amount of procurements;
- with limited participation 321 procurements, contracts were concluded for Som 251,0 million Som, which constitutes 6 percent of the total amount of procurements;
- method of request for quotations 2 434 procurements, contracts were concluded for Som 860,0 million Som, which constitutes 21 percent of the total amount of procurements;
- single-source procurement 1 697 procurements, contracts were concluded for Som 941,0 million Som, which constitutes 23 percent of the total amount of procurements;
- 251 procurements were made by mutual counts (cross-cancellation of debts) for Som 549,0 million, which constitutes 14 percent of the total amount of procurements.

At present time carrying out of procurements through mutual counts (cross-cancellation of debts) is prohibited by the Government of the Kyrgyz Republic and terms and conditions for protection of own market, that is restrictions on the basis of country of suppliers and have been excluded from the Law of the Kyrgyz Republic «On Public Procurement». Instead of it the new version of the Law stipulates for possibility of granting up to 20% of preference for offered price while evaluating tender proposals for goods, produced on the territory of the Kyrgyz Republic, in comparison with the tender proposals for goods of foreign production, as well as for works up to 10% in comparison with proposals of domestic contractors with proposals of foreign firms.

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

Prequalification Proceedings are carried out in procurement of goods or works which are complex from the point of view of their technical characteristics according to Article 9 of the Law of the Kyrgyz Republic «On Public Procurement». Not later than one month before announcement of the tender proceedings the Procuring Entity must publish in Republican level mass media and in the Bulletin of Public Procurement, and if necessary--in international press, information on conducting of the prequalification selection.

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.

At present time the Government of the Kyrgyz Republic is carrying out reforms of governance structural adjustments in public (state) governance (World Bank governance adjustment credit GSAC-GTAC), which includes sup-component B «Improving transparency, efficiency of using the money (value for money) and accountability in public procurement» according the action plan:

- regularly publish in the Bulletin of Public Procurement information on all tenders and awarded contracts on public procurement;
- make amendment to the Law of the Kyrgyz Republic «On Public Procurement of goods, works and services» and bring in compliance with it subordinate legislation acts;

- carry out audits of procurements of selected, high value items, to be agreed with IDA, that affect service quality in the Health and Education sectors;
- apply the Law «On Public Procurement» to all enterprises where participation of the state in equity is not less than 50 percent.

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 Government of the Kyrgyz Republic, ministries and agencies have web-sites in the government web portal where one may obtain information on activities of the ministries and agencies.

The State Commission under the Government of the Kyrgyz Republic on State Procurements and Material Reserves has a web-site: www.goszakupki.gov.kg where the following documents are placed: the Law of the Kyrgyz Republic «On Public Procurement», normative and legal (regulatory) acts in the area of public procurement, information on forthcoming and conducted competitive tendering/ bidding, etc.

The Bulletin of Public Procurement is being published every month.

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.

Data base of suppliers (contractors) at present in compliance with the Order of the State Commission under the Government of the Kyrgyz Republic on State Procurements and Material Reserves dated 24 January 2005 No. 15 “On approval of the Provisions/Rules “On formation and procedures for application of the data base of suppliers and contractors” which stipulates for criteria.

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

The Article 16 of the Law of the Kyrgyz Republic «On Public Procurement» stipulates for principle of confidentiality of information that is submitted and used. In compliance with Article 25 of this Law A supplier (contractor) at the time of submission of a tender proposal shall simultaneously provide a bid security, the amount of which shall be determined by the tender commission of the Procuring Entity and it must not exceed 3% of the value of the goods, works and services offered by the suppliers (contractors) in their bids. And in compliance with Article 59 the Procuring entity may request from a supplier (contractor) the security for performance of the contract, which must not exceed of the value of 10 percent the of the cases of procurement.

Chapter 3 of this Law stipulates for procedure of conducting tenders, including tender advertisements/ announcements.

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 Procuring Entity in conducting tenders in compliance with Article 17 of the Law of the Kyrgyz Republic «On Public Procurement»:

If tenders are conducted for the amount equal to or exceeding the maximum threshold amount, the tender announcement shall be published in mass media and in the Bulletin of Public Procurement;

If the procurement is made for the amount less than the maximum threshold amount, the tender announcement shall be published in the Bulletin of Public Procurement. If the procurement is made for amount less than minimum threshold amount the tender announcement shall not be published.

In compliance with Article 20 for sending the tender documents the Procuring Entity may charge the non-reimbursable fee which must not exceed the costs of printing and sending of the documents.

In compliance with Article 23 the Procuring Entity shall establish a specific date and deadline for submitting of tender applications which must be:

- for the tender with unlimited participation it should be not less than 6 weeks after the announcement of tender proceedings;
- for the tender with limited participation it should be not less than 3 weeks from the date of sending invitations to participate in the tender proceedings and publishing the tender announcement in mass media and in the Bulletin of Public Procurement;

In procurement by request quotations the Procuring entity shall publish announcement in the Bulletin of Public Procurement, deadline of quotation submission shall not be less than one week from the day of its publishing.

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?

Criteria for selection and decision making shall be made according to Articles 2-31 of the Law of the Kyrgyz Republic «On Public Procurement» and in compliance with tendering documentation.

The winning tender shall be the tender which meets in substance the requirements of the bidding documents and which has the lowest evaluated cost.

Qualification requirements are presented not to buyers but to the suppliers (contractors) in compliance with Article 8 of the Law «On Public Procurement».

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 case of cancellation of tenders in compliance with Article 29 of the Law of the Kyrgyz Republic «On Public Procurement» the Procuring entity upon agreement with the State Body may conduct a re-tender using other method of public procurement.

The Procuring entity shall register all bid applications.

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?

Activities and decisions related to procurement procedures shall be registered in the record (minutes) of bids opening, the copy of which shall be sent to the authorized State Body in compliance with Article 10, 26 of the Law of the Kyrgyz Republic «On Public Procurement» for monitoring and analysis.

All tender documents shall be kept in procuring entities during three years, and all members of Department of Procurement and tender commission of procuring entities have access to tender documents.

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?

In compliance with Article 30 of the Law of the Kyrgyz Republic «On Public Procurement»:

The written notice of acceptance/recognition of the winning bid shall be sent within 3 days after the selection to the supplier (contractor) who submitted it;

The Procuring entity within three days shall notify all other bidders by way of publishing an announcement on the selection and identify the name and address of the successful bidder and the price presented in his bid;

If the announcement on soliciting tenders was published in the Bulletin of Public Procurement, the announcement referred to in paragraph 2 of this Article shall be published in Bulletin of Public Procurement as well.

No negotiations shall take place after making decisions.

However in the event that the selected supplier (contractor) does not sign a contract or fails to provide the required performance security, the Contract in accordance with the Article 27 of this Law shall be signed with the next ranked bidder.

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

Framework contract is not applied.

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)?

Article 14 of the Law of the Kyrgyz Republic «On Public Procurement» stipulates for the functions of the Authorized State Body on Public Procurement, and also in Article 5 «Conflicts of Interest» in compliance with which Government employees of the Kyrgyz Republic are prohibited to influence in any way the procurement procedure.

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 State Commission under the Government of the Kyrgyz Republic on State Procurements and Material Reserves in January 2002 has established the Regional Training Center. This is the only structure in the Kyrgyz Republic which carries out purposeful training of specialists on procurement on the basis of higher education.

In September 2003 an Agreement between the Government of the Kyrgyz Republic and the World Bank was signed on extending a grant for the project "Institutional strengthening of the system of state procurement of the Kyrgyz Republic through support of the National Training Center". At present time international and national consultants work on elaboration of curricula/syllabi on the new version of the Law of the Kyrgyz Republic "On Public Procurement", on procedures of the World Bank and other international financial institutions.

At present time the Training Center is working with the International Training Center of International Labor Organization (ILO) in Turin on elaboration of curricula/syllabi.

In 2004, 26 seminars/workshops were conducted on procurement procedures and 736 persons went through training.

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?

In compliance with Article 6 of the Law of the Kyrgyz Republic on Public Procurement, in the event that bribery by a supplier (contractor) has been verified, the Procuring Entity, with the approval of the State Body shall reject the tender application, offer or quotation from participation in tender.

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).

In compliance with Article 413 of the Code of the Kyrgyz Republic on Administrative Responsibility and Provisions/Rules «On the order/ procedures of considering administrative infringements/ violation of the law and imposing administrative penalties for breaking legislation on public procurement by Procuring Entities», administrative penalties are imposed on chiefs and members of tender commission of Procuring Entities.

Material/property damage is restored at the expense of guilty persons.

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 compliance with Criminal Code of the Kyrgyz Republic if a person is found guilty in corruption in the process of submitting tender application, then sanctions are applied as specified in Articles 310-314.

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...)?

In compliance with Articles 4, 6 of the Law of the Kyrgyz Republic «On Public Procurement» and Provisions/Rules "On formation of data base of unreliable (unfair suppliers (contractors) and procedures for its application" the Procuring Entity with the agreement of the State Body forbids participation in tender during 2 years.

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?

The Law «On Public Procurement» does not regulate relations between a contractor and subcontractor, as well as the third parties, which must be regulated by contracts between them.

As for the service of a subcontractor on performing a contract, the standard tender documents provide for it.

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?

cf. question 25

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.)?

In compliance with Article 13 of the Kyrgyz Republic Law «On Public Procurement» all decisions on procurement procedures are made by Department of Procurement and Tender Commission of procuring entities. The Department of Procurement and Tender Commission must comprise not less than three persons.

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?

-

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?

Chapter IX of the Law of the Kyrgyz Republic «On Public Procurement» stipulates for the mechanisms for considering protests and complaints. To protect their rights, suppliers (contractors) have the right to appeal to the Procuring entity within 10 days after the publication of the announcement on the results of a procurement proceeding. The Procuring entity shall consider a complaint during 7 days from the day it was submitted and makes a decision in writing. In case the supplier (contractor) is not satisfied with the decision made by a Procuring entity supplier (contractor) then he has the right to appeal to the State Body on public procurement or to a court of general jurisdiction in accordance with Articles 65 or 67 of this Law.

From 5 to 10 complaint cases related to procurement are handled per year. For 2004 the State Commission under the Government of the Kyrgyz Republic on State Procurements and Material Reserves considered 5 complaints.

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.)?

-