

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

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 Pakistan 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 Pakistan 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 of Pakistan notified Public Procurement Rules, 2004 on June 08, 2004 for transparent and efficient procurement of goods, services and works. These Rules are applicable on all procuring agencies of the Federal Government including public sector autonomous bodies, corporations and other entities owned or controlled by the Federal Government. The Rules may be downloaded from <http://www.ppra.org.pk>

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).

Please see relevant provisions of Public Procurement Rules, 2004.

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

Generally, procurement of services is also subject to the same procedures as the procurement of goods and works. However, for the procurement of services, provision for technical negotiations has been made.

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?

No. There is no centralized procurement office in Pakistan.

The procurement entities undertake procurement in accordance with the financial resources available with them

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

All procuring agencies owned or controlled by Federal Government, except procurement related to National Security, Defence forces or disclosure of intellectual property etc.

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

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?

Model Tender Documents for procurement of works and services have been prescribed by Pakistan Engineering Council (PEC). The model documents for procurement of goods are under preparation. Where the project is financed through funding of international donor agency, the standard bidding documents of donor agency are used. While the Public Procurement Rules, 2004 are aimed at transparent procurements, all procuring agencies are also required to sign an Integrity Pact with their suppliers for procurements over Rs.10.00 million.

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.

The main function of PPRA is to regulate public procurements with a view to ensure transparency, accountability, value for money, good governance, quality of public procurements and effective management.

Please see Rule 42.

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

The Government of Pakistan has recently undertaken reforms in the field of public procurement. It has enacted legislation i.e. the Public Procurement Regulatory Authority Ordinance, 2002 and established Public Procurement Regulatory Authority. It has also promulgated Public Procurement Rules, 2004. Public sector organization under Federal Government are autonomous to determine and decide the conditions for pre-selection. Public Procurement Rules, 2004 provide a broad legal framework addressing various methods of procurements.

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.

The GoP has recently undertaken far reaching reforms in this area and established Public Procurement Regulatory Authority. The main objective of establishment of PPRA is to build and strengthen GoP capacity to develop a modern transparent and cost effective public procurement system and regulate public sector procurement of goods, services and works with a view to achieve transparency, accountability and quality of public procurement, as well as improving governance and management. The Authority has also devised a regulatory framework for public procurements which has been notified by the federal government. Both the Public Procurement Regulatory Authority Ordinance, 2002 as well as Public Procurement Rules, 2004 can be downloaded from the website of Authority at <http://www.ppra.org.pk>

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?

Yes. They can be downloaded from website at <http://www.ppra.org.pk>

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. On the other hand, a list of blacklisted contractors is maintained.

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

Yes. A maximum of 5% bid security is prescribed.

All procurement opportunities over Rs.40,000/- are required to be advertised on PPRA's website. Procurements over Rs.1.0 million have to be advertised in print media also.

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.

All procurement opportunities over Rs.40,000 are required to be published on Authority's website. All opportunities over Rs.1.0 (million) are also required to be published in print media.

Yes. The fee has to be no more than cost and printing & delivery of documents.

Yes. A minimum of 15 days time for National Competitive Bidding (NCB), and a minimum of 30 days time for International Competitive Bidding (ICB).

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?

Yes, it is mandatory upon procuring agency to incorporate evaluation criteria in bidding documents and announce evaluation reports atleast 10 days before the final award of contract.

The procuring agencies are also at liberty to devise bid evaluation criteria which is transparent and conforms to Public Procurement Rules, 2004.

It is mandatory to advertise bid evaluation criteria in the bid 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?

If none of the bids is responsive, the procuring agency may recall tenders. If too few bids are responsive, it is the discretion of the procuring agency whether to go ahead with the proposed procurement or to re-advertise.

The procuring agencies are required to keep complete record of procurement for at least five years.

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?

All procuring agencies are required to keep complete records of procurement for a minimum period of five years

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?

As per Rule 35, the final decision about award of contract is to be communicated not only to the successful bidder but also to all unsuccessful bidders.

Yes.

Generally no financial negotiations are allowed. However, adjustment in prices may be allowed which may be as a result of technical negotiations etc.

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

No.

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. Please see attached text of integrity pact.

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).

Not yet. The Authority is however, designing training programmes for this purpose.

May be downloaded from PPRA website at <http://www.ppra.org.pk>

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?

There is no bar on any procurement professional for reporting any such event.

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).

They can be tried under the Prevention of Corruption Act 1947, and National Accountability Ordinance 1999.

Any gifts received by any civil servant are to be deposited in Tosha Khana maintained by Cabinet Division. A public servant may keep such items for his personal use in accordance with the instructions issued by Cabinet Division

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?

If proved guilty, the company can be black-listed. In addition, its personnel can also be tried in the court of law under relevant Anti Corruption Laws.

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. Such companies can be blacklisted. The respective procuring agency is empowered to develop appropriate criteria and take such 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?

Yes for all contracts over Rs.10.00 million.

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?

Yes for all contracts for supply of goods, works and services valuing over Rs.10.00 million.

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.)?

An inbuilt system of check and balance works in such case

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?

Yes, the auditors of Auditor General of Pakistan conduct annual audits. In addition, Public sector entities also get their accounts audited from Chartered Accountants. These Audit Reports are also made public.

Not really

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?

As per Rule 48 of Public Procurement Rule, each procuring agency has to set up committees for grievance redressal. In addition, judicial remedy is also available in the office of Ombudsman as well as in the civil courts.

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.)?

A bidder can lodge a complaint to the relevant authorities. Under Rule 48 of Public Procurement Rules 2004, a procuring agency is required to constitute a committee comprising of odd member of persons with proper powers and authorizations.

The committee so constituted is required to decide upon the complaint within fifteen days of receipt of complaint. The decision of such committees are binding. Any bidder not satisfied with the decision of committee may lodge an appeal in the relevant court of law.

In this case, the findings are sent to the concerned ministry for appropriate decision.