

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

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 Cambodia 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 Cambodia 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).

In general, responses below exclude procurements from funds provided by the international financing institutions (where grant/credit conditions frequent dictate how procurements are to be undertaken) or bilateral agencies (as applicable to individual cases). But what is said below has also been noted in the procurement/contracting practices of every project or entity, irrespective of the nature of the funding mechanism.

The list of legislations is included in Annex 1; and a synopsis of laws and regulations in Annex 2 (both lists are incomplete and to be completed).

It is important to highlight here Cambodia's public administration is currently transitional in nature. Therefore, some of the guidelines and procedures are dynamic and steadily getting fine-tuned.

Having said that, it is important to acknowledge that Cambodia has no specific or basic law on public procurements. A draft law previously prepared (1995) but was promulgated by sub-decree by the Council of Ministers based on the Law on Budget (1994). Regulations were also promulgated in 1995 (since amended 1998 and 2005).

However, it is important to note here that numerous exemptions and unclear procedures continue to limit the transparency of public procurement practices in the country.

For public procurement, there are other rules and guidelines exist:

- (a) Privatized concession and/or build-operate-transfer (BOT) projects. Since January 2004 all government ministries have been required to adopt “open” tendering, compared to direct contracting (par 27);
- (b) Government involvement in contracts for rural communities is limited, with contracts being awarded in transparent, open procedures;
- (c) Sub-decree No 40, MEF, dated 15/02/05 on arrangement and implementing Internal Audit Unit in Ministries, Institution, and Public Enterprises;
- (d) Decision No 045, MEF, dated 31/01/2005 on the Governing on Co-decentralization on Public Procurement;

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

- (e) Cambodia accession to the World Trade Organization (WTO), and is renewing its efforts to address issues related to the awarding of concession contracts.
- (f) To strengthen the efficiency of implementation of IFI-financed projects, MEF is currently preparing, with assistance from the ADB and the WB, a manual of Standard Operating Procedures (under preparation for over four years), which will include manuals for procurement management and FM; and WB is currently preparing a project for legal and judicial reform that will assist RGC to address issues related to contractual disputes.
- (g) Provincial and local district projects handled under the RGC decentralization policy by the National Committee for Supporting the Communes (the Commune-Sangkat initiative); and the community-based contracting methods of the Social Fund of the Kingdom of Cambodia (SFKC).

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).

The principle body managing/controlling public procurement in the Ministry of Economy & Finance through the:

1. Department of Public Procurement
2. Department of Investment & Co-operation (which oversees procurements with funds from international financing agencies (WB/ADB and bilateral donors), and the
3. Procurement units (PU) and Pre-qualification, Evaluation, and Awarding Committee (PEAC)

Additionally, provisions have been made for procurements through other institutions i.e., either line Ministries or such mandated independent projects/programmes/entities as the Social Fund of the Kingdom of Cambodia and SEILA through the elected (2002) Commune Councils and Sangkat (under the provincial governors) Councils.

There are specified contract methods of procurement are (including threshold limits):

- National Competitive Bidding (ICB): above KHR 50,000,000;
- Domestic Competitive Bidding (DCB): KHR 200,000,000 to KHR 50,000,000;
- Domestic Canvassing (DC): not exceeding KHR 10,000,000 to KHR 20,000,000.

These thresholds were set in January 2005. While exchange rate movements have not had a significant impact on the levels (US\$ 1 was worth KHR 3,420 in 1998, and is now worth KHR 4,060), there is a case for reviewing the thresholds, based on the experience gained over the past five years, to determine whether the levels are consistent with efficiency and practicality. The Royal Government of Cambodia is considering it.

Additional provision on handed the rights and responsibilities in procurement process through decentralized authorities have been made to line-ministries, institutions of the provincial-cities government and public enterprises (through threshold limits) as the following:

- Line-department of provincial/cities under KHR 200, 000, 000

- Cabinet of provincial/cities under KHR 300, 000, 000
- Ministries, Institution and Public Administration Enterprises under KHR 500, 000, 000
- Ministries of Education, Youth and Sport, Ministry of Health, and
- Public economic enterprises under KHR 1000, 000, 000.

The tasks and responsibilities of the ministries, provinces/cities and public enterprises in the decentralized procurement process as the following:

1. To properly correctly and appropriately carried out in accordance with procurement procedures and guidelines setting up by the Ministry of Finance and Economy (MEF);
2. To properly prepared procedure of the procurement documents in accordance with the guidelines of the MEF;
3. To properly prepared procurement documents following the model and guidelines of the MEF;
4. To properly fix the contract prices lower or similar to the market prices;
5. To regularly sent monthly procurement report to the MEF.

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

Not the same.

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 law, but Department of Public Procurement at MOEF. Evidence from the World Bank (2004) Cambodia Procurement Assessment Reports indicate limited capacities with an average of 2 person days training for those involved in procurements. Additionally querying through a survey indicated validated claims of limited knowledge and capacity.

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 state sector agencies are entitled to undertake limited procurement with approvals or securing “no objection” from Ministry of Economy and Finance.

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?

Yes.

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 don't have information about total numbers and values of purchases for 2005.

Under Parkas No 045 year 2005 on Implementation of public procurement co-decentralization, there are 3 methods as follows:

- Direct purchase or Direct Contracting methods (below \$5,000)
- Domestic Canvassing methods (from \$5,000 to \$12,500)
- Public bidding methods (over \$12,500).

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

Responsible persons who have properly registered at the department of public procurement will be considered as having ability to participate in bidding or having characteristics in any contract depending on the limitation of type and classification as mentioned in the certificate of registration of the responsible person.

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.

A major reform of procurement system is to ensure appropriate, effective, transparent procedure and bidding compliance by avoiding overprice setting and select the bidder against the evaluation principle. Its measures are follows:

- Strengthen the implementation of the sub-decree No.60 dated 31 July 1995 on Public Procurement, and documents of law enforcement and regulations governing Public Procurement.
- Establish of sovereign procurement law and prepare its draft.
- Decentralize procurement in ministries, provinces municipalities and state of enterprises, including raising procurement thresholds under which ministries, provinces and state of enterprises may procure directly.
- Continue to improve the procurement procedure by reducing time and speed up the expenditure procedure as well as decentralization of procurement activities to the line ministries that have capacity in doing so.
- Strengthen ministerial Pre-qualification Evaluation and Awards Committee of relevance ministries/institutions and provinces/municipalities.
- Strengthen provincial/municipal Pre-qualification Evaluation and Awards Committee.

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?

From government publication office and through, the official printed gazette. Also a through a compendium of Cambodia Legislation has been published, (some materials may have unofficial translations from Khmer to English).

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.

At provincial levels, procurement of contractors for civil works is based on a process of provincial prequalification “listing”.

Additionally, much public procurement of goods and services such as the BOT contracts for roads and other goods and service contracts have been provided to contractor with “special qualification”.

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

The amount of bid security should be not more than 2% of the bid price and the amount of performance bond should be not exceeding 10% of contract amount.

An advertisement of procurement opportunities: public location and through mass media.

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 are no strict rules for publishing of tenders or invitation to potential bidders (often a mandatory requirements for the application of funds from international financing institutions and bilateral donors). Fee can and are asked, no apparent guidelines of how these are applied in practice. On occasions, government has received complaints from bidders on the provision of inadequate time to prepare/comply with requirements or quotations.

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.

MOEF has attempted to apply standard operating procedures (SOP) for controlling procurements based on bid evaluation committees no clear guidance on these except the numbers of participants and potential veto by MOEF. (Please refer to draft SOP discussions circulated by MOEF for all donor-assisted procurement/contracting and also for others).

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?

No.

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?

Bid evaluation minutes are required by MOEF procedures. In general, minutes of the bid evaluation committee meetings are prepared. It has been often observed that these minutes were inadequate in details and quality comparison of various bidders tend to lack.

However, the confidentiality of the contract bid documents have been safeguarded and they should not be disclosed to unauthorized without the consent of the parties of the contract.

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?

It depending in the size of the contract the MOEF (Ministry of Economy & Finance) has the final and conclusive words, reasons for selection do not have to be stated. As stated numerous incidents of special qualification applied.

Otherwise, the final decision on awarding the contract have been sent to the winner by issue letter of awarding. Post awarding negotiation generally not allowed but in particular case such as short of funds, negotiation shall be done.

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)?

There exists no comprehensive code of ethics. The current civil service code prohibits corrupt practice, but its enforcement is seen to be weak. Various reports indicate numerous incidences of often-undeclared 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).

As yet no inadequate training is an issues and contributory factor to some of the problems.

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?

Yes.

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).

Procurement personnel who accepted or solicited bribes and tend to induce, aid or tolerate any violation of the contracts will be subject for administrative sanctions, including removal or suspension from office, without prejudice to any criminal action that may be brought against him 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?

Any act committed by a private person or entity of the bidding company violation related to the bidding procedure shall subject to Perpetual or temporary disqualification from participating in any procurement transaction and to such penalties or punishments as may be imposed under existing law and the party concerned to penalties or punishments as may be imposed under existing 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...)?

No.

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, the selected bidder must declare that he hasn't offer or pledge any amount of money or bribes to the procurement officer or any other bidder to obtain the contract.

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. There is no requirement. Apart from financial consideration, the bidding documents also cover the following points, bidding validity, standards, use of brand name, insurance, price adjustment, liquidated damages, bonuses, force major, language, and settlement of disputes.

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.)?

Theoretically tiered reviews (several layers) of recommendations/decisions made on procurements existence of National Auditing Authority (NAA) established (2001). NAA is functioning and is gradually assuming and discharging its mandated responsibilities.

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, particularly of procurement entities using international financed monies. Nationally NAA is responsibility but overworked, specific auditing documents are not currently made public soon? The government is planning to recommend setting time-schedules for the NAA on such matters.

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?

In general, complaints are administrative in nature pertaining to the Ministry/state agencies.

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.)?
