

## Anti-corruption policies in Asia and the Pacific: Thematic review on provisions and practices to curb corruption in public procurement

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### Background

Identifying reform needs, assessing progress and evaluating the effectiveness of anti-corruption policies are central principles enshrined in the ADB/OECD Initiative and its Action Plan. They constitute essential tools to strengthen the Asian and Pacific countries' anti-corruption agenda. Against this background, the Initiative's member countries engaged in 2003 and 2004 in an in-depth study of their legal and institutional frameworks to fight corruption against the principles and standards of the Action Plan. This study resulted in a stocktaking report on anti-corruption policies in twenty-one Asian and Pacific countries, published in November 2004.

The findings of this stocktaking exercise highlight areas which require particular attention in a majority of countries of the region. To promote reforms in these matters, the Steering Group at its fifth meeting in July 2004 agreed to pursue this analytical work through a thorough review of policies, practices and rules governing critical areas. Measures to prevent, detect and sanction corruption in public procurement are of high importance throughout the region and therefore have been selected for the first thematic review.

Corruption is pervasive in public procurement in many countries, and its costs to societies and economies are particularly high: Corruption increases prices of goods acquired by public entities by up to 25%; considering the volume of public expenditure in any given country, it may entail huge losses of wealth to the country. The Anti-Corruption Action Plan for Asia-Pacific and its endorsing countries consequently recognize under the Plan's first Pillar that "*appropriate transparent procedures for public procurement that promote fair competition and deter corrupt activity*" are important element to safeguard accountability of public service. The Action Plan also recommends the review of laws on "*government procurement contracts so that access to public sector contracts could be denied as a sanction for bribery of public officials*".

### Purpose and expected outcome

The goal of the review is to assist participating governments in better understanding the corruption risks inherent in their countries' institutional settings and procurement practices and as such to assist them in enhancing integrity and accountability in their procurement systems. The reviews will assess how countries translate into practice their commitment made under the Action Plan to curb corruption in public procurement. It will further aim at providing governments with an analytical framework to design policies and procedures that ensure greater transparency and integrity in public procurement and to identify priorities for respective reform. The review will also provide expertise in identifying shortcomings and loopholes in the legal frameworks or practices. Finally, the report resulting from the review will aggregate experience in participating countries to inspire possible reform in other countries.



## Scope

Curbing corruption in public procurement requires a sound legal and institutional framework covering broad aspects including effective audit-mechanisms, a well functioning judiciary and public access to information, to mention just a few aspects. While the stocktaking report covers these and other broader issues, the review on public procurement systems focuses exclusively on aspects that are relevant to curbing corruption in public procurement as outlined in the Action Plan, namely transparency, integrity, and accountability. Although important in an overall view to ensure effectiveness of government procurement, issues such as the economy of procurement will not be covered, and the evaluation of other anti-corruption tools such as codes of conduct or effective law enforcement is to be addressed only when specifically relevant to procurement.

## Methodology

In line with the Action Plan's principle of self-assessment, the review will be based on information provided by participating countries in their replies to the attached questionnaire. Countries are further invited to provide – where available in English language – extracts or copies of relevant laws, reports and other documentation, as well as links to internet sites providing additional information. Similar to the stocktaking report, the collected information will be compiled and consolidated by the Secretariat. The report resulting from this exercise and to be edited by the Secretariat will be submitted to the Steering Group for discussion and adoption and eventual publication.

## Submission

The responses to this questionnaire should be sufficiently detailed and specific and should, together with any additional documents you would like to provide, be submitted in electronic format to the Secretariat of the ADB/OECD Anti-Corruption Initiative (gretta.fenner@oecd.org and mpizarro@adb.org) at the earliest convenience, but not later than **14 February 2005**. Countries are kindly asked to also provide contact details of a designated person who could provide clarifications if need arises; this would ideally be a person who was involved in drafting the replies to the questionnaire. You are encouraged to submit, if existing, the report from a survey which your country has possibly undertaken with another international organisation or in the framework of an internal reform program if you consider that this survey responds sufficiently well to the issues raised in the present questionnaire. In this case, we would kindly ask you to update the past survey and add any information requested in the present questionnaire which is not contained therein.

The cooperation extended to the Secretariat by participating countries in the preparation of the Steering Group's study on curbing corruption in public procurement is gratefully acknowledged. Should you require further information or assistance, please feel free to contact the Secretariat through Jak Jabes at the Asian Development Bank (jjabes@adb.org; phone: +63 2 632 57 49) or Gretta Fenner at the Organisation for Economic Co-operation and Development (gretta.fenner@oecd.org; phone: +41 43 300 11 60).

## Questionnaire

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### 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 agreements<sup>1</sup> that your country is committed under, including its level of involvement (e.g. signature, ratification, implementation).

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).

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

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?

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

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

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*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?

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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.

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

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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.

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**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?

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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.

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12. Is a bid security and/or a performance guarantee required from the bidder?

What are the procedures for advertisement of procurement opportunities?

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*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.

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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?

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*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?

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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?

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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?

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

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**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)?

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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).

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?

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).

*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?

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...)?

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?

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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?

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**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.)?

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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?

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*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?

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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.)?