

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

---

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

Constitution of The Kingdom of Nepal-1989

Finance Act-1996,

Financial Administration Rule-1999

Local Body Financial Administration Rule-2000,

Public Works Directives - 2003

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 office in charge is fully responsible for making the procurement decision and the person working in this field implements it. There is a committee for evaluation of bids and there is a Dispute Resolution Board at Departmental level.

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

Separate procedures are provided in Public Works Directives and Financial Regulations for procurement of goods and 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?

No. There is no provision of separate PPO in our organizations. Rather procurement task is carried out by a wing under Administrative Division.

---

<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).

Local authorities and state owned enterprise have their own separate procurement rules. But government agencies are governed by same rules and regulations.

*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?

There is Public Procurement Guideline which is mandatory. There is specific anti corruption clause as well. Model tender documents applicable to donor-funded projects are also available for use.

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.

Approximately Rs.197,230,000,000 is spent in this field. There is a provision for sealed tender for works exceeding the amount Rs. 1 million, Direct purchase for small purchase upto 100 thousand and limited tender for work less than 1 million in value.

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

Procurement above Rs. 10 million is subject to prequalification.

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 draft procurement law had already been prepared in assistance with the World Bank.

## **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, it is available and is published by Law Book Management Committee.

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.

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

Bid security is required. Advertisement should be made twice in national daily newspaper.

*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.

Advertisement is mandatory by rule. Rule fixes the tender fee and time submission according to the bid amount.

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?

Rules prescribe the criteria and its description is mandatory to be printed in the 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?

If there is only one bid then it is re-advertised. There is the system to keep register of all bids received.

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?

It is recorded on the memo. By Rule it is preserved for 20 years and only concerned officials have access to the information. It is audited by the auditor at the end of the year.

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?

The person who gets the tender. Reasons have to be stated in the bid. No, there are no post award negotiations.

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

There are separate law and institution to deal with corruptions.

## 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)?

No, there is no specific code for procurement. Rather all public servants and guided by same code.

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).

No. Recently some trainings are started on procurement and technical audit.

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?

No specific provision. But PWD and Financial Rules have some prohibitive statements.

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).

Ultimately they could be removed from service, fined and also imprisoned. Yes, they are liable and the loss could be recovered from their personal property. Code of conduct of civil servant restricts acceptance of gift. Anti corruption Act, Anti corruption Regulation, Financial Regulation and PWD prohibits public officials from accepting facilitation payments etc.

### *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?

No separate act prevails. For government officer it is liable for punishment by corruption 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...)?

Yes. Such disqualification is mandatory. The Deciding agency circulates the decision to implementing agency.

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.

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 specific law exists.

## **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.)?

There is a Committee comprising of 4 to 5 persons to recommend the bid. There is rotation of officers in a cycle of 2 years.

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?

Internal & external audit is mandatory. Audit reports are made public through parliament. There is no such law to monitor procurement procedures. Recently Technical audit of selected projects have been started by National Vigilance center.

### *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?

No review and complaints procedures are specified. But bidder can complain with 15 days of decision made and it is in the administrative level as well as to the 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.)?

Competing bidders can initiate. Their identity is kept confidential on their request.