

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

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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 Thailand 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 Thailand 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).

The main legislation concerning government procurement is Regulation of the Office of the Prime Minister on Procurement 1992, as Amended to No. 6

2002 (hereinafter, Regulation of the Office of the Prime Minister on Procurement 1992). However, this Regulation does not apply to state-owned enterprises and local government agencies since they have their own procurement regulations (namely, Regulations of the Ministry of Interior on Procurement of Provincial Administration)

Presently, the new draft of Regulation of Ministry of Finance on Procurement B.E. ... is under consideration.

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).

According to Regulation of the Office of the Prime Minister on Procurement 1992, there are several processes and persons in charge of each stage as follows:

#### *1. Pre-procurement processes*

- Prior to any procurement has been conducted, procurement personnel (persons who is in charge of procurement) of the government agency has to prepare and render to the Head of the agency, a proposal for procurement clarifying material items such as reasons and necessity of that procurement, details of goods/ service, standard price, amount of budget for procurement, period needed for procurement, methods of procurement and other relevant proposals.
- Upon approval of the Head of the procuring agency, the notification of request for tender has been made. Such tender notification shall, at least, specify specifications of the goods/ service needed, experience and work portfolio of the tenderer, working capacity of the tenderer, tenderer's financial status, criteria for selection and venues for receiving or purchasing the preliminary qualification documents.

#### *2. On-Procurement processes*

- Procurement processes are different depending on some legal conditions namely the amount of budget involved, the special characteristics of goods/ services procured, urgency of procurement, optimum interest for public, etc.

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

**Note:** Since January 1, 2005, the Government's policy has been implemented resulting in the requirement of most procurement value of more than Baht 2,000,000 (approx.USD 50,000) must be conducted by the method of electronic auction.

- Evaluation of Tenders
- Awarding of Contract

3. *Post-procurement processes*

- The Materials Inspection and Acceptance Committee is in charge of inspecting the fulfillment of the procurement contract, in terms of quality and quantity of goods/ services)
- Inventory control and written off

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

According to Regulations of the Office of the Prime Minister on Procurement 1992, most procurement of goods and procurement of services are governed by the same procedures except for the engagement of consultant and contracting for design and working supervision which appear in separate part of the same Regulation.

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?

Public Procurement Management Office (PPMO) is under the Comptroller General's Department (CGD), Ministry of Finance. CGD is responsible for controlling, monitoring and evaluating the procurement processes of government entities. As a central government agency CGD determines regulations and guideline related to government procurement. In addition, Committee in Charge of Procurement (CCP) is established by Regulation of the Office of the Prime Minister on Procurement 1992 to:

- To interpret and make recommendation pertaining to the enforcement of these Regulations,
- To grant a reprieve or exemption in the event that the government agency concerned can not comply with these Regulations,
- To consider the complaint in case that the government agency does not comply with these Regulations,
- To propose the Cabinet for the alternation or improvement of these Regulations,
- To set up the form of sample including adding, alter or set the guideline to be in line with these Regulations,
- To recommend the person authorized to act under these regulations in considering and circulation the persons

Moreover, the Office of Auditor General of Thailand and the National Counter Corruption Commission have the powers to carry out an audit and monitor in regards of legality and transparency of the government procurements.

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

Procurements of local government agencies are governed by Regulations of the Ministry of Interior on Procurement for various administrative levels. Overall, these regulations are based on similar procedures and conditions as stipulated in Regulation of the Office of the Prime Minister on Procurement 1992

Particular procurement rules in other sectors, i.e. City of Bangkok Administrative, Provincial Administrative Assembly, or other state owned enterprises etc., are mostly based on the main principle abovementioned. However, as for laws and regulations on procurement in significant details of those, there are numbers of information which are difference from each others.

*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?

The Committee in Charge of Procurement (CCP) has stipulated the model forms of tender documents, procurement contracts, letter of guarantee and relevant documents to government agencies. These model forms are principally required by Section 132 of the Regulation of the Office of the Prime Minister on Procurement 1992 to be used; except for, when necessary, the procuring agency needs to vary immaterial detail of the Contract and this will not disadvantage the state interest. In case of material change, the Head of the procuring agency shall consult with the Office of Attorney General for consideration.

Normally, the above mentioned model forms are designed to promote the transparency and justice of the procurement. Also, the Act Regulating the Offense Relating to the Submission of Bids or Tender Offers to Government Agencies

2003, and Royal Decree on Good Governance in State Administration 2003 will be applied to government procurement process to counter corruption. Additionally, there are council of cabinet's circulars and standards laid down by the State Audit Commission, are used as a mechanism for anti-corruption.

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.

So far, our Government Financial Management Information System (GFMS) has just setup and the good governance monitoring system to be setup by the Office of National Counter Corruption Commission in coordination with the Office of Public Sector Development Commission. Therefore, the annual total numbers and values of purchase as specified abovementioned shall be available by the end of 2006.

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

According to Section 30 of the Regulation of the Office of the Prime Minister on Procurement 1992, pre-selection procedures may be conducted in the routine-type procurement or procurement limited to specialists when requested by the procuring agency. In this case, the agency must stipulate criteria and methods of selection which made available to public and shall inform the Committee in Charge of Procurement accordingly. The pre-selection procedures are conducted by requirement of procurement of specialists. Name of qualified specialists, graded in categories and their capacity, will be listed at the Ministry of Finance. At present, procurements of goods conducted with pre-selection procedures have been found in the procurements of the Department of Highways and Royal Irrigation Department.

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.

CGD's development plan for Government Procurement are as follows:

- Developing the e-GP information system
- Studying international GP's development frameworks
- Enhancing procurement skills for government officers
- Modernizing GP regulations
- Developing SMEs participation in GP

## **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?

Presently, the Regulation is under reform. Draft Regulation of Ministry of Finance on Procurement is under consideration.

The existing laws, regulations and policy guidelines on public procurement are published in the Royal Gazette. Also, anyone may access to these law and regulations via internet's websites of Ministry of Finance ([www2.mof.go.th](http://www2.mof.go.th)), the State Legal Council and the Ministry of Interior.

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.

Apart from the procurements of goods/ services other than consultants by the Department of Highways and Royal Irrigation Department, there is no list of eligible contractors established.

In case of procurement of consultants, list of eligible contractors is made available at the Ministry of Finance.

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

Typically, a bid security and/ or performance guarantee is required from the bidder, saving for government agencies or state-owned enterprises which the requirement is not compulsory.

Procuring agency has to advertise its procurement in the website: [www.gprocurement.go.th](http://www.gprocurement.go.th), and notify to other public agencies such as Mass Communication Authority of Thailand, Broadcasting authority, newspaper office and the Office of the Auditor General of Thailand.

### *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.

Procuring agency has to advertise its procurement in the website: [www.gprocurement.go.th](http://www.gprocurement.go.th), and notify to other public agencies such as Mass Communication Authority of Thailand, Broadcasting authority, newspaper office and the Office of the Auditor General of Thailand.

In case of bidding procedures, the period between the advertisement of procurement and the submission date of bidding documents shall not be less than 21 days. This deems to be adequate and reasonable time for interested suppliers to prepare and submit responsive bids.

The procuring agency may impose a fee for tendering documents. Although there is no fix rate of the fee, according to the Resolutions of the Council of Ministers, it was suggested the fee should not be higher than the cost of photocopying expenses of such documents.

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?

According to Section 42 (3) of the Regulation of the Office of the Prime Minister on Procurement 1992, criteria considered by the Selection Committee includes:

- the tenderer/ bidder has proposed the price according to the agency's requirement
- Goods/ Services meet the qualification and quality that deem to benefit the agency
- the tenderer/ bidder who meets the above requirement and propose the lowest price.

Note: In case of the procurement of specialists, the consideration of technical qualification shall be placed a priority, followed by the offering price.

Normally, the selective criteria shall appear 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?

In case of none of the tenderers fulfill the technical requirements as defined in the call for tender, reopening of the bid is adopted.

If too few tenderers who fulfill the technical requirements as defined in the call for tender, it is required by law that the committee of selective consideration propose the cancellation of that procurement process to the Head of the agency, except where the committee of selective consideration thinks that there are reasonable reasons to continue further process.

A register of all bids received is kept at the procuring agency.

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?

A register of all bids received and a record of decisions in the procurement process, as being official documents, are kept at the procuring agency for at least 10 years. This is to allow the Office of the Auditor General of Thailand to carry out a procurement audit.

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?

According to the Notification of the Committee on Official Information on December 1, 2000, it is required that government agencies make information relating to each procurement proceeding, name of the awardee and the reason for awarding, available at their offices.

Post-awarding negotiations may be allowed for the best interests of the State. Anyway, the awardee shall not be affected as the result of failing in the post-awarding negotiations if they have already proposed a price of contract not exceeding the procurement budget amount.

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

The Committee in Charge of Procurement has stipulated the model forms of tender documents, procurement contracts, letter of guarantee and relevant documents to government agencies. Normally, the mentioned model forms are designed to promote the transparency and justice of the procurement.

Also, the Act Regulating the Offense Relating to the Submission of Bids or Tender Offers to Government Agencies 1999, and Royal Decree on Good Governance in State Administration 2003 will be applied to the government procurement process to counter corruption. Additionally, there are council of cabinet's circulars and audit standards laid down by the State Audit Commission, which are used as a mechanism for anti-corruption.

## 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)?

Recently, the Royal Decree on Good Governance in State Administration 2003 has been referred to as the code of ethics for procurement personnel and entities.

Additionally, the Regulation of the Office of the Prime Minister on Procurement 1992 has included the concept of the "jointly interested bidder" that constitutes a conflict 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).

Depending on the policy of each agency. Generally, the integrity issues in public office are included in the Civil Service Act 1992 and Civil Service Ethic standards.

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 case that the procurement personal is civil servant, he/she shall report attempts by suppliers to undermine the impartiality and independence of action by offering bribes, benefits or other forms of inducement to the Head of the procuring agency for further legal action to be taken. Alternatively, the procurement personal may report the circumstances to the Office of the National Counter Corruption Commission.

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).

With regard to misconduct of the involved government officers, the Regulation of the Office of the Prime Minister on Procurement 1992 provides penal provisions for a willful or negligent infringement of the procurement regulations by the official in charge of the procurement process. The imposed penalties are divided into three levels depending on the seriousness of the damage incurred and the intention of the government officer.

The Penal Code shall be also applied to this case. It contains several regulations that deal with bribery of officials, members of the State Legislative Assembly, members of Provincial Assemblies and members of the Municipal Assembly. Examples for these provisions cover “offenses relating to public administration” and “misfeasance in office”.

Additionally, there are other laws with penal or administrative sanctions being applied to procurement personnel for accepting or soliciting bribes as follows:

- Organic Act on Counter Corruption 1999
- Regulation of State Audit Commission on Discipline for Government Budget and Public Finance 2001
- The Civil Service Act 1992, as amended
- The Act Governing Liability for Wrongful Acts of Competent Officers 1996 (also deals with liability for the economic damage that the procuring entity suffers)
- The Act Regulating the Offense Relating to the Submission of Bids or Tender Offers to Government Agencies 1999.

*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?

Penal sanctions 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, are found in the following laws:

- The Penal Code 1956
- the Regulation of the Office of the Prime Minister on Procurement 1992
- The Act Regulating the Offense Relating to the Submission of Bids or Tender Offers to Government Agencies 1999
- The Public Limited Company Act 1992, as amended up to No. 2 2001
- The Securities and Exchange Act 1992, as amended

Alternatively, the company may have to liable for the economic damage that the procuring entity has suffered.

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...)?

The suspension from competition for public contracts and/or from other commercial activities an enterprise determined to have bribed a public official appears in the Act Regulating the Offense Relating to the Submission of Bids or Tender Offers to Government Agencies 1999

Moreover, it appears in the Act on Establishment of Administrative Courts and Administrative Court Procedure 1999.

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?

No any explicit legal requirement of declaration of the bidders' abstention from any means that could improperly influence the procurement process. This may appear indirectly in the tender documents where the bidder maybe required representing that his/her bidding does not have conflict of interest.

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?

There is no requirement to disclose such payment. However, in some case, the contractor, while quoting the cost in the Bill of Quantity (BoQ) may also declare a coordinating fee or contracting fee which is normally about some small percentage per contract price.

## **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.)?

Normally, the procedures for preparation of specification requirements, receipt of document from the tenderer/ bidder and the consideration of the tender/bidding are taken by different officials/ committee.

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?

Normally, the government agencies have their own officials to carry out the internal controls in organization.

As for the external audits, under the Organic Act on State Audit 1999, the Office of the Auditor General of Thailand has been empowered to carry out a procurement audit in regards of legality and value of money. The audit report will be rendered to National Assembly, the Senate, Council of Ministers and audited agency. People may access to these information upon reporting to the relevant authorities.

*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?

The Committee on State Procurement has a duty to consider any complaints as to non-compliance with the Regulation of the Office of the Prime Minister on Procurement 1992

As for matters relevant to illegality and circumstances relevant to corruption, the complaints may be made to either of the Head of procuring agency, the National Counter corruption Commission, or the Office of the Auditor General of Thailand. Alternatively, when anyone suffers from the illegal procurement process, he/she may bring the case before the judicial/ administrative court.

Regarding number of complaint cases related to procurement, as mentioned already in item 7, the good governance monitoring system to be setup by the Office of National Counter Corruption Commission in coordination with the Office of Public Sector Development Commission. Therefore, the annual total numbers and values of purchase as specified abovementioned shall be available by the end of 2006.

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.)?

As for matters relevant to illegality and circumstances relevant to corruption, any citizen may initiate a complaint procedure the Office of the National Counter corruption Commission, or the Office of the Auditor General of Thailand. Discovering the complaint's name is normally encouraged at the first stage but this will be kept as confidential by relevant laws.

According to the Organic Act on State Audit 1999, the decisions on the audit case made by the State Audit Commission lead to further actions by the relevant authority. In case of any resistance by the audited agency, the State Audit Commission may report the circumstances to the higher authority supervising that audited agencies. Where the audit decision is relevant to the penal offences, the Office of National Counter Corruption Commission or the Police Department in subsidiary to the Office of National Counter Corruption Commission shall undertake the investigation generally in consequence to the audit report of the Office of the Auditor General of Thailand.

So far, if a complaint is proven valid, there may be reopening of the bidding. Or in case the project had been done, the administrative sanction may be undertaken for liquidation of damages.