

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

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 Palau 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 Palau 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).

Republic of Palau (ROP) has enacted a public law governing procurement by the government. The ROP Procurement Law and Regulations (RPPL 3-54) governs the procurement of goods and services by the government, its agencies, and departments. In addition, as Palau receives various grants from the United States, these grants contain conditions requiring compliance with U.S. procurement regulations. Moreover, the ROP adopted a Code of Ethics Act prohibiting, criminalizing, and penalizing certain conflict of interests, bribery, collusion, and other acts impeding competitive bidding. Please refer to the attached Republic of Palau Procurement Law and Regulations and Code of Ethics Act.

Palau endorsed the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific.

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 Palau National Government utilizes a centralized procurement system. Under this system, all government procurements (except for semi-autonomous agencies) are processed through the Ministry of Finance. The Procurement Law, however, designates 3 Procurement Officers for the government: Director of Public Works for procurement of construction services (including design, engineering, architectural services), Director of Public Service System for professional services, and Chief of Property and Supply for all other procurements. The procurement officers are required by law to let out for competitive bidding any procurement costing \$10,000 or more. Advertisement is the primary medium for soliciting competition and is required by law. Each of the procurement officers have adopted policies for bid opening, evaluation, bid award. These steps in the procurement process are also contained or required under the procurement law. All contracts require certification by the Attorney General as to legal form and substance.

The Procurement Law also has a built-in mechanism for addressing bid protests, appeals, legal action for unfair practices, and recovery of government funds. Please

See the attached Procurement Law and Regulations.

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

The Procurement Law governs the procurement of goods and services

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

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?

Yes, please refer to response under item 2. Yes, the Procurement Officer is adequately staffed to carry out his/her mandate. The Procurement Officers have a combined employees of 11 people.

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

The Procurement Law and Regulations govern procurements by the National Government (including its Ministries, Bureaus, Divisions, Boards, Commissions, and Authorities) and State governments. Semi-autonomous agencies promulgate their own procurement policies, however, such policies must either be equally or more stringent than the Procurement Law 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?

Yes. There are model Request For Proposal forms and Contracts contain standardized clauses prohibiting kickbacks, collusion, bribery, and other anti-competition clauses.

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.

Due to time constraints, we are unable to provide the total numbers and values of purchases. However, we can say with high level of certainty that construction dominated procurements in terms of dollars. These construction procurements were conducted mostly through sealed tender. In terms of numbers, direct procurement is the standard practice for procurement of goods and services that do not require competitive bidding (<\$10,000).

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

Pre-selection is used only under emergency situations. These conditions are enumerated in the Procurement Law. In addition, Sole Source procurement can be used if the user agency can justify the basis for it (i.e. prior experience, prior purchase of equipment, training provided, etc.). Conditions under which sole source procurement is used are also specified in the Procurement Law.

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.

Presently, there are no discussions to reform procurement policies. However, if such reforms are proposed, our office would recommend harsher penalties for violations.

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, copies of public procurement policy can be obtained from the procurement offices, libraries, and other government offices by request.

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.

Yes, each of the Procurement Officers identified under item 2 above are required by law to maintain a mailing list (and updated) of eligible contractors and contractors can also request to be included in the mailing list.

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

Yes, mostly for construction projects. Request for Proposal (RFP) is the most common method of procurement. In the RFP, potential bidders are instructed to obtain copies of project specifications (detailed) and where and how bid securities are paid. The RFP is required to be advertised in major newspapers for 30 days, in addition to those contractors on the mailing list.

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.

Yes, the law requires RFPs to be publicly announced through local radio stations, newspapers, and posted at designated public buildings. All procurements costing \$10,000 or more require advertisement. A non-refundable fee is charged a bidder for copies of project specifications.

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?

No. The selection criteria are required by law to be disclosed in the Request for Proposal or invitation for bids. However, the commonly used criteria for goods are quality, delivery time, price, prior experience with supplier, etc. For services, financial condition of company, qualification, experience of bidder on similar projects, price, equipment, etc.

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 proposals received fail to meet with project specifications or not enough bids are received, then RFP may be cancelled. Yes, the Procurement Officer is required by law to keep a registry of all bidders tendering a bid.

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?

Procurements Officers and members of the bid evaluation committee (when applicable) are required by law to document their evaluations and the basis of their decisions (award).

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 Procurement Officer makes the final decision. By law the procurement Officer informs the successful bidder as well as the other bidders who submitted bids. The reasons for awarding a bid, has to be disclosed and contained in the file. Yes, usually under construction contracts negotiations with the successful offeror are permitted by law.

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. The Code of Ethics Act addresses conflict of interest, related party matters, collusion, bribery, other procurement-related irregularities, and provides penalties for infraction. Refer to attached Code of Ethics Act.

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. Presently, there are no ongoing training programs for procurement personnel on integrity issues.

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. The procurement personnel and independent contractors have to abide by the procurement law and regulations and the Code of Ethics Acts. Violations are reported to the Attorney General or the Special Prosecutor for prosecution. In addition, the Procurement Law and Regulations has a built in mechanism for contractors to file protests or appeals for unfair practices. Refer to attached procurement law.

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).

Persons involved in fraudulent activities can be prosecuted for criminal acts such as fraud, kickbacks, color of office, etc. In addition, the Office of the Public Auditor (OPA) can initiate civil action in court to recover proceeds of illegal activities. Moreover, the government can also sue to recover damages as a result of illegal activities. The Procurement Law and the Code of Ethics Act absolutely prohibits gifts or other gratuitous exchange of any kind.

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?

The employees could face criminal charges and the company could be liable for criminal as well as civil monetary damages as required under the Procurement Law and the Code of Ethics Act.

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. Companies that are found guilty of bribery or other procurement irregularities can be debarred from future participation in government contracts. The Attorney General acts on such debarment proceedings.

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. To my knowledge any declaration for potential conflicts has to be made by the procurement officer or other employees have responsibilities over the procurement process. Nonetheless, the company and its subcontractors would face criminal and civil penalties for any wrongdoings.

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. Because the procurement law and Code of Ethics absolutely prohibits the giving of any gifts, payments, or other gratuitous exchange.

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.)?

Although there is no rotation of procurement officers, the fact that the procurement process goes through many checkpoints for review and approval, gives the assurance that irregularities will be detected and corrected. In addition, the Attorney General has to certify each contract as to legal form and substance.

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?

The (OPA) has jurisdiction on audits involving procurements. The OPA is also designated by the Code of Ethics to review government activities to ensure compliance with the provisions of the Act. All reports of the OPA are public information. In addition, there is a local NGO (Chamber of Commerce that also monitors government procurement activities).

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?

Yes. The Procurement Law has a built in mechanism for filing bid protests, appeals, and such at the administrative level. The injured party can also take the matter to the judicial level if the party is dissatisfied with the actions taken at the administrative level. Presently, we do not have the statistics regarding the number of complaints per year.

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.)?

The injured bidder can file a protest. A private citizen can file a protest. Pursuant to the Public Auditing Act, an informant who provides information to the OPA regarding irregularities, his identity has to be kept anonymous. If a complaint is found valid, the government can cancel or recall the contract or request for proposal. Responsible parties could face criminal as well as civil penalties.