

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

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 Korea 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 Korea 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).

Law and Regulation Related to Government Procurement

- a. The Government Procurement Act determines matters necessary to operate and manage the procurement business for its efficient performance, which is conducted by the Public Procurement Service as a central procuring agency. Under the act lie the enforcement decree and the rules related to the procurement business.
- b. The Act on Contracts to which the State is a Party determines basic matters regarding contracts to which the government is a party. Under the act lies the enforcement decree and rules related to contracts to which the government is a party.

Special Provisions of the Enforcement Decree of the Act on Contracts to which the State is a Party for specific procurement determines special provisions regarding the enforcement decree of the act on contracts to which the state is a party when conducting international bids in accordance with Article 4 of the Act on Contracts to which the State is a Party in order to implement multilateral or bilateral government procurement agreements such as the agreement prepared in Marrakech on April 15, 1994 which the government has established or acceded to. Under these provisions lie the Special Enforcement Rules of the Act on Contracts to which the State is a Party.

There are also **Special Provisions of the Enforcement Decree of the Act on Contracts to which the State is a Party** for the procurement of specific goods, which determines special provisions of the enforcement decree of the act on contracts to which the state is a party in conducting procurement of goods by means of the contract through international bidding. Under these provisions lie Special Rules on Conducting the Contracting Job for the Procurement of Specific Goods.

- c. **The Local Finance Act** determines basic principles on the finance and accounting for local autonomies. It stipulates contracts in Article 7, and matters other than the ones determined in this Act and other regulations that are subject to the Act on Contracts to which the State is a Party. Under this act lies the Enforcement Decree for the Local Finance Act.
- d. **The Framework Act on the Management of Government-Invested Institutions** determines basic matters regarding autonomy and accountability in the management of government-invested institutions. Under this act lie the accounting rules on government-invested institutions, which regulate accounting, standards of contracts and procedures and the limitation on the participation in bids for government-invested institutions. Matters that are not regulated in this rule are governed by the Act on Contracts to which the State is a Party.

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

The sites where regulations related to government procurement can be downloaded:

Korean text:

- www.g2b.go.kr (in the section of Regulation Information under Customer Assistance)
- www.moleg.go.kr

English text: www.klri.re.kr/project/emain.nsf

As for the involvement of commitment to international or regional agreements

- The WTO Agreement on Government Procurement
- The OECD Convention on the Bribery of Foreign Public Officials
- The Korea-Chile Free Trade Agreement (FTA) has been implemented.
- The Korea-Singapore FTA has been signed.

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 Public Procurement Service (PPS)**, the central procuring agency, conducts the procurement business under Article 3 of **the Government Procurement Act**.

As for the procedures and scope of procurement of goods, which is regulated in Article 14 of the Government Procurement Act, the principal of an end-user organization should make a purchase and supply the request to the PPS Administrator when need arises. It, however, may directly purchase the goods according to the exception of Article 14.

- The end-user organization can submit its opinions on the specifications and conditions for participation in bids when making a procurement request, which is finally determined by the PPS Administrator and then publicized for bid invitation.
- As for the procedures and scope of works, which is regulated in Article 15 of **the Enforcement Decree of the Government Procurement Act**, the head of an end-user organization should make a request for a works contract to the PPS Administrator regarding matters above a certain amount. They can also make a contract request to the PPS Administrator if necessary, even in cases where it can directly establish a contract for public works.

Construction designs such as drawings and specifications are prepared by an end-user organization, and are subject to general contract conditions as determined by the Minister of Finance and Economy. As for specific conditions, however, the PPS Administrator consults with the end-user organization and then determines them.

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

There is no difference between goods and services in procurement procedures.

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?

The procurement law establishes the Public Procurement Service as a central procuring agency, which conducts the procurement business according to the Government Procurement Act. PPS has approximately 950 employees. PPS receives procurement commissions from its end-users to conduct procurement business.

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

As for procurement law that is applicable to each organization, be it a national organization, local autonomy or government-invested institution, see Answer 1. There is a Defense Procurement Agency as a procuring agency of defense materials, which procures according to the Act on Contracts to which the State is a Party.

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 law related to government procurement includes standard bid forms, the use of which is mandatory. A standard bid form includes anti-corruption clauses. The clauses stipulate that bidders submit their bids in accordance with bid instructions and bid instructions provide for debarred suppliers' limitation in participating in bids. Aside from the bid instructions, the Special Instruction on Integrity Bidding and Contract applies to all bids.

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.

The procurement volume in 2003 reached 74 trillion won: 33.7 trillion won for national organizations; 19.3 trillion won for local autonomies; 12.1 trillion won for government-invested institutions; 8.2 trillion won for special legal entities such as government-funded organizations; and 9 trillion won for local public corporations.

It is difficult to confirm the procurement volume by type of procurement, though the principle of the procurement type is for open competition in the Act on Contracts to which the State is a Party.

However, procurement can be made through the use of limited competition, nomination, and private contract according to the Presidential Decree when such method is necessary, considering the objective, nature and size of the contract, as is suggested in Article 7 of the Act on Contracts to which the State is a Party.

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

According to Article 13 of the Enforcement Decree of the Act on Contracts to which the State is a Party, as for works determined by the Ministry of Finance and Economy's order, applicants are examined for the review of qualifications prior to the bid, and then eligible ones can participate in a competitive bid once selected and are notified of their results.

When it is necessary to examine bidder's qualifications in order to participate in bids, PPS requires detailed examination criteria in accordance with the examination criteria determined by the Minister of Finance and Economy which should then be accessible by hopeful bidders before they participate in the bid.

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.

Korea acceded to the WTO Agreement on Government Procurement in 1994 and revised the entire government contract law in 1995.

On Sept. 30, 2002, PPS adopted **the Government e-Procurement System (GEPS)**, and made it mandatory to publicize bid invitations by all public institutions in GEPS. The entire procurement process is processed electronically in terms of bid execution, awardee selection, contract establishment through to payment.

Starting from 2005, PPS introduced multiple award methods similar to the Framework Agreement of Britain, and the Multiple Award Schedule of the USA in order to provide a greater range of choices to end-user organizations.

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?

The laws, regulations and guidelines on public procurement are available in the Government e-Procurement System and are accessible via the Internet, www.g2b.go.kr.

The Republic of Korea's laws, including ones on government procurement, are available in the Ministry of Legislation's homepage, www.moleg.go.kr

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.

Korea has operated a competitive system by means of an eligible bidder list for public works since 1975. The purpose of the system is to equally divide construction projects between big, medium-sized and small enterprises according to their capability.

Construction companies are categorized into seven levels based on their performance capability amount, which is announced by the Korean Construction Association every year. Each construction company is entitled to participate in bids for projects that are allocated according to their level.

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

The laws on procurement require a payment of 5% of the contract amount for bid security and 10% for performance bond in principle. However, the bid security payment is exempted before the bidding takes place, except for special circumstances. Contents on whether and how to pay a bid security are contained in the bid invitation.

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.

All bid invitations by public institutions must be made in the Government e-Procurement System.

There are no fees to participate in a bid in most cases, but some local autonomies collect them.

The laws on procurement stipulate the bid invitation period, considering the time needed for preparing a bid. This must be honored by public institutions.

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?

The award criteria are stipulated in Paragraph 2 of Article 10 of the Enforcement Decree of the Act on Contracts to which the State is a Party, including;

- those who are capable of fulfilling a contract and have submitted the lowest price;
- those who have submitted the most advantageous bid to the government according to evaluation criteria mentioned in bid documents such as bid invitations; and
- those who have submitted the most appropriate bid, compared to the special standards mentioned in the Presidential Decree, taking into consideration the nature and scope of the contract.

Contract methods, qualifications to participate in a bid, contents to be included in a bid, bid evaluation and award criteria are subject to laws related to procurement, and should be included in bid documents such as the bid invitation concerned.

Bidding methods and bid nullification are regulated in Article 42 or 44 of the Enforcement Rules, the Act on Contracts to which the State is a Party. When nullifying the bid, a contracting official must notify the bidder of the reason.

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?

Two or more valid bids comprise a competitive bidding according to Article 11 of the Enforcement Decree of the Act on Contracts to which the State is a Party.

- When there are not two or more valid bidders or awardees, re-bidding can be made again at the same place according to Paragraph 1, Article 20, the Enforcement Decree of the Act on Contracts to which the State is a Party.
- When there are no bidders or awardees or the awardee did not establish a contract, the bid can be invited again according to Paragraph 2, Article 20, the Enforcement Decree of the Act on Contracts to which the State is a Party.

When the bid results show that there was only one bidder and it is apparent in the case of bids to be invited again that there will be only one qualified bidder, and when the re-invited bidding showed that there were no bidders or awardee, the procurement can be made by a private contract according to Article 27 of the Enforcement Decree of the Act on Contracts to which the State is a Party.

Bidding and contracting documents are maintained by the owner institution for five years according to the law concerning the management of records for public institutions.

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?

Actions and decisions in the procurement process are recorded and managed in written form by the owner institution. With the introduction of the Government e-Procurement System made on Sept. 30, 2002 and its growing use, there are a growing number of e-documents managed in this system.

Documents related to bidding and contracts are preserved by the owner institution for five years according to the law on the management of records by public institutions.

They are also accessible to the public according to the law on publicizing the information on public institutions. All contents on bid invitations, e-bid results and award results using the Government e-Procurement System are accessible in real time through the Internet.

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?

All contents on bid invitations, e-bid results and award results using the Government e-Procurement System are accessible in real time through the Internet.

Since awarding is subject to criteria determined in the bid invitation, the reason for the selection of the awardee is not separately stated.

In the case of negotiated contracts in accordance with Article 43 of the Enforcement Decree of the Act on Contracts to which the State is a Party, negotiations are conducted before selecting an awardee. In this case, the criteria and procedures required for establishing a contract must be determined previously and must be accessible to negotiating bidders.

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

In order to offer a wider choice for end-user organizations, Korea has adopted a multiple award method similar to a framework contract, starting from 2005.

In the case of the Multiple Award Schedule, PPS has operated the price review council with the involvement of external members to enhance transparency and fairness since Jan. 19, 2005. The council reviews major agendas related to determining price.

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)?

To establish a law-abiding mindset for public officials and discipline in the public service, PPS has enacted and implemented the Procurement Service Charter, the Code of Conduct for Safeguarding Integrity for PPS officials, criteria for determining the level of sanctions on PPS officials, and Integrity Contract, as government guidelines.

PPS is focusing on creating a working environment to eradicate and prevent corruption through the detection and elimination of the causes of corruption by exploring ways to attain anti-corruption measures.

By operating the Procurement Complaint Center on the PPS homepage to impose controls by citizens in order to prevent corruption, PPS receives and processes reports of irregularities and the cases of acts of overt kindness or unfriendliness. The Kickbacks Reporting Center in the PPS' EDMS bulletin board serves as a reporting center for the informant as well as others.

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).

In order to establish an image of integrity for procurement officials, PPS conducts one or more special training sessions to implement a code of conduct for PPS officials every year and checks whether or not it is being honored every month.

To strengthen anti-corruption education and promotion, PPS has allocated anti-corruption training within the professional procurement education course in which procurement officials in all levels of government participate and utilize professional instructors from the Korean Independent Commission against Corruption when conducting education on a regular basis.

All data related to procurement such as bidding and contract data, product information, and relevant laws are registered on the PPS homepage, www.pps.go.kr in detail, which are used by procurement personnel at home and abroad.

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?

As for illegal activities such as the offering of bribes by the supplier, Article 18 of the Code of Conduct for Safeguarding the Integrity for PPS Officials requires such acts to be reported to the Code of Conduct Officer or Audit Officer. Cases involving the PPS administrator, however, should be directly reported to the Korean Independent Commission against Corruption.

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).

Public officials who are found to be involved in the acceptance or solicitation of bribes are punished in accordance with the Penal Code (Article 129~132 and 134~135) or according to Paragraph 1 or 2 of Article 2 of the Act on Increased Penalty for Specific Crimes in the case of bribes exceeding 50 million won. They will receive disciplines according to the criteria for determining the level of discipline on corrupt PPS officials.

When someone has incurred economic damages on the government, he or she shall offer compensatory responsibility to the government, and procedures for this case are regulated in the Act on Responsibility of Accounting Employees.

The Code of Conduct for Safeguarding Integrity for PPS Officials prevents work-related people, businesses, and work-related public officials from receiving money, property, gifts or entertainment in principle. However, Article 14 of the code stipulates a range of kickbacks that are exceptions to this Article.

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?

If a bidding business or its employees are found guilty of corruption related to the bidding procedure, they are subject to imprisonment of five years or less or fines of 20 million won or less according to Article 133 of the Penal Code.

As for economic damage on the government incurred by a business because of its illegal activities, the government can cancel the contract with the business according to Article 75 of the Enforcement Decree of the Act on Contracts to which the State is a Party, and the business shall offer compensatory damage according to Article 750 of the Civil 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...)?

Authorities can impose disqualification on those who have committed irregularities such as the offering of bribes to public officials or such businesses for a certain period of time so that they are prevented from participating in all biddings by public institutions according to Paragraph 1, Article 76, the Enforcement Decree of the Act on Contracts to which the State is a Party. And the authorities cannot establish a private contract with them without exceptional reasons to do so.

As for penal procedures, a hearing is conducted in accordance with Article 21 of the Administrative Procedures Act and then agendas are discussed by the contract review committee and the disqualification can last from one month to two years.

The contents of disqualification are registered in the Government e-Procurement System in order to prevent the participation in biddings in the first place.

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?

A bid invitation contains the Special Instruction of Integrity Contract for all biddings. Bidders are regarded as having submitted the Pledge to implement the integrity contract and the awardee has to sign and submit the pledge before establishing a contract. The pledge states that the bidders will not commit any unfair acts related to bidding and 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?

It is not mandatory to disclose commissions, gratuities or fees that have been paid by bidders in the preparation of a bid or the execution of the contract.

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.)?

The criteria for managing the positions assigned to PPS officials require the work of two years at the same place in principle and then rotate the position.

Objectivity and fairness are ensured by;

- mutual controls by business division such as the separation of a contract division from a payment division;
- the separation of drafting from signing;
- the determination, publication and processing of standard operating procedures and criteria; and
- the determination of important decisions by the review council, consultation body or committees that involve NGOs.

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?

There are internal audits, and external ones conducted by the Audit and Inspection Board, the Office of Government Policy Coordination, and the National Assembly.

There are also regular audits that are conducted with the interval of one or three years or irregular audits.

External audits are mandatory.

Audit results are accessible through the Internet or to the public in written form.

The Ombudsman system or committees that involve NGOs are put in place to monitor the procurement procedures, which is conducted by the Korean Independent Commission against Corruption, the Ombudsman Committee, and the Audit and Inspection Board.

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?

Review and complaint procedures are provided for by the Petition Act, the law on processing civil affairs, the Arbitration Act and the Civil Litigation Act.

Complaints about international bidding can be filed in accordance with Article 28 of the Act on Contracts to which the State is a Party. If there is complaint against the review results, it can be filed with the International Contract Dispute Mediation Committee according to Article 29.

The complaint for the breach of the act as proscribed by Article 28 of the Act on Contracts to which the State is a Party should be made to the principal of a central executive agency within 15 days after the breach has occurred or within 10 days after knowing that such breach occurred.

After the International Contract Dispute Mediation Committee's mediation is completed, it has the same effect as reconciliation at a court, if not challenged within 15 days.

In 2004, PPS received 574 written questions, 8,921 questions over the Internet, and 52 litigations.

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.)?

Petitions as prescribed by the Petition Act or civil complaints as prescribed by the law on processing civil affairs can be filed by interested parties as well as the general public. In the case of international bidding as prescribed by the Act on Contracts to which the State is a Party, complaints or petitions for review can be filed by affected parties.

The principal of a central executive agency should review the complaint within 10 days after it was received and take necessary measures such as correction and notify the results of the applicant. There is no retaliation or disadvantages against the applicant. Informants are protected by maintaining their confidentiality and anonymity, and rewards are provided to them.

When one is not satisfied with the decision for the complaint, he or she can file the petition for review. If he or she is not satisfied with the examination of or mediation for the review, he or she can file a lawsuit according to the Civil Litigation Act.

If the complaint is found to be legitimate, then adequate corrective measures such as re-bidding or compensation for the damage must be provided.