

Chapter 7

Support from international and regional partners in improving procurement frameworks to prevent bribery

It is governments' responsibility to strengthen their countries' anti-bribery legislation and regulatory frameworks to mitigate bribery risks in public procurement. However, in their overall efforts to curb bribery in public procurement, they can draw on support from development banks, international organizations and regional processes. Many countries in the Asia-Pacific region have taken advantage of these actors' expertise in reforming sectors relevant to the fight against corruption.

As remaining and emerging challenges require further efforts in bolstering policies, legislation and institutions against bribery, international and regional partners remain an important source of support and expertise. Two initiatives undertaken by ADB and OECD, respectively, demonstrate how such assistance can impact procurement reform, notably with regard to integrity and transparency.

ADB's technical assistance programs for Indonesia constitute support mechanisms at country level. Since these programs were launched in 2001, ADB has assisted the Indonesian government in improving its legislative framework, in standardizing documents, in establishing a national agency dedicated to coordinating government procurement policies, and in strengthening capacity of procurement officials in Indonesia. The programs also assisted the government in establishing institutional mechanisms to ensure integrity in the procurement process by enacting anti-corruption legislation and establishing the Corruption Eradication Commission KPK.

The joint statistical project of the World Bank and the OECD Development Assistant Committee (DAC) is an example of a regional and even global support mechanism. The joint venture endeavors to develop indicators to assess country procurement systems. Baseline Indicators serve to assess procurement systems with respect to international standards, and Compliance or Performance Indicators evaluate these systems. The program is still in its pilot-testing phase and will soon be available to assist countries in identifying bribery risks in their frameworks and practices, in further improving their procurement systems, and in strengthening capacity.

ADB assistance for strengthening procurement frameworks

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In 2007, after excluding the expenditures of the state-owned enterprises and the oil and gas sectors, about 11% of the Indonesian budget was spent for public expenditures involving procurement activities. To ensure efficiency objectives the procurement of works, goods, and services is bound to comply with competitiveness, transparency, and fairness principles.

Since mid-1994, public procurement has been governed by national laws and regulations, and technical guidelines. After the 2000 Consultative Group for Indonesia (CGI) meeting in Tokyo, the Indonesian Government initiated the reform by issuing a presidential decree on public procurement (Keppres 18/2000) to introduce transparency and open and fair competition and address procurement issues under the country decentralization law.

ADB's country program for Indonesia has provided technical assistance (TA) programs to assist the Government with the development of the legal and regulatory framework and built capacity in the public procurement area. ADB's assistance covers four aspects: regulatory, institutional, capacity building, and integrity.

The public procurement legal framework introduced in 2000 lacked consistency, and overlapped and even in some instances contradicted other laws and regulations. As a result, the legal framework met only partly the efficiency and competitiveness objectives and was prone to fraudulent and corrupted practices.

In 2001, ADB provided a grant financed technical assistance aimed at strengthening procurement policies, the legal framework, and institutions. The TA

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contributed to the revision of Keppres 18/2000 by removing the provisions limiting the competition such as certification procedures and market segmentation and making the amended presidential decree, Keppres 80/2003, more consistent with international best practices. The TA produced a set of standard bidding documents to be applied nationwide to the procurement of civil works and goods, the recruitment of consultants, and the procurement of other services. In the current decentralization context, the standardization of bidding documents across the Indonesian administration is a major achievement in the procurement reform and the harmonization process.

The 2001 ADB TA also assisted with the establishment of the National Public Procurement Office, an independent institution whose key mandates will be to develop, maintain, and enforce public procurement policies, regulations, and guidelines.

ADB, through the procurement unit of the Indonesia Resident Mission, provides further assistance to the ministries and government agencies involved in the implementation of ADB-financed projects. The procurement unit, through comprehensive reviews of all procurement documents and activities, ensures that the procurement of ADB-funded works, goods, and consulting services complies strictly with ADB's procurement rules and guidelines. The procurement unit works closely with ADB's Integrity Division in ensuring that all parties involved in ADB-funded projects observe the highest standards of ethics during the procurement and execution of contracts. Violation of ADB's anti-corruption policy at any stage of procurement may result in ADB's declaring a contract ineligible under ADB financing and ineligibility sanctions against suppliers, contractors, and consultants involved in corrupt practices.

Through the above-mentioned technical assistance and through a second TA aimed at improving public sector procurement, ADB has assisted the Government with the certification of procurement officers and capacity building through a sustainable training and certification program to professionalize public sector procurement.

To supplement the Government's capacity-building programs, ADB is providing training in procurement to government staff involved in ADB-funded projects. While focusing on ADB's procurement guidelines and procedures, the ADB training contributes to disseminating international best practices among the government staff and improving their understanding of procurement and good governance principles.

To assist in building the required level of integrity among procurement officers, ADB has provided three grant-financed TAs. The first one assisted the Government with the issuance of the Eradication of Corruption Bill and the

establishment of the Corruption Eradication Commission. The second strengthened the capacities of the Ministry of Settlements and Regional Infrastructures in combating corruption by implementing new policies and procedures to handle allegations of fraud and corruption in procurement and execution of contracts. The last one contributed to building the capacity of the Corruption Eradication Commission through the development of standard operational procedures related to investigations, interrogations, and prosecutions.

Assessing public procurement frameworks: The Joint Venture for Procurement

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It is recognized that there is a need for more effective use of public funds, which may also include funds provided through official development assistance. Public funds are a major source of financing for the developmental needs of a country, whether for infrastructure or for social development. One way of improving effectiveness is to adopt national procurement systems that meet international standards¹ and operate accordingly. However, assessing or evaluating national procurement procedures and systems requires a set of tools and standards that can suggest improvements.

To develop common tools for assessing the quality and effectiveness of national procurement systems, developing member countries and bilateral/multilateral donors, under the World Bank and OECD Development Assistance Committee, formed a Joint Venture (JV) for Procurement. The JV developed a methodology for applying identified indicators including those associated with compliance and performance.

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This presentation is based on research material made available by the OECD Donor Assistance Committee (DAC).

¹ OECD. 2006. *Methodology for Assessment of National Procurement Systems*. Paris.

The process

Through extensive consultations and interaction, the JV, in 2006, developed the first draft of a methodology for benchmarking and assessing public procurement systems. This draft went through extensive peer review, after which the current format was adopted for pilot-testing. The methodology, available on the OECD/DAC Web site, includes a numeric scoring system with defined criteria that will provide a qualitative scoring of a country's procurement system. The scoring criteria are also designed to support capacity development in procurement.

Two types of indicators, namely, baseline and compliance or performance indicators, were identified. The baseline indicators present a snapshot comparison of the actual system against international standards. The compliance or performance indicators deal with how the system actually operates.

The baseline indicators address four pillars as follows:

- Existing legal frameworks that regulate procurement in the country,
- Institutional frameworks of the system and management capacity,
- Operation of the system and competitiveness of the national market,
- Integrity and transparency of the procurement system.

Each baseline indicator is subdivided into the indicators given below along with their assigned weight:

Pillar 1: Legislative and regulatory frame (25%)

- Legislative and regulatory provisions (15%)
- Existence of implementing rules (10%)

Pillar 2: Institutional framework and management capacities (25%)

- Public sector governance system (9%)
- Functional normative body (8%)
- Existence of institutional development (8%)

Pillar 3: Procurement operations and public procurement market performance (25%)

- Efficient procurement operations (10%)
- Functionality of public procurement (10%)
- Existence of contract administration and dispute resolution (5%)

Pillar 4: Integrity and transparency of the procurement system (25%)

- Effective control and audit system (8%)
- Efficiency of appeals mechanism (5%)
- Degree of information access (4%)
- Ethics and anti-corruption measures (8%)

The compliance or performance indicators evaluate the operation of procurement frameworks and systems, identify weaknesses in compliance, and recommend more in-depth review, if required. Although no scoring system has been recommended, the OECD Users' Guide provides a list for consideration.

These indicators alone cannot give a full picture but must be viewed as a tool for identifying broadly the strengths and weaknesses of a system. Applications of these indicators provide for subjective professional judgment. However, subjectivity cannot be fully avoided but should be minimized. The assessors should keep in mind that there can be no single model for a procurement system and there are different models developed that work well. Thus, the focus of the assessment should be to evaluate how each existing system works in terms of outcomes, results, transparency, and efficiency in facilitating the achievement of social, economic, and developmental objectives.

Testing

Subsequently, the process went through pilot-testing. Experienced procurement specialists were invited from all adherents to the Paris Declaration to participate in familiarization workshops. Twenty-two countries volunteered for the pilot-testing, nine of them from Asia. ADB has actively supported the pilots directly or by active association in Mongolia, Vietnam, Philippines, and Sri Lanka.

Based on the assessment after these pilots, a general consensus that emerged is that the concept of baseline indicators is a well-developed tool for evaluating the legal and organizational set-up of procurement systems. However, the focus should now be on further improving the systems and layout, designing targeted comparators, and increasing consultations and risk assessments. Further, some issues that were raised are capacity development, need for linkages between public procurement and public financial management, the need for transparency and stakeholder consultations.

Looking ahead

From the experience gained so far, the next steps will be to assist more countries in conducting such analysis, developing action plans for improvement, and developing performance measuring tools. In addition, there is a need to strengthen links and collaboration to fight corruption through the use of transparent and reliable systems by trained procurement professionals. These issues will be further deliberated at the Accra conference scheduled for late 2008.

Abbreviations and acronyms

ADB	Asian Development Bank
AUD	Australian dollar
AusAID	Australian Agency for International Development
CNY	Chinese yuan/renminbi
CPI	Corruption Perceptions Index
CPTU	Central Procurement Technical Unit (Bangladesh)
CSO	civil society organization
CVC	Central Vigilance Commission (India)
DAC	Development Assistance Committee, OECD
DIP	Daftar Isian Proyek (annual government project list) (Indonesia)
DKI Jakarta	Daerah Khusus Ibukota Jakarta (special capital city district) Jakarta (Indonesia)
DMC	developing member country
DOJ	Department of Justice (USA)
e-GP	electronic government procurement system
ERRA	Earthquake Reconstruction and Rehabilitation Authority (Pakistan)
EUR	euro
FCA	False Claims Act
FCPA	Foreign Corrupt Practices Act
GPPB	Government Procurement Policy Board (Philippines)
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit GmbH (German Technical Cooperation)
ICCP	Indonesia Control of Corruption Project
IDR	Indonesian rupiah
ILO	International Labor Organization

IMED	Implementation Monitoring and Evaluation Division (Bangladesh)
INR	Indian rupee
ITC	International Trade Centre
JV	joint venture
Keppres	Keputusan Presiden (presidential decree) (Indonesia)
KPK	Komisi Pemberantasan Korupsi (Corruption Eradication Commission) (Indonesia)
KPPU	Komisi Pengawas Persaingan Usaha (Business Competition Supervisory Commission) (Indonesia)
LPKPP	Lembaga Pengembangan Kebijakan Pengadaan Pemerintah (National Public Procurement Office) (Indonesia)
MCC	Millennium Challenge Corporation
NEPS	National Electronic Procurement System (Indonesia)
NGO	nongovernment organization
OECD	Organisation for Economic Co-operation and Development
OGC	Office of Government Commerce (UK)
PGC	Public Governance Committee, OECD
PKR	Pakistan rupee
PPB	Public Procurement Board (Ghana)
PPDPA	Public Procurement and Disposal of Public Assets Authority (Uganda)
PPRA	Public Procurement Regulatory Authority (Pakistan)
PSU	public sector unit
PTF	Partnership for Transparency Fund
Rp	Indonesian rupiah
RPA	risk potential assessment
SEC	Securities and Exchange Commission
SME	Small and Medium Enterprises
SOE	state-owned enterprise
STD	standard tender document
TA	technical assistance
TI	Transparency International
UNCAC	United Nations Convention against Corruption
UNCITRAL	United Nations Commission on International Trade Law

UNODC	United Nations Office on Drugs and Crime
USAID	United States Agency for International Development
USD	United States dollar
WTO	World Trade Organization

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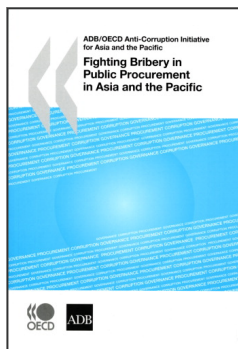
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From:

Fighting Bribery in Public Procurement in Asia and the Pacific

Access the complete publication at:

<https://doi.org/10.1787/9789264046955-en>

Please cite this chapter as:

OECD/Asian Development Bank (2008), "Chapter 7 - Support from international and regional partners in improving procurement frameworks to prevent bribery", in *Fighting Bribery in Public Procurement in Asia and the Pacific*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9789264046955-8-en>

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