

Cambodia

Legal and institutional framework

Cambodia's regulatory framework for public procurement is composed of various decrees, sub-decrees, and guidelines that do not, however, cover all relevant aspects of public procurement. To remedy this situation, Cambodia plans to pass a comprehensive procurement law. Until then, some guidance is provided to procurement personnel in manuals on standard operating procedures. The existing procurement regulations apply to procurement at all state levels and to public enterprises. They assign bodies responsible for procurement and define certain procurement methods. Certain phases of the procurement process that are particularly vulnerable to corrupt practices, such as procurement planning and implementation monitoring, are, however, not covered.

Cambodia has established a decentralized procurement system. The procurement process is conducted by prequalification, evaluation, and awards committees established within the procuring entities. Politically or environmentally sensitive purchases worth more than KHR1.3billion (about USD325,000) require approval by the Ministry of Economics and Finance.

Procurement methods and procedures

The procurement regulations provide for various procurement methods—competitive bidding, domestic canvassing, direct shopping, and direct contracting. The selection of the applicable method depends on the value of the acquired goods or services; competitive bidding is mandatory for the purchase of goods, services or works worth more than USD12,500. Urgent need or procurement after natural disasters, however, justifies resorting to noncompetitive procurement methods such as international shopping or direct contracting; in these cases, direct contracting is permitted regardless of the value of the contract. No explicit mechanism exists to prevent the arbitrary creation of situations justifying direct contracting to create opportunities for corruption.

The ample participation of qualified bidders is a prerequisite for curbing corruption in the tendering phase. Wide publication of tender opportunities is a prime condition for attracting broad participation. In Cambodia, procurement through competitive bidding must be advertised publicly. Difficulties in this context arise from poor information

infrastructure. In addition, only those bidders registered with the department for public procurement are permitted to participate in the tendering, and at the provincial level certain prequalification procedures exist.

Pre-bid conferences that have merits in clarifying the requirements, in particular for more complex purchases, are not mandatory in Cambodia. This increases the risk of tender failure in complex projects, which leads to single-source procurement, a method particularly vulnerable to corruption. Regulations on bid opening stipulate that bids have to be opened at the time and place stated in the tender documents. The bids have to be opened no later than one hour after the close of tendering. Such a delay between the closing time and the opening of the bids entails the risk of manipulation of bids.

Safeguarding and enforcing integrity

The various regulations in place result in diverse procedures that render transparent and effective management of the procurement process for both bidders and procuring agencies difficult. Lack of training of procurement personnel and equipment for the efficient and reliable handling of procurement processes adds to this difficulty.

The integrity of bidders and staff handling procurement procedures for the procuring agencies also limits corruption in public procurement. Codes of conduct help define rules that staff have to respect. So far, Cambodia has not passed comprehensive codes of conduct, and existing regulations that contain provisions on conflict of interest are not fully enforced. However, the winning bidder has to explicitly declare that no bribes have been paid to procurement personnel or any competing bidder.

Administrative and penal sanctions are available to enforce integrity in the procurement process. Mechanisms that are aimed at preventing and prosecuting attempts of corruption from the bidders' side are in place to detect corruption. Procurement personnel are required to report attempts of corruption by suppliers. Improper conduct of individuals or entities in the procurement process can entail debarment from government contracts either temporarily or indefinitely.

Review and complaint procedures are essential preconditions for preventing and detecting malpractices and for bolstering trust in the procurement system. In Cambodia, complaints that arise from the procurement procedures are handled at the administrative level. A review mechanism has been established, entrusting the National Auditing

Authority with the audit of procurement procedures; however, this body reportedly lacks the resources needed to fulfill this role satisfactorily. A further obstacle to a meaningful review of procurement decisions and procedures is the absence of regulations on documentation.

A way forward

Since Cambodia has no clear-cut and comprehensive legal framework for public procurement, it lacks a crucial basis for effectively curbing corruption in this field. To remedy this situation, Cambodia is encouraged to swiftly pursue its plans to pass comprehensive procurement legislation. In this context, it is recommended that the principles, structures, and responsibilities of procurement procedures be enacted at the level of a law and more detailed procedural provisions be passed in decrees. Cambodia is also urged to adopt a code of conduct for procurement personnel to clarify the obligations of the staff involved and provide a basis for the enforcement of proper conduct.

Cambodia is invited as well to set up a review mechanism for procurement decisions; this mechanism should include the duty to keep and store records for a meaningful period of time to provide a basis for an effective review of procurement decisions. Cambodia is further encouraged to strengthen the capacities and resources of the auditing authority.

Once this framework is in place, Cambodia is invited to take the necessary steps to provide extensive training to staff involved in procurement procedures to ensure the thorough implementation of the framework.

Relevant documentation

Cambodian Ministry of Economics and Finance: <http://www.mef.gov.kh/>
World Bank Country procurement assessment report (September 2004)