

Cook Islands

Legal and institutional framework

The basic public procurement rules of the Cook Islands are contained in the Government Financial Policies and Procedures Manual (GFPPM), which is qualified as rule of law by the Ministry of Finance and Economic Management (MFEM) Act 1995–1996. This manual, which was updated in 2004, also provides a checklist for purchases of goods. While at present available only in hard copy upon request, the MFEM is considering making the Manual available on the Internet. Additional relevant provisions are contained in the Public Expenditure Review Committee and Audit Act 1995–1996. These existing rules apply to procurement at all levels of administration and government, i.e., all Crown Agencies and Outer Island Administrations, and to the procurement of goods and services. The Government of the Cook Islands recognizes that the existing rules are incomplete and lack clarity; consequently, the MFEM is currently undertaking a thorough review of existing procedures with a view to remedying this situation and strengthening public procurement procedures.

The MFEM is responsible for designing procurement policies and standards with the overall purpose of establishing uniform procedures for the purchase of goods and services and ensuring that such purchases are conducted according to certain standards of transparency and accountability. Authority to execute government procurement within the limits of the budget as approved by Parliament lies within the individual ministries and Crown-funded agencies. In most ministries, responsibility for public procurement lies within designated procurement teams composed of finance and administration staff. Any procurement of goods and services of a value equal to or exceeding USD30,000 has to be reviewed by a tender committee composed of the Financial Secretary and the Solicitor General or their respective nominees, and other experts chosen as required.

Procurement methods and procedures

Competitive bidding is the standard method for all major procurements—those worth at least USD30,000. For the procurement of goods or services of a lesser value, quotations have to be obtained from at least three potential suppliers, unless unspecified circumstances dictate that fewer quotes may be obtained. The rules further state that quotations should be obtained only from suppliers who are “genuinely

interested” in supplying the required goods or services, to avoid the abuse of the quotation rule for the purpose of illicit selection. No rules exist that would specify the handling of situations in which too few or no bids or quotations are received, or in which no bid or quotation fulfills the technical requirements defined in the call for tender; however, such rules are currently being developed.

The public tendering procedures provide for the announcement of tender opportunities in the local media or, in the absence of such media, on community notice boards. Tenders exceeding USD10,000 must in any event be announced in media published in the capital. “Sufficient time” for preparation of the tenders—14 days at least—must be allowed.

The existing legal framework does not explicitly specify the minimum content of tender documents; it, however, prescribes that certain aspects such as technical specifications, completion dates, place and time for submission of tenders, and other contractual details be worked out before tenders are solicited, and that evaluation criteria be defined before evaluation begins. These evaluation criteria are not explicitly defined but may include, among others, elements such as the ability of a bidder to meet technical specifications, expertise of the bidder, monetary value, and previous performance. Whether or not the weight of such factors is to be predetermined, whether or not the evaluation criteria are to be made available to potential bidders, or whether post-awarding negotiations are permitted is not specified in the existing rules.

Safeguarding and enforcing integrity

To foster the transparency and fairness of the procurement process, the rules of the Cook Islands prescribe that the tendering process be “contestable, transparent, accountable, arm’s-length, and without favoritism.” Taking specific measures to ensure the integrity of personnel of both bidders and staff handling procurement is crucial in any effort to prevent corruption in public procurement. The Public Tendering Procedure of the GFPPM requires all public officials involved in a given public procurement process to declare any potential conflict of interest. While no specific training for procurement personnel is provided, the GFPPM is included in the training curriculum provided to finance officers of government agencies or departments by the Ministry of Finance and Economic Management.

Specifically addressing the integrity of bidders, the GFPPM further prohibits anyone intending to supply goods and services to the Government from being involved in the evaluation of quotations or tenders. This narrow definition of conflict of interest as related to the

sole act of evaluating the tender may, however, have limited effect. There are no other procedures for strengthening the integrity of bidders, such as requirements to declare abstention from corruption or the use of other illicit means to improperly influence the procurement process, or requirements to disclose commissions, gratuities, or fees that have been legally paid to third parties for their services in relation to the bidding in a public tender.

With regard to the transparency of the procurement process, and equal treatment of all potential bidders, the rules stipulate that the same instructions and specifications regarding a bid are applicable to all parties interested in bidding or submitting a quotation. Furthermore, all public tenders must be announced in the local media and a minimum of 14 days are allowed for bids to be submitted. Special provisions applying to regions where no formal media are available, e.g., the Outer Islands, prescribe the use of community notice boards and other appropriate gathering points to advertise tenders. Rules also provide for clear procedures with regard to the submission and opening of tenders.

All bidders are notified in writing about the tender result. Tender details are to be kept by the procuring ministry and are subject to verification by the Audit Department; however, the rules do not specify how long such records have to be kept. A tender report, containing details related to the awarding of the tender, can be accessed upon request at the Ministry of Finance and Economic Management. Audit reports are publicly available. Upon receipt of a complaint of impropriety from any interested party, the Audit Department conducts ad hoc investigations in addition to its annual verification.

While no procurement-specific sanctions are provided for in the legislation of the Cook Islands, the act of accepting a bribe or offering a bribe to a public official is sanctioned by the Cook Islands Crimes Act and may merit imprisonment of up to seven years or three years, respectively. Penal sanctions for bribing a public official applicable to legal persons are not provided for in the legislation of the Cook Islands. At the time of this review, no information was available about possible administrative or civil sanctions applicable to legal persons, such as temporary or permanent exclusion from bidding for public tenders.

A way forward

The Cook Islands is encouraged to continue its ongoing review of existing procurement procedures so as to further strengthen these and enhance their capacity to foster and enhance transparency and integrity in public procurement. Amendments to the existing rules, regulating in

particular situations in which there are not enough bids or no bid meets the tender requirements and the related issue of post-award negotiations, and requiring the inclusion of evaluation criteria in the tender, may be considered in this context. The Cook Islands may also want to strengthen and expand existing provisions on conflict-of-interest declarations.

The Cook Islands is further invited to consider establishing standard tender documents and including therein a clause through which bidders explicitly declare that they will abstain from using corruption or other undue means to influence the procurement procedures, and amending its existing legislation to provide for the possibility of applying to legal persons penal sanctions for bribery.

The Cook Islands is also encouraged to pursue its plans to make available the Government Financial Policies and Procedures Manual on the Internet, as well as any documents or rules resulting from the current review process, as wide public knowledge of applicable procedures may significantly contribute to the fairness and transparency of procurement processes.

Relevant documentation

Ministry of Finance and Economic Management (MFEM) Act 1995–1996:
[http://www.mfem.gov.ck/Assets/Legislation/MFEM Act 1995-96.pdf](http://www.mfem.gov.ck/Assets/Legislation/MFEM%20Act%201995-96.pdf)

Public Expenditure Review Committee and Audit Act 1995–1996

Cook Islands Government Financial Policies and Procedures Manual (rule of law under the MFEM Act)