

## Fiji Islands

### Legal and institutional framework

Public procurement in the Fiji Islands is governed by subsidiary legislation under the Finance Act, namely the Finance (Supplies and Services) General Regulations (FSSR), the Supplies and Services Instructions (SSI), the Government Stores Instruction 1982, the Finance (Control and Management) Regulations (FCMR), and the Finance Regulations 1982. Ministry of Finance Circulars may amend these regulations and instructions from time to time.

Several bodies administer public procurement. The Minor or Major Tenders Board administers the procurement of goods and services, depending on the value of the contract. The Public Works Tenders Board (PWTB) deals with the procurement of building or engineering works. Members of these boards come from various government ministries and relevant departments. The responsibility for calling tenders, and signing and executing contracts, falls on the Controller of Government Supplies (COGS) (for goods and services) and the Secretary of the PWTB (for building or engineering works).

### Procurement methods and procedures

Clear definition and publication of procurement procedures enhance transparency and thus reduce the risk of corruption. The Finance Act, the FSSR, and the FCMR prescribe tender procedures for the procurement of goods and services in excess of a threshold. Procurement below the threshold only requires obtaining three quotations. For procurement above the threshold, COGS and the Secretary of the PWTB have discretion to procure contracts through tendering or quotation (in which at least three quotations are obtained). The regulations do not indicate under what circumstances the Major Tenders Board should consider tendering rather than quotation. The unwritten practice for the quotation process is for the officer in charge of a project to seek three or more quotations, evaluate the proposals, and make a recommendation for the consideration of the relevant tenders board. Procurement guidelines and regulations are available in hard copy to agencies and suppliers. Model documents are used for contracts and for tenders of common user items. These documents do not contain anti-corruption clauses, though such clauses may be added once the Cabinet approves a pending anti-corruption bill. The Government has also prepared the Government Tenders – General Conditions and Fiji Government General

Conditions of Contract. Preselection procedures are used for procuring specialized items such as drugs that must meet certain government and international standards. Some ministries and departments maintain lists of eligible contractors.

Wide participation in procurement protects against bribery, favoritism, nepotism, and collusion. In Fiji, a tender is normally advertised twice in the daily newspaper and the Government's gazette. Tender documents are also provided to trade embassies to be forwarded to their foreign counterparts.

To prevent corruption, the method of handling and selecting bids must also be clearly prescribed. In Fiji, for the Major Tenders Board, the SSI lays down the procedures for the tendering process but is silent on the quotation process. The selection criteria are prescribed either by law or in tender documents, and may include special criteria when specialized equipment or services are involved. In the future, all selection criteria may be incorporated into tender documents. The selection of bids is based on compliance with the criteria, the quality of samples, and cost. Bids are initially considered by a subcommittee convened by the procuring ministry or department, whose members are recommended by COGS. The subcommittee reviews the bids and forwards a recommendation to the COGS, which in turn sends its recommendation to the relevant tenders board for consideration. The final decision of the board (but not the reasons for the decision) is communicated to the procuring ministry or department and all bidders. The name of the winning bidder is made public. In many countries, post-tender negotiations have given rise to corruption. In Fiji, post-award negotiations are rare. Strict and clear definition of the procedures for dealing with a failure of tendering is also essential in preventing corruption. In Fiji, the Government conducts research to identify suitable suppliers if no bids have been received. If such suppliers exist, the Government withdraws the previous tender, calls a fresh tender, and informs the suitable suppliers.

### Safeguarding and enforcing integrity

Codes of conduct can instill integrity among procurement officials and thus help prevent corruption. All public servants in Fiji must comply with the Public Service Values and the Public Service Code of Conduct in the Public Service Act 1999, but no specific code applicable to public procurement has been adopted. The Public Service Code requires an employee to disclose and avoid conflicts of interest. Breach of the Code may result in disciplinary action by the Public Service Commission. To further strengthen integrity, procurement personnel attend from time to

time in-service programs that address integrity issues. In addition, procurement staff are generally rotated every three years, or more frequently if the staff have certain involvements with bidders that may lead to corrupt practices. Fiji is considering statutory protection for whistleblowers in all areas of the public service.

Effective sanctions can deter corruption in procurement. In Fiji, if there is concrete evidence that a bidding company is guilty of corruption related to the bidding procedure, the case is referred to the police. The Penal Code prohibits both giving and accepting bribes, including those made through an intermediary, and provides for imprisonment of up to seven years. A company may also be held liable for any economic damage. Moreover, certain tenders contain a clause that allows the Government to terminate or suspend the contract, although the Government will do so only after seeking the advice of the Solicitor General.

Procedures for complaint and review are important tools in detecting corruption in public procurement. The Ministry of Finance in Fiji may deal with complaints and set up investigative committees to handle specific cases. Complaints about the procurement process are referred to the relevant procuring authority. On rare occasions, complaints may be forwarded to the Ombudsman.

Audits also play an important role in detecting corruption in public procurement. Procuring entities are subject to internal audits by the Ministry of Finance and regular external audits by the Office of the Auditor General. Independent actors and nongovernmental organizations are not involved.

Verification and review procedures are effective only if the procurement process is properly documented. In Fiji, all bids, including those submitted after the deadline, are recorded in the Tender Register. Records of the decision are kept at the office of the COGS and are accessible to the Office of the Auditor General.

## A way forward

The Fiji Islands is encouraged to pursue the reform of its procurement framework by introducing anti-corruption clauses into tender documents, disclosing all selection criteria in the tender documents, and passing comprehensive whistleblower protection mechanisms for at least the area of public procurement.

The Fiji Islands is also invited to consider establishing a comprehensive regulatory framework for public procurement; it is recommended that the elements of this framework be enacted as a parliamentary law and passed as executive regulations. Once this framework is in place, the Fiji

Islands is urged to take the necessary steps to provide extensive training to staff involved in procurement procedures to ensure the proper implementation of the framework.