

India

Legal and institutional framework

In India, different procurement rules apply at the federal level, in the states and territories, to the central public sector units, and to public sector enterprises. At the federal level, procurement is regulated through executive directives. The General Financial Rules, issued by the Ministry of Finance, lay down the principles for financial management, and—in chapters 6 and 8—broad rules and procedures for the procurement of goods and services and for contract management. The Rules were revised in 2005 to provide greater flexibility while ensuring accountability in government transactions. A Manual on Policies and Procedures for Purchase of Goods has been published to assist the procurement entities and their officers in procurement. An important number of instructions, issued by the Central Vigilance Commission (CVC), supplement these regulations. Specific sectoral procurement regulations exist in some areas, such as defense procurement.

At the federal level, procurement is administered by the individual government agencies. These agencies may issue more detailed instructions in conformity with the Rules; the individual procuring agencies are also responsible for developing their own handbooks, model forms, and model contracts. At the time of writing, most of these agencies had developed model tender documents.

Certain control and oversight functions are carried out by central authorities such as the Comptroller and Auditor General and the CVC. At the federal level, India has not established an authority that is exclusively responsible for defining procurement policies and for overseeing compliance with the established procedures.

Procurement methods and procedures

The applicable procurement method depends on the value of the contracts to be awarded and other factors as stipulated in the Rules. The splitting of purchases into contracts of smaller value is explicitly forbidden. Procurements exceeding INR2.5 million (about USD54,000) must generally be done through open tendering. Limited tendering, which requires a direct request from at least three suppliers, is permitted for contracts of up to INR2.5 million and in other urgent cases, but the reasons for the variation should be recorded in writing. Limited tendering beyond the threshold of INR2.5 million is also allowed if the competent authority indicates that an open tender would not be in the public

interest. Grounds that would justify such an assumption are not defined in the Rules, but must be documented in writing by the procuring entity. Direct contracting is permitted for low-value purchases and in emergency situations.

Wide dissemination of tender opportunities is generally considered to help avoid failure of tendering and the increased risk of corruption it entails. In India, tenders are advertised in the *Indian Trade Journal*, at least one national daily newspaper, and on the Web site of the procuring entity, if it has one. Also, the Government of India increasingly displays current and past tenders on a central Web site. The minimum time for submission of bids is three weeks. Late bids may not be considered.

Selection and qualification criteria must be stated in the bidding documents. The selection of the winning bidder follows the principle of value for money. Only the winning bidder is informed about the result of the bid evaluation. The reasons for the selection of this bidder are recorded but not disclosed. Post-tender negotiations, which pose an important risk for corruption in procurement, are explicitly forbidden. The Rules allow two exceptions: post-tender negotiations may be conducted with the bidder offering the lowest price and for ad hoc purchases in exceptional circumstances.

Safeguarding and enforcing integrity

General codes of conduct apply to procurement personnel. They contain conflict-of-interest regulations regarding personal affiliations with bidders and prohibitions against the acceptance of inducements. Gifts beyond a certain value must be reported to superiors, and administrative sanctions are available to enforce these rules. Other measures aimed at preventing corruption among procurement entities' staff include the rotation of officials. Staff rotation is an established practice in India, especially for personnel in sensitive positions, such as in government procurement.

To enhance integrity in government procurement, the CVC, through its Chief Technical Examiners Organization, conducts systematic analyses of weaknesses and irregularities and issues circulars and instructions to prevent such risks. To strengthen further the mechanisms that ensure integrity and curb corruption in procurement in India, integrity pacts are being introduced in major contracts. At the time of writing of this report, integrity pacts were being used in procurement in the defense sector.

Penal sanctions for any form of corruption, and thus also for corruption in public procurement, are available. Companies may be taken off the list of registered suppliers as a sanction for corruption or other

misbehavior in public procurement. Such lists of registered suppliers exist for goods commonly procured. Procuring agencies are not required to select among such registered suppliers, however, and suppliers are not required to register to bid for government contracts.

Aggrieved bidders can seek judicial review of procurement decisions. Public interest litigation provides an additional channel for seeking judicial review of procurement decisions tainted by corruption. However, as the procurement framework does not have the quality of parliamentary law, not all deviations from the rules are subject to judicial review.

Citizens can also lodge complaints with the CVC and its branches or, in some states, with ombudsmen to trigger investigations into alleged acts of corruption in procurement by public officials or politicians. The Right to Information Act 2005, which covers procurement procedures, is a complementary measure. It gives citizens access to information about procurement decisions within a defined period. Internal and external audits of procuring agencies and offices at the federal and local levels are other instruments in place to curb and detect corruption in public procurement. Reports of external audits are publicly available.

Procuring agencies must record the reasons for all procurement decisions to facilitate meaningful judicial review and audit. The records are kept for later consultation; the period of retention is not generally prescribed and varies from organization to organization.

Relevant documentation

General Financial Rules (GFR): http://finmin.nic.in/the_ministry/dept_expenditure/GFRS/GFR2005.pdf

Manual on Policies and Procedures for Purchase of Goods may be seen at http://finmin.nic.in/the_ministry/dept_expenditure/GFRS/MPProc4ProGod.pdf

Indian Government Tenders Information System: <http://www.tenders.gov.in>