

Indonesia

Legal and institutional framework

The Indonesian framework for public procurement is laid out in various presidential decrees, based on laws 5 and 18/2000. Presidential decree 18/2000 has important provisions, and other decrees and laws contain relevant regulations on certain types of contracts as well as on procurement by local governments. Also, some model tender documents exist. For the time being, however, the regulatory framework remains fragmented and contains contradictory provisions and loopholes that leave room for interpretation and could be exploited for corrupt ends. The framework applies to procurement at all state levels—central, provincial, and local—and to procurement by state-owned enterprises, but not to security-sensitive procurement and emergency procurement. Public contracts amount to roughly 25 percent of Indonesia’s central government expenditure.

Procurement falls within the authority of each government department or agency. No centralized procurement entity ensures uniformity of policies and practices or oversees the application of procurement rules. The Ministry of Finance conducts capacity-building programs in public procurement.

Procurement methods and procedures

The risk of corruption varies, depending largely on the type of procurement method chosen for a given public contract. The Indonesian procurement framework provides for open and limited tendering, as well as direct contracting. Open tendering is the standard procurement method. Limited tendering can be used to purchase complex goods, works, or services, where there are only a few suppliers. Direct contracting is permitted under various conditions, notably for security-sensitive procurement, procurements worth up to IDR50,000,000 (about USD5,300), and in urgent cases. The Indonesian procurement framework does not require the use of lists of qualified bidders. Suppliers can, however, be prequalified to assess their capability to meet tender requirements. Prequalification is mandatory for restricted tendering and direct purchase.

To reach a wide range of potential bidders, Indonesia’s procurement regulations require tender opportunities to be publicized in the mass media. In cases of limited tendering, the announcement gives the names of the eligible companies. In early 2006, Indonesia was working to

strengthen e-procurement, i.e., procurement using modern information technology.

Under Indonesian procurement rules, a tender is deemed to have failed if there are fewer than three bidders (regardless of their bids), if no responsive bid is submitted, or if the lowest bid exceeds the available budget. The project officer selects the winning bid at the recommendation of the procurement committee and has the choice approved by a superior. The procurement committee is ad hoc; its members perform this function in addition to their regular assignments. The selection of the committee must be based on criteria stated in the procurement regulations. Post-award negotiations with the selected bidder are prohibited.

In Indonesia, procurement officers are not assigned specific areas of procurement. Also, decisions on procurements worth more than IDR50 million (USD5,500) must be made by a committee. This provision limits the risk of bias and improper relations with suppliers. At the same time, it increases the need to train staff to make procurement decisions. Such training is provided by each government department or agency engaged in procurement.

Safeguarding and enforcing integrity

Indonesia has put in place a number of mechanisms to bolster the integrity of procurement personnel and bidders. Preventive instruments include integrity pacts that are mandatory for all procurement. Also, procurement-specific regulations on conduct regulate conflict-of-interest situations and specify how to handle gifts.

Integrity is enforced through sanctions for corrupt acts by procurement officials and suppliers. Procurement personnel found guilty of such acts are dealt administrative and criminal sanctions and have civil liability for damages. Suppliers can be prosecuted as well and held liable for damages. Also, suppliers found to have engaged in corruption in procurement can be debarred from participation in public tenders.

Aggrieved bidders can request administrative review of the procurement decision, which may result in the reopening of tender procedures or the cancellation of the awarded contract. Improper conduct is more easily detected with the help of internal audit and public scrutiny. Any citizen can request information about issues related to procurement planning, evaluation of bids, and contract implementation, and may file a complaint against an erring procurement agency.

The requirement to store procurement documents for 10–30 years allows review and regulatory enforcement even at a much later stage. But because the documents are stored by the procurement personnel, they could be destroyed or tampered with to cover up improper conduct.

A way forward

Indonesia has established various mechanisms that help protect public procurement against corruption. Indonesia is urged to streamline, clarify, and complete this framework and to anchor it in parliamentary law. Indonesia should also further strengthen the mechanisms and expand their range to reduce the risk of corruption in public procurement. In particular, Indonesia would be well advised to consider establishing a distinct procurement entity tasked to define standard documents, procedures, and policies for all types of procurement nationwide.

To ensure thorough and professional implementation of the strengthened framework, it is recommended that Indonesia enhance capacity building for the staff of government departments and agencies that carry out procurement. Indonesia might also wish to consider ways to further professionalize public procurement committees.

Relevant documentation

Indonesian Government e-procurement portal: <https://eproc.pu.go.id/>

World Bank Country Procurement Assessment Report (March 2001)

APEC Government Procurement Survey (2003)