

Japan

Legal and institutional framework

Japan has several laws and ordinances that concern public procurement, including the Accounts Law (Law No. 35 of 1947), the Cabinet Order concerning the Budget, Settlement of Account and Accounting (Imperial Ordinance No. 165 of 1947), and the Local Autonomy Law (Law No. 67 of 1947). Procurement over a certain threshold under the WTO Government Procurement Agreement is governed by the Cabinet Order Stipulating Special Procedures for Government Procurement of Products or Specified Services (Government Ordinance No. 300 of 1980), the Cabinet Order Stipulating Special Procedures for Government Procurement of Products and Specified Services in Local Government Entities (Government Ordinance No. 372 of 1995), and other ministerial ordinances. In 2000, Japan passed the Act for Promoting Properness of Bidding and Contracting in Public Works. In mid-2006, a bill “against government-initiated bid rigging” was under consideration; the bill, if passed, would introduce penalties, including imprisonment, for government officials who initiate, assist, or coordinate bid rigging. The procurement rules apply generally and are not specific to certain sectors (e.g., military procurement). These laws and regulations are published in the Government’s compendium of laws and on the Internet. To make the procurement process more transparent and clear to potential suppliers, Japan has prepared a document titled “Questions and Answers on Government Procurement Contracts” for suppliers.

There are no specialized procurement bodies in Japan. Each government authority administers its own procurement process.

Procurement methods and procedures

In Japan, open tendering is the standard method of procurement and is mandatory for public works over a certain threshold. But, like many other countries, Japan permits other methods that have greater potential for abuse and corruption, such as restricted tendering and direct negotiations. Restricted tendering may be used when there are only a few suitable suppliers. For public works, direct negotiation may be used when severe time constraints render other methods impractical. This method can also be used for procurement under the WTO Government Procurement Agreement in situations defined in the Agreement. With some exceptions, procurement through direct negotiations must still be

published in advance. In some cases, procurement may also be done through auction. Prequalification is generally a precondition of participation in open or restricted tendering. Procuring entities are required to publish the conditions for prequalification. Candidates are judged according to a scoring system. The list of prequalified suppliers for a restricted tender is published. Japan is reviewing the conditions surrounding restricted tendering to improve the accountability of the process.

Wide publication of procurement opportunities encourages more suppliers to participate and thus decreases the likelihood of corruption. In Japan, such opportunities are advertised in the official gazette (*Kanpo*) or its local equivalent. They are also published in an electronic database that is accessible through the Internet and at the offices of the Japan External Trade Organization. Central government entities have created other Web sites for their own procurement. In addition, voluntary measures drawn up by the Government entail the publication of anticipated procurement for each fiscal year. Participation can also be improved by giving suppliers a reasonable amount of time to prepare their bids. In Japan, the minimum bidding period is 40 days for open tenders and 20 days for restricted tenders. Under the voluntary measures, a bidding period of 50 days has been set for procurement worth more than JPY16 million (USD144,000). The Government also holds yearly seminars to discuss upcoming procurement.

Transparent procedures for handling bids, which allow scrutiny by bidders, are crucial in preventing corruption in procurement. For all tenders in Japan, the notice of tender in the gazette stipulates the place and deadline for submitting and opening bids. All received bids are recorded in a register. Tenders are opened in the presence of tenderers or their representatives, or by staff of the procuring entity who were not involved in the tendering. The Accounts Law and the Cabinet Order concerning the Budget, Settlement of Account and Accounting specify the bid selection criteria. As a general rule, a contract is awarded to the bidder with the lowest price, but other criteria may also be considered. The winning tenderer and the value of the contract are published in the gazette. While all contract procedures and results of procurement by national agencies are disclosed to the public, disclosure at prefecture and lower levels is less regular. The choice of bids is generally not explained to bidders.

Model contracts can avoid post-award negotiations that could lead to corruption. In Japan, procuring agencies may have standard-form contracts for some types of transactions, but are not required to use

them. These standard-form contracts usually do not contain anti-corruption clauses. Failure of tendering arises if all bids exceed the budget ceiling. In these cases, the procuring entity may repeat the tender with modified criteria. Alternatively, the procuring entity may negotiate individually with the tenderers under the same tender criteria. The procuring entity may then award the contract to the tenderer who offers a price lower than the ceiling price.

Safeguarding and enforcing integrity

Codes of conduct for civil servants can reduce corruption by promoting integrity and ethics. In Japan, a number of laws stipulate codes of ethical conduct for national and local government officials, but none are specific to public procurement. These laws include the National Public Service Laws, the Local Public Service Laws, the National Public Service Ethics Law, the Ethics Bylaw, and the Ethics Regulation. These instruments contain provisions on conflict of interest, and the acceptance of gifts and hospitality. Training programs and manuals for officials on these rules have not yet been implemented in Japan. Procuring entities in Japan usually rotate procurement personnel to prevent them from forming relationships that could result in favoritism.

Effective sanctions can also deter corruption. Japan requires procurement officials to report crimes to the judicial police or the prosecutor's office. A procurement official who is found to have accepted or solicited a bribe must surrender the bribe and can be imprisoned for up to seven years under the Penal Code, besides being liable for any economic harm caused by the crime. Officials who violate the codes of conduct for civil servants may be subjected to disciplinary measures. Bribe givers are punishable under the Penal Code by three years' imprisonment or a fine of up to JPY2.5 million (USD22,600). If a procurement is inconsistent with the prescribed rules, the contract may be terminated and the procurement may be conducted again. The contract may also be awarded to another bidder. Finally, a person who bribes an official may be debarred from future bids. Each procuring authority determines the length and terms of the debarment as each case warrants.

Readily accessible complaint and review procedures render procurement more accountable. Japan has created the Government Procurement Review Board (GPRB) to hear complaints about procurement over a certain threshold by central government agencies. Any participant in the procurement may complain. For complaint

procedures to be meaningful, the aggrieved parties must be given enough time to verify the facts and to weigh the benefits and risks of an appeal. In Japan, bidders for central government contracts may complain to the GPRB within 10 days of finding cause for complaint. Local procuring entities have similar complaint procedures.

Audits can also be used to detect corruption in public procurement. In Japan, procuring entities are urged to undergo internal audits but are not required to do so. However, external audits by the Board of Audit are mandatory for all entities. The Board submits annual reports to the Diet and these reports are also available to the public. Independent actors and nongovernment organizations are not involved in the audit process.

Proper documentation is crucial in procurement monitoring and verification. In Japan, procurement actions and decisions are recorded and maintained by each procuring entity for at least five years. Anyone may access the documents.

A way forward

Japan is asked to consider introducing formal rules on the imposition of administrative sanctions on legal persons and individuals convicted of corruption offenses, including debarment from bidding for government procurement contracts in appropriate cases. Japan may also wish to consider making it a policy to deny access to government procurement opportunities to individuals and companies convicted of corruption offenses, and to terminate contracts where the contractors are convicted of corruption after the contract has been signed.

Relevant documentation

Suggestions for Accessing the Government Procurement Market of Japan: http://www.mofa.go.jp/policy/economy/procurement/q_a.pdf

Japanese Procurement Procedures for Public Works: <http://www.mlit.go.jp/sogoseisaku/const/kengyo/kokyo-e.htm>

Japan's Government Procurement—Policy and Achievements: <http://www.kantei.go.jp/foreign/procurement/2003/>

Home page of the Japanese External Trade Organization (JETRO): www.jetro.go.jp