

Kyrgyz Republic

Legal and institutional framework

Regulations for the conduct of public procurement in the Kyrgyz Republic were recently amended in light of their decisive role in curbing corruption in public contracting. Government procurement in the Kyrgyz Republic—worth KGS4.08 billion (about USD100 million) a year—is subject to the Law on Public Procurement, issued as a parliamentary law in 2004 and strongly inspired by the UNCITRAL model law on public procurement. It is supplemented by a number of resolutions and provisions regulating individual aspects of procurement such as threshold amounts and tender commissions. The procurement rules apply to all administrative entities at the local and national levels, as well as to state-owned enterprises where state has more than 50 percent participation in equity. These measures minimize exceptions to the application of the procurement rules to maximize their effectiveness in preventing corruption in public procurement. Goods and services used in national defense and security, however, are procured under specific regimes. Kyrgyz procurement regulations, like those of other countries that were inspired by the UNCITRAL model law, do not encompass issues like procurement planning or implementation control.

Government procurement activities have been decentralized to individual procuring entities at the local level, except for the procurement of manufactured goods, medicines, and solid fuel, which is centralized in tender commissions on state level.

Procurement methods and procedures

The Kyrgyz procurement framework is based on open tendering, which can be done in two stages under certain circumstances. Open tendering is not required, however, if the value of the procured goods or services is below a certain threshold and does not warrant a long and complex tendering process. Kyrgyz procurement regulations explicitly forbid the splitting of purchases into smaller contracts, as the practice could lead to abuse. Limited and negotiated tendering and single-source contracting are allowed under special circumstances, such as an emergency, which are laid down to some extent in the Procurement Law. To contain the risks of arbitrary selection of procurement method, particularly as manipulations are difficult to detect at this early stage, prior approval by an administrative unit at a higher level is required for single-source tendering or for a change in procurement method.

Procurement procedures, regulations, and competencies ought to be transparent for all parties involved and to be overseen properly, as corruption may creep into procurement especially during procurement planning. Kyrgyz procurement rules provide for the mandatory use of standard tender documents, which include a clause prohibiting corrupt acts. Bids are usually opened right after the tender period and late bids are excluded. All bidders or their representatives are expected to be present. The selection is based on the lowest evaluated price, as well as other criteria stated together with their relative weight in the bidding documents.

To prevent indiscriminate renegotiation of the terms of the contract and to avoid the possibility of kickbacks or bribes at the post-tender stage, Kyrgyz law requires the procuring entities to provide a model contract with the procurement documents and forbids post-tender negotiations.

Safeguarding and enforcing integrity

As measures to ensure the integrity of procurement agency personnel, the Kyrgyz Republic has adopted an extensive code of conduct for public officials (including staff of procuring entities) that specifically prohibits corruption and deals with conflicts of interest. The Kyrgyz Republic restricts public officials' involvement in private sector enterprises or investment, and requires shareholders, while in the public service, to transfer their shares into trust governance.

The Kyrgyz Republic provides for the disqualification of bidders for corruption or improper conduct. It disqualifies bidders that knowingly submit false or incomplete information regarding their qualifications, but not if the false information is not material and is immediately rectified by the supplier. To counter the risk of abuse of the instrument of disqualification, a bidder is disqualified only with the consent of a higher authority. The Kyrgyz Republic may debar companies who are found guilty of corruption or collusion from tendering for public contracts for up to three years.

Procurement decisions may be reviewed at the administrative level before and after the contract is signed. A bid participant may lodge a complaint with the procuring entity within 10 days of knowing of the source of the complaint or—if the complaint is about the final decision itself—within 10 days after the publication of the procurement results.

Appeals against decisions made by the procuring entity on the complaints can be brought to a higher level within the public administration. Considering the important role of an independent body

in controlling administrative decisions, the Kyrgyz Republic also permits judicial review. The supplier has the right to appeal to the Arbitration Court, as well as to a court of general jurisdiction, which may nullify unlawful acts or decisions of the procuring entities and require these entities to compensate suppliers for costs incurred in connection with the appeal.

The Kyrgyz Republic audits the procurement of selected high-value items to monitor the proceedings and overall service quality in different sectors.

Documentation regarding procurement acts and decisions has to be kept for at least three years; the precise content of the records is defined by law. To eliminate the possibility of the records being manipulated or altered, there is provision for their immediate transfer to a higher body for storage.

A way forward

The Kyrgyz Republic has enacted a comprehensive procurement framework and plans further amendments to the Law on Public Procurement.

To attract the greatest possible number of bidders and to assist in and facilitate procurement, the Kyrgyz Republic is urged to consider, in addition to the current practice of publishing tenders and bid openings on the Internet, expanding online facilities and further promoting e-procurement. The Kyrgyz Republic may also wish to review the necessity of the exceptions to open tendering, and to more clearly define the conditions for single-source procurement.

The Kyrgyz Republic might also introduce regular independent external and internal audits in addition to the current selective audits of procurement. Such auditing bodies may be allowed to intervene during the project cycle or after projects have been fully implemented to detect and deter corruption more efficiently. Finally, to ensure a thorough review of procurement decisions, given the difficulties of detecting fraud and corruption, the Kyrgyz Republic might wish to extend the mandatory storage period for procurement documentation beyond three years.

Relevant documentation

Web site of the State Commission under the Government of the Kyrgyz Republic on State Procurements and Material Reserves listing relevant laws and regulations and providing the platform for online announcements and registrations: <http://www.goszakupki.gov.kg/English/>