

Palau

Legal and institutional framework

Palau has enacted the Procurement Law and Regulations, which apply to the procurement of goods and services by the national and state governments and by most agencies of the national government. Semiautonomous agencies set their own procurement policies, which must at least meet the standards of the Procurement Law and Regulations. Copies of the Government's public procurement policy can be obtained from procurement offices, libraries, and other government offices upon request.

Palau has a centralized procurement system in which all procurements are processed through the Ministry of Finance. The Procurement Law designates procurement officers at the national and state levels to oversee procurement. Also involved are the attorney general and his or her state counterparts, who must certify the form and legality of all contracts.

Procurement methods and procedures

The Procurement Law provides for a number of procurement methods. Competitive bidding is the standard method for procurement of at least USD10,000. Restricted tendering must be used for procurements between USD5,000 and USD10,000. The legislative framework gives procurement personnel considerable discretion, particularly in interpreting undefined terms. The legislation allows competitive negotiation if a procurement officer deems competitive bidding to be "impractical" or "not advantageous," without, however, defining these terms. Single-source procurement can be used for procurement below USD10,000 where there is only one reliable supplier. A procurement officer, with the authorization of the President, may make an emergency procurement if there is a threat to public health, welfare, or safety. For competitive bidding, the bidding period must be at least 30 days, but a procurement officer may reduce it to 15 days if he or she finds the shorter period reasonable. There are model tender documents and contracts with anti-competition clauses. Prequalification is available.

To reduce corruption by increasing participation in procurement, the Procurement Law requires procurement opportunities to be announced in a newspaper of general circulation in Palau. The procurement opportunities are also advertised on all local radio and television stations

and posted at designated public buildings. They may be further advertised in a foreign newspaper if the procurement officer decides that publication would be beneficial. In addition, each procurement officer must notify all eligible contractors of every procurement opportunity. Contractors are added to the list of eligible contractors at their request. Procurements must be advertised for 15 days before bidding begins.

The opening and evaluation of bids is a sensitive part of the procurement process. To enhance transparency, the Procurement Law requires a procurement officer or a designated representative to open bids in the presence of at least two witnesses at the time and place stated in the tender documents. Bidders are not present at the bid opening. To further protect against tampering, the officer records the amount of each bid, the name of the bidder, and a summary of the bid opening, which is countersigned by the witnesses. All bids and the summary are available for public inspection. A committee may be set up to evaluate bids, but the procurement officer makes the final decision. Price is only one of several factors that must be considered. The procurement officer must inform all bidders of the result and the reasons for the decision. Post-award negotiations, which are reputed to entail risks for corruption, are usually conducted for construction contracts in Palau. The attorney general must certify all contracts as to legal form and substance. Finally, to prevent corruption through deliberate failure of tendering, the Procurement Law defines the circumstances under which such failure arises. In case of failure, the tender may be canceled. In some cases, a procurement officer may negotiate with a bidder and change bid requirements.

Safeguarding and enforcing integrity

Implementing and enforcing codes of conduct can help prevent corruption among procurement staff. The Procurement Law contains specific provisions dealing with conflict of interest and the offering of gifts and gratuity that apply to all procurement personnel. The Code of Ethics Act contains further provisions that apply to all civil servants. Palau does not train procurement personnel in integrity issues. To strengthen its ability to detect corruption, Palau requires procurement personnel to report attempts to influence their decisions to the attorney general or the special prosecutor.

Additional means of preventing corruption are effective and dissuasive sanctions. In Palau, a procurement officer may terminate or annul a contract that was awarded in violation of the Procurement Law

and Regulations. Civil servants who breach the Procurement Law may face administrative and criminal sanctions. Corrupt suppliers may be criminally prosecuted and debarred from participation in future procurements for up to three years. In addition, the Office of the Public Auditor (OPA) and the Government may initiate proceedings against corrupt officials and suppliers to recover damages or proceeds of illegal activities. Finally, a legal person may also be subject to debarment and liability for damages.

The Procurement Law permits an actual or prospective bidder to seek administrative and judicial review of the procurement process. The aggrieved bidder must first complain to the procurement officer concerned. Deadlines for filing a complaint should be long enough to allow a complainant to verify the facts and to estimate the risks of an appeal. In Palau, an aggrieved bidder must complain to a procurement officer within 14 days after knowing the facts underlying the complaint. A complainant who remains dissatisfied with the decision of the procurement officer may seek judicial review.

Effective audits can also detect and deter corruption. The OPA in Palau conducts external audits of procurements. All reports of the OPA are publicly available. In addition, the Chamber of Commerce monitors government procurement activities.

To ensure the effectiveness of these review and audit mechanisms, procurement officers and members of the bid evaluation committee are required to document their evaluations and the basis of their decisions. All documents are kept and disposed of in accordance with rules approved by the minister of administration, except for records relating to emergency and sole-source procurements, which are kept for three years.

A way forward

Palau is encouraged to consider whether it could strengthen the safeguards against corruption in its current procurement framework by reducing discretion and by clarifying the terminology of the regulations.

Palau is further invited to consider whether the transparency of the procurement process might be increased by measures such as allowing bidders to be present during the bid opening. Palau may also wish to consider whether the current period for which documents are kept is sufficient to allow verifications or criminal proceedings, notably for procurements that are exposed to particular corruption risks, such as sole-source and emergency procurements.