

Philippines

Legal and institutional framework

In 2003, the Philippines passed a comprehensive act governing public procurement. This law, along with implementing rules and regulations, standardizes public procurement conducted at all government levels, as well as by state-owned or state-controlled companies. The framework covers the procurement process from planning to implementation.

The procurement itself, from needs assessment to implementation, is conducted by the individual government departments, offices, or agencies. Bids and awards committees are established within each procuring entity to conduct the procurement proceedings. The procurement act also established the Government Procurement Policy Board (GPPB). This central body defines policies, implementing regulations, and standard documents; produces guidelines and manuals; and oversees the training conducted by procuring agencies.

Procurement methods and procedures

The Philippines' procurement act designates competitive bidding as the standard procurement method. Exceptions are permitted under conditions enumerated in the law and stipulated in more detail in implementing regulations. No particular institutional mechanisms exist that would routinely subject the list of exceptionally permitted methods to a review.

Procuring agencies are required to publish tender openings twice in nationwide media to attract the greatest possible number of tenders, thereby helping to avoid collusion and failure of tenders. The Internet is also widely used for announcing tender opportunities, and the Government is expanding this instrument with the aim of enhancing transparency. Further mechanisms to ensure transparency comprise the development of standard bidding and contract documents to the extent practical. The use of these documents is compulsory.

To ensure the transparency of the bid opening—a crucial moment in the tendering procedure that allows bidders to verify whether bids have been altered or destroyed—it has to take place in public at a predefined place and time. The law does not require bid opening right after the submission period, a requirement that is generally considered a safeguard against fraudulent alterations of bids during the time between the deadline for submission and the opening of bids.

As regards the evaluation of tenders, the procurement law prescribes the selection of the eligible bidder that has submitted the cheapest responsive offer for the goods and works.

Safeguarding and enforcing integrity

The Philippines has not yet adopted a specific code of conduct for officials in public procurement that takes into consideration the particular corruption risks in this field. Hence, the general law on the conduct of public officials is applicable to procurement personnel. This law does address issues such as conflict of interest and the acceptance of gifts by public officials in the exercise of their duties. The Philippine procurement law provides for a number of institutional mechanisms to prevent favoritism in public procurement. Decisions throughout the procurement process are made by panels composed of five to seven officials. The personnel involved in procurement decisions are regularly rotated. Further, civil society organizations are permitted to monitor all stages of the procurement process, and the Philippines is assessing avenues for involvement of civil society in the monitoring of project implementation. Special training is conducted for these civil society representatives to strengthen their capability to monitor public procurement activities.

No particular measures were reported to safeguard integrity among bidders and their staff. Here, penal and economic sanctions are the main instruments to safeguard and enforce integrity. The Philippine procurement law itself establishes penal sanctions for procurement-specific corruption, in addition to offenses established by the generally applicable penal law. These offenses cover public officials as well as suppliers' staff. Civil liability is linked to conviction for these acts.

To sanction the economic entity that profits from corruption in public procurement, the procurement act also provides for debarment. It empowers the head of a procuring entity to exclude a bidder for one or two years from public bidding as a sanction for providing false information or unduly influencing the procurement process. The law does not specify whether the debarment decision has any consequences for public tenders by other procuring entities. Blacklisted contractors are listed on the GPPB website.

As regards the prosecution of corruption in public procurement, no reporting duties for public officials exist at this time, nor does a protection mechanism for those who come forward and report corruption in the procurement process or in a particular agency. Efforts to enact comprehensive whistleblower protection legislation or a reward system are ongoing but have not yet resulted in a law.

Irregularities and corruption may also be detected in the course of complaint procedures. Such procedures, which may also help bolster bidders' trust in the fairness of the procedures, exist at the administrative level and, if administrative remedies do not suffice or remain fruitless, through the judiciary. A non-refundable protest fee, amounting to 1% of the contract value, must be paid to trigger the administrative review procedure.

Aside from complaints by aggrieved bidders, which may lead to the detection of corruption in a procurement process, procuring entities are subject to audit. In addition, observers from civil society are entitled to develop and submit their own monitoring reports. These reports, which may be sent to the Office of the Ombudsman, evaluate whether an individual procuring entity did abide by the rules.

A way forward

The Philippines' framework for public procurement contains a number of comprehensive mechanisms that help curb corruption in public procurement. The Government of the Philippines is encouraged to conduct training for procurement personnel to ensure the full implementation of this framework. The Philippines is invited to actively pursue the enactment of a whistleblower protection system, which would facilitate the detection of corruption in public procurement. Furthermore, the Philippines is encouraged to strengthen measures aimed at promoting private sector integrity, to curb corruption in public procurement.

Relevant documentation

Government Procurement Policy Board (GPPB):

<http://www.procurement-service.org/gppb/home.htm>

Procurement Service, Department of Budget and Management: <http://www.procurement-service.org/ps/index.cfm>

Government Electronic Procurement System: <https://www.philgeps.net>

Department of Budget and Management: <http://www.dbm.gov.ph>