

Thailand

Legal and institutional framework

The main legislation concerning government procurement in Thailand is the Regulation of the Office of the Prime Minister on Procurement 1992, as amended to No. 6, 2002 (ROPMP). The ROPMP does not apply to state-owned enterprises or local government agencies. Procurement by local government agencies is governed by the Regulations of the Ministry of Interior on Procurement of Provincial Administration, whose key principles are similar to those of the ROPMP. State-owned enterprises set their own procurement regulations. Also relevant are the Act on Offences Relating to the Submission of Bids or Tender Offers to Government Agencies, which imposes sanctions for criminal offenses to ensure fair bidding; circulars of the council of the Cabinet; and standards laid down by the State Audit Commission. Thailand is considering overhauling its procurement framework and envisages the drafting of a regulation on procurement for the executive level.

Public procurement in Thailand is decentralized and involves a range of government bodies. The Public Procurement Management Office (PPMO) is in the Comptroller General's Department (CGD) within the Ministry of Finance. The PPMO controls, monitors, and evaluates procurement by government entities. It also determines regulations and guidelines related to government procurement. In addition, the Committee in Charge of Procurement (CCP), established under the ROPMP, interprets the ROPMP, makes recommendations concerning its enforcement and amendment, grants exemptions from the ROPMP to procuring agencies, and hears complaints. For specific procurements, the procurement personnel of an agency involved must prepare a proposal to be approved by the head of the agency. Selection committees evaluate offers and select the winning bids.

Procurement methods and procedures

The publication of a clearly defined legal framework enhances the transparency of procurement and thus reduces the risk of corruption. Thailand's laws, regulations, and policy guidelines on public procurement are published in the *Royal Gazette*. They are also posted on the Web sites of the Ministry of Finance, the State Legal Council, and the Ministry of Interior. The method of procurement depends on several factors, including the value of the contract, the nature of the goods or services,

and the urgency of the procurement. Since 2005, procurement over THB2 million (USD50,000) has had to be conducted through an electronic auction. The ROPMP requires the use of model contracts and tender documents to strengthen the transparency of the procedures. The procuring agency must publish the prequalification criteria and method of selection, and inform the CCP.

The publication of procurement opportunities increases participation and consequently reduces the risk of collusion or failure of tendering. In Thailand, all agencies must advertise their procurements on the Government's central procurement Web site and relevant agencies' Web sites. In addition, they must notify other public agencies such as the Mass Communication Authority of Thailand, the Broadcasting Authority, and the Office of the Auditor General of Thailand, as well as newspaper offices. The minimum period allowed for submitting a tender is 21 days.

Clear definition of the criteria and procedure for bid selection is also important in reducing corruption. The ROPMP provides only very general selection criteria, namely, price, bidder's qualifications, and quality. For specific procurements, the procurement personnel of an agency involved must prepare a proposal to be approved by the head of the agency. Selection committees are tasked with the evaluation and selection of offers. The name of the winning bidder is announced on the Web site of the procuring agency. The reasons for the decision are available upon request. Thailand uses model documents. If none of the received bids meets the requirements, the tender is reopened.

Safeguarding and enforcing integrity

Codes of conduct, particularly those specific to procurement, can reduce corruption by instilling high ethical standards in procurement officials. The ROPMP addresses conflicts of interest, specifically those involving procurement. The Organic Act on Counter Corruption 1999 contains additional conflict-of-interest provisions. The Royal Decree on Good Governance in State Administration 2003, the Civil Service Act 1992, and the Civil Service Ethic Standards apply to civil servants generally. The National Counter Corruption Commission (NCCC) has also issued a "notification" concerning the acceptance of gifts. To strengthen the effect of these documents, specific agencies may train their procurement personnel in integrity issues. If civil servants are offered bribes or other inducements by a supplier, they must report the matter to the head of the procuring agency or the NCCC.

Measures to promote ethical standards among suppliers also strengthen the fight against corruption in public procurement. In this

regard, tender documents in Thailand may require bidders to declare that they have no conflict of interest.

Effective sanctions can dissuade bidders and procurement officials from engaging in corruption. A number of sanctions may be applied to corrupt procurement officials in Thailand. The ROPMP contains penal provisions for willful violations or negligence. The Penal Code prohibits the bribery of officials, including bribery done through intermediaries. Additional penal and administrative sanctions for accepting or soliciting bribes can be found in a number of laws such as the Civil Service Act 1992 and the Act on Offences Relating to the Submission of Bids or Tender Offers to Government Agencies. Several of these offenses are punishable by a fine and imprisonment of five years to life. Similar sanctions are available against corrupt bidders. If a complaint is proven before a contract is completed, the bidding is reopened. Otherwise, the bidder will be liable for the economic damage suffered by the procuring entity.

Integrity in the procurement process can be enhanced by allowing aggrieved suppliers to complain and to seek review of procurement decisions. Procurements in Thailand are subject to administrative and judicial review. A complainant may bring a case to the CCP, the NCCC, or the Office of the Auditor General of Thailand. Further appeals to the judicial or administrative court are available.

Auditing can further enhance the integrity of the procurement system, and the risk of later detection can deter corruption in procurement. In Thailand, the Materials Inspection and Acceptance Committee inspects the fulfillment of a procurement contract and verifies the quality and quantity of the procured goods or services. The Auditor General audits the legality and value of procurements. The audit report is provided to the National Assembly, the Senate, the Council of Ministers, and the audited agency. It is also publicly available.

Documents must be retained long enough to allow a review of the procurement system. For each procurement in Thailand, the procuring agency must keep a register of all bids and a record of the decisions for at least 10 years. The Office of the Auditor General has access to the documents.

A way forward

Thailand is encouraged to pursue its efforts to overhaul its procurement framework. In this context, Thailand is invited to consider passing the constitutive elements of this framework at the level of a parliamentary law.

Once this framework is in place, Thailand is invited to take the necessary steps to provide extensive training to staff involved in procurement procedures to ensure the proper implementation of the framework.

Relevant documentation

Home page of the Thai Government Procurement Office: <http://www.gprocurement.go.th/>

Regulation of the Office of the Prime Minister on Procurement 1992, as amended to No. 6, 2002

Act on Offences Relating to the Submission of Bids to State Agencies: <http://www.moj.go.th/Law/MojLaw/EngLaw/Act%20Con.pdf>