

Vietnam

Legal and institutional framework

Except for one law concerning the construction sector, Vietnamese rules on public procurement are found entirely in subsidiary legislation. These include several government decrees and circulars from the Ministries of Planning and Investment, Construction, and Finance. These instruments apply to procurement in all sectors, though some sectors (e.g., energy and construction) may be subject to additional rules. As the various normative instruments that govern public procurement in Vietnam overlap in scope, a comprehensive Procurement Ordinance has been in preparation over the past several years, but it has not yet been passed. Vietnam's Anti-Corruption Law, passed in 2005, also sets general standards for the conduct of procurement.

Procurement in Vietnam is largely decentralized, with some central control. Specific ministries and provincial governments are responsible for administering their own procurements. In some cases, the Ministry of Planning and Investment (MPI) reviews procurement decisions. The Prime Minister, the minister responsible for the procuring agency, or senior local officials may also be involved.

Procurement methods and procedures

The publication of procurement rules may help curb corruption by increasing transparency. The circulars and regulations that stipulate the rules for procurement are published in the Government's official gazette and the Web site of the MPI. The method of procurement may be open or restricted tender at the discretion of the procuring agency. Direct negotiation may be used for contracts below VND1 billion (USD66,000). The bidding periods are 15 days for domestic tenders and 30 days for international tenders. Model tender documents, which could further enhance transparency, have not yet been issued in Vietnam, but the MPI is considering their preparation.

The risk of corruption can be diminished by wide publication of tender opportunities to increase participation in the process. In Vietnam, all procurements must be published on the procuring agency's Web site and announced in the media or the Bidding Information Bulletin 10 days before tender documents are issued.

Bids are opened in the presence of the public immediately after the bidding period. A project director evaluates the bids and prepares an evaluation report, possibly with the help of a scoring system. The MPI

may review the evaluation report, depending on factors such as the nature of the procured item and the value of the contract. These factors also determine whether the Prime Minister, the minister responsible for the procuring agency, or senior local officials give final approval of the selection. The project director must announce the result in the Bidding Information Bulletin and on the Internet. Post-award negotiations are permitted for technical issues, which could alter the price of the contract. Failure of tendering arises when there are fewer than three bids, in which case the procuring agency seeks permission from a higher authority to extend the deadline for closing the tender.

Safeguarding and enforcing integrity

Codes of conduct are vital in preventing procurement officials from engaging in corruption. There are no codes of conduct that apply specifically to procurement officials in Vietnam. Conflict-of-interest provisions are so far rudimentary. They prohibit the bidder's relatives from being involved in the bid evaluation, and, as stated in the Ordinance on Public Employees, prohibit senior officials from holding shares in enterprises that operate in their field of competence. There is no training for procurement staff that particularly addresses integrity issues.

Vietnam has taken measures to ensure that suppliers abide by the rules. It allows the disqualification of a bidder in an ongoing tender for corruption or improper conduct. Furthermore, a procuring entity may disqualify a bidder who submits false information regarding his or her qualifications. The name of the bidder is published in the Bidding Information Bulletin and on the Internet.

Effective sanctions can also deter procurement officials and suppliers from engaging in corrupt conduct. Bribery is outlawed under two decrees. Violations of the procurement regulations may result in penal or disciplinary sanctions. A corrupt bidder may be held responsible for the economic damage that he or she causes. The authorities may disqualify a bidder that has submitted false or incomplete information regarding their qualifications. Furthermore, a bidder who violates procurement regulations may be debarred from public procurement. The length of debarment depends on the number of infringements, and in the most severe cases may be permanent.

An effective mechanism for processing complaints can verify the integrity of the procurement process and deter wrongdoing. In Vietnam, any individual may complain to a procuring agency. The agency is responsible for reviewing and resolving the complaint. No other avenues of complaint, such as judicial review, are available.

A way forward

Vietnam is encouraged to pursue its plans to pass a comprehensive regulatory framework for public procurement. In this context, Vietnam is invited to consider passing the constitutive elements of this framework at the level of a parliamentary law.

Once this framework is in place, Vietnam 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

World Bank Country Procurement Assessment Report (October 2002)

Web site of the Ministry of Planning and Investment: www.mpi.gov.vn

Decree No. 88/1999/ND-CP promulgating the procurement regulations, followed by amendments

Circular No. 66/2003/TT-BKH containing instructions for implementing the procurement regulations

Circular No. 08/2003/TT-BXD containing instructions for the contents and management of procurement contracts for construction engineering

Circular No. 121/2000/TT-BTC containing instructions for the procurement of furniture, equipment, and instruments for state agencies, the armed forces, organizations, and state-owned enterprises using the national budget

Circular No. 17/2001/TT-BTC containing instructions for the management and use of fees for the review of bidding results

Decree No. 34/2001/ND-CP promulgating procurement regulations for oil and gas exploration and exploitation projects

Law on Construction (chapter on bidder selection and construction contracts)