

**PUBLIC PROCUREMENT IN SOUTHEAST ASIA:
CHALLENGE AND REFORM**

David S. Jones*

ABSTRACT. Despite the economic transformation that the various countries in Southeast Asia have undergone, serious weaknesses have persisted in the area of public procurement. These include fragmented procurement procedures; the lack of professional procurement expertise; the absence of open, competitive tendering, especially for foreign suppliers; widespread corruption; and the lack of transparency. In recent years, limited progress has been made in reforming public procurement but all too often the reforms have been inadequate and have not had the desired impact so that shortcomings still persist. In light of these failings, the paper will highlight the twin challenges facing most of the states of the region: viz. the need to reinforce the recent procurement reforms and to translate them into actual practices.

INTRODUCTION

In recent years most of the countries of Southeast Asia have experienced noticeable economic growth, although its extent and impact on living standards have varied across the region. By the mid 1980s Singapore had already reached a standard of living of a developed affluent country, whilst the small population of Brunei has reaped for many years the benefits of abundant oil and natural gas

* *David S. Jones, Ph.D., is Associate Professor, Department of Public Policy and Administration, Faculty of Business, Economics and Policy Studies, University of Brunei Darussalam, Brunei. His research interests include public policy, development administration, public financial management, and government procurement.*

reserves. In the last eight years, Malaysia and Thailand have also experienced substantial economic progress whilst the poorer countries of the region (Vietnam, Laos, Cambodia, Indonesia, and the Philippines) have all shown clear signs of improving economic performance and progress in poverty alleviation.

The economic progress in the region, in order to be sustained, depends upon continuing improvements in public governance, especially in creating more competent and accountable government administration, less pervaded by waste, inefficiency, secrecy, and corruption. One important hallmark of a high standard of public governance is a well-developed and efficient system of government procurement, which provides value for money. Yet over the years, serious weaknesses have persisted in procurement practices in the countries in the region (with the notable exception of Singapore), which have given rise to reforms in recent years.

The paper will examine these failings, the reforms that have been introduced to address them, often with the encouragement and guidance of international donor and lending institutions. It will consider how some of the most serious shortcomings have still persisted, in spite of the reforms, reflecting their limited scope, and failure to alter actual day to day procurement practices. In conclusion, the paper will highlight the need for further reform and the challenge of ensuring that the reforms, both present and future, are translated into practices in line with acceptable procurement standards.

THE LEGAL AND PROCEDURAL FRAMEWORK

A major impediment in achieving effective public procurement in most of the countries of Southeast Asia has been the fragmentation, ambiguities and limited scope of laws, implementing regulations, and procedures. This has given rise to inconsistency, confusion and lack of accountability. To address the problem, in some countries steps have been taken to develop a legal and administrative framework which creates greater coherence in the procurement process, clearly defines the processes and criteria that should be adopted, and the roles and responsibilities of procurement officials and bodies. In some cases, as a further benefit, the framework establishes a more competitive and transparent system of public procurement with greater accountability.

An example of progress in creating a clearer and more coherent system of procurement has been the Philippines. Up to 2003, more than 60 laws, executive orders, presidential decrees and administrative orders governed the procurement process, which resulted in “confusion and conflicting interpretation ... increasing the likelihood of rigged bidding, delay and irregularities in the bid evaluation process” (GP, WB and ADB, 2003, p. 89).¹ Matters in part have been put to right by the enactment in 2003 of the Government Procurement Reform Act and its implementing regulations. This has imposed a uniform procurement system within the public sector, clearly specifying, amongst other things, the methods and stages of purchasing to be followed, the roles, responsibilities, accountability and manner of appointment of procurement officials and committees. What’s more, these measures have prescribed competitive bidding (within the limits indicated below), and greater transparency (IMF, 2004a; 2005a; GP, WB and ADB, 2003; WB, 2005a; Campos & Syquia, 2005).² Further harmonization of procurement procedures and the use of uniform bidding documents was established in 2004 for local competitive bidding. But uniform and clearly defined procedures have yet to be adopted for tenders involving foreign contracts, and in bidding for consultancy services for donor funded public works projects. The ADB is currently engaged in a program with the Government of the Philippines to overcome the remaining anomalies and ambiguities (ADB, 2005).

In Vietnam too, procurement rules have for years not only been limited in scope, but have also been highly fragmented. A variety of circulars (orders issued by Ministries), decrees (regulations passed by the Government) and ordinances (laws passed by the National Assembly) have covered procurement. Inconsistencies in these rules have given rise to confusion. However, steps have been taken to simplify and harmonize them. Decree 66 of 2003 represented a significant step forward in unifying procurement procedures across ministries, but major inconsistencies still existed with procurement-related provisions in other laws. However, an all-embracing Public Procurement Ordinance has been drawn up (having gone through several drafts) and should reach the statute book in the near future, so imposing greater uniformity, and providing, as well, the legal basis of an open and competitive purchasing process (SRV and WB, 2005).³ Limited efforts to upgrade and harmonize fragmented procurement laws and regulations have similarly been undertaken in

Laos, although much work remains to be done to create a clear, coherent and accountable procurement system (WB, 2002).

However, in Cambodia, a fragmented system of procurement continues, governed by a plethora of disparate and uncoordinated sub-decrees in the absence of an overarching procurement law (WB, 2004a). In Indonesia too, public procurement rules remain highly fragmented. The World Bank reported in 2001, that in the procurement process, “a multiplicity of laws and decrees and regulations constitutes a source of confusion with the risk of overlapping jurisdiction made worse by inconsistent provisions and a lack of clarity in important policy and procedural requirements” (WB, 2001, pp. 1, 9). Presidential Decree 18 in 2000 concerning procurement outside construction provides a semblance of uniformity, but leaves in place, and does not supersede, many other laws, decrees and regulations affecting procurement (WB, 2003). However, in 2005, a start was made in drafting a comprehensive procurement law to create a uniform and more clearly defined set of procurement procedures (IMF, 2005b).

The fragmentation of the procurement laws and regulations not surprisingly leads to a good deal of non-compliance. For example, in Cambodia, much of the procurement continues to be undertaken with little regard to the legal and administrative obligations that regulate the purchasing process. This has undoubtedly been exacerbated by the continuing muddled and disparate nature of the legal and administrative procurement framework which allows every opportunity for circumvention (WB, 2004b; IMF, 2004b).

However, even when a harmonized legal and administrative framework has been established, the necessity exists to ensure compliance amongst procurement officials within line ministries and agencies responsible for purchasing and contracts, known as government procurement entities (GPEs). All too often when an appropriate set of laws and regulations have been introduced, they may be ignored or side-stepped, especially when corrupt practices are the norm. For example, in Vietnam, despite the creation of a uniform system of procurement, GPEs are continuing to follow their own procurement practices (SRV and WB, 2005). Assessing the potentially beneficial impact of the Procurement Reform Act in the Philippines, two writers cautioned that “enforcement has always been the Achilles heel of Philippine legislation” indicating that effective implementation

will entail “daunting challenges” and could take many years to achieve (Campos & Syquia, 2005, p. 31; IMF, 2002, p. 17).

By contrast, in Singapore and Malaysia the government procurement process has been well regulated for many years and in general the laws and regulations are adhered to. In Singapore a consistent and clear set of rules has guided the procurement process, laid down in its procurement instruction manual and Government Procurement Act of 1997 (enacted shortly after its accession to the WTO Government Procurement Agreement). Strict compliance is the norm and any deviations, however minor, are readily brought to light by the Auditor-General (Jones, 2002; WTO, 2000).⁴

INSTITUTIONAL AND HUMAN RESOURCE CAPACITY

One of the factors contributing to the failings in public procurement in Southeast Asia has been the absence of central procurement authorities to oversee procurement policy and practices, to review procurement rules, draft bidding documents, advertise intended procurements, and monitor compliance to the rules. A further role of central procurement authorities is to undertake bulk purchasing and provide training for procurement officials. Several countries in Southeast Asia have now established or enlarged the powers of central procurement authorities with a view to performing some or all of the functions mentioned above.

One example is Vietnam where the powers of the central procurement authority, the Department of Public Procurement (DPP), have been extended in the last few years. These now include formulating procurement laws and regulations, drafting standard bidding documents, monitoring compliance, advertising proposed purchases and public works contracts, and developing training programs (SRV and WB, 2005). In Laos, a central procurement monitoring agency, the Procurement Monitoring Office (PrMO) finally became operational in 2003 as a department in the Ministry of Finance, following pressure from the World Bank and ADB (WB, 2002a; 2004c). Indeed, the PrMO was a condition under which a major credit provision was to be made available to the Lao government in 2003. The Cambodian government has also established in recent years a central procurement authority, the Department of Public Procurement, under the Ministry of Economy

(WB, 2004b). The Philippines has followed suit and established the Government Procurement Policy Board in 2003 under the Government Reform Act. Its role is to review the implementation of the Act and its implementing regulations, to monitor and enforce compliance to them, and to recommend changes in procurement policy and rules. It is also responsible for drafting bidding documents and providing procurement training (PGPPB, 2006).⁵ In Malaysia and Singapore central procurement agencies are the Government Procurement Management Division of the Ministry of Finance, and the Expenditure and Procurement Policies Unit (supported by the Building and Construction Authority for public works) respectively, and have existed for many years (Jones, 2002; APEC, 2006).⁶ By contrast, in Indonesia, where the World Bank called for, as a matter of urgency, the creation of a National Public Procurement Office in its procurement assessment report of 2001, nothing has been done to date in response to this recommendation (WB, 2001). Somewhat surprisingly, Thailand has not seen fit to create a central procurement authority either, although some of the central procurement functions are undertaken by the Prime Minister's Office (APEC, 2006).

How far the newly created or strengthened central procurement authorities can effectively discharge their responsibilities without being hampered by vested interests in and outside the government remains to be seen. But there exists the possibility that such agencies may not be able or willing to undertake some of their key functions especially in monitoring and enforcing compliance to uniform standards, despite having the formal powers to do so. The evidence so far is that GPEs, as mentioned above, still follow their own procedures, side step the relevant laws and regulations, and pay little regard for transparency and probity in their transactions. As an example, in Vietnam, despite the extension of the mandate of the DPP, it has not been able to monitor and enforce compliance by GPEs (SRV and WB, 2005). Similarly, in Cambodia, the Department of Public Procurement, with a remit to review major public procurement and public works projects, often finds that they are undertaken by GPEs without it being given the opportunity to assess their merits and oversee their implementation (WB, 2004b).

In addition, to achieve higher standards of public procurement, institutional reform must be accompanied by improvements in the knowledge, skills and probity of procurement personnel (referred to as "human capacity building"). This involves an understanding of

globally recognized procurement principles, knowledge of national laws, regulations and procedures, and a commitment to ethical responsibilities. Procurement proficiency also entails the ability to assess company track records and financial standing for registration and qualification purposes, competence in drafting specifications, choosing an appropriate form of tender, and evaluating tender submissions especially in respect to technical proposals. Equally salient is the ability to oversee projects especially in public works, and appraise contractor performance. This equally applies to the procurement rules laid down by donor institutions for the projects they fund. For example, the World Bank's procurement assessment of Laos in 2002 noted officials' inadequate knowledge of both the Lao government's and World Bank's procurement procedures due to a paucity of training, the lack of familiarization with legal and commercial terms, and frequent rotation of procurement staff and their replacement by inexperienced staff. Similar problems were noted in the procurement assessment of Indonesia in 2001 ((WB, 2002a; WB, 2001; GP, WB, and ADB, 2003).

Systematic training and upgrading of procurement staff in most countries in the region is still in its infancy with Singapore leading the way in implementing such programs. The Philippines, which until recently lacked systematic training and upgrading of staff, has now sought to rectify the shortcoming with a series of procurement training programs. This has been the result of the creation of the Government Procurement Policy Board and the development of a core of personnel who are able to conduct procurement training courses (PGPPB, 2006; WB, 2005a).

COMPETITION AND ACCESS

Despite the reforms of procurement procedures mentioned above, open and non-discriminatory competition has still yet to be achieved in most countries of the region. Major barriers still remain preventing the creation of a level playing field for all private domestic suppliers as well as for overseas companies. Such barriers may arise from a bidding system subject to preferential margins, and quota restrictions, which discriminate against foreign businesses. Competition may be further curtailed by restricting the eligibility to tender to only domestic bidders or products, or to certain categories of domestic bidder, through set-asides. Eligibility restrictions are often

applied in the registration of suppliers and contractors as government trading partners, or in the pre-tender qualification process for major procurements. Alternatively, barriers to open competition may simply be the result of informal practice in which special consideration, as a matter of course, is given to nation-wide domestic enterprises, provincial/local enterprises (where the GPE is a provincial or local authority), state-owned enterprises (SOE's) or to businesses to which leaders and senior officials have an association themselves or through family members or cronies (Coe, 1993; Erridge, 1998). In such cases, the usual method of procurement is limited or single sourcing and direct negotiation.

The absence of open and competitive bidding is reflected in Vietnam. In 2002, only 32% of public bidding for goods and public works was subject to open tender. At the provincial level the amount of open competitive bidding was even smaller. Information from one province, Bac Ninh, in 2003 indicated that one out of 77 bidding packages was subject to open tender. In the World Bank's procurement assessment report of Vietnam in 2002, it was noted that in many tenders, as a matter of practice, access was confined to or special consideration was given to SOE's. A further advantage enjoyed by SOE's was their ability to draw upon government funding when necessary, and the willingness of banks to write off their non-performing loans, so enabling them to out-bid private sector competitors with low bids (WB, 2002b). This greatly limited access to public procurement contracts of foreign suppliers and contractors, and also private sector domestic bidders. Provincial authorities with procurement powers have also restricted competition, favoring provincial SOE's and in some cases private sector providers so long as they are provincially-based. Whilst the procurement reform of 2003, mentioned above, stipulates open competitive bidding as the "main method" of procurement, in practice little has changed (SRV and WB, 2005, p. 144). The preferred methods continue to be limited bidding and single sourcing, accompanied by direct negotiation, mainly involving SOE's (SRV and WB, 2005).

Similar impediments have been evident in Laos. SOE's have obtained the lion's share of government procurement contracts and figure prominently in the awards for World Bank sponsored projects. This has happened even when "it is questionable whether some of the winners meet eligibility criteria under the Bank's guidelines" (WB, 2002a, pp. ii, 18).

Competitive bidding and equal access is similarly absent from the procurement process in Cambodia. In its procurement assessment report of Cambodia of 2004, the World Bank noted how existing procurement laws explicitly allowed the waiver of competition if it is evident the number of eligible bidders is limited, when the goods, services and public works are required “urgently”, or when “special qualifications” are needed. Whilst these restrictions were considered as reasonable, the World Bank expressed concern that they relied on “judgment in their application” and “are being applied more widely than intended.” The upshot in many cases was direct negotiation (WB, 2004a; WB, 2004b). In a more hard-hitting assessment, the IMF and the International Development Association in 2003 described the procurement process in Cambodia in the following terms:

Closed, opaque and non-competitive bid transactions that lack performance indicators or regulatory oversight have been a common feature of Cambodia’s procurement of private providers of public services to date at the cost of revenue opportunities for the government and efficient and sustainable service provision for the consumers (IDA and IMF, 2003, p. 13).⁷

Despite strongly urging the Cambodian government to adopt fully competitive bidding, the IMF in the following year noted that lack of competition and direct negotiation still persisted without any significant change (IMF, 2004b).

Not surprisingly, according to another report on Cambodia by the World Bank in 2004, the main major supply and public works contracts in transport, telecommunications, water supply, electricity, and waste management involved direct private negotiations between the relevant GPE and the contractor, without any recognizable bidding process. In the power sector, independent power producers have all negotiated power purchase agreements directly. This meant that the projects were not commissioned on a least cost basis or that the contractors had not necessarily met the technical criteria to ensure proper and reliable delivery (WB, 2004b). As further examples in the transport sector, a French- Malaysian joint venture was recently awarded a contract, based on direct negotiation without competitive bidding, to operate Cambodia’s two international airports, whilst the procurement of a container scanner at the country’s leading seaport was likewise based on a direct award without a competitive tender

(WB, 2004b). It appears that the most serious absence of competitive bidding occurs in the public works project which entails a Build-Operate-Transfer arrangement, allowing the contractor the concession to manage the facility that has been created. The majority of these contracts are awarded without competitive bidding (WB, 2004a; 2004b). Even in projects the World Bank sponsored there has been a lack of competitive bidding, according to its fiduciary review of Cambodia in 2005 (WB, 2005b).

The Indonesian government in its current APEC report states that its aim is “to foster effective, broad-based competition to maximize fairness and efficiency,” balanced against its commitment “to promote utilization of domestic products and professional services; to strengthen the capabilities of domestic contractors; and to create an environment to nurture the growth and development of economically weak contractors and cooperatives” (APEC, 2006). The World Bank in 2003 highlighted in blunter terms the restrictions on competition which were incorporated in the presidential procurement decree of 2000, referred to above, under which tenders were confined to firms of “equal standing”. This allowed officials interpreting this provision wide discretion in determining which firms were of “equal standing” (WB, 2003, p. 33). The decree also provided for direct negotiation and stipulated that special consideration be given to local medium and small enterprises, as in Laos, Vietnam and Cambodia (WB, 2003).

In Malaysia, open competition based on equal access in the public procurement process is prevented by an explicit affirmative action policy, that ensures opportunities for the Malay (*Bumiputra*) business community. This is exercised through set asides, preferential margins and quota restrictions. The set asides apply to all products acquired through small value purchases, which are confined to Malay-owned businesses. They also enjoy preferential margins up to 12½% for medium value and in some cases, high value tenders. What’s more, up to 30% of the annual value of public works contracts must be awarded to Malay-owned businesses (WTO, 1997; APEC, 2003). The preferential system is part of a long standing policy in Malaysia to maximize the business and employment opportunities of the Malay population and upgrade their living standards. According to the information provided by APEC, Malaysia’s public procurement policy supports its objective of “achieving developed-nation status by stimulating local industry through maximum use of local materials

and resources and technology transfer, supporting *Bumiputra* business, and promoting local service industries". In consequence, "government agencies are required to procure supplies and services from local sources. International tenders will only be invited if goods and services are not available locally" (APEC, 2006).

In Thailand, competition is still curtailed. For low value purchases (under US\$80,000), procurement is undertaken through negotiation, or selective tenders. For procurements above that limit, open bidding is allowed but is qualified by a system of preferential margins accorded to Thai owned businesses. A 7% preferential margin is applied in favor of Thai companies registered with the Ministry of Industry and selling products that meet national standards. If there are three or more Thai companies engaged in bidding, only their bids will be considered. For consultancy and engineering services, a Thai consultant must be engaged as the leading firm (APEC, 2006). It is interesting to note that public procurement has not been incorporated into the Thailand-Australia Free Trade Agreement (TAFTA) which came into force in 2005. A working party has been set up to discuss how incorporation could be achieved, with a view to ensuring that the TAFTA shall, "to the extent possible, promote and apply open and effective competition and non-discrimination in their government procurement procedures". The caveat is of course the phrase "to the extent possible" (DFATA, 2005).⁸

Previously, the tenders in the Philippines were limited to businesses exclusively owned by Filipinos and registered in the country, and procurement officials had wide discretion in selecting bidders without reference to objective criteria (IMF, 2004a). Under the Government Procurement Reform Act of 2003, and its implementing regulations, mentioned above, the procurement system has been liberalized to a limited extent in favor of foreign businesses. Goods can now be procured from companies in which the ownership stake of Filipinos can be as low as 60%, and public works contracts awarded to firms in which the ownership stake can be 75%. This has allowed foreign suppliers limited access to the Philippines public procurement market by teaming up with domestic firms (APEC, 2005; 2006b). In addition, the procurement reform has prescribed an objective system of selection based on specification requirements (now indicated in bid documents) and prices offered, and have simplified and shortened a lengthy pre-tender qualification process, which favored certain bidders, so further enhancing accessibility (IMF,

2004a). As mentioned above, procurement officials have now less leeway to make arbitrary and self-serving contract awards. How far, of course, these reforms are translated into practice remains to be seen.

The Singapore government has, in contrast to its neighbors, implemented a strictly competitive and open access procurement policy for many years. As mentioned above, in 1996 the Singapore government became a signatory to the WTO Government Procurement Agreement in 1996, which simply affirmed its commitment to permit full access of foreign suppliers and contractors to its public procurement market (Jones, 2002; 2006).

It should be noted that competition in public procurement has been seriously undermined in the countries of the region (with exception of Singapore) by corrupt practices especially cronyism and nepotism, bribery, collusion, and fraud. This will be further discussed below.

CORRUPTION

Another key challenge facing many of the governments of Southeast Asia is combating widespread corruption in the procurement process, as in other sectors of government administration. Table 1 illustrates the extent of corruption in Southeast Asia, according to surveys by the World Bank in 2004 and Transparency International (TI) in 2000 and 2005. Singapore stands out as an example of what can be done to eliminate corruption, and remains one of the least corrupt countries in the world, exemplified by the high standards of probity in its public procurement system (Jones, 2002; 2006). Apart from Malaysia and Brunei, the figures indicate that corruption continues to be endemic in the other countries in Southeast Asia, with Myanmar Laos, Cambodia and Indonesia counted amongst the most corrupt countries in the world. According to the IT index, limited improvements have occurred in Indonesia and Thailand (as well as Malaysia) between 2000 and 2005, but two countries, Laos and Philippines, have regressed.

Corruption as it affects public procurement in Southeast Asia, involves a wide spectrum of individuals and organizations, including political leaders, judicial figures, senior administrators, and officials in

TABLE 1
Corruption scores for Southeast Asian states

	World Bank corruption indices by point score and percentile score in 2004		Transparency International Corruption Perception Index in 2000 and 2005	
	Point*	Percentile+	Score out of 10#	
Year	2004		2005	2000
Singapore	+2.44	99.5	9.4	9.3
Malaysia	+0.29	64.5	5.1	4.8
Brunei	+0.23	63.1	n/a	n/a
Thailand	-0.25	49.3	3.8	3.2
Philippines	-0.55	36.5	2.5	2.8
Vietnam	-0.74	27.1	2.6	2.5
Indonesia	-0.90	17.7	2.2	1.7
Cambodia	-0.97	13.3	2.3	n/a
Laos	-1.15	6.9	3.3	3.6
Myanmar	-1.49	1.0	1.8	n/a

Source: WB, 2006; TI, 2006.

Notes: * The point score is given in the range from +2.5 (no corruption) to -2.5 (maximum corruption).

+ The percentile score is the rank amongst all countries in the world.

In the score out of 10, 10 indicates no corruption, and 0 indicates maximum corruption.

procurement roles , as well as suppliers and contractors, They have been able to take advantage of the opportunities provided in the purchasing of goods and services and in public works contracts, to make illicit personal gains or secure benefits for their family, friends and businesses to which they are connected. Sanctions are rarely applied due to the 'influence' and connections of those involved, the clandestine nature of many transactions, weak enforcement systems and a permissive attitude to corruption that permeates nearly all levels of government and business.

All the main forms of corruption have figured in the procurement process in most of the countries of the region. One is misappropriation of funds, which has occurred when part of the

payment of goods and services is siphoned off by public officials into bank accounts under false names, or when more goods are acquired than are needed, with the surplus taken by officials and used for their benefit or sold for financial gain. Another prevalent form of corruption is bribery. Money and favors (kick-backs) are offered to or demanded by officials in return for the award of a contract (Coe, 1993; Finkler, 2001; Farrington and Waters, 1994). The favors may include gifts, the promise of future employment, and a financial or ownership stake in a business or partnership. Equally common is nepotism and cronyism by which preferential treatment is accorded to businesses linked to the families and friends of government officials who influence or decide to whom a contract will be awarded. Nepotism and cronyism may cause procurement officials to draft specification requirements to suit the preferred supplier or contractor (Zenz, 1994).

For their part, suppliers and contractors have engaged in corruption, not only by offering bribes, but also by committing fraud. The latter includes deliberately disclosing false information about the past financial record, resources and capital value of a business, and its capacity to deliver the goods and services, or implement the project in question. Other types of fraud are overcharging a GPE by disguising or misrepresenting the real costs of products and services, and not conforming to tender specifications such as supplying or using materials of a standard not permitted in the contract (Farrington and Waters, 1994). A further departure from probity is the rigging of a tender through various forms of collusive practice intended to prevent competition. Examples of collusion are when one contractor or supplier bribes another submitting a lower bid to withdraw from the tender, and when contractors or suppliers form a collusion ring and engage in rotation bidding, in which it is agreed that only one supplier or contractor submits a bid for a current contract, followed by another supplier or contractor in the ring for the next contract.

Most of the governments in the region have recognized corruption in public procurement as not only unacceptable in itself, but as undermining the effectiveness of the procurement system, increasing costs for suppliers and contractors, and ultimately, when repeated in other sectors of government administration, as eroding the legitimacy of the state. Consequently, in some countries, reforms have been

implemented to create a legal and institutional framework to tackle corruption in public procurement.

One example is Vietnam, under Decree 46 of 2003, the Government Inspection Department took on the additional role as an anti-corruption agency. Its brief is to investigate allegations of corruption, to review the legal framework to combat corruption, and to require civil servants to declare their assets. In addition, Decree 66 of 2003 included collusion amongst bidders as a corrupt practice, specifies debarment as a sanction against a bidding company engaging in bribery or collusion, and stipulates that officials cannot be appointed to a procurement role if it results in a conflict of interest. These are complemented by reforms, referred to above, to standardize and clarify procurement procedures. However, the anti-corruption measures are not sufficiently precise in determining what would be considered a bribe, a collusive practice and a conflict of interest. Equally important, implementation of the anti-corruption measures has been inadequate, resulting from a failure for the most part to properly monitor the procurement process and expose unethical practices, compounded by an unwillingness to apply sanctions against errant officials in the few cases that do come to light. It was, therefore, no surprise that a World Bank report of 2005, concluded that corruption, including collusive practices, continues to be prevalent in public procurement in Vietnam (SRV and WB, 2005).

Anti-corruption reforms have been introduced in Thailand. In 1999, the National Counter Corruption Commission (NCCC) was established under the 1997 constitution, with wide ranging powers. These include the power to investigate the authenticity of disclosures of personal and family assets and liabilities, which senior public officials are required to make. It can also arrest those suspected of corruption, and, if it is proven, to impeach them and confiscate their assets (Westcott, 2002). However, the NCCC still lacks the resources and manpower to conduct detailed enquiries and bring to book those who have abused their office. It has not been helped in its task by the lack of commitment on the part of government leaders and senior officials to ensure that errant officials are penalized. In so far as it is a branch of the Prime Minister's Office, the NCCC may also lack the independence to pursue corrupt government leaders, parliamentarians, and senior officials whose exposure could be politically damaging (Westcott, 2002).

In consequence, despite media scrutiny, the procurement process in Thailand is still marked by bribery and corruption. According to a survey in 2000, 79% of businesses sampled reported that bribes were necessary to secure a government purchasing and works contract, adding 20% to their costs, while the scale of embezzlement was reflected in the estimate of the NCCC in 2002 that 30% of the public procurement budget ended up in private pockets (Funston, 2000; Westcott, 2002). Another issue is nepotism and cronyism reflected in drafting specification requirements to suit a preferred company. To compound the problem, convictions against public officials on corruption-related charges are rare, which led one report to conclude that “the legal system offers inadequate deterrence against corruption” (USSD, 2006).⁹ The reasons for this are “a cultural propensity to forgive bribes as a normal part of doing business and to equate cash payments with finders' fees or consultants' charges, coupled with the low salaries of civil servants,” which “encourages officials to accept illegal inducements” (USSD, 2006).

Little progress has been made to combat corruption in the Philippines either. This has not been for the want of relevant laws and decrees nor of anti-corruption agencies, which have multiplied over the years (far exceeding those in other Southeast Asian states), but too little avail (Quah, 2003). The establishment of the Inter-Agency Committee on Graft and Corruption in 1997 to act as an umbrella and coordinating body to combat corruption has had seemingly little impact, as indicated by the TI and World Bank corruption scores for the Philippines (see Table 1) (IMF, 2002a). Not surprisingly, the ADB in a report in 2005, referred to “widespread corruption in public procurement,” which “has also greatly impaired the country's available resources” (ADB, 2005; Quah, 2003). Even in donor assisted programs, corruption is still prevalent, an example being evidence of serious collusion in the ADB's investment in and technical assistance to develop the electrical power industry in the country (ADB, 2005). Whilst recognizing that the Philippine Government “is moving aggressively” to combat corruption in public procurement, the ADB in 2005 admitted that “more needs to be done” (ADB, 2005; WB, 2005). This echoed a comment in 2005 by a leading official in the Government Procurement Policy Board, Laura Pascua, that “we have a long way to go” in dealing with procurement

corruption (WB, 2005a. p. 64). In the same vein two Filipino writers have commented on the benefits to those involved in corruption:

Government contracts for large infrastructure projects are a lucrative source of under the table commissions for both politicians and bureaucrats and often are a major source of additional income for them. Even modest contracts for goods such as textbooks or drugs can rake in an additional sum (Campos and Syquia, 2005, p. 5).

Somewhat unexpectedly, despite the TI and World Bank corruption scores for the Philippines, IMF assessments in the last two years have struck a slightly more positive note, with, according to one report, “some evidence suggesting that bribe taking (in procurement) has become less prevalent in recent years” (IMF, 2006a, p. 14). The new Government Procurement Reform Act contains clear provisions prohibiting corruption in public procurement. However, according to past record it is hard to visualize any future diminution of the endemic corruption in the public procurement system.

In Indonesia, corruption remains a prevalent feature of public procurement, as it does in other sectors of government administration. A hard hitting report on corruption in Indonesia by the World Bank in 2003, singled out public procurement as being riddled by corrupt practices. Regular collusion amongst bidders was highlighted, even “with the active involvement of government officials.” Embezzlement, collusion and bribery have extended to donor sponsored projects (the report cited several examples), thus exacerbating the problem of fiduciary risk (WB, 2003). Most recently there has been evidence of embezzlement by officials of donor money and widespread fraud and collusion amongst builders in the reconstruction program in Aceh province following the Tsunami of 2004, with an estimate that 30-40% of aid funds had been subject to corrupt practices (Sheridan, 2006). The establishment of the Anti-Corruption Commission (KPK) in 2004, and subsequent prosecutions of officials on charges of taking bribes perhaps represents the beginning of a process of tackling corruption more seriously, which prompted the IMF to conclude “the government has made initial progress in combating corruption” (IMF, 2005b, pp. 15, 19-20; 2006b, pp. 13, 23).

In Cambodia too, corruption continues to pervade the procurement process. In 2002, the IMF representative in Phnom

Penh, Robert Hagemann, stated that “anticorruption agencies need to focus on public procurement, which gives rise to some of the most egregious abuses” and on the basis of evidence from Transparency International and Gallup International, “public works and construction are widely perceived to be the sectors most riddled by corruption, followed by the defense sector” (IMF, 2002b). As an example, recently, the Korean government withdrew its commitment to fund a road transport project since it perceived that contractors had been selected on a fraudulent basis (WB, 2004b). As in Indonesia, corruption has been all too apparent in donor-funded projects. In the fiduciary review of Cambodia in 2005, referred to above, the World Bank uncovered plenty of evidence of collusion, fraud and conflicts of interest, and partisan bid evaluations that suggested bribery, cronyism and nepotism (WB, 2005b).

TRANSPARENCY

Ensuring competition and equal access, probity, and accountability depends, of course, upon making the public procurement process as transparent as possible, requiring the public disclosure of all relevant information. Several types of disclosure are necessary in relation to submissions, procedures, criteria, results and procurement personnel.

For the purpose of transparency, all intended procurements should be widely published, and prospective tenderers should be informed of the procedures to follow in submitting a bid, the schedule for submission, the specification requirements of the procurement, the information that must be supplied in submitting a bid, and the type of procurement to be undertaken (open, open with pre-tender qualification, selective or limited). It is also necessary to specify to the prospective tenderer the criteria by which submissions are evaluated. These may include the weightages to be given to price and quality in a tender proposal, preferential margins to be applied, or any other conditions that will favor or exclude certain types of tenderer. If tendering is not possible and single sourcing and direct negotiation adopted, this should also be publicly known.

In relation to tender submissions, the names of tenderers and the prices offered should be made available, and the process of tender evaluation and selection should be disclosed. Once selection has been made, the results of the contract award should be published

with the names of the successful business, the price it offered and details of the contract (Sherman, 1999). Those who were unsuccessful in a tender should be provided with explanations of the reasons for their failure. It is also necessary that registration procedures and criteria be disseminated, as well as the procedures involved in a pre-tender qualification test and the requirements to meet the criteria for the qualification (WTO, 2001).

For purposes of internal transparency, officials involved in the procurement process, especially evaluation and selection, should be required to declare conflicts or potential conflicts of interest to the GPE, and the central procurement authority. A key obligation is to declare any familial, ownership, financial, and employment link to businesses submitting a tender.

A number of outlets are available for meeting these disclosure requirements. The overall framework stipulating disclosures requirements applicable to procurements in general, should be clearly spelt out in the procurement legislation and implementing regulations. Essential information in relation to specific procurements should be made available through an official channel such as a procurement bulletin, government gazette, and an official web site if it exists, as well as in the newspapers and trade press. More detailed information may be given in the invitation to tender and in the bidding documents. The results of a tender should be likewise disclosed in the outlets mentioned above and unsuccessful bidders should be personally informed in writing of the reason why their bids failed. Moreover, to allow proper accountability in the procurement process, the central procurement authority, government auditor, and relevant watchdog committees within the legislature, should be given details of procurements undertaken, together with all necessary documentation.

Progress in making procurement more transparent in Southeast Asia has been limited and variable. The new procurement laws and implementing rules and regulations introduced in several countries have included provisions expressing commitment to disclosure and transparency. However, variation exists on the scope and details of disclosure requirements and on the extent to which the transparency provisions are implemented.

In Singapore, a transparent procurement system has existed for many years, which has been one of the factors contributing to the low

level of corruption there. Most aspects of transparency, as mentioned above, have been observed. Over the last eight years, it has developed one of the most comprehensive e-procurement systems known as GeBiz. Through this portal all intended procurements are advertised, with general specification requirements, and the necessary procedural, evaluative and other information which prospective tenderers and applicants for registration require. It also discloses bids received with prices offered, and the results of the selection process (Jones, 2002). Details of registration and pre-tender qualification are found on the GeBiz web-site, and for public works, on the web-site of the Building and Construction Authority. Tenderers submit their bids through the GeBiz portal too.

Vietnam appears to have taken modest strides in making the procurement system more transparent by clarifying and harmonizing its procurement rules, referred to above, and by a newly established e bulletin for procurement called *Vietnam Tenders*, published daily. This is “Vietnam’s single source of all tenders on offer by governmental agencies, commercial organizations or aid agencies” (Intellasia, 2006). The Philippines has made similar progress. Procedures and criteria for bidding and registration are specified in its recent procurement reform. Its public tenders are published in a variety of newspapers and other media, which include a wide range of information covering the type of procurement to be undertaken, registration, and pre-tender qualification procedures and criteria, and details of tender procedures and specification requirements. An e procurement system in the Philippines is being currently developed, and is expected to be fully operational at the end of 2006, with a facility for electronic advertising, bidding, payment, and registration. Already a wide range of information is available on its portal including bidding documents, rules and procedures to be followed, relevant laws and regulations, and procurement manuals for GPE’s (IMF, 2002a; 2004a; 2005c; APEC, 2006; PGPPB, 2006). Nevertheless, the continuing high levels of corruption in both countries suggest that in practice certain procurements or aspects of the procurement process remain covert.

The procurement decree in Laos and its implementing rules and regulations clearly stipulate the obligation to ensure transparent procurement (WB, 2004c). However, no progress has been made in publishing a procurement bulletin or gazette in which intended procurements could be advertised and specify bidding procedures.

This was strongly recommended by the World Bank as a basic requirement (WB, 2002a; 2004c). The Cambodian government has fared even worse. It still lacks a clear and unified procurement framework, as mentioned above. This makes it difficult for suppliers and contractors to know what procedures to follow and what criteria to adhere to for the purposes of both registration (which is required) and bidding. Also no authoritative outlet exists for advertising procurement opportunities and procedures. This has allowed many contracts to be awarded through direct negotiation, as noted earlier. Two World Bank reports on Cambodia in 2004 (the procurement assessment report and a report on investment and reform) repeatedly referred to the lack of transparency in public procurement (WB, 2004a; 2004b). This also applied to procurements in projects the World Bank itself sponsored (WB, 2005b). In Indonesia, transparency is similarly absent, as reflected in the absence of wide publicity for tenders and the number of intended procurements which are not advertised. There also is a lack of clarity and consistency in the procedures to follow in drafting and submitting tender proposals, and failure to disclose the results of, let alone justifying the selection (WB, 2003).

The comments made by delegates from three of the four Southeast Asian states (Malaysia, Philippines, Thailand, and Singapore) involved in the WTO negotiations to reach a plurilateral agreement on procurement transparency are instructive. The delegates, with the exception of their Singapore counterpart, expressed misgivings about the disclosure of bid evaluation criteria, and the obligation to inform companies whose bids had failed, of the reasons why. This revealed a wider unease at making public procurement totally transparent, perhaps out of fear of compromising national interests by expanding market access for foreign suppliers, undermining the discretion of GPE's through the increased chances of bid challenges, or disadvantaging groups and individuals who stood to gain from existing non-transparent procedures (WTO, 2001; 2002; 2003). Reflecting this concern, the Malaysian delegate stated in 2002 that "any eventual agreement shall be based on national practices" (WTO, 2002).

DECENTRALIZATION

In several countries of Southeast Asia, many functions previously undertaken by central government have been transferred to newly created or existing commune, district and regional/provincial bodies. In countries where democratic reforms have been implemented these are elected by the local population. Part of their responsibility is to raise a portion of their own revenue through local taxes, although reliance on central government grants still continues. The decentralization reforms have been recommended and guided by international organizations such as the World Bank, Asian Development Bank, United Nations Development Programme and the IMF, who have argued that local institutions are better able than central administration, to identify and target the most pressing needs within their locality.

The powers of local authorities vary from one country to another but usually include the procurement of certain types of goods and services necessary for providing the services they are responsible for. Local government institutions usually have responsibility for procurement of small scale and/or locality-specific public works projects, such as water supply, irrigation and drainage projects, civic amenities, and certain public buildings. Of course, large scale projects that span different sub-national jurisdictions such as roads, railways, electrical supply, telecommunications and reservoirs, continue to be the responsibility of central agencies responsible for public works.

In Indonesia, a decentralized system of public administration was introduced in 2001 with the creation of representative regional assemblies. The decentralization included the freedom of regional authorities to apportion central government block grants (comprising up to 40% of central government revenues), the ability to raise local taxes, and powers to draft procurement rules and undertake local purchasing for small and medium value contracts (Jemal-ud-din, 2003; Fanany, 2003; Ray & Goodpaster, 2003). In its procurement assessment of Indonesia in 2001 on the eve of decentralization, the World Bank expressed the hope that "if managed well, decentralization can achieve substantial efficiency gains because decisions will be taken at a level of government that has better information and is more accountable to the local public". But it warned in the same breadth that decentralization "runs the risk of

exacerbating existing weaknesses in the procurement system as well” (WB, 2001, p. 27). Amongst these weaknesses were the absence of procurement management skills amongst local officials, and the paucity of professional consultants and contractors capable of effective delivery within localities outside the main urban centers. A further concern of the World Bank was the likely curtailment of competition, stemming from the expectation, going on past experience that contracts would be mainly awarded to local SMEs. Related to this were the concerns that local procurement officials and locally elected representatives would fall prey to the familiar temptations to take bribes, embezzle procurement funds and show favors to cronies, exacerbated by the absence of proper audit mechanisms and complaints procedures (WB. 2001).

Cambodia is the most recent example of decentralization. In 2002, elected local government structures were created, known as commune councils, following the first local elections. Each commune council is given a block grant from the Commune Fund managed by the central government. This grant can be spent by the commune council on local poverty alleviation and employment creation schemes, for which they have limited powers to procure goods and services and award contracts for local public works. The organization of decentralized administration was further improved in 2004 (UNDP, 2005).¹⁰ But as with Indonesia, the benefits of decentralization have been undermined by the lack of well-trained procurement personnel, limited local availability of suitable suppliers and contractors, and widespread corruption.

Even in communist countries of Southeast Asia, viz. Laos and Vietnam, where democratic reforms have not been implemented and a system of authoritarian control through the communist party has been retained, power has been decentralized to district and provincial authorities, which still though remain under the control of the ruling party. In Laos where bureaucratic power was decentralized in 1998, the World Bank was far from sanguine in its procurement assessment report of 2002. It noted that “under the decentralization policy, district agencies will, to a significant extent, be responsible for procurement” but warning that this “will severely test the capacities of ... district governments to perform as needed” (WB, 2002a, pp. 6, 15). Of particular concern was the absence of trained procurement staff in the decentralized authorities, who lacked adequate qualifications, experience and familiarity with procurement

procedures resulting in the “misapplication of procurement procedures and delays” (WB, 2002a, p. 21). A further observation in the report was that decentralization “has spawned many SOE’s ... in the provinces keen to win government contracts” so squeezing out privately owned enterprises (WB, 2002a, p. 20).

Vietnam has followed a similar path of decentralization within the framework of a communist state. The initial step was taken under 1996 State budget law which delegated to provincial authorities (Peoples Councils and Peoples Committees) greater control over policy planning, implementation and spending. This was significantly extended by the state budget law of 2002 to include the power of undertaking procurements and awarding and supervising contracts for local public works and infrastructure development (SRV and WB, 2005). However, the lack of procurement know-how, the absence of supervision of contract implementation, and the shortage of staff equipped to provide training in procurement at the provincial level has become all too evident. This reflects the need for institutional capacity building to match the greater discretion now afforded to the provincial authorities (SRV and WB, 2005).

CONCLUSION

The reform of public procurement in most of the countries of Southeast Asia may still be considered as work-in-progress. Certain improvements have been made but much remains to be done to achieve competitive, transparent, uncorrupt and competently managed procurement systems.

Progress has been made in most of the countries in the region in establishing appropriate legal and administrative frameworks of public procurement, which provide greater harmonization and coherence, and provide clarity in procedures and roles, as well as, in some cases, stipulating key requirements to ensure value for money in the goods, services and public works procured. Linked to this is the much needed creation of a central procurement authority in several countries, responsible for drafting procurement policy and rules, overseeing procurement activities and training procurement staff. This has been supplemented by the establishment of anti-corruption agencies and the strengthening of the role of the government audit office, with the responsibility to fulfill a watchdog role over

government agencies, including their procurement activities. These are positive developments.

However, in some countries, the more coherent and the clearer legal and administrative procurement frameworks that have been introduced, still contain gaps and loopholes, allowing unacceptable practices to be followed. In particular, in certain cases, new procurement laws and their implementing regulations continue to stipulate protectionist practices and restricted access, preventing an openly competitive public procurement market. A further shortcoming is the absence of provisions to ensure sufficient transparency in the various aspects of the procurement process. Likewise, the central procurement authorities and GPE's are often hampered by the lack of trained procurement personnel, not least at the provincial and local levels. Thus, a key challenge facing the governments of Southeast Asia is to rectify the continuing shortcomings in the recent reforms of the legal, administrative and institutional frameworks.

A further challenge is to ensure that the procedures laid down in the procurement reforms are translated into actual practices and are neither ignored nor side-stepped, and that the institutions whose task is to monitor and enforce compliance make full use of their powers. All too often, the reforms on paper, even when accompanied by the necessary institutional mechanisms, do not sufficiently alter ingrained behavior in the day to day transactions of purchasing goods, services and works. For procurement practices to change will require a change of mind-set amongst leaders and officials alike in which procurement rules are taken seriously at all levels and violations of these rules are not tolerated. In all probability, changes in organizational culture and mind-set in the public bureaucracy will only be achieved gradually, especially in countries in which practices at variance with acceptable standards of procurement have become ingrained and have been taken for granted over a long period.

How readily such changes occur in the countries of Southeast Asia will also depend upon the pressures exerted upon government and officials by so-called civil society, arising in tandem with democratic reform. The key features of civil society as far as procurement is concerned, are a free media, independent professional associations, private watchdog bodies that monitor government purchasing and contracts. Furthermore, elected bodies, and other public institutions are needed to promote accountability.

However, the impact of civil society in the immediate term should not be overstated. Those countries where democratic change has been introduced, and where a civil society has emerged, such as Thailand, the Philippines, Indonesia and Cambodia, fare no better with respect to procurement standards than the other states in the region governed by more authoritarian means.

A certain amount of progress in improving procurement has been made in those countries reliant on donor aid from international organizations such as the World Bank and the Asian Development Bank. Such organizations have become much more vigilant in ensuring that proper methods of procurement are followed by government agencies in projects they themselves sponsor or are involved in on a partnership basis. For example, the World Bank stipulates that in the projects its sponsors, procurement must follow its own code of procurement emphasizing open competition, transparency, contractor performance evaluation and freedom from corruption. Even so fiduciary risks still exist since officials responsible for project implementation may still seek and find means to side step the procurement rules laid down by the sponsoring organization.

NOTES

1. "GP" in the in text citation refers to the Government of the Philippines; "WB" in the in text citations refers to the World Bank; "ADB" in the in text citations and references refers to the World Bank.
2. "IMF" in the in text citations and references refers to the International Monetary Fund.
3. "SRV" in the in text citation refers to the Socialist Republic of Vietnam.
4. "WTO" in the in text citations and references refers to the World Trade Organization.
5. "PGPPB" in the in text citations refers to the Philippines Government Procurement Policy Board.
6. "APEC" in the text citations and references refers to the Asia-Pacific Economic Cooperation.

7. "IDA" in the in text citation and references refers to the International Development Association.
8. "DFATA" in the in text citations refers to Department of Foreign Affairs and Trade, Australia.
9. "USSD" in the in text citations refers to US State Department.
10. "UNDP" in the in text citation and references refers to the United Nations Development Programme

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