

南アジア地域公共調達制度・能力 に関する情報収集・確認調査 最終報告書

平成25年2月
(2013年)

独立行政法人国際協力機構
ザ・クラウンエイジェンツ・フォー・オーバーシー・ガバメンツ・
アンド・アドミニストレーションズ・リミテッド

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1 調査概要

(1) 調査の背景と目的

資金協力をはじめとするわが国 ODA の迅速かつ適正な実施のためには、被援助国政府実施機関が公共調達の実施・管理に必要とされる独自の制度、組織、詳細な運用規則及び規定、能力等（以下、調達能力）を備えていることが前提となっており、同実施機関の主導により各種調達手続きが円滑に行われることが求められる。近年、南アジア地域における協力の拡充により、これまで国際協力機構（以下「JICA」）の協力実績のない新たな実施機関への援助が拡大しているが、実施機関の調達能力は、被援助各国政府の調達制度の成熟度、及び各実施機関の経験によって異なっているのが実状である。

上記の理由から、JICA は個々の機関の調達能力に即した支援を行うことが必要とされている。

本調査の目的は以下のとおりである。

- 1) 南アジア地域（バングラデシュ国、ブータン国、ネパール国、パキスタン国、スリランカ国）の被援助国における公共調達制度・手続きに関する基礎情報収集及び、当該国の ODA プロジェクトの実施機関（将来的に実施機関となる可能性の高い機関を含む）の調達能力に関する評価を実施し、公共調達の課題を抽出し、解決策の提案並びにプロジェクト実施機関中における JICA による適切な調達支援のあり方を検討する上での参考情報を提供する。
- 2) 収集した情報を基に実施機関の調達能力強化・改善のための研修計画を立案し・実施機関に対して試行し、その結果を踏まえ、調達能力改善の課題の現実可能性と優先順位付けに資する情報、並びに必要な且つ実践的な支援内容・研修内容に係るニーズを明確にする。

(2) 調査の狙い

クラウンエイジェンツ（以下「CA」）は、以下を目的としたアセスメントツールを作成する。

- ① 各国及びいかなる計画又はその変更にも適用可能な、公共調達における規制の枠組み・制度の評価。
- ② 対象実施機関の調達及びプロジェクトマネジメント能力の強み・弱点の把握。
- ③ 各国対象実施機関向け研修用素材を含む、能力強化計画の策定。

アセスメントツールは、各アセスメントが一定の形式で行われることを担保し、また将来的に援助計画が策定される際に JICA が必要とする基礎データ及び情報を備えていることを担保するものである。なお各アセスメントの結果は、対象国の調査対象各実施機関に対する能力強化計画（Capacity Development Plan）を作成する上で活用され、また、各国で実施されるパイロット調達研修用の支援計画を策定する上で活用された。

契約は 2 フェーズにて履行される。第 1 フェーズにおいては、アセスメントツールが作成され、一カ国または二カ国を対象に先行的に調査が実施される。第 1 フェーズの実施により、アセスメントツールの改善点が明らかになり、調査工程がレビューされるものである。第 1 フェーズの終了後、CA は貴機構にインテリムレポートを提出し、第 2 フェーズの開始に先立ち改善が必要と思われる部分について改善が行われた。

現在の ODA プロジェクトにおいて、JICA は多様な実施機関に対して支援を行っているが、中には JICA プロジェクト実施経験を持たない、あるいは JICA の調達ガイドラインの下でのプロジェクト実施経験のない機関がある。従って、援助が想定されている全ての機関が JICA のプロジェクトを効率的に、か

つ遅延を最小限とした上でプロジェクトを実施できるよう、CA は以下の調査を実施した。

- ① 各国の公共調達制度に関する情報収集（他ドナーからのデータ収集を含む）
- ② 各対象実施機関の調達能力評価
- ③ 各対象実施機関における調達制度の現状
- ④ インターナショナルコンサルタントのための大規模且つ複雑な工事契約に必要とされる契約管理システム・能力
- ⑤ 対象実施機関のプロジェクトマネジメントシステム及び経験
- ⑥ 対象実施機関における JICA 調達ガイドラインの理解度、知識

本調査の主たる成果は以下のとおりである。

- A) 各国の公共調達制度及び手続きのレビュー
- B) 対象実施機関におけるアセスメント結果報告書
- C) 各対象実施機関との研修用教材を含めた能力強化計画
- D) 各国一対象実施機関におけるパイロット調達研修の実施

本調査の最終目的は、JICA の円借款事業等において円滑な実施と早期完了を可能とするための、対象実施機関の効率性の向上にある。

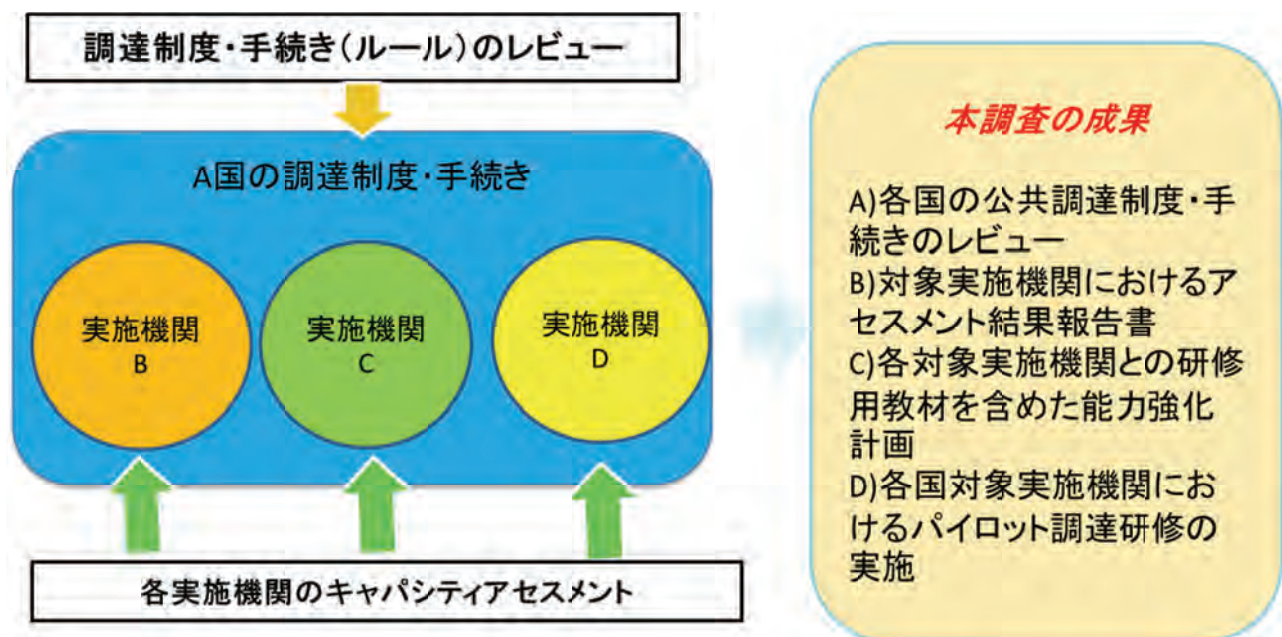


図 1-1 調査全体のイメージ

(3) 各国での調査手順

CA は、各対象国の現地調査の際には、調達監督機関やドナー機関等へ訪問して情報収集を行う共に、予め JICA より指定された調達能力評価の対象となる実施機関を訪問し、調達能力評価を行う。そして、その現地調査での結果をもとに能力強化計画を策定し、JICA 及び実施機関とのその内容について協議を行った。

なお、本業務の実施に当たっては、JICA 在外事務所と対象実施機関及びクラウンエイジェンツによる十分な連絡・調整が必要であった。

下表に各対象機関における調査内容及び調査日数（目処）を示す。しかしながら、対象機関毎の違い及び複数の対象機関が設定されている国があることから、調査内容及び調査日数はその国々によって異なっている。

表 1-1 標準的な調査内容及び日数

| 業務内容 | 想定業務日数 |
|---|-----------------|
| 事前の情報収集 | 国内作業 |
| 調達能力評価（現地調査） | 1 実施機関あたり約 7 日間 |
| 能力強化計画策定 | 国内作業 |
| 能力強化計画に関する JICA 事務所及び実施機関との協議 （現地調査） | 1 実施機関あたり約 3 日間 |
| 調達研修 ¹ | 1 実施機関あたり約 5 日間 |

（4）成果品

- ① インセプションレポート（提出期限：2012 年 3 月末）
- ② インテリムレポート（提出期限：2012 年 12 月末）
- ③ ファイナルレポート（提出期限：2013 年 2 月 28 日）

¹調達研修を実施の対象実施機関は、その効果や必要性を踏まえて JICA と CA との協議により決定された。

2 調査結果概要

(1) 調査日程

最終的な調査日程は以下の通り。

表 2-1 調査日程

| | | 2012年 5月 | 6月 | 7月 | 8月 | 9月 | 10月 | 11月 | 12月 | 2013年 1月 |
|---------|-------------|-------------|----|----|----|----|-----|-----|-----|-------------|
| バングラデシュ | 第1回 現地調査 | | | ■ | | | | | | |
| | 第2回 現地調査 | | | | | ■ | | | | |
| | 第3回 現地調査 | | | | | | | | | ■ |
| ブータン | 第1回 現地調査 | | | | | ■ | | | | |
| | 第2回 現地調査 | | | | | | | ■ | | |
| | 第3回 現地調査 | | | | | | | | | ■ |
| ネパール | 第1回 現地調査 | ■ | | | | | | | | |
| | 第2回 現地調査 | | | | ■ | | | | | |
| | 第3回 現地調査 | | | | | ■ | | | | |
| | 第4回 現地調査 | | | | | | | ■ | | |
| パキスタン | 第1回 現地調査 | | | | | ■ | | | | |
| | 第2回 現地調査 | | | | | | ■ | | | |
| | 第3回 現地調査 | | | | | | | ■ | | |
| | 第4回 現地調査 | | | | | | | | | ■ |
| スリランカ | 第1回 現地調査 | | ■ | | | | | | | |
| | 第2回 現地調査 | | | | | | | ■ | | |
| | 第3回 現地調査 | | | | | | | | | ■ |

(2) 業務従事者

業務従事者は以下の通り。

表 2-2 業務従事者リスト

| | 氏名 | 担当分野/業務 | 担当国 |
|---|---------------------|--|-----|
| 1 | Edward Noel Setters | Project Manager/ Procurement Expert (International) | - |
| 2 | 谷田部 雅史 | Deputy Project Manager/ Procurement Expert(International) | - |
| 3 | Elinor Caborn | Procurement System ・ Capacity | - |

| | | Assessment/ Capacity Development | |
|----|---------------------|--|-----------------|
| 4 | Christine Jackson | Procurement System · Capacity Assessment/ Capacity Development /Training Planner | - |
| 5 | Robert Graham | Procurement Expert (International) | Bangladesh |
| 6 | Steve Guppy | Procurement Expert (International) | Nepal |
| 7 | Gordon Bateman | Procurement Expert (International) | Nepal, Pakistan |
| 8 | Carlos Chamorro | Procurement Expert (International) | Sri Lanka |
| 9 | Doug Fraser | Procurement Expert (International) | Bhutan |
| 10 | 辻本 令 | Procurement Expert (International) | Bhutan |
| 11 | Christopher Folwell | Procurement Expert (International) | Pakistan |
| 12 | Deryck C. Uprichard | Procurement Expert (International) | Bangladesh |
| 13 | Saeedur Rahman | Procurement Expert (Local) | Bangladesh |
| 14 | Birendra Deoja | Procurement Expert (Local) | Nepal |
| 15 | Gurme Tenpa | Procurement Expert (Local) | Bhutan |
| 16 | Abdullah Mahesar | Procurement Expert (Local) | Pakistan |
| 17 | Velupillai Mohan | Procurement Expert (Local) | Sri Lanka |

(3) 調達能力アセスメント対象実施機関

A) バングラデシュ国

- ① Roads and Highways Department (RHD)
- ② Chittagong Development Authority (CDA)
- ③ Chittagong Water Supply & Sewerage Authority (CWASA)

B) ブータン国

- ① Bhutan Power Corporation Limited (BPC)
- ② Ministry of Works and Human Settlement (MWHS)
- ③ Ministry of Agriculture and Forest (MOAF)

C) ネパール国

- ① Public Procurement Monitoring Office (PPMO)
- ② Civil Aviation Authority of Nepal (CAAN)
- ③ Nepal Electricity Authority (NEA)
- ④ Melamchi Water Supply Development Board (MWSDB)

D) パキスタン国

- ① National Highway Authority (NHA)
- ② National Transmission & Dispatch Company (NTDC)
- ③ Karachi Urban Transport Corporation (KUTC)

E) スリランカ国

- ① Department of National Planning (DNP)
- ② Ministry of Health (MOH)
- ③ National Water Supply and Drainage Board (NWSDB)

(4) 各国の公共調達制度・手続き調査結果の概要

A) バングラデシュ国

バングラデシュ国では、1971年の独立以降公共調達制度や手続きはドナー機関から大きな影響を受けており、それは公共事業の財源の殆どをドナー機関からの支援に依存していたためである（現在も公共部門が実施する調達の2/3以上はドナー資金によるものである）。

これらドナー機関の支援を受け、2003年に Public Procurement Regulations (PRR)、Procedure for Implementation of the Public Procurement Regulation、Public Procurement Approval Process と言った規則が整備され、2006年には Public Procurement Act (PPA) が制定された。それと前後して、計画省の Implementation Monitoring and Evaluation Division(IMED)には Central Procurement Technical Unit (CPTU) が2000年に設置され、世銀等のドナー機関が CPTU のキャパシティビルディングを支援している。CPTU は、中央政府の公共調達監督機関として PPA・PPR の改正や標準入札書類 (SBD) の整備等を行うと共に、多くの省庁が調達する物品の供給業者のデータベースを整備するなどして調達を行う各省庁をサポートしている。また、バングラデシュ国の公共調達制度の将来の方向性を見据えた活動も行っている。例えば、電子調達の導入のために e-Government Procurement(e-GP)ポータルサイトを2010年に立ち上げ、電子調達ガイドラインも作成した。この様に、CPTU はバングラデシュ国の公共調達制度の監督機関として各法規の改定や新たなイシューへの取り組みを行い、同国の公共調達制度の発展に注力しており、またドナー機関もその取り組みを主に CPTU の能力強化という形で支援している。

しかしながら、バングラデシュ国の公共調達には依然として多くの課題が残されており、今回の調査では各実施機関において、特に建設工事プロジェクトでは、契約後の工事実施段階において問題が少なからず発生していることが明らかになった。例えば、今回ヒアリングとアセスメントを行った RHD では、ADB の Road Network Improvement & Maintenance Project 2 において、外国系コントラクターとの契約を工事完了前に解消する等してプロジェクトスコープの大幅な削減を余儀なくされるケースがあった。その Project Management Unit (PMU) から話しによれば、このケースで発生した問題としては以下のものが挙げられた。

- ① 当該外国系コントラクターが経済合理性を無視した著しく低い価格で落札したものの、財務体質が脆弱で資金繰りが逼迫し、契約後2年間着工しなかった。その後、コントラクターは再三設計変更により契約金額増額を要求してきた。RHD 側での、承認手続きに長期間を要したため、その間工事進行は進行しなかった。
- ② また、RHD は道路用地収用予算不足（収用コスト上昇による）により、コントラクターへのサイトハンドオーバーが遅れ、コントラクターがアイドリングコストを請求してきた。
- ③ 着工後もバングラデシュ政府ポーシヨンの支払い遅延により、コントラクターが工事進行を拒否した。

これらの問題が発生した背景としては、経済成長による地価の高騰（土地収用の遅れ）と慢性的な財政難と言う様な公共調達以外の問題も存在しているが、特にバングラデシュ国の場合には外国企業の進出が活発であり、このケースのように外資系コントラクターとの契約関係のトラブルが多く発生しており、各実施機関において特に外資系コントラクターとの契約管理能力の向上が喫緊の課題であると言える。

また、政治家による行政ポストの支配が進み、実務に精通した行政職員が意思決定できるポストにいないということもこの様な問題に大きく影響している印象を受けた。結果的に政府の意思決定の遅れによる損失を拡大することに繋がってしまうという現状がある。

B) ブータン国

ブータン国では、世銀からの支援を受けて 2007 年に Procurement Rules and Regulations (PRR) が制定され、各政府機関や公社は PRR に基き調達を実施している。また、2009 年に財務省の Public Procurement Policy Division (PPPD) が設置され、PPPD 設置以降は PPPD により PRR の改訂や変更が行われている。但し、PPPD のマンパワーが限られており（職員は 5 名程度）、機能としては極めて限定的なものにとどまっている。例えば、2007 年の Public Finance Act に定められている PPPD の機能には、各省庁から毎年報告を受けて PRR の運用状況をモニターすることが含まれているが、マンパワーの制約によりその様な活動ができていない。PPPD へのヒアリングでは、当面は PPPD 職員の増員計画もないため、現在の機能を維持していくのみとしている。

調達は全て担当省庁が行い、PRR にて調達金額の多寡により入札手続きにおいて設置される委員会の構成や手順が定められている。各省庁ともその規定に忠実に従い、入札手続きを執り行っている。

ブータン国の調達プラクティスの大きな特徴として、MWHS の下部組織である Construction Development Board (CDB) による業者登録制度と E-tool と呼ばれる入札評価システムが挙げられる。

CDB の業者登録制度では、国内の公共工事の入札に参加する全ての業者の登録が義務付けられており、この業者登録を行わなければ公共工事の入札には参加できない。登録業者は、その規模と業種による登録資格が分かれており、各省庁は入札を行う都度、適当と思われるカテゴリーの登録業者に対して入札参加を認めることとしている。但し、現在のところ世銀や ADB と呼んだドナー機関によるプロジェクトについては、右登録制度を入札参加要件とすることを認めていないとのことである。

E-tool は、2011 年 5 月に導入された入札評価システムであり、入札を独自の 2 段階評価システムにより自動的に評価（技術・価格とも）を行うものである。このシステムの詳細は以下のウェブサイト²を参照いただきたいが、このシステムの導入により不正行為が発生するリスクが低くなるとともに、入札評価手続きの迅速性が劇的に早まった等のメリットを享受できているものの、入札評価手続きにおける柔軟性が損なわれることとなったため、E-tool に対する民間業者の評判は決して良くないようである。

（例えば、応札業者の保有する建設機材が既往の建設工事契約に使用されている場合には、その既往の建設工事契約が終了しなければ新たに入札に参加する際にその建設機材を使用することがシステム上認められず、工事受注に必要な建設機材を保有していないと看做されてしまうケースがある、との情報を MWHS への聞き取りの際に得た。）E-tool 導入から 1 年以上が経過しており、今後は入札手続きの透明性や利便性をより高めるため、更に改良していくことが重要であると考えられる。

² CDB ウェブサイト (<http://www.cdb.gov.bt/>)

C) ネパール国

本調査において先行的に調査を実施する国としてネパールが選定された。

ネパールでは、2007年に Public Procurement Act (PPA) と Public Procurement Regulation (PPR) が制定され、それ以前は公共調達に関する統一された法律は存在しなかった。また、同年 PPA に基づき公共調達監視機関である Public Procurement Monitoring Office (PPMO) が設置された。現地でのヒアリングのなかで、従来存在した法律と PPA・PPR との間に矛盾点が幾つかあるとのコメントが複数の政府職員よりあった。例えば、Private Investment in Infrastructure Build and Operate Act 2006(2063), Electricity Act 2049(1992), Nepal Airlines Corporation Act 2019 (1963), Civil Aviation Authority Act 2053(1996), Local Self Governance Act 2056(1999)と言った法律では、それぞれの該当機関の調達に関する記載があり、今日でも従来から存在する法律に基いて調達が実施されている。但し、PPA にはそれら従来の法律と PPA が矛盾する場合には PPA が優先されるとの記載がある。

ネパールの調達制度の特徴の一つとして、6百万ルピー以下の調達において問題が多発しているとの情報も得た。これは、PPA のなかで6百万ルピー以下の工事契約では入札参加者の資格要件を設けてはいけないという決まりがあること、また、その様な小規模工事の調達は主に地方政府 (District) が実施することが多く、これらの地方政府の調達キャパシティが相対的に低いことが原因のようである。また、PPA の条項で、応札札のデビエーションが15%を超えた場合にメジャーと看做すとの記載があり、この点は円借款の調達ガイドラインとは異なる点である。(円借款調達ガイドラインでは特にデビエーションのマイナー/メジャーを判断する基準は記載されていない。)

ネパールでは2007年に新しい法律が制定され、新しい機関が設置され、公共調達分野の能力強化が図られているが、これまでのところこれらの仕組みが十分に機能しているとは言えない。その理由としては以下の点があげられる。

- ・ ネパール政府の公共調達分野におけるコミットメントが十分ではなく、PPMO の組織能力強化が進んでいないため、PPA・PPR、SBD 等の普及への取り組みが不十分 (オーナーシップが不十分) である。
- ・ 各実施機関が、それぞれ確立された調達方法・手続き (入札図書等) に固執して、新制度を十分に受け入れない。(PPA・PPR と既存の国内法との不整合が多く、実施機関からの評判は芳しくない。)

D) パキスタン国

パキスタン国では、2002年に Public Procurement Regulatory Ordinance に基いて Public Procurement Regulation Authority (PPRA) が設置され、それ以降2004年に Public Procurement Rules、2008年に Public Procurement Regulations、PPRA Guidelines (2009)、Consultant Services Regulations (2010)と言った指針や規則の制定が行われている。上記の他にも法的な位置づけが曖昧な FAQ や Manual が PPRA より出されているおり、従来から存在する法律やルールと新たなルールとの整合性の問題が指摘されている。

PPRA の設置以前は、Pakistan Engineering Council(PEC)や Planning Commission が公共調達に関するガイドラインや方針等を作成していた。特に PEC は歴史もある組織であり、エンジニアからの支持もあるため、未だに強い影響力を持っていると言われている。

例えば、パキスタン国内の全てのエンジニアリング関連業務を行う企業・団体は PEC に登録する必要があり（外資系コントラクターを含む）、更に PPRA 設置前には PEC が標準入札書類（SBD）の作成・配布を行っていたが、PPRA 設立以降は PEC が SBD の作成を担当し、PPRA がそれを配布するという所掌となっており、この様な事実からも公共調達における PEC の影響力が垣間見られる。なお、PPRA は公共調達監督機関でありながら、独力では SBD の作成ノウハウや経験を有していない。

パキスタンの公共調達のプラクティスとしては、上記のとおり法律や規制がそれぞれの所管官庁や部署により異なる目的で制定されており、民間企業にとっては複雑怪奇なものとなっている。また、PEC の意見が公共調達において大きな影響力を持つため、PEC との関連性が弱い企業にとっては、そのことが建設工事契約を受注する上で大きなリスクになる可能性がある。

E) スリランカ国

本調査において先行的に調査を実施する国としてスリランカ国が選定された。

スリランカ国では、2006 年に調達ガイドラインが制定されたが、正式な調達に関連する法律がないこと（調達ガイドラインのなかには「調達は国内法準拠で行うべき」との記載がある）、2003 年の世銀のレポートに基づき 2004 年に設置された National Procurement Agency(NPA)が 2008 年の政権交代のために解体された影響により、公共調達に関する国内制度に混乱が生じている。

NPA 解体後は、財務省（the Ministry of Public Finance and Planning）の Department of Public Finance (DOPF) が NPA の業務を引き継いでいるものの、DOPF の機能や体制が十分とは言い難く、2006 年の制定以降は調達ガイドラインの見直しも行われていない。

スリランカ国の公共調達プラクティスの現状としては、建設工事プロジェクトにおいてコントラクターと施主との紛争が発生していたり、調達プロセスで恒常的に遅延が発生するなど、多くの問題が確認されている。にもかかわらず、スリランカ政府によって適切な対策が講じられておらず、その原因として DOPF の機能が限定的であること、また、公共調達の改善・改革に向けたスリランカ政府のコミットメントも不十分であることが挙げられる。現在の状況を打開するには、ドナー機関からの援助を受けつつ、スリランカ政府による早急な対策が望まれる。

スリランカ国における公共調達手続きにおける遅延の主な原因としては、入札手続きにおいて設置される入札委員会（Procurement Committee (PC)）、技術評価委員会（Technical Evaluation Committee (TEC)）、コンサルタント調達委員会（Consultant Procurement Committee(CPC)）による意思決定に時間を要するケースが多く、特に大規模な調達では Cabinet Appointed Procurement Committee(CAPC)や Cabinet Appointed Consultant Procurement Committee(CACPC)が設置されるが、この委員会のメンバーには担当省庁外からも委員が指名されることとなるため、その手続きや委員会召集の際のスケジュール調整等に多くの時間を要することがある。あるケースでは CAPC のスケジュール調整で 1 ヶ月以上を費やしたこともあるそうであるが、この委員会の設置プロセスにおけるリスクを整理すると以下ようになる。

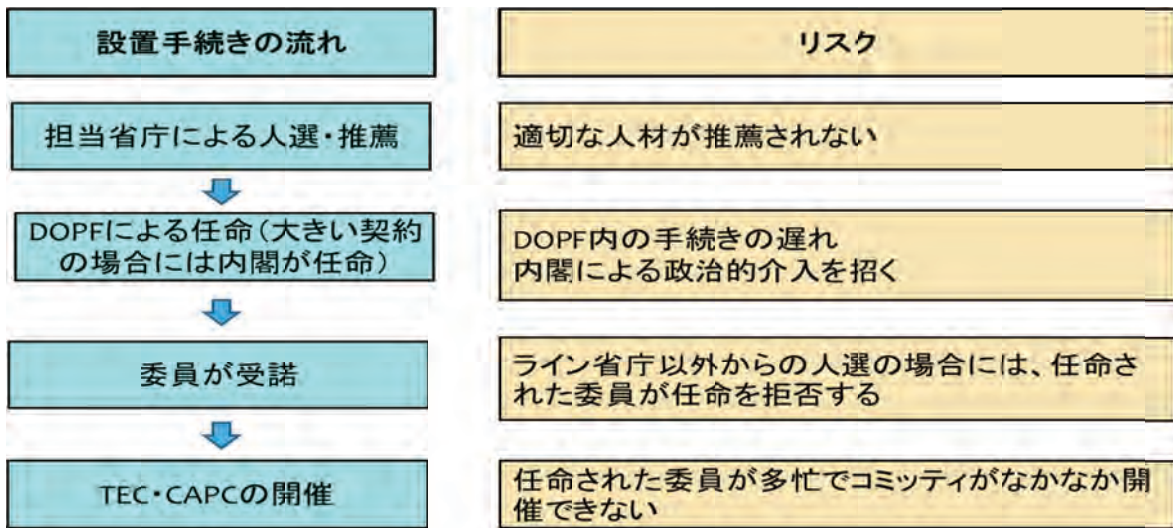


図 2-1 手続きの流れとリスク

(5) 各実施機関の調達能力アセスメントの結果

添付資料 1：実施機関の調達能力アセスメント・パイロット研修一覧表を参照。

3 まとめ

(1) 南アジア地域における公共調達課題と提言

本調査では、バングラデシュ国、ブータン国、ネパール国、パキスタン国、スリランカ国の5カ国の公共調達制度やプラクティスを確認すると共に、各実施機関における調達手続きの実施状況の評価と必要と思われる能力強化策を提案・実施してきた。これらの活動を通して、各々の国における公共調達分野の課題が確認されたが、その課題は、各国の法制度や商習慣等に関連したその国特有のものと、当該地域における共通の特徴・課題とに分けることができる。

南アジア地域に共通する課題について、それに対する日本の協力の方向性を考察し、以下の通り提言を行いたい。なお、各国特有の特徴や課題については添付資料の「公共調達制度レビュー報告書」を参照。

① 公共調達制度の普及・定着

世銀やDACが中心として展開している Use of Country System³という取り組みの影響により、南アジア地域においても2000年代前半からドナー機関主導による被援助国の公共調達制度の整備が進められた。各国の公共調達制度整備の取り組みに対して、世銀やADBは公共調達関連法令の整備や監督機関の能力強化と言った技術支援(TA)を積極的に行ったことにより、各国の公共調達制度整備が急速に進んだ。他方で、新たな法令やルール等が実際に調達手続きを担当する実施機関に十分に浸透していないケースがあり、今後は公共調達制度の更なる普及・強化の取り組みが必要である。

この公共調達制度の普及・強化については、被援助国のガバナンス強化に直結するものであり、JICAは世銀やADBと言ったマルチドナー機関と連携・協調しつつ、積極的に支援して行くべきと考える。他方、当該分野における日本国内のリソース確保が難しいこともあり、協力の方向性やアプローチについては今後継続的に検討をしていくべきであろう。

② 意思決定の適正化・迅速化

各国の入札手続きにおいては、通常入札委員会、技術評価委員会等の合議制による意思決定を行っているが、必ずしも適切な人選が行われなわれず有効に機能しない場合がある。また、委員の人選手続き等で遅延が常態化しているケースも確認された。南アジア地域の文化や習慣から合議制による意思決定が望ましいとしても、意思決定に関わる人・組織が増えることにより意思決定手続きの遅延や混乱が生じやすいのも事実である。従って、当該分野の専門性や第三者によるチェック機能を確保しつつ、ライン省庁や実施機関への積極的な権限委譲、手続きの簡素化により、意思決定の迅速性を高めることも重要である。

特に、この課題は円借款プロジェクトの迅速な実施への影響が大きいことから、JICAは先方政府へ積極的に働きかけるべきであろう。

③ 実施機関の契約管理能力

³Use of Country System の取り組みについては、下記のウェブサイト参照。

<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,contentMDK:20266649~menuPK:538163~pagePK:41367~piPK:51533~theSitePK:40941,00.html>

南アジア地域はここ数年急速な経済成長を遂げており、ビジネスチャンスの拡大は外資系コントラクターの積極的な参入を招いている。特に、南アジア地域では東アジアや東南アジア国籍のコントラクターが多く参入してきている。この事自体は、南アジア地域の経済発展に望ましいことであると考えるが、これらの外資系コントラクターとの契約後の紛争により、ドナープロジェクトに遅延が発生しているケースが散見される。この背景としては、被援助国の脆弱な財政基盤や外資系コントラクターとの商習慣の違い等の要因が考えられるが、最も根源的な原因として、コントラクター及び技術コンサルタントと実施機関とのコミュニケーション不足があるのではないかと思われる。実施機関が技術コンサルタント・コントラクターと十分にコミュニケーションを取りつつ、建設工事や物品調達で発生する様々な問題を早期に解決する努力を継続して行くことにより、プロジェクトの深刻な遅延を防ぐことができると考える。

JICAは、特に円借款プロジェクトの実施機関に対して当該分野の能力強化支援を積極的に行うべきと考える。特に円借款等の大型プロジェクトを担当する職員については、調達研修等による継続的な能力強化が必要である。

添付資料

添付資料 1 : 実施機関の調達能力アセスメント・パイロット研修一覧表

| 国名 | 実施機関 | 現地調査日程 (アセスメント) | 調査結果概要 | 能力強化プラン(CDP)の提案内容 | 現地調査日程 (CDPの合意) | パイロットトレーニング 実施要否 (要:○、否:×) | パイロットトレーニング概要 | PT実施日程 | トレーナー |
|---------|--|---------------------------|--|--|--------------------|----------------------------------|--|--|--|
| ネパール | Public Procurement Monitoring Office (PPMO) | 07/05/2012～ 12/05/2012 | 2007年のPPMO設立以降、WB・ADB等の支援を受けて調達人材育成や電子調達システムの導入準備を行っているが、PPMO職員の調達やモニタリングでの業務経験が不足しており、PPMO職員のキャパビリティ不足。また、PPMOの活動に関して政府機関や国民の認知度が低く、啓発活動を強化する必要がある。 | 日常業務の中心である。調達レビュー等の調達モニタリング活動に関する能力強化を提案。 | 8月20日 | ○ | 2つの異なるレベルの研修を行う。 ・基礎レベル:主に調達業務経験が少ない職員を対象とした調達実務の研修(5日間) ・上級レベル:調達業務経験を有する職員を対象とした調達モニタリング・監査手法に関する研修(2週間程度) | 基礎レベル:11月18日～23日(実施中) 上級レベル:12月7日～20日(予定) | 基礎レベル: C.ジャクソン 上級レベル: C.ジャクソン、 G.ベイトマン |
| | Civil Aviation Authority of Nepal (CAAN) | 07/05/2012～ 12/05/2012 | ネ国の国際空港の運営機関として大規模工事調達を含めた調達経験は豊富であるものの、組織内のそれぞれの部署が独自の方法や書類で調達を行っており、組織的な調達計画や戦略策定能力が脆弱である。 | 以下の3つの強化策を提案。 ①シニアレベルの職員に対する調達計画立案に関する研修(優先課題) ②ジュニアレベルの職員には調達手続きに関する実践的な研修 ③調達担当者には技術仕様作成等の技術支援策(ワークショップ等) | 8月21日 | ○ | 調達計画立案に関する研修 (期間:10日間) 参加者:17名 | 9月30日から10月10日 (実施済み) | C.ジャクソン S.ガッビー |
| | Nepal Electricity Authority (NEA) | 13/08/2012～ 17/08/2012 | 大型プロジェクト(国家予算、海外援助とも)の実績も多く、職員の多くが調達業務を経験しているが、来年度以降もドナー資金による大型プロジェクトが幾つか予定されており、それらのプロジェクトを実施するために職員の調達能力向上が急務である。 | 調達業務の経験が少ない職員を対象とした包括的な調達研修を提案。 | 10月12日 | ○ | 調達計画立案から契約管理までの包括的な調達実務研修(期間:10日間) | 11月25日～12月6日(予定) | C.ジャクソン S.ガッビー |
| | Melamchi Water Supply Development Board (MWSDB) | 24/08/2012～ 30/08/2012 | 主に大型建設工事契約の契約管理について、過去にもコントラクターとの紛争も経験しており、能力強化が必要。それ以外の調達手続きにおいて特に問題は認められない。 | FIDIC契約条件書に基く契約管理能力の強化のため研修及びワークショップ(1週間程度)を提案。 | 10月13日 | × (現在実施中の円借款プロジェクトの調達を優先) | 実施せず | N/A | N/A |
| スリランカ | Department of National Planning (DNP) | 25/06/2012～ 29/06/2012 | DNPIは、円借款プロジェクトのPMUとしての実績はあるものの、調達手続きは当該プロジェクトを担当する省庁や実施機関が執り行うため、調達経験は有していない。従って、調達能力アセスメントは実施できず。 | N/A | 11月13、14日 | × | 実施せず | N/A | N/A |
| | Ministry of Health (MOH) | 02/07/2012～ 06/07/2012 | MOHでは、プロジェクト毎にPMUやPIUが設置されるが、円借款プロジェクト「地方基盤社会サービス改善事業」のPIUが未設置であったため、詳細な調達能力アセスメントは実施できず。但し、MOHの調達能力は相対的に低く、当該プロジェクトのPIUに配置される職員も調達手続きに関するベーシックな研修が必要と見られる。 | 円借款プロジェクト「地方基盤社会サービス改善事業」のPIUが12月に設置予定であり、新たに人選されるPIUのメンバーに対して調達に関する基礎的な研修を実施することを提案。 | 11月15、16日 | △ | 実施せず(2013年1月時点でPIU未設置) | N/A | N/A |
| | National Water Supply & Drainage Board (NWSDB) | 09/07/2012～ 13/07/2012 | NWSDBには、トレーニングセッションがあるものの、調達分野の定期的・体系的な研修は実施されておらず、調達に従事する職員や今後NWSDB内にて調達研修のトレーナーとなるような人材に対して、包括的な調達研修を行う。 | 包括的な調達研修を提案。(モジュールは以下のとおり) ①モジュール1:調達の概要 ②モジュール2:物品の調達 ③モジュール3:工事の調達 ④モジュール4:コンサルタント雇用 | 11月13日 | ○ | 土木工事の契約管理に関する実践的な研修 (期間:5日間) (第2回調査にて先方より特定分野(契約管理・紛争回避)に特化した研修の要望があり、JICA事務所とも協議の結果、変更となった。) | 1月7日～11日 | C.Chamorro |
| バングラデシュ | Roads and Highways Department (RHD) | 03/07/2012～ 05/07/2012 | RHDは、バ国内の主要道路の建設プロジェクトを長年マネジメントしており、組織内にその経験・ノウハウが蓄積されている。そのため、職員の調達についての知識・経験は相対的に高いが、近年は予算不足や外国コントラクター(特に中国)等との契約上の紛争によりプロジェクト遅延が頻発している。 | 建設工事プロジェクトのマネジメントに関する実践的な研修を提案 | 9月23日 | × (優先順位が劣後するため実施せず) | 実施せず | N/A | N/A |
| | Chittagong Development Authority (CDA) | 08/07/2012～ 09/07/2012 | 調達に従事するCDA職員の経験や能力にはバラつきがあり、且つ、十分とは言えない。特に、調達プランニング、入札書類作成(技術仕様も含む)、入札評価、契約マネジメント等の各段階において、脆弱性やリスクが確認された。 | 右アセスメント結果にて特定された項目を中心とした調達研修プログラムを作成して提案。 | 9月17日 | ○ | 調達計画・入札書類作成(技術仕様も含む)・入札評価・契約管理を中心とした調達研修 (期間:5日間) ※CWASAと合同で実施 | ①1月5日～9日 ②1月11日～15日 | R.グラハム D.アププリチャード |
| | Chittagong Water Supply & Sewerage Authority (CWASA) | 10/07/2012～ 12/07/2012 | CWASA職員の調達キャパシティは、十分とは言えず、職員個々の能力強化が必要。特に、調達プランニング、入札図書作成、契約マネジメントの各段階における能力強化が必要。 | 右アセスメント結果にて特定された項目を中心とした調達研修プログラムを作成して提案。 | 9月19日 | ○ | 調達計画・入札書類作成(技術仕様も含む)・入札評価・契約管理を中心とした調達研修 (期間:5日間) ※CDAと合同で実施 | ①1月5日～9日 ②1月11日～16日 | R.グラハム D.アププリチャード |
| ブータン | Bhutan Power Corporation Limited (BPC) | 04/09/2012～ 05/09/2012 | ブ国で唯一の輸出セクターと言える電力セクターの公社として、ドナー支援による大型プロジェクトで豊富な調達経験を有しており、調達能力は高い。調達分野やサプライチェーン等に関して独自の研修等も企画・運営。 | 調達プランニングや資格事前審査等の個別なイシューについてワークショップを実施する。 | 12月18日 | ○ (相乗り) | MOAFへの調達研修(8日間)に若手職員を数名派遣 | 1月8日～18日 | C.ジャクソン |
| | Ministry of Works and Human Settlement (MWHHS) | 06/09/2012～ 07/09/2012 | 公共投資の約3割を支出する官庁であり、特に交通インフラ(道路・橋梁)に関わる建設工事の調達経験を有している。しかしながら、調達に関する研修等でのキャパビリティはほとんど行われていないため、調達能力は職員個々の経験や知識に依存している。(経験が少ない職員が調達を担当するケースでは、調達手続きが必ずしもスムーズに進んでいないものと思われる。) | 主に調達経験が少ない職員を対象とした包括的な調達トレーニングにより、組織としての調達能力の底上げを提案。 | 12月18日 | ○ (相乗り) | MOAFへの調達研修(8日間)に職員を数名派遣 | 1月8日～18日 | C.ジャクソン |
| | Ministry of Agriculture and Forest (MOAF) | 10/09/2012～ 11/09/2012 | 農業分野(灌漑・農道整備)での建設工事調達や飼料等の調達も毎年行っており、組織として相応の調達経験があるものの、調達に関する組織内のキャパビリティやナレッジシェアリングはほとんど行われていないため、調達における問題点が多い。 | 主に調達経験が少ない職員を対象とした包括的な調達トレーニングにより、組織としての調達能力の底上げを提案。 | 12月19日 | ○ | 包括的な調達手続きの研修 (期間:8日間) PPPD(財務省の公共調達を監督する部署)と合同実施 | 1月8日～18日 | C.ジャクソン |
| パキスタン | National Highway Authority (NHA) | 11/09/2012～ 13/09/2012 | 道路・橋梁の建設工事調達で豊富な経験を有している。しかしながら、調達プランニングがほとんど実施されず、調達に関わる複数の部署間での調整・連絡も十分に行われていないため、調達手続きやその後の契約管理において様々な問題が発生している。また、コンサルタント雇用においては国内のコンサル企業が限られており十分な競争性が確保できず、十分な能力有するコンサルタントを確保できていないという課題がある。 | 調達プランニング及び契約管理をテーマとしたワークショップを提案。 | 10月25日 | ○ | 調達プランニングと契約管理をテーマとしたワークショップ(期間:5日間) | 11月19日～11月23日 | C.フォーウェル |
| | National Transmission & Despatch Company (NTDC) | 14/09/2012～ 18/09/2012 | 送配電公社として大型の建設工事調達やメンテナンス部材の調達等の調達経験を有している。しかしながら、調達プランニング、入札図書作成、契約管理等において調達手続きの脆弱性が確認された。 | 右調査結果にて抽出された課題に関するワークショップを提案。 | 10月26日 | ○ | 調達プランニングや契約管理をテーマとしてワークショップ(期間:5日間) | 1月7日～11日 | G.ベイトマン |
| | Karachi Urban Transport Corporation (KUTC) | 19/09/2012～ 20/09/2012 | 円借款プロジェクト実施に向けてPMUの立ち上げを計画しているが、未だ立ち上がっておらず、調達キャパシティの評価が困難であったため、評価レポートは作成できず。 | N/A | N/A | N/A | 実施せず | N/A | N/A |

添付資料 2 : 公共調達制度レビュー報告書 (バングラデシュ)



Study of National Procurement System of Bangladesh

Japan International Cooperation Agency

Report

July 2012



Crown Agents Reference No. 28643

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List of Abbreviations

| | |
|----------|---|
| ADB | Asian Development Bank |
| BDT | Bangladeshi Taka |
| BoQ | Bill of Quantity |
| CQBS | Consultants Qualification Based Selection |
| CPTU | Central Procurement Technical Unit |
| CSOS | Community Service Organisation Selection |
| DCS | Design Contest Selection |
| DPM | Direct Procurement Method |
| EA | Executing Agency |
| e-GP | Electronic Government Procurement |
| EOI | Expression of Interest |
| FBS | Fixed Budget Selection |
| GoB | Government of Bangladesh |
| ICB | International Competitive Bidding |
| IMED | Implementation Monitoring and Evaluation Division |
| JICA | Japan International Cooperation Agency |
| JPY | Japanese Yen |
| LCS | Least Cost Selection |
| LTM | Limited Tender Method |
| ODA | Official Development Assistance |
| OSTETEM | One Stage Tendering Method |
| PE | Public Entity |
| PPA | Public Procurement Act |
| PPR | Public Procurement Rules |
| PPRP | Public Procurement Reforms Project |
| QCBS | Quality and Cost Based Selection |
| RFP | Request for Proposals |
| RFQM | Request for Quotation Method |
| RP | Review Panel |
| SBD | Standard Bidding Document |
| TOR | Terms of Reference |
| TSTN | Two Stage Tendering Method |
| UNCITRAL | United Nations Commission on International Trade |
| WB | World Bank |

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It should be noted that the BSI Symbol and UKAS Accreditation mark signify that Crown Agents operate a documented Quality Management System registered with the British Standards Institution to the international quality standard BS EN ISO 9001:2008. The provision of consultancy services in revenue enhancement and expenditure and debt management including: customs, taxation and trade, human institutional and organisational development, engineering, procurement management advice and reform, health logistics and procurement services. Third party quality assurance and inspection services related to the supply of manufactured and processed products. International freight forwarding services utilising in house sub-contract warehousing. Verification of service as follows: Air Import – Clearance UK airport; Exports – Airport of departure; Sea Imports – Clearance UK port; Sea Exports – Port of loading.



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Section 1: Introduction

1. Study of Procurement Systems and Capacity in South Asia

The quick and appropriate implementation of Official Development Assistance (ODA) programmes by the Japan International Cooperation Agency (JICA) is dependent on executing agencies (EAs) having the necessary systems, organisation, operational rules and capability to undertake the required procurement procedures smoothly. This capability depends on both the degree of procurement experience of each EA and on the degree of maturation of the national procurement system.

As JICA is now cooperating with new EAs in the South Asia region, it requested Crown Agents to undertake a study of procurement systems and capacity in selected target countries in South Asia in order to collect basic information on the public procurement systems and procedures of each country, determine the capacity of each target EA and formulate training plans to reflect areas requiring procurement support.

2. Purpose of Report

As part of the study, this report provides an overview of the national procurement system of Bangladesh. It provides a general summary of the government system, based primarily on the legal and regulatory framework. Details on specific EAs can be found in separate capacity assessment reports.

As new EAs for JICA ODA loans are likely to be more familiar with their national procurement system than with the JICA Guidelines for the Employment of Consultants and for the Procurement of Goods and Services under Japanese ODA Loans (JICA Guidelines), this report highlights any areas where national rules or practices differ significantly from JICA Guidelines.

This report is issued as a draft, providing essential background information to inform capacity assessment work in EAs. It will be further updated, where appropriate, in light of information obtained during field visits for the assignment.

3. Methodology

In order to facilitate and standardise studies of national procurement systems across all target countries, Crown Agents developed a questionnaire covering the key elements of a procurement system. This questionnaire is completed for each target country, primarily through a desk study by a procurement specialist from Crown Agents' headquarters. The study is based on relevant legal documents, websites and information available from other recent studies of the national system, supplemented by input from the Crown Agents' local consultant and from field visits by the team assessing procurement capacity in EAs.

This study of the national procurement system for Bangladesh is based on:

- The Public Procurement Act (PPA), 2006 and The Public Procurement Rules (PPR), 2008
- The official website of the Central Procurement Technical Unit at <http://www.cptu.gov.bd/>
- The Bangladesh Public Procurement Reforms Project (PPRP I 2002-07 and PPRP II 2007 to present)

The completed questionnaire for Bangladesh is included at Appendix A. Section 2 of Section 3 provides brief recommendations for strengthening the national procurement system.

Section 2: Summary of National Procurement System

4. Overview of Procurement System and Reforms

The aim of the public procurement policy in Bangladesh is to ensure efficiency, transparency and accountability in procurement of goods, works and services and, to ensure equitable treatment and, free and fair competition amongst all persons wishing to participate in such procurement. The public procurement is conducted by the public sector corporations and semi-autonomous bodies under 39 ministries of the government. The departments through about 265 different procuring entities under the respective ministries carry out procurements in their respective sectors with the exceptions for foodstuffs, printing, and stationery and to some extent health sector essentials that are handled both in the centre and locally.

The resources for public procurements are channelled through budgetary provisions in two distinct streams; one being included in the Annual Revenue Program and the other being included in the Annual Development Program, drawn from within the government's Five Year Plan targets viz. sustaining overall economic stability, achieving rapid economic growth, creating increased opportunities for employment generation, development of infrastructure, communication, human resources and, poverty reduction.

Since independence in 1971, the public procurement procedures and practices have been influenced by the major international development partners' viz. Japan International Cooperation Agency (JICA), The World Bank (WB), Asian Development Bank (ADB), Department for International Development (DFID) and few others. About 70 to 80 per cent of public expenditures are made on account of public procurement. The annual volume of the public procurement is around US \$3 billion, out of which almost two-third is externally funded. The support ratio of the development partners to the Government of Bangladesh (GoB) in above is 60:40. The Central Procurement Technical Unit as CPTU has been established by the Implementation Monitoring and Evaluation Division (IMED) of the Ministry of Planning (MoP), to monitor compliance with the legal and regulatory framework.

IMED monitors implementation and evaluation of the projects/programs in general; not specific to public procurement proceedings. An online Procurement Management Information System (PROMIS) to monitor procurement based on 45 Key Performance Indicators (KPIs) has been developed to track procurement performance at 4 target procuring entities; Local Government Engineering Department (LGED), Bangladesh Water Development Board (BWDB), Roads and Highway Department (RHD) and Rural Electrification Board (REB) and to prepare summary reports at the entity and national level.

A national e-Government Procurement (e-GP) portal has been developed by CPTU to provide an on-line platform to carry out public procurement activities following the e-GP Guidelines, 2010. <http://www.eprocure.gov.bd/>. This tool is a single web portal through which procuring entities are able to perform their procurement activities. The web portal is accessible through the internet and is used by all government organizations and bidders. The e-GP System is built on a two stage process

- (i) **e-Tendering System:** covering tendering processes such as centralized user registration, preparation of Annual Procurement Plan (APP), Instructions to Bidders (ITB), sale of Bidding Documents (BD), conducting online pre-bid meeting, collection of bid security, bid submission, bid evaluation, negotiations and contract awards and
- (ii) **e-Contract Management System (e-CMS):** covering Contract Management, work plan submission, defining milestones, tracking and monitoring progress, generating reports, performing quality checks and generating invoices, vendor rating and preparation of completion certificates.

The institutional framework of internal financial control in Bangladesh is under the supervision of the Ministry of Finance (MoF) and external audit under the independent Comptroller and Auditor General (C&AG) who audits all public sector expenditures and submits annual and special reports to the Public Accounts Committee (PAC) of the national assembly. The audit reports, to the extent directed towards procurements, highlight only minor procedural lapses and unauthorized expenditures rather than major non-compliance, irregularities, malpractice, or corruption in procurement.

Procurement Entities are obliged to undertake procurement post-review compliance reviews to monitor value-for-money. PEs are obliged to carry out such yearly post review by independent experts subject to a threshold of BDT 100 million of the annual volume of procurements of the individual entity.

GoB has developed a strategy for Public Private Partnerships issued Guidelines for suppliers/buyers in 2006 and 2010 along with the Guidelines for formulation, appraisal and approval of large, medium and small projects in specific sectors such as, power, gas, telecom, ports, roads, railway water supply, waste management, tourism.

The GoB and WB have recently agreed in principle to carry forward, beyond the current project period (April 2013), the two major components e.g. Capacity Development and e-GP development and training. The GoB is being supported by various other development partners, including JICA, ADB and WB.

5. Legal and Institutional Framework

5.1 Legal Framework

The public procurement procedures and practices evolved over the years from the days of the British regime.

To address several deficiencies namely; the absence of a sound legal framework governing public sector procurement, complex bureaucratic procedures, a lack of adequate professionally competent staff to manage public procurement, poor quality bidding documents and bid evaluation, ineffective administration of contracts and absence of adequate mechanisms for ensuring transparency and accountability, the government with the support of Development Partners undertook a reform of public procurement.

The Public Procurement Regulations (PPR), 2003, the Procedure for Implementation of the Public Procurement Regulations, 2003 and, the Public Procurement Approval Process, 2003 were introduced. A Public Procurement Act (PPA) was passed in 2006. This has been amended three times in July 2007, November 2009 and July 2010. Consequently, The Public Procurement Rules 2008 have been revised twice in August 2009 and March 2011. The initial amendments and revisions were mostly editorial but the subsequent amendments to the laws, raised serious concerns, amongst Development Partners.

Contract management and dispute resolution, is covered under the Arbitration Act, 2001, the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules of 1976 or the Rules of Conciliation and Arbitration of the International Chamber of Commerce in force and, others are also most in use in the case of international procurement.

The legal and regulatory framework aims to ensure the highest standards of performance in procurement proceedings. Corruption and misconduct in office is dealt with under Government Servants (Discipline and Appeal) Rules, 1985 or under the Service Rule relating to the general conduct and discipline, as applicable to such officer or employee. In addition, criminal procedures may also be initiated against, under The Prevention of Corruption Act, 1947, The Anti-corruption Act, 2004 and in appropriate cases, under The Penal Code, 1860.

The PPA, 2006 and PPR, 2008 are supplemented by further guidance documents; most of which have not yet been issued. The need for procurement and contract manuals has been recognised and, the guidelines are under preparation/review. Some standard bidding documents (SBDs) and standard forms have been issued by CPTU, some documents and templates still need to be completed and/or translated into both Bangla and English.

Despite on-going work to complete and further update the legal framework, enforcement of the PPA and PPR is reported to be weak due to understaffing and inadequate budgets

5.2 Scope of Application

The PPA, 2006 in accordance with the provisions under Section-3 is applicable as follows:

- Procurement by PEs using public funds

- Procurement by any government, semi-government or any statutory body established under any law
- Procurement using public funds by a company registered under the Companies Act, 1994
- Procurement under a loan, credit or grant agreement or under any other agreement with a development partner or with a foreign state or an organisation, provided donor guidelines do not apply.

There is an exception to application of the PPA where procurement must follow donor guidelines under a financing agreement. This is important for implementation of ODA by JICA, allowing JICA Guidelines to prevail over the national law.

5.3 Institutional Framework

Each PE is required to establish a procurement unit or designate a unit with responsibility for procurement and contract management. Each PE must also form an evaluation committee. Depending on the size of the annual volume of procurement there may be more than one evaluation committee.

5.3.1 Procurement Responsibilities

Each PE is required to establish a procurement unit or designate a unit with responsibility for procurement and contract management. Each PE must also form an evaluation committee. Staff undertaking procurement are required to have qualifications prescribed by the CPTU and knowledge or training on procurement; CPTU has reported inadequate capacity in many PEs and intends to initiate an accreditation programme, as well as capacity needs assessment, training and establishment of a national procurement training system.

CPTU provides central support by establishing databases of suppliers and average prices for common user items. CPTU also intends to develop guidelines for framework contracts, to facilitate their use for common user items. Aside from these information functions, CPTU is prohibited from operational involvement with procurement processes (other than those to meet its own needs) or the settlement of procurement disputes.

Procurement units must mandatorily obtain approvals for procurement in the template of Annual Procurement Plan from the Head of the PE (HOPE). Standard Bidding Documents are approved and issued only by the CPTU and those are simply customised by the Procuring Entities to meet their needs for a specific procurement. Accordingly approvals to different stages of procurement process are defined by the GoB's Delegation of Administrative and Financial Power culminating in award of contract and subsequent contract management.

5.3.2 Regulation and Oversight

CPTU was established in April, 2002 as a unit within the Implementation Monitoring and Evaluation Division of the Ministry of Planning. It is primarily a regulatory body, with functions in the following areas:

- Policy: advising Government on procurement policy, submitting annual reports, reviewing the system, studying other systems and coordinating reforms
- Regulatory framework: issuing guidelines, manuals and SBDs and advising PEs on their interpretation
- Monitoring: collecting procurement and contract implementation statistics, requiring reports from PEs and monitoring procurement
- Information dissemination: operating a procurement website and publishing a bulletin
- Capacity building: arranging training and other programmes for public and private sector, arranging accreditation programmes for public sector procurement staff
- Regulatory: operating the updated list of the bidders debarred by different PEs in the official website of the CPTU.

According to the PPA, CPTU is also required to make, or cause to be made, technical auditing of compliance with the PPA. However, this technical audit role is also exercised by the individual PE on its own by independent consultant on annual basis under some specific terms and conditions. In addition to CPTU's monitoring functions, the Office of the C & AG audits procurement and publishes a report on procurement audit.

This range of functions is consistent with those of regulatory bodies worldwide and the prohibition on involvement in the procurement of other PEs avoids any conflict with its regulatory functions. However, while legal requirements are adequate, the CPTU reports inadequate capacity and a need for institutional restructuring to effectively fulfil its mandate. CPTU reports that inadequate monitoring is currently taking place due to a lack of trained staff, resources and data. It is planning to strengthen the existing Procurement Monitoring Management Information System (PROMIS) comprising 45 KPIs

6. Procurement Procedures and Practices

6.1 Registration and Participation

The PPA contains no restrictions on participation in public procurement based on nationality, except for procurement of rations (food items), where contracts can only be concluded with Bangladeshi citizens. However, as noted in section 5.1 above, the Construction Business Act requires only Bangladeshi contractors to be used for works up to a value of BDT 60 million (approximately JPY 57 million). While the PPA prohibits discrimination as a general principle, price preferences are permitted for both goods and works; Bangladeshi goods will be purchased in preference to foreign goods at prices up to 10% more expensive. For consultancy services, shortlisted international consultants must have a local agent. Registration is more politically and socially driven in case of low value works at the local level. Amendment to law exempts past working experience for such registration which causes unskilled bidders to enter the procurement process

PPR Clause 52 The PE may maintain supplier lists of enlisted or qualified tenderers only for procurement in accordance with the National Limited Tendering method (LTM) Clause 63 & 64 for use and procedures. These lists must be reviewed annually.

Suppliers may be debarred by CPTU for a period of 1-3 years and a list of debarred suppliers is displayed on CPTU's website. Grounds for debarring include breach of the code of conduct, failure to sign a contract, substantial defects in contract implementation, conviction of a criminal offence, misrepresentation or failure to pay a loan.

6.2 Procurement Planning

The procurement plan identifies and schedules all the steps involved in the procurement process. It follows certain fundamental approach, whether it is for a development project/program or under a revenue budget.

The annual procurement plan advises the national and international market and the contracting industries by way of posting the same above specified thresholds of BDT 10 million for goods and works and, BDT 5 million for service in the government's website and, that of below in procuring entities', website where available. It is mandatory by law for all procuring entities as precedent to initiate procurement proceedings. For convenience, all goods, works and services are grouped under the different templates. Once the templates are completed, the procurement plan is considered prepared and then approved by Head of the PE. The procurement plans are reviewed/updated on a quarterly basis incorporating the risks and uncertainties.

6.3 Procurement Methods

The PPA defines a range of procurement methods, with a preference for competitive bidding and various methods suitable for high and low values and for consultancy services, as well as goods, works and non-consultancy services. Thresholds are provided in the PPR and the splitting of requirements to avoid these thresholds is prohibited.

The main permitted methods for goods, works and non-consultancy services are:

N.B. BDT 1 million = JPY-900 K = USD 12,000 approximately

Open Tender Method (OTM): No threshold; no conditions

Limited Tender Method (LTM): without threshold: employed in the following scenarios (i) specialist nature (ii) available only from a limited number of Tenderers/Suppliers (iii) an urgent need (iv) competitive Tendering impractical and (v) policy of standardization; Rule - 63

Limited Tender Method: with threshold: (i) BDT 2.5/5 million for Goods and related services and "Stand alone service"; (ii) BDT 20 million for works and physical services. Conditions: (i) Only from enlisted contractors (ii) Offers from Tenderers on BOQ priced by PE (iii) Tendered prices more than $\pm 5\%$ of the BOQ price results in rejection of those Tenders and (iv) in case of a tie, selection by lottery; Rule-33 (3)(ka), Rule-63 (2) and Rule-98 Use of LTM is more popular at the local Government level due to political and social pressures.

One Stage Two Envelope Tendering Method (OSTETM) no threshold: but for national procurement of supply, installation and commissioning of processing plant or works of complex nature, Information Technology and works only; Section-68 (ka).

Two Stage Tendering Method (TSTM): no threshold: but for Turnkey Contracts or Contracts for large complex nature of plants. Not possible to prepare complete technical specifications in advance, PE Lacks the capability to prepare Specification, alternative technical approaches are not be available within the knowledge of PE

Request for Quotation Method (RFQM): with threshold: Revenue; goods BDT 200 thou (each case.) with annual aggregate of BDT 1 million and, works BDT 500 thou (each case) with annual aggregate of BDT 2 million. Development; goods BDT 500 thou (each case) with annual aggregate of BDT 2 million and, works BDT 1 million (each case) with annual aggregate of BDT 4 million. Conditions: (i) readily available Off-the-shelf Goods (ii) low value simple Works and physical Services and (iii) at least three responsive quotations; Rule 69,70 &73

For Bangladesh missions abroad for procurement of off-the-shelf readily available goods and unforeseen physical services the threshold is BDT 1.5 million in each case.

Direct Procurement Method (DPM): Variation orders/ Extra Work orders/Repeat Orders are DPM; Rule-75.

Direct Procurement Method without threshold: Only one Supplier or Contractor to submit an offer when it is of (i) proprietary nature, (ii) critical plant components (iii) exclusive dealer or manufacturer, (iv) Government-owned industry or factory using government own funds,(v) Small Scale Local Industries for specialized product and (vi) not interchangeable with existing equipment; Rule-76

Direct Procurement Method with threshold: (i) natural disasters; BDT 5 million each case with annual aggregate of 50 million and (ii) very urgent; BDT 100 thou or BDT 500 thou in each case with approval of HOPE. For above this threshold approval of Cabinet Committee for Economic Affairs CCEA required; Section-68, (iii) direct contracting with local community for poverty alleviation oriented activities; Rule-76. For Bangladesh Flag Carriers for procurement of fuel, spares and emergency repair the threshold is BDT 5 million

Variation orders/Extra Work Orders/Repeat Orders; threshold: 15% of Original contract price (OCP) and, in exceptional case up to a maximum 50% of OCP

In all cases must be approved in Annual Procurement Plan or approved by HOPE

The main permitted methods for consultancy services are:

Quality & Cost Based Selection (QCBS) No thresholds; no conditions Consider the quality and cost of the services; Rule -103

Fixed Budget Selection (FBS) Conditions: Available budget is fixed. The assignment is relatively simple & can be precisely defined; Rule -103

Least Cost Selection (LCS) Conditions: (i) Standard or routine nature. e.g. - audits, architectural & engineering design of non-complex works where established practice & standards (ii) cost within the threshold; Rule-104 Threshold: BDT 5 million

Community Service Organization Selection (CSOS) Conditions: Well qualified to assist in the preparation, management, and implementation of community development projects or Programs because of their involvement & knowledge of local issues, Community needs or participatory approaches-Rule-104 &109

Individual Consultant Selection: (i) Qualified individual expert while no team work is required (ii) in some case time threshold is less than 6 months

Consultants Qualification Based Selection (CQBS) Conditions: Full-fledged selection where quality of proposal rather than cost is prime consideration

Single Source Selection (SSS) Conditions: (i) where rapid selection is essential(ii)where only one firm or individual consultant has experience of exceptional worth (ii) For low value small assignments within threshold – Rule-104 Threshold: BDT 1 million for firms and BDT 500,000 for Individuals

Design Contest Selection (DCS) Conditions: Technical excellence & innovation are of prime considerations

6.4 Bidding Process for Goods, Works and Non-Consultancy Services

6.4.1 Qualifications and Advertising

Bidding may be with or without prequalification. Prequalification is mandatory for large and complex contracts, as determined by CPTU guidance and is permitted for other procurement where considered appropriate by the PE. PEs are not permitted to apply qualification requirements to construction of a value less than BDT 6m (approximately JPY 5 million) and the estimated costs must be disclosed in the invitation to bid notice.

Qualification criteria must be stated in bidding, prequalification or RFP documents and must relate to areas such as technical qualifications, equipment, past performance. Provisions allowing only a particular class of supplier to participate are not permitted.

Invitations to bid or prequalify must be published in daily newspapers of national circulation (or internationally for open international bidding) and on the website of the PE or CPTU. Invitation for sealed quotations must be published in national or local newspaper. Where pre-qualification is used, all qualified applicants must be invited to bid.

6.4.2 Bidding Documents and the Bidding Process

PEs are required to prepare specifications, plans, drawings, designs or other descriptions based on relevant objective characteristics and functions. Particular brands or trademarks are only permitted where objective description is not possible and on the basis that equivalent products are also acceptable.

Standard templates are provided for bidding documents with specified content including clear descriptions of the procurement need, instructions on the bidding process, the evaluation criteria and methodology including any preferences and the terms and conditions of the contract. The PPR specific the permitted types of contract.

Bidders may be charged fees for bidding and prequalification documents, which are specified in the PPR and based on the cost incurred in preparation of the documents.

A deadline for receipt of bids must be set, with bids kept unopened until this time and any late bids rejected. The PPA sets minimum bidding periods of at least:

- 28 days for national bidding or pre-qualification
- 42 days for international bidding or pre-qualification
- 15 days for sealed quotations.

Bid securities are required with a fixed value, set by the PE, of up to 5% of the estimated value; this requirement must be stated in the bid notice. Bid securities from foreign banks must be counter-guaranteed by a Bangladeshi bank. Conditions for forfeiture of bid securities are wider than usually seen; in addition to the internationally accepted conditions of bid withdrawal, refusing an arithmetic correction, failing to sign a contract or to provide performance security, forfeiture is possible for changing price or other substantive matter when providing clarifications or breaching rules on conduct. Conditions relating to substantive changes and breach of conduct rules are subjective and could be open to abuse.

Bids must be opened in the presence of bidders' representatives at the time and place stated in the bidding documents, immediately after the deadline for bid submission.

6.4.3 Evaluation

Evaluation must be based on the criteria stated in the bidding document and evaluation procedures are consistent with international accepted practices.

Award is to the lowest evaluated substantially responsive bid, although a preference may be given to Bangladeshi bidders (or foreign bidders in joint venture with a Bangladeshi bidder) under international bidding.

Under the sealed quotations method, the lowest evaluated quotation fulfilling specified requirements that is within the cost estimate is accepted.

No negotiations permissible for goods and works, in general. But PE may engage in conversation with the lowest responsive bidder when there is a budget constraint compared to very high bid price in order to reduce the bid price by reallocation of responsibilities and obligations; subject to the condition that lowest remains lowest in any case. The bidder if refuses to accept/agree no penalty can be imposed. Such conversation cannot be held with bidders other than the lowest responsive bidder

6.5 Procurement Process for Consultancy Services

6.5.1 Advertising and Shortlisting

Under the competitive proposals method, a notice requesting expressions of interest (EOIs) must be published on the CPTU website where the procurement is over BDT 10million Goods and Works (approximately JPY9.0 Million) and BDT 5 Million Services (approx. JPY 4.5 Million). The notice will normally be published nationally, but international publication is required where the procurement is over BDT 30m (approximately JPY 28 million), the services are not available at a competitive price from more than one consultant in Bangladesh, no proposals were received following national advertising or where a donor requires procurement from a foreign source. International notices must be in English.

The evaluation of EOIs must be based on qualifications, experience and capacity. Shortlists must normally consist of 3-6 firms and PEs must re-advertise if a shortlist of at least 3 is not developed. Shortlists can include renowned consultants who did not submit EOIs, if they are contacted by the PE.

The shortlist may be developed without advertising where the procurement is under BDT 1million (approximately JPY 940k).

6.5.2 Request for and Submission of Proposals

Standard Requests for Proposals (RFP) templates are issued by CPTU and used by PEs and customised for specific procurement. PEs are required to prepare terms of reference (TOR) stating the nature, time and place of services, tasks and expected outputs, instructions on the submission of proposals, the selection method, evaluation criteria, minimum technical pass mark and weightings and the terms and conditions of the contract.

Proposal submission deadlines are mentioned in RFPs clearly. Minimum Bidding periods are procurement type specific) 28 days for national and 42 days for international. Technical proposals are kept in safe custody of Client after opening by Bid Opening Committee and receipt for not more than 48 hours and then forwarded to evaluation committee. Financial proposals are sent to HOPE or AO's safe custody until the Technical proposals are approved by HOPE.

6.5.3 Evaluation and Negotiation

Ranking based on the methodology and weightings very much corresponds to the procurement methods used. For instance:

QCBS: The technical score plus the financial score (using the **weightings** specified in RFPs) gives the combined score applied for ranking and the Consultant with the highest combined score is invited for negotiations

FBS: Highest ranked technical proposal within the budget is found on the basis of Technical points (below 70 considered non-responsive) secured by the bidders. Weightings not required.

LCS: Lowest evaluated proposal price among those that secured the minimum Technical points (i.e. pass mark of 70). Weightings not required.

Single Source Selection SSS: Straight to negotiation on technical and financial aspects of the proposal as a whole

Negotiations are limited to first ranked consultant and only on failure, is continued successively with the second and the third ranked consultants subject to budgetary constraints and fulfilment of other conditions.

Areas of negotiations, other than fees, are specific methodology, work plan and activity schedule, organisation and staffing deliverables/training inputs, if training is a major component, client or PE's inputs, Proposed contract price also reimbursables in case of Time-based Contracts

6.6 Contract Award and Management

The authority to award contracts is delegated by the MoF to the PE. The Delegation of Financial Power (DoFP) is the principal tool for determining the approving authority of the contract; which means the instructions with regard to the delegation of financial authority, issued by the Government from time to time, relating to the conduct of public procurement or sub-delegation of financial powers under such delegation. The approving authority decides, within the time-frame, in compliance with the provisions of the law and rules on the recommendations of evaluation committee. It may either approve the recommendations; or seek any clarification from the evaluation committee through the PE on any specific issues in connection with such recommendations; or explaining the reasons (i) reject the recommendations for a re-evaluation; or (ii) reject the recommendations with instructions to reprocess

The PE, upon receipt of approval within 7 days, but before expiry of the Bid validity, issues Notification of Award (NOA) to the winning Bidder with a draft contract in the case of goods and works. It provides the basis of acceptance of the Bid of the winning Bidder by the PE binding upon both the parties. In the case of service the winning Bidder is invited to sign the contract. Such NOA and Letters of Invitation to sign the contract are not issued by the PE until after any complaints or appeals have been resolved. This provision can be overruled by the Head of the PE, Secretary or the Minister in public interest. Basis of such certification shall be specifically recorded in the procurement proceedings and is considered final except for judicial review.

Any complaints in public procurement proceedings up to issuance of NOA by the PE are dealt with by the administrative authority and, appeals thereto on rotational basis by the multiple review panels formed by the government comprising of non-government professionals with requisite skills, integrity and probity to redress the grievances of the Bidders.

Contract management including monitoring actual progress against target, controlling cost overruns, periodic inspection or measurement of accomplishment, supervision of compliance with quality standards such as inspection, testing etc., operation of Management Information Systems, providing technical support to operation staff, and technical assessment and design services needed for implementation and completion of contract are the responsibility of the PE. In exceptional circumstances, issues such as termination, settlement of disputes, will be subject to adjudication and arbitration.

The critical elements in contract management are Variations/EWOs/Modifications, Time Extension, Liquidated Damages/Bonus, Delayed Payment, Compensation Events, Price Adjustment and Rate Adjustment. The resources constraints and rapid economic inflation also adversely impact contract management.

Maintaining procurement records is essential for procurement post review and, financial and accounts auditing by the Government. Records of procurement must be held for minimum of five years or more in special circumstances following approval of Head of the PE. This provides database for review of past performance of the procuring entities and contractors.

Notice of intent of acceptance must be sent to the selected bidder within 7 days of selection of lowest evaluated bid or successful proposal and information on the selected bidder (and the price of the selected bid for goods, works or non-consultancy services) must also sent to other bidders. The selected bid or proposal can only be accepted after a period of 7 days if no application for review is submitted. A public notice of procurement contracts must be published after conclusion of a contract.

PEs must communicate the grounds for rejection of bids to any bidder for goods, works and other services who requests this within 30 days of the notice of intent of acceptance. For consultancy services, information on the shortlist must be sent to all consultants who submitted EOIs and the financial proposals of consultants failing to reach the technical pass mark must be returned, with a notice stating the grounds for failure.

Contracts may be amended by written consent of both parties, providing the basic scope of the contract is not changed. The PPA contains no specific provisions on approvals for contract amendments. In cases of unforeseen circumstances, variation orders of up to 15% may be issued without a contract amendment. Variation orders over 15% require the approval of the Council of Ministers.

Contracts must state the mechanism for settlement of disputes. For goods, consultancy and non-consultancy services, this is arbitration as provided in the contract or prevailing law. For works, adjudication, a dispute resolution committee or arbitration may be used, depending on the contract value.

6.7 Record Keeping and Communications

Records of Procurement to be maintained by a PE for a minimum period of five years. Records may be retained for more than five years in special cases with the approval of the Head of PE or an authorized officer

Communications with bidders/suppliers is to be in writing meaning “communication written by hand or machine duly signed and includes properly authenticated messages by facsimile or electronic mail”.

Communications relating to the clarifications on the questions raised by the bidders must be sent to all bidders without disclosing its source. Minutes of pre-bid meeting to be sent to all prospective bidders who have purchased or have been issued with the bidding documents only

7. Oversight and Enforcement Systems

7.1 Bidder Complaints

The PPA must establish a mechanism for bidders to challenge procurement decisions, allowing bidders to file an application for complaint and then review of any error or breach of duty by a PE in procurement proceedings. The right to complain and review must be stated in bidding documents. The mechanism is aimed at ensuring transparency, credibility, public confidence and trust. The complaints procedure comprises the following:

1. The tenderer submits the complaint to the Procuring Entity (the Project Director (PD), Line Director (LD), Project Manager (PM), Procurement Officer, Officer assigned for Procurement who issued the Tender or Proposal Document).
2. If the tenderer does not receive the response within 7 working days or is not satisfied with the response then complaint can be submitted to the Head of Procuring Entity (HOPE). HOPE should respond in 3 working days.
3. If the tenderer is not satisfied with the response from HOPE, the complaint can be submitted to the Secretary of Ministry. Secretary of Ministry should respond within 7 working days.

4. If the tenderer is still not satisfied with the response then the tenderer may wish to consider pursuing the appeal through the CPTU Review Panel (RP)

The complainant may appeal to a RP only if the Person has exhausted all his or her options of complaints to the administrative authority (i.e. Secretary) under the Rule 57 of PPR-2008. The Review Panel shall issue written decision within maximum 12 working days.

The review at Administrative Level provides an opportunity for the correction of mistakes, but cannot be considered an independent review. Very few complaints are submitted to the RP due to the high threshold and high deposit requirement. In practice, the majority of procurement complaints are submitted to the courts of law.

The public procurement system in Bangladesh therefore lacks an effective mechanism for challenging procurement decisions and falls far short of international standards, such as those set by the United Nations Convention against Corruption (which the GoB has ratified) which requires an effective system of review and appeal. Timescales for both submission of complaints and appeal and, the issue of decisions are short compared to many other countries.

7.2 Prevention of Corruption

The PPA contains codes of conduct for public officials involved in public procurement and for bidders. The former requires officials to act impartially and in the public interest, avoid conflict of interest, maintain confidentiality and not commit corrupt, fraudulent or collusive practices. The code of conduct for bidders covers bribery, misrepresentation, coercion, collusion, interfering with other bidders, seeking to influence the PE and conflict of interest. The PPA also requires bidding documents to state that bids will not be processed where there is a conflict of interest or legal action for fraud or corruption and requires bids to be rejected in cases of collusion.

Despite these rules, CPTU observes widespread collusion and intimidation at the time of bid submission with ineffective action to mitigate.

Section 3: Recommendations

8. Recommendations

The following sections make recommendations for the strengthening of the national procurement system of Bangladesh. Many are already recognised by the Central Procurement Technical Unit / Government of Bangladesh. Note CPTU is yet to give final approval to the procurement related instruments for use at operational level.

8.1 Legal Framework

Complete all outstanding work on the revision of the legal framework. As well as addressing identified weaknesses in the PPA, such as the complaints mechanism as discussed in section 8.4 below, the revision should:

- ensure that the PPA and other related laws are aligned to eliminate conflicts and the resulting confusion or loopholes;
- complete all supporting documents and templates, such as guidelines and SBDs, including those for framework contracts;
- ensure that all documents are available in both *Bangla* and English to facilitate their use;
- ensure that rules, guidance documents and templates are suitable and proportionate for smaller PEs, such as local government bodies, schools and clinics. .

8.2 Institutional Framework

Strengthen CPTU to ensure it is able to fulfil its mandate of regulating and monitoring public procurement, as well as building capacity among PEs. This should be achieved through restructuring of CPTU and recruitment of additional staff as necessary, as well as developing the skills of current staff and ensuring it has all necessary tools.

Tools and training for setting criteria and bid evaluation, post award contract management, monitoring and auditing tasks are key priorities.

8.3 Capacity Development

Develop capacity among all government procurement staff to ensure they have good procurement skills and are able to comply with the legal framework. Capacity development initiatives should differentiate between different procurement roles, including practitioners in procurement units, those responsible for approvals, including the Head of the PE and staff with technical involvement, such as the preparation of specifications and terms of reference and participation in evaluation committees.

All development partners interfaced concurred with the view expressed by the PEs that there is a need for a joint sensitisation seminar aimed at high level government bureaucrats, public officials and Chief executives of Government Agencies. Bangladesh Public Administration Training Centre (BPATC) and Bangladesh Civil Service Admin (BCSA) Academy have though prepared a two-three day training module on Public Procurement in its routine foundation course for entry-level and mid-level officers. Senior officers who have influence in the decision making process and procurement proceedings are not receiving guidance in this area.

It is recommended that a capacity development programme for senior staff to cover the key aspects of the public procurement process to ensure they are aware of their responsibilities and to discourage undue interference and delay in awards of high value contracts.

8.4 Complaints Mechanism

It is recommended training is provided at all levels within the procurement process on the settlement of disputes arising from contracts, especially by adjudication and arbitration. Access to dispute resolution is not clearly dealt with in the current capacity development programme being conducted by CPTU.

It is also recommended that the complaints mechanism is revised to ensure greater access by bidders to an effective system of review and appeal. This should include the abolition of value thresholds and reduction of fees for the review committee to ensure genuine access to independent review prior to appeal to the law courts. Timescales for review and the rights of bidders should be revised in line with international standards; the UNCITRAL Model Law on Public Procurement provides a useful template

Appendix A: Completed Questionnaire on National Procurement System

Study on the National Procurement System of Bangladesh

This study is primarily a desk study based on

- The Central Procurement Technical Unit (CPTU) website www.cptu.gov.bd
- Reference to The Public Procurement Rules 2008 (note stamped Preliminary Working Draft on website?)
- BDTender.info website
- Public Procurement Reform Project , PPRP I (2002 – 2007) and PPRP II (2007 to present) to be implemented over 5 years

| No | Question | Details of Procurement System | Comments and Recommendations |
|----|---|--|--|
| A1 | <p>Legal Framework</p> <p>Which documents make up the legal framework? i.e. is there a procurement law / regulations / guidelines / manual?</p> | <p>Public Procurement Act 2006 (PPA) includes e-Government Procurement Clause 65</p> <p>The Public Procurement Rules 2008 (PPR)(Preliminary Working Draft) revised from PPR 2003 in light of PPRP)</p> | <p>Status now? Not really working draft. It is gazetted by the Govt (Bengali version). Subsequent amendments are there too.</p> <p>Legal framework does not include the "DISPOSAL" issue at the end. Disposals are separately handled by the agencies. For instance the disposals of medical wastes. In case of disposal of toxic substances like BATTERY procured by an agency from a local producer has naturally been embedded in the procurement system.</p> <p>DISPOSAL issues are to be thought in future.</p> |
| A2 | <p>Are there standard bidding documents and/or any other standard forms or templates?</p> <p>If so, are they based on a particular template, such as donor documents?</p> | <p>Standard Tender Documents (STD) RFQs for Goods to BDT 5 Lakh, STD National & Int'l STDs for Works National & Int'l Standard Pre-Qualification Doc Int'l works >BDT 3500 Lakh. (USD 4.2 Million)</p> <p>Aligned procurement policies and practices to those of WB. Also SRFPs, STDs for Goods, Standard Application for Enlistment (SAFE), RFQs for works, PQDs etc</p> | <p>World Bank's 2002 Country Procurement Assessment Report (CPAR) cited as a very close blue print for PPRP. (source Euro network on Debt & Devt) eurodad.org.</p> <p>9 STDs were initially approved based on PPR, 2003 and those were revised and updated subsequently based on PPR,2008. All these are in draft status and being reviewed by CPTU for approval</p> |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----------|---|--|--|
| B | Scope of Application | | |
| B1 | Who does the legal framework apply to? i.e. does it cover parastatals and state owned enterprises or only government ministries? | PPA Clause 3 (2) (a-d) a. Procuring Entity (PE), b, semi govt, statutory bodies, c, companies registered under Companies Act 1994 using public funds, d, loan, credit or grant under agreement with a development partner or with foreign state or an organisation. For goods, works and services. | Generally any entity using public funds. Revenue generated funds are not considered as public funds. |
| B2 | Does the legal framework apply to all procurement or are there exceptions? | Very wide see above Exception for development partner funded projects if agreed in the Project Appraisal Document (PAD) and also for procurement related to national security | Reforms in legal framework is in a period of transition. |
| B3 | What provision does the legal framework make for application of alternative donor rules? | PPA 3 (2) d. conditions of alternative agreements shall prevail. PPA 4 Act to override other laws. | Development partners have demonstrated their reservation in some specific areas of small value contracts where the selection process is based on LOTTERY. Currently WB and others in particular are not endorsing the SBDs drafted by the govt. Needs to be endorsed by the dev. partners |
| C | Institutional Framework | | |
| C1 | Is centralised or decentralised? i.e. is there any central body responsible for conducting or approving procurement or does each agency do this itself? | Decentralised to the procuring entities PPA Chapter two Delegation of financial power table to determine thresholds for Approving Authority. Cabinet Committee for Govt Purchase (CCGP), Minister, Head of the Procuring Entity (HOPE), Project Director (PD) (and below with sub-delegation) Partly centrally in procurement of divisible commodities, foods, school text books, some extent health essentials etc | CPTU is not mandated to be involved in specific procurement carried out by Agencies; but in practice agencies are using CPTU for interpretation of procurement issues; more like a "scapegoat" |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----|--|---|---|
| C2 | Is there a regulatory body for procurement? If so, what are its functions? | <p>The CPTU is a permanent institution of the government, funded under the revenue budget and established for carrying out the purposes of Section 67 which states as follows:</p> <ul style="list-style-type: none"> ➤ monitoring compliance with and implementation of this Act ➤ arranging for performance of the necessary functions and responsibilities incidental thereto ➤ performing any other responsibilities | Monitoring compliance functions by CPTU is far behind, because of understaffing, budgets etc. |
| C3 | Who is responsible for monitoring or auditing procurement? | <p>The CPTU was established in April 2002 as a unit within the Implementation Monitoring and Evaluation Division of the Ministry of Planning. It is headed by a Director-General, who reports directly to the Secretary, IMED. The DG has a staff complement of Directors, Deputy Directors, Assistant Directors, Systems Analyst, Programmer and other support staff.</p> <p>Under clause 67 of PPA the CPTU is responsible for public procurement</p> <p><i>a. Providing for monitoring compliance with and implementation of this Act through the authority as designated by the Government</i></p> <p>Even PE itself when the annual volume of his/her procurement is BDT 10 million (USD 120,000) or more by engaging independent consultant</p> | Each agency procuring annually over the specified threshold should begin their own post-procurement review following procedures. Draft procedures should be endorsed by the CPTU. This is critically important for monitoring compliance and achieving VFM. |
| C4 | Who is responsible for procurement within each agency? i.e. is there a procurement unit, designated procurement staff within departments or any form of committee? | <p>PPA Chapter two devolves to Procuring Entities preparation of application (Pre-qualification), tender or proposal documents and the constitution of opening and evaluation committees. Approving Authority as defined in delegation of financial powers.</p> | Every procuring department of an agency is responsible for procurement provided that it has a budget. Several entities have established its own central Procurement Directorate for over viewing the procurement activities of different entities under the agency. Procurement staff at the operational level are not specifically designated for procurement purposes but generally remain responsible for procurement functions. |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----|--|--|---|
| C5 | Are there any requirements for qualifications or registration for procurement staff? | <p>PPA Clause 26 persons does this include procurement staff in terms of minimum qualifying criteria?</p> <p>Key Objectives to Improve Procurement Management Capacity</p> <p>To substantially enhance the capacity for procurement management through a structured education and training program addressed to the needs of the senior managers, working level staff, auditors and business community in order to build a profession of procurement specialists.</p> <p>Under the procurement management capacity building focus will be given primarily on two areas:</p> <p>(a) institutionalizing comprehensive and regular training programs through selected public and private training institutions</p> <p>(b) establishing monitoring and evaluation capacity to track procurement performances of the public sector entities.</p> | Procurement qualifications or registration are not specific because the subject is very new in regard to academic or professional qualifications. Gradually it is however focussing on such qualifications which will further enhance the status of the profession. . |
| C6 | How is procurement reviewed or approved within each agency? i.e. is there any committee or board which approves and are there levels of authority for approvals? At what stages is procurement reviewed? | <p>PPR Clause 36 Approval Procedures linked to a "Delegation of Financial Power"</p> | Committees are procurement specific for large agencies. For small agencies there are standing committees. External appointments from outside the procuring agency are included in these committees but in practice they are seen more as ornamental. |
| C7 | Is responsibility for contract management within each agency specified? | <p>PPR Clause 38 Contract Administration & Management details role Procuring Entity must play. Include provision for collective use of laboratories, inspection and testing facilities.</p> | Procurement proceedings and contract management are carried out mostly by the same staff along the vertical channel of authority. In some large procurement consultants are engaged in supervision and execution of the contracts. |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----|--|---|--|
| C8 | Who performs financial management functions (e.g. commitments, payments etc)? Are they separated from procurement? | The Head of the PE is responsible for financial management. The financial management of the Govt is carried out by the Finance Act, 2011 (Act No. XII of 2011). Procurement and Finance functions appear separated for establishing a check-n-balance. | Broadly the payment part is separated but certification and acceptance part is within the agency. Advantage is financial control but disadvantage is 'payment delay" causes "implementation delays" |
| D | Registration and Participation | | |
| D1 | Are there any requirements for supplier registration as a requirement of participation in procurement or as a condition of contract award? If so, give details | PPR Clause 52 The PE may maintain supplier lists of enlisted or qualified tenderers only for procurement in accordance with the National Limited Tendering method (LTM) Clause 63 & 64 for use and procedures. These lists must be reviewed annually. | Registration is more politically and socially driven in case of low value works at the local level. Amendment to law exempts past working experience for such registration which causes unskilled elements in procurement proceedings. |
| D2 | Are there any restrictions on participation or origin of goods or staff based on nationality? If so, give details | PPR LTM above. | Preference of UNCITRAL Model law to promote domestic industries? (source Eurodad) |
| D3 | Is there any mechanism for suspension of non-performing suppliers and/or those guilty of misconduct? If so, give details | PPR Termination clause 42 in terms of General CoCs. | Law has good provisions but can hardly be applied. Political influence and fear factors deter the agencies. |

| E | Procurement Planning | | |
|----|--|--|--|
| E1 | Are agencies required to prepare procurement plans as part of their budgeting process? | PPR 16 (1) The preparation of a Procurement Plan is mandatory for all PEs each financial year. Separately for Development Projects or Programmes and of Revenue budgets | Procurements plans are in place but these are not practically posted in the relevant website for sensitizing the markets in advance. |
| E2 | Are agencies required to prepare procurement plans for major procurement requirements? | Procurement plans are mandatory for all major and minor procurement. To be approved by HOPE. Rule-16 | Lack of skills is factor for the common absence of the preparation a sound Procurement plan. |
| E3 | What are the key contents of procurement plans? E.g. methods, packaging, type of contracts, timescales etc | PPR 15 (1) & (2) covers Procurement Planning & Selection of Procurement Methods and factors to consider when consolidation goods packages (lots). | Minor mismatch between the TPP in Project Template and APP (Annual Procurement Plan) needs to be removed. TPP means Technical Assistance Project Proposal |
| F | Procurement Methods | | |
| F1 | Is there a preference for open competition, with other methods requiring justification? | PPA,2006, Section-31 and PPR,2008, Rules-61 preference is given to OTM for goods and works procurement; subject to the conditions that the method other than OTM, subject to specified special circumstances and thresholds, is more justifiable. | There is trend for opting for method <u>other</u> than OTM driven by political expediency. |
| F2 | What procurement methods are permitted for goods, works and non-consultancy services? Provide details of thresholds and conditions for use | Goods and Works and Physical services N.B. BDT 1 million = USD 12,000 approx Open Tender Method : No threshold; no conditions Limited Tender Method : without threshold;(i) specialized nature (ii) available only from a limited number of Tenderers/Suppliers (iii) an urgent need (iv)competitive Tendering impractical and (v) policy of standardization; Rule -63 Limited Tender Method : with threshold: (i) BDT2.5/5 million for Goods and related services and “Stand alone service”; (ii) BDT 20 million for works and physical services. Conditions: (i) Only from enlisted contractors (ii) | Adequately addressed |

| F | Procurement Methods | | |
|---|---------------------|--|---|
| | | <p>Offers from Tenderers on BOQ priced by PE (iii) Tendered prices more than $\pm 5\%$ of the BOQ price results in rejection of those Tenders and (iv) in case of TIE, selection by lottery; Rule-33 (3)(ka), Rule-63(2) & Rule-98(ka)</p> <p>One Stage Two Envelope Tendering Method (OSTETM): no threshold: but for national procurement of supply, installation and commissioning of processing plants or works of complex nature, Communication Technology and works only; Section-68 (ka).</p> <p>Two Stage Tendering Method (TSTM): no threshold: but for Turnkey Contracts or Contracts for large complex nature of plants. Not possible to prepare complete technical specifications in advance, PE Lacks the capability to prepare Specification, alternative technical approaches are not be available within the knowledge of PE</p> <p>RFQM: with threshold: Revenue; goods BDT 200 thou (each case.) with annual aggregate of BDT 1 million and, works BDT 500 thou (each case) with annual aggregate of BDT 2 million. Development; goods BDT 500 thou (each case) with annual aggregate of BDT 2 million and, works BDT 1 million (each case) with annual aggregate of BDT 4 million. Conditions: (i) readily available Off-the-shelf Goods (ii) low value simple Works and physical Services and (iii) at least three responsive quotations; Rule 69,70 &73</p> <p>For Bangladesh missions abroad for procurement of off-the-shelf readily available goods and unforeseen physical services the threshold is BDT 1.5 million in each case.</p> <p>DPM: Direct contracting, Variation orders/ Extra Work orders/Repeat Orders are DPM; Rule-75.</p> <p>DPM: without threshold: Only one Supplier or Contractor</p> | <p>OSTETM means One Stage Two Envelope Tendering Method</p> <p>TSTM means Two Stage Tendering Method</p> <p>CCEA means Cabinet Committee for Economic Affairs</p> |

| F | Procurement Methods | | |
|----|---|---|--|
| | | <p>to submit an offer when it is of (i)proprietary nature, (ii)critical plant components (iii)exclusive dealer or manufacturer, (iv) Government-owned industry or factory using government own funds,(v) Small Scale Local Industries for specialized product and (vi)not interchangeable with existing equipment; Rule-76</p> <p>DPM: with threshold: (i)natural disasters; BDT 5 million each case with annual aggregate of 50 million and (ii) very urgent; BDT 100 thou or BDT 500 thou in each case with approval of HOPE. For above this threshold approval of CCEA required; Section-68, (iii) direct contracting with local community for poverty alleviation oriented activities; Rule-76. For Bangladesh Flag Carriers for procurement of fuel, spares and emergency repair the threshold is BDT 5 million</p> <p>Variation orders/ Extra Work orders/Repeat Orders; threshold: 15% of OCP and, in exceptional case up to a maximum 50% of OCP</p> <p>In all cases must be approved in APP or approved by HOPE</p> | <p>OCP means Original Contract Price APP means Annual Procurement Plan</p> |
| F3 | <p>What procurement/ selection methods are permitted for consultancy services? Provide details of thresholds and conditions for use</p> | <p>Consultancy services APP to be approved or HOPE's approval required Quality & Cost Based Selection (QCBS) No thresholds; no conditions Consider the quality & cost of the services; Rule-103 Fixed Budget Selection (FBS) Conditions: Available budget is fixed. The assignment is relatively simple & can be precisely defined; Rule-103 Least Cost Selection (LCS) Conditions: (i) Standard or routine nature. e.g.- audits, architectural & engineering design of non-complex works where established practice & standards (ii) cost within the threshold; Rule-104</p> | <p>Adequately addressed</p> |

| F | Procurement Methods | | |
|----|--|--|---|
| | | <p>Threshold: BDT 5 million</p> <p><u>Community Service Organization Selection (CSOS)</u> Conditions: Well qualified to assist in the preparation, management, & implementation of community development projects or Programs because of their involvement & knowledge of local issues, Community needs or participatory approaches-Rule-104 &109</p> <p><u>Individual Consultant Selection</u> Conditions: (i) Qualified individual expert while no team work is required (ii) in some case time threshold is less than 6 months</p> <p><u>Consultants Qualification Based Selection(CQBS)</u> Conditions: Full-fledged selection where not Justified</p> <p><u>Single Source Selection (SSS)</u> Conditions: (i) where rapid selection is essential (ii)where only one firm or individual consultant has experience of exceptional worth (ii) for low value small assignments within threshold – Rule-104</p> | |
| F4 | Is the procurement to avoid splitting of requirements thresholds prohibited? | <p>Threshold: BDT 1 million for firms and BDT 500,000 for Individuals</p> <p><u>Design Contest Selection(DCS)</u> Conditions: Technical excellence & innovation are of prime considerations</p> <p>Yes, prohibited as in Rule-17(1) in order to evade the higher level contract approving authority</p> | <p>In practice this is hardly complied with in order to first accommodate higher number of contractors and secondly to avoid approval of higher authorities</p> |

| F | Procurement Methods | | |
|----------|---|--|--|
| F5 | Is a simplified method available for low value procurement, with a clear threshold? | No other method available as discussed in F2 | Simplified SBDs for some direct procurement of low value may be useful |
| F6 | Is single source procurement limited to specified, justified circumstances? | DPM for goods and works and SSS for services is limited to specified circumstances as discussed in F2 in Rule-110 respectively | Recently some Govt agency or enterprise pursuing for allotting procurement to them directly. |

| G | Bidding Process for Goods, Works and Non-Consultancy Services | | |
|----------|---|--|---|
| G1 | Are agencies required to advertise procurement opportunities widely, whether nationally or internationally? | Yes in accordance with Rule-90. Nationally for national procurement and internationally for international procurement. Exception for RFQM and Limited Tender Method LTM with threshold of BDT 20 million and DPM/SSS | Many Invitation for Bids (IFBs) are faulty. Not in compliance with the Rules |
| G2 | Is use of restricted bidding limited to specified, justified circumstances? | Restricted bidding is LTM and of course, limited to specified and justified circumstances described in F2 under LTM | Use of LTM is more popular at the local Govt level because of political and social reasons. |
| G3 | Is pre-qualification permitted or required for large or complex contracts? | Pre-qualification is not mandatory but may be required or permitted with approval of HOPE for large and complex (i) Construction Works above BDT. 350 million, (ii) Maintenance Works above BDT. 35 million (iii) Supply and installation of Plant and Equipment above BDT 150 million (iv) Design and Build Infrastructure above BDT 350 million (v) Custom Designed Equipment above BDT 35 million, and (v) Management Contracts above BDT 350 million | Pre-qualification is OK. In many cases, fraud is taking place. |

| G | Bidding Process for Goods, Works and Non-Consultancy Services | | |
|----|--|---|--|
| G4 | Are agencies required to use qualification criteria related to the contract and to disclose these to applicants? | Yes as detailed in Rule-47 & Rule-48 and in the SBDs those must be pre-disclosed. | Working well except where the agencies are biased to a particular prospective Bidder in terms of drawing the qualification criteria. |
| G5 | Are all qualified firms invited to bid? | In case of procurement with a pre-qualification process as discussed in G3, only the pre-qualified firms are invited to bid as in Rule-93(15) | No problem |
| G6 | Are objective specifications or other technical documents required to clearly describe the subject of procurement? | Technical specifications of goods and works to be procured are required and contained in details in SBDs; even with design and drawings in many cases. | Agencies are not adequately skilled to prepare the technical specifications |
| G7 | Are standards required to be used, whether national or international? | The technical specifications for procurement of goods, works and service are drawn on the standards approved or published by International Organization for Standardization (ISO), and Bangladesh Standard and Testing Institute (BSTI) or any other national or international institute. For international procurement, in particular, the technical specifications are based on international standards or those widely used in international trade and such standards need to be compatible with those in use in Bangladesh; keeping in relevance with inter-state trade relations and, treaties ratified by the government; Rule-29 | Agencies are more inclined to use of international standards that has past reputation and reliability in their experience |

| G | Bidding Process for Goods, Works and Non-Consultancy Services | | |
|-----|---|--|---|
| G8 | Do templates for bidding documents: <ul style="list-style-type: none"> • Contain clear instructions on the bidding process? • disclose the evaluation criteria and methodology? • contain draft contracts which are fair and provide adequate protection for the agency? | SBDs are issued by CPTU and used PE duly customised for specific procurement <ul style="list-style-type: none"> o contains instruction to bidder as to the process of preparation, submission, and opening o contains detail evaluation criteria and methodology up to the award of contract as usual o contains draft contracts along with draft Notice of Award (NOA) and other documents template Rule-4 | SBDs are of international standards |
| G9 | Are fees for bidding documents limited to costs for copying and despatch? | Fees/Prices for SBDs are fixed by the PE based on re-production and despatch costs as in Rule-94(4) | Inconsistencies prevail between agency to agency on price ranging from BDT 500 to BDT 1000 |
| G10 | Are agencies required to give a clear bidding deadline, keep bids securely and reject late bids? | Bid Submission deadlines are mentioned in SBDs clearly. Bids are kept in safe custody of PE after receipt for not more than 48 hours and then forwarded to evaluation committee. Late Bids are rejected not at the time of submission or at the time of opening Bid, but later to avoid hassle. | |
| G11 | Are minimum bidding periods specified? | Minimum Bidding periods are procurement methods specific and those are specified in the SBDs | Compliance adequate |
| G12 | Are bid securities required? If so, give details of rules. | Bid Securities are required. This also depends on procurement methods and thresholds. | Agencies avoid Bank Guarantee in few cases because of fraudulent documentation by the Bidders |
| G13 | Are public bid openings required? | Public openings are mandatory with exception for RFQM, DPM/SSS, and Technical proposal, where appropriate, for services (non-consultancy) | Complied with adequately |
| G14 | Is evaluation based on the criteria in the bidding document? | Exclusively based on the pre-disclosed criteria in the bidding document | This is OK |

| G | Bidding Process for Goods, Works and Non-Consultancy Services | | |
|-----|--|---|--|
| G15 | Is award to the lowest evaluated responsive bid? | In any case to the lowest responsive Bid. Even if that is front-end-loaded or unreasonably below the Engineers official estimated cost with higher percentage of Performance Security (25% of the evaluated bid price) | Lowest evaluated is OK. But the responsiveness sometimes becomes a question. |
| G16 | Are negotiations prohibited? | No negotiations permissible for goods and works, in general. But PE may engage in conversation with the lowest responsive bidder when there is a budget constraint compared to very high bid price in order to reduce the bid price by reallocation of responsibilities and obligations; subject to the condition that lowest remains lowest in any case. The bidder if refuses to accept/agree no penalty can be imposed. Such conversation cannot be held with bidders other than the lowest responsive bidder. | In compliance |

| H | Procurement Process for Consultancy Services | | |
|----|---|--|---|
| H1 | Are TOR required which clearly describe objectives, tasks and outputs of the assignment? | PPR 108 (3) (SBCQ) and PPR 111 (4) Design Contest DC require TORs. With selection of individual consultants (SIC) PPR 112 consultants must demonstrate in their qualifications and experience in their EOI | Low level skills in framing TOR within agencies |
| H2 | Are agencies required to advertise procurement opportunities widely, whether nationally or internationally? | PPR 103 (3) The Procuring Entity shall encourage the involvement of national Consultants in assignments with international competition | This is OK |
| H3 | Is shortlisting based on objective evaluation of EOIs or other appropriate sources? | Two preferred methods of consultant selection are PPR 103 (4) QCBS or Fixed Budget Selection (FBS) (fixed Budget for simpler assignments) | Generally understood by agencies |

| H | Procurement Process for Consultancy Services | | |
|----|---|--|------------|
| H4 | <p>Do templates for RFP documents:</p> <ul style="list-style-type: none"> • contain clear instructions on the bidding process? • disclose the evaluation criteria, weighting, methodology and any minimum thresholds? • contain draft contracts which are fair and provide adequate protection for the agency? | <p>SRFPs. are issued by CPTU and used by PE duly customised for specific procurement</p> <ul style="list-style-type: none"> o LOI containing name of Client, source of funds, brief description of objectives and scope of assignment, names of short-listed firms, method of selection, date, time & address of pre-proposal meeting, if required, etc o contains instruction to Applicants as to the process of preparation, submission, and opening o contains detail evaluation criteria (allocated points, scoring and pass/fail) and methodology up to the award of contract as usual o contains draft contracts along with other documents template which are fair and adequate o Specified Forms for Technical and Financial proposals used <p>Rule-117</p> | This is OK |
| H5 | <p>Are agencies required to give a clear bidding deadline, keep proposals securely and reject late proposals?</p> | <p>Proposal Submission deadlines are mentioned in RFPs clearly. Technical proposals are kept in safe custody of Client after opening by Opening Committee and receipt for not more than 48 hours and then forwarded to evaluation committee. LATE proposals are rejected not at the time of submission or at the time of opening proposal, but later to avoid hassle. Financial proposals are sent to HOPE or AO's safe custody until the Technical proposals are approved by HOPE.</p> | This is OK |
| H6 | <p>Are minimum bidding periods specified?</p> | <p>Minimum Bidding periods are procurement type specific (national or international) and those are specified in the RFPs. Simply 28 days for national and 42 days for international.</p> <p>Rule-117</p> | This is OK |

| H | Procurement Process for Consultancy Services | | |
|----|---|--|--|
| H7 | Are public bid openings required for technical and/or financial proposals, with adequate notification for financial openings? | No public opening required for opening of Technical proposals but of course, for Financial proposals with only those Applicants who secure the minimum pass marks allowing at least one week from such notification for opening: Rule-120 | This is OK |
| H8 | Is technical evaluation based on the criteria and weightings in the RFP document, with a minimum quality threshold? | Technical evaluation is based on grading (poor/good/very good/excellent) converting into rating (40/70/90/100 per cent respectively) against each criteria /sub-criteria with a minimum threshold of PASS MARKS as in H7 above; Rule- 117(24)) | Generally low level of skills in evaluation. |
| H9 | Are agencies required to keep financial bids sealed until the time for financial opening and evaluation? | To be kept sealed and safe in the custody as in H5 | This is OK |

| H | Procurement Process for Consultancy Services | | Generally low levels of skills in evaluation. |
|-----|--|--|---|
| H10 | Is financial evaluation and ranking of proposals based on the methodology and weightings in the RFP? | <p>Ranking based on the methodology and weightings very much corresponds to Procurement Methods used. For instance as follows:</p> <p>Quality and Cost Based Selection QCBS: The technical score plus the financial score (using the weightings specified in RFPs) gives the combined score applied for ranking and the Consultant with the highest combined score is invited for negotiations</p> <p>Rule-121</p> <p>Fixed Budget Selection: Highest ranked Technical Proposal within the budget is found on the basis of Technical points (below 70 considered non-responsive) secured by the bidders. Weightings not required.</p> <p>Lowest Cost Selection: Lowest evaluated Proposal Price among those that secured the minimum Technical points (i.e. pass mark of 70). Weightings not required.</p> <p>Single Source Selection SSS: Straight to negotiation on Technical and Financial aspects of the Proposal as a whole</p> <p>Rule-119 and Rule-120</p> | |
| H11 | Is award to the highest ranked proposal, according to the methodology specified in the RFP? | <p>Not really the award is forthwith made to the highest ranked proposal, according to the methodology specified in the RFP (in case of LCS lowest evaluated proposal price securing the minimum Technical points as discussed in H10). Rather selected for invitation for negotiations on the Proposal.</p> | <p>Negotiation skills are inadequate. More is bargaining. General desire of the Clients to dominate negotiations.</p> |

| H | Procurement Process for Consultancy Services | | As above |
|-----|---|---|--|
| H12 | Are negotiations limited to the first ranked consultant and to areas other than fee rates? | <p>Negotiations is not limited to first ranked consultant rather to begin, it is started with first ranked consultant and on failure, is continued successively with the second and the third ranked consultants subject to budgetary constraints and fulfilment of other conditions.</p> <p>Areas of negotiations, other than fees, are specific viz.</p> <ul style="list-style-type: none"> ➤ Methodology ➤ Work plan and activity schedule ➤ Organization and staffing ➤ Deliverables ➤ Training inputs, if training is a major component ➤ Client or PE's inputs ➤ Proposed contract price <p>And also Reimbursable in case of Time-based Contracts Rule-122 (3)</p> | |
| I | Contract Award and Management | | |
| I1 | Is any notification to unsuccessful bidders and standstill period required prior to award? | Notification to unsuccessful bidders required for a potential debriefing; not for standstill prior to award of a contract. | More apparent in large value contracts |
| I2 | Is the agency required to debrief unsuccessful bidders and publish details of the contract award? | Debriefing unsuccessful bidders required only upon request from the bidder(s) for disclosing the grounds only not the reasons. Details of the contract award are published in specified format in CPTU's website above specified thresholds and of below in PE/Client's own website or other public places like Notice Boards | As above |

| I | Contract Award and Management | | |
|----|---|---|---|
| I3 | What procedures and controls apply to contract amendments and variations? | Contract amendments are linked to any changes in the original terms of the contract including Variations/ Extra Work Orders/Addl. Deliveries/ Repeat Orders/ Modifications/Time Extensions etc. Amendments to contracts are made by the contracting parties incorporating the changes; provided that the changes are approved by the competent authority which is determined by the Delegation of Administrative Authority and Financial Power. | Very strictly followed |
| I4 | What dispute resolution procedures are included in contracts? | Efforts for resolution of disputes are initially taken up by contracting parties amicably. On failure by adjudication and, then again on failure by arbitration for medium and large contracts. For small value contracts (BDT 2.5 million for Goods and BDT 20 million for Works and below and, procurement under RFQM), this is not emphasized. | Disputes of low magnitudes are amicably settled between the contracting parties. On failure the disputes are handled by an Adjudicator. Arbitrations are carried out under Arbitration Act, 2001 of Bangladesh. In international procurement, however these issues are dealt with under International Rules for Arbitration such as United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules of 1976 or the Rules of Conciliation and Arbitration of the International Chamber of Commerce. EA's are not very skilled to handle such disputes. The rules are explicit but because of the lack of skills of the Procuring Entity the dispute resolution procedures are not always being rightly handled. |

| J | Record Keeping and Communications | | |
|----|---|---|---|
| J1 | Is the agency required to maintain records of procurement activities? Give details of the contents required | <p>43(1) Records of Procurement to be Maintained by a Procuring Entity</p> <ul style="list-style-type: none"> • For a minimum period of five (5) years • Longer than five (5) years in special cases with the approval of the Head of Procuring Entity or an authorized officer | Very hazardous in maintaining records. Traditional methods of filing are used. IT facilities are very less used because of conventional practice and short of skills. |
| J2 | Are communications with bidders and suppliers required to be in writing or confirmed in writing? | Yes in communications with bidders/suppliers is to be in writing where writing means “communication written by hand or machine duly signed and includes properly authenticated messages by facsimile or electronic mail”. | This is OK |
| J3 | Must communications such as bid clarifications and pre-bid meeting minutes be sent to all bidders? | Yes communications relating to the clarifications on the questions raised by the bidders must be sent to all bidders without disclosing its source. Minutes of pre-bid meeting is sent to all prospective bidders who have purchased or have been issued with the bidding documents only. | This is OK |
| K | Bidder Complaints | | |
| K1 | Is there any mechanism enabling bidders to challenge procurement decisions? And to appeal the response? | Any Person (not necessarily yet the bidders) and bidders can challenge or lodge complaint on the grounds specified during the bidding process (starting from IFB) until any procurement decision. Such complaints are first resolved by 3-tier Administrative Authority. If not resolved or the complainant is not satisfied with the resolution then there is opportunity for him/her to appeal to the Review Panel constituted of non-govt officials, by the government. All these are subject to specified timeframe. Rule-56,57 and 58 | Sometimes ignored otherwise OK |

| K | Bidder Complaints | | |
|----------|---|---|------------|
| K2 | Are complaints and appeals heard by an independent body? | Complaints and Appeals are separated out. Complaints are resolved by the Administrative Authority of the PE (PD/HOPE/SECRETARY of the Ministry in sequence) and Appeals are heard by Review Panels (more than one) by rotation. Review Panels are independent body as said in K1 above. | This is OK |
| K3 | Does any complaints mechanism follow appropriate procedures in terms of timescales, documentation requirements etc? | Complaints and Appeals both follow the appropriate procedures and timeframe and documentation. In reality, however, the Administrative Authority has a little bit of apathy. | This is OK |

| L | Prevention of Corruption | | |
|----------|--|--|---|
| L1 | Is there a clear policy and rules prohibiting corrupt and fraudulent practices? | Clause 64 in PPA re Professional Misconduct refers to Code of Ethics (check this). To be short this is OK | Anti corruption commission in Bangladesh. Also endorsed ADB / OECD Anti Corruption Action Plan. Check this in practice? |
| L2 | Is there a procurement code of conduct or other rules covering areas such as gifts, hospitality and conflicts of interest? | There is Code of Conduct for procurement in specific. But as said in L1 Government Servants (Discipline and Appeal) Rules, 1985 is applicable for misconduct or corruption in procurement proceedings. | Enforcement is not enough |

| M | Other Information | | |
|----------|---|--|--|
| M1 | Note any other information of relevance concerning the procurement system e.g. use of e-procurement | 128. E-Government Procurement. (1) For carrying out the purposes of the Act, any or all government procurement may be undertaken using electronic processing systems following the principles governing e-GP as prescribed by the Government. | Presently, e-Tendering System is launched on pilot basis and eventually will be rolled out to all the 308 procuring entities of aforementioned 4 sectoral agencies (5 including CPTU). All the stakeholders, including Bidders (national and international), Procuring Entities, Procurement Related Committees, |

| | | |
|----------|--------------------------|---|
| M | Other Information | (2) In case of procurement following e-GP, should there be any conflict between the provisions of the e-GP rules and the provisions of these rules, then e-GP shall prevail. |
| | | Payment Service Providers, Development Partners (DPs), Media, Operation, Maintenance and Management Entity (OMME), e-GP System Administrators, Auditors and General Public will have access to e-GP system and information as specified in the Terms and Conditions of Use and Policy. The e-GP is nascent beginning in 2010 and in operating in a very limited scale. More efforts on capacity building and motivation required |

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添付資料 3 : 公共調達制度レビュー報告書（ブータン）



Study of National Procurement System of Bhutan

Japan International Cooperation Agency

Report

September 2012



Crown Agents Reference No. 28643

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List of Abbreviations

| | |
|------|--|
| CDB | Construction Development Board |
| EA | Executing Agency |
| EC | Evaluation Committee |
| e-GP | Electronic Government Procurement |
| EOI | Expression of Interest |
| IRB | Independent Review Body |
| JPY | Japanese Yen |
| ODA | Official Development Assistance |
| JICA | Japan International Cooperation Agency |
| Nu | Ngultrum (Currency) |
| PA | Procuring Agency |
| PRR | Procurement Rules & Regulations |
| PPPD | Public Procurement Policy Division |
| RFP | Request for Proposals |
| RGoB | Royal Government of Bhutan |
| SBD | Standard Bidding Document |
| TC | Tender Committee |
| TOR | Terms of Reference |

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FS 33234

Section 1: Introduction

1. Study of Procurement Systems and Capacity in South Asia

The quick and appropriate implementation of Official Development Assistance (ODA) programmes by the Japan International Cooperation Agency (JICA) is dependent on executing agencies (EAs) having the necessary systems, organisation, operational rules and capability to undertake the required procurement procedures smoothly. This capability depends on both the degree of procurement experience of each EA and on the degree of maturation of the national procurement system.

As JICA is now cooperating with new EAs in the South Asia region, it requested Crown Agents to undertake a study of procurement systems and capacity in selected target countries in South Asia in order to collect basic information on the public procurement systems and procedures of each country, determine the capacity of each target EA and formulate training plans to reflect areas requiring procurement support.

2. Purpose of Report

As part of the study, this report provides an overview of the national procurement system of Bhutan. It provides a general summary of the government system, based primarily on the legal and regulatory framework. Details on specific EAs can be found in separate capacity assessment reports.

As new EAs for JICA ODA loans are likely to be more familiar with their national procurement system than with the JICA Guidelines for the Employment of Consultants and for the Procurement of Goods and Services under Japanese ODA Loans (JICA Guidelines), this report highlights any areas where national rules or practices differ significantly from JICA Guidelines.

This report is issued as a draft, providing essential background information to inform capacity assessment work in EAs. It will be further updated, where appropriate, in light of information obtained during field visits for the assignment.

3. Methodology

In order to facilitate and standardise studies of national procurement systems across all target countries, Crown Agents developed a questionnaire covering the key elements of a procurement system. This questionnaire is completed for each target country, primarily through a desk study by a procurement specialist from Crown Agents' headquarters. The study is based on relevant legal documents, websites and information available from other recent studies of the national system, supplemented by input from the Crown Agents' local consultant and from field visits by the team assessing procurement capacity in EAs.

This study of the national procurement system for Bhutan is based on:

- The Royal Government of Bhutan Public Finance Act of Bhutan 2007
- The Royal Government of Bhutan, Ministry of Finance, Finance and Accounting Manual 2009
- The Royal Government of Bhutan, Ministry of Finance, Procurement Rules and Regulations (PRR) 2009
- The website of the Public Procurement Policy Division (PPPD) at <http://www.mof.gov.bt/index.php?deptid=12&id=67>

The completed questionnaire for Bhutan is included at Appendix A. Section 2 of this report summarises the findings of the study, highlighting areas where national rules or practices differ significantly from JICA Guidelines. Section 3 provides brief recommendations for strengthening the national procurement system.

Section 2: Summary of National Procurement System

4. Overview of Procurement System and Reforms

The Royal Government of Bhutan (RGoB) in recent years has undertaken the reform of its public procurement system. In 2005, with technical assistance from the World Bank (WB) under a five year programme it modernised the legal framework through the issue of the Public Finance Act of Bhutan 2007 with procurement constituted under Section 104 of the Act. Subsequently Procurement Rules and Regulations (PRR) were issued in 2007 and updated in 2009. Procurement is governed by the PRR rather than separate public procurement legislation. Various amendments have and continue to be issued.

The Public Procurement Policy Division (PPPD) was formed in 2009 as a body to monitor public procurement in Bhutan, to build procurement capacity, to develop and promulgate the PRR, the use of procurement documents and templates, liaise with donors and development partners and to conduct procurement seminars and workshops and to be a focal point for public procurement.

Procurement responsibility is decentralised to each Procuring Agency (PA); although the majority of procurement expenditure takes place within central government ministries and local government entities; Dzongkhag (an administrative and judicial district) and Gewogs (a group of villages).

5. Legal and Institutional Framework

5.1 Legal Framework

Procurement is constituted under Section 104 paragraph (i) of the Public Finance Act of Bhutan 2007, which states “Without limiting the powers of the Ministry of Finance under Section 24, the Ministry of Finance may issues rules, manuals, directives, instructions or notifications on the specific matters as follows:

- (i) procurement system which is equitable, transparent, competitive and cost-effective”. The Ministry of Finance through the PPPD frames the Rules and Regulations for Procurement to be implemented by Government Agencies. The detailed rules and regulations are stipulated in The Public Procurement Rules and Regulations, 2009 (Procurement Manual).

The role of the PPPD is to:

- a. monitor the implementation of the Procurement Rules & Regulations through the collection and analysis of reports provided by the procuring agencies based on reporting formats developed by the PPPD;
- b. provide annual reports to the Secretary, Ministry of Finance on the functioning of the national procurement system;
- c. based on such reports, propose improvements to the Procurement Rules & Regulations and supporting regulations, guidelines and documentation;
- d. develop and promulgate implementing regulations, methodologies, guidelines and documentation such as standard bidding and contract documents for the benefit of procuring agencies;
- e. act as a focal point for enquiries and information regarding public procurement in Bhutan;
- f. provide to procuring agencies, on request, advice and guidance on the interpretation and application of the Procurement Rules & Regulations, and supporting regulations, guidelines and documentation provided always that such advice and guidance shall not be given nor accepted as a recommendation or decision in the conduct of any specific procurement procedure;
- g. carry out and/or commission studies and research on procurement, comparisons and future projections with a view to improving the procurement system;

- h. coordinate, in consultation with the relevant training organizations in the Kingdom, the development of a national capacity building strategy and encourage the professionalisation of the procurement function;
- i. liaise with the relevant governmental organizations in the Kingdom to implement measures aimed at developing human resources and professionalism in procurement within the central and local government;
- j. liaise and cooperate with the relevant governmental organizations in the Kingdom whose activities are connected with the implementation and/or enforcement of the procurement system;
- k. coordinate and facilitate, in consultation with the relevant governmental and private organizations in the Kingdom, the policy for the use of information technology in procurement, including the establishment of a PPPD website for the dissemination of procurement related information and the creation and use of databases for the collection and analysis of procurement reports as defined in (a) above;
- l. coordinate and facilitate, in consultation with the relevant governmental and private organizations in the Kingdom, the development of advanced electronic procurement mechanisms with a view to improving the efficiency of the procurement system;
- m. develop and administer the review mechanism;
- n. act as the central counterpart for any procurement related issues in connection with donors or foreign investors;
- o. keep abreast of and disseminate as appropriate information regarding international developments in procurement and best practice which may impact on and assist in the improvement of the national procurement system;
- p. provide and conduct, in collaboration with relevant governmental and private organizations in the Kingdom and outside the Kingdom, workshops, conferences and seminars aimed at improving awareness and understanding of the government's procurement policy and practices.

Some standard bidding documents (SBDs) and standard forms have been issued by PPPD in English. These documents are largely based upon international standards.

5.2 Scope of Application

The PRR covers all public entities with the following exemptions:

- When the Government grants exemption from application of these rules in view of the basic security interests of the State or the requirements of special security measures in particular works, goods and services contracts;
- When, due to some special circumstances, the Government grants exemption to the application of these rules for execution of a project funded by external assistance, and provides for adherence of some specific procurement procedure under the relevant financing agreement;
- When local preference is provided for goods of Bhutanese origin;
- When contracting with another agency of the government provided that the organisation is guided by the PRR;
- Corporations (except municipal corporations) and Financial Institutions fully or partly owned by the Royal Government, Trust Funds, and Welfare Funds may adopt separate rules and regulations for the management of their procurements, provided such rules are within the broad principles of these rules and are approved by their respective Boards of Directors/Trustees.

There is a further exception to the application of the PRR where procurement must follow donor guidelines under a financing agreement. This is important for implementation of ODA by JICA, allowing JICA Guidelines to prevail over national law.

5.3 Institutional Framework

Procurement is decentralised, with the chief of each Procuring Agency (PA) responsible for ensuring procurement activities are carried out and the central monitoring body, the PPPD, providing oversight.

5.3.1 Procurement Responsibilities

Each PA is required to establish a Tender Committee (TC) which acts as a procurement unit or designate a unit with responsibility for procurement and contract management. There are eight different levels of Tender Committee including (Gewog, Dzongkhag, Department Field Level, Departmental, Ministerial, Autonomous Bodies, Higher Level for Autonomous Bodies and Inter-ministerial). The TC is responsible for:

- ensuring that all procurements have been undertaken in accordance with the PRR;
- appointing members to bid opening committees;
- appointing evaluation committee (EC) members. (Members of TCs are excluded from being members of ECs);
- Acting as an Award Committee by confirming the findings and recommendations of the EC
- Ensuring that evaluations have been undertaken in accordance with the PRR.

Financial authority levels are applicable to each TC are currently set as follows:

| Tender Committee Levels | Threshold for Goods | Threshold for Works |
|--|---------------------|---------------------|
| Gewog Level | Up to Nu. 1 m* | Up to Nu. 2 m |
| Dzongkhag Level | Up to Nu. 15 m | Up to Nu. 30 m |
| Field Level | Up to Nu. 5 m | Up to Nu. 10 m |
| Departmental Level | Up to Nu. 10 m | Up to Nu. 20 m |
| Ministerial Level | Upto Nu 20 .m | Upto Nu 50 . m |
| Inter-Ministerial | Above Nu. 20 m | Above Nu 50 m |
| Autonomous Body Tender Committee | Upto Nu. 20 m | Upto Nu 50 m |
| High Level Autonomous Body Tender Committee | Above Nu 20 m | Above Nu 50 m |

* million

EC members may be chosen from within the PA or from other departments and an EC must comprise of a minimum of three members.

Procurement units must generally obtain approvals for procurement from the chief of the PA. The chief of the PA approves bidding documents, while evaluations are approved according to value. The head of the PA has responsibility for financial management, in addition to procurement.

5.3.2 Regulation and Oversight

PPPD was established in 2007 by the Ministry of Finance as a body under the Ministry of Finance. It is primarily a reviewing and monitoring body, with functions in the following areas:

- Monitoring and reporting: collecting procurement and contract implementation statistics, requiring reports from PAs and monitoring procurement
- Policy: advising Government on procurement policy, submitting annual reports, reviewing the system, studying other systems and coordinating reforms
- Regulatory framework: issuing guidelines, manuals and SBDs and advising PAs on their interpretation
- Information dissemination: operating a procurement website and publishing a bulletin

- Capacity building: arranging training and other programmes for public and private sector, arranging accreditation programmes for public sector procurement staff
- E-procurement: Coordinate and facilitate the development of electronic procurement systems
- Donor and investor coordination: Act as the coordinating body for all procurement related interface with donors and foreign investors

This range of functions is consistent with oversight bodies worldwide and the prohibition on involvement in the procurement of other PAs avoids any conflict with its regulatory functions. However, the PPPD does not have any role in auditing or in ensuring the adherence of PAs with the PRR and does not undertake an investigative role and monitoring and reporting is dependent upon reports prepared by the PAs themselves.

6. Procurement Procedures and Practices

6.1 Registration and Participation

The PRR contains no restrictions on participation in public procurement based on nationality. The PRR requires that a supplier/contractor database is set up by “technical bodies” in relevant sectors as determined by the government. An example of such a body is the Construction Development Board (CDB) which is the accredited authority determined by government to establish and maintain the List of Registered Contractors, Engineering Consultants, Architects and Speciality Contractors for Works. The purpose of registration is to pre-qualify bidders as it is presumed that bidders who are registered are suitably qualified to participate in public tenders.

The PRR contains no requirements for suppliers to register as a condition of participation in competitive bidding or sealed quotations procurement. However, any bidder who is not registered with the relevant authority must furnish all the appropriate documentation to confirm their capability to perform the required services, including a trade licence issued by the Ministry of Economic Affairs to operate in their field. Realistically, it is unlikely that an unregistered bidder will be able to successfully participate in public tenders.

The Ministry of Health also operates a supplier registration database for suppliers of drug and non-drug products.

Suppliers may be excluded by the registration body if they are (a) insolvent or are in receivership or bankrupt or in the process of being wound up; or have entered into an arrangement with creditors; or (b) their affairs are being administered by a court, judicial officer or by an appointed liquidator; or (c) they have suspended business; or are in any analogous situation arising from similar procedures under the laws and regulations of the country of establishment; or (d) they have been found guilty of professional misconduct by a recognised tribunal or professional body; or (e) they have not fulfilled obligations with regard to the payment of taxes, social security or other payments due in accordance with the laws of the country in which they are established or of the Kingdom of Bhutan; or (f) they are debarred from participation in public procurements by any competent authority.

6.2 Procurement Planning

There is no requirement under the PRR for PAs to undertake any form of procurement planning. The procurement process starts once the necessary budget is approved for the PAs. The procurement planning therefore is limited to budget planning and typically, for the Government funded activities, follows the twelve months fiscal year (July-June). The lack of planning has the potential to result in delayed procurement or the utilisation of emergency procurement using non-preferred procurement methods. There is no linkage to the RGoB Financial Management Information System which risks very poor forecasting

6.3 Procurement Methods

The PRR defines a range of procurement methods, with a preference for competitive bidding and various methods suitable for high and low values and for consultancy services, as well as goods, works and non-consultancy services. Thresholds are provided in the PRR and the splitting of

requirements to avoid these thresholds is proscribed, however a PA may break up a work, supply or service assignment into separate lots or components for awarding to different contractors, suppliers or service providers.

The main permitted procurement methods for goods, works and non-consultancy services are:

- **Open Tender/Bidding Method**, the preferred method, which may involve one or two-stage bidding, the latter for complex requirements. International bidding is pursued where the funding agency demands it or the limited capacity of the local construction industry/suppliers/consultants makes it necessary.
- **Limited Tender/Bidding Method**, The number of bidders is limited to 3 to 5 bidders. The use of this method is allowed provided the total value is within the threshold value, there is insufficient time to use the open tender or Direct Contracting methods or where a pre-qualification procedure has been completed. All bidders must be registered with an authorised technical body as constituted by government.
- **Limited Enquiry Method**, this method allows the PA to solicit prices from at least three domestic companies or individuals and may be used for the procurement of goods or works where the total value does not exceed the applicable threshold value or where an earlier Limited Bidding procedure less than three bids were received. Under this method bids may also be accepted from bidders who had not been invited. If this method fails to result in an award of contract the Direct Method may be utilised.
- **Direct Contracting Method**, a quotation shall be obtained from one or more suppliers with specifications, timescales and appropriate terms and conditions. It is restricted to use in situations where procurement is for low value administration items (not exceeding Nu 0.02 million), where an earlier Limited Enquiry procedure failed to provide three bids, for rural works where no bids were received under open tender (not exceeding Nu 0.3 million), where there is only one available supplier/contractor, where spare parts are being procured for items that have already been procured, where repeat orders are being made (subject to limitations based on the percentage of the contract in relation to that of the original contract) and where extreme urgency is required. This method of procurement allows the procuring agency to negotiate prices and terms and conditions of its procurement directly.
- **Framework Contracting Method**, this method can be used for purchasing designated supplies for a 12 month period at fixed prices. Supplies can be ordered at any time during the 12 month period. The procurement method utilised is determined by the threshold total estimated value of the goods or services. This method is mostly used for procurement of office stationery, vehicle parts, maintenance materials, etc

6.4 Procurement Thresholds

The following estimated contract values, including taxes and duties shall be used to determine the method of procurement are as follows:

| Type | Open Tender/Bidding | Limited Tender/Bidding | Limited Enquiry |
|------------------------------|---------------------|--|-------------------|
| Works | Above Nu.1,000,000 | Above Nu.200,000 up to Nu.1,000,000 | Up to Nu. 200,000 |
| Goods & Consultancy Services | Above Nu.200,000 | Above Nu.100, 000 and Up to Nu.200,000 | Up to Nu.100,000 |

6.5 Bidding Process for Goods, Works and Non-Consultancy Services

6.5.1 Qualifications and Advertising

Bidding may be with or without prequalification. Qualification criteria must be stated in bidding, prequalification or RFP documents and must relate to areas such as technical qualifications, equipment, past performance. Provisions allowing only a particular class of supplier to participate are not permitted.

Invitations to bid or prequalify must be published in daily newspapers of national circulation (or internationally for open international bidding) and on the website of the PA on national radio, TV and other mass media and on the notice board of the PA. Where pre-qualification is used, all qualified applicants must be invited to bid. However, pre-qualification seems to be used rarely for goods and services.

6.5.2 Bidding Documents and the Bidding Process

The bidding process may involve two types- Single Stage process or a Two Stage process depending on the complexity involved

PAs are required to prepare specifications, plans, drawings, designs or other descriptions based on relevant objective characteristics and functions. Particular brands or trademarks are only permitted where objective description is not possible and on the basis that equivalent products are also acceptable.

Standard templates are provided for bidding documents with specified content including clear descriptions of the procurement need, instructions on the bidding process, the evaluation criteria and methodology including any preferences and the terms and conditions of the contract. The PRR specifies the permitted types of contract.

Bidders may be charged fees for bidding and prequalification documents, fees are not specified in the PRR but should be based on the cost incurred in preparation and despatch of the documents.

A deadline for receipt of bids must be set, with bids kept unopened until this time and any late bids rejected. The PRR sets minimum bidding periods of at least:

- 30 days for Open Bidding or pre-qualification
- 14 days for Limited Bidding
- 5 days for Limited Enquiry
- By mutual agreement for Direct Contracting

Bid securities are required with a fixed value, set by the PA, of between 1 and 2% of the estimated value and may be stipulated by the PA as a fixed sum; this requirement must be stated in the bid notice. Bid securities must be denominated in the currency of the bid. Conditions for forfeiture of bid securities are to the internationally accepted conditions of; bid withdrawal, refusing an arithmetic correction, failing to sign a contract or to provide performance security.

Bids must be opened in the presence of bidders' representatives at the time and place stated in the bidding documents, immediately after the deadline for bid submission. Any bids not announced at the time of bid opening will not be considered for evaluation. PA shall register all bidders representative present and also invite any complaints in the prescribed form.

6.5.3 Evaluation

Evaluation must be based on the criteria stated in the bidding document and evaluation procedures are consistent with international accepted practices.

Award is to the lowest evaluated substantially responsive bid, although a preference may be given to Bhutanese bidders (or foreign bidders in joint venture with a Bhutanese bidder) under international bidding. Where two or more tenders are equivalent in the light of evaluation methods and factors set out in the PRR preference shall be given to the bid offering goods of Bhutanese

origin provided that the price difference does not exceed five percent (5%) (in order to be classed as “Bhutanese origin” at least 30% of the ex-works value or of the value stated on a certificate of value issued by the Ministry of Economic Affairs must be Bhutanese). Similarly, a five percent (5%) margin of preference may be given to the National bidders in case of works.

Evaluation of works is in practise undertaken in part through the use of a web-based online tender evaluation system called “e-tool”. This new system was launched on 1st May 2011 by PPPD and is managed/support by the Construction Development Board (CDB). The “e-Tool” was developed around an automated point based system based on information registered on the e-tool system by bidders and entries made by procurement officers based on the content of bids received. This system aims to standardise and make uniform the tender evaluation process as well as to centralise the registered information on construction companies. The “e-tool” has significantly helped procurement agencies save time and inputs for tender evaluation,

However, the e-tool is not formally approved by the PPPD or mentioned under the PRR and no formal guidelines seem to exist as to how and when it should be utilised. At a practical level the use of the e-tool means that a substantial part of the evaluation process is done by a sole procurement officer and there is a danger the Tender Evaluation Committee merely “rubber stamps” the outcome of the evaluation done by the procurement officer rather than contributing in a meaningful way. This undermines the value of the Evaluation Committee and risks one individual skewing the result. Also there are concerns about the flexibility of the scoring system. It is understood that the ADB and WB have requested it is not used for their projects.

Under the PRR the PA can undertake negotiations with bidders where prices are deemed to be excessive or above local norms, when contracting using the Direct Method. Negotiations on price can also be undertaken when procuring Consultants Services where the quoted prices are much higher than those typically quoted. If the negotiations are unsuccessful then the next lowest compliant bidder can be called for negotiations. Negotiations cannot be re-opened after they are deemed to have failed.

6.6 Procurement Process for Consultancy Services

6.6.1 Advertising and Shortlisting

Under the competitive proposals method, a notice requesting expressions of interest (EOIs) must be published. The notice will normally be published in the national media and where feasible on a website and where appropriate in an international newspaper or technical publication. For National Competitive Bidding firms can be invited directly without a pre-qualification process.

The evaluation of EOIs must be based on qualifications, experience and capacity. Shortlists must normally consist of a maximum of six firms or individuals.

6.6.2 Request for and Submission of Proposals

PAs are required to prepare terms of reference (TOR) stating the nature, time and place of services, tasks and expected outputs.

Standard templates are provided for request for proposals (RFP) documents with specified content including TOR, instructions on the submission of proposals, the selection method, evaluation criteria, minimum technical pass mark and weightings and the terms and conditions of the contract. The PRR specifies the permitted types of contract.

A deadline for receipt of proposals must be set, with proposals kept unopened until this time and any late proposals rejected. The PRR sets minimum bidding periods of at least 30 days. Both technical and financial openings must be held in the presence of bidders’ representatives and financial proposals must be retained unopened until the notified time for the financial opening.

6.6.3 Evaluation and Negotiation

Technical evaluation must be based on the criteria and weightings in the RFP document, with a minimum quality threshold set. Criteria may include experience of the firm, proposed methodology, qualifications of key human resources, knowledge and technology transfer and, for international proposals, key Bhutanese human resources.

Award is to the first-ranked proposals, according to the selection method specified in the RFP. This may be:

- the Quality and Cost Based Selection method;
- the Quality Based Selection method – for services which are exceptionally complex or have considerable impact on future projects or the national economy;
- the Fixed Budget method; or
- the Least Cost Selection method.
- The Consultants Qualifications method
- Single Source Selection method

The Quality and Cost, Quality and the Single Source Selection methods are equivalent to JICA selection procedures. The Fixed Budget, Least Cost Selection and Consultants Qualifications methods are not contained in JICA Guidelines, but modelled on World Bank guidelines.

Negotiations may only be held with the selected consultant, although the PA can negotiate with the next ranked consultant if these negotiations fail. Technical negotiations are limited to the TOR, scope of services, reports and facilities provided by the PA. Fee rates can only be negotiated for time based contracts where negotiations on price can be undertaken when the quoted prices are much higher than those typically quoted locally, but reimbursables can be negotiated under all selection methods.

6.7 Contract Award and Management

After the award of contract, the Procuring Agency shall send to all consultants who have submitted proposals the following information:

- (a) the names of all consultants who submitted proposals;
- (b) the technical points assigned to each consultant;
- (c) the evaluated prices of each consultant;
- (d) the final point ranking of the consultants;
- (e) the name of the winning consultant and the price, duration, and summary scope of the contract.

Contracts may be amended by written consent of both parties, providing the basic scope of the contract is not changed. The PRR contains no specific provisions on approvals for contract amendments. In cases of unforeseen circumstances, variation orders of up to 15% may be issued without a contract amendment. Variation orders over 15% require the approval of the Council of Ministers.

Price adjustment is permitted for contracts that have a duration of more than 18 months. The PRR guidance on price adjustment allows price escalation in contracts of more than 18 months in cases where unusual conditions increase market prices. No adjustment is allowed in the first 18 months of a contract.

Dispute resolution under the contract is to be settled by any mediation as designated by the parties by common agreement or through National Arbitration Committee or the Courts of Bhutan. There are no special provisions for international tenders.

6.8 Record Keeping and Communications

PAs are required to maintain a comprehensive list of records, however there is no guidance as to formats or the period for which records must be retained. Comment is made that records must be kept until the project is finished and the audit completed.

Communications must be in writing, but procurement transactions may be carried out through electronic communications where permitted by government and subject to requirements of security, access, preserving content and not otherwise contravening the PRR.

Many key communications must be sent to all bidders, including the list of pre-qualified bidders, bid clarifications and amendments and notices of cancellation.

7. Oversight and Enforcement Systems

7.1 Bidder Complaints

The PRR establishes a mechanism for bidders to challenge procurement decisions, allowing bidders to file an application for review of any error or breach of duty by a PA in procurement proceedings. The mechanism comprises the establishment of an Independent Review Body (IRB) for Procurement Grievance and the operation of the body.

The Ministry of Finance announced on the 15th June 2012 that the body had been established and the Body would comprise three members, one each from the Ministry of Finance, the Ministry of Works and Human Settlement and the Bhutan Chamber of Commerce and Industries. The PPPD has been appointed to act as the Secretariat for the Body.

The review mechanism has the following components:

- Applications must first be submitted to the Head of the PA within 20 days of the date that the infraction was identified;
- The Head of the PA must within 15 days of receipt of an application respond stating the reasons for the decision and if the complaint is upheld in total or in part indicate the corrective measures to be taken;
- Should the decision not be received within 15 days or the complainant disagrees with the decision, the complainant may initiate a review by the Independent Review Body. A review procedure must be brought by the complainant within 10 days of the decision of the Head of the Procuring Agency or, where no such decision has been taken within 25 days of the original complaint.
- No timescale is stated for the IRB to respond to a complaint.

The IRB may make an interlocutory or final decision on the legality or principles that apply, annul in whole or part any unlawful act or decision by the PA including amendments to technical or other specifications, prohibit the PA from acting unlawfully or making unlawful decisions or procedures and order the termination of the procurement.

The IRB may also order the suspension of the procurement procedure pending its final decision. If the decision of the Independent Review Body is not acceptable then an appeal may be made to the Court only on a question of law. In such a case, any concession granted by the Review Body is withdrawn.

The constitution, rules of procedures and operation of the Independent Review Body shall be established by the Ministry of Finance.

If the facts disclose a potential issue of corruption, the Independent Review Body shall immediately refer the case to the Anti-Corruption Commission.

The public procurement system in Bhutan therefore lacks an effective mechanism for challenging procurement decisions and falls far short of international standards, such as those set by the United Nations Convention Against Corruption (which the RGoB has ratified) which requires an effective system of review and appeal. Timescales for both submission of complaints and the issue of decisions are short compared to many other countries.

7.2 Prevention of Corruption

The PRR does not contain a code of conduct for public officials involved in public procurement and for bidders. However, before each meeting of TCs members are required to sign a certificate stating “Declared that none of my close relatives (father, mother, brother, sister, spouse and own children) have taken part in the competitive bidding and that I do not have any direct interest in any of the parties participating in the bidding.”

This declaration falls short of what is deemed best practise. Normally a code of conduct requires officials to act impartially and in the public interest, avoid conflict of interest, maintain confidentiality and not commit corrupt, fraudulent or collusive practices. The code of conduct for bidders should cover bribery, misrepresentation, coercion, collusion, interfering with other bidders, seeking to influence the PA and conflict of interest.

It is noted that, as required by the Anti-Corruption Commission, it is mandatory for all bid document to contain an Integrity Pact. The Integrity Pact has to be submitted duly signed by the bidder along with its bid. Non-compliance leads to bid rejection.

Section 3: Recommendations

8. Recommendations

The following sections make recommendations for the strengthening of the national procurement system of Bhutan. Many are already recognised by the Royal Government of Bhutan, with actions included in the 10th Five Year Plan running from 2008 to 2013.

8.1 Legal Framework

Complete all outstanding work on the revision of the legal framework. As well as addressing identified weaknesses in the PRR, such as the complaints mechanism, as discussed in section 8.4 below, the revision should:

- ensure that the PRR includes a requirement for robust procurement planning;
- complete all supporting documents and templates, such as guidelines and SBDs, including those for framework contracts;
- ensure that documents, especially for low value procurements managed at a local level, are available in English as well as Dzongkha;
- in line with the above-point ensure that rules, guidance documents and templates are suitable and proportionate for smaller PAs, such as local government bodies, schools and clinics;
- develop an ethical code for all involved in public procurement to strengthen anti-corruption measures and to enhance the perceived integrity of the public procurement process
- introduce a clear procurement filing and record keeping system

8.2 Institutional Framework

Strengthen PPPD to ensure it is able to fulfil its mandate of monitoring and reporting public procurement, as well as building capacity among the staff of the PPPD and PAs. This should be achieved through continued capacity building of staff recruitment of additional staff as necessary, as well as developing the skills of current staff and ensuring it has all necessary tools. Tools and training for procurement monitoring and auditing tasks are one priority.

As a Division under the Ministry of Finance, reporting to the Secretary of the Ministry of Finance, the PPPD formally has a high level and authoritative standing in Government (PRR rules 8.2.1.1 and 8.2.1.2). In practice, however, PPPD administratively falls under the Department of National Properties, and the Head of PPPD refers to the Head of the Department of National Properties and not directly to the Secretary. This condition, together with the fact that PPPD does not have the authority to publicly address matters relating to public procurement, but is required to refer all such matters to the Secretary (who may however choose to delegate), this puts at risk the independence of the body. The issue of independence is further exaggerated by the fact that no rules on the financing of the PPPD are established in the PRR, hence making the financing of PPPD subject to easily changeable administrative decisions.

8.3 Capacity Development

Procurement capacity varies among government procurement staff but there is a need to ensure that they all have good fundamental procurement skills and are able to comply with the legal framework. Where procurement skills are weak there is a need to develop the key procurement skills throughout the procurement cycle.

However, it is important to recognise that procurement capacity development initiatives should differentiate between different procurement roles, including practitioners in procurement units, those responsible for approvals, including the chief of the PA and staff with technical involvement, such as the preparation of specifications and terms of reference and participation in evaluation committees. The work undertaken in the following project should be extended to meet this requirement.

Between 15th June 2009 and May 2011 the World Bank (WB) funded a capacity building project with the PPPD called “Institutional Capacity Building Project in Procurement (ICBPP) – Bhutan”.

This project In addition to building capacity in public procurement the project aimed to introduce a sustainable internationally recognized qualification in procurement to be delivered by Royal Institute of Management (RIM) and other Institutes. The 3 main objectives of ICBPP were to:

- 1) Establish and embed procurement bench-marks and standards which are based on international best practice
- 2) Establish and professionalize a procurement community through a national people development strategy
- 3) Strengthen and support the wider roll out of procurement practices, in order to create a “Body” of procurement knowledge for the country.

It is important to build on the successes of this project and to now deepen procurement expertise on a sustainable basis beyond PPPD in the key procuring ministries and agencies to that a professional cadre of procurement experts develops in the Bhutanese Government.

8.4 Complaints Mechanism

Significantly revise the complaints mechanisms to ensure access by bidders to an effective system of review and appeal. Timescales for review and the rights of bidders should be revised in line with international standards; the UNCITRAL Model Law on Public Procurement provides a useful template.

8.5 E-procurement

Bhutan having put in place some of the fundamental “building blocks” for an effective public procurement system is now considering the merits of introducing an e-procurement system that will make the public procurement system more secure, efficient and transparent. Support is likely to be needed in considering firstly whether now is an appropriate time to introduce an e-procurement system and what an appropriate system would be for Bhutan. It is understood that the World Bank will likely support this initiative.

Appendix A: Completed Questionnaire on National Procurement System

Study on the National Procurement System of Bhutan

Study of Bhutan Procurement System is based on:

- The Royal Government of Bhutan Public Finance Act of Bhutan 2007
- The Royal Government of Bhutan, Ministry of Finance, Finance and Accounting Manual 2009
- The Royal Government of Bhutan, Ministry of Finance, Procurement Rules and Regulations (PRR) 2009
- The website of the Public Procurement Policy Division (PPPD) at <http://www.mof.gov.bt/index.php?deptid=12&id=67>

It covers the key elements of the national procurement system, but is not exhaustive. Where relevant, it highlights features or practices which differ from those contained in JICA Guidelines.

| No | Question | Details of Procurement System | Comments and Recommendations |
|----|--|---|---|
| A1 | <p>Legal Framework</p> <p>Which documents make up the legal framework? i.e. is there a procurement law / regulations / guidelines / manual?</p> | <ul style="list-style-type: none"> • The Royal Government of Bhutan Public Finance Act of Bhutan 2007 • The Royal Government of Bhutan, Ministry of Finance, Finance and Accounting Manual 2009 • The Royal Government of Bhutan, Ministry of Finance, Procurement Rules and Regulations (PRR) 2009 • The website of the Public Procurement Policy Division (PPPD) at http://www.mof.gov.bt/index.php?deptid=12&id=67 | <p>PPPD do not see any serious conflicts between the law and regulations notes in the left hand column.</p> <p>Changes are introduced as & when found necessary - PPPD wants to revise PRR to incorporate all amendments/additions made after publication in circulars into single document in 2012.</p> <p>Also currently translating Standard Bidding documents into Bhutanese Language- Dzongkha for low value procurement. It is now at the</p> |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----------|---|--|--|
| A2 | Are there standard bidding documents and/or any other standard forms or templates? If so, are they based on a particular template, such as donor documents? | SBDs for goods (ICB and NCB), SBDs for works (various values and methods plus prequalification) and consultancy services (various values and contract types) The SBD are similar to World Bank and ADB format | finalisation stage. PPPD is responsible for updating these. Is noted some State Owned Corporations have developed their own SBD. |
| B | Scope of Application | | |
| B1 | Who does the legal framework apply to? i.e. does it cover parastatal and state owned enterprises or only government ministries? | The procurement rules and regulation applies to all procurements/Government agencies except for; <ul style="list-style-type: none"> • Procurements involving the security interests of the country • Bilateral or multilateral project agreement requirements • Government owned agencies which have their own rules and regulations for procurement but these should reflect the broad principle of PRR 2009 | |
| B2 | Does the legal framework apply to all procurement or are there exceptions? | Covers procurements of goods, construction, consultancy services and other services except when: <ul style="list-style-type: none"> • Procurements impact on Security interests of the country • Bilateral or multilateral project agreement require different guidelines to be followed • Where government owned agencies, which has their own rules and regulation for procurement within the broad principle of PRR 2009, conduct | PPPD has very limited interactions with government corporations (including all the key ones under Druk Holding Investment (DHI)) and doesn't know how many governmental agencies have their own rules. |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----------|---|---|---|
| B3 | What provision does the legal framework make for application of alternative donor rules? | procurement) PRR 2009 allows procurements to follow donor agencies procurement rules and regulations if this requirement is reflected in the agreement with the donor. | JICA can require use its procurement guidelines where specified in loan agreements |
| C | Institutional Framework | | |
| C1 | Is procurement centralised or decentralised? i.e. is there any central body responsible for conducting or approving procurement or does each agency do this itself? | Procurement process is overseen by PPPD but PPPD does not conduct procurement itself. Actual procurement is decentralised to different entities/levels of government, right down to Gewog level, depending on values involved. With exceptions mentioned in B1 and B2, PAs are required to follow the Government's procurement rules and regulations and adopt the SBDs. | |
| C2 | Is there a regulatory body for procurement? If so, what are its functions? | Public Procurement Policy Division under the Ministry of Finance is the custodian of PRR. Functions defined in s65, PRR and supplemented in Rule 144, PRR and include: <ul style="list-style-type: none"> • Policy: advising Government on procurement policy, submitting annual reports, reviewing the system, studying other systems and coordinating reforms • Regulatory framework: issuing guidelines, manuals and SBDs and advising PAs on their interpretation • Monitoring: collecting procurement and contract implementation statistics, requiring | Staff are recruited solely to PPPD and do not rotate to other government ministries Currently no aspirations / plans to establish PPPD as an independent agency. |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----|--|---|---|
| C3 | Who is responsible for monitoring or auditing procurement? | <p>reports from PAs and monitoring procurement</p> <ul style="list-style-type: none"> • Information dissemination: operating a procurement website and publishing a bulletin • Capacity building: arranging training and other programmes for public and private sector, arranging accreditation programmes for public sector procurement staff • Regulatory: blacklisting suppliers and acting as Secretariat to the Review Committee <p>PPPD not involved in procurement processes (except its own) or settling disputes</p> | |
| | | <p>The PPPD. Its functions include collecting data, requiring reports from PAs, monitoring, undertaking (or arranging) technical audits of compliance and making observation visits.</p> <p>PPPD is planning a Procurement Monitoring Management Information System (PMMIS) with benchmarks and indicators</p> <p>Office of the Auditor General audits procurement and publishes a specific guide on procurement audit.</p> | <p>PPPD is suppose to monitor the implementation of procurement rules & its related documents through collection and analysis of reports provided by PA based on the reporting formats developed by PPPD and propose improvements based on such reports but to date they have not been able to do this due to lack of manpower & competency.</p> <p>PPPD has not been able to interact with RAA much but whenever PPPD proposes improvements to PRR & related guidelines RAA is</p> |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----|--|--|---|
| C4 | Who is responsible for procurement within each agency? i.e. is there a procurement unit, designated procurement staff within departments or any form of committee? | Overall responsibility rests with the Chief of the PA. PAs are to establish a procurement unit or designate a unit with procurement responsibilities, s7(3), PRR. PAs to form Tender or evaluation committees, s71, PRR | always invited to participate and sometimes RAA points out the deficiencies in t rules related to audits. Noted that PPPD understand RAA have procurement audit manual but have not seen it and were not involved in its development. |
| C5 | Are there any requirements for qualifications or registration for procurement staff? | PAs to carry out procurement activity through employees with qualifications prescribed by the PPPD and knowledge or training on procurement, s7(2), PRR PPPD functions include defining functions of procurement staff and arrangements for assessing their capability and expertise. | Through ICBPP project the Royal Civil Service Commission has endorsed a procurement competency framework utilising the Chartered Institute of Purchasing and Supply's (UK) qualifications against but it has not yet been implemented. Royal Institute of Management (RIM) course on procurement is treated as the base course for CIPS but RIM is unable to fully introduce the CIPS course due to high cost and non-availability of faculty. CIPS have been to Bhutan |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----------|--|--|---|
| C6 | How is procurement reviewed or approved within each agency? i.e. is there any committee or board which approves and are there levels of authority for approvals? At what stages is procurement reviewed? | Bidding documents to be approved by chief of PA, PRR 47 Depending on financial thresholds, committees are formed at the recommendation of PA. The committee is fully responsible for the interpretation and review of the SBD Approval of evaluations varies according to value, PRR 67. | and discussed with PPPD. In terms of capacity building procurement professionalization is one of PPPD priorities along with training of the private sector. PPPD hopes to launch procurement courses in few government colleges. |
| C7 | Is responsibility for contract management within each agency specified? | Procurement unit responsible for examining quality standards of delivered goods, works and services and keeping performance guarantees. | |
| C8 | Who performs financial management functions (e.g. commitments, payments etc)? Are they separated from procurement? | The head of the PA is responsible for financial management under the Financial Procedures Act 1999. Procurement and financial functions are separated. Once contracts are awarded, copies are provided to the finance department, who also process invoices. The Head of the Finance department is responsible for disbursement | |
| D | Registration and Participation | | |
| D1 | Are there any requirements for supplier registration as a | PRR requires the creation of registration system. | |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----|--|--|---|
| | requirement of participation in procurement or as a condition of contract award? If so, give details | The appropriate authorities from time to time will undertake registration. In the context of works, the Construction Development Board is the competent authority for contractors and engineering consultants. The Ministry of Economic Affairs is the responsible agency for issuing trade licence for suppliers. | |
| D2 | Are there any restrictions on participation or origin of goods or staff based on nationality? If so, give details | No restrictions on participation based on nationality, Restrictions are applied only when the donor agreement requires. | However, often are indirect restrictions such as bids/payments in Nu. |
| D3 | Is there any mechanism for suspension of non-performing suppliers and/or those guilty of misconduct? If so, give details | Bidders are excluded where; <ul style="list-style-type: none"> - Bhutan prohibits commercial relation with the country in questions in compliance with any United Nation sanctions - Where they are insolvent or bankrupt; - Where their Affairs are administered by a court - Found guilty of professional misconduct; - Violation of tax laws; - Convicted of fraud or corruption; - Debarred from public procurement by competent authority. | PAs based on the grounds mentioned in PRR 2009 or relevant SBDs can exclude the bidders from participation in the bidding process (is applicable only to agency in question). Debarment which applies nation-wide is done by two agencies ACC & CDB and is announced in mass media & on relevant website. ACC have asked PPPD to work with them on debarments acting as kind of secretariat but PPPD is reluctant as scope likely to exceed procurement and they are worried about how much time it will take up when they have limited man power. |

| No | Question | Details of Procurement System | Comments and Recommendations |
|-----------------------------|--|---|---|
| Procurement Planning | | | |
| E1 | Are agencies required to prepare procurement plans as part of their budgeting process? | Procurement plans do not form a specific part of the budgeting process | |
| E2 | Are agencies required to prepare procurement plans for major procurement requirements? | No not unless this is a donor requirement | |
| E3 | What are the key contents of procurement plans? E.g. methods, packaging, type of contracts, timescales etc | See E-2 | |
| Procurement Methods | | | |
| F1 | Is there a preference for open competition, with other methods requiring justification? | Yes, preference for open bidding, Mostly the bidding process is single stage single envelope. Only for complex or large scale project, it is single stage two envelope | |
| F2 | What procurement methods are permitted for goods, works and non-consultancy services? Provide details of thresholds and conditions for use | <p>PRR defines:</p> <ul style="list-style-type: none"> • Open national bidding – default method • Open international bidding – required where the value of works are beyond the capacity of Bhutanese • Limited Tender/Bidding Method - The number of bidders is limited to 3 to 5 bidders. Threshold value, in place. • Limited Enquiry Method - this method allows the PA to solicit prices from at least three domestic companies or individuals and may be used for the procurement of goods or works where the total value does not exceed the applicable threshold value or where an earlier Limited Bidding procedure less than three bids were received | <p>Note: unlike JICA guidelines no international bidding eg limited international bidding outside of open procurement method. DF</p> <p>H</p> |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----|--|---|---|
| | | <ul style="list-style-type: none"> • Direct purchase mostly for low value, repeat or emergency purchases • Framework contract • | |
| F3 | What procurement/ selection methods are permitted for consultancy services? Provide details of thresholds and conditions for use | The selection methods are: QCBS, FBS, LCS, CQS, SSS and Independent Individual | QCBS is employed, unless the circumstances justify the use of other selection methods prescribed under each methods. However, noted technical: financial weight used is often 60 : 40 ie emphasis far more on cost than the international norm. |
| F4 | Is the splitting of procurement requirements to avoid thresholds prohibited? | No | |
| F5 | Is a simplified method available for low value procurement, with a clear threshold? | Yes, for low value the procurement is through limited bidding and limited enquiry or direct contracting | |
| F6 | Is single source procurement limited to specified, justified circumstances? | It is restricted to use in situations where procurement is for low value administration items (not exceeding Nu 0.02 million), where an earlier Limited Enquiry procedure failed to provide three bids, for rural works where no bids were received under open tender (not exceeding Nu 0.3 million), where there is only one available supplier/contractor, where spare parts are being procured for items that have already been procured, where repeat orders are being made (subject to limitations based on the percentage of the contract in relation to that of the original | |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| | | contract) and where extreme urgency is required. | |
| G | Bidding Process for Goods, Works and Non-Consultancy Services | | |
| G1 | Are agencies required to advertise procurement opportunities widely, whether nationally or internationally? | Invitation to bid or prequalify to be published in daily newspapers of national circulation (or internationally for open international bidding) | PPPD has already created website which will soon be launched. This is aimed towards development of full e-GP system in future and once this is realised all procurement information will be required to route through this centralised website. |
| G2 | Is use of limited bidding restricted to specified, justified circumstances? | Limited biddings are adopted when open tender fails or when the threshold value is for limited bidding | |
| G3 | Is pre-qualification permitted or required for large or complex contracts? | Bidding can be with or without prequalification, Not mandatory to pre-qualify | Based on complexity and size of contracts where high cost of preparing detailed bids could discourage competition (entirely on capability and resources of prospective bidders).PA should provide set of pre-qualifications document to those who respond to such invitation. Admitted that in reality (consultancy services aside) pre-qualification is very rare. |
| G4 | Are agencies required to use qualification criteria related to the contract and to disclose these to applicants? | Qualification criteria must be stated in bidding, prequalification or RFP documents and must relate to areas such as technical qualifications, | |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| | | equipment, past performance etc, | |
| G5 | Are all qualified firms invited to bid? | Yes, | |
| G6 | Are objective specifications or other technical documents required to clearly describe the subject of procurement? | Yes, PRR requires to prepare specifications, plans, drawings, designs or other descriptions based on relevant objective characteristics and functions. Brand names etc only permitted where other description is not possible and with equivalents permitted. | |
| G7 | Are standards required to be used, whether national or international? | Technical specification in the SBD includes relevant standards. | |
| G8 | Do templates for bidding documents: <ul style="list-style-type: none"> •contain clear instructions on the bidding process? •disclose the evaluation criteria and methodology? •contain draft contracts which are fair and provide adequate protection for the agency? | Yes, SBD templates based on ADB/World Bank documents. For national procurement the unit rates and prices shall be quoted by the Bidder entirely in Ngultrum (Nu). Foreign currency requirements shall be indicated and shall be payable at the option of the Bidder in up to three foreign currencies. In case of international procurement bidders can quote their prices in three freely convertible foreign currency. | |
| G9 | Are fees for bidding documents limited to costs for copying and despatch? | The PRR mentions that the fees should cover the preparation cost and is left to the PA to determine. The PA agency defines the bid document cost. | |
| G10 | Are agencies required to give a clear bidding deadline, keep bids securely and reject late bids? | Yes, | |

| No | Question | Details of Procurement System | Comments and Recommendations |
|-----|--|--|---|
| G11 | Are minimum bidding periods specified? | At least 30 days for open bidding/ 14 days limited bidding 5 days limited enquiry Direct contracting mutual agreement For international bidding it is left for the PA | |
| G12 | Are bid securities required? If so, give details of rules. | Yes, 1%-2% of the estimated cost Bid securities from foreign banks to be counter-guaranteed by a Bhutanese bank. Bid security forfeited for withdrawal, refusing an arithmetic correction, failing to sign a contract or provide performance security, | |
| G13 | Are public bid openings required? | Bids to be opened at the time and place in the bidding documents, immediately after the deadline in the presence of bidders' representatives, | Noted that usual practise is not to distribute bid-opening minutes so if bidders do not attend are not informed the outcome of the bid opening ceremony. |
| G14 | Is evaluation based on the criteria in the bidding document? | Yes, evaluation criteria are laid down in the bidding document,. | |
| G15 | Is award to the lowest evaluated responsive bid? | Yes, | |
| G16 | Are negotiations prohibited? | Negotiations not covered in PRR. | Basically negotiations is not allowed in competitive tender although it is not expressly mentioned in PRR 2009 but this does not preclude the agencies to seek clarifications to help in clarifying doubts at the time of evaluations and arithmetical corrections. |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| H | Procurement Process for Consultancy Services | | |
| H1 | Are TOR required which clearly describe objectives, tasks and outputs of the assignment? | RFP to contain TOR with nature, time and place of services, tasks and expected outputs, | |
| H2 | Are agencies required to advertise procurement opportunities widely, whether nationally or internationally? | Yes | This differs from JICA guidelines, where shortlists can be developed without advertising to request EOIs. |
| H3 | Is shortlisting based on objective evaluation of EOIs or other appropriate sources? | Evaluation of EOIs based on qualification, experience and capacity in EOIs. Renowned consultants who did not submit EOIs may also be included in the shortlist, Shortlist of 3-6 firms. | |
| H4 | Do templates for RFP documents: <ul style="list-style-type: none"> •contain clear instructions on the bidding process? •disclose the evaluation criteria, weighting, methodology and any minimum thresholds? •contain draft contracts which are fair and provide adequate protection for the agency? | Yes. Gives details on RFP, including stating criteria, weights and selection methods. Standard RFP templates based on World Bank documents | Noted weighting often 60% technical and 40% financial which puts more emphasis on financial than is typical under international norms |
| H5 | Are agencies required to give a clear bidding deadline, keep proposals securely and reject late proposals? | RFP requires clear deadline. | |
| H6 | Are minimum bidding periods specified? | RFP requires rejection of late proposals. At least 30 days. | |
| H7 | Are public bid openings required for technical and/or financial proposals, with adequate notification for financial openings? | RFP addresses technical opening, RFP addresses financial opening. RFP require both technical and financial openings in the presence of bidders' representatives | |
| H8 | Is technical evaluation based on the criteria and weightings in the RFP document, with a minimum quality threshold? | Yes, RFP Criteria may include experience of firm, proposed methodology, qualifications of key human resources, knowledge and technology transfer and, | |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----------|--|---|---|
| | | for international proposals, | |
| H9 | Are agencies required to keep financial bids sealed until the time for financial opening and evaluation? | Yes,. | |
| H10 | Is financial evaluation and ranking of proposals based on the methodology and weightings in the RFP? | Yes | |
| H11 | Is award to the highest ranked proposal, according to the methodology specified in the RFP? | Yes, | |
| H12 | Are negotiations limited to the first ranked consultant and to areas other than fee rates? | Yes, negotiations only with the selected consultant. Can negotiate with the next ranked consultant if negotiations fail. Negotiations limited to TOR, scope of services, reports and facilities provided by the PA. Fee rates can only be negotiated for QBS. Reimbursables can be negotiated under all methods. | |
| I | Contract Award and Management | | |
| I1 | Is any notification to unsuccessful bidders and standstill period required prior to award? | Yes, notice of intent of acceptance sent to selected bidder and information on the selected bidder sent to other bidders within 7 days of selection of lowest evaluated bid. Selected bid can only be accepted after 7 days if no application for review is submitted. | PA are required to notify bidders in writing of the award decision in their respective websites within 15 days of its such decision.. |
| I2 | Is the agency required to debrief unsuccessful bidders and publish details of the contract award? | Yes. The agency informs the unsuccessful and successful bidders. | Noted is no public announcement of Contract award. |
| I3 | What procedures and controls apply to contract amendments and variations? | Contracts can be amended by written consent of both parties, providing the basic scope of contract is not changed,. No specific provisions on approvals in PRR. In cases of unforeseen circumstances, variation | |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----------|---|---|---|
| I4 | What dispute resolution procedures are included in contracts? | orders up to 20% may be issued without contract amendment. Variation orders over 20% require approval from the competent authority. Arbitration for goods, consultancy and works as provided in the contract or prevailing law. Adjudication, dispute resolution committee or arbitration for works, depending on value. | |
| J | Record Keeping and Communications | | |
| J1 | Is the agency required to maintain records of procurement activities? Give details of the contents required | Records to be kept until the completion of final auditing. Prior approval to be sought before destroying records. | No filing or record keeping guidelines as to how documents are to be kept |
| J2 | Are communications with bidders and suppliers required to be in writing or confirmed in writing? | Communications to be in writing, | |
| J3 | Must communications such as bid clarifications and pre-bid meeting minutes be sent to all bidders? | Bid clarifications and amendments must be sent to all bidders, Notice of cancellation must be sent to all bidders, | |
| K | Bidder Complaints | | |
| K1 | Is there any mechanism enabling bidders to challenge procurement decisions? And to appeal the response? | Yes, The bidder at the time of bid opening can register a complaint in the complaint register Bidder also within 20 days can appeal to the PA; Bidder if not satisfied can appeal to the Independent Review Body established by Ministry of Finance; Bidder not satisfied with Independent Review Body can appeal to Court. | |
| K2 | Are complaints and appeals heard by an independent body? | Bidder not satisfied with Pas decision can appeal to independent Review Body and finally to Court | |
| K3 | Does any complaints mechanism follow appropriate | Complaints to be submitted to the PA within 20 | |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----------|--|---|---|
| | procedures in terms of timescales, documentation requirements etc? | days of the bidder being aware of the error/breach. PA shall give decision within 15 days Complainants shall appeal to Independent Review Body with 10 days of the decision of the PA. | |
| L | Prevention of Corruption | | |
| L1 | Is there a clear policy and rules prohibiting corrupt and fraudulent practices? | Yes, Bidding documents contain information that bids will not be processed where there is conflict of interest or legal action for fraud or corruption, Rejection of bids required in cases of collusion, An Integrity Pact forms part of the bidding document and is signed by PA and bidder. Also all members of EC must declare any conflicts of interest. | However, no ethical code for public procurement in place |
| L2 | Is there a procurement code of conduct or other rules covering areas such as gifts, hospitality and conflicts of interest? | PRR gives code of conduct for officials involved in procurement which includes acting impartially and in the public interest, avoiding conflict of interest, maintaining confidentiality and not committing corrupt, fraudulent or collusive practices. PRR gives code of conduct for bidders which covers bribery, misrepresentation, coercion, collusion, interfering with other bidders, seeking to influence the PA and conflict of interest. Integrity Pact provides limited code of conduct | Integrity Pact covers by no details no caps for gifts/hospitality. |
| M | Other Information | | |
| M1 | Note any other information of relevance concerning the procurement system e.g. use of e-procurement | E-procurement not adopted in Bhutan | As mentioned above, start has been made towards target of e-procurement.. World Bank project to assist PPPD has been extended by |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----|----------|-------------------------------|--|
| | | | 1 year and will include study visits to countries using e-procurement including probably Singapore and Philippines and expected phase II of project will include selecting a system. |

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添付資料 4 : 公共調達制度レビュー報告書（ネパール）



Study of National Procurement System of Nepal

Japan International Cooperation Agency

Report

June 2012



Crown Agents Reference No. 28643

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List of Abbreviations

| | |
|-------|--|
| EA | Executing Agency |
| e-GP | Electronic Government Procurement |
| EOI | Expression of Interest |
| GON | Government of Nepal |
| NPPSF | Nepal Public Procurement Strategic Framework |
| ODA | Official Development Assistance |
| JICA | Japan International Cooperation Agency |
| PE | Public Entity |
| PPA | Public Procurement Act |
| PPR | Public Procurement Regulations |
| PPMO | Public Procurement Monitoring Office |
| RFP | Request for Proposals |
| Rs | Rupees |
| SBD | Standard Bidding Document |
| TOR | Terms of Reference |

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It should be noted that the BSI Symbol and UKAS Accreditation mark signify that Crown Agents operate a documented Quality Management System registered with the British Standards Institution to the international quality standard BS EN ISO 9001:2008. The provision of consultancy services in revenue enhancement and expenditure and debt management including: customs, taxation and trade, human institutional and organisational development, engineering, procurement management advice and reform, health logistics and procurement services. Third party quality assurance and inspection services related to the supply of manufactured and processed products. International freight forwarding services utilising in house sub-contract warehousing. Verification of service as follows: Air Import – Clearance UK airport; Exports – Airport of departure; Sea Imports – Clearance UK port; Sea Exports – Port of loading.



FS 33234

Section 1: Introduction

1. Study of Procurement Systems and Capacity in South Asia

The quick and appropriate implementation of Official Development Assistance (ODA) programmes by the Japan International Cooperation Agency (JICA) is dependent on executing agencies (EAs) having the necessary systems, organisation, operational rules and capability to undertake the required procurement procedures smoothly. This capability depends on both the degree of procurement experience of each EA and on the degree of maturation of the national procurement system.

As JICA is now cooperating with new EAs in the South Asia region, it requested Crown Agents to undertake a study of procurement systems and capacity in selected target countries in South Asia in order to collect basic information on the public procurement systems and procedures of each country, determine the capacity of each target EA and formulate training plans to reflect areas requiring procurement support.

2. Purpose of Report

As part of the study, this report provides an overview of the national procurement system of Nepal. It provides a general summary of the government system, based primarily on the legal and regulatory framework. Details on specific EAs can be found in separate capacity assessment reports.

As new EAs for JICA ODA loans are likely to be more familiar with their national procurement system than with the JICA Guidelines for the Employment of Consultants and for the Procurement of Goods and Services under Japanese ODA Loans (JICA Guidelines), this report highlights any areas where national rules or practices differ significantly from JICA Guidelines.

This report is issued as a draft, providing essential background information to inform capacity assessment work in EAs. It will be further updated, where appropriate, in light of information obtained during field visits for the assignment.

3. Methodology

In order to facilitate and standardise studies of national procurement systems across all target countries, Crown Agents developed a questionnaire covering the key elements of a procurement system. This questionnaire is completed for each target country, primarily through a desk study by a procurement specialist from Crown Agents' headquarters. The study is based on relevant legal documents, websites and information available from other recent studies of the national system, supplemented by input from the Crown Agents' local consultant and from field visits by the team assessing procurement capacity in EAs.

This study of the national procurement system for Nepal is based on:

- The Public Procurement Act and Regulations
- The website of the Public Procurement Monitoring Office (PPMO) at <http://www.ppmo.gov.np/>
- The Nepal Public Procurement Strategic Framework (NPPSF) of July 2010

The completed questionnaire for Nepal is included at Appendix A. Section 2 of this report summarises the findings of the study, highlighting areas where national rules or practices differ significantly from JICA Guidelines. Section 3 provides brief recommendations for strengthening the national procurement system.

Section 2: Summary of National Procurement System

4. Overview of Procurement System and Reforms

The Government of Nepal (GON) is undertaking the reform of its public procurement system. In 2007, it modernised the legal framework through the issue of the Public Procurement Act and Regulations, also establishing the PPMO as a body to regulate and monitor public procurement in Nepal. Procurement responsibility is decentralised to each public entity (PE); although the majority of procurement expenditure takes place within central government ministries, there are approximately 40,000 PEs in Nepal, including those at local level.

The process of procurement reform continues, guided by the Nepal Public Procurement Strategic Framework for 2010-2013. Among other initiatives, the GON is implementing electronic Government Procurement (e-GP), with the first phase due for completion in mid-2012. The GON is being supported by various development partners, including the Asian Development Bank and World Bank.

5. Legal and Institutional Framework

5.1 Legal Framework

The legal framework for public procurement in Nepal was established in 2007, but has recently been revised and is likely to undergo further revision in future. The legal framework currently consists of:

- The Public Procurement Act, 2007 (PPA)
- The Public Procurement Regulations, 2007 and Public Procurement (Third Amendment) Regulations 2011 (PPR)

Amendments to the PPA have been recommended. Various other laws in Nepal contain provisions on procurement and were not repealed by the PPA; this creates confusion among procurement staff and provides potential loopholes to avoid application of the PPA.

These legal documents are intended to be supplemented by further guidance documents, but with the exception of a directive on price adjustment, most have not yet been issued. The need for procurement and contract manuals has been recognised and guidelines are under preparation.

Some standard bidding documents (SBDs) and standard forms have been issued by PPMO, but some documents and templates still need to be completed and/or translated to be available in both Nepali and English.

Despite ongoing work to complete and further update the legal framework, enforcement of the PPA and PPR are reported to be weak.

5.2 Scope of Application

The PPA covers all public entities including central government entities, many companies and academic bodies (subject to with full or majority government ownership or control), local bodies and bodies with government loans or grants. As individual schools and health clinics, as well as local bodies at village, municipality and district levels, are separate public entities, there are approximately 40,000 PEs with responsibility for procurement in Nepal. This brings challenges in monitoring compliance with the PPA, as well as questions of the suitability of the legal framework for smaller, lower spending PEs. PPMO has already noted the need to adapt guidelines and documents to ensure their suitability for the local government context.

The PPA applies to goods, construction, consultancy services and other services, with exceptions only for security, strategic or defence procurement when so decided by government. This security exception is potentially open to abuse and is no longer recommended in standards such as the 2011 Model Law on Public Procurement issued by the United Nations Commission on International Trade Law, but remains common across the world.

There is a further exception to application of the PPA where procurement must follow donor guidelines under a financing agreement. This is important for implementation of ODA by JICA, allowing JICA Guidelines to prevail over national law.

5.3 Institutional Framework

Procurement is decentralised, with the chief of each PE responsible for ensuring procurement activities are carried out and the central regulatory body, the PPMO, providing oversight.

5.3.1 Procurement Responsibilities

Each PE is required to establish a procurement unit or designate a unit with responsibility for procurement and contract management. PEs also form evaluation committees. Staff conducting procurement are required to have qualifications prescribed by the PPMO and knowledge or training on procurement; PPMO has reported in adequate capacity in many PEs and intends to initiate an accreditation programme, as well as capacity needs assessment, great training and establishment of a national procurement training system.

PPMO provides central support by establishing databases of suppliers and average prices for common user items. PPMO also intends to develop guidelines for framework contracts, to facilitate their use for common user items. Aside from these information functions, PPMO is prohibited from operational involvement with procurement processes (other than those to meet its own needs) or the settlement of procurement disputes.

Procurement units must generally obtain approvals for procurement from the chief of the PE. The chief of the PE approves bidding documents, while evaluations are approved according to value. The head of the PE has responsibility for financial management, in addition to procurement.

5.3.2 Regulation and Oversight

PPMO was established in 2007 by the PPA as a body under the Office of the Prime Minister and Council of Ministers. It is primarily a regulatory body, with functions in the following areas:

- Policy: advising Government on procurement policy, submitting annual reports, reviewing the system, studying other systems and coordinating reforms
- Regulatory framework: issuing guidelines, manuals and SBDs and advising PEs on their interpretation
- Monitoring: collecting procurement and contract implementation statistics, requiring reports from PEs, monitoring and auditing procurement
- Information dissemination: operating a procurement website and publishing a bulletin
- Capacity building: arranging training and other programmes for public and private sector, arranging accreditation programmes for public sector procurement staff
- Regulatory: blacklisting suppliers and acting as Secretariat to the Review Committee

This range of functions is consistent with those of regulatory bodies worldwide and the prohibition on involvement in the procurement of other PEs avoids any conflict with its regulatory functions. However, while legal requirements are adequate, the PPMO reports inadequate capacity and a need for institutional restructuring to effectively fulfil its mandate.

PPMO reports that inadequate monitoring is currently taking place due to a lack of trained staff, resources and data. It is planning a Procurement Monitoring Management Information system. In addition to PPMO's monitoring functions, the Office of the Auditor General audits procurement and publishes a specific guide on procurement audit.

6. Procurement Procedures and Practices

6.1 Registration and Participation

There are no restrictions on participation in public procurement based on nationality, except for procurement of rations (food items), where contracts can only be concluded with Nepalese

citizens. Discrimination is prohibited as a general principle, but price preferences are permitted and Nepali goods will be purchased in preference to foreign goods at prices up to 10% more expensive. For consultancy services, shortlisted international consultants must have a local agent.

The PPA contains no requirements for suppliers to register as a condition of participation in competitive bidding or sealed quotations procurement. However, PEs are required to prepare standing lists of suppliers which are used for low value direct procurement. The list must be advertised and updated annually.

Suppliers may be blacklisted by PPMO for a period of 1-3 years and a list of blacklisted suppliers is displayed on PPMO's website. Grounds for blacklisting include breach of the code of conduct, failure to sign a contract, substantial defects in contract implementation, conviction of a criminal offence, misrepresentation or failure to pay a loan.

6.2 Procurement Planning

PEs are required to prepare:

- a master procurement plan for procurements with a duration of more than one year or annual procurement with a value greater than Rs 100m, which must be updated each fiscal year;
- an annual procurement plan, based on the master procurement plan, for all procurement with a value greater than Rs 1m, as part of the budget process.

The contents of procurement plans are specified in detail, including timings, costs, methods, packaging, any need for pre-qualification and types of contract.

PEs are also required to prepare cost estimates for procurement with a value greater than Rs 25k. Written approval and confirmation of funding is required before the procurement proceeds.

Despite these rules, the PPMO reports that most PEs do not have master or annual procurement plans in place, that there is poor correlation between procurement and budgeting and that PEs have weak skills in preparing cost estimates.

6.3 Procurement Methods

The PPA defines a range of procurement methods, with a preference for competitive bidding and various methods suitable for high and low values and for consultancy services, as well as goods, works and non-consultancy services. Thresholds are provided in the PPR and the splitting of requirements to avoid these thresholds is prohibited. The main permitted methods for goods, works and non-consultancy services are:

- **Open national bidding**, the preferred method, which may involve one or two-stage bidding, the latter for complex requirements.
- **Open international bidding**, which is required where the items are not available at competitive price in Nepal, no bids were received under national bidding, where a donor required procurement from a foreign source or the items are complex and requires international bidding. Documents must be in English for this method.
- **Sealed quotations** for procurement up to Rs 1m.
- **Direct purchase**, which is limited to specific circumstances, some of which require approval by a government committee. It is permitted for procurement up to Rs 150k, where only one supplier can meet the need or has exclusive rights, for additional purchases up to 30% of the contract value where they cannot be separated from the initial purchase or where a consultant has unique qualifications or must continue earlier work.
- Through **participation of users' committee or beneficiary group** where this increases economy, quality or sustainability.
- **Force account** for regular petty work of an ordinary nature.

There is no restricted bidding method which would be equivalent of the Limited International Bidding method in the JICA Guidelines.

The main permitted methods for consultancy services are:

- **Competitive proposals**, which may be national or international and with or without publication of a notice requesting expressions of interest. Further details are provided in section 6.5 below.
- **Direct negotiations** which is permitted for services under Rs 100k or, with the approval of a higher level official, in other circumstances.

The PPR also allow procurement using the “other method”, with consultants appointed based on qualifications where a high level of expertise is required, there are few qualified consultants, the consultancy is for a short period or there is inadequate time for a full procurement process.

Alternative rules are also provided in the PPA for:

- Ration procurement for foodstuffs, principally for the army and police; and
- Work by Non-Governmental Organisations in order to achieve promptness, effectiveness and economy for works such as public awareness or empowerment.

Immediate procurement is permitted in special circumstances, such as natural disasters or war.

6.4 Bidding Process for Goods, Works and Non-Consultancy Services

6.4.1 Qualifications and Advertising

Bidding may be with or without prequalification. Prequalification is mandatory for large and complex contracts, as determined by PPMO guidance and is permitted for other procurement where considered appropriate by the PE. Qualification requirements may not be applied to construction of a value less than Rs 6m.

Qualification criteria must be stated in bidding, prequalification or RFP documents and must relate to areas such as technical qualifications, equipment, past performance. Provisions allowing only a particular class of supplier to participate are not permitted.

Invitations to bid or prequalify must be published in daily newspapers of national circulation (or internationally for open international bidding) and on the website of the PE or PPMO. Invitation for sealed quotations must be published in national or local newspaper. Where pre-qualification is used, all qualified applicants must be invited to bid.

6.4.2 Bidding Documents and the Bidding Process

PEs are required to prepare specifications, plans, drawings, designs or other descriptions based on relevant objective characteristics and functions. Particular brands or trademarks are only permitted where objective description is not possible and on the basis that equivalent products are also acceptable.

Standard templates are provided for bidding documents with specified content including clear descriptions of the procurement need, instructions on the bidding process, the evaluation criteria and methodology including any preferences and the terms and conditions of the contract. The PPR specific the permitted types of contract.

Bidders may be charged fees for bidding and prequalification documents, which are specified in the PPR and based on the cost incurred in preparation of the documents.

A deadline for receipt of bids must be set, with bids kept unopened until this time and any late bids rejected. The PPA sets minimum bidding periods of at least:

- 30 days for national bidding or pre-qualification
- 45 days for international bidding or pre-qualification
- 15 days for sealed quotations.

Bid securities are required with a value of at least 2.5% of the bid value. Bid securities from foreign banks must be counter-guaranteed by a Nepali bank. Conditions for forfeiture of bid securities are wider than usually seen; in addition to the internationally accepted conditions of bid withdrawal, refusing an arithmetic correction, failing to sign a contract or to provide performance

security, forfeiture is possible for changing price or other substantive matter when providing clarifications or breaching rules on conduct. Conditions relating to substantive changes and breach of conduct rules are subjective and could be open to abuse.

Bids must be opened in the presence of bidders' representatives at the time and place stated in the bidding documents, immediately after the deadline for bid submission.

6.4.3 Evaluation

Evaluation must be based on the criteria stated in the bidding document and evaluation procedures are consistent with international accepted practices.

Award is to the lowest evaluated substantially responsive bid, although a preference may be given to Nepalese bidders (or foreign bidders in joint venture with a Nepalese bidder) under international bidding.

Under the sealed quotations method, the lowest evaluated quotation fulfilling specified requirements that is within the cost estimate is accepted.

There are no rules on negotiation in the PPA and it is thus presumably prohibited, although no explicit prohibition is stated.

6.5 Procurement Process for Consultancy Services

6.5.1 Advertising and Shortlisting

Under the competitive proposals method, a notice requesting expressions of interest (EOIs) must be published where the procurement is over Rs 1m. The notice will normally be published nationally, but international publication is required where the procurement is over Rs 30m, the services are not available at a competitive price from more than one consultant in Nepal, no proposals were received following national advertising or where a donor requires procurement from a foreign source. International notices must be in English.

The evaluation of EOIs must be based on qualifications, experience and capacity. Shortlists must normally consist of 3-6 firms and PEs must re-advertise if a shortlist of at least 3 is not developed. Shortlists can include renowned consultants who did not submit EOIs, if they are contacted by the PE.

The shortlist may be developed without advertising where the procurement is under Rs 1m.

6.5.2 Request for and Submission of Proposals

PEs are required to prepare terms of reference (TOR) stating the nature, time and place of services, tasks and expected outputs.

Standard templates are provided for request for proposals (RFP) documents with specified content including TOR, instructions on the submission of proposals, the selection method, evaluation criteria, minimum technical pass mark and weightings and the terms and conditions of the contract. The PPR specific the permitted types of contract.

A deadline for receipt of proposals must be set, with proposals kept unopened until this time and any late proposals rejected. The PPA sets minimum bidding periods of at least 30 days. Both technical and financial openings must be held in the presence of bidders' representatives and financial proposals must be retained unopened until the notified time for the financial opening.

6.5.3 Evaluation and Negotiation

Technical evaluation must be based on the criteria and weightings in the RFP document, with a minimum quality threshold set. Criteria may include experience of the firm, proposed methodology, qualifications of key human resources, knowledge and technology transfer and, for international proposals, key Nepalese human resources.

Award is to the first-ranked proposals, according to the selection method specified in the RFP. This may be:

- the Quality and Cost method;

- the Quality method – for services which are exceptionally complex or have considerable impact on future projects or the national economy;
- the Fixed Budget method; or
- the Least Cost method.

The Quality and Cost and Quality methods are equivalent to JICA selection procedures. The Fixed Budget and Least Cost methods are not contained in JICA Guidelines, but modelled on World Bank guidelines.

Negotiations may only be held with the selected consultant, although the PE can negotiate with the next ranked consultant if these negotiations fail. Technical negotiations are limited to the TOR, scope of services, reports and facilities provided by the PE. Fee rates can only be negotiated where the Quality method is used, but reimbursables can be negotiated under all selection methods.

6.6 Contract Award and Management

Notice of intent of acceptance must be sent to the selected bidder within 7 days of selection of lowest evaluated bid or successful proposal and information on the selected bidder (and the price of the selected bid for goods, works or non-consultancy services) must also be sent to other bidders. The selected bid or proposal can only be accepted after a period of 7 days if no application for review is submitted. A public notice of procurement contracts must be published after conclusion of a contract.

PEs must communicate the grounds for rejection of bids to any bidder for goods, works and other services who requests this within 30 days of the notice of intent of acceptance. For consultancy services, information on the shortlist must be sent to all consultants who submitted EOIs and the financial proposals of consultants failing to reach the technical pass mark must be returned, with a notice stating the grounds for failure.

Contracts may be amended by written consent of both parties, providing the basic scope of the contract is not changed. The PPA contains no specific provisions on approvals for contract amendments. In cases of unforeseen circumstances, variation orders of up to 15% may be issued without a contract amendment. Variation orders over 15% require the approval of the Council of Ministers.

Price adjustment is permitted for contracts with a duration of over 15 months. The PPMO directive on price adjustment allows price escalation in contracts less than 15 months in cases where unusual conditions increase market prices by more than 10%.

Contracts must state the mechanism for settlement of disputes. For goods, consultancy and non-consultancy services, this is arbitration as provided in the contract or prevailing law. For works, adjudication, a dispute resolution committee or arbitration may be used, depending on the contract value.

6.7 Record Keeping and Communications

PEs are required to maintain a comprehensive list of records, using formats prepared by PPMO. These records must be kept for a period of at least 7 years from completion of procurement proceedings.

Communications must be in writing, but procurement transactions may be carried out through electronic communications where permitted by government and subject to requirements of security, access, preserving content and not otherwise contravening the PPA.

Many key communications must be sent to all bidders, including the list of pre-qualified bidders, bid clarifications and amendments and notices of cancellation.

7. Oversight and Enforcement Systems

7.1 Bidder Complaints

The PPA establishes a mechanism for bidders to challenge procurement decisions, allowing bidders to file an application for review of any error or breach of duty by a PE in procurement proceedings. The right to be reviewed must be stated in bidding documents. The review mechanism has the following two levels:

- Applications must first be submitted to the Chief of the PE, unless the contract is already in force.
- For any procurement of a value greater than Rs 30m, an application may be submitted to the Review Committee where the Chief of PE does not decide on time, the applicant is not satisfied with the PE's decision or the contract is in force.

The Review Committee is appointed by Government and includes a former senior judge or civil servant, retired government engineer and person with procurement experience. No serving government staff are permitted on the committee. PPMO provide secretariat services to the Review Committee.

Complaints must be submitted to the PE within 7 days of the bidder being aware of the error or breach. Complaints or appeals to the Review Committee must be submitted within 7 days of the disputed decision by the PE or failure of the PE to issue a decision or within 30 days of conclusion of the contract. A security deposit (bank guarantee or cash deposit) of 0.5% of the bid value is payable.

The Chief of PE must suspend procurement and issue a decision within 5 days, stating how procurement is to proceed if there has been a breach.

The Review Committee must decide within 30 days. It must request information from the PE within 3 days, with 3 days for the PE to respond. It may hold hearings with the parties. Prior to contract award, the Review Committee may annul or prohibit incorrect decisions or order re-evaluation in cases of breach. After contract award, compensation may be awarded. The PE must suspend procurement during committee proceedings, unless it certifies that procurement is urgent.

The first review by the Chief of the PE provides the opportunity for correction of mistakes, but cannot be considered an independent review. Very few complaints are submitted to the Review Committee due to the high threshold and high deposit requirement. In practice, the majority of procurement complaints are submitted to the courts or to anti-corruption organisations, such as the Commission on Investigation of Abuse of Authority and National Vigilance Centre.

The public procurement system in Nepal therefore lacks an effective mechanism for challenging procurement decisions and falls far short of international standards, such as those set by the United Nations Convention Against Corruption (which the Government of Nepal has ratified) which requires an effective system of review and appeal. Timescales for both submission of complaints and the issue of decisions are short compared to many other countries.

7.2 Prevention of Corruption

The PPA contains codes of conduct for public officials involved in public procurement and for bidders. The former requires officials to act impartially and in the public interest, avoid conflict of interest, maintain confidentiality and not commit corrupt, fraudulent or collusive practices. The code of conduct for bidders covers bribery, misrepresentation, coercion, collusion, interfering with other bidders, seeking to influence the PE and conflict of interest. The PPA also requires bidding documents to state that bids will not be processed where there is conflict of interest or legal action for fraud or corruption and requires bids to be rejected in cases of collusion.

Despite these rules, PPMO report widespread collusion and intimidation at time of bid submission with ineffective action to mitigate.

Section 3: Recommendations

8. Recommendations

The following sections make recommendations for the strengthening of the national procurement system of Nepal. Many are already recognised by the Government of Nepal, with actions included in the NPPSF.

8.1 Legal Framework

Complete all outstanding work on the revision of the legal framework. As well as addressing identified weaknesses in the PPA, such as the complaints mechanism as discussed in section 8.4 below, the revision should:

- ensure that the PPA and other related laws are aligned to eliminate conflicts and the resulting confusion or loopholes;
- complete all supporting documents and templates, such as guidelines and SBDs, including those for framework contracts;
- ensure that all documents are available in both Nepali and English to facilitate their use;
- ensure that rules, guidance documents and templates are suitable and proportionate for smaller PEs, such as local government bodies, schools and clinics. .

8.2 Institutional Framework

Strengthen PPMO to ensure it is able to fulfil its mandate of regulating and monitoring public procurement, as well as building capacity among PEs. This should be achieved through restructuring of PPMO and recruitment of additional staff as necessary, as well as developing the skills of current staff and ensuring it has all necessary tools. Tools and training for monitoring and auditing tasks are one priority.

8.3 Capacity Development

Develop capacity among all government procurement staff to ensure they have good procurement skills and are able to comply with the legal framework. Capacity development initiatives should differentiate between different procurement roles, including practitioners in procurement units, those responsible for approvals, including the chief of the PE and staff with technical involvement, such as the preparation of specifications and terms of reference and participation in evaluation committees.

8.4 Complaints Mechanism

Significantly revise the complaints mechanisms to ensure access by bidders to an effective system of review and appeal. This should include the abolition of value thresholds and reduction of fees for the review committee to ensure genuine access to independent review, as well as appeal to the courts. Timescales for review and the rights of bidders should be revised in line with international standards; the UNCITRAL Model Law on Public Procurement provides a useful template.

Appendix A: Completed Questionnaire on National Procurement System

Study on the National Procurement System of Nepal

This study for Nepal is primarily a desk study based on:

- The PPMO website
- The Public Procurement Act and Regulations
- The July 2010 Nepal Public Procurement Strategic Framework (NPPSF)

This has been supplemented and updated by field input from our local consultant and our assessment field visits.

It covers the key elements of the national procurement system, but is not exhaustive. Where relevant, it highlights features or practices which differ from those contained in JICA Guidelines.

| No | Question | Details of Procurement System | Comments and Recommendations |
|----|--|---|---|
| A | Legal Framework | | |
| A1 | Which documents make up the legal framework? i.e. is there a procurement law / regulations / guidelines / manual? | Public Procurement Act, 2007 (PPA) Public Procurement Regulations, 2007 and Public Procurement (Third Amendment) Regulations 2011 (PPR) Procurement and contract manuals needed; guidelines being prepared One directive is on PPMO's website on price adjustment | PPMO reports that enforcement of PPA and PPR is weak Recommendations for amendment of PPA being prepared but not yet in force. Work on guidelines etc needs to be completed |
| A2 | Are there standard bidding documents and/or any other standard forms or templates? If so, are they based on a particular template, such as donor documents? | SBDs for goods (ICB and NCB), works (various values and methods plus prequalification) and consultancy services (various values and contract types) on PPMO website Works ICB > Rs 500m (approx £3.7m) uses FIDIC MDB harmonised construction contract. Other SBDs mostly use harmonised MDB or World Bank documents Also templates for sealed quotations (goods and | Work on SBDs needs to be completed. Templates are required for bid openings, evaluation reports, negotiations reports and notices of award |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----------|--|---|--|
| | | works) and direct purchase (goods and consultancy) A few standard forms are on PPMO website e.g. procurement plan templates | |
| B | Scope of Application | | |
| B1 | Who does the legal framework apply to? i.e. does it cover parastatals and state owned enterprises or only government ministries? | Wide application. s3, PPA and s2(b), PPA Applies to public entities (PEs) which include <ul style="list-style-type: none"> • governmental entities (ministries, departments, constitutional bodies, courts etc) • companies with full or majority government ownership or control • academic bodies with full or majority government funding • local bodies (village, municipality or district development committees) • bodies with government loans or grants • any other body specific by government. | PPMO intends to adapt guidelines and documents to ensure they are suitable for the local government context. |
| B2 | Does the legal framework apply to all procurement or are there exceptions? | Covers goods, construction, consultancy services and other services Exceptions for security, strategic or defence procurement when decided by government, s67(1)(a) | The security exception can be abused but is fairly common across the world. |
| B3 | What provision does the legal framework make for application of alternative donor rules? | Exception to use of PPA where use of a donor's guidelines are required by agreement with a donor, s67(1)(b) | JICA can require use of its guidelines where specified in loan agreements |
| C | Institutional Framework | | |
| C1 | Is procurement centralised or decentralised? i.e. is there any central body responsible for conducting or | Decentralised, the chief of each PE is responsible for ensuring procurement activities | PPMO report inadequate capacity of PEs |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----|--|--|--|
| C2 | <p>approving procurement or does each agency do this itself?</p> <p>Is there a regulatory body for procurement? If so, what are its functions?</p> | <p>are carried out, s7(1), PPA</p> <p>PPMO is establishing databases of suppliers and average prices for common user items (NPPSF)</p> <p>Public Procurement Monitoring Office (PPMO) since 2007. Under Office of the Prime Minister and Council of Ministers</p> <p>Functions defined in s65, PPA and supplemented in Rule 144, PPR and include:</p> <ul style="list-style-type: none"> • Policy: advising Government on procurement policy, submitting annual reports, reviewing the system, studying other systems and coordinating reforms • Regulatory framework: issuing guidelines, manuals and SBDs and advising PEs on their interpretation • Monitoring: collecting procurement and contract implementation statistics, requiring reports from PEs, monitoring and auditing procurement • Information dissemination: operating a procurement website and publishing a bulletin • Capacity building: arranging training and other programmes for public and private sector, arranging accreditation programmes for public sector procurement staff • Regulatory: blacklisting suppliers and acting as Secretariat to the Review Committee <p>PPMO not involved in procurement processes (except its own) or settling disputes</p> | <p>The PPMO seems to have an appropriate range of functions, in line with those of regulatory bodies worldwide.</p> <p>The prohibition on involvement in procurement of PEs avoids any conflict with its regulatory functions.</p> <p>While the legal requirements are adequate, the PPMO reports inadequate capacity and a need for institutional restructuring</p> |
| C3 | Who is responsible for monitoring or auditing | The PPMO. Its functions include collecting data, | PPMO report inadequate |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----|--|---|--|
| | procurement? | <p>requiring reports from PEs, monitoring, undertaking (or arranging) technical audits of compliance and making observation visits.</p> <p>PPMO is planning a Procurement Monitoring Management Information System (PMMIS) with benchmarks and indicators</p> <p>Office of the Auditor General audits procurement and publishes a specific guide on procurement audit.</p> <p>Commission on Investigation of Abuse of Authority (CIAA) will investigate complaints made directly to it or through the media</p> | <p>monitoring currently taking place due to lack of trained staff, resources and data</p> |
| C4 | Who is responsible for procurement within each agency? i.e. is there a procurement unit, designated procurement staff within departments or any form of committee? | <p>Overall responsibility rests with the Chief of the PE. PEs are to establish a procurement unit or designate a unit with procurement responsibilities, s7(3), PPA</p> <p>PEs to form evaluation committees, s71, PPA</p> | |
| C5 | Are there any requirements for qualifications or registration for procurement staff? | <p>PEs to carry out procurement activity through employees with qualifications prescribed by the PPMO and knowledge or training on procurement, s7(2), PPA</p> <p>PPMO functions include defining functions of procurement staff and arrangements for assessing their capability and expertise.</p> | <p>PPMO reports that an accreditation programme is to be initiated, as well as capacity needs assessment, greater training and establishment of a national procurement training system</p> |
| C6 | How is procurement reviewed or approved within each agency? i.e. is there any committee or board which approves and are there levels of authority for approvals? At what stages is procurement reviewed? | <p>Procurement unit to obtain approvals from the chief of the PE, s7(4), PPA. This is the secretary in government and constitutional bodies or the officer designated by the agency's own rules in other cases.</p> | |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----------|--|---|------------------------------|
| | | Bidding documents to be approved by chief of PE, PPR 47 Approval of evaluations varies according to value, PPR 67. | |
| C7 | Is responsibility for contract management within each agency specified? | Procurement unit responsible for examining quality standards of delivered goods, works and services and keeping performance guarantees. | |
| C8 | Who performs financial management functions (e.g. commitments, payments etc)? Are they separated from procurement? | The head of the PE is responsible for financial management under the Financial Procedures Act 1999. Procurement and financial functions are separated. Once contracts are awarded, copies are provided to the finance department, who also process invoices. | |
| D | Registration and Participation | | |
| D1 | Are there any requirements for supplier registration as a requirement of participation in procurement or as a condition of contract award? If so, give details | None in the PPA. PPR 18 requires PEs to prepare standing lists (including lists of NGOs), but inclusion on the list is not mandatory for participation in bidding, competitive proposals or sealed quotations. Lists used for low value direct procurement. Inclusion on the list based on qualification criteria. List to be advertised and updated annually. Procurement must be from bidders with VAT registration, unless under thresholds, PPR 19. | |
| D2 | Are there any restrictions on participation or origin of goods or staff based on nationality? If so, give details | No restrictions on participation based on nationality, except for ration procurement (food items) where contracts can only be concluded with Nepalese citizens, PPR 89(2)(d) PPR 38 prohibits discrimination, other than use | |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----------|--|---|--|
| D3 | Is there any mechanism for suspension of non-performing suppliers and/or those guilty of misconduct? If so, give details | <p>of preferences</p> <p>Foreign bidders required to state whether they have an agent in Nepal, s14(9), PPA (but not obliged to have an agent). For consultancy, PPR 70(6) requires shortlisted international consultants to have a local agent.</p> <p>Nepali goods to be purchased, even if up to 10% more expensive than foreign goods, PPR 17.</p> <p>Yes, non-performing suppliers blacklisted by PPMO for 1-3 years, s63, PPA. Grounds for blacklisting include breach of code of conduct, failure to sign a contract, substantial defects in contract implementation, conviction of a criminal offence, misrepresentation or failure to pay a loan.</p> <p>PPR 39 requires blacklisting for false information regarding local agents or their commission. List displayed on PPMO website</p> | There is no provision for appeal against the decision |
| E | Procurement Planning | | |
| E1 | Are agencies required to prepare procurement plans as part of their budgeting process? | <p>PEs to prepare a master procurement plan for procurements over more than one year or annual procurement > Rs 100m (approx. £7350). To be updated each fiscal year.</p> <p>PEs to prepare an annual procurement plan for procurement > Rs 1m (approx. £7350) as part of budget process. To be based on master procurement plan.</p> <p>s6, PPA, PPR 7-8</p> | <p>PPMO reports most PEs do not have master or annual procurement plans</p> <p>PPMO reports poor correlation between procurement and budgeting</p> |
| E2 | Are agencies required to prepare procurement plans for major procurement requirements? | Procurement plans required under PPR 3 PEs required to prepare cost estimates for | PPMO report PEs have weak skills in preparing |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----------|--|---|--|
| E3 | What are the key contents of procurement plans? E.g. methods, packaging, type of contracts, timescales etc | procurement > Rs 25k, s5, PPA & PPR 9-15 Written approval and confirmation of funding required before procurement proceeds, PPR 4-6. Detailed contents specified in PPR 7-8 covering timing, cost, method, packaging, need for pre-qualification and types of contract. | cost estimates |
| F | Procurement Methods | | |
| F1 | Is there a preference for open competition, with other methods requiring justification? | Yes, preference for open bidding, s9, PPA Open bidding may be one or two stage, s11(2), PPA. Two stage permitted where technical aspects cannot be fully defined or discussions with bidders are required due to the complex nature of the procurement, s28. | |
| F2 | What procurement methods are permitted for goods, works and non-consultancy services? Provide details of thresholds and conditions for use | s8(1)(a), PPA defines: <ul style="list-style-type: none"> • Open national bidding – default method • Open international bidding – required where the items are not available at competitive price in Nepal, no bids were received under national bidding, where a donor required procurement from a foreign source or the items are complex and requires international bidding. Documents must be in English, s15, PPA • Sealed quotations – see F5 • Direct purchase – see F6 • Through participation of users' committee or beneficiary group – where this increases economy, quality or sustainability, s44, PPA • Force account – for regular petty work of ordinary nature, s45, PPA | Open bidding, sealed quotations and direct purchase are broadly equivalent to ICB, shopping and direct contracting in JICA guidelines. There is no method equivalent to LIB. Additional methods also exist e.g. community participation, force account, ration procurement and work by NGOs. |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----|--|---|---|
| F3 | What procurement/ selection methods are permitted for consultancy services? Provide details of thresholds and conditions for use | <p>Other variations include:</p> <ul style="list-style-type: none"> Ration procurement (for foodstuffs, principally for army and police), s42, PPA, PPR 88-93 Work by NGO – to achieve promptness, effectiveness and economy for works such as public awareness or empowerment, s46, PPA <p>s8(1)(b), PPA defines:</p> <ul style="list-style-type: none"> Competitive proposals – see variations of method in H2 Direct negotiations, PPR82 <p>PPR 83 allows procurement by “other method”, based on qualifications where high level expertise is required, there are few qualified consultants, the consultancy is for a short period or there is inadequate time for the procurement. Consultancy services may be procured when the work cannot be performed by PE staff or it is required by a donor, s29, PPA</p> | Competitive proposals is broadly similar to JICA’s main selection procedure. Direct negotiations is broadly similar to JICA’s single source selection. |
| F4 | Is the splitting of procurement requirements to avoid thresholds prohibited? | Yes, s8(2) | |
| F5 | Is a simplified method available for low value procurement, with a clear threshold? | Yes, sealed quotations up to Rs 1m (approx. £7350), s40, PPA, PPR 84 Direct procurement up to Rs 150k (approx £1,100) | Sealed quotation method is unusual in requiring an advert, rather than being limited to a shortlist. The advert gives greater transparency and competition, but potentially results in a costly process for low value contracts |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----------|---|---|--|
| F6 | Is single source procurement limited to specified, justified circumstances? | Yes, direct purchase only for low values up to Rs 150k (approx £1,100), where only one supplier can meet the need or has exclusive rights, for additional purchases up to 30% of the contract value where they cannot be separated from the initial purchase or where a consultant has unique qualifications or must continue earlier work, s41, PPA, PPR 85 Certain justifications for direct purchase require approval by a government committee. Direct negotiations for consultancy services only for services under Rs 100k(approx. £750). Permitted over this threshold with approval of an official one level higher than the chief of the PE. Immediate procurement permitted in special circumstances i.e. natural disasters, war etc, s66 & 2(n), PPA | |
| G | Bidding Process for Goods, Works and Non-Consultancy Services | | |
| G1 | Are agencies required to advertise procurement opportunities widely, whether nationally or internationally? | Invitation to bid or prequalify to be published in daily newspapers of national circulation (or internationally for open international bidding) and on the website of the PE or PPMO, s14, PPA Invitation for sealed quotations published in national or local newspaper | |
| G2 | Is use of restricted bidding limited to specified, justified circumstances? | No method of restricted bidding | No method equivalent to LIB in JICA guidelines |
| G3 | Is pre-qualification permitted or required for large or complex contracts? | Bidding can be with or without prequalification, s11, PPA Prequalification required for large and complex | |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----|---|---|--|
| | | contracts, according to PPMO guidance. Permitted for other procurement where considered appropriate, s12, PPA No qualification requirements permitted for construction < Rs 6m (approx. £44k) | |
| G4 | Are agencies required to use qualification criteria related to the contract and to disclose these to applicants? | Qualification criteria must be stated in bidding, prequalification or RFP documents and must relate to areas such as technical qualifications, equipment, past performance etc, s10, PPA Provisions allowing only a particular class of supplier to participate are not permitted. Detailed guidance on criteria in PPR 25-30 | |
| G5 | Are all qualified firms invited to bid? | Yes, s12(5) and 13(3), PPA, PPR 35 | |
| G6 | Are objective specifications or other technical documents required to clearly describe the subject of procurement? | Yes, s4, PPA PEs required to prepare specifications, plans, drawings, designs or other descriptions based on relevant objective characteristics and functions. Brand names etc only permitted where other description is not possible and with equivalents permitted. Further requirements in PPR 42-44 | Adequate legal rules, but PPMO report PEs have weak skills in preparing specifications |
| G7 | Are standards required to be used, whether national or international? | Not covered | |
| G8 | Do templates for bidding documents: •contain clear instructions on the bidding process? •disclose the evaluation criteria and methodology? •contain draft contracts which are fair and provide adequate protection for the agency? | s13(2) requires this content in bidding documents. PPR 45-46 gives further details. PPR 21-22 & Schedules 3-4 specify permitted contract types. SBD templates based on World Bank documents. | PPMO report PEs have weak skills in preparing bidding documents |
| G9 | Are fees for bidding documents limited to costs for | Fees not covered in PPA | |

| No | Question | Details of Procurement System | Comments and Recommendations |
|-----|--|---|---|
| | copying and despatch? | Yes, fees for prequalification documents on the basis of cost incurred to prepare documents, from Rs 1-15k (approx £7-110), PPR 34 Fees for bidding documents from Rs 1-10k (approx £7-75), PPR 48 | |
| G10 | Are agencies required to give a clear bidding deadline, keep bids securely and reject late bids? | Yes, s17-18, s14(6)-(7), PPA, PPR 57 and 59 | |
| G11 | Are minimum bidding periods specified? | At least 30 days for national bidding/prequalification and 45 days for international bidding/prequalification, s14(4), PPA At least 15 days for sealed quotations, s40, PPA | |
| G12 | Are bid securities required? If so, give details of rules. | Yes, s21, PPA. PPR 53 specifies a value of at least 2.5% of bid value Bid securities from foreign banks to be counter-guaranteed by a Nepali bank. Bid security forfeited for withdrawal, refusing an arithmetic correction, failing to sign a contract or provide performance security, changing price or substantive matter when providing clarifications or breaching conduct rules. | Conditions for forfeiting bid security are wider than usually seen. Forfeiture for substantive changes or breach of conduct rules are subjective and could be open to abuse |
| G13 | Are public bid openings required? | Bids to be opened at the time and place in the bidding documents, immediately after the deadline in the presence of bidders' representatives, S22, PPA and PPR 59 | |
| G14 | Is evaluation based on the criteria in the bidding document? | Yes, s25(5), PPA s23-25, PPA and PPR 60-66 give evaluation procedures, which are consistent with usual international practices. | |
| G15 | Is award to the lowest evaluated responsive bid? | Yes, 25(5)-(7), PPA | 10% preference to |

| No | Question | Details of Procurement System | Comments and Recommendations |
|-----|---|---|---|
| G16 | Are negotiations prohibited? | Preference for Nepalese bidders (or foreign bidders in joint venture with a Nepalese bidder) is permitted under international bidding, s14(8) For sealed quotations, the lowest evaluated quotation fulfilling specified requirements that is within the cost estimate, s40, PPA Negotiations not covered in PPA. | domestic products possible but no preference for SMEs |
| H | Procurement Process for Consultancy Services | | |
| H1 | Are TOR required which clearly describe objectives, tasks and outputs of the assignment? | Yes, s4, PPA PEs required to prepare specifications, plans, drawings, designs or other descriptions based on relevant objective characteristics and functions. PPR 69 gives details to include in TOR. RFP to contain TOR with nature, time and place of services, tasks and expected outputs, s31(2)(b), PPA | |
| H2 | Are agencies required to advertise procurement opportunities widely, whether nationally or internationally? | For competitive proposals, request for EOIs notice required where over threshold of Rs 1m (approx. £7350). Advert may be national or international. s30, PPA, PPR 70 <ul style="list-style-type: none"> National advert – default International advert – required where over Rs 30m (approx. £225k), the services are not available at competitive price from more than one consultant in Nepal, no proposals were received under national advertising, where a donor requires procurement from a foreign source. Notices must be in English. Shortlist developed without advertising where under the Rs 1m threshold. Shortlist of | This differs from JICA guidelines, where shortlists are developed without advertising to request EOIs |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----|--|--|------------------------------|
| H3 | Is shortlisting based on objective evaluation of EOIs or other appropriate sources? | preferably 6, but at least 3, required, PPR 72. Evaluation of EOIs based on qualification, experience and capacity in EOIs, s30(5), PPR 70(5). Renowned consultants who did not submit EOIs may also be included in the shortlist, PPR 70(7). Shortlist of 3-6 firms. PEs must re-advertise if a shortlist of at least 3 is not developed, PPR 70(8). Detailed guidance on criteria in PPR 27-30 | |
| H4 | Do templates for RFP documents: <ul style="list-style-type: none"> • contain clear instructions on the bidding process? • disclose the evaluation criteria, weighting, methodology and any minimum thresholds? • contain draft contracts which are fair and provide adequate protection for the agency? | S31(2) requires this content in RFP documents. PPR 23 & Schedule 5 specify permitted contract types. PPR 71 & 73 gives details on RFP, including stating criteria, weights and selection methods. Standard RFP templates based on World Bank documents | |
| H5 | Are agencies required to give a clear bidding deadline, keep proposals securely and reject late proposals? | s31(2)(h), PPA requires clear deadline. PPR 75(2) requires rejection of late proposals. | |
| H6 | Are minimum bidding periods specified? | At least 30 days, s31, PPA, PPR 71(1). | |
| H7 | Are public bid openings required for technical and/or financial proposals, with adequate notification for financial openings? | S32, PPA addresses technical opening, s34, PPA addresses financial opening. PPR 75 and 79 require both technical and financial openings in the presence of bidders' representatives | |
| H8 | Is technical evaluation based on the criteria and weightings in the RFP document, with a minimum quality threshold? | Yes, s31(2)(f) and s33, PPA Criteria may include experience of firm, proposed methodology, qualifications of key human resources, knowledge and technology | |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----------|--|---|--|
| | | transfer and, for international proposals, key Nepalese human resources. Quality threshold to be stated in RFP, PPR 71 and 76 | |
| H9 | Are agencies required to keep financial bids sealed until the time for financial opening and evaluation? | Yes, s32, PPA, PPR 71(c) & 76(5). | |
| H10 | Is financial evaluation and ranking of proposals based on the methodology and weightings in the RFP? | s31(4)-(5) and s35, PPA, PPR 71, 74 & 80: Competitive proposals may be evaluated using: <ul style="list-style-type: none"> • Quality and Cost method • Quality method – where exceptionally complex or having considerable impact on future projects or national economy • Fixed Budget method • Least Cost method | QCBS and QBS are equivalent to JICA selection procedures. FBS and LCS are additional methods not contained in JICA guidelines. |
| H11 | Is award to the highest ranked proposal, according to the methodology specified in the RFP? | Yes, s35, PPA specifies proposal to be selected for QCBS, QBS, FBS and LCS | |
| H12 | Are negotiations limited to the first ranked consultant and to areas other than fee rates? | Yes, negotiations only with the selected consultant. Can negotiate with the next ranked consultant if negotiations fail. Negotiations limited to TOR, scope of services, reports and facilities provided by the PE. Fee rates can only be negotiated for QBS. Reimbursables can be negotiated under all methods. s37, PPA, PPR 81(5). | |
| I | Contract Award and Management | | |
| I1 | Is any notification to unsuccessful bidders and standstill period required prior to award? | Yes, notice of intent of acceptance sent to selected bidder and information on the selected bidder sent to other bidders within 7 days of | |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----|---|---|---|
| I2 | Is the agency required to debrief unsuccessful bidders and publish details of the contract award? | <p>selection of lowest evaluated bid. Selected bid can only be accepted after 7 days if no application for review is submitted. s27 and s38, PPA.</p> <p>PE must communicate grounds for rejection of bids to any bidder for goods, works and other services who requests this within 30 days of the notice of intent of acceptance, s27(7)</p> <p>Information on shortlist must be provided to all consultants who submit EOIs, PPR 70(10).</p> <p>Financial proposals of consultants failing to reach technical pass mark must be returned with a notice giving grounds for failure, PPR 78(3).</p> <p>Public notice of contracts required, s60, PPA.</p> | Need to ensure debrief is available for consultants bidding for consultancy services. |
| I3 | What procedures and controls apply to contract amendments and variations? | <p>Contracts can be amended by written consent of both parties, providing the basic scope of contract is not changed, s53, PPA. No specific provisions on approvals in PPA.</p> <p>In cases of unforeseen circumstances, variation orders up to 15% may be issued without contract amendment. Variation orders over 15% require approval of the Council of Ministers. s54, PPA</p> <p>s55, PPA covers price adjustment for contracts over 15 months. Directive on price adjustment allows price escalation in contracts less than 15 months in cases of unusual conditions increasing market prices by > 10%.</p> | |
| I4 | What dispute resolution procedures are included in contracts? | Contract must state mechanism for settlement of disputes, s52(2)(r) and s58, PPA. | Arbitration for goods, consultancy and other |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----------|---|---|--|
| | | services as provided in the contract or prevailing law. Adjudication, dispute resolution committee or arbitration for works, depending on value. | |
| J | Record Keeping and Communications | | |
| J1 | Is the agency required to maintain records of procurement activities? Give details of the contents required | Records to be kept for 7 years from completion of the procurement s72, PPA, PPR 149. PPR 149 provides comprehensive list of records to be maintained (23 items). PPMO to prepare formats for records. | |
| J2 | Are communications with bidders and suppliers required to be in writing or confirmed in writing? | Communications to be in writing, s68, PPA s69, PPA allows electronic communications where permitted by government, subject to requirements of security, access, preserving content and not otherwise contravening the PPA | |
| J3 | Must communications such as bid clarifications and pre-bid meeting minutes be sent to all bidders? | List of pre-qualified bidders to be published and sent to all applicants, s12(5), PPA Bid clarifications and amendments must be sent to all bidders, s16, PPA Notice of cancellation must be sent to all bidders, s26(3), PPA | |
| K | Bidder Complaints | | |
| K1 | Is there any mechanism enabling bidders to challenge procurement decisions? And to appeal the response? | Yes, two level review process where there is an error or breach of duty by the PE, s47-51, PPA. Application to be submitted to the Chief of the PE, unless the contract is already in force. For any procurement over Rs 30m (approx. £225k), an application may be submitted to the Review Committee where the Chief of PE does not decide on time, the applicant is not satisfied | PPMO report the complaints mechanism is ineffective. There are very few complaints at Review Committee level due to the high threshold and high deposit requirement. In practice, most complaints are taken to anti-corruption |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----|---|--|---|
| K2 | Are complaints and appeals heard by an independent body? | <p>with the PE's decision or the contract is in force. Not clear if appeal to the courts is possible. Right to review to be stated in bidding documents, s13(2)(q) and s31(2)(k), PPA</p> <p>Complaints heard by the Chief of the PE – this cannot be independent, but gives the opportunity to correct mistakes without long proceedings. Review Committee appointed by Government including a former senior judge or civil servant, retired government engineer and person with procurement experience. No serving government staff permitted on the committee.</p> | <p>bodies or the courts.</p> <p>Where appeal to the Review Committee is not permitted, there is no independent review at all.</p> |
| K3 | Does any complaints mechanism follow appropriate procedures in terms of timescales, documentation requirements etc? | <p>Complaints to be submitted to the PE within 7 days of the bidder being aware of the error/breach.</p> <p>Complaints/appeals to be submitted to the Review Committee within 7 days of the disputed/absent decision of the PE or within 30 days of conclusion of the contract. A security deposit (bank guarantee or cash deposit) of 0.5% of the bid value is payable.</p> <p>The Chief of PE must suspend procurement and decide within 5 days, stating how procurement is to proceed if there has been a breach.</p> <p>The Review Committee must decide within 30 days. It must request information from the PE within 3 days, with 3 days for the PE to respond. It may hold hearings with the parties. Prior to contract award, the Review Committee may annul/prohibit incorrect decisions or order re-evaluation in cases of breach. After contract</p> | <p>Timescales are short compared to many other countries.</p> |

| No | Question | Details of Procurement System | Comments and Recommendations |
|----|--|---|---|
| L | Prevention of Corruption | | |
| L1 | Is there a clear policy and rules prohibiting corrupt and fraudulent practices? | <p>award, compensation may be awarded. The PE must suspend procurement during committee proceedings, unless it certifies that procurement is urgent.</p> <p>Yes, see details on s61-62, PPA in L2. Bidding documents to contain information that bids will not be processed where there is conflict of interest or legal action for fraud or corruption, s13(2)(p) and s31(2)(j), PPA Rejection of bids required in cases of collusion, s26(6) and s36(d), PPA</p> | PPMO report widespread collusion and intimidation at time of bid submission with ineffective action to mitigate |
| L2 | Is there a procurement code of conduct or other rules covering areas such as gifts, hospitality and conflicts of interest? | <p>s61, PPA gives code of conduct for officials involved in procurement which includes acting impartially and in the public interest, avoiding conflict of interest, maintaining confidentiality and not committing corrupt, fraudulent or collusive practices.</p> <p>s62, PPA gives code of conduct for bidders which covers bribery, misrepresentation, coercion, collusion, interfering with other bidders, seeking to influence the PE and conflict of interest.</p> | |
| M | Other Information | | |
| M1 | Note any other information of relevance concerning the procurement system e.g. use of e-procurement | <p>e-GP for procurement > Rs 20m (approx. £150k) from 15 April 2010 – phase 1 to be completed by July 2012. Further roll out needed</p> <p>PPMO has plans to facilitate domestic industry and SMEs</p> <p>OECD/DAC assessment ongoing</p> | |

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添付資料 5 : 公共調達制度レビュー報告書 (パキスタン)



Study of National Procurement System of Pakistan

Japan International Cooperation Agency

Report

December 2012



Crown Agents Reference No. 28643

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List of Abbreviations

| | |
|----------------|--|
| EA | Executing Agency |
| EOI | Expression of Interest |
| FIDIC | Federation Internationale des Ingenieurs-Conseils |
| JICA | Japan International Cooperation Agency |
| JV | Joint Venture |
| ODA | Official Development Assistance |
| PA | Procuring Agency |
| PEC | Pakistan Engineering Council |
| PPRA | Pakistan Public Procurement Regulatory Authority |
| PP Regulations | Public Procurement Regulations |
| PP Rules | Public Procurement Rules |
| RFP | Request for Proposals |
| Rs | Rupees |
| SBD | Standard Bidding Document |
| SOP | Standard Operating Procedures |
| TOR | Terms of Reference |
| UNCITRAL | United Nations Commission on International Trade Law |

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It should be noted that the BSI Symbol and UKAS Accreditation mark signify that Crown Agents operate a documented Quality Management System registered with the British Standards Institution to the international quality standard BS EN ISO 9001:2008. The provision of consultancy services in revenue enhancement and expenditure and debt management including: customs, taxation and trade, human institutional and organisational development, engineering, procurement management advice and reform, health logistics and procurement services. Third party quality assurance and inspection services related to the supply of manufactured and processed products. International freight forwarding services utilising in house sub-contract warehousing. Verification of service as follows: Air Import – Clearance UK airport; Exports – Airport of departure; Sea Imports – Clearance UK port; Sea Exports – Port of loading.



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Section 1: Introduction

1. Study of Procurement Systems and Capacity in South Asia

The quick and appropriate implementation of Official Development Assistance (ODA) programmes by the Japan International Cooperation Agency (JICA) is dependent on Executing Agencies (EAs) having the necessary systems, organisation, operational rules and capability to undertake the required procurement procedures smoothly. This capability depends on both the degree of procurement experience of each EA and on the degree of maturation of the national procurement system.

As JICA is now cooperating with new EAs in the South Asia region, it requested Crown Agents to undertake a study of procurement systems and capacity in selected target countries in South Asia in order to collect basic information on the public procurement systems and procedures of each country, determine the capacity of each target EA and formulate training plans to reflect areas requiring procurement support.

2. Purpose of Report

As part of the study, this report provides an overview of the national procurement system of Pakistan at federal level. It provides a general summary of the government system, based primarily on the legal and regulatory framework. Details on specific EAs can be found in separate capacity assessment reports.

As new EAs for JICA ODA loans are likely to be more familiar with their national procurement system than with the JICA Guidelines for the Employment of Consultants and for the Procurement of Goods and Services under Japanese ODA Loans (JICA Guidelines), this report highlights any areas where national rules or practices differ significantly from JICA Guidelines.

3. Methodology

In order to facilitate and standardise studies of national procurement systems across all target countries, Crown Agents developed a questionnaire covering the key elements of a procurement system. This questionnaire is completed for each target country, primarily through a desk study by a procurement specialist from Crown Agents' headquarters. The study is based on relevant legal documents, websites and information available from other recent studies of the national system, supplemented by input from the Crown Agents' local consultant and from field visits by the team assessing procurement capacity in EAs.

This study of the national procurement system for Pakistan is based on the following documents downloaded from the website of the Pakistan Public Procurement Regulatory Authority <http://www.ppra.org.pk/> under the title "Pakistan Procurement Code, 3rd Edition:

- The Public Procurement Regulatory Ordinance 2002
- The Public Procurement Rules of 2004, amended 2006 and 2008
- The Public Procurement Regulations of 2008
- The PPRA Guidelines of 2009
- The Consultancy Services Regulations of 2010
- Frequently Asked Questions
- Manual of Procurement Policies and Standard Bidding Documents for Goods, Works and Services of PPRA, Government of Pakistan
- Six Standard Bidding Documents of the Pakistan Engineering Council
- Thirteen Procurement documents (Procedures) approved by the governing body of the Pakistan Engineering Council

Section 3 provides brief recommendations for strengthening the national procurement system.

Note: JICA uses the terminology Executing Agency to refer to public organisations either receiving or being considered for support from the Japanese Government. However, Pakistan's

procurement documentation uses the term Procuring Agency (PA) to refer to public organisations. In this report both terms are utilised, with usage determined by the context.

Section 2: Summary of National Procurement System

4. Overview of Procurement System

The Government of Pakistan established its public procurement system in 2002, through the Public Procurement Regulatory Ordinance. This established the Public Procurement Regulatory Authority (PPRA) as the regulatory body for public procurement in Pakistan and PPRA has since issued various Rules, Regulations and Guidelines governing procurement at federal level. The public procurement system is also shaped by various guidelines and documents of the Pakistan Engineering Council (PEC) and the Planning Commission.

Pakistan's federal system of government is reflected in its public procurement system. While the Ordinance has country-wide application, each province has its own lower level regulatory documents and establishes its own regulatory authority.

There have been no significant changes to the public procurement system since the issue of the Ordinance in 2002 and we are not aware of any planned reforms.

5. Legal and Institutional Framework

5.1 Legal Framework

5.1.1 Laws and Regulations

The legal framework for public procurement in Pakistan is based on the Public Procurement Regulatory Authority Ordinance, 2002, which established PPRA. Unlike many national procurement laws, the Ordinance does not contain any rules or methods for undertaking procurement; its purpose is solely to establish PPRA, whose functions include recommending other rules, regulations and policies for public procurement. Since PPRA's formation, the following Rules, Regulations and Guidelines have been issued to specify how public procurement should be undertaken:

- The Public Procurement Rules of 2004, amended 2006 and 2008 (PP Rules)
- The Public Procurement Regulations of 2008 (PP Regulations)
- The PPRA Guidelines of 2009
- The Consultancy Services Regulations of 2010

In addition PPRA has issued the following guidance documents, although their legal status is unclear:

- Frequently Asked Questions
- Manual of Procurement Policies and Standard Bidding Documents for Goods, Works and Services of PPRA, Government of Pakistan, which is also referred to as Standard Operating Procedures (SOP).

Collectively, the above documents forming the legal, regulatory and guidance documents are referred to as the Pakistan Procurement Code.

The various parts of the Pakistan Procurement Code appear to have been prepared at different times and influenced by different sources and authors. This has resulted in some discrepancies or lack of clarity between different documents, particularly in the area of consultancy services where the Consultancy Services Regulations remain subject to the PP Rules, but the regulations themselves take a differing approach to procurement. Certain aspects of a procurement system which are usually found in higher level documents in most countries are covered only in the SOPs.

5.1.2 Other Applicable Rules

All public entities must follow the rules of PEC when undertaking civil engineering procurement processes; see further details in section 5.3.5 below.

In addition to the Pakistan Procurement Code, various procurement and contractual issues are subject to the following laws and ordinances:

- Insurance Ordinance 2000
- Environmental Protection Act 1997
- Income Tax Law / Ordinance
- Arbitration Act 1940
- Codes of Civil and Criminal Procedure
- Contract Law 1875
- Planning, Procurement and Contracting Guidelines prescribed by Planning Commission of Pakistan
- Financial Rules, Accounting and Auditing procedures prescribed by the Ministry of Finance and Auditor General of Pakistan
- Internal Codes of Practice developed by respective PA under the powers and authority given through the legal instrument called the Act of Parliament under which each PA is established.

5.1.3 Standard Bidding Documents

Prior to the formation of PPRA, PEC had a key role in the management of public procurement. As part of this role, PEC was assigned responsibility by the Planning Commission and Executive Committee of the National Economic Council (Pakistan) for the preparation of Standard Bidding Documents (SBD) to bring uniformity to the use of the SBDs in all public procurements and for “policing” their utilisation. Since the formation of PPRA, when this role passed to PPRA, PEC has continued to prepare SBDs for publishing by PPRA; six basic SBDs have been harmonised with the PP Rules and an additional 13 documents are on the PEC website for download and use, pending final agreement between PPRA and PEC on use of the documents.

Since PPRA became responsible for the issue of SBDs, the PEC SBDs have been mandated by the Planning Commission of the National Economic Council of Pakistan for use in public procurements in Pakistan, both at federal level and for use by PAs governed by provincial PPRA’s (see section 5.1.4 below for further details).

Six SBDs of the PEC, comprising three for Works and three for Engineering Consultancy Services, have been mandated for use by all public bodies on the 12 February 2008 and again on the 24 December 2009. The General Conditions of Contract used in these SBDs are those issued by the International Federation of Consulting Engineers¹ (Federation Internationale des Ingenieurs-Conseils (FIDIC), and are commonly known as the FIDIC Conditions of Contract. (The version used is the fourth edition, 1987, reprinted in 1992 with further amendments). FIDIC provided copyright permission for a single use.

Thirteen other Procurement documents were approved by the governing body of the PEC on the 10 September 2011 and are available from the PEC website at <http://www.pec.org.pk/Downloads.aspx#biddocs1>. The documents are listed in Appendix A to this document. These documents are not approved by PPRA and thus could be construed as advisory or optional procedures for procurement, although a link to the documents is provided on the PPRA website. There is therefore potential confusion or conflict over which organisation has the required authority to issue SBDs (PPRA, PEC or the Planning Commission of Pakistan) and which SBDs have been formally issued.

It is a major weakness in the operations of PPRA that they have not produced any standard procurement documents for use by all PAs, including documents to cover procurement of goods, non-consultancy services and non-engineering related consultancies.

¹ FIDIC Secretariat, P.O. Box 86, 1000 Lausanne 12, Switzerland e-mail: fidic.pub@fidic.org

5.2 Scope of Application

The PP Rules apply to all public entities including public companies and academic bodies (subject to full or majority government ownership or control), local bodies and bodies with federal loans or grants. This brings challenges in monitoring compliance with the PP Rules, as well as questions of the suitability of the legal framework for smaller, lower spending PAs.

The PP Rules applies to goods, construction, consultancy services and other services, with exceptions that are in the national interest. The national interest is not defined but is assumed to be for security, strategic or defence procurement when so decided by government. This security exception is potentially open to abuse and is no longer recommended in standards such as the 2011 Model Law on Public Procurement issued by the United Nations Commission on International Trade Law (UNCITRAL), although it remains common across the world.

Additionally, PPRA can recommend to government that an exception should be granted to any procurement under Section 21 of the Ordinance. This potentially provides an opportunity for additional exemptions to be provided under pressure from PAs or government.

There is a further exception to application of the PP Rules where procurement must follow donor guidelines under a financing agreement. This is important for implementation of ODA by JICA, allowing JICA Guidelines to prevail over national law.

5.3 Institutional Framework

Procurement is decentralised, with the chief of each PA responsible for ensuring procurement activities are carried out and the central regulatory body, PPRA, providing oversight. There does not appear to be any mechanism for PPRA to monitor PAs to ensure compliance. This situation is made more difficult by a shortage of staff in PPRA who have the procurement training or experience to undertake the task.

5.3.1 Procurement Responsibilities

Each PA is understood to be required to establish a Procurement Unit or designate a unit with responsibility for procurement and contract management, although this requirement is not stated in either the PP Rules, Regulations or SOPs. Reference is made in the SOPs to a PA's responsibility for selecting evaluation committees.

Procurement Units must generally obtain approvals for procurement from the "Relevant Authority" within the governing Board of the PA or the chief executive of the PA in accordance with the code of practice on delegation of powers. The chief of the PA approves bidding documents, while evaluations are approved according to value. The head of the PA has responsibility for financial management, in addition to procurement. The lack of a clear statement within the procurement legal framework on who the relevant authority is indicates a weakness in the system.

5.3.2 Regulation and Oversight

PPRA was established under the Public Procurement Regulatory Authority (PPRA) Ordinance, 2002 and is primarily a regulatory body, with functions in the following areas:

- Policy and Regulatory Framework: recommending revisions to or formulation of new laws, regulations, rules and policies, codes of ethics, guidelines and manuals in relation to procurement and the inspection/quality of goods services and works, as well as reporting to government on procurement issues;
- Monitoring: monitoring application of the laws, rules, regulations in relation to procurement and inspection/quality of goods services and works;
- Capacity building: arranging training and other programmes for public sector procurement staff, advising PAs on their interpretation in relation to procurement and inspection/quality of goods services and works and making recommendations for improvements in their operational setup.

Producing SBDs is not listed under PPRA's functions but is considered by PPRA as part of its role.

This range of functions is consistent with those of regulatory bodies worldwide and the absence of any procurement operational/transactional functions or involvement in the procurement of PAs avoids any conflict with its regulatory functions. However, while legal requirements are adequate, the PPRA appears to lack the capacity to effectively fulfil its mandate. Currently capacity building of public procurement staff is limited to two day seminars, primarily being undertaken by PPRA in Islamabad.

It is unclear what approach PPRA plans to undertake in monitoring compliance with the PP Rules and Regulations as it has insufficient resources to adequately undertake the function. The Office of the Auditor General is responsible for auditing all public bodies, however this is understood to be an accounting audit not a procurement audit to ensure compliance with the Ordinance and subsidiary documents.

PPRA is currently located in 1st Floor FBC Building Near State Bank, Sector G-5/2, Islamabad. It is understood that funding has been agreed by Government for PPRA to construct their own offices in Islamabad. Currently there is no information available as to when any move is likely to take place.

5.3.3 Provincial PPRA Organisations

Under Amendment 18 in the Constitution of Pakistan, called the Constitution (Eighteenth Amendment) Act, 2010, the respective provinces have been assigned the powers and authority of PPRA in respect of procurements using provincial funding. Each province is required to set up a PPRA organisation to undertake responsibility for public procurement under the auspices of the provincial governments. Each of these bodies is totally independent and there is no obligation for the separate organisations to work together or for them to work with the federal PPRA in Islamabad. There is potential therefore for the organisations to develop divergent and possibly contradictory interpretations of the Procurement Rules and to prepare and issue different procurement documents.

The implications for suppliers and contractors are that they have to understand and operate four potentially similar but slightly different procurement processes and that practises and documents that are accepted by one "PPRA" may be rejected by another.

This report concentrates on the federal system and rules.

5.3.4 Procurement Qualifications and Education

Currently there are no educational qualifications in procurement that are recognised by PPRA and no requirement for PA staff undertaking procurement or even for PPRA staff to have a minimum level of procurement training. This is considered a major weakness in the Pakistan public procurement system.

PEC has responsibility for the registration of engineers, consulting engineers, constructors/operators accreditation of engineering programmes run by universities/institutions for ensuring and managing continuing professional development. PEC have recently introduced procurement modules into the curriculum for all engineering qualifications in response to the shortage of procurement specialists in Pakistan.

5.3.5 Pakistan Engineering Council

PEC is a statutory body, constituted under the PEC Act 1976 (V of 1976) amended 24th January 2011, to regulate the engineering profession in Pakistan. The PEC Act defines "professional engineering work" as the giving of professional advice and opinions, the making of measurements and layouts, the preparation of reports, computations, designs, drawings, plans and specifications and the construction, inspection and supervision of engineering works. PEC's main functions include the registration of engineers, consulting engineers, constructors/operators and the accreditation of engineering programmes run by universities/institutions. As discussed in section 5.1.3 above, it has also been involved in preparing standard bidding or contract documents, as well as construction cost data, conciliation and arbitration procedures and guidelines for bid evaluation, prequalification and price adjustments for construction and consultancy contracts.

PEC maintains a central register of all engineering consultants and contractors, as discussed further in section 6.1 below. This is of vital importance in the procurement process as all

engineering contractors operating in Pakistan must be registered with PEC. A separate registration is required for all Joint Ventures (JV) operating in Pakistan. The requirement for JV registration is a formality provided each member is already registered with PEC.

As noted above, in certain areas, such as the issue of SBDs, there is still some degree of confusion as to the respective responsibilities of PEC and PPRA for procurement, although PAs all reported that PPRA was responsible for public procurement in Pakistan.

6. Procurement Procedures and Practices

6.1 Registration and Participation

There are no restrictions on participation in public procurement based on nationality; the PP Rules and Regulations contain no requirements for suppliers to register as a condition of participation in open competitive bidding or request for quotations procurement. However, PPRA includes a registration facility for suppliers on its website. The registration process is not mandatory and the information required is principally; name, address, contact details, products/services offered, tax registration numbers and PEC registration details if applicable.

Separately, all engineering suppliers are required to register / be accredited by PEC if they wish to participate in public tenders. The PEC accreditation process is used to pre-qualify suppliers and determines the category(ies) of contractworks that can be undertaken by each registered company. The categories are determined by a combination of experience, number of qualified staff and financial strength. This requirement also applies to international companies wishing to participate, as well as to Joint Ventures (JV). Registration of a JV is not a precondition for international companies prior to bid but is required prior to contract signature. All JV partners must be separately registered with PEC before a JV can be registered. The PEC accreditation process is included as Appendix B.

There is a formal process of domestic preference in place for all public procurements, unless this is overridden by a donor's guidelines and is written into a grant or loan agreement.

PAs are required to set up a mechanism for permanently or temporarily debarring suppliers/contractors provided the process includes a mechanism for appeal. Suppliers may be blacklisted by PAs for an unspecified period and a list of blacklisted suppliers is displayed on PPRA's website. Suppliers may be blacklisted for either consistently failing to provide satisfactory performance or being found to be indulging in corrupt or fraudulent practices. Included on the PPRA website is a link to suppliers debarred by the World Bank and it is assumed that these suppliers are also barred from participating in public tenders. Currently there are 10 Pakistani suppliers on the PPRA blacklist, of which three were blacklisted in 2012 and the first supplier was blacklisted in 2004.

Notwithstanding the above, our interviews with PAs suggest that most public bodies have no formalised procedure for monitoring supplier/contractor performance and that unofficial blacklists are utilised which are not notified to PPRA. Donors are unwilling to accept these unofficial blacklists as they do not contain documentary evidence to support contractors' exclusion or a method for monitoring on-going performance. Therefore requests by PAs to exclude poorly performing suppliers\contractors frequently fail, partly due to the poor procedures and record keeping of PAs.

6.2 Procurement Planning

Requirements for procurement planning include the following:

- procurement plans for all procurements as part of the annual budget forecast which should be reviewed quarterly;
- a procurement plan should be included as part of the approval process for new projects under the Planning Commissions' PC-1 document\process;
- an overall procurement plan should include a listing of all forecast procurements for goods and services for each PA.

There is a sample procurement plan template on the PPRA website, however the format does not correspond to the detailed requirements of SOP 1 of the procurement manual. The SOP states the following information should be included; procurement timetable, sources of supply – local or international, costs, inspection, insurance, methods, packaging, any need for pre-qualification and types of contract (framework, phased deliveries).

There is no limitation on the value of the planned procurement that should be included in the plan.

PAs are required to send a copy of all procurement plans to PPRA. Currently there are only eleven procurement plans on the PPRA website and none of the plans follow the format suggested by PPRA. It is unlikely that PPRA has any method of monitoring compliance with the requirement for procurement planning by PAs. Discussions with PAs indicated that there is no requirement in their working procedures to provide Procurement Plans to PPRA.

6.3 Procurement Methods

The PP Rules states that Open Competitive Bidding is the principal method of procurement for goods, services and works, with other methods to be used only as permitted in the PP Rules on defined grounds. Choice of procurement method is also linked to financial thresholds included in the PP Rules. However, PAs may request agreement from PPRA for revised financial thresholds that are appropriate to their individual circumstances.

The PP Rules thus have a preference for competitive bidding but also provide other methods suitable for high and low values and for consultancy services, as well as goods, works and non-consultancy services. PAs are responsible for setting authority levels for prescribing the method of procurement utilised and getting PPRA approval for these limits. It is not apparent how closely this process is followed. There is no explicit prohibition on the splitting of requirements to avoid procurement thresholds unless procurement has already been advertised. The main permitted methods for goods, works and consultancy services are:

- **Open competitive bidding**, the preferred method, which may involve one or two-stage bidding, the latter for complex requirements. Pre-qualification may be used under open bidding and advertising may be national or international.
- **Request for quotations**, This method of procurement may be used for procurement below Rs 100,000, where the items being procured have standard specifications, a minimum of three quotations are obtained and the lowest bid is accepted.
- **Direct Contracting**, which is limited to specific circumstances, some of which require approval by an appropriately appointed authority. It is permitted for procurement where the items being purchased are spare parts or supplementary services from the original manufacturer or supplier, only one manufacturer or supplier exists or where a change of supplier would result in the PA acquiring items with different technical specifications and result in operational problems. This method may also be used in an emergency situation or where prices are fixed by government or another duly appointed body.

Various limits apply, depending on the grounds for use of direct contracting, such as a maximum three years duration or repeat orders not exceeding fifteen percent of the original cost.

- **Negotiated tendering**, a PA may engage in negotiated tendering with one or more suppliers where goods are manufactured for a specific requirement, where copyright or intellectual property rights exist or where extreme urgency is required due to events unforeseen by the PA and normal time limits cannot be met for reasons not attributable to the PA. A written explanation and authorisation for using this method must be recorded.
- **Petty cash purchases**, PAs are not required to use the normal procurement processes of bidding or quotations for petty cash purchases below RS 25,000.

Open competitive bidding, request for quotations and direct contracting are broadly equivalent to the International Competitive Bidding, shopping and direct contracting methods in the JICA Guidelines. However, there is no restricted bidding method which would be equivalent to JICA's Limited International Bidding method.

Although separate regulations have been issued for consultancy services, which include various methods of selection, the PP Rules, and hence the procurement methods above, also apply to consultancy services. This contrasts with the approach taken by JICA, where separate guidelines with alternative methods govern the procurement of consultancy services.

6.4 Bidding Process for Goods, Works and Non-Consultancy Services

6.4.1 Qualifications and Advertising

Bidding may be with or without prequalification. Prequalification is not mandatory but may be used for large and complex contracts at the discretion of the PA. All civil engineering contractors must be registered with PEC. The PEC registration process is frequently used to pre-qualify suppliers and determines the category(ies) of contract\works that can be undertaken without consideration of the nature and site conditions, as is the normal process for pre-qualification.

Qualification criteria must be stated in bidding, prequalification and requests for proposal documents and must relate to areas such as technical qualifications, equipment, past performance. There are mandatory eligibility requirements such as legal capacity, financial capability, taxation status, not being debarred, no criminal convictions etc., but these are given only in the SOPs.

Invitations to bid or prequalify must be published in daily newspapers of national circulation (or internationally for open international bidding) and on PPRA's website. Where the PA has its own website, the notice may also be published there.

6.4.2 Bidding Documents and the Bidding Process

PAs are required to prepare specifications which allow for the widest possible competition. Particular brands or trademarks are only permitted where objective description is not possible and on the basis that equivalent products are also acceptable.

Standard templates are provided for a limited range bidding documents with specified content including clear descriptions of the procurement need, instructions on the bidding process, the evaluation criteria and methodology including any preferences and the terms and conditions of the contract. As previously mentioned these templates have not been approved by PPRA, though there are links to the documents on the PPRA website. The bidding documents available are included in Appendix A along with links to the websites from where they can be downloaded. There are no sample templates for Requests for Quotations or petty cash requirements.

Bidders may be charged fees for bidding and prequalification documents, which are to recover the cost of printing and providing the documents only.

A deadline for receipt of bids must be set, with bids kept unopened until this time and any late bids rejected. The PP Rules set minimum bidding periods of at least:

- 15 days for national bidding or pre-qualification
- 30 days for international bidding or pre-qualification

However, there is a discrepancy in SOP 7 which states a minimum of 45 days for international tendering. There are no set bidding periods stated for requests for quotation.

When bid securities are required, their value must not exceed 5% of the bid value. However, for two envelope bidding the bid security amount must be common to all bidders, whilst not exceeding 5% of the PA's budget for the procurement concerned.

Bids must be opened in the presence of bidders' representatives at the time and place stated in the bidding documents, immediately after the deadline for bid submission. There is no requirement for requests for quotation to be opened in public.

6.4.3 Evaluation

Evaluation must be based on the criteria stated in the bidding document and evaluation procedures are consistent with international accepted practices.

Award is to the lowest evaluated substantially responsive bid; a preference of 15% is normally given to Pakistani bidders (or foreign bidders in joint venture with a Pakistan bidder) under international bidding or when there is competition with foreign bidders/goods.

Under the request for quotations method, the lowest evaluated quotation fulfilling specified requirements that is within the cost estimate is accepted.

The PA may negotiate with the highest ranked bidder regarding methodology, work plan, staffing and special conditions of the contract. There should be no negotiation with bidders over price.

6.5 Procurement Process for Consultancy Services

6.5.1 Advertising and Shortlisting

Under the open competitive bidding method, an expression of interest (EOI) procedure may be used but is not mandatory. EOIs must be published on the PPRA website and must also be advertised in print media.

The evaluation of EOIs must be based on qualifications, experience and capacity. Shortlists must normally consist of more than 3 firms to ensure at least three bidders have the opportunity to respond, but there is no upper limit. Where an EOI procedure is used, only bidders who respond can be included in the short list and all applicants must be informed of whether or not they have been shortlisted.

The shortlist may be developed without advertising where the procurement is small and simple.

6.5.2 Request for and Submission of Proposals

PAs are required to prepare terms of reference (TOR) stating the objective, goals and scope of services, as well as expected outputs.

There is a link on the PPRA website to the PEC website where standard templates are provided for request for proposals (RFP) documents with specified content including TOR, instructions on the submission of proposals, the selection method, evaluation criteria, minimum technical pass mark and weightings and the terms and conditions of the contract.

A deadline for receipt of proposals must be set, with proposals kept unopened until this time and any late proposals rejected. The PP Rules sets minimum bidding periods of at least 15 days for national bidders and 30 days for international bidders. Both technical and financial openings must be held in the presence of bidders' representatives and financial proposals must be retained unopened until the notified time for the financial opening.

6.5.3 Evaluation and Negotiation

Technical evaluation must be based on the criteria and weightings in the RFP document, with a minimum quality threshold set. Criteria may include experience of the firm, proposed methodology, qualifications of key human resources, knowledge and technology transfer and, for international proposals, key Pakistani human resources.

Award is to the first-ranked proposals, according to the selection method specified in the RFP. This may be:

- Quality Based Selection. This method will be used for highly specialized and complex assignments, where quality is the only factor taken into consideration;
- Quality and Cost Based Selection. This method shall be used where high quality is the prime consideration while cost is a secondary consideration;
- Least Cost. This method will only be used for assignments of standard or routine nature, where well established practices and standards exist
- Single Source or Direct Selection. This method will be used in exceptional circumstances, where it provides clear advantages over competition;
- Fixed Budget. This method shall be used only when the assignment is simple, can be precisely defined and when the budget is fixed. The request for proposals shall indicate the

available budget. Proposals that exceed the indicated budget shall be rejected. The ranking shall be based only on evaluation of technical proposals of the qualified bidders.

The Quality Based Selection, Quality and Cost Based Selection and Single Source or Direct Selection methods are equivalent to JICA selection procedures. The Least Cost and Fixed Budget methods are not contained in JICA Guidelines, but modelled on World Bank guidelines. However, as noted in section 6.3, as the Consultancy Regulations remain subject to the PP Rules, these selection methods must be used within the rules for each defined procurement method.

Negotiations may only be held with the selected consultant, although the PA can negotiate with the next ranked consultant if these negotiations fail. Technical negotiations are limited to the methodology, work plan, staffing and special conditions. Negotiations cannot seek to change fee rates.

Negotiations cannot be undertaken by a single member but require a negotiation committee.

6.6 Contract Award and Management

PAs are required to announce the bid evaluation results ten days prior to the award of contract in the form of a report, but it is not clear where it is to be announced. PPRA has links on its website where 51 organisations have published awards, but this is a very small number and it is apparent that this mechanism is not commonly used.

There is no requirement for PAs to automatically debrief bidders following completion of a tender evaluation. However, PAs must write to each unsuccessful bidder notifying them of contract award. Following receipt of a request for a debrief PAs must prepare and issue a response within five days.

Contracts may be amended by written consent of both parties, but procedures for contract amendments are found only in the SOP. The PP Rules impose a maximum limit of 15% of the original contract value for repeat orders through direct contracting, which would limit the financial value of some contract amendments.

PP Rule 49 requires any disputes between parties to a contract to be settled by arbitration and further requires PAs to specify a method of arbitration in contracts, which is not inconsistent with the laws of Pakistan. In practice, this will usually be the Pakistan Arbitration Act, 1940, as amended. PEC also issued Rules of Conciliation and Arbitration in 2009.

6.7 Record Keeping and Communications

PAs are required to maintain comprehensive procurement records. These records must be kept for a period of at least five years from completion of the contract or rejection of all bids. Regulation 4 lists the records which are required to be kept. These do not however include:

- A copy of the bidding document;
- Copies of bids received;

Paragraph 5.2 of the manual also makes reference to the need to retain records on procurement files although this falls short of giving explicit details of what is expected.

Certain provisions of the PP Rules require specific communications to be in writing, such as Rule 31 which requires that requests for clarification of bids, as well as the responses, are always in writing. However, there is no general rule requiring all communications to be in writing or confirmed in writing. The SOP further require certain key communications, such as records of pre-bid conferences and clarifications of bidding documents to be sent to all bidders.

7. Oversight and Enforcement Systems

7.1 Bidder Complaints

The PP Rules requires bidders to lodge any complaint with the PA within 15 days after the announcement of the bid evaluation report.

There are three weaknesses to the complaints system:

(1) Rule 48(2) requires a complaint to be lodged not later than 15 days after the announcement of the report, however according to Rule 35, the report only needs to be issued 10 days prior to the award of contract being made. Therefore, if a complainant lodges a complaint between 11 and 15 days they are inside the period of a legitimate complaint but it is possible that the contract award will have already been made. The timeframes therefore need to be aligned.

(2) Rule 48(4) states that merely lodging a complaint does not warrant suspension of the procurement process. This is understandable so as to prevent spurious complaints delaying legitimate procurement activities; however the Rule needs to be clearer on what does warrant suspension of the proceeding since at the moment this is not disclosed.

(3) The appeal process appears to be straight to the judiciary even though the original review by the PA lacks independence. There is therefore no provision for a further layer of independent *administrative* review, outside of the PA, for bidders to challenge procurement decisions. Appeal to the courts would usually be an expensive process, the costs of which may prevent genuine complaints from being taken forward for lack of funds to pursue the case through the legal system.

The public procurement system in Pakistan therefore lacks an effective mechanism for challenging procurement decisions and falls far short of international standards, such as those set by the United Nations Convention Against Corruption (which the Government of Pakistan ratified in August 2007) which requires a system of independent review *and* appeal.

The lack of such provision, and the concerns raised above are considered to represent a weakness in the complaints system. The lack of a clearly defined, and independent, complaints and appeals procedure has a negative impact on the transparency and integrity of the entire procurement system, as bidders are discouraged from making representations.

7.2 Prevention of Corruption

The Procurement Manual contains a code of conduct for public officials involved in public procurement. The code requires officials to act impartially and in the public interest, avoid conflict of interest, maintain confidentiality and not commit corrupt, fraudulent or collusive practices.

The PP Rules require all bidding documents with a budget of more than Rs 10 million to include an "Integrity Pact". This is a declaration to be signed by bidders and the Buyer's representative and covers bribery, misrepresentation, coercion, collusion, interfering with other bidders, seeking to influence the PA and conflict of interest. The bidder is required to declare any fees, commission, etc. that have been paid or are payable. The bidder is required to indemnify the buyer for any loss or damage incurred on account of its corrupt practices and to pay an amount equivalent to 10 times the amounts paid. A copy of the Pact is included as Appendix C.

It is not known how successful this pact is in preventing corrupt practices in procurement.

Section 3: Recommendations

8. Recommendations

The following sections make recommendations for the strengthening of the national procurement system of Pakistan.

8.1 Legal Framework

Review all parts of the legal and regulatory framework (Rules, Regulations, Guidelines and SOPs), to ensure that they comply with international standards and fully cover all aspects of the procurement process and related requirements, such as blacklisting of suppliers and complaints. The review should aim to identify and remove all discrepancies between different documents and requirements in the regulatory framework; in particular, they should ensure that the rules governing consultancy services are clear.

Support PPRA to enable it to both review existing SBDs issued by PEC and develop appropriate SBDs and other templates for needs not addressed by PEC.

If any exemptions to application of the Ordinance and PP Rules are to be maintained, ensure that these are clearly and narrowly defined, to avoid abuse or widespread avoidance of the PP Rules.

8.2 Institutional Framework

The review of the legal and regulatory framework referred to in section 8.1 should address any ambiguity over the overlapping roles and responsibilities of PPRA, PEC and the Planning Commission.

Introduce arrangements to enable the federal and provincial PPRA's to work together, ensuring consistency in the interpretation of the legal framework.

8.3 Capacity Development

Support the professionalisation of procurement through setting minimum requirements for staff working in Procurement Units or otherwise participating in procurement functions. Consider developing a mandatory procurement qualification for public sector procurement staff, as well as enhancing PPRA's capacity to deliver capacity building support to PAs.

8.4 Complaints Mechanism

Significantly revise the complaints mechanisms to ensure access by bidders to an effective, independent system of review and appeal. Consideration should be given to establishing an independent, administrative body to review complaints, to ensure genuine access to independent review, as well as appeal to the courts. Timescales for the standstill period and submission of complaints should be obligated and the legal framework should include safeguards and rights for bidders in line with international standards; the UNCITRAL Model Law on Public Procurement provides a useful template.

8.5 Oversight and Enforcement

Strengthen PPRA's capacity to conduct monitoring of procurement by PAs.

Ensure the introduction of adequate procedures for blacklisting of suppliers, including an independent appeals mechanism.

Appendix A: Procurement Documents from PPRA and PEC Websites

Bidding Documents from PPRA Website

STANDARD BIDDING DOCUMENTS OF PAKISTAN ENGINEERING COUNCIL

Notified Documents June 11, 2007 (Revised)

[Standard Form of Bidding Documents \(Civil Works\).](#)

[Standard Form of Tender Documents for Procurement of Works \(E&M\).](#)

[Standard Form of Tender Documents for Procurement of Works \(For Smaller Contracts\).](#)

[Standard Form of Contract for Engineering Consultancy Services \(For Large Projects\)](#)

[Time Based Assignments.](#)














[Standard Form of Contract for Engineering Consultancy Services \(For Large Projects\)](#)

[Lump Sum Assignments.](#)

[Standard Form of Contract for Engineering Consultancy Services \(For Smaller Projects\).](#)

Procurement Documents from the PEC website

The following documents have been approved by Governing Body in its 11th meeting (SRO Notification in progress) held on 10th Sep 2011.

1. Rules of Conciliation and Arbitration.  
2. Standard Procedure for Evaluation of Proposals for Procurement of Engineering Services  
3. Standard Procedure and Formula for Price Adjustment  
4. Standard Procedure for Evaluation of Bids for Procurement of Works  
5. Standard Procedure for pre-qualification of constructors  
6. Standard Procedure for pre-qualification of consultants  
7. Standard Form of Bidding Documents for Procurement of Works on BOT Basis 
8. Standard Form of Bidding Documents for Procurement of Works on Design and Build Basis  
9. Standard Form of Bidding Documents for Procurement of Civil Works (SSTE)  
10. Standard Form of Joint Venture/Consortium Agreements and Memorandum of Understandings  
11. Standard Form of Bidding Documents for EPC/Turnkey Contracts  
12. Standard Form of Bidding Documents for Procurement of Goods  
13. Standard Form of Bidding Documents for Operation & Maintenance Contracts  

Appendix B: PEC Accreditation Procedure

Accreditation Procedure:**Appendix C**

| | |
|---|---|
| STEP 1 : (Month 1) | Institution submits accreditation / reaccreditation application including information/data according to the Proforma (AC-1) provided by the PEC. A master list of exhibits for the site visit, arranged according to different criteria should also be provided by the Institution. |
| STEP 2 : (Within 30 days after step 1) | Identifying the Visiting Team and its Convener by PEC EA&QEC; seek institutional input for any conflict of interest. |
| STEP 3 : (Within 2 months after step1) | PEC provides the Visiting Team with the visit instructions / guidelines, profile of the Institution / Program(s); including the archived accreditation report of the previous visit, if any. |
| STEP 4 : (Within 30 days after step 3) | Critical study including verification, by the Visiting Team, of the information furnished to the EA&QEC; (hard and soft copies provided). |
| STEP 5 : (Within 15 days after step 4) | Furnishing any additional information requested by the Visiting Team of PEC (through correspondence if necessary); Institution provides a master schedule of the site visit according to PEC visit plan. |
| STEP 6 : (Within 4 th /5 th month of the year after step 1 to 5) | Briefing to the visitation Team by its Convener to refresh the visit instructions / guidelines. Visit of the institution (Laboratories, Libraries, Workshops and other Infrastructure/Facilities) as per schedule; meet with administrative staff, faculty, students and alumni for reaccreditations of established programs. |
| STEP 7 : | Discussions with the Management, Principal, Deans, faculty and others, enumerating the strengths and weaknesses of the programs. At this stage the institution may decide to withdraw the program(s) from consideration for accreditation; |
| STEP 8 : | Discussions among Members of the Visiting Team followed by finalization of the Team Report (Shared with the institution for removal of factual errors, and for a rejoinder). |
| STEP 9 : | Institutional Rejoinder/Comments to the report within 30 days of the receipt of the team report. If the Institutional rejoinder is not received by the due date, it will be assumed that the Institution agrees to the observations of the Team. |
| STEP 10 : (Within 30 days after Rejoinder) | Submission of the Team Report by the Convener of the Visiting Team to the EA&QEC; |
| STEP 11 : (Within 6th /7th Month) | Consideration of the Report of the Visiting Team and the rejoinder, by EA&QEC; |
| STEP 12 : (Within 7th / 8th month) | Decision of the EA&QEC on the status of accreditation; Reporting the accreditation decision by EA&QEC to Chairman PEC. |
| STEP 13 : (Within 8th / 9th month) | Communication of the accreditation decision to institution(s) and issue the SRO. |
| STEP 14 : | Entry into the First Schedule of the PEC Act and posting on PEC Website. After taking action on above steps, should a program be successful in obtaining accreditation, the entire process will be repeated at the expiry of the specified accreditation period. The period of full accreditation shall be 3 years. However, if accreditation is pended due to shortcomings identified the institution is required to provide a compliance report to PEC within 06 months highlighting corrective measures taken. This will be followed by a confirmatory visit. |

Appendix C: Integrity Pact (Bidders)

Integrity Pact

**DECLARATION OF FEES, COMMISSION AND BROKERAGE ETC.
PAYABLE BY THE SUPPLIERS OF GOODS, SERVICES & WORKS IN
CONTRACTS WORTH RS.10.00 MILLION OR MORE**

Contract Number: _____ Dated: _____

Contract Value: _____

Contract Title: _____

_____ [name of Supplier] hereby declares that it has not obtained or induced the procurement of any contract, right, interest, privilege or other obligation or benefit from Government of Pakistan or any administrative subdivision or agency thereof or any other entity owned or controlled by it (GoP) through any corrupt business practice.

Without limiting the generality of the foregoing, _____ [name of Supplier] represents and warrants that it has fully declared the brokerage, commission, fees etc. paid or payable to anyone and not given or agreed to give and shall not give or agree to give to anyone within or outside Pakistan either directly or indirectly through any natural or juridical person, including its affiliate, agent, associate, broker, consultant, director, promoter, shareholder, sponsor or subsidiary, any commission, gratification, bribe, finder's fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or inducing the procurement of a contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoP, except that which has been expressly declared pursuant hereto.

_____ [name of Supplier] certifies that it has made and will make full disclosure of all agreements and arrangements with all persons in respect of or related to the transaction with GoP and has not taken any action or will not take any action to circumvent the above declaration, representation or warranty.

_____ [name of Supplier] accepts full responsibility and strict liability for making any false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of this declaration, representation and warranty. It agrees that any contract, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other right and remedies available to GoP under any law, contract or other instrument, be voidable at the option of GoP.

Notwithstanding any rights and remedies exercised by GoP in this regard, _____ [name of Supplier] agrees to indemnify GoP for any loss or damage incurred by it on account of its corrupt business practices and further pay compensation to GoP in an amount equivalent to ten times the sum of any commission, gratification, bribe, finder's fee or kickback given by _____ [name of Supplier] as aforesaid for the purpose of obtaining or inducing the procurement of any contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoP.

[Buyer]

[Seller/Supplier]

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添付資料 6 : 公共調達制度レビュー報告書 (スリランカ)



Study of National Procurement System of Sri Lanka

Japan International Cooperation Agency

Report

August 2012



Crown Agents Reference No. 28643

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List of Abbreviations

| | |
|-------|--|
| EA | Executing Agency |
| CAO | Chief Accounting Officer |
| CAPC | Standing Cabinet Appointed Procurement Committees |
| CPC | Consultants Procurement Committee |
| DOPF | Department of Public Finance |
| e-GP | Electronic Government Procurement |
| EOI | Expression of Interest |
| GOSL | Government of Sri Lanka |
| ICTAD | Institute for Construction, Training & Development |
| JPY | Japanese Yen |
| ODA | Official Development Assistance |
| JICA | Japan International Cooperation Agency |
| MOPFP | Ministry of Public Finance and Planning |
| PE | Procuring Entity |
| PG | Procurement Guidelines |
| RFP | Request for Proposals |
| Rs | Rupees |
| SBD | Standard Bidding Document |
| TOR | Terms of Reference |

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It should be noted that the BSI Symbol and UKAS Accreditation mark signify that Crown Agents operate a documented Quality Management System registered with the British Standards Institution to the international quality standard BS EN ISO 9001:2008. The provision of consultancy services in revenue enhancement and expenditure and debt management including: customs, taxation and trade, human institutional and organisational development, engineering, procurement management advice and reform, health logistics and procurement services. Third party quality assurance and inspection services related to the supply of manufactured and processed products. International freight forwarding services utilising in house sub-contract warehousing. Verification of service as follows: Air Import – Clearance UK airport; Exports – Airport of departure; Sea Imports – Clearance UK port; Sea Exports – Port of loading.



FS 33234

Section 1: Introduction

1. Study of Procurement Systems and Capacity in South Asia

The quick and appropriate implementation of Official Development Assistance (ODA) programmes by the Japan International Cooperation Agency (JICA) is dependent on executing agencies (EAs) having the necessary systems, organisation, operational rules and capability to undertake the required procurement procedures smoothly. This capability depends on both the degree of procurement experience of each EA and on the degree of maturation of the national procurement system.

As JICA is now cooperating with new EAs in the South Asia region, it requested Crown Agents to undertake a study of procurement systems and capacity in selected target countries in South Asia in order to collect basic information on the public procurement systems and procedures of each country, determine the capacity of each target EA and formulate training plans to reflect areas requiring procurement support.

2. Purpose of Report

As part of the study, this report provides an overview of the national procurement system of Nepal. It provides a general summary of the government system, based primarily on the legal and regulatory framework. Details on specific EAs can be found in separate capacity assessment reports.

As new EAs for JICA ODA loans are likely to be more familiar with their national procurement system than with the JICA Guidelines for the Employment of Consultants and for the Procurement of Goods and Services under Japanese ODA Loans (JICA Guidelines), this report highlights any areas where national rules or practices differ significantly from JICA Guidelines.

This report is issued as a draft, providing essential background information to inform capacity assessment work in EAs. It will be further updated, where appropriate, in light of information obtained during field visits for the assignment.

3. Methodology

In order to facilitate and standardise studies of national procurement systems across all target countries, Crown Agents developed a questionnaire covering the key elements of a procurement system. This questionnaire is completed for each target country, primarily through a desk study by a procurement specialist from Crown Agents' headquarters. The study is based on relevant legal documents, websites and information available from other recent studies of the national system, supplemented by input from the Crown Agents' local consultant and from field visits by the team assessing procurement capacity in EAs.

This study of the national procurement system for Sri Lanka is based on:

- The website of the Ministry of Finance & Planning, Department of Finance - National Procurement Agency <http://www.treasury.gov.lk/FPPFM/pfd/publications/npa.html>
- The Procurement Guidelines of 2006
- The Guidelines, Selection and Employment of Consultants, 2007
- The Procurement Manual, printed version, 2006 and supplements 1 to 25 issued amending the original manual
- Consulting Services Manual, November 2007

The completed questionnaire for Sri Lanka is included at Appendix A. Section 2 of this report summarises the findings of the study, highlighting areas where national rules or practices differ significantly from JICA Guidelines. Section 3 provides brief recommendations for strengthening the national procurement system.

Section 2: Summary of National Procurement System

4. Overview of Procurement System and Reforms

The Government of Sri Lanka (GOSL) set up via a Cabinet Memorandum dated May 6 2004 the National Procurement Agency (NPA) under President Chandrika Kumaranatunge in accordance with the Parliament Act, 2004. The memorandum was based upon a Country Procurement Assessment Report of the government tender procedure prepared by the WB in June 2003.

In 2008 the NPA was subsumed into the Ministry of Public Finance and Planning, Department of Public Finance (DOPF). As a result of this the Procurement Department in the DOPF is less independent than NPA and its role is largely administrative.

There is no on-going procurement reform process in Sri Lanka though it is understood that the ADB and the WB has recently undertaken a study of the national procurement system and a draft Procurement Report is currently being discussed with the GOSL.

5. Legal and Institutional Framework

5.1 Legal Framework

Many countries prefer to issue the most important procurement rules through a law or regulations to ensure they are legally enforceable and cannot easily be changed. However, this is not the route undertaken by the GOSL.

Instead Procurement Guidelines (PG) were prepared in cooperation with funding agencies, including the World Bank, ADB and JBIC, and were harmonised with their guidelines to the extent possible. Changes to the Procurement Manual (PM) were issued via supplements and circulars issued by the NPA. This practise is continued by DOPF. Consequently, multiple supplements to the procurement manual have been issued making it difficult to follow. In addition the NPA website, which is still in place contains copies of repealed guidelines.

5.2 Scope of Application

The PG applies to all procuring entities (PE) carrying out procurement partly or wholly funded by the Government of Sri Lanka (GOSL) or a foreign funding agency.

PEs include:

- ministries, departments, statutory authorities
- provincial councils and local authorities
- government corporations and government owned companies
- any body, wholly or partly owned by GOSL or where the GOSL has effective control of the body

The PG applies to all procurement. There are alternative rules for Special Procurements i.e. commodities, spare parts, vehicle and equipment repairs, publications, fuel, pharmaceuticals and medical equipment and information systems. These are variations to the existing PG, rather than an exemption.

- The Guidelines for Selection and Employment of Consultants (CG) apply to all types of consultants, including organisations and individuals. No types of consulting services excluded. However, there is a standing Cabinet Appointed Procurement Committee (CAPC) for special circumstances requiring deviation from general procurement procedures, suggesting exceptions are permitted.

The PGs apply to all procurement, irrespective of funding. However, where a funding agency mandates use of its guidelines, they prevail over the PG/CG to the extent that they conflict. Therefore procurement can be undertaken under ODA by JICA, allowing JICA Guidelines to prevail over national guidelines.

5.3 Institutional Framework

All procurement is decentralised. Secretaries to line ministries are responsible for procurement actions, as Chief Accounting Officers (CAO) with similar responsibility also given to Chief Secretaries of provincial councils.

All procurement activity and decisions are decentralised, with the exception that committees for higher value procurement are appointed by NPA.

5.3.1 Procurement Responsibilities

The officer-in-charge, such as the head of department or project director is responsible for procurement and although the PG refer to Procurement Specialists (PS) this role is not clearly defined. The PE responsibilities include communications, preparing and issuing invitation documents, preparation of data prior to the evaluation and supporting committees including issuing minutes of meetings. There are two key committees, who are jointly responsible for the procurement process for goods/works:

- Procurement Committees which are responsible for ensuring funds availability, agreeing the procurement time schedule (PTS), determining arrangements for advertising, sale of documents, receipt and opening, agreeing the type of documents, reviewing evaluation reports and recommending/deciding award. This committee is appointed by the CAO.
- Technical Evaluation Committees (TEC) which are responsible for recommending the PTS, reviewing/approving specifications, invitation documents and addenda, participating in pre-bid meetings, agreeing bid opening procedures, participating in negotiations if directed by the PC, reviewing draft contracts. Function of conducting evaluation not directly listed but implied by other parts of PG. TECs may differ for each procurement activity. Members are appointed by the DOPF.

For consultancy services, there is a single **Consultants Procurement Committee (CPC)** with responsibility for the entire selection process including ensuring funds availability, agreeing the PTS, deciding the selection method and contract type, evaluating and approving the shortlist and RFP including TOR, individual technical scoring and preparing the technical evaluation report, financial evaluation, deciding/recommending award, reviewing the draft contract.

CPCs vary according to the procurement, with composition stated in the manual. They are appointed by the Chief Accounting Officer except for Cabinet Appointed Consultants Procurement Committees (CPCC) for high value procurement, who are appointed by DOPF.

5.3.2 Regulation and Oversight

5.3.2.1 *The Objectives and functions of the NPA*

The objectives and functions of NPA as set out in the Procurement Manual (PM) are that the NPA is the principle authority for formulating and effecting amendments to these Guidelines; issuance of manuals, SBDs, evaluation methodologies, standard contracts, and specifications. NPA was established under a directive issued by H.E the President of Sri Lanka with the following objectives.

- To streamline the government procurement system and standardize the same to be of equal application to all government institutions.
- To ensure better transparency and good governance in relation to government procurement awards.
- To ensure that all parties who are eligible and desirous of participating in public bidding are afforded an equal opportunity.
- To ensure that when procuring the government will get best value for money in terms of price, quality and timely delivery.
- To ensure that the government procurement system is made efficient and simplified in order to promote development needs of the country.
- To put in place a monitoring system relating to selection of successful bidders and award of government tenders.

5.3.2.2 *The key functions of the NPA as set out are:*

- Develop, implement and review policies in procurement of goods, works and services
- Advise the Ministries and Tender Boards on procurement Activities
- Standardizing of goods and equipment
- Simplification of Review and Approval Process
- Review Procurement Procedures & Procurement Plans of all Government Institutions
- Monitor quality and progress on procurement projects
- Formulate accreditation system on selection of members for TECs and Tender Boards
- Appoint Tender Board and Technical Evaluation Committee members for procurements of higher values - Cabinet Appointed Tender Boards, Cabinet Appointed Negotiating Committees and Project Committees
- Introduction of code of conduct and ethics for Procurement Procedures
- Introduction of performance and technical auditing
- Capacity Building in the field of Procurement Management

5.3.2.3 *Revised role of the NPA under the Ministry of Finance and Planning*

The government officially instructed the NPA in December 2007 to close down operations and hand over its assets, liabilities and staff before January 31, 2008. Subsequently the NPA was subsumed into the Ministry of Public Finance and Planning, Department of Public Finance (DOPF). Currently this body is only responsible for:

- Formulating and effecting amendments to the PGs
- Maintaining and updating a database of qualified technical specialists who are qualified to be members of TECs. Individuals should be limited to sitting as members of three TECs concurrently
- Selecting qualified technical specialists to sit on TECs

5.3.2.4 *Role of the Institute for Construction Training and Development (ICTAD)*

ICTAD is a department of the Ministry of Construction, Engineering Services, Housing and Common Amenities and has several functions in the public procurement process in respect of the construction industry. According to the ICTAD website http://www.ictad.lk/sub_pgs/about_areas.html# the organisation is responsible for:

- Recommending strategies for the development of the Construction Industry and assist in their implementation.
- Regulating, registering and grading of Construction Contractors.
- Promoting the professionalism of consultants and coordinating the activities of professional bodies and assisting in the formation of similar bodies in the Construction Industry.
- Promoting and facilitating export of construction industrial services by undertaking overseas contracts.
- Providing advisory services to the Construction Industry.
- Reviewing human resource requirements of the industry and assisting in the provision of training facilities.
- Promoting the advancement of the skills and expertise of personnel and professional bodies in the Construction Industry.
- Promoting and undertaking research on matters related to the Construction Industry.
- Promoting Quality Assurance and productivity in the Construction Industry.
- Promoting and granting assistance to the development of industries related to the Construction Industry.

- Undertaking or assisting any other activity for the promotion of the Construction Industry.

Due to a lack of funding ICTAD is unable to undertake most of these functions and finds great difficulty in recruiting and retaining qualified staff, Currently ICTAD undertake the following additional procurement activities:

- Maintaining, updating and selling all civil engineering procurement tender and contracting documents. (This is the main source of income for the organisation. ICTAD receives a fee for all civil engineering tender documents issued in Sri Lanka)
- Maintaining, updating and selling technical specifications for use by civil engineering contractors for such things as Guidelines for Site Investigations for foundation of Buildings (1994) and Guide for Operation of Metal Quarries.
- Provide advice on Contract Administration and Disputes and Facilitating / Mediating / Adjudicating to resolve disputes between contractors and employers.

5.3.2.5 World Bank report on public procurement

It is understood that the World Bank (WB) has recently commissioned a report on the state of public procurement in Sri Lanka. However, the report has not as yet been made public as it is being discussed with government. It is likely that this report will recommend changes to the role of the Procurement Regulatory Body for procurement in Sri Lanka.

ADB are currently formulating a project with ICTAD to assist registering and grading of contractors through a new database.

6. Procurement Procedures and Practices

6.1 Registration and Participation

Foreign and domestic bidders are treated equally under ICB and NCB, except in regard to ICTAD registration (foreign bidders are not required to register) and domestic preference. Preference will be 10% for works and 20% for goods if funded by GOSL. Preferences of 7.5% and 15% apply to contracts funded by the WB and ADB.

NPA theoretically maintained a database of defaulting contractors/suppliers/consultants for high value contracts (> LKR 1,000,000 for consultancy, > LKR 5,000,000 for others) and for bidders defaulting on bid declarations. Defaulting contractors/ suppliers are debarred from future contract awards. This is to be issued to PEs every 6 months and published on NPA's website. PEs may maintain databases of defaulting contractors/suppliers for contracts < 5,000,000. This is made available to other PEs on request.

Discussions with Procurement Entities suggested that DOPF no longer undertake this function and that PEs maintain their own unofficial blacklists. This process should theoretically be tied into the ICTAD registration process as contractors could have their registration status enhanced or reduced depending upon performance. However, the ICTAD process does not cover international contractors.

6.2 Procurement Planning

PEs are required to prepare:

- a Master Procurement Plan (MPP) covering 3 years for goods/works or 2 years for consultancy, with detail for the succeeding year. MPP is to be updated at least every 6 months. The contents of procurement plans are specified in detail, including timings, costs, methods, packaging, any need for pre-qualification and types of contract.
- A procurement time schedule (PTS) is required for individual procurements and procurement cannot commence without a firm commitment of funds

There is a proscribed format for the MPP in the procurement manual. Additionally a Total Cost Estimate (TCE) must be prepared for goods/works and a cost estimate and budget for consultancy services

PEs are allowed to Slice and Package contracts to remain within authorisation limits for procurement. For example a ten kilometre road could be tendered as 3 slices or packages with each being awarded and contracted separately and potentially the same contractor being awarded each package.

6.3 Procurement Methods

NCB is the default method for GOSL funded projects and used for donor funded projects where agreed. ICB is used where domestic providers have limited capacity or where required by a donor. The following methods of procurement are permitted for goods, works and non-consultancy services:

- **International Competitive Bidding (ICB)** – where domestic capacity is limited or where required by a donor
- **National Competitive Bidding (NCB)** – This is the default method where GOSL funds are utilised. International bidders are excluded unless funding is provided by donors
- **Limited/Restricted International/National Competitive Bidding (LIB/LNB)** – This is only used where there limited qualified sources available
- **Shopping** – This method is permitted for standard and low value purchases up to a threshold in the PM.
- **Direct Contracting** – in exceptional circumstances, limited to exceptional circumstances where prices are fixed by legislation, where standardisation justifies additional purchases of the same type, subject to limits, proprietary items, and where items are required from a particular supplier for guarantee purposes. Direct contracting is subject to a maximum value issued in circulars with Controls placed over repeat orders, including a limit of 50% on the original contract value and a 6 month time limit. Under this method emergency procurement is permitted in exceptional circumstances, such as manmade or natural disasters and where declared an emergency by GOSL. Approval required if above thresholds issued in circulars. Direct contracting is also permitted for community based participation.
- **Sole Source Selection** is limited to exceptional cases such as for continuation of previous work where the original assignment was competitively selected, for an emergency operation or small assignments up to LKR 100,000 where only one organisation is qualified or has exceptional experience for the assignment. This method requires approval from the relevant CPC and funding agency.
- **Repeat Orders** – Controls are placed over repeat orders, including a limit of 50% on the original contract value and a 6 month time limit
- **Force Account** – is for procurement where it is difficult to define quantities, where bids at reasonable prices are unlikely and for emergencies. This method is being used by the Department for Irrigation to procure/disburse JICA funds under the National Disaster Rehabilitation Project.
- **Emergency Procurement** – this method is detailed under Direct Contracting
- **Community Participation in Procurement** – for project sustainability or to achieve specific social objectives with conditions given in manual.
- **Two-Stage Bidding** – this method is used where innovative approaches are required or technically unequal bids are likely. Cabinet approval is required before this method can be initiated.
- **Two Envelope System** – this method is used for turnkey projects, where design and build or supply and installation type contracts or alternate types of technical proposals are required.

The following methods of procurement/selection are permitted for consultancy services:

- **Quality and Cost Based Selection (QCBS)** – this the default method for the selection of consultants
- **Quality Based Selection (QBS)** – this method is used for complex or highly specialised assignments, which have a high downstream impact and where the best experts are needed or where proposals will not necessarily be technically comparable

- Selection under a Fixed Budget (FBS) – this method is used where TOR are precisely defined, inputs can be accurately assessed and the budget is fixed
- **Least Cost Selection (LCS)** – this method is used for standard or routine assignments where well established practices exist
- **Selection Based on Consultant’s Qualifications (CQS)** – is used when allowed under donor projects or preparation and evaluation of full competitive proposals is not justified either for assignments up to LKR 3 million or for higher value assignments, where highly specialised expertise is required and there are few qualified consultants.
- **Single Source Selection (SSS)** – is for use in exceptional cases, such as for continuation of previous work where the original assignment was competitively selected for an emergency operation or for small assignments up to LKR 100,000 where only one organisation is qualified or has exceptional experience for the assignment. This method requires approval from the relevant CPC and funding agency.

6.4 Bidding Process for Goods, Works and Non-Consultancy Services

6.4.1 Qualifications and Advertising

For NCB, notices must be advertised in at least one widely circulated national newspaper, the NPA website and other relevant websites and for ICB, notices must be advertised in one widely circulated national newspaper, relevant websites, the UNDB or dgMarket and sent to embassies and trade missions worldwide.

Pre-qualification is required where the cost of preparing detailed bids could discourage competition, such as for large or complex works and custom-designed equipment, industrial plant and specialised services.

Qualification criteria must be stated in bidding, prequalification or RFP documents and must relate to areas such as technical qualifications, equipment, past performance. Provisions allowing only a particular class of supplier to participate are not permitted.

6.4.2 Bidding Documents and the Bidding Process

PEs are required to prepare specifications, plans, drawings, designs or other descriptions based on relevant objective characteristics and functions. Particular brands or trademarks are only permitted where objective description is not possible and on the basis that equivalent products are also acceptable. The Sri Lanka Standard Institution are responsible for determining national standards for products and where these are available they must be utilised. Where they are not available, international standards should be included in tender documents.

Both NPA and ICTAD have responsibility for preparing specifications, NPA include a number of functional specifications on their website and they also list the specifications available from ICTAD. The ICTAD specifications are only available for purchase.

Standard templates are provided for bidding documents with specified content including clear descriptions of the procurement need, instructions on the bidding process, the evaluation criteria and methodology including any preferences and the terms and conditions of the contract. The PPR specific the permitted types of contract.

Bidders may be charged fees for bidding and prequalification documents, which are specified in the PG and based on the cost incurred in preparation of the documents. Bidding documents for civil engineering works must also include a fee for ICTAD. The fees charged should not be so high as to deter competition.

A deadline for receipt of bids must be set, with bids kept unopened until this time and any late bids rejected. The PPA sets minimum bidding periods of at least:

- 21 days for NCB/LNB (or 14 days for restricted district construction contracts)
- 42 days for ICB/LIB
- 15 days for shopping.

Bid securities are required for ICB/LIB, NCB and LNB as a bid declaration or bid guarantee/cash deposit. Guarantees are for a fixed amount, not a percentage. Where bid declarations are utilised can result in bidders being listed as a defaulter by NPA if breached.

The organisation of bid opening is the responsibility of PCs but may be delegated to a specific bid opening committee.

6.4.3 Evaluation

Evaluation must be based on the criteria stated in the bidding document and evaluation procedures are consistent with international accepted practices.

Award is to the lowest evaluated substantially responsive bid, however, where the lowest bids contain unrealistically low rates, and the explanation provided by the bidder is not satisfactory, the bid may be rejected. A higher performance security may also be requested.

Negotiation of rates is permitted with a bidder where only one bid is received and prices are higher than the budget. Negotiations are assumed to be prohibited in other circumstances, but this is not clearly stated.

6.5 Procurement Process for Consultancy Services

6.5.1 Advertising and Shortlisting

For complex consultancy assignments and those over LKR 2 million, notices inviting expressions of interest (EOIs) must be advertised in national newspapers. Adverts must also be in international media where international organisations are expected. In other cases, the PE may choose to advertise or to include consultants known from previous work, by other PEs or by donor agencies. For individual consultants, advertising is required for national experts for more than 1 year and international experts for more than 6 months. For civil engineering assignments all local consultants must be registered with ICTAD. ICTAD registration involves the categorisation of each applicant into grades based upon experience, financial capacity and technical speciality.

The evaluation of EOIs must be based on qualifications, experience and capacity. First consideration must be given to organisations that express interest and have the relevant qualifications. Shortlists may include up to 7 organisations. They should normally comprise the same category of consultants i.e. not mixing organisations and individuals or private firms with NGOs and universities.

6.5.2 Request for and Submission of Proposals

PEs are required to prepare terms of reference (TOR) stating the nature, time and place of services, tasks and expected outputs.

Standard templates are provided for request for proposals (RFP) documents with specified content including TOR, instructions on the submission of proposals, the selection method, evaluation criteria, minimum technical pass mark and weightings and the terms and conditions of the contract. The PG specify the permitted types of contract.

A deadline for receipt of proposals must be set, with proposals kept unopened until this time and any late proposals rejected. The PM sets minimum bidding periods as follows:

- 42 days for QCBS, QBS, FBS and LCS (international)
- 28 days for CQS and SSS (international) and QCBS, QBS, FBS and LCS (national)
- 21 days for CQS and SSS (national)
- 7 days for individual consultants

Bid opening of technical proposals should be undertaken in the presence of consultants who choose to attend, except for CQS and SSS. Consultants submitting qualified technical proposals are invited to financial openings, with 5 days' notice for national shortlists and 10 days for international. During the bid opening names, scores and prices are to be announced.

6.5.3 Evaluation and Negotiation

Technical evaluation must be based on the criteria and weightings in the RFP document, with a minimum quality threshold set. Criteria may include experience of the firm, proposed methodology, qualifications of key human resources, knowledge and technology transfer.

Award is to the first-ranked proposals, according to the selection method specified in the RFP.

The QCBS, QBS methods are equivalent to JICA selection procedures. FBS, LCS and CQS are not contained in JICA Guidelines, but modelled on World Bank guidelines.

Negotiations may only be held with the selected consultant, although the PE can negotiate with the next ranked consultant if these negotiations fail. Technical negotiations are limited to the TOR, scope of services, reports and facilities provided by the PE. Fee rates can only be negotiated where the QBS, CQS and method is used, but reimbursables can be negotiated under all selection methods.

6.6 Contract Award and Management

Bidders for goods/works must be informed within one week of the award decision and given two weeks to make representation to the Secretary or Procurement Appeal Board if they wish. The process for publishing the award of contract is:

- The PE should publish promptly in its website (if available), the NPA website and/or any other appropriate media
- The following details of contract awards should be included:
 - (a) description of the Goods\Works\Consulting Services for which bids\proposals were invited;
 - (b) the names of all bidders\contractors\consultants who submitted proposals;
 - (c) name of the successful bidders\contractors\consultant;
 - (d) amount at which the contract was awarded;
 - (e) in the case of a contract awarded to a foreign principal who has a local agent, the name of the local agent.

If requested by bidders the PE shall provide in writing the reasons why a particular bid was unsuccessful and/or in a debriefing meeting at the option of the bidder. The bidder is responsible for all costs and the debriefing is limited to the bidder's proposal. Competitors' bids cannot be discussed.

Contracts may be amended by written consent of both parties, providing the basic scope of the contract is not changed. The PPA contains no specific provisions on approvals for contract amendments for goods or consultancy services. Works variation orders may be permitted within the contract conditions. Variations within the contract contingency (usually 10%) may be authorised by the head of department/project director. Where the contingency is exceeded or there is no contingency, the variation must be approved by a higher authority. Extensions of time may be granted in exceptional circumstances.

Contracts must state that dispute settlement will be in accordance with the Arbitration Act of Sri Lanka, except where funding agencies require alternative provisions. For contracts in the construction sector ICTAD are tasked with providing Facilitating / Mediating / Adjudicating services for resolving disputes. ICTAD maintain a database of arbitration specialists and appoint these specialists to resolve disputes. Funding agencies may substitute the Rules of Arbitration of the International Chamber of Commerce or United Nations Commission on International Trade Law or any other acceptable rules recommended.

6.7 Record Keeping and Communications

The PG and the PM contain no proposals for record keeping, although specific records (such as the MPP and evaluation report) are referred to and these records must be kept for a period of at least 5 years from completion of procurement proceedings.

There are no specific instructions on communications with the specific exception of such items as clarification requests which must be in writing, but procurement transactions may be carried out through electronic communications where permitted by government and subject to requirements of security, access, preserving content and not otherwise contravening the PG.

Many key communications must be sent to all bidders to ensure everyone is provided with the same information and assured of equal opportunities to obtain additional information. Pre-bid meeting minutes must be circulated to all bidders.

7. Oversight and Enforcement Systems

7.1 Bidder Complaints

Bidders may submit a representation against the award decision. Where procurement is by the MPC, representations are to the Secretary of the PE. A joint MPC/TEC meeting considers and reports to the Secretary within 14 days. The Secretary must act in accordance with the recommendations of the MPC/TEC.

Where procurement is by the CAPC, representations are to the Procurement Appeal Board at the Presidential Secretariat. The Appeal Board is required to undertake an investigation and provide a report to cabinet either endorsing the PC decision or providing an independent award recommendation. No timescales are set for the Appeal Board to produce their report.

Investigation and decision on a complaint is entirely within the remit of the PE for lower value procurement. For higher value procurement, the Procurement Appeal Board reports to cabinet, who appointed the CAPC.

7.2 Prevention of Corruption

The PG states that officials involved in procurement must not abuse their powers and any official who derives benefits for oneself or one's close family or business associates, would be deemed to be engaged in corrupt practices. Officials are required to declare that they do not have a conflict of interest when undertaking a procurement action such as evaluating a tender. If a conflict occurs officials must remove themselves from the process. Additionally, officials must not accept gifts and suppliers/contractors offering inducements will be disqualified.

The PG do not contain a Code of Ethics and there is no overt mechanism for dealing with corruption in the procurement process.

Section 3: Recommendations

8. Recommendations

The following sections make recommendations for the strengthening of the national procurement system of Sri Lanka. Currently the GOSL is in discussions with the WB about ways to reform the public procurement system. However, we have been unable to ascertain what is being considered and which government body would be responsible for implementing reform.

8.1 Legal Framework

The most significant reform we would suggest is the reinstatement of the DOPF as an independent body tasked with undertaking its roles as detailed in the Procurement Guidelines. This could be coordinated with the introduction of a proper legal framework for public procurement. The later would be a major undertaking and require buy-in from government. The original mandate for an independent NPA included the following:

- To streamline the government procurement system and standardize the same to be of equal application to all government institutions.
- To ensure better transparency and good governance in relation to government procurement awards.
- To ensure that all parties who are eligible and desirous of participating in public bidding are afforded an equal opportunity.
- To ensure that when procuring the government will get best value for money in terms of price, quality and timely delivery.
- To ensure that the government procurement system is made efficient and simplified in order to promote development needs of the country.
- To put in place a monitoring system relating to selection of successful bidders and award of government tenders.

The key functions of the NPA as set out in the PM were to:

- Develop, implement and review policies in procurement of goods, works and services
- Advise the Ministries and Tender Boards on procurement Activities
- Standardizing of goods and equipment
- Simplification of Review and Approval Process
- Review Procurement Procedures & Procurement Plans of all Government Institutions
- Monitor quality and progress on procurement projects
- Formulate accreditation system on selection of members for TECs and Tender Boards
- Appoint Tender Board and Technical Evaluation Committee members for procurements of higher values - Cabinet Appointed Tender Boards, Cabinet Appointed Negotiating Committees and Project Committees
- Introduction of code of conduct and ethics for Procurement Procedures
- Introduction of performance and technical auditing
- Capacity Building in the field of Procurement Management

8.2 Institutional Framework

One of the weaknesses of the NPA was the lack of a mandate for regulating and monitoring public procurement and building procurement capacity within PEs. This is still the case with the role of the DOPF. Should the DOPF be reinstated in a role similar to that of the original NPA then the organisation will require restructuring and additional staff recruited. A capacity building programme would be required to enhance the procurement skills of existing staff and ensuring new staff have the skills required to take forward the enhanced role of the organisation. A key

component of this will be the provision of tools and training for monitoring and auditing are one priority.

8.3 Capacity Development

Develop capacity among all government procurement staff to ensure they have good procurement skills and are able to comply with the regulatory framework. Capacity development initiatives should differentiate between different procurement roles, including practitioners in procurement units, those responsible for approvals, including the chief of the PE and staff with technical involvement, such as the preparation of specifications and terms of reference and participation in evaluation committees.

8.4 Complaints Mechanism

The current complaints mechanism leaves the investigation and decision on a complaint entirely within the remit of the PE with the exception of procurement undertaken by the CAPC. In addition, though complaints from bidders must be received within a set number of days there is no restriction upon when the Procurement Entity must respond. It is important that an independent complaints mechanism is instituted that is independent of the PE is introduced. The mechanism could include the DOPF as an independent body whose staff would be procurement professionals with procurement expertise. It is important that procurement professionals are involved in the appeal process to ensure that internationally accepted procurement norms apply to the process.

Appendix A: Completed Questionnaire on National Procurement System

Study on the National Procurement System of Sri Lanka
Study on the National Procurement System of Sri Lanka

This study is primarily a desk study to be completed using:

- *Relevant websites e.g. of a regulatory body or ministry responsible for procurement*
- *Relevant legal documents e.g. procurement legislation and/or regulations*
- *Information from other recent assessments of national systems e.g. from other donors*

However, it should also include field input from local consultants and should be further supplemented or updated by the assessor following field visits.

The study has used:

- NPA/Department of Public Finance website
- Procurement Guidelines, 2006
- Guidelines, Selection and Employment of Consultants, 2007
- Country Public Procurement Profile Survey submitted to the ADB Procurement Forum by the Ministry of Finance & Planning

It has not yet reviewed procurement/consultancy manuals, all circulars or the SBDs.

*Under **Details of Procurement System**, provide an overview of the key details of the national regulatory framework only. Where there is information to indicate that the regulatory framework is not followed, indicate any discrepancies in actual practice. Similarly, where the regulatory framework doesn't cover a particular area, complete any known details of actual practice.*

*Under **Comments and Recommendations**, indicate areas which require strengthening or where rules or practices may impact on timely disbursement of JICA loans.*

This questionnaire covers the key elements of a procurement system, but is not exhaustive. Where particular features or practices of a system are considered unsatisfactory or likely to impact on implementation of JICA loans, identify these under "Other Information" or in the relevant section of the questionnaire.

| No | Question | Details of Procurement System | Comments and Recommendations |
|----|---|--|--|
| A | Legal Framework | | |
| A1 | Which documents make up the legal framework? i.e. is there a procurement law / regulations / guidelines / manual? | <p>No procurement legislation or regulations. Procurement rules are set through several sets of guidelines:</p> <ul style="list-style-type: none"> • Procurement Guidelines (PG), Goods & | Many countries prefer to issue at least the most important procurement rules through a law or regulations to ensure they are legally enforceable and cannot easily be changed. |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| | | <p>Works, 2006 (These also apply to non-consultancy services.)</p> <ul style="list-style-type: none"> • Guidelines, Selection and Employment of Consultants (CG), 2007 • Guidelines on Private Sector Infrastructure Projects • Guidelines for Procurement of Pharmaceutical & Medical Devices, 2006 <p>Guidelines were issued by the National Procurement Agency (NPA) with cabinet approval.</p> <p>The two sets of guidelines are supplemented by manuals:</p> <ul style="list-style-type: none"> • Procurement Manual, 2006, which has updated by supplement numerous times – there are 24 supplements up to March 2012, the first 8 of which have been incorporated into the issued manual • Consulting Services Manual, 2007 <p>Guidelines and Manuals are supplemented by numerous circulars, originally issued by NPA, but now by the Department of Public Finance (DOPF).</p> <p>Documents issued in English, Sinhala and Tamil.</p> | <p>Guidelines were prepared in cooperation with funding agencies, including the World Bank, ADB and JBIC, and were harmonised with their guidelines to the extent possible.</p> <p>The multiple supplements to the procurement manual make it difficult to follow. The guidelines/manuals also refer to the now closed NPA, whose functions have been assumed by the DOPF.</p> <p>There are also a significant number of circulars on procurement issues.</p> <p>It is recommended that DOPF re-issue updated and consolidated versions of all guidelines/manuals, incorporating the contents of circulars where relevant.</p> <p>Additional repeated guidelines and circulars are also available on the NPA website. This could cause confusion and we recommend that they be removed.</p> <p>PG and CG contain similar provisions on some issues, but often with small differences that cannot be explained by the differences between consultancy and other procurement (e.g. PG provisions on database of defaulting contractors/suppliers has more detail than CG provisions on database of defaulting consultants). This results in duplication between the two sets of guidelines and potential confusion over two differing processes where no differences are required.</p> |
| A2 | Are there standard bidding documents and/or any other standard forms or templates? | SBDs for goods/works and standard RFPs for consultancy services have been issued by NPA. These include: | The set of SBDs appears to be limited e.g. no documents for specialised goods or for procurement of goods under ICB. |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| | If so, are they based on a particular template, such as donor documents? | <ul style="list-style-type: none"> • Procurement of goods – national shopping • Procurement of general goods – NCB • Procurement of non-consultancy services (trial edition of 2007) • RFP for consultancy organisations (QCBS, QBS, FBS, LCS) <p>No other SBDs are available on the NPA/DOPF website.</p> <p>Works SBDs have been prepared in conjunction with the Institute for Construction Training and Development (ICTAD). These SBDs are sold by ICTAD and are not available from NPA.</p> <p>Donor SBDs may be used where procurement is donor funded.</p> | <p>Alternatively, the website doesn't contain all issued documents.</p> <p>EAs seem to have to pay to get copies of the works SBDs, which may discourage their use.</p> |
| B B1 | Scope of Application Who does the legal framework apply to? i.e. does it cover parastatals and state owned enterprises or only government ministries? | <p>Applies to procuring entities (PE) carrying out procurement partly or wholly funded by the Government of Sri Lanka (GOSL) or a foreign funding agency.</p> <p>PEs include:</p> <ul style="list-style-type: none"> • ministries, departments, statutory authorities • provincial councils and local authorities • government corporations and government owned companies • any body wholly or partly owned by GOSL or where the GOSL has effective control of the body <p>(PG/CG 1.1.1 and definitions)</p> | Wide application of the PG/CG. |
| B2 | Does the legal framework apply to all procurement or are there exceptions? | Applies to all procurement. PG chapter 9 gives alternative rules for | Wide application of the PG/CG. |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| B3 | What provision does the legal framework make for application of alternative donor rules? | <p>Special Procurements i.e. commodities, spare parts, vehicle and equipment repairs, publications, fuel, pharmaceuticals and medical equipment and information systems. These are variations to the existing PG, rather than an exemption.</p> <p>CG apply to all types of consultants, including organisations and individuals. No types of consulting services excluded. (CG 1.3.2-1.3.3)</p> <p>PG 2.7.2 establishes a Standing Cabinet Appointed Procurement Committee (SCAPC) for special circumstances requiring deviation from general procurement procedures, suggesting exceptions are permitted.</p> | JICA can require use of its guidelines where specified in loan agreements |
| C | Institutional Framework | | |
| C1 | Is procurement centralised or decentralised? i.e. is there any central body responsible for conducting or approving procurement or does each agency do this itself? | <p>Decentralised. Secretaries to line ministries are responsible for procurement actions, as Chief Accounting Officers (CAOs)(PG/CG 2.2) CG also give this responsibility to Chief Secretaries of provincial councils.</p> <p>All procurement activity and decisions decentralised, with the exception that committees for higher value procurement are appointed by NPA.</p> | The discrepancy between the PG and CG should be reviewed. |
| C2 | Is there a regulatory body for procurement? If so, what are its functions? | National Procurement Agency (NPA) established under presidential directive in | |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| | | <p>2004, but closed in 2008. NPA functions transferred to the Department of Public Finance (DOPF), Ministry of Finance and Planning. All references in guidelines etc to NPA are now to be read as DOPF. NPA (now DOPF) functions include the objectives.</p> <p>To streamline the government procurement system and standardize the same to be of equal application to all government institutions.</p> <p>To ensure better transparency and good governance in relation to government procurement awards.</p> <p>To ensure that all parties who are eligible and desirous of participating in public bidding are afforded an equal opportunity.</p> <p>To ensure that when procuring the government will get best value for money in terms of price, quality and timely delivery.</p> <p>To ensure that the government procurement system is made efficient and simplified in order to promote development needs of the country.</p> <p>To put in place a monitoring system relating to selection of successful bidders and award of government tenders.</p> <p>The key functions of the NPA as set out are:</p> <p>Develop, implement and review policies in procurement of goods, works and services</p> <p>Advise the Ministries and Tender Boards on</p> | |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| | | <p>procurement Activities Standardizing of goods and equipment Simplification of Review and Approval Process Review Procurement Procedures & Procurement Plans of all Government Institutions Monitor quality and progress on procurement projects Formulate accreditation system on selection of members for TECs and Tender Boards Appoint Tender Board and Technical Evaluation Committee members for procurements of higher values - Cabinet Appointed Tender Boards, Cabinet Appointed Negotiating Committees and Project Committees Introduction of code of conduct and ethics for Procurement Procedures Introduction of performance and technical auditing Capacity Building in the field of Procurement Management Revised role of the NPA under the Ministry of Finance and Planning The government officially instructed the NPA in December 2007 to close down operations and hand over its assets, liabilities and staff before January 31, 2008. Subsequently the NPA was subsumed into the Ministry of Public Finance and Planning, Department of Public Finance (DOPF). Currently the NPA is only responsible for:</p> | <p>The current remit of the NPA is severely limited and reflects the priority applied by the current government</p> |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| C3 | Who is responsible for monitoring or auditing procurement? | <p>Formulating and effecting amendments to the PGs</p> <p>Maintaining and updating a database of qualified technical specialists who are qualified to be members of TECs. Individuals should be limited to sitting as members of three TECs concurrently</p> <p>Selecting qualified technical specialists to sit on TECs</p> | The audit function is a part of the MoPFP and DOPF. In reality NPA does not have an audit function under its current remit |
| C4 | Who is responsible for procurement within each agency? i.e. is there a procurement unit, designated procurement staff within departments or any form of committee? | <p>Performance of PCs, TECs and CPCs monitored by NPA, who may advise corrective measures or replace committee member.</p> <p>Guidelines refer to procurement specialists, but their role is not defined. PE responsibilities are assigned to the officer in charge, such as a head of department or project director, to work with the assistance of procurement specialists. These PE responsibilities include communications, preparing and issuing invitation documents, preparation of data prior to the evaluation and supporting committees including through issuing minutes of meetings. (PG/CG 2.3). There are two key committees, who are jointly responsible for the procurement process for goods/works:</p> <ul style="list-style-type: none"> • Procurement Committees (PC) (PG 2.5) which are responsible for ensuring funds availability, agreeing the procurement time schedule (PTS), determining arrangements for advertising, sale of documents, receipt | <p>Guidelines seem to leave flexibility to PEs to use procurement specialists as they consider appropriate.</p> <p>Cabinet members are involved in the appointment of various PCs, which potentially allows for political interference.</p> <p>Committee arrangements appear complex, with numerous people/bodies involved in each procurement. This could result in delays and unclear accountability for decisions. The payment of allowances to committee members adds to the cost of procurement.</p> |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| | | <p>and opening, agreeing the type of documents, reviewing evaluation reports and recommending/deciding award.</p> <ul style="list-style-type: none"> • PCs can serve for overall projects or aggregated requirements. • Technical Evaluation Committees (TEC) (PG 2.6) which are responsible for recommending the PTS, reviewing/approving specifications, invitation documents and addenda, participating in pre-bid meetings, agreeing bid opening procedures, participating in negotiations if directed by the PC, reviewing draft contracts. Function of conducting evaluation not directly listed but implied by other parts of PG. <ul style="list-style-type: none"> • TECs may differ for each procurement activity. <p>PCs vary according to the procurement, with composition stated in the manual. They are appointed by the Secretary, unless indicated otherwise below: (PG 2.7)</p> <ul style="list-style-type: none"> • Ministry Procurement Committee (MPC) • Department Procurement Committee (DPC) • Project Procurement Committee (PPC) • Regional Procurement Committee (RPC) which may act under delegated authority where departments have a large number of regional offices • Cabinet Appointed Procurement Committees (CAPC) for high value procurement, appointed by NPA | |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| | | <ul style="list-style-type: none"> • Standing Cabinet Appointed Procurement Committees (SCAPC) for special circumstances requiring deviation from general procedures, appointed by NPA <p>TECs should consist of subject specialists and at least one member with procurement knowledge. They are appointed by the NPA, Secretary or head of department depending on whether procurement is managed by a CAPC, MPC or PPC/DPC/RPC. Members may not serve on both PCs and TECs.</p> <p>For consultancy services, there is a single Consultants Procurement Committee (CPC) (CG 2.4-2.5) with responsibility for the entire selection process including ensuring funds availability, agreeing the PTS, deciding the selection method and contract type, evaluating and approving the shortlist and RFP including TOR, individual technical scoring and preparing the technical evaluation report, financial evaluation, deciding/recommending award, reviewing the draft contract.</p> <p>CPCs vary according to the procurement, with composition stated in the manual. They are appointed by the CAO, unless indicated otherwise below: (CG 2.6)</p> <ul style="list-style-type: none"> • Ministry Consultants Procurement Committee (GPCM) • Department Consultants Procurement Committee (GPCD) • Project Consultants Procurement | |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| C5 | Are there any requirements for qualifications or registration for procurement staff? | Committee (CPCP) <ul style="list-style-type: none"> • Cabinet Appointed Consultants Procurement Committees (CPC) for high value procurement, appointed by NPA None in guidelines | |
| C6 | How is procurement reviewed or approved within each agency? i.e. is there any committee or board which approves and are there levels of authority for approvals? At what stages is procurement reviewed? | Goods/works procurement activities by the PE are reviewed by both TECs and PCs and activities by TECs are reviewed by the PCs. The TEC reviews specifications, invitation documents and draft contracts. The PC reviews the evaluation report and, depending on value, may make the award decision or make a recommendation to a higher authority. Levels of authority for award are issued by circulars. Consultancy procurement activities by the PE are reviewed by the CPC. The CPC's work appears to be reviewed by a higher authority if over its limits of authority (set in the manual or by circulars). Award recommendations by CAPCs are required to be submitted to cabinet for approval. | |
| C7 | Is responsibility for contract management within each agency specified? | PE responsible for contract administration, for goods/works with a requirement for independent quality checks before acceptance. Certification of receipt/completion by an Engineer/Consultant for works or officer in charge for goods/non-consultancy services. (PG 8.12) PE to make arrangements for supervision of | |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| C8 | Who performs financial management functions (e.g. commitments, payments etc)? Are they separated from procurement? | consultants, including acceptance of deliverables (CG 9.7). Financial management not covered by the PM. However, each entity has a finance function which processes forecasts, budgets, payments, etc. | |
| D | Registration and Participation | | |
| D1 | Are there any requirements for supplier registration as a requirement of participation in procurement or as a condition of contract award? If so, give details | Registration required for participation in shopping procedures (PG 3.4.3) For works, domestic contractors must have a valid ICTAD registration to bid, but may purchase bidding documents without registration (PG 3.2.2(d)) PG 5.3.5 states ICTAD registration as a post qualification criteria. Membership of the National Construction Contractors Association of Sri Lanka cannot be used as an eligibility criterion (circular). | |
| D2 | Are there any restrictions on participation or origin of goods or staff based on nationality? If so, give details | Only domestic companies can bid under National Competitive Bidding (NCB), unless NCB is used for a donor funded project. Domestic preferences apply to International Competitive Bidding (ICB) but both foreign and domestic bidders may participate. Foreign and domestic bidders to be treated equally under ICB, except in regard to ICTAD registration and preference (PG 5.3.8) Preference will be 10% for works and 20% for goods if funded by GOSL. Preferences of 7.5% and 15% apply to contracts funded by the WB and ADB. | As NCB is the default method, restrictions based on nationality are common. |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| D3 | Is there any mechanism for suspension of non-performing suppliers and/or those guilty of misconduct? If so, give details | National and foreign consultants to be treated equally, except where preference is specified in the RFP (CG 6.5.6) NPA maintains a database of defaulting contractors/suppliers/consultants for high value contracts (> LKR 1,000,000 for consultancy, > LKR 5,000,000 for others) and for bidders defaulting on bid declarations. Defaulting contractors/suppliers are debarred from future contract awards. This is to be issued to PEs every 6 months and published on NPA's website. (PG 8.11/CG 9.6 & 6.5.2) PEs may maintain databases of defaulting contractors/suppliers for contracts < 5,000,000. This is made available to other PEs on request. | PG provide a process for notifying contractors/suppliers and enabling them to explain any default, followed by investigation by a PE committee and review by NPA before listing on the database. No such process is provided in the CG. The database of defaulting contractors/suppliers held by PEs could be abused as there is no independent review. A page for this list was on the DOPF website, but no companies were listed. |
| E | Procurement Planning | | |
| E1 | Are agencies required to prepare procurement plans as part of their budgeting process? | PEs to prepare a Master Procurement Plan (MPP) covering 3 years for goods/works or 2 years for consultancy, with detail for the succeeding year. MPP to be updated at least every 6 months (PG 4.2.1, CG 5.2) | It is not clear whether/how this is integrated with budgeting processes. |
| E2 | Are agencies required to prepare procurement plans for major procurement requirements? | A procurement time schedule (PTS) is required for individual procurements (PG 4.2.2, CG 5.2.2) Procurement not to commence with a firm commitment of funds (PG 4.1, CG 5.1) | Appears to be required for all procurement actions. |
| E3 | What are the key contents of procurement plans? E.g. methods, packaging, type of contracts, timescales etc | Format for MPP given in the manual. Total Cost Estimate (TCE) also to be prepared for goods/works (PG 4.3) and cost estimate and budget for consultancy | |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| F | Procurement Methods | services (CG 3.4) Slice and package of contracts permitted (PG 4.4) | |
| F1 | Is there a preference for open competition, with other methods requiring justification? | Yes. NCB is the default method for GOSL funded projects and used for donor funded projects where agreed. ICB is used where domestic providers have limited capacity or where required by a donor. Consultants to be selected following a competitive process wherever possible (CG 3.2) | |
| F2 | What procurement methods are permitted for goods, works and non-consultancy services? Provide details of thresholds and conditions for use | <p>PG chapter 3 defines the following methods:</p> <ul style="list-style-type: none"> • ICB – where domestic capacity is limited or where required by a donor • NCB – default method where GOSL funded • Limited/Restricted International/National Competitive Bidding (LIB/LNB) – when only a few sources are available • Shopping – see F5 • Direct Contracting – in exceptional circumstances, see F6 • Repeat Orders – subject to limits, see F6 • Force Account – for difficult to define quantities, where bids at reasonable prices are unlikely and for emergencies. • Emergency Procurement – see F6 • Community Participation in Procurement – for project sustainability or to achieve specific social objectives with conditions given in manual. | Methods are closely modelled on funding agency guidelines. ICB, LIB, Two-Stage Bidding, Two Envelope System, Shopping and Direct Contracting are very similar to methods in JICA guidelines. Other methods, including NCB, are not found in JICA guidelines. |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| F3 | What procurement/ selection methods are permitted for consultancy services? Provide details of thresholds and conditions for use | <ul style="list-style-type: none"> • Two-Stage Bidding – where innovative approaches are required or technically unequal bids are likely, requires cabinet approval • Two Envelope System – for turnkey, design and build or supply and installation type contracts or where alternate types of technical proposals are possible. | |
| | | <p>CG 3.7 defines the following selection methods:</p> <ul style="list-style-type: none"> • Quality and Cost Based Selection (QCBS) – the default method • Quality Based Selection (QBS) – for complex or highly specialised assignments, those with a high downstream impact where the best experts are needed or where proposals will not be comparable • Selection under a Fixed Budget (FBS) – where TOR are precisely defined, inputs can be accurately assessed and the budget is fixed • Least Cost Selection (LCS) – for standard or routine assignments where well established practices exist • Selection Based on Consultant's Qualifications (CQS) –when allowed under donor projects or preparation and evaluation of full competitive proposals is not justified either for assignments up to LKR 3 million or for higher value assignments where highly specialised expertise is required and there are few | Selection methods are very closely modelled on funding agency guidelines. |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| F4 | Is the splitting of procurement requirements to avoid thresholds prohibited? | <p>qualified consultants.</p> <ul style="list-style-type: none"> Single Source Selection (SSS) – in exceptional cases, see F6 <p>Selection of individual consultants is also permitted (CG Chapter 4)</p> <p>There are also rules on selection of particular types of consultants i.e. universities and R&D centres and government institutes (CG 3.14)</p> | |
| F5 | Is a simplified method available for low value procurement, with a clear threshold? | <p>Not clearly prohibited in PG, but there are limits on repeat orders with the same supplier.</p> <p>Yes, shopping for standard and low value purchases up to a threshold of less than Rs 3 million</p> | |
| F6 | Is single source procurement limited to specified, justified circumstances? | <p>Direct contracting limited to exceptional circumstances (PG 3.5):</p> <ul style="list-style-type: none"> where prices are fixed by legislation where standardisation justifies additional purchases of the same type, subject to limits proprietary items items are required from a particular supplier for guarantee purposes. <p>Direct contracting subject to a maximum value of less than Rs 1 million.</p> <p>Controls placed over repeat orders, including a limit of 50% on the original contract value and a 6 month time limit (PG 3.6)</p> <p>Emergency procurement permitted in exceptional circumstances such as manmade or natural disasters and where declared an emergency by GOSL. Approval</p> | |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| | | <p>required if above thresholds (PG 3.8) Direct contracting permitted for community based participation (PG 3.9.2) SSS limited to exceptional cases (CG 3.13.1):</p> <ul style="list-style-type: none"> • for continuation of previous work where the original assignment was competitively selected • for an emergency operation • for small assignments up to LKR 100,000 • where only one organisation is qualified or has exceptional experience for the assignment <p>SSS requires approval from the relevant CPC and funding agency. Similar conditions apply to sole source selection of individual consultants (CG 4.5)</p> | |
| G | Bidding Process for Goods, Works and Non-Consultancy Services | | |
| G1 | Are agencies required to advertise procurement opportunities widely, whether nationally or internationally? | <p>For NCB, notices advertised in at least one widely circulated national newspaper, the NPA website and other relevant websites (PG 3.2.2) For ICB, notices advertised in one widely circulated national newspaper, relevant websites, UNDB or dgMarket and sent to embassies and trade missions (PG 3.1.4)</p> | Some notices were displayed on the DOPF website, but these were limited. Others may be on the EA's own website |
| G2 | Is use of restricted bidding limited to specified, justified circumstances? | Yes, LIB/LNB permitted only where there are few sources (PG 3.3). Procedures to follow ICB/NCB, except for advertising and domestic preference. | |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| G3 | Is pre-qualification permitted or required for large or complex contracts? | Required where the cost of preparing detailed bids could discourage competition, such as for large or complex works and custom-designed equipment, industrial plant and specialised services. (PG 3.12) | |
| G4 | Are agencies required to use qualification criteria related to the contract and to disclose these to applicants? | Yes (PG 3.12.1(d) and 3.12.2). Criteria to focus on: <ul style="list-style-type: none"> • experience and past performance • resources available i.e. personnel, equipment and construction/manufacturing facilities • financial resources | |
| G5 | Are all qualified firms invited to bid? | Yes (PG 3.12.1(e)-(f)) | |
| G6 | Are objective specifications or other technical documents required to clearly describe the subject of procurement? | Yes (PG 5.6). Specifications to be generic. Where brand names need to be used, "or equivalent" should be added. | |
| G7 | Are standards required to be used, whether national or international? | Standards of the Sri Lanka Standard Institution to be used to the maximum extent possible. Where not available, international standards to be used. PEs to use NPA/ICTAD specifications as far as possible for goods/works (PG 5.6.4). NPA has issued various indicative functional specifications covering various commonly purchased goods – available on NPA website. ICTAD specifications are listed on NPA website and available for purchase from ICTAD | ICTAD specifications are well known to all local bidders and there is no requirement to regularly purchase copies. Has no affect upon competition |
| G8 | Do templates for bidding documents: <ul style="list-style-type: none"> • contain clear instructions on the bidding process? | SBDs to be used with minimum changes. Where there is no relevant SBD, NPA concurrent required for an alternative (PG | |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| | <ul style="list-style-type: none"> • disclose the evaluation criteria and methodology? • contain draft contracts which are fair and provide adequate protection for the agency? | 5.3) Bidding documents to contain all relevant information for bid preparation (PG 5.2) Manual gives contents of bidding documents. SBDs not yet reviewed. Bidding document to specify factors to be considered in bid evaluation and how the lowest evaluated bid will be determined (PG 5.3.19) Draft contract to be issued with bidding document (PG 5.4). PG contain considerable detail on contract conditions. | |
| G9 | Are fees for bidding documents limited to costs for copying and despatch? | Fees for bidding documents not to be fixed so high as to discourage bidders (PG 6.1.3) | |
| G10 | Are agencies required to give a clear bidding deadline, keep bids securely and reject late bids? | Yes, PG 6.3 | |
| G11 | Are minimum bidding periods specified? | Yes, PG 6.2.2: <ul style="list-style-type: none"> • 42 days for ICB/LIB • 21 days for NCB/LNB (or 14 days for restricted district construction contracts • 7 days for shopping These may be reduced for emergency procurement. | |
| G12 | Are bid securities required? If so, give details of rules. | Bid securities required for ICB/ LIB, NCB and LNB as a bid declaration or bid guarantee/cash deposit (PG 5.3.11-13) Guarantees to be for a fixed amount, not percentage. Declarations can lead to be listed as a defaulter by NPA if breached. To be called where a bidder withdraws/ modifies his bid, doesn't agree arithmetic | |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| | | corrections, fails to sign a contact or fails to provide performance security. | |
| G13 | Are public bid openings required? | Yes, PG 6.3.3 This is a PC responsibility, but may be delegated to a bid opening committee. | |
| G14 | Is evaluation based on the criteria in the bidding document? | Yes, PG 7.8(b), 7.9.1, 7.9.10 | |
| G15 | Is award to the lowest evaluated responsive bid? | Yes, evaluation determines the lowest evaluated substantially responsive bid (PG 7.7) However, where the lowest bids contain unrealistically low rates, and the explanation provided by the bidder is not satisfactory, the bid may be rejected. A higher performance security may also be requested. (PG 7.9.11) | Provisions on debatable deviations (neither minor or major) are confusing. It is not clear whether they are to be accepted or rejected. |
| G16 | Are negotiations prohibited? | Negotiation of rates permitted with a bidder where only one bid is received and prices are high (PG 7.12.2) Negotiations assumed to be prohibited in other circumstances, but this is not clearly stated. | |
| H | Procurement Process for Consultancy Services | | |
| H1 | Are TOR required which clearly describe objectives, tasks and outputs of the assignment? | TOR to describe the objectives, goals and scope, background information, any training required and PE/consultant responsibilities. (CG 3.3) | |
| H2 | Are agencies required to advertise procurement opportunities widely, whether nationally or internationally? | For complex consultancy assignments and those over LKR 2 million, notices inviting expressions of interest (EOIs) must be advertised in national newspapers. Adverts must also be in international media where | This differs from JICA guidelines, where shortlists are developed without advertising to request EOIs. |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| H3 | Is shortlisting based on objective evaluation of EOIs or other appropriate sources? | <p>international organisations are expected. In other cases, the PE may choose to advertise or to include consultants known from previous work, by other PEs or by donor agencies. (CG 3.5)</p> <p>For individual consultants, advertising is required for national experts for more than 1 year and international experts for more than 6 months.</p> <p>First consideration to be given to organisations that express interest and have the relevant qualifications.</p> <p>Shortlists may be up to 7 organisations. They should normally comprise the same category of consultants i.e. not mixing organisations and individuals or private firms with NGOs and universities (CG 3.6)</p> | |
| H4 | <p>Do templates for RFP documents:</p> <ul style="list-style-type: none"> • contain clear instructions on the bidding process? • disclose the evaluation criteria, weighting, methodology and any minimum thresholds? • contain draft contracts which are fair and provide adequate protection for the agency? | <p>Yes, RFP documents to contain (CG 6.2):</p> <ul style="list-style-type: none"> • letter of invitation (LOI) • instructions to consultants and data sheet • standard forms for technical and financial proposals • terms of reference • standard form of contract <p>PEs to use the standard RFP with minimum changes to address assignment specific issues (CG 6.3)</p> <p>RFP to specific evaluation criteria and subcriteria (CG 6.5.9)</p> <p>Draft contract to be issued with RFP (CG 6.6). Various contract types permitted (CG 10.1)</p> <p>Fees may be charged for RFP documents,</p> | <p>Charging for RFP documents differs from JICA guidelines, where they are issued free of charge. However, provided the fee is limited, this should not be a matter for concern. It is not clear whether the shortlist would be amended if consultants declined to purchase the RFP.</p> |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| H5 | Are agencies required to give a clear bidding deadline, keep proposals securely and reject late proposals? | <p>provided they are not so high as to discourage consultants (CG 7.1.2).</p> <p>Deadline in LOI (CG 6.4)</p> <p>Proposals to be received at only one location by registered post or personal delivery against receipt to an authorised officer. (CG 7.3)</p> <p>Proposals to be submitted sealed. (CG 7.3)</p> <p>Late proposals to be rejected. (CG 7.3.2)</p> <p>Opened original financial proposals handed to the CPC chairperson (CG 7.4.5).</p> | |
| H6 | Are minimum bidding periods specified? | <p>Yes, CG 7.2.2:</p> <ul style="list-style-type: none"> • 42 days for QCBS, QBS, FBS and LCS (international) • 28 days for CQS and SSS (international) and QCBS, QBS, FBS and LCS (national) • 21 days for CQS and SSS (national) • 7 days for individual consultants | |
| H7 | Are public bid openings required for technical and/or financial proposals, with adequate notification for financial openings? | <p>Opening of technical proposals in the presence of consultants who choose to attend, except for CQS and SSS. (CG 7.4)</p> <p>Consultants submitting qualified technical proposals invited to financial opening, with 5 days' notice for national shortlists and 10 days for international. Names, scores and prices to be announced. (CG 7.4.3)</p> | |
| H8 | Is technical evaluation based on the criteria and weightings in the RFP document, with a minimum quality threshold? | <p>Evaluation to be carried out in full conformity with the RFP (CG 8.7 & 8.8.5)</p> <p>CG 8.8.5 gives range of weights for each criteria.</p> <p>CG 8.8.6 refers to minimum qualifying score.</p> | |
| H9 | Are agencies required to keep financial bids | Yes, CG 7.4 | |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| H10 | Is financial evaluation and ranking of proposals based on the methodology and weightings in the RFP? | Evaluation to be carried out in full conformity with the RFP (CG 8.7) CGG 8.10-8.11 gives details of financial evaluation. | |
| H11 | Is award to the highest ranked proposal, according to the methodology specified in the RFP? | For QCBS, highest ranked consultant invited for negotiations, CG 8.10.3. Further details for other selection methods given in the manual. | |
| H12 | Are negotiations limited to the first ranked consultant and to areas other than fee rates? | All negotiations limited to the first ranked consultant (CG 8.12) Fee rates not negotiated for QCBS, FBS and LCS (CG 8.12.1) Fee rates are negotiated for QBS, CQS and SSS (CG 8.12.2) | |
| I | Contract Award and Management | | |
| I1 | Is any notification to unsuccessful bidders and standstill period required prior to award? | Yes, bidders for goods/works to be informed within one week of the award decision and given two weeks to make representation to the Secretary or Procurement Appeal Board if they wish. No parallel provisions for consultancy. | |
| I2 | Is the agency required to debrief unsuccessful bidders and publish details of the contract award? | Bidders may request debriefing after notification of contract award (CG 8.2) (PG 8.8) Consultants may request debriefing after publication of contract award (CG 9.4.1) Contract awards must be published on the NPA website, any PE website and any other appropriate media. (PG 8.10, CG 9.3) For goods/works, publication in a newspaper | |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| I3 | What procedures and controls apply to contract amendments and variations? | <p>of wide national circulation is required for contracts over SLR 250,000,000 (PG 8.10)</p> <p>The PE should publish promptly in its website (if available), the NPA website and/or any other appropriate media, the following particulars in regard to contracts on which awards have been made:</p> <p>(a) description of the Consulting Services for which proposals were invited;</p> <p>(b) the names of all consultants who submitted proposals;</p> <p>(c) name of the successful consultant;</p> <p>(d) amount at which the contract was awarded;</p> <p>(e) in the case of a contract awarded to a foreign principal who has a local agent, the name of the local agent.</p> <p>Works variation orders may be permitted within the contract conditions. Variations within the contract contingency (usually 10%) may be authorised by the head of department/project director. Where the contingency is exceeded or there is no contingency, the variation must be approved by a higher authority, as specified in the manual. (PG 8.13)</p> <p>Extensions of time may be granted in exceptional circumstances. (PG 8.14)</p> | No provisions on contract amendments for goods or consultancy services. |
| I4 | What dispute resolution procedures are included in contracts? | <p>Contracts to state that dispute settlement will be in accordance with the Arbitration Act of Sri Lanka, except where funding agencies require alternative provisions.</p> <p>Subject to the Arbitration Act, Rules of Arbitration of the International Chamber of</p> | |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| J | Record Keeping and Communications | | |
| J1 | Is the agency required to maintain records of procurement activities? Give details of the contents required | Commerce or United Nations Commission on International Trade Law or any other acceptable rules recommended. (PG 5.4.12, CG 6.6.5) | |
| J2 | Are communications with bidders and suppliers required to be in writing or confirmed in writing? | No general rules on record-keeping in the guidelines, although specific records (such as the MPP and evaluation report) are referred to. | |
| J3 | Must communications such as bid clarifications and pre-bid meeting minutes be sent to all bidders? | No general rules on written communications, but specific rules (such as clarifications) require this. All bidders to be provided with the same information and assured of equal opportunities to obtain additional information. Pre-bid meeting minutes to be circulated to all bidders (PG 5.3.14) Clarifications during evaluation to be in writing (PG 7.9.9) | |
| K | Bidder Complaints | | |
| K1 | Is there any mechanism enabling bidders to challenge procurement decisions? And to appeal the response? | Bidders may submit a representation against the award decision. Where procurement is by the MPC, representations are to the Secretary of the PE. A joint MPC/TEC meeting considers and reports to the Secretary within 14 days. Secretary to act in accordance with recommendations. Where procurement is by the CAPC, representations are to the Procurement Appeal Board at the Presidential Secretariat. Appeal Board to investigate and provide a | The complaints mechanisms appears to be weak, lacking independence, having no appeal against the original consideration of the complaint and lacking due process. Cabinet involvement gives the potential for political interference. All provisions on complaints are included in the procurement guidelines only. |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| K2 | Are complaints and appeals heard by an independent body? | Investigation and decision on a complaint is entirely within the PE for lower value procurement. For higher value procurement, the Procurement Appeal Board reports to cabinet, who appointed the CAPC. | |
| K3 | Does any complaints mechanism follow appropriate procedures in terms of timescales, documentation requirements etc.? | No, details in guidelines are very limited. | |
| L | Prevention of Corruption | | |
| L1 | Is there a clear policy and rules prohibiting corrupt and fraudulent practices? | PG/CG 1.4 covers ethics and includes a prohibition on abusing powers and on acceptance of gifts and inducements. | |
| L2 | Is there a procurement code of conduct or other rules covering areas such as gifts, hospitality and conflicts of interest? | PG/CG 1.4. also requires confidentiality and for conflicts of interest to be declared and any official with a conflict to disassociate himself from the process. PG 2.12/CG 2.9 requires PC, TEC and CPC members to sign a declaration covering confidentiality, impartiality and absence of personal interest. | |
| M | Other Information | | |
| M1 | Note any other information of relevance concerning the procurement system e.g. use of e-procurement | Sri Lanka has no strategic plan or reform agency for developing public procurement Also has no formal plan for e-GP. The PG allow use of electronic means for publishing invitation notices, inspecting invitation | |

| No | Question | Details of Procurement System | Comments and Recommendations |
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| | | documents and for bidders to seek clarifications. Electronic bid submission is not permitted. (PG 9.8) | |

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