

THE PHILIPPINES

Table of Contents

Acronyms.....	2
Executive Summary	5
1. Introduction: BLI Assessment Methodology.....	7
1.1. Background of the Assessment	7
1.2. Scope of the Assessment	7
1.3. Methodology for Assessment.....	7
1.3.1. Baseline Indicators	7
1.3.2. Assignment of Weights for Indicators	8
1.3.3. Compliance/Performance Indicators.....	10
1.4. Limitations	11
2. Philippine Governance Environment	13
2.1. Philippine Economic Situation	13
2.2. Nature and Scope of Public Expenditure	13
2.3. Role of National Government and Sub-National Government	14
2.4. Links Between Budgetary and Control Mechanisms.....	15
2.5. Procurement System and the Public Sector	16
3. Philippine Procurement System.....	19
3.1. Background	19
3.2. Coverage and Application	19
3.3. Principles of Government Procurement	19
3.4. General Features of the Procurement Law	19
3.5. Implementing Rules and Regulations.....	20
3.6. Key Actors and their Roles	22
3.6.1. Procurement Organization	22
3.6.2. Oversight Organizations	23
4. Assessment Results and Findings.....	25
4.1. Overall Results	25
4.2. Results by Indicators	27
4.2.1. Pillar I — Legislative and Regulatory Framework	27
4.2.2. Pillar II. Institutional Framework and Management Capacity	42
4.2.3. Pillar III. Procurement Operations and Market Practices	51
4.2.4. Pillar IV. Integrity and Transparency of the Public Procurement System	61
5. Areas of Strengths and Improvements in the Philippine Public Procurement Process	73
5.1. Strengths of the Philippine Public Procurement Process	73
5.2. Areas for Improvement	75
5.2.1. High Risk Areas	75
5.2.2. Medium Risk Areas	75
5.2.3. Low Risk Areas	78

6. Government Reform Programs	85
6.1. Government-wide Integrated Financial Management Systems	85
6.1.1. Electronic Budget System (e-Budget)	85
6.1.2. Electronic National Government Accounting System (e-NGAS)	85
6.2. Government-wide Organizational Rationalization and Compensation Program.....	85
6.3. Dispute Resolution	86
6.4. Contract Implementation	86
6.4.1. Acquisition of Right-of-Way	86
6.5. Use of Official Development Assistance Funds	86
6.6. Nationality Requirements	87
6.7. Anti-Graft and Corruption Measures	87
6.7.1. Existing Laws and Regulations	87
6.7.2. Proposed Laws and Regulations	87
6.6.3. Anti-Corruption Programs	88
7. Proposed Procurement Capacity Development Plan	91
7.1. Key Areas and Actions	91
7.1.1. Pillar I - Legal and Policy Framework	91
7.1.2. Pillar II – Institutional Framework and Management Capacity	91
7.1.3. Pillar III – Procurement Operations and Market Practices	92
7.1.4. Pillar IV – Integrity and Transparency of the Public Procurement System.....	92
7.1.5. CPAR Related Actions	93
7.2. Responsibilities for Key Actions.....	93
8. Comments on the BLI Assessment Methodology	97
8.1. Differing Interpretations.....	97
8.1.1. Fractioning of Contracts to Limit Competition.....	97
8.1.2. Extension of Time Frames for the Publication of Bid Opportunities	97
8.1.3. Requirement of Certification of Availability of Funds	97
8.1.4. Use of Available Media for Publication of Procurement Information	98
8.1.5. Evidence of Enforcement of Rulings and Penalties	98
8.2. Unclear Definitions	99
8.2.1. Mandatory Association for Purposes of Registration	99
8.2.2. Independent Administrative Body to Review Decisions	99
8.2.3. Separation and Clarity of Normative Body to Avoid Conflict of Interest.....	100
8.2.4. Private Sector Participation in the Public Procurement Market	100
8.2.5. Appeals Body	100
8.2.6. Capacity of Appeals Body to Handle Complaints	101
Annexes	103
Annex A: Assessment of the Philippine Public Procurement System	105
Annex B: Proposed Action Plan for the Improvement of the Philippine Public Procurement System.....	109
Annex C: Summary of Agency Procurement Performance Indicators (APPI) as Validated for Ten Philippine Government Agencies	111

ACRONYMS

ADB	Asian Development Bank
BAC	Bids and Awards Committee
BDS	Bid Data Sheet
BIS	Baseline Indicator System
BLI	Baseline Indicators
COA	Commission on Audit
COFILCO	Confederation of Filipino Consultants
CPAR	Country Procurement Assessment Report
CPI	Compliance/Performance Indicators
DBM	Department of Budget and Management
DBM PS	Department of Budget and Management Procurement Service
DEPED	Department of Education
DILG	Department of Interior and Local Government
DOE	Department of Energy
DOF	Department of Finance
DOH	Department of Health
DOJ	Department of Justice
DOST	Department of Science and Technology
DOTC	Department of Transportation and Communications
DND	Department of National Defense
DPWH	Department of Public Works and Highways
DTI	Department of Trade and Industry
EU	European Union
GAA	General Appropriations Act
GCC	General Conditions of Contract
GFI	Government Financing Institution
GOCC	Government Owned and Controlled Corporation
GOP	Government of the Philippines
GPM	Generic Procurement Manuals
GPPB	Government Procurement Policy Board
GPRA	Government Procurement Reform Act
HOPE	Head of Procuring Entity
IAEB	Invitation to Apply for Eligibility and to Bid
IFI	International Financing Institutions
IRRs	Implementing Rules and Regulations
ITB	Instructions to Bidders
JBIC	Japan Bank for International Cooperation
LGU	Local Government Unit
NBI	National Bureau of Investigation
NEDA	National Economic and Development Authority
NEP	National Expenditure Program
NGA	National Government Agency
NGAS	National Government Accounting System
OMB	Ombudsman
PAGC	Presidential Anti-Graft Commission
PBDs	Philippine Bidding Documents
PDF	Philippine Development Forum
PHILGEPS	Philippine Government Electronic Procurement System

PIA	Philippine Information Agency
PWI	Procurement Watch Inc.
QBE	Quality Based Evaluation
QCBE	Quality Cost Based Evaluation
RA 9184	Government Procurement Reform Act
SCC	Special Conditions of Contract
SUC	State Universities and Colleges
TAF	The Asia Foundation
TAN	Transparency and Accountability Network
TSO	Technical Support Office
USAID	United States Agency for International Development
WB	World Bank

EXECUTIVE SUMMARY

A Baseline Indicators (BLIs) assessment was conducted by the GOP as one of the activities of the 2006 Country Procurement Assessment Report (CPAR). The assessment covered the four pillars as well as all the indicators and sub-indicators in each pillar based on a review of the existing regulatory framework and the institutional and operational arrangements and as provided for in the OECD DAC Guidelines.

The GPPB TWG served as the principal assessor. The TWG is composed of seasoned public procurement experts and reformers with ample knowledge of the institutional and operational aspects of the subject and of internationally accepted procurement practice. It is an inter-agency committee created by the GPPB to assist its Board in its decision-making functions. It held four meetings for the assessment and review of the indicators. The preliminary results of the BLI assessment were presented to the GPPB and the CPAR Working Group for validation and comments.

The TWG followed the OECD DAC scoring system for each baseline sub-indicator in conducting the assessment. In order to arrive at a numerical score, the GPPB Technical Support Office (TSO) recommended a set of weights for each indicator and sub-indicator. For the 2006 assessment, the same weights assigned to the 4 pillars and 12 indicators under the 2004 BIS assessment were used subject to some modifications.

For the Compliance/Performance Indicators (CPIs), two types of assessments were utilized to evaluate the actual application of the procurement regulations and the prevailing procurement practices in the country.

The first assessment applied the results of the Agency Procurement Performance Indicators (APPI) developed by the GPPB TSO. The APPI is a tool to assess and compare the effectiveness of a government agency's procurement systems against that of the national public procurement systems using twenty eight (28) baseline standards and indicators based on the Baseline Indicators System (BIS). The results of the independent evaluation of ten (10) agencies were utilized to support the findings of the BLI assessment.

The second assessment using the suggested compliance/performance indicators (CPIs) associated with the BLI under the OECD DAC guidelines is currently being undertaken by the Transparency and Accountability Network (TAN), a civil society organization. A separate narrative report will be submitted on the CPI findings of the TAN to determine the degree of compliance to the international best practice and to assist the OECD in the improvement of the assessment tool.

The Philippine public procurement system garnered a score of 68.20 % in 2006. It scored highest in Pillar I, Legislative and Regulatory Framework (22.0%), followed by Pillar II, Institutional Framework and Management Capacity (17.13%), Pillar IV, Integrity and Transparency of the Public Procurement System (16.49%) with Pillar III, Procurement Operations and Public Procurement Market Performance (12.58%) getting the lowest score.

Compared to 2004, where the Philippine public procurement system obtained a score of 67.89% under the BIS assessment, there has been a slight increase of .31%. Although caution should be taken in comparing both scores due to differences in methodology and indicators, it is interesting to note that the scores for each pillar are basically the same except for a slight

increase in Pillar IV, Integrity and Transparency of the Public Procurement System where a net increase of 1.44% is noted.

The Philippine Public Procurement System exhibited strengths in five indicators where the sub-indicators were given a score of 3. These are Indicators 1, 2, 4, 8 and 12. In terms of areas for improvement, the highest risk area is Indicator 6. The only baseline element missing is the absence of established norms for the safekeeping of records and documents related to transactions and contract management (6(c)). Another High Risk Area is the absence of an administrative complaint review body to handle appeals under Indicator 10. The Medium Risk Areas are Indicator 5, existence of institutional development capacity and Indicator 9, presence of effective control and audit systems. The Low Risk Areas are Indicator 3; the public procurement system is mainstreamed and well integrated into the public sector governance system, Indicator 7; functionality of the public procurement market; Indicator 10; efficiency of appeals mechanism, and Indicator 11; degree of access to information.

The Proposed Capacity Development Plan summarized all the existing and proposed initiatives and recommendations to address the areas for improvement in the Philippine Public Procurement System based on the international best practice as prescribed by the BLI assessment. Other actions from earlier CPAR studies and recommendations were also discussed and included in the Plan.

Some of the comments and observations of the TWG on the BLI methodology were also presented to assist the OECD DAC in its improvement.

SECTION 1

INTRODUCTION

ASSESSMENT METHODOLOGY

1.1. Background of the Assessment

This assessment was conducted by the Government of the Philippine (GOP) to evaluate the performance of its procurement systems at the national level, determine the success of its procurement reform initiatives, and identify further strengths and weaknesses that need to be addressed through improvements in its capacity development plan. The self-assessment followed the prescribed guidelines under the OECD DAC Methodology for the Assessment of National Procurement Systems and was performed as one of the activities of the 2006 Country Procurement Assessment Report (CPAR). In 2004, the government utilized the Baseline Indicator System (BIS) to assess the quality of its procurement systems as part of the CPAR 2nd update mission garnering a score of 67.89%. The assessment results served as basis for recalibrating the public procurement reform strategy, and for identifying further technical assistance for capacity development from donor agencies and international financing institutions (IFIs).

1.2. Scope of the Assessment

The assessment of the Philippine public procurement system deals with the formal and functional features of the existing procurement system with snapshot comparisons against international standards. As a pilot country, the assessment covers the four pillars under the OECD DAC Guidelines Version 4 dated July 17, 2006, namely: a) the existing legal framework that regulates procurement in the country; b) the institutional architecture of the system; c) the operation of the system and competitiveness of the national market; and d) the integrity of the procurement system. The Baseline Indicators (BLI) and sub-indicators and where possible, the Compliance/Performance Indicators (CPIs) were applied in each pillar based on a review of the existing regulatory framework and the institutional and operational arrangements.

The assessment covered the implementation of the procurement law from the national agencies, sub-national agencies, government owned and controlled corporation, up to local government units. It also included the market place for public procurement which includes the private sector comprising of bidders, suppliers, contractors and consultants. The effectiveness of the participation of the civil society organization was likewise assessed. Procurement transactions and contracts were analyzed covering the period 2004 to 2006.

1.3. Methodology for Assessment

1.3.1. Baseline Indicators (BLI)

The Government Procurement Policy Board (GPPB) Technical Working Group (TWG) served as the principal assessor for the BLI to ensure credibility and reliability of the assessment. The TWG is composed of seasoned public procurement experts and reformers knowledgeable on the institutional and operational aspects of the Philippine Procurement System, as well as on internationally accepted procurement practice.

The TWG is an inter-agency committee created by the GPPB to assist the GPPB in performing its decision-making functions. It is ably chaired by Undersecretary Laura Pascua

of the Department of Budget and Management (DBM). Its membership is and composed of representatives from the National Economic and Development Authority (NEDA); Department of Public Works and Highways (DPWH); Department of Finance (DOF); Department of Trade and Industry (DTI); Department of Health (DOH); Department of National Defense (DND); Department of Education (DEPED); Department of Interior and Local Government (DILG); Department of Science and Technology (DOST); Department of Transportation and Communications (DOTC); and Department of Energy (DOE) and the private sector. Former TWG and GPPB members who were the pioneers of procurement reform were invited to take part in the 2004 BIS assessment.

For the 2006 Base Line Indicator System, the assessment was completed after the TWG conducted four meetings to review and evaluate the indicators. These meetings were held on December 14, 2006, January 17, 2007, February 2, 2007 and March 16, 2007, respectively. The final scores were arrived at after tedious deliberations of each of the indicators. The allocation of weights for each indicator and sub-indicator, under each pillar was assigned on the basis of their importance to the country's procurement system. The GPPB also sent two of the TWG Members (Director Aida Carpintero of the DEPED and Director Crispinita Valdez of the DOH) and the Executive Director of the GPPB-Technical Support Office (Executive Director Ruby Alvarez and Atty. Pia Zobel Ruiz) to attend the OECD-DAC Workshop held at Jakarta Indonesia to confirm and seek clarification on some issues concerning the use of the tool. To assist the TWG in understanding its task, two of its members

The preliminary results of the BLI assessment were presented to the GPPB on January 26, 2007 for initial confirmation of the scores prior to its presentation to the CPAR Working Group for validation.

On January 19, 2007 and February 26, 2007, the results of the BLI assessment conducted by the TWG were presented to the CPAR Working Group for validation and comments. The CPAR Working Group is chaired by DBM Undersecretary Laura Pascua and composed of members of the GPPB TWG and the GPPB Technical Support Office (TSO); representatives from oversight agencies such as the Presidential Anti-Graft Commission (PAGC), the Ombudsman (OMB), Department of Justice (DOJ), National Bureau of Investigation (NBI) and Commission on Audit (COA), Philippine Information Agency (PIA); Leagues of Provinces, Cities and Municipalities; private sector and civil society organizations such as Philippine Constructors Association and Confederation of Filipino Consultants (COFILCO); civil society organizations such as: Transparency and Accountability Network (TAN); Procurement Watch Inc. (PWI), Catholic Bishop Conference of the Philippines (CBCP); Development Partners from the World Bank and its consultants, Asian Development Bank (ADB), Japan Bank for International Cooperation (JBIC), United States Agency for International Development (USAID), Australian Aid (AUSAID), European Commission (EC), United Nations Systems, Canadian International Development Agency (CIDA); among others.

After the last CPAR Working Group Meeting, the scores were again presented to the TWG on April 13, 2007 for finalization, after taking into consideration the final comments of World Bank and the OECD.

1.3.2. Assignment of Weights for BLI

In conducting the BLI assessment, the TWG adopted the scoring system prescribed by the OECD-DAC for each baseline sub-indicator, which ranges from 3 to 0; where a score of 3

indicates full achievement of the given standard, a score of 2 means that the system exhibited less than full achievement and needed some improvements; whereas, a score of 1 corresponds to those areas where substantive work still needs to be done for the system to achieve the desired standard, and finally, a rating of 0 showed failure to meet the proposed standard.

The tool's methodology specifically allows each country the discretion to assign the weights to be allocated for each indicator and its aggregation in order to determine the country's score. The GPPB Technical Support Office (TSO) initially recommended the weight allocation which became the basis of the deliberations of the TWG. For the 2006 assessment, the same weights assigned to the 4 pillars and 12 indicators under the 2004 BIS assessment were adopted with slight modifications made on those indicators with different number of sub-indicators, such as indicator 3, 7, 10, 11 and 12. The following table shows the allocation of weights for the 2006 assessment.

Pillar I - Legislative and Regulatory Framework – 25%	Indicator 1 - Legislative and regulatory provisions	15 %
	Indicator 2 – Existence of implementing rules	10 %
Pillar II - Institutional Framework and Management Capacity – 25%	Indicator 3 – Public sector governance system	9 %
	Indicator 4 - Functional normative body	8 %
	Indicator 5 – Existence of institutional development capacity	8 %
Pillar III - Procurement Operations and Public Procurement Market performance – 25%	Indicator 6 - Efficient procurement operations	10 %
	Indicator 7 - Functionality of public procurement market	10 %
	Indicator 8 - Existence of contract administration and dispute resolution	5 %
Pillar IV - The Integrity and Transparency of Procurement System – 25%	Indicator 9 - Effective control and audit system	8 %
	Indicator 10 - Efficiency of appeals mechanism	5 %
	Indicator 11 - Degree of information access	4 %
	Indicator 12 - Ethics and anti-corruption measures	8 %

Due to the changes in the number of sub-indicators, the following weights were assigned to the respective indicators:

Indicator 3 with 4 sub-indicators compared to 5 under the BIS:

- 3(a) – Procurement planning and associated expenditures are part of the budget formulation process and contribute to multi-year planning (30%)
- 3(b) – Budget law and financial procedures support timely procurement, contract execution, and payment (20%)
- 3(c) – No initiation of procurement actions without existing budget appropriations (20%)
- 3(d) – Systematic completion reports are prepared for certification for budget execution and for reconciliation of delivery with budget programming. (30%)

Indicator 7 with 3 sub-indicators compared to 4 under BIS:

- 7(a) – There are effective mechanisms for partnerships between the public and private sector (40%)
- 7(b) – Private sector institutions are well organized and able to facilitate access to the market (30%)

7(c) – There are no major systemic constraints (e.g. inadequate access to credit, contracting practices, etc.) inhibiting the private sector’s capacity to access the procurement market (30%)

Indicator 10 with 5 sub-indicators compared to 6 under the BIS:

10(a) – Decisions are deliberated on the basis of available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law (20%)

10(b) – The complaint review system has the capacity to handle complaints efficiently and a means to enforce the remedy imposed (30%)

10(c) – The system operates in a fair manner, with outcomes of decisions balanced and justified on the basis of available information (15%)

10(d) – Decisions are published and made available to all interested parties and to the public (10%)

10(e) – The system ensures that the complaint review body has full authority and independence for resolution of complaints (25%)

Indicator 11 with 1 sub-indicator compared to 3 under the BIS:

11(a) – Information is published and distributed through available media with support from information technology when feasible (100%)

Indicator 12 with 7 sub-indicators compared to 3 under the BIS:

12(a) – The legal and regulatory framework for procurement, including tender and contract documents, includes provisions addressing corruption, fraud, conflict of interest, and unethical behaviour and sets out (either directly or by reference to other laws) the actions that can be taken with regard to such behavior (20% of Indicator)

12(b) – The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in fraudulent or corrupt practices. (20% of Indicator)

12(c) – Evidence of enforcement of rulings and penalties exists (10% of Indicator)

12(d) – Special measures exist to prevent and detect fraud and corruption in public procurement (15%)

12(e) – Stakeholders (private sector, civil society, and ultimate beneficiaries of procurement/end-users) support the creation of a procurement market known for its integrity and ethical behaviors (10%)

12(f) – The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behavior (15%)

12(g) – Existence of Codes of Conduct/Codes of Ethics for participants that are involved in aspects of the public financial management systems that also provide for disclosure for those in decision making positions. (10%)

1.3.3. Compliance/Performance Indicators (CPIs)

For the Compliance/Performance Indicators (CPIs), two methods of assessment were employed to evaluate the application of the procurement regulations and the prevailing procurement practices in the country.

The first method used the Agency Procurement Performance Indicators (APPI) developed by the GPPB TSO. The APPI is a tool to assess the level of compliance and the effectiveness of

a specific government agency as compared to the country's public procurement system using baseline standards and indicators. The APPI is actually based on the Baseline Indicators System (BIS), applied at the agency level. It adopts the same set of pillars and six major criteria namely; Strategy, Agency Professionalization Measures, Organizational Structure, Agency Procurement Process (Competition, Transparency and Efficiency), Effectiveness and Accountability Measures. There are actually twenty eight (28) indicators assigned to these criteria. The use of the APPI as an assessment tool to determine the agency's procurement performance has been reviewed and approved by the World Bank. Since its development in 2005, the APPI has undergone several improvements, one of which was its conversion to electronic format through the On-line Monitoring and Evaluation System (OMES). The system is now being used by at least fifty two (52) national and regional government agencies, government owned and controlled corporations, and state universities and colleges. During its pilot testing, twelve (12) government agencies were selected by the GPPB to apply the APPI. The independent evaluations were conducted by the consultants commissioned by the GPPB TSO and the World Bank, to conduct the APPI. The scores were validated by the TWG, and was subsequently determined as the agency's final score.

The results obtained from the evaluation of the pilot agencies in 2005 and 2006 were used to support the findings obtained in the 2006 Assessment using the BLI Tool. These pilot agencies include: Department of Public Works and Highways (DPWH), Department of Education (DepEd), Department of Health (DOH), Department of National Defense (DND), Armed Forces of the Philippines (AFP), National Power Corporation (NPC), the City Government of Marikina (CGM), Department of the Interior and Local Government (DILG), Department of Environment and Natural Resources (DENR), and the Bureau of Internal Revenue (BIR). The average score obtained by the ten agencies is 74.17% indicating a high level of compliance to the identified indicators. However, it would be inappropriate to compare the scores because of the difference in the scoring system and the allocation of weights. The summary of the scores for the ten sample agencies is found in Annex C.

The APPI results were applied to the following sixteen (16) indicators: 1b, 1c, 1h, 2b, 2c, 2f, 3a, 3b, 5b, 5c, 6a, 6d, 7b, 9a, 10b and 10c.

The second method of assessment used was the compliance/performance indicators (CPIs), which comprised Part II of the OECD-DAC Assessment Tool. The CPI exercise is currently being undertaken by the Transparency and Accountability Network (TAN), a civil society organization, which is actively involved in procurement and one of the forerunners of the Alliance of Civil Society Observers. TAN validates the usefulness of the proposed CPI based on actual review of data, transactions and practices of eight sample agencies; interviews with its officials; and the conduct of perception surveys among different procurement stakeholders. In the process of gathering data, TAN will also develop a database which is intended to serve as the foundation of a central Procurement Compliance Monitoring System. The results of the CPI Assessment conducted by TAN will be presented through a separate report.

1.4. Limitations

There were two major constraints encountered by the TWG members in the conduct of the assessment. These are conflicting interpretations of some of the provisions and vague/unclear terms used in the tool. Hereunder is a summary of those noted limitations in the conduct of the assessment:

1. Conflicting Interpretations

- 1.1. Fractioning of contracts to limit competition
- 1.2. Extension of time frames for the publication of bid opportunities when international competition is sought.
- 1.3. Requirement of certification of availability of funds before solicitation of tenders
- 1.4. Use of available media for publication of procurement information
- 1.5. Evidence of enforcement of rulings and penalties

2. Unclear /Vague Definitions of Terms

- 2.1. Mandatory association for purposes of registration
- 2.2. Independent administrative body to review decisions with regards to complaints and appeals
- 2.3. Separation and clarity of normative/regulatory body to avoid conflict of interest
- 2.4. Private sector participation in the public procurement market
- 2.5. Appeals body
- 2.6. Capacity of complaints review system to handle complaints

SECTION TWO PHILIPPINE GOVERNANCE ENVIRONMENT

2.1. Philippine Economic Situation

The Philippine economy has a mixed history of growth and development. In 2006, gross national product (GNP) grew at an average growth of 6.2%, or P 6.6 T. Services accounted for 49% of output followed by industry with 29%, agriculture with 12% and foreign remittances from overseas Filipino workers at 10%. Inflation remained at 2.2% in 2006. Exports grew at US \$ 47B while imports was US \$ P 51.5 B.¹

Notwithstanding the difficult political circumstances, GDP grew by 5.1% in 2005.² Overall, per capita income grew by 2.9% in 2005 down from 3.8% in 2004. Private consumption drove economic growth, expanding by 4.9% despite rising oil prices, increases in power tariffs and excise taxes. Investment and export performance were sluggish and disappointing.

Droughts brought about by El Niño depressed growth in the agriculture sector which grew by a meager 2% in 2005. Industry propelled by strong manufacturing activity and the recent passage of the mining law grew by 5.3%. The service sector continued to lead with a 6.3% growth. Prospects for higher growth hinge upon the rebound of agriculture and exports.

Public sector deficits and debt were reduced in real terms. Progress on implementation of the fiscal reform program, coupled with the economy's resilience to various shocks-ongoing political tensions, higher oil prices, agricultural slowdown-boosted financial markets as reflected in a stronger peso, higher private capital inflows, and falling borrowing costs and spreads for the public sector were observed. Improved tax administration and governance are now needed to ensure that recent policy reforms translate into sustained deficit and debt reduction as well as effectively implemented public programs for infrastructure and social programs.

2.2. Nature and Scope of Public Expenditure

The 2007 National Expenditure Program (NEP) submitted to Congress may be divided into allocations for departments and agencies and special purpose funds. In 2006, the National Budget stood at P 1.053T distributed between obligations for departments and agencies at P 401.4 B and the special purpose funds at P 651.8 B. In 2007, the budget will increase to P 1.126T with departments receiving P 457.6B and the special purpose funds getting P 668.8B. The top five (5) departments which will get the largest allocation out of the proposed national budget are the Department of Education, P132.9B; Department of Public Works and Highways, P73.6B; Department of Interior and Local Government, P51.1B; Department of National Defense, P49.5B; and Department of Agriculture, P18.5B. Under the Special Purpose Funds, the Allocation to Local Government Units, the Pension and Gratuity Fund, and the Agricultural and Fisheries Modernization Program (AFMP) were provided substantial allocations amounting to P197.4B, P65.5B, P21.7B respectively. For FY 2007, Internal Revenue Allotment is proposed to be automatically appropriated. Out of the P1.126T budget

¹ Data from the National Statistical Coordination Board (NSCB)

² Data from Country Report of the World Bank

proposal, an amount of P641.1B of New General Appropriations is proposed for enactment in FY 2007. This includes P67.0B of Unprogrammed Appropriations which will be provided as standby authority to be released only when revenue collections exceed revenue targets.³

By nature of expenditure, programs (general administration and support and operations) received 31.7% in 2006 and 33.3% in 2007. Projects (locally funded and foreign assisted) obtained 35.3% in 2006 and 36.7% in 2007. Interest payments for foreign obligations stood at 32.2% in 2006 and will decrease to 29.2% in 2007 due to the strong performance of the Philippine peso.

In terms of expense class, the 2007 budget shall be distributed as follows: 31.6% for Personal Services; 58.0% for Maintenance and Other Operating Expenses; 9.6% for Capital Outlays and the remaining balance of 0.8% is for Net Lending.

The Philippines' fiscal accounts have improved dramatically, with a decline in public sector deficit. A key condition for fiscal sustainability is the reduction in public debt obligations which has been met in the last year.

In terms of sectoral distribution of public expenditures, the economic sector composed of agriculture, agrarian reform and natural resources, trade and industry, tourism, power and energy, water resources development and flood control, communication, roads and other transport, among others, accounted for 31% of total expenses in 2006. This is followed by social services consisting of education, health, social security and welfare, housing and land distribution allocated with 23% together with interest payments also at 23%. General public services including general administration and services and public order and safety received 16% while defense got 3%.

The consolidated public sector deficit for 2006 stood at P 128.13B with the national government borrowing at P 181.1B.

2.3. Role of National Government and Sub-National Government

Interestingly, the Philippines follows a presidential form of government in accordance with its 1987 constitution. The powers of the government are exercised by three independent and co-equal branches, namely: the *Executive Branch*, which enforces the laws; the *Legislative Branch* which promulgates the laws; and the *Judicial Branch* which settles disputes involving rights of contending parties under the law.

Furthermore, there are also independent constitutional bodies which have their own respective mandates, such as (a) the Civil Service Commission; (b) the Commission on Election; (c) the Commission on Audit; and (d) the Office of the Ombudsman.

Within this governance structure, the management and operation of the public procurement system is lodged with the Executive Branch, primarily because of its existing institutional mechanisms for service delivery. Likewise, the Philippine governance structure also features the different existing territorial and political subdivisions, which are granted local autonomy by the constitution. These political subdivisions which comprise the sub-national levels of the

³ Data from the Department of Budget and Management

Philippine government are as follows: province, cities, municipalities and barangays. . At present, there are 17 Regions, 81 provinces, 118 cities, 1,510 municipalities, 41,995 barangays.

2.4. Links Between Budgetary and Control Mechanisms

Fiscal management of public resources is the primary responsibility of the Development Budget Coordinating Committee (DBCC), a cabinet-level interagency committee that formulates fiscal policy, generates and manages government resources, supervises revenue operations of all LGUs, manages all public sector debt and contingent liabilities and privatization of government corporations and assets.

Annual budget proposals include a statement of the main budgetary focus for the year, the expected impact of the budget on development goals, and on monetary and fiscal objectives.

To align multiyear budgeting with the Medium Term Philippine Development Plan (MTPDP), the government is developing a three-year rolling budget – Medium Term Expenditure Framework (MTEF) which includes a results framework for performance budgeting using the instruments: Sector Effectiveness and Efficiency Reviews (SEERs) and the Organizational Performance Indicator Framework (OPIF) to improve allocation efficiency of scarce public resources.

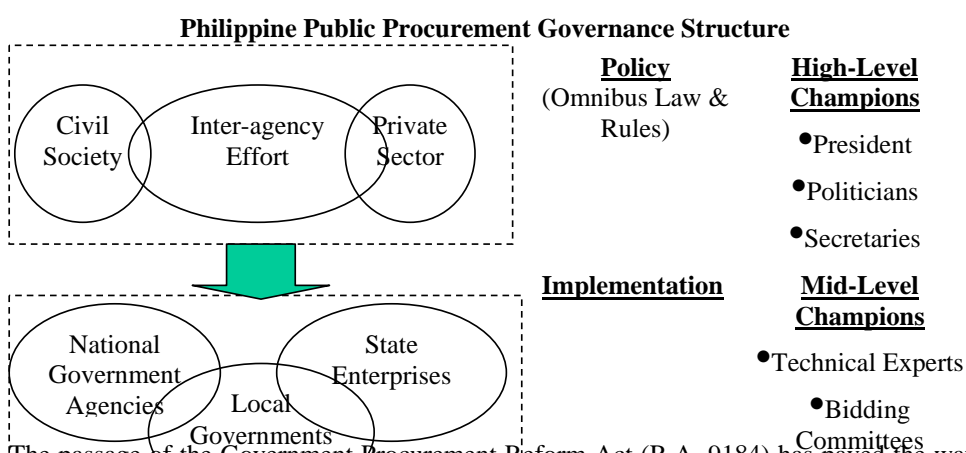
Government analysis of fiscal sustainability is mandatory. The DBM and NEDA are conducting spending efficiency reviews of government programs and projects, as part of the MTEF, to increase discipline of public expenditures. The COA requires agencies to report expenditures quarterly and identifies any expenditure in excess of an agency's appropriation and reports semi-annually. Fiscal reporting is done through the submission of regular, quarterly reports on the ongoing implementation of the national budget to Congress. The General Appropriations Act (GAA) requires each government department and agency to submit a quarterly financial and narrative accomplishment report to the House Committee on Appropriations and the Senate Committee on Finance, with copies sent to the DBM and COA.

The government is taking steps to develop an integrated financial management information system through two major initiatives: the e-Budget System and the e-National Government Accounting System (e-NGAS). The e-budget system is established to strengthen the DBM's expenditure management capability, streamline budget-release procedures and improve front-line service, improve budget administration and accountability, update budget analysis and decision making and minimize the fabrication of documents and the opportunities for 'fixers' promising to arrange funds for agencies. It has been used by the DBM Central Office to release budget documents.

The e-NGAS is designed to simplify government accounting, improve the efficiency of monitoring public sector performance, and increase the transparency of government audits through civil society involvement. More importantly, the new framework shifts from cash- to accrual-based accounting and introduces modifications to the obligation-accounting techniques. It also mandates the introduction of valuation accounting for receivables and fixed assets, and envisages the full computerization of government accounting, as well as the development of viable internal control systems within government agencies over the medium term. The modified accrual-based NGAS has been progressively rolled out, first in manual and then electronic versions, to the national government agencies and LGUs.

2.5. Procurement System and the Public Sector

The Philippine Public Procurement Governance Structure is characterized by strong partnership between national government agencies; government owned and controlled corporations or state enterprises; and local government units working actively with civil society in the implementation of the procurement law. In the formulation of legislation and policies on procurement, high level champions such as the President of the Philippines, members of the legislative branch and cabinet secretaries coordinate and work together to ensure its regular review. In the implementation of the procurement laws, head of agencies, members of the Bids and Awards Committees and Technical experts are involved in ensuring that the full intent of the law is complied with.



The passage of the Government Procurement Reform Act (R.A. 9184) has paved the way to achieving substantial improvements in procurement methods and standards. It has also institutionalized major reforms in the procurement process which helped promote transparency, accountability, and competitiveness. One of the most notable reforms introduced by the law into the procurement system was the creation of the GPPB. The GPPB was charged with the task of protecting the national interest in all matters affecting public procurement and formulating rules and guidelines on government procurement. Furthermore, the GPPB also oversees the implementation of the whole procurement reform process, including recommending changes to the GPRA, if necessary. As a result, the Philippine Public Procurement System has continuously taken serious strides in ensuring that the reform initiatives have been institutionalized and sustained. Significant improvements in procurement for the health and education sectors have been noted.

Procurement officials of government agencies, GOCCs and LGUs were trained and introduced to the GPRA and the Government Electronic Procurement Systems (G-EPS). The G-EPS has led to clear efficiency gains, savings through competition and reduced costs, and has reduced the scope for corruption. Additional functions, including online bidding and an electronic payment system, are currently being developed.

SECTION THREE PHILIPPINE PUBLIC PROCUREMENT SYSTEM

3.1. Background

One of the major findings of the 1st CPAR Mission was the fragmented nature of public procurement in the Philippines, characterized by multiple laws, rules and regulations which were inefficient and prone to abuse. As an initial response to the clamor for reforms in the problematic state of the procurement system, the procurement reform law was enacted to streamline the whole procurement process by prescribing uniform rules on procurement applicable to all government agencies and instrumentalities. On January 10, 2003, the Government Procurement Reform Act (GPRA) or Republic Act No. 9184 was passed by Congress and approved by the President. It became effective on January 26, 2003, fifteen days after its publication. Its Implementing Rules and Regulations (IRRs) were subsequently issued in September of the same year.

3.2. Coverage and Application

The GPRA is applicable for all procurement activities of the government and all its branches and instrumentalities, including national government agencies, government owned and controlled corporations and local government units. It covers the procurement of goods, infrastructure projects, and consulting services, regardless of source of funds, whether local or foreign. It includes procedures for competitive bidding, alternative methods of procurement and contract implementation.

The only exemptions to the law are the acquisition of real property for right-of-way sites and private sector infrastructure or development projects under the build-operate and transfer law.

Since its enactment, efforts have been taken to harmonize the procedures with those of IFIs through standardized bidding documents known as the Philippine Bidding Documents (PBDs) and the generic procurement manuals.

3.3. Principles of Government Procurement

Government procurement is governed by the principles of transparency, characterized by widest dissemination of bid opportunities and the involvement of pertinent non-government organizations; competitiveness, which entails the provision of equal opportunities for bidders and providing fair rules of competition; streamlining and use of technology through uniform application of procedures and the use of electronic media; accountability which pertains to clearly identifying and defining the responsibilities and accountabilities of public officials and private entities; and public monitoring which primarily involves ensuring that contracts are awarded pursuant to the provisions of the law.

3.4. General Features of the Procurement Law

The GPRA prescribes the following reform measures:

- a. Procurement planning and budgeting linkage through the preparation of Annual Procurement Plans (APPs) and Project Management Procurement Plans (PPMP) consistent with the agency budget procedures;
- b. Procurement organizations and roles and responsibilities of procurement officials;
- c. Participation of private sector and civil society observers in the procurement process;
- d. Procurement by electronic means using the Philippine Government Electronic Procurement System (Phil-GEPS);

- e. Competitive bidding as the primary mode of procurement;
- f. Issuance of standard bidding documents and forms;
- g. Conditions and procedures for use of competitive bidding and alternative procurement methods;
- h. Procedures for key procurements processes for advertisement, receipt and opening of bids, bid evaluation, post qualification and award, implementation and termination of contracts;
- i. Requirements for domestic and foreign procurement;
- j. Requirement for disclosure of relations where the bidder should execute a sworn affidavit that he or she or any officer of their corporation is not related to the Head of the Procuring Entity by consanguinity or affinity up to the third civil degree.
- k. Use of the Approved Budget for the Contract as ceiling for bid prices;
- l. Advertisement of all invitations to bid-widespread dissemination including posting on Phil-GEPS and the website of Procuring Entity, if available;
- m. Qualification of bidders-eligibility and general, financial and technical requirements;
- n. Two envelope system for evaluation of bids, use of non-discretionary pass/fail criteria to evaluate the eligibility criteria;
- o. Criteria for awarding contracts-generally based on the lowest calculated responsive bid for goods and infrastructure projects and the highest rated responsive bid for consulting services;
- p. Notices of all awards to be posted on the Phil-GEPS electronic bulletin board;
- q. Protest mechanism and procedures;
- r. Settlement of disputes;
- s. Contract implementation processes and warranties;
- t. Establishment and creation of the Government Procurement Policy Board
- u. Timelines for each phase of procurement;
- v. Penal, administrative and civil liabilities and sanctions;
- w. Legal assistance and indemnification of procurement officials;

A national and local training program for capacity building on the new procurement system, its documents and forms is also under implementation.

Details of the specific provisions of the law will be discussed in Section 4 on Assessment Results and Findings.

3.5. Implementing Rules and Regulations

The GPRA mandates the issuance of its own implementing rules and regulation (IRR-A) formulated by the Joint Congressional Oversight Committee which was issued by the President under Administrative Order No. 119 signed by the President on September 18, 2003. IRR-A provides the specific guidelines and procedures for the procurement of goods, works and consulting services that are fully funded by government funds and does not cover procurement under foreign assisted projects. Note however that in some cases, R.A. 9184 and its IRR-A may be applied as a supplement to the Procurement Guidelines of the International financing institutions, provided it is stated in the loan or grant agreement. The procurement reform framework is presented below.

GOP Procurement Reform Framework

Law
(R.A. 9184)

3.6. Key Actors and their Roles

3.6.1. Procurement Organization

The key actors in every procurement organization existing within government agencies are the following:

- a. **Head of Procuring Entity (HOPE)** - is the highest official at the central, or regional office, or any decentralized, local or lower level agency/ bureau/office of an NGA, GOCC, GFI, SUC or LGU. Its functions include the approval of the APP, ensures the regular preparation of the APP, appoints the members of the BAC and the BAC Secretariat, approves or disapproves the recommendation for award, ensures that the BAC and the BAC Secretariat give utmost priority to procurement assignments. The HOPE decides on protests and appeals raised by bidders.
- b. **Bids and Awards Committee (BAC)** –undertakes the actual procurement within the agency and ensures that the procedures are in accordance with the provisions of the law. The BAC recommends the applicable mode of procurement, creates the TWG, conducts pre-procurement and pre-bid conferences, determines the eligibility of prospective bidders, acts as sole authority to receive and open bids, conducts the evaluation of bids, undertakes post-qualification proceedings, resolves motions for reconsideration filed by prospective bidders, recommends award of contracts to the HOPE, recommends the imposition of sanctions, prepares a procurement monitoring report, invites observers required by law to be present during all stages of the procurement process, and furnishes the observers with bidding documents.
- c. **Technical Working Group (TWG)** – consist of a pool of technical, financial and/or legal experts tasked to assist in the procurement process, depending on the on the nature of procurement. The TWG assists the BAC in the preparation of the bidding documents, conduct of eligibility screening of prospective bidders, and in the short listing of prospective bidders in case of biddings for consulting services, evaluation of bids, conduct of post-qualification activities, preparation of resolution recommending award.
- d. **Procurement Unit / Office and the BAC Secretariat** - the procurement unit is the organic or permanent office within the Procuring Entity that carries out the procurement function. The Procurement Unit / Office and the BAC Secretariat acts as the main support unit of the BAC. Some of its functions involve the ff: takes custody of procurement documents and responsibility for the sale and distribution of bidding documents to interested buyers, assists in managing the procurement process, monitors procurement activities and milestones for proper reporting to relevant agencies, acts as central depository of all procurement related information, prepares the APP, makes arrangements for the pre-procurement and pre-bid conferences and bid openings, acts as the central channel of communications for the BAC, assists the BAC in preparing drafts of BAC resolutions, prepares the procurement documents, creates, maintains and updates the registry of suppliers, contractors, and consultants and the price monitoring list, administers the PhilGEPS, and transacts with the PhilGEPS and PS-DBM on behalf of the Procuring Entity.
- e. **Observers** – these may be government or private sector representatives from the COA, duly recognized professional association relevant to the procurement at hand, and a non-government organization who ensure that transparency is observed in the procurement

process. They represent the public and the taxpayers who are interested in seeing to it that procurement laws are observed and irregularities are averted.

3.6.2. Oversight Organizations for Procurement

The Government Procurement Policy Board (GPPB) is an inter-agency administrative body established to perform the following functions: formulate procurement policies; monitor compliance of agencies to these policies; evaluate the effectiveness of procurement reform program and develop and implement programs to professionalize government procurement practitioners. It is chaired by the Secretary of the Department of Budget and Management (DBM) and the Director General of the National Economic and Development Authority (NEDA), as Alternate Chairman, whose membership consist of Secretaries from the following departments: Departments of Public Works and Highways, Finance, Trade and Industry, Health, National Defense, Education, Interior and Local Government, Science and Technology, Transportation and Communications, and Energy; and a representative from the private sector.

The GPPB is also assisted by an inter-agency TWG to assist in its procurement decisions and responsibilities. The GPPB TWG served as the principal assessor for this assessment.

The Commission on Audit serves as the supreme audit institution vested by the Constitution with: the power and duty to audit and settle accounts pertaining to revenues and receipts, as well as expenditures or uses of funds and property owned or held in trust by the Government. It has exclusive authority to prescribe government accounting and auditing rules and regulations with the responsibility to recommend measures necessary to improve the efficiency and effectiveness of government operations including the monitoring of procurement related transactions.

Likewise, the Ombudsman is the organization tasked to prosecute cases against erring government officials found to have committed any form of abuse and misuse of power. The Office of the Ombudsman is charged with five major functions. These are Public Assistance, Graft Prevention, Investigation, Prosecution and Administrative Adjudication.

On the other hand, the Presidential Anti-Graft Commission (PAGC) was an investigative body established by President Gloria Macapagal-Arroyo to investigate and hear administrative complaints against presidential appointees in the Executive Department.

These four agencies serve as oversight organizations for the procurement process.

SECTION FOUR ASSESSMENT RESULTS AND FINDINGS

This Section will discuss the results and findings of the BLI assessment in relation to each of the pillars, indicators and sub-indicators. Where applicable and where data is available, the corresponding results of the CPI evaluation for the ten government agencies discussed in the methodology will be used to explain actual experiences and practice. The policies, programs and other initiatives of the Philippine government will be discussed in the respective indicators.

4.1. Overall Results

Using the Baseline Indicator (BLI) System assessment methodology, the Philippine public procurement system garnered a score of 68.20 % in 2006. It scored highest in Pillar I, Legislative and Regulatory Framework (22.0%), followed by Pillar II, Institutional Framework and Management Capacity (17.13%), Pillar IV, Integrity and Transparency of the Public Procurement System (16.49%) with Pillar III, Procurement Operations and Public Procurement Market Performance (12.58%) getting the lowest score. Table 1 shows the breakdown of scores.

Table 1. Pillar Scores for the Philippine Public Procurement System

Pillars/Indicators	BLI Score	GOP Rating
Pillar I – The Legislative and Regulatory Framework	25.0%	22.00%
Pillar II – Institutional Framework and Management Capacity	25.0%	17.13%
Pillar III - Procurement Operations and Public Procurement Market Performance	25%	12.58%
Pillar IV – The Integrity and Transparency of the Public Procurement System	25.0%	16.49%
Total Score	100.0%	68.20%

Figure 1. Graphical Representation of the BLI Pillars for the Philippine Public Procurement Systems in 2006

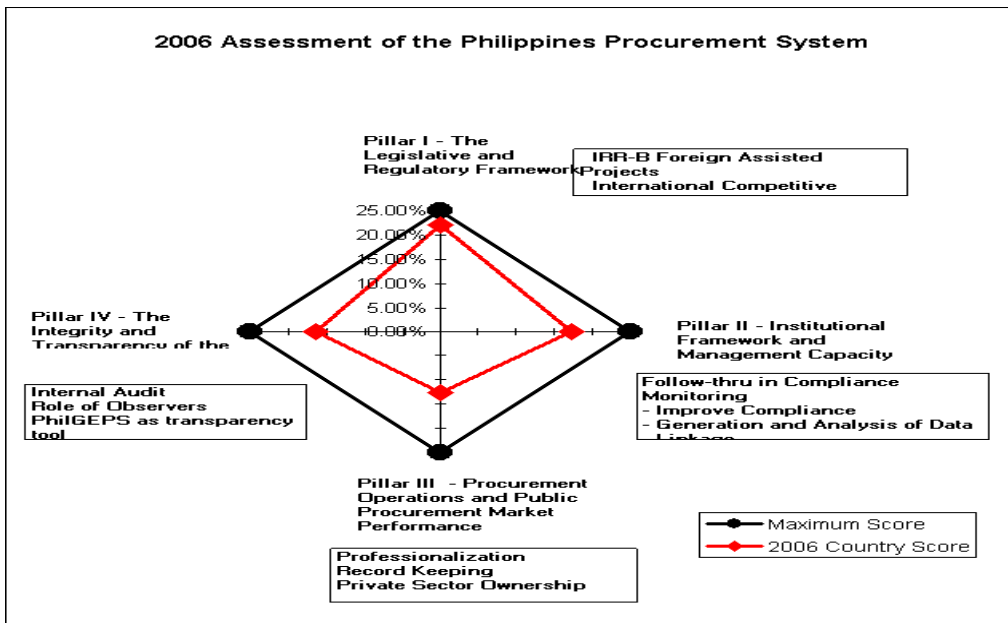


Figure 1 provides a graphical representation of the scores for each pillar during the 2006 assessment, as well as the areas of weakness which will be discussed in detail in the succeeding section on Areas for Improvement as prescribed under the OECD- DAC Methodology.

In terms of the Indicators, it rated strongest in Indicators 1, 2, 4, 8, and 12 and lowest in Indicator 6. Table 2 presents the scores by Indicator.

Table 2. Baseline Indicator Scores and Level of Achievement for the Philippine Public Procurement System

Pillars/Indicators	BLI Score	GOP Rating
Pillar I - The Legislative and Regulatory Framework	25.0%	22.00%
Indicator 1 – Public Procurement Legislative and Regulatory Framework Achieves the Agreed Standards and Complies with Applicable Obligations	15.00%	12.00%
Indicator 2 – Existence of Implementing Regulations and Documentation	10.0%	10.0%
Pillar II - Institutional Framework and Management Capacity	25.0%	17.13%
Indicator 3 – The Public Procurement is Mainstreamed and Well Integrated into the Public Sector Governance System	9.0%	6.60%
Indicator 4 – The Country has a Functional Normative/Regulatory Body	8.0%	7.2%
Indicator 5 – Existence of Institutional Development Capacity	8%	3.33%
Pillar III - Procurement Operations and Public Procurement Market Performance	25%	12.58%
Indicator 6 – Efficient Procurement Operations and Practice	10.0%	4.17%
Indicator 7 – Functionality of the Public Procurement Market	10.0%	4.67%
Indicator 8 – Existence of Contract Administration and Dispute Resolution Provisions	5.0%	3.75%
Pillar IV - The Integrity and Transparency of the Public Procurement System	25.0%	16.49%
Indicator 9 – Effective Control and Audit System	8.0%	4.13%
Indicator 10 – Efficiency of Appeals Mechanism	5.0%	3.00%
Indicator 11 – Degree of Access to Information	4.0%	2.67%
Indicator 12 – Ethics and Anti-corruption Measures	8.0%	6.69%
Total Score	100.0%	68.20%

Compared to 2004, where the Philippine public procurement system obtained a score of 67.89% under the BIS assessment, there has been a slight increase of .31%. Although caution should be taken in comparing both scores due to differences in methodology and indicators, it is interesting to note that the scores for each pillar are basically the same except for a slight increase in Pillar IV, Integrity and Transparency of the Public Procurement System, where a net increase of 1.44% is recorded. Table 3 shows the comparison of scores by pillar for the years 2004 and 2006. Figure 2 presents the graphical comparison of the scores for 2004 and 2006.

**Philippines' Procurement System Assessment
(As of April 11, 2007)**

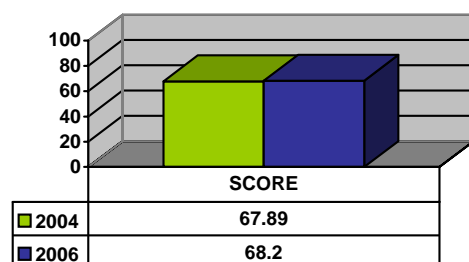


Figure 2. Graphical Comparison of Assessment Scores for the Philippine Public Procurement System (2004-2006)

4.2. Results by Indicators

The findings and results of the 2006 assessment by indicator are presented as follows:

4.2.1. Pillar I — Legislative and Regulatory Framework

4.2.1.1. Indicator 1. Public procurement legislative and regulatory framework achieves the agreed standards and complies with applicable obligations. (15%)

Indicator 1 garnered a score of 12% where the public procurement legislative and regulatory framework achieves the agreed standards and complies with applicable obligations.

Table 4. Summary of Scores for Indicator 1

Sub-Indicators	Score	Rating
1(a) – Scope of application and coverage of the legislative and regulatory framework	3	0.60
1 (b) – Procurement methods	2	0.30
1(c) – Advertising rules and time limits	1	0.10
1(d) – Rules on participation	2	0.30
1(e) – Tender documentation and technical specifications	3	0.15
1(f) – Tender evaluation and award criteria	3	0.45
1(g) – Submission, receipt and opening of tenders	3	0.45
1(h) – Complaint	1	0.05
Score		12.00%

In terms of actual application (CPI), this is supported by the findings of the APPI where all ten sampled government agencies complied with the procurement rules and regulations through the issuance of agency orders cascading the national procurement reform strategy to its lowest levels.

Sub-indicator 1(a) - Scope of application and coverage of the legislative and regulatory framework.

Score: 3

Conditions Met: all (a,b,c)

a. The legislative and regulatory body of norms is adequately recorded and organized hierarchically (laws, decrees, regulations, procedures,) and precedence is clearly established.

The GPRA, otherwise known as Republic Act 9184, clearly spells out the basic policy, governing principles and general coverage and procedures on procurement.

The Implementing Rules and Regulations Part A (IRR-A) provide the specific guidelines and procedures to implement the law. Each of the provisions of the law is clearly discussed from procurement planning, procurement procedures, contract implementation, liabilities and sanctions.

Periodically, the GPPB issues guidelines for the uniform interpretation of the law and the implementing rules.

The Philippine Bidding Documents (PBD) are standard documents used for procurement through competitive bidding that include information such as bid data sheet, general and special contract conditions of the contract, and sample forms.

The Generic Procurement Manuals (GPM) discuss the standard detailed procedures to explain the specific stages of the procurement process depending on the type of procurement. These consist of four volumes: Volume One: Procurement Systems and Organization, Volume Two: Procedures for the Procurement of Goods and Services, Volume Three: Procedures for the Procurement of Infrastructure Projects and Volume Four: Procedures for the Procurement of Consulting Services. Government agencies are allowed to customize and modify the GPM to suit its needs subject to the approval of the GPPB, and for as long as it is consistent with existing procurement laws, rules, and regulations.

The laws, decrees, regulations, and procedures are adequately recorded and organized in an understandable hierarchy, and precedence is clearly established to avoid inconsistencies in application. The law was passed by the Philippine Congress, the legislative arm of the government; the implementing rules and regulations were formulated by the GPPB with members of the Joint Congressional Oversight Committee and approved by the President of the Philippines. Additional amendments to the IRR-A are prepared by the GPPB and submitted to the President for approval. Hence, modification of the law requires prior approval of the highest authority and the stability of the different provisions and of the entire systems is dependent on the hierarchy of the legal framework.

b. All laws and regulations are published and easily accessible to the public at no cost.

The procurement law was signed by the President on January 10, 2003 and was published on January 11, 2003 in two newspapers of general circulation, namely Manila Times and Malaya, and the Official Gazette. The IRR-A was approved by the President through Memorandum Order 119, dated September 18, 2003 and was published in two newspapers of general circulation, namely Manila Times and Malaya, and the Official Gazette. The GPPB regularly issues other relevant guidelines and policies to all government agencies that are published in the Official Gazette or in newspapers of general circulation.

The Procurement Service published a Handbook on Philippine Government Procurement that includes the GPRA, its IRR-A, and the latest GPPB issuances. It also published the PBDs for the procurement of goods, works, and consulting services.

All these information may be downloaded from the GPPB website (www.gppb.gov.ph) and the government electronic procurement system (PhilGEPS) website free of charge. The websites are readily accessible to the public.

(c) The legislative and regulatory body of norms covers goods, works, and services (including consulting services) for all procurement using national budget funds.

The GPRA, its IRR-A, and all pertinent guidelines apply to all procurements of the national government, its departments, bureaus, offices and agencies, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions and local government units. It also applies to the procurement of goods and services, infrastructure projects, and consulting services, regardless of source of funds (local or foreign).

Sub-indicator 1(b) — Procurement Methods

Score: 2

Conditions Met: a,b,c

(a) Allowable procurement methods are established unambiguously at an appropriate hierarchical level along with the associated conditions under which each method may be used, including a requirement for approval by an official that is held accountable.

Republic Act 9184 and its IRR-A clearly identify the types of methods that may be used for government procurement. These are competitive bidding (Section 10) and the following alternative methods: limited source bidding (Section 49), direct contracting (Section 50), repeat order (Section 51), shopping (Section 52), and negotiated procurement (Section 53). The conditions under which alternative methods may be used and the terms and conditions for its use are clearly defined in the IRR-A (Section 49-54). The detailed methodologies for the application of these types of procurement are also discussed in the GPM.

The procurement law states that a government agency may resort to any of the alternative methods subject to prior approval by the Head of the Agency or Procuring Entity.

Procurement methods are thus established in an understandable manner and at appropriate hierarchical levels. The conditions for use of each method are clearly explained and approval of the Head of the Procuring Entity is required prior to its use. He/she is held accountable for any violations of the law.

(b) Competitive procurement is the default method of public procurement.

Section 10 of RA 9184 clearly states that all procurement shall be done through competitive bidding except as otherwise provided under conditions that allow resort to alternative methods.

CPI Results:

Data from five (5) of the sampled government agencies show that seventy percent (70 %) of procurement contracts were done through competitive bidding. The remaining thirty percent (30%) of the transactions involved such methods as purchase through the Procurement Service (for common use goods and equipment), shopping, direct contracting, and negotiated procurement. This confirms the assessment score given by the GPPB IATWG.

(c) Fractioning of contracts to limit competition is prohibited.

Section 54.1 of R.A. 9184 clearly states that splitting of government contracts is not allowed. It specifically defines splitting of contracts as the division or breaking up of government contracts into smaller quantities and amounts or dividing a contract into artificial phases or sub-contracts. This is sometimes resorted to when there are no sufficient funds to complete a project; when the eligibility requirements are designed to suit favored suppliers or contractors; or to circumvent the law. Contracts may be packaged into smaller sizes to allow more bidders to participate.

Conditions Not Met: d

(d) Appropriate standards for international competitive tendering are specified and are consistent with international standards

R.A. 9184 adopts international best practices in public procurement processes but it does not specify the appropriate standards for international competitive tendering under the law since procurements funded partly or fully by International Financing Institutions (IFIs) follow the procedures specified under the loan or grant agreements. The Philippine government recognizes the need to develop implementing rules and regulations for foreign-assisted projects (IRR Part B) and is now in the process of resolving issues within the rules that are not congruent with those of the IFIs.

The Philippine government is in the process of harmonizing its procurement rules with those of the IFIs through the issuance of harmonized standard bidding documents and the inclusion of IFI procedures in its procurement manuals. It will continue to work with its major partners to harmonize its procurement rules with those of the IFIs.

Sub-indicator 1(c) — Advertising rules and time limits

Score: 1

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Conditions Met: a,c,d

(a) Requires that procurement opportunities other than sole source or price quotations be publicly advertised.

RA 9184 requires the public advertisement and posting of bid opportunities referred to as Invitation to Apply for Eligibility and to Bid (IAEB) for competitive bidding and for procurement done through alternative methods. This may be done in several ways depending on the contract amount and the methods of procurement:

1. Advertisement in a newspaper of general circulation which has been regularly published for at least two (2) years before the date of issuance of the advertisement,
2. Posting in the website of the procuring entity concerned, if available, the website of its service provider, if any, and the G-EPS website,
3. Posting at any conspicuous place reserved for the purpose in the premises of the procuring entity concerned.

(c) Publication of open tenders is mandated in at least a newspaper of wide national circulation or in a unique Internet official site, where all public procurement opportunities are posted, that is easily accessible.

As discussed in condition a, bid opportunities may be advertised and posted in a newspaper of general nationwide circulation; continuously on the website of the procuring entity concerned, if available, the website of its service provider, if any, the PhilGEPS; and any conspicuous place reserved for this purpose in the premises of the Procuring Entity concerned.

(d) Content of publication includes sufficient information to enable potential bidders to determine their ability and interest in bidding.

The information contained in the IAEB for competitive bidding include the following:

1. The name of the contract to be bid, and a brief description of the goods to be procured;
2. A general statement on the criteria to be used by the Procuring Entity for:
 - a. The eligibility check; and
 - b. The examination and evaluation of bids;
3. The date, time, and place of the deadline for:
 - a. The submission and receipt of the eligibility requirements;
 - b. The pre-bid conference, if any;
 - c. The submission and receipt of bids; and
 - d. The opening of bids;
4. The Approved Budget for the Contract (ABC);
5. The source of funding;
6. The period of availability of the bidding documents, the place where the bidding documents may be secured and, where applicable, the price of the bidding documents;
7. The contract duration or delivery schedule;
8. The name, address, telephone number, facsimile number, e-mail, and website addresses of the concerned Procuring Entity, as well as its designated contact person;
9. The Reservation Clause, which is normally located at the bottom of the notice; and
10. Other necessary information deemed relevant by the Procuring Entity.

The invitation provides information that enables potential bidders to decide whether to participate or not.

CPI Results:

All ten sampled government agencies advertised bid opportunities as required by the GPRA in a newspaper of general circulation, its respective websites, and the PhilGEPS in accordance with the prescribed contents of the IAEB as discussed above.

Conditions Not Met: b

(b) Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. Such timeframes are extended when international competition is sought.

The IRR-A of R.A. 9184 prescribe specific time frames for the advertisement and posting of bid opportunities, seven (7) calendar days, for all types of procurements to ensure that there are no unnecessary delays in the bidding process. These time frames are not extended even if foreign bidders are expected to compete.

The maximum periods between the last day of advertisement and the submission of proposals and opening of bids are also prescribed in the implementing rules and regulations. However, these periods may not be extended in case foreign bidders are expected to compete.

In the case of foreign assisted projects, however, the publication time frames prescribed by the IFIs are followed. The implementing rules and regulations for foreign-assisted projects (IRR-B) should be able to address this concern.

Sub-indicator 1(d) — Rules on participation

Score: 2

Conditions Met: a,b,c

(a) Establishes that participation of any contractor or supplier or group of suppliers or contractors is based on qualification or in accordance with international agreements; requires the use of pass/fail basis for determining qualifications to extent possible; limits domestic price preferential, if allowed, to a reasonable amount (e.g.15% or less); and requires justification for set asides that limit competition.

Sections 23 and 24 of IRR-A 9184 establish the eligibility requirements for the procurement of goods, infrastructure projects and consulting services for locally funded projects based on legal, technical and financial qualifications. For foreign- assisted projects, the eligibility requirements are based on the qualifications set by the IFI and the provisions of the loan agreement.

The eligibility of any prospective bidder is determined based on non-discretionary “pass/fail” criteria. (Section 23.2 of the IRR-A of RA 9184)

Domestic price preference is allowed for goods and infrastructure projects up to fifteen percent (15%) in excess of the lowest bid subject to the provisions of Commonwealth Act No. 138, otherwise known as the Flag Law. For foreign-assisted projects or procurements undertaken by virtue of international treaties or agreements, domestic preference may be allowed when there is no provision disallowing such or when this is provided for in the loan agreement in the interest of availability, efficiency and timely delivery.

The justifications for such “set asides” or legal exclusions as judicial findings of corruption are clearly specified under the penal provisions of the law (Sections 65-69). Justifications that

limit competition in international agreements are generally provided for in the appropriate contract documents.

(b) Ensures that registration if required does not constitute a barrier to participation in tenders and does not require mandatory association with other firms.

For domestic manufacturers, suppliers, contractors and consultants, business registration, permits and licenses are part of the eligibility requirements (Section 23.6). For foreign manufacturers, suppliers, contractors and consultants, the eligibility requirements may be substituted by the appropriate equivalent documents issued by the country of the foreigner concerned provided these are duly acknowledged and authenticated by the Philippine Consulate in the country (Section 23.7). Hence, registration requirements do not constitute a barrier to participation of foreign firms.

Mandatory association with other local or foreign firms is not required under the procurement law. Nationality requirements are, however, required for partnerships, corporations and joint venture agreements. For the procurement of goods and consulting services, Filipino interest must be at least sixty percent (60%) while for infrastructure projects, this should be seventy five percent (75%). For foreign-assisted projects, the requirements of the IFIs are followed.

(c) Provides for exclusions for criminal or corrupt activities, administrative debarment under the law subject to due process or prohibition of commercial relations.

The procurement law clearly defines the administrative, criminal and civil offenses and liabilities that may be imposed on erring government officials and private individuals (Sections 65-71). The GPPB has also issued the appropriate guidelines for the blacklisting and suspension of manufacturers, suppliers, contractors and consultants that includes the procedures to be followed during the bidding and contract implementation stages and appeal.

Condition Not Met: d

(d) Establishes rules for the participation of government owned enterprises that promote fair competition.

Under the procurement law, government owned or controlled corporations (GOCCs) or enterprises are allowed to enter into memoranda of agreements and negotiated contracts with other government agencies (such as in the purchase of goods and services) without need of conducting public bidding since this often results in lower costs to the government. Cost of goods, services and works provided by the GOCCs are normally lower than market prices since there are limited overhead and other hidden costs and these firms are granted tax exemptions or subsidies. Government firms given preferential treatment when dealing with other government agencies are normally those with specific mandates to supply particular services such as the National Printing Office, National Food Authority, among others. In practice, there are very few GOCCs that are in direct competition with the private sector.

The GPPB is in the process of formulating policies, procedures and guidelines for procurement under the government to government arrangements that define the conditions for the participation of government owned enterprises in procurement for public projects to promote fair competition as well as standards for agency-to-agency transactions.

Sub-indicator 1(e) — Tender documentation and technical specifications

Score: 3

Conditions Met: all (a,b,c)

(a) Establishes the minimum content of the tender documents and requires that content is relevant and sufficient for tenderers to be able to respond to the requirement.

The minimum standard contents are identified in each of the Philippine bidding documents for goods and services, infrastructure projects and consulting services that include among others: the Invitation to Apply for Eligibility and to Bid (IAEB), Eligibility Documents, Instructions to Bidders (ITB), Bid Data Sheet (BDS), General Conditions of Contract (GCC), Special Conditions of Contract (SCC), Specifications, Drawings, Bill of Quantities, Sample Forms. All of these documents are relevant and sufficient for bidders to be able to respond to the requirements of each agency.

(b) Requires the use of neutral specifications citing international standards when possible.

In determining the technical specifications of items to be procured (goods, infrastructure projects, consulting services), each agency is required to identify the standards to be met as specified by local or international bodies. Reference to brand names is not allowed (Section 18) and neutral specifications are used.

(c) Requires recognition of standards which are equivalent when neutral specifications are not available.

As a rule, Philippine standards must be followed in setting specifications. These are based on international standards. Where there are no specified Philippine standards, the standards of the country of origin or other internationally recognized bodies such as the International Standards Organization (ISO) may be considered.

Sub-indicator 1(f) — Tender evaluation and award criteria

Score: 3

Conditions Met: all (a,b,c,d)

(a) The evaluation criteria are relevant to the decision, and precisely specified in advance in the tender documents so that the award decision is made solely on the basis of the criteria stated in the tender documents.

The information provided in the Invitation to Apply for Eligibility and to Bid (IAEB), which is part of the Philippine Bidding Documents, includes a general statement on the criteria to be used by a government procuring entity for eligibility check, examination and evaluation of bids and post-qualification. (Section 21.1) These criteria are used to decide on eligible suppliers, contractors and consultants; evaluate their bids and post-qualify the lowest complying and evaluated bidder who will be awarded the contract.

(b) Criteria not evaluated in monetary terms are evaluated on a pass/fail basis to the extent possible.

In determining the eligibility of prospective contractors, examining completeness of the technical and financial proposals, evaluating complying technical proposals and post-qualifying the lowest calculated bid, a non-discretionary “pass/fail” criterion is used for goods, infrastructure projects and consulting services. (Section 30.1 and Section 32.4)

(c) The evaluation of proposals for consulting services gives adequate importance to the quality and regulates how price and quality are considered.

There are two methods of evaluating bids for consulting services: Quality Based Evaluation (QBE) and Quality Cost Based Evaluation (QCBE). The technical and financial proposals are given corresponding weights as indicated in the IAEB and the bid documents. The technical proposals are evaluated based on quality of personnel to be assigned, experience and capability of the consultant and plan of approach and methodology. For QCBE, financial proposals are given weights of fifteen percent (15%) up to a maximum of forty percent (40%). (Section 33)

(d) During the evaluation period, information relating to the examination, clarification and evaluation of tenders is not disclosed to the participants or to others not involved officially in the evaluation process;

During the bid evaluation stage, the members of the Bids and Awards Committee (BAC), its Secretariat and the TWG are not allowed to entertain clarifications from bidders, or initiate communication with the bidders, regarding the evaluation of the bids under the “no contact rule”. There are two reasons for this rule: (a) there is no need for clarifications of technical issues since the evaluation is focused on arithmetical computations which are determined from the face of the bid itself; and (b) communications with the bidders might lead to possible collusion or the bidder might try to influence the outcome of the bidding process.

Upon completion of the bid evaluation process and the preparation of the Bid Evaluation Report, the BAC submits its recommendation to the Head of the Procuring Entity (HOPE) who approves or disapproves its recommendation. The bidders are then notified of the results of award and the lowest bidder undergoes post-qualification.

Sub-indicator 1(g) — Submission, receipt and opening of tenders

Score: 3

Conditions Met: all (a,b,c,d)

(a) Public opening of tenders in a defined and regulated proceeding immediately following the closing date for bid submission.

The place, date and time for the submission, receipt and the opening of bids are specified in the IAEB and the bidding documents. (Section 29) The bid opening date is scheduled close to the deadline for the submission of bids. The bidders or their duly authorized representatives may attend the opening of bids. Duly recognized observers from the COA, professional

organizations relevant to the procurement at hand and non-governmental organizations or civil society are also invited to sit in the procurement proceedings.

(b) Records of proceedings for bid openings are retained and available for review.

The BAC Secretariat records the proceedings of the bid opening using a tape recorder, or a video recorder or any device that may facilitate the recording. The minutes of the bid opening are prepared within three (3) calendar days after the bid opening date. Copies of the minutes are made available to the public upon written request and payment of a specified fee to recover cost of materials. (Section 29)

(c) Security and confidentiality of bids is maintained prior to bid opening and disclosure of specific sensitive information during debriefing is prohibited.

The technical and financial bids are contained in two separate and duly marked sealed envelopes, maintained in a safe place with controlled access. The BAC can open these envelopes only on the day of bid opening. (Section 30) Under the “no-contact rule” members of the BAC, its Secretariat and the TWG are not allowed to communicate with bidders or other interested parties on the proceedings or results of the bid evaluation process.

(d) The modality of submitting tenders and receipt by the government is well defined to avoid unnecessary rejection of tenders.

The procedures for the submission, receipt and opening of bids are clearly specified in Section 25 as follows:

1. The BAC receives the Technical and Financial envelopes at the time, date and place specified in the bidding documents. The opening shall also be done in public. Upon receipt, the BAC Secretariat stamps the face of the outer envelope as “RECEIVED,” indicating the date and time of receipt with the stamp countersigned by an authorized representative.
2. The BAC proceeds with the opening of the technical proposals of eligible bidders and conducts the preliminary examination of bids, to determine each bidder’s compliance with the documents that are required to be submitted for the technical component of the bid. The BAC checks the submitted technical documents against a checklist of required technical documents to ascertain if they are all present, using non-discretionary “pass/fail” criteria.
3. In case one or more of the above-required documents in the Technical Bid envelope is missing, incomplete or patently insufficient, the bid is declared as “failed” and immediately returned to the bidder concerned, together with the unopened financial envelope.
4. Immediately after determining compliance with the requirements in the first envelope, the BAC opens the financial proposals of each remaining technically complying bidder whose submitted technical requirements were rated “passed.” Only bids that are determined to contain all the bid requirements for both technical and financial components shall be rated “passed” and shall be considered for evaluation and comparison.
5. All members of the BAC or their duly authorized representatives and the Observers who are present during bid opening, shall initial every page of the original copies of all bids received and opened.
6. After the preliminary examination of bids, the BAC, or through the TWG, shall immediately conduct a detailed evaluation of all bids rated “passed,” using a non-discretionary pass/fail criteria. All bids shall be evaluated on an equal footing to ensure fair and competitive bid evaluation.

7. After all bids have been received, opened, examined, evaluated and ranked, the BAC shall prepare the corresponding Abstract of Bids that will include such information as: name of the contract and its location, if applicable, time, date and place of bid opening; and names of bidders and their corresponding calculated bid prices arranged from lowest to highest, the amount of bid security and the name of the issuing entity.

8. The TWG, with the assistance of the BAC Secretariat, shall prepare the Evaluation Report, containing the details of the evaluation conducted, preferably within three (3) calendar days from the date the evaluation was concluded.

Sub-indicator 1(h) — Complaints

Score: 1

Conditions Met: a,c

(a) The right to review for participants in a procurement process

A prospective bidder found ineligible, declared failed or post-disqualified may file a written request for reconsideration before the BAC. If its request for reconsideration is denied, the ineligible bidder may protest the decision in writing with the Head of the Procuring Entity. (Section 55)

(c) Establishes the matters that are subject to review

Complaints may be filed only when a bidder is found ineligible, its bid declared failed or post-disqualified.

CPI Results:

Data from the ten sampled agencies show that there are no records of protest cases filed by ineligible or disqualified bidders when compared to the number of transactions done through competitive bidding. This is despite the presence of clear procedures for the filing of protests. The CPI recommendation of determining the number of cases resolved within the terms of the established legal framework is difficult to obtain.

Conditions Not Met: b,d

(b) Provisions to respond to a request for review at the procuring/agency level with administrative review by another body independent from the procuring agency that has the authority to grant remedies and includes the right for judicial review.

There are sufficient hierarchies for filing procurement related complaints. Decisions of the BAC on protests filed are submitted to the Head of Procuring Entity for review and recommendation. The decisions of the Head of Procuring Entity shall be final up to the limit of his approving authority subject to the provisions of existing laws on the authority of Department Secretaries and the heads of agencies, branches, constitutional commissions or instrumentalities of the government to approve contracts. (Section 56)

The Office of the President serves as the independent administrative body that has authority to grant remedies for procurement related decisions. However, not all procurement related complaints are elevated to the Office of the President.

In a query raised with the OECD DAC on whether the courts can be considered as the review body independent from the procuring entity as stated in this criteria, the reply received states that xxx *If a special administrative court exists, then it would be a viable and acceptable option to a fully administrative process.* xxx

The members of the TWG strongly argue that the courts should be considered as an independent review body since the criteria itself states that administrative review by an independent body “*includes the right for judicial review*”.

Under the implementing rules and regulations of RA 9184, the courts shall have jurisdiction over the final decision of the Head of Procuring Entity. (Section 58.1) The Administrative Code of 1987 states that decisions made by the Head of Procuring Entity shall be subject to judicial review. (Book VII, Chapter 4, Section 25)

(d) Establishes timeframes for issuance of decisions by the procuring agency and the administrative review body.

A prospective bidder filing a complaint has three (3) calendar days from receipt of the Notice to file a written request for reconsideration before the BAC. Seven (7) calendar days after it receives a letter requesting for reconsideration, the BAC shall resolve such request. If its request for reconsideration is denied, the bidder may protest the decision in writing with the Head of the Procuring Entity within seven (7) calendar days from receipt of the resolution. The HOPE shall resolve a protest within seven (7) calendar days from receipt.

The Administrative Code prescribes the time frames for the filing of complaints that are subject to judicial review. (Book VII, Chapter 4 Section 26) However, it is difficult to impose timeframes on the issuance of decisions by the court.

4.2.1.2. Existence of Implementing Regulations and Documentation. (10%)

Indicator 2 garnered a perfect score of 10% due to the existence of implementing regulations and documentation in the legal and regulatory framework.

Table 5. Summary of Scores for Indicator 2

Sub-Indicators	Score	Rating
2(a) – Implementing regulation that provides defined processes and procedures not included in higher level legislation	3	0.60
2(b) – Model tender documents for goods, works and services	3	0.60
2(c) – Procedures for pre-qualification	3	0.30
2(d) – Procedures suitable for contracting for services or other requirements where technical capacity is a key criterion	3	0.30
2(e) – User’s guide or manual for contracting entities	3	0.60
2 (f) – General Conditions of Contracts for public sector contracts covering goods, works and services consistent with national requirements and when applicable, international requirements (20% of Indicator)	3	0.60
Score		10.00%

Sub-indicator 2(a) — Implementing regulation that provide defined processes and procedures not included in higher-level legislation

Score: 3

Conditions Met: all (a,b,c)

(a) They are clear, comprehensive and consolidated as a set of regulations available in a single and accessible place

The implementing rules and regulations are clear, comprehensive and consolidated and accessible and available to any interested party at the GPPB and Phil-GEPS website.

(b) They are updated regularly;

The implementing rules and regulations are updated regularly.

(c) The responsibility for maintenance is defined.

The GPPB is mandated to formulate and amend public procurement policies including revisions to the implementing rules and regulations. It is also authorized to ensure the proper implementation of the procurement law and all other relevant rules and regulations pertaining to public procurement. (Section 63)

Sub-indicator 2(b) — Model tender documents for goods, works, and services

Score: 3

Conditions Met: all (a,b,c)

(a) There are model invitation and tender documents provided for use for a wide range of goods, works and services procured by government agencies

The PBDs discussed earlier are the model invitation and tender documents used by all government agencies in the public bidding of goods and services, infrastructure projects and consulting services.

(b) There is a standard and mandatory set of clauses or templates that are reflective of the legal framework, for use in documents prepared for competitive tendering.

The standard and mandatory clauses or templates incorporate the relevant provisions of the procurement law from the IAEB, Instruction to Bidders, Bid Data Sheet, Instruction to Bidders, General and Specific Conditions of Contract and Sample Forms.

(c) The documents are kept up to date with responsibility for preparation and updating clearly assigned.

The GPPB is mandated to prepare and issue the PBDs (Section 63). These documents are reviewed and updated regularly by the GPPB.

CPI Results:

All ten sampled agencies use the Philippine Bidding Documents as prescribed by the GPPB and in accordance with the above conditions. This confirms the BLI score given by the GPB TWG.

Sub-indicator 2(c) — Procedures for pre-qualification

Score: 3

Conditions Met: all (a,b,c)

(a) Provide for limitations on the content of pre-qualification criteria that are based on the needs of the specific procurement

Under the procurement law and its implementing rules and regulations, pre-qualification is replaced by eligibility check. There are specific eligibility criteria for goods and services, infrastructure projects and consulting services that are based on legal, technical and financial qualifications and are applicable for both local and foreign contractors. These criteria are included in the IAEB and the Philippine Bidding Documents. (Section 23-24)

(b) Specify the use of pass/fail for application of qualification criteria.

A non-discretionary “pass/fail” criterion is used to determine the eligibility qualifications of manufacturers, suppliers, contractors and consultants for goods and services, infrastructure projects and consulting services.

(c) Provide guidance on when to apply a pre-qualification procedure.

The implementing rules and regulations of the procurement law specify when the eligibility check shall be conducted. This is usually done after the issuance of bid documents and before the submission of bids. The procurement manuals provide the detailed procedures on its application.

Sub-indicator 2(d) — Procedures suitable for contracting for services or other requirements in which technical capacity is a key criterion.

Score: 3

Conditions Met: all (a,b)

(a) Conditions under which selection based exclusively on technical capacity is appropriate and when price and quality considerations are appropriate.

As explained earlier, there are two methods of evaluating bids for consulting services: Quality Based Evaluation (QBE) and Quality Cost Based Evaluation (QCBE). QBE considers technical capability in the ranking of consultants. These are applied for complex or highly specialized assignments where the Terms of Reference (TOR) is difficult to define and inputs from consultants are required; and where the assignment can be carried out in substantially different ways, such that the proposals are not comparable. In other cases, QCBE is applied

and this considers both the technical capability and financial or price considerations in the ranking of consultants.

(b) Clear procedures and methodologies for assessment of technical capacity and for combining price and technical capacity under different circumstances.

The technical and financial criteria are assigned numerical weights as indicated in the IAEB, Request for Proposals and the bid documents. The technical proposals are evaluated based on quality of personnel to be assigned (recommended weight: 30-70%), experience and capability of the consultant (recommended weight: 10-30%) and plan of approach and methodology (recommended weight: 20-40%). The relative importance of the three (3) factors will vary with the type of consulting services to be performed. The technical criteria can be further subdivided to appropriately consider the requirements of the project. For QCBE, financial proposals are given weights of fifteen percent (15%) up to a maximum of forty percent (40%). (Section 33) The specific procedures and methodologies for application of both the technical and financial capacity are discussed in the procurement manuals.

4

Sub-indicator 2(e) — User’s guide or manual for contracting entities

Score: 3

Conditions Met: all (a,b,c)

(a) There is a unique procurement manual detailing all procedures for the correct administration of procurement regulations and laws.

There are four generic procurement manuals (GPM) to explain the specific stages of the procurement process depending on the type of procurement. Volume One: Procurement Systems and Organization, Volume Two: Procedures for the Procurement of Goods and Services, Volume Three: Procedures for the Procurement of Infrastructure Projects and Volume Four: Procedures for the Procurement of Consulting Services. Government agencies are mandated to use the procurement manuals. These agencies are allowed to customize and modify the GPM to suit specific requirements subject to the approval of the GPPB.

(b) The manual is updated regularly;

These procurement manuals are updated regularly to incorporate new policies, regulations and GPPB issuances.

(c) The responsibility for maintenance of the manual is clearly established.

The GPPB is mandated to prepare and issue the procurement manuals as well as to ensure the proper implementation of all procurement related laws, rules and regulations. It is responsible for updating the manuals.

CPI Results:

All ten sampled agencies have their own customized procurement manuals that comply with the above conditions. The preparation of the customized procurement manuals for these agencies was done with the assistance of the GPPB and the World Bank.

Sub-indicator 2(f) — General Conditions of Contracts (GCC) for public sector contracts covering goods, works and services consistent with national requirements and, when applicable, international requirements

Score: 3

Conditions Met: all (a,b)

a) There are GCCs for the most common types of contracts and their use is mandatory.

The PBDs for goods and services, infrastructure projects and consulting services have a specific section on general conditions of contract. The GCCs are based on Philippine laws and generally reflect the commercial codes that deal with contracts between parties. The same provisions in the general conditions are discussed in the contract implementation section of the generic procurement manuals. The use of the general conditions is mandatory.

b) The content of the GCC is generally consistent with internationally accepted practice.

The contents of the General Conditions of Contract are generally consistent with internationally accepted practice since these are harmonized with the procedures of the World Bank, Asian Development Bank and the Japan bank for International Cooperation, the three major IFIs supporting the Philippines.

CPI Results:

All ten sampled agencies use the General Conditions of Contract under the Philippine Bidding documents as prescribed by the GPPB, as harmonized with the procedures of the major IFIs and in accordance with the above conditions.

4.2.2. PILLAR II. Institutional Framework and Management Capacity

4.2.2.1. Indicator 3. The public procurement system is mainstreamed and well integrated into the public sector governance system. (9%)

Indicator 3 garnered a score of 6.6.% since the public procurement system is mainstreamed and integrated into the public sector governance system.

Table 6. Summary of Scores for Indicator 3

Sub-Indicators	Score	Rating
3(a) – Procurement planning and associated expenditures are part of the budget formulation process and contribute to multi-year planning	2	0.60
3(b) – Budget law and financial procedures support timely procurement, contract execution, and payment	2	0.40
3(c) – No initiation of procurement actions without existing budget appropriations	3	0.60
3(d) – Systematic completion reports are prepared for certification for budget execution and for reconciliation of delivery with budget programming.	2	0.60
Score		6.60%

Sub-indicator 3(a) — Procurement planning and associated expenditures are part of the budget formulation process and contribute to multiyear planning

Score: 2

Conditions Met:

The majority of procurement plans are prepared based on the annual and multi-year operating plans independently from budget allocation but they are revised to meet the forward budget estimates for the sector or agency allocations before expenses are committed.

Every year, procuring entities prepare the annual operating plans and budget for the succeeding calendar year that embodies the national government and the agency thrusts and the resources needed to produce the key services it delivers to the public. The budget contains the initial list of projects to be procured and the corresponding estimated budgetary requirement. As soon as the national budget is approved by Congress, the procuring entities refine the annual procurement plans based on this approved budget. The annual procurement plans are revised and updated to conform to the approved allocations before expenses are committed. Most agencies, however, do not prepare multi-year plans that are linked to the annual budget process or to the preparation of annual procurement plans.

CPI Results:

All ten sampled agencies prepared their annual operating plans and their annual procurement plans (APP) in accordance with the agency budget estimates. However, only thirty (30) percent of the sampled agencies were able to comply with the threshold that at least seventy five (75) percent of all procurement activities should be within the original APP. This means that the APPs were periodically revised and updated depending on the approved budgetary releases and the actual requirements of the agencies within the year. This can also be explained by the fact that the preparation of the APP was required only in the last three years and agencies are still trying to adjust their procedures to comply with the requirements.

Sub-indicator 3(b) — Budget law and financial procedures support timely procurement contract execution, and payment.

Score: 2

Conditions Met:

Budget and financial procedures are in place to ensure that funds are committed or appropriated within a week from award of contract to cover the full amount of the contract but there are no published business standards for processing of invoices by government agencies that meet obligations for timely payment stated in the contract. Authorization of payments is generally timely.

Budget funds are committed for any type of procurement prior to bidding to ensure that there are sufficient funds. The issuance of the Obligation Slip (OS) and the Certificate of Availability of Funds (CAF) are required prior to the signing of the contract by the Head of the Procuring Entity. There are established practices and norms for the processing of payment invoices for contracts but these are not published and there are no mandated timelines for timely release. Payments are generally authorized within the four week standard for payments of procurement related invoices and billings after approval of invoices or monthly certification of progress payments.

CPI Results:

Only three of the ten sampled agencies were able to pay their suppliers, contractors and consultants within the given threshold of forty five (45) days.

Sub-indicator 3 (c) — No initiation of procurement actions without existing budget appropriations.

Score: 3

Conditions Met: all (a,b)

(a) The law requires certification of availability of funds before solicitation of tenders takes place.

The procurement law requires that the funds are available and programmed for all types of procurement even before the IAEB is posted or advertised or during the pre-procurement conference. The issuance of the Certificate of Availability of Funds is a requirement before contract signing rather than solicitation. The TWG believes that the said practice will ensure the availability of funds prior to contract award and signing. To require the CAF prior to solicitation will only cause delay in the procurement process. In the case of a re-enacted national budget, which is a common occurrence in the Philippines, bidding takes place prior to re-enactment to ensure that the projects are scheduled to commence just in time for the dry season, which is ideal for starting construction projects.

In line with this, the preparation of the National Expenditure Program was affirmed by the OECD-DAC as good procurement practice to ensure the availability of funds. Moreover, the strict application of the requirements of having an approved budget for the contract and the securing of a Certificate of Availability of Funds prior to award has been recognized as enough safeguards to ensure fund allocation prior to award.

(b) There is a system in place (e.g. paper or electronic interface between the financial management and the procurement systems) that ensures enforcement of the law.

The respective Accounting Units and the resident COA Auditor of each agency make sure that the law is enforced.

Sub-indicator 3(d) — Systematic completion reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming.

Score: 2

Conditions Met:

Information on completion of the majority of large contracts is submitted for certification of budget execution and for reconciliation of delivery with budget programming. NEDA is the government agency tasked to monitor large foreign assisted projects. Thus, agencies are mandated to submit information on the status of their respective projects, including those completed for purposes of considering these data in planning the country's budget expenditure. The information is also used for budget execution purposes, particularly for multi-year projects. Infrastructure projects, in particular, are monitored since information on the completion of these large contracts are required prior to the processing of payments at the

Department of Public Works and Highways (DPWH). With this, there is certainly a need to develop the system to integrate the procurement system within the budgetary and financial systems to provide information on the completion of all major contracts.

4.2.2.2. Indicator 4. The country has a functional normative/regulatory body. (8%)

Indicator 4 obtained a score of 7.2 % since there is a functional normative/regulatory body for procurement.

Table 7. Summary of Scores for Indicator 4

Sub-Indicators	Score	Rating
4(a) – The status and basis for the normative/regulatory body is covered in the legislative and regulatory framework	3	0.90
4(b) – The Body has a defined set of responsibilities	3	0.60
4(c) – The body’s organization, funding, staffing, and level of independence and authority (formal power) to exercise its duties should sufficient and consistent with the responsibilities	2	0.60
4(d) – The responsibilities should also provide for separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions	3	0.60
Score		7.20%

Sub-indicator 4(a) — The status and basis for the normative/regulatory body is covered in the legislative and regulatory framework.

Score: 3

Conditions Met: all

There is a normative or regulatory body within the government which is specified in the legal and regulatory framework in unambiguous way without gaps or overlaps.

The normative body is the GPPB created under the procurement law. The GPPB is an inter-agency body composed of twelve (12) cabinet secretaries and one (1) private sector representative. The GPPB is ably chaired by the Secretary of the Department of Budget and Management (DBM) and co-chaired by the Director General of the NEDA, as his alternate. The membership of the GPPB is composed of the following key line agencies: Departments of Public Works and Highways, Finance, Trade and Industry, Health, National Defense, Education, Interior and Local Government, Science and Technology, Transportation and Communications, and Energy, and a representative from the private sector. Its normative and regulatory duties and responsibilities are clearly defined in RA 9184. It has a Technical Support Office (TSO) that supports the performance of its functions.

Sub-indicator 4(b) — The body has a defined set of responsibilities that include but are not limited to the following:

- providing advice to contracting entities;
- drafting amendments to the legislative and regulatory framework and implementing regulations;
- monitoring public procurement;

- providing procurement information;
- managing statistical databases;
- reporting on procurement to other parts of government;
- developing and supporting implementation of initiatives for improvements of the public procurement system; and
- providing implementation tools and documents to support training and capacity development of implementing staff.

Score: 3

Conditions Met: all

GPPB has been given all of the above-mentioned responsibilities. (Section 63.1)

In addition to these responsibilities, the TSO has also developed linkages with other agencies of the government such as the Ombudsman, Presidential Anti-Graft Commission (PAGC) and other oversight agencies to strengthen the enforcement of and compliance to the procurement law. It has also initiated related projects such as training programs and workshops on detecting fraud and corruption and value engineering.

Sub-indicator 4 (c) — The body’s organization, funding, staffing, and level of independence and authority (formal power) to exercise its duties should be sufficient and consistent with the responsibilities.

Score: 2

Conditions Met:

The body is at an adequate level but financing is subject to administrative decisions and can be changed easily.

The organization, staffing, and authority of the GPPB are sufficient and consistent with its responsibilities. However, funding for its operations and that of the TSO is provided by the Procurement Service, a self-sufficient, income-generating agency which is attached to the DBM. Thus, its independence is secured because it does not have to go through the usual process of defending its budget before the Congress. Hence, the GPPB TSO is not left at the mercy of politicians and is not susceptible to political interference.

Sub-indicator 4(d) — The responsibilities should also provide for separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions.

Score: 3

Conditions Met: all

The body is not responsible for direct procurement operations and is free from other possible conflicts.

As discussed in its duties and responsibilities, the GPPB is not responsible for direct procurement operations of any agency and is free from other possible conflicts.

4.2.2.3. Indicator 5. Existence of institutional development capacity. (8%)

Indicator 5 received a score of 3.33 % since there is institutional development capacity but it needs a lot of improvement.

Table 8. Summary of Scores for Indicator 5

Sub-Indicators	Score	Rating
5(a) – The country has a system for collecting and disseminating procurement information, including tender invitations, requests for proposals, and contract award information	1	0.15
5(b) – The country has systems and procedures for collecting and monitoring national procurement statistics	1	0.30
5(c) – A sustainable strategy and training capacity exists to provide training, advice and assistance to develop the capacity of government and private sector participants to understand the rules and regulations and how they should be implemented	2	0.50
5(d) – Quality control standards are disseminated and used to evaluate staff performance and address capacity development issues	1	0.30
Score		3.33%

Sub indicator 5(a) — The country has a system for collecting and disseminating procurement information, including tender invitations, requests for proposals, and contract award information.

Score: 1

Condition Met :

There is a system for collecting and disseminating procurement information but it only provides information on some of the contracts and the system accessibility is limited.

There are currently two systems which are electronically available and capable of collecting procurement information, these are the Philippine Government Electronic Procurement System (PhilG-EPS) and the On-line Monitoring and Evaluation System (OMES).

The PhilG-EPS serves as a central electronic portal providing primary source of information on government procurement. The system allows the collection and dissemination of procurement information through posting of notices or invitations and notices of awards. The system is accessible to all government agencies who are registered users in the system. PhilG-EPS also contains data on savings of agencies, electronic catalogue of supplies available to government agencies, and electronic registry of suppliers.

Present, Phil-GEPS is undergoing systems development on its existing features and is expected to prepare for further enhancement to operate additional features for the next phase which includes, virtual store, electronic payment and electronic bid submission.

Likewise, the GPPB Website has its own system for collecting data through the OMES. The OMES basically contains the electronic version of the APPI and other surveys on

procurement to determine the agencies' compliance an actual savings realized by adhering to the principles of the new procurement law.

Sub-indicator 5(b) — The country has systems and procedures for collecting and monitoring national procurement statistics.

Score: 1

Conditions Met: all (a,b)

(a) There is a system in operation to collect data.

As explained earlier, the Phil-GEPS is the single electronic portal for the collection and dissemination of procurement information and statistics.

(b) The system collects data on procurement by method, duration of different stages of the procurement cycle, awards of contracts, unit prices for most common types of goods and services and other information that allows analysis of trends, levels of participation, efficiency and economy of the purchases and compliance with requirements.

The Phil-GEPS collects data on procurement opportunities that include information on the name of the contract to be bid, the method of procurement, the date, time and place of the deadline for the submission and receipt of eligibility requirements, pre-bid conference, submission and receipt and opening of bids, period of availability of bidding documents and other relevant information that can be found in the Annual Procurement Plans. It also has information on the unit cost of common use items available at the Procurement Service.

CPI Results:

All of the ten sampled agencies are registered with the Phil-GEPS. However, five out of ten sampled agencies submit all their tender invitations and requests for proposals for posting in the Phil-GEPS in accordance with requirements. Three of these agencies submit contract award information in addition to bid opportunities. The other sampled agencies submit information on bid opportunities but not on a regular basis. There is a need to strengthen enforcement of requirement for submission of the above information to Phil-GEPS.

Conditions Not Met: c,d

(c) Reliability of the information is high (verified by audits)

The information available on the Phil-GEPS has not been verified by audit either by the COA, or other relevant government agencies.

(d) Analysis of information is routinely carried out, published and fed back into the system.

There has been no analysis of procurement information carried out so far, hence, such information has not been published and no feed back system has been established.

Sub-indicator 5 (c) — A sustainable strategy and training capacity exists to provide training, advice and assistance to develop the capacity of government and private sector participants to understand the rules and regulations and how they should be implemented.

Score: 2

Conditions Met: a,c

(a) Substantive permanent training programs of suitable quality and content for the needs of the system.

The GPPB is tasked to establish a sustainable training program to professionalize and develop the capacity of government procurement officers and employees, and to ensure the conduct of regular procurement training programs by and for procuring entities under Sections 16.1 and 63.1.e of RA 9184.

Under the Procurement Law, the Bids and Awards Committee (BAC), BAC Secretariat and Procurement Unit are to be created to facilitate the professionalization of the procurement function. Heads of procuring entities shall consider procurement proficiency as one of the factors in the designation of officials to the BAC, BAC Secretariat, Procurement Unit and TWGs. (Section 16.2)

Officials and employees involved in procurement are required to avail of the training conducted by the GPPB and other GPPB accredited bodies. Procuring entities are also required to develop and implement their own in-house training programs in accordance with the guidelines and standards prescribed by the GPPB-TSO and to include provisions for such training in their annual budget proposals submitted to the DBM and Congress.

In line with this policy, the GPPB TSO has developed a series of training programs to enhance the capacity of government procurement officers. These are: (a) the Basic Training on RA 9184 and the Use of PBDs for LGUs, NGAs, GOCCs/GFIs and SUCs; (b) the Refresher Course for Trainors on RA 9184; (c) Trainors' Training on the Generic Procurement Manuals, (d) the Specialized Training Courses on Value Engineering and Fraud Detection for selected participants involved in such activities.

The Basic Training on RA 9184, Use of PBDs and the GPM for local government units are conducted by the regional Composite Team of Trainors consist of Procurement Management Officers and representatives from the DBM, COA, DILG, and the Philippine League of Local Budget Officers (PHILLBO). On the other hand, trainors from the SUCs conduct trainings for national government agencies, government owned and controlled corporations and government financing institutions.

The Refresher Courses are conducted by the GPPB-TSO, while specialized courses were conducted by consultants who are experts on the specific fields identified for capacity building during the CPAR.

The GPPB will also be implementing the professionalization program for procurement management officers in accordance with its mandate. At present, training modules are being developed for this purpose. The professionalization program is actually a is type of certification program that intends toraise the level of efficiency and effectiveness of procurement practitioners in the public sector. It involves the development of detailed

modular syllabus based on the modules identified by a prior study made on the Philippine Procurement System.

(c) Advisory service or help desk to absolve questions by procuring entities, suppliers, contractors and the public.

The GPPB TSO has a Help Desk that responds to queries raised by procuring entities, suppliers, contractors and the public on any procurement related concern or issue. This is accessible through the web, phone calls, walk-in queries or letters.

CPI Results:

Only three of the ten sampled agencies were able to send at least sixty (60) percent of their procurement staff to undergo training conducted by the GPPB but all were able to send some of their staff for training. In addition, three agencies have developed their own training programs for procurement personnel up to the regional and district levels.

Condition Not Met: b

(b) Evaluation and periodic adjustment based on feedback and need.

The Basic Training Programs are regularly evaluated and feedback on the contents, delivery and effectivity of the training programs are obtained. Subsequent adjustment in the training modules are made to respond to such needs. Moreover, the regular Refresher Courses for Trainors are meant to address the results of the evaluation and feedback. However, the evaluation and feedback mechanism which shall monitor the effectiveness of the GPPB trainings is currently being developed through a technical assistance from the ADB.

Sub-indicator 5(d) — Quality control standards are disseminated and used to evaluate staff performance and address capacity development issues.

Score: 1

Condition Met:

The procurement system has quality standards but there is limited monitoring or use of the standards for staff performance evaluation.

There are quality standards for processing procurement actions (such as specific timelines to reply to inquiries, to prepare tender documents, to post the IAEB, to open and receive bids, evaluate bids, post-qualify suppliers, contractors and consultants and to award the contract) and all procurement officials are expected to comply with these timelines and standards. However, these standards are not monitored nor used for staff performance evaluation on a government wide basis. In some agencies, such as the DPWH and the Department of Health (DOH), quality standards for staff performance are monitored. The proposed professionalization program is expected to clearly define these quality standards in order to serve as basis for monitoring compliance and evaluating performance of the procurement staff

4.2.3. Pillar III. Procurement Operations and Market Practices

4.2.3.1. Indicator 6. The country’s procurement operations and practices are efficient. (10%)

Indicator 6 got a score of 4.17 % since there areas in procurement operations and practices that need further improvements.

The CPI Results indicated that all ten sampled agencies complied with the prescribed timelines for bid opening and contract award for at least seventy five (75) percent of publicly bid contracts.

Table 9. Summary of Scores for Indicator 6

Sub-Indicators	Score	Rating
6(a) – The level of procurement competence among government officials within the entity is consistent with their procurement responsibilities	1	0.25
6(b) – The procurement training and information programs for government officials and for private sector participants are consistent with demand	2	0.50
6(c) – There are established norms for the safekeeping of records and documents related to transactions and contract management	0	0.00
6(d) – There are provisions for delegating authority to others who have the capacity to exercise responsibilities	2	0.50
Score		4.17%

Sub-indicator 6(a) — The level of procurement competence among government officials within the entity is consistent with their procurement responsibilities.

Score: 1

Condition Met: a

(a) There are defined skill and knowledge profiles for specialized procurement jobs.

Volume One of the Generic Procurement Manuals on Procurement Systems and Organizations defines the qualification requirements of members of the Bids and Awards Committee (BAC), TWG and the BAC Secretariat. It also defines the duties and responsibilities of these procurement officials where the skills and knowledge requirements are spelled out. In addition, some agencies have specific job descriptions for their procurement staff. Volume One, also, prescribes the guidelines for the creation of Procurement Units depending on the number and amount of procurement transactions handled.

As part of the Government Rationalization Plan, the Organization, Position Classification and Compensation Bureau (OPCCB) of the Department of Budget and Management is in the process of preparing the position classification and qualification standards for procurement management officers which will be implemented for all government agencies.

The Philippine government is now currently undertaking the development of a professionalization program for the public sector. It is expected to be completed by 2008. Once completed, the professionalization program will address requirements on procurement competency standards (defining skills and knowledge requirements for specialized

procurement positions), matching of skills against the standards, ensuring that staff undertaking the procurement functions on an ad-hoc basis will have sufficient knowledge on procurement laws and procedures. The expected components of the program will include the design of career path models for procurement officers, identification of knowledge, skills, experience requirements and standards to perform the work, design of training curricula and courses to address the required standards, the development of competency measurements or criteria, the conduct of competency assessment to verify if the individual meets the work standards and the development of a system for certification.

CPI Results:

Seven out of ten sampled agencies have formulated specific job descriptions for different procurement personnel in their organization.

Conditions Not Met: b,c

(b) There is systematic matching of skills against requirements for competitive recruitment.

There is no systematic matching of skills against requirements for competitive recruitment.

(c) Staff required to undertake procurement activities on an ad hoc basis have the knowledge they need to undertake the activity or have access to professional staff that can provide this knowledge.

While GPPB has training programs for procurement staff, not all government agencies including local government units have availed of this training. The GPPB Help Desk serves as the source of information that staff may utilize to provide procurement knowledge.

Sub-indicator 6(b) — The procurement training and information programs for government officials and for private sector participants are consistent with demand.

Score: 2

Conditions Met: a,c

(a) Training programs' design is based on a skills gap inventory to match the needs of the system.

All the training programs conducted by GPPB TSO as discussed in sub-indicator 5(c) are designed based on a skills gap inventory and training needs analysis.

(c) The waiting time to get into a course (for public or private sector participants) is reasonable, say one or two terms.

There are regular schedules for the training programs being offered by GPPB TSO and procurement staff can readily avail of these. The GPPB TSO in coordination with the Development Academy of the Philippines (DAP) can also arrange for the conduct of training programs exclusively for procurement staff of agencies.

Conditions Not Met: b

(b) Information and training programs on public procurement for private sector are offered regularly either by the government or by private institutions.

There are no regular training programs on public procurement for the private sector, although civil society organizations such as Procurement Watch, Philippine Constructors Association, Council of the Laity offer training for their members who serve as Observers in the procurement process.

Sub-indicator 6(c) — There are established norms for the safekeeping of records and documents related to transactions and contract management

Score: 0

Conditions Not Met: all (a,b,c,d)

(a) The legal/regulatory framework establishes a list of the procurement records that must be kept at the operational level and what is available for public inspection, including conditions for access.

The procurement law does not identify any of procurement records that must be kept for operations or identify what is available for inspection.

(b) The records should include: public notices of bidding opportunities, bidding documents and addenda, bid opening records, bid evaluation reports, formal appeals by bidders and outcomes, final signed contract documents and addenda and amendments, claims and dispute resolutions, final payments, disbursement data (as required by the country's financial management system).

Every procuring entity has the above records but these are not integrated or consolidated to form part of the procurement records. Most procurement related records are available with the BAC Secretariat, the contract related records are with the project management office or end-user unit, the disbursement and payment records are with the finance or accounting office.

(c) There is a document retention policy that is compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and with the audit cycles.

There is no document retention policy within the law that is compatible with the statute of limitation for investigating and prosecuting cases of fraud. There are no organized records keeping systems for the whole of government. Only few agencies have record keeping system, such as, the NEDA (digital archiving), Securities and Exchange Commission (SEC) and DPWH (microfilm).

(d) There are established security protocols to protect records either physical or electronic.

There are no established protocols to protect physical or electronic records.

Sub-indicator 6(d) — There are provisions for delegating authority to others who have the capacity to exercise responsibilities.

Score: 2

Conditions Met: b

(b) Delegation is regulated by law.

The law establishes the responsibility for delegation of authority and accountability with the Head of the Procuring Entity tasked with issuing the appropriate delegation directive for his agency. There is no information available on compliance for all government agencies. Some government agencies observe delegation of approving authority depending on the threshold or amount of contract.

CPI Results:

All ten sampled agencies have specific agency orders delegating approval and signing authorities for procurement related transactions depending on contract amount. Eight out of these ten agencies have between three to five layers of authority for actions, decisions or approvals from the head of the procuring entity within the procurement process.

Conditions Not Met: a,c

(a) Delegation of decision making authority is decentralized to the lowest competent levels consistent with the risks associated and the monetary sums involved.

There is no information available to determine if delegation is decentralized to the lowest levels. However, some central departments issue delegation orders up to the lowest level.

(c) Accountability for decisions is precisely defined.

In some agencies, accountability for decisions is defined but there is no way of finding the extent of compliance to this.

4.2.3.2. Indicator 7. Functionality of the public procurement market. (10%)

Indicator 7 was given a score of 4.67 % since there areas in the functionality of the public procurement system that need further improvements.

Table 10. Summary of Scores for Indicator 7

Sub-Indicators	Score	Rating
7(a) – There are effective mechanisms for partnerships between the public and private sector	2	0.80
7(b) – Private sector institutions are well organized and able to facilitate access to the market	1	0.30
7(c) – There are no major systemic constraints (e.g. inadequate access to credit, contracting practices, etc.) inhibiting the private sector’s capacity to access the procurement market	1	0.30
Score		4.67%

Sub-indicator 7(a) — There are effective mechanisms for partnerships between the public and private sector.

Score: 2

Conditions Met: a,c

(a) Government encourages open dialogue with the private sector and has several established and formal mechanisms for open dialogue through associations or other means.

Private sector participation in the procurement process is encouraged in several ways:

Representatives from professional organizations and non-government organizations serve as observers in the Bids and Awards Committee (BAC) of government agencies to ensure transparency in the procurement process. These include among others: the Philippine Chamber of Commerce and Industry (PCCI) for goods, the Philippine Constructors Association (PCA), National Constructors Association of the Philippines, Inc. (NACAP); and Philippine Institute of Civil Engineers (PICE) for infrastructure projects, and the PICE, Philippine Institute of Certified Public Accountants (PICPA), and COFILCO for consulting services. The PWI, TAN, CBCP, Makati Business Club (MBC), and National Citizens Movement for Free Election (NAMFREL) are some of the more active non-governmental organizations who send representatives as observers.

There are private sector representatives who sit in the GPPB and in its TWG to provide private sector inputs in discussions on procurement policies, procedures and concerns.

The GPPB recognizes an umbrella organization of Filipino consultants as the representative of all Filipino consultants dealing and consulting with this organization on matters relative to the consulting industry in the country. COFILCO prepares and certify a list of fields where there are available Filipino consultants who can provide consulting services. Their list also includes the standards of competence required for each field and further certifies that those in their list passed the said standards.

There are regular workshops and meeting conducted by the GPPB TSO and selected government agencies with the private professional and non-governmental organizations to discuss issues and concerns related to procurement. This is done in coordination with CPAR activities.

(c) The government encourages public/private partnerships and the mechanisms are well established in the legal framework to make possible such arrangements

The participation and qualifications of observers, and their responsibilities in the procurement process are embodied in Section 13, while Section 64 of the law states the appointment of a private sector representative to the GPPB. In addition, the accreditation of the umbrella organization for consultants can be found in Section 24.6.1 of RA 9184.

The GPPB was also instrumental in organizing the Alliance of Civil Society Observers which are involved in the procurement process. Its members are the Transparency Accountability Network (TAN), Procurement Watch Inc. (PWI), Government Watch (G-Watch), Catholic

Bishops Conference of the Philippines (CBCP). These organizations were also helpful in mobilizing private sector participation in the passage of the procurement law and in promoting private sector involvement as NGO observers in the procurement process.

Conditions Not Met: b

(b) The government has programs to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace

The government has provided training on procurement for observers as part of the capacity building program for civil society organizations. However, the number of private sector representatives participating as observers is limited particularly in local government units. The Department of Trade and Industry (DTI) promotes training programs on entrepreneurship for small medium businesses but this is not focused on procurement. Only the Department of Education (DEPED) and the Department of Health (DOH) have conducted procurement training for its suppliers and contractors. There are no known public/private partnership arrangements such as concession contracts or private public joint ventures for the provision of goods or services.

Sub-indicator 7(b) — Private sector institutions are well organized and able to facilitate access to the market.

Score: 1

Condition Met:

The private sector is relatively weak and/or competition is limited owing to monopolistic or oligopolistic features in important segments of the market

Market forces generally control private participation in the public procurement process, although there is growing perception that it is difficult to deal with government due to its long and tedious processes rather than the monopolistic and oligopolistic features of some of its sectors. In monitoring the number of bidders submitting bids in competitive bidding, many agencies have difficulty in meeting the threshold of five bidders. In a study conducted on bidding for foreign assisted infrastructure projects, one of the main observations is that many contractors submit Letters of Intent to participate but very few actually submit bids. This may be attributed to the difficulties encountered in complying with bidding requirements particularly for small contractors.

Moreover, there are no organized efforts to address the organizational capacity of the small and medium enterprises (SMEs). Several small projects at the regional, district and local government levels, are subjected to political interference of local officials. There is, however, access to information and other services to promote their participation through the Phil-GEPS.

CPI Results:

In measuring the level of competition and level of confidence of the private sector in the bidding process under the APPI, information on the average number of bidders for each bid

process was obtained. A threshold of five (5) bidders or more for at least seventy five (75) percent of publicly bid contracts was set. Only one of the sampled agencies was able to meet this threshold meaning that most sampled agencies had an average of three bidders submitting bids for each process. This confirms the BLI score given by the GPPB TWG.

Sub-indicator 7 (c) — There are no major systemic constraints (e.g. inadequate access to credit, contracting practices, etc.) inhibiting the private sector’s capacity to access the procurement market.

Score: 1

Condition Met:

There are multiple constraints inhibiting private sector access to the public procurement market which often affect competition levels even for small contracts.

Among the multiple constraints identified by the Assessment Team which affect competition levels are: tedious payment processes, intervention of politicians in the procurement process, cumbersome procurement requirements, difficulties in securing licenses and permits, and lack of access to credit. This is validated by a survey conducted by the Makati Business Club. Moreover, in a survey conducted by the Social Weather Station during the last quarter of 2006, the following factors have been identified by the general public as probable reasons for delay in the implementation of government projects: corruption of a government official (55%), lack of funds (55%), corruption of the contractor (43%), lack of coordination of government officials with contractors (29%) and overcomplicated government regulations or red tape (16%).

The TWG is of the view that one of the constraints that inhibits private sector participation is the interference of politicians in the procurement process, especially in the local level.. Some politicians use their power and influence to pressure members of the BAC into awarding contracts either to their favored contractors or suppliers or to their own dummy companies, or to get a “commission” from the contract price. The prevalence of patronage in the Philippine political culture hampers the promotion of transparency through sound procurement rules and regulations.

4.2.3.4. Indicator 8. Existence of contract administration and dispute resolution provisions. (5%)

Indicator 8 received a score of 3.75 % since there are contract administration and dispute resolution provisions in the procurement law.

Table 11. Summary of Scores for Indicator 8

Sub-Indicators	Score	Rating
8(a) – Procedures are clearly defined for undertaking contract administration responsibilities that include inspection and acceptance procedures, quality control procedures, and methods to review and issue contract amendments in a timely manner	2	1.00
8(b) – Contracts include dispute resolution procedures that provide for an efficient and fair process to resolve disputes arising during the performance of the contract	3	0.75
8(c) – Procedures exist to enforce the outcome of the dispute resolution process	2	0.50

Score	3.75%
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Sub-indicator 8(a) — Procedures are clearly defined for undertaking contract administration responsibilities that include inspection and acceptance procedures, quality control procedures, and methods to review and issue contract amendments in a timely manner.

Score: 2

Conditions Met: a,b,c,d

(a) Procedures for acceptance of final products and for issuance of contract amendments are part of the legal/regulatory framework or are incorporated as standard clauses in contracts.

The following procedures for final acceptance, inspections, tests, quality control procedures and issuance of contract amendments are found in the General Conditions of Contract and in the Guidelines on Contract Implementation for each type of procurement:

1. Goods and Services – Clause 14 on Inspections and Tests and Clause 27 on Contract Amendment of the General Conditions of Contract; Procedures on Inspections and Tests and Amendment to Order in the Generic Procurement Manual Volume Two; and Annex D of the implementing rules of RA 9184
2. Infrastructure Projects – Clauses 33-37 on Inspections and Correcting Defects and Clause 42 on Variation Orders of the General Conditions of Contract; Procedures on Inspection and Tests, Use of Accredited Testing Laboratories, Measurement of Works and Variation Orders in the Generic Procurement Manual Volume Three and Annex E of the implementing rules of RA 9284.
3. Consulting Services – Clause 43, Standards of Performance, Clause 46, Specifications and Designs, Clause 51, Accounting Inspection and Auditing of the General Conditions of Contract and

(b) Clauses are generally consistent with internationally accepted practices (see IFI standard contracts for good practice examples).

The standard clauses in the General Conditions of Contract for Tests, Inspection and Contract Amendments are based on internationally accepted standards and largely harmonized with those of the World Bank (WB), Asian Development Bank (ADB) and the Japan Bank for International Cooperation (JBIC).

(c) Quality control (QC) procedures for goods are well defined in the model contracts/documents or in the regulations. QC is carried out by competent officers, inspection firms or specialized testing facilities.

Quality control procedures for different types of goods (e.g. books, drugs, and computers) are normally specified in the contract documents. The general procedures for quality control are those stipulated in Inspections and Tests under the General Conditions of Contract. When necessary, quality control is carried out as specified either through the agencies' testing facilities or by other competent firms identified for this purpose.

(d) Supervision of civil works is carried out by independent engineering firms or qualified government supervisors and inspectors.

In the Department of Public Works and Highways (DPWH), construction supervision for foreign assisted infrastructure projects is normally done by independent engineering firms in coordination with government supervisors and inspectors. For locally funded infrastructure projects, construction supervision is undertaken by qualified government supervisors and inspectors.

Conditions Not Met: e

(e) Final payments are processed promptly as stipulated in the contract.

In general, the release of final payment goes through several procedures (final inspection and acceptance, payment of warranty securities) and takes time before release. The processing of requirements depends highly on compliance with all requirements for final payments and the availability of funds.

Sub-indicator 8(b)—Contracts include dispute resolution procedures that provide for an efficient and fair process to resolve disputes arising during the performance of the contract.

Score: 3

Conditions Met: all (a,b,c,d,e)

(a) There is an Arbitration law in the country.

All disputes arising from the implementation of contracts covered by RA 9184 are submitted to arbitration in accordance with Republic Act No. 9285, otherwise known as the Alternative Dispute Resolution Act. For construction disputes, Executive Order 1008, creating an Arbitration Machinery for Construction Disputes, is the prevailing law. Likewise, Section 59 of RA 9184 also states that the parties may agree in writing to other alternative modes of dispute resolution. The contracts has standard clauses pertaining to settlement of disputes through arbitration.

(b) The law is consistent with generally accepted practices for neutrality of arbitrators, due process, expediency and enforceability.

The RA 9285 is consistent with generally accepted practices for neutrality of arbitrators, due process, expediency and enforceability.

(c) The country accepts as a matter of course international arbitration for international competitive bidding.

The government allows international arbitration for contracts involving international competitive bidding, provided that such adherence to international arbitration is clearly stated in the conditions of the loan agreement and contract documents.

(d) Provisions for Alternative Dispute Resolution (ADR) are standard in contracts.

Alternative Dispute Resolution provisions are standards provided under RA 9285 and may be resorted to upon mutual agreement of parties.

(e) ADR provisions conform to the international standard wording (may refer to IFI standard documents for sample good international practice)

Alternative Dispute Resolution provisions conform to international standard wording.

Sub-indicator 8 (c) – Procedures exist to enforce the outcome of the dispute resolution process.

Score: 2

Conditions Met: a,b

(a) The country is a member of the New York Convention on enforcement of arbitral awards.

The Philippines is a member of the New York Convention on enforcement of arbitral awards.

(b) The country has procedures to enable the winner in a dispute to seek enforcement of the outcome by going to the courts.

Section 60 of RA 9184 provides that arbitral awards shall be appealable by way of Petition for Review to the Court of Appeals , specially on questions of law. Arbitration as a dispute resolution mechanism is based on the mutual agreement of parties. It is assumed that both parties will honor the decision rendered by the duly appointed arbitrator. However, the party may still go to court for enforcement of award, if necessary.

Conditions Not Met: c

(c) The country has a process to monitor this area of contract administration and to address performance issues.

Monitoring of outcomes of the dispute resolution cases is rather weak. There are no defined procedures to monitor this area.

4.2.4. PILLAR IV. Integrity and Transparency of the Public Procurement System (8%)

4.2.4.1. Indicator 9. The country has effective control and audit systems. (8%)

Indicator 9 received a score of 4.13 % since the control and audit systems need further improvement.

Table 12. Summary of Scores for Indicator 9

Sub-Indicators	Score	Rating
9(a) – A legal framework, organization, policy, and procedures for internal and external control and audit of public procurement operations are in place to provide a functioning control framework	2	0.50
9(b) – Enforcement and follow-up on findings and recommendations of the control framework provide an environment that fosters compliance	2	0.40

9(c) – The internal control system provides timely information on compliance to enable management action	1	0.20
9(d) – The internal control systems are sufficiently defined to allow performance audits to be conducted	2	0.20
9(e) – Auditors are sufficiently informed about procurement requirements and control systems to conduct quality audits that contribute to compliance	1	0.25
Score		4.13%

Sub-indicator 9(a) — A legal framework, organization, policy, and procedures for internal and external control and audit of public procurement operations are in place to provide a functioning control framework.

Score: 2

Conditions Met: a,b,c

(a) Adequate independent control and audit mechanisms and institutions to oversee the procurement function.

The Commission on Audit created under the 1987 Philippine Constitution has the power to audit all accounts pertaining to government funds including procurement related transactions. The Department of Budget and Management has issued Administrative Order 70 (AO 70) on March 2004 to strengthen the internal control systems of agencies through the creation of internal audit services in all government agencies.

(b) Implementation of internal control mechanisms in individual agencies with clearly defined procedures.

There are existing internal control and management procedures for processing of procurement actions that provide for checks and balances within an agency. The Government Auditing Code and the Government Accounting and Auditing Manual discuss the procedures for internal control and management of all financial transactions. AO 70, likewise, provides procedures and standards in the conduct of internal audit activities within government agencies.

(c) Proper balance between timely and efficient decision making and adequate risk mitigation.

There is proper balance between timely and efficient decision making and adequate risk mitigation.

CPI Results:

Seven out of ten sampled agencies have established internal control units to oversee the procurement functions. This confirms the BLI score given by the GPPB TWG.

Conditions Not Met: d

(d) Specific periodic risk assessment and controls tailored to risk management.

Periodic risk assessment and controls are not carried out as part of the system.

Sub-indicator 9(b) — Enforcement and follow-up on findings and recommendations of the control framework provide an environment that fosters compliance.

Score: 2

Conditions Met:

Audits are carried out annually but response to or implementation of the auditors' recommendations takes up to a year.

COA prepares its Audit Report of agencies annually, but response to the auditors' recommendations takes up to a year or more to be enforced. Normally, the findings of audit reports which have not been properly responded or ignored are carried over to the next audit period. Note however that there has been a decline in the incidence of inaction on audit reports.

Sub-indicator 9(c) — The internal control system provides timely information on compliance to enable management action.

Score: 1

Condition Met: a

(a) There are written standards for the internal control unit to convey issues to management depending on the urgency of the matter.

As discussed earlier, the Government Auditing Code of the Philippines (Presidential Decree 1445) issued in June 1978, the Government Accounting and Auditing Manual issued through COA Circular 91-368 in January 1992 and AO 70 provide for the written standards for internal control to provide timely information on audit findings requiring immediate management action.

Conditions Not Met: b,c

(b) There is established regular periodic reporting to management throughout the year.

There are no established periods for reporting to management on internal audit and control findings. This is usually done, however, by complying agencies on an annual basis.

(c) The established periodicity and written standards are complied with.

There is no existing mechanism to monitor whether agencies comply with the standards and procedures for internal audit and control. Hence, there is no way of determining if the standards are complied with on a government wide basis. However, the Presidential Anti-Graft Commission (PAGC) actively monitors the activities of selected agencies with regards to internal audit and control.

Sub-indicator 9(d) — The internal control systems are sufficiently defined to allow performance audits to be conducted.

Score: 2

Conditions Met:

There are internal control procedures to allow performance audits to be conducted but there are omissions or practices that need some improvement, among them the development of an internal audit and control manual for use by different government agencies.

Presidential Anti-Graft Commission (PAGC) is still in the process of institutionalizing a functional internal control system. As of January 2007, 56% of NGAs, 52% of SUC, 73% of GOCC, and 35% of LGUs in the provinces and cities have created internal control units in their agencies.

Sub-indicator 9(e) — Auditors are sufficiently informed about procurement requirements and control systems to conduct quality audits that contribute to compliance.

Score: 1

Conditions Met:

There is a requirement that auditors should have general knowledge of procurement principles, operations, laws, and regulations when conducting procurement audit but they are not generally supported by specialists in procurement.

Although COA is a member of the GPPB Composite Team of Trainors, a lot of auditors particularly those in Visayas, Mindanao and in the local government units need training on procurement audits and procurement laws, regulations and procedures. Procurement specialist from the GPPB-TSO may provide guidance to auditors. The professionalization program of GPPB is expected to include COA auditors as participants.

4.2.4.2. Indicator 10. Efficiency of appeals mechanism. (5%)

Indicator 10 received a score of 3.00 % since the appeals mechanism needs further improvement.

Table 13. Summary of Scores for Indicator 10

Sub-Indicators	Score	Rating
10(a) – Decisions are deliberated on the basis of available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law	3	0.45
10(b) – The complaint review system has the capacity to handle complaints efficiently and a means to enforce the remedy imposed	3	0.90
10(c) – The system operates in a fair manner, with outcomes of decisions balanced and justified on the basis of available information	2	0.30
10(d) – Decisions are published and made available to all interested parties and to the public	1	0.15
10(e) – The system ensures that the complaint review body has full authority and independence for resolution of complaints	0	0.00
Score		3.00%

Sub-indicator 10(a) — Decisions are deliberated on the basis of available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law.

Score: 3

Conditions Met: all (a,b,c)

(a) Decisions are rendered on the basis of available evidence submitted by the parties to a specified body that has the authority to issue a final decision that is binding unless referred to an appeals body.

Motions for Reconsideration with respect to the procurement process may first be filed with the Bids and Awards Committee (BAC) and when such is denied, the bidder may file a protest in writing with the HOPE as provided for under Section 55.1 of RA 9184. Protests are resolved strictly on the basis of records available with the BAC. The HOPE has the authority to resolve the protest and render a final decision up to the limit of his contract approving authority. (Section 56 of IRR-A of RA 9184)

(b) An appeals body exists which has the authority to review decisions of the specified complaints body and issue final enforceable decisions.

The first appeal body that may review decisions and approve or disapprove Motions for Reconsideration (MR) issued by the BAC is the Head of the Procuring Entity (HOPE). When an aggrieved bidder want to further appeal the decisions of the HOPE, he has two other alternatives.

The Office of the President serves as the independent administrative body that has authority to grant remedies for procurement related decisions. The Regional Trial Courts has jurisdiction over the final decision of the HOPE. (Section 58.1) The Administrative Code of 1987 further states that decisions made by the HOPE shall be subject to judicial review. (Book VII, Chapter 4, Section 25)

(c) There are times specified for the submission and review of complaints and issuing of decisions that do not unduly delay the procurement process.

A prospective bidder filing a complaint has three (3) calendar days from receipt of the Notice to file a written request for reconsideration before the BAC. Seven (7) calendar days after it receives a letter requesting for reconsideration, the BAC shall resolve such request. If its request for reconsideration is denied, the bidder may protest the decision in writing with the HOPE within seven (7) calendar days from receipt of the resolution. The HOPE shall resolve a protest within seven (7) calendar days from receipt. The Administrative Code prescribes the time frames for submission of records for judicial review. (Chapter4 Section 26)

Sub-indicator 10(b) — The complaint review system has the capacity to handle complaints efficiently and a means to enforce the remedy imposed.

Score: 3

Conditions Met:

The complaint review system has precise and reasonable conditions and timeframes for decision by the complaint review system and clear enforcement authority and mechanisms.

As discussed earlier, the complaint review system has specific procedures, reasonable conditions and timeframes for decisions by the complaint review system. The enforcement authority and mechanisms are clearly established under Section 55-58 of RA 9184.

CPI Results:

Seven out of ten sampled agencies have formal systems and procedures to hear and document administrative cases and all of the agencies follow the prescribed procedures and timelines for the receipt and resolution of complaints and protests filed.

Sub-indicator 10 (c) — The system operates in a fair manner, with outcomes of decisions balanced and justified on the basis of available information.

Score: 2

Conditions Met: (a,b,c)**a) based on information relevant to the case.**

Procedures governing the decision making process are based on information and records available with the BAC and relevant to the case.

b) balanced and unbiased in consideration of the relevant information

Procedures are balanced and unbiased in consideration of relevant information.

c) can be subject to higher level review

Procedures governing the decision making process can be subject to higher level review as discussed earlier.

CPI Results:

All ten sampled agencies resolve whatever protests are filed with their agency based strictly on the records of the BAC.

Condition Not Met: d**d) result in remedies that are relevant to correcting the implementation of the process or procedures.**

Available remedies focus on sanctions and do not provide corrective actions.

Sub-indicator 10(d) — Decisions are published and made available to all interested parties and to the public

Score: 1

Condition Met:

Publication of decisions on disputes resolved by the procuring entity is not mandatory and publication is left to the discretion of the review bodies making access difficult.

Sub-indicator 10(e) — The system ensures that the complaint review body has full authority and independence for resolution of complaints.

Score: 0

Conditions Met (none):

The score obtained for this sub-indicator is 0 because the existing courts in the Philippines are not special administrative courts, which may be acceptable to the OECD-DAC for this purpose. The OECD DAC explained the difference between countries which use the requirement of exhausting available administrative remedies before going to courts, and those countries which have special administrative courts that has narrower mandate which can support the appeals process in a timely manner, thereby falling within the contemplation of the said criteria. The latter practice is the one contemplated in the criteria because it addresses the time element required for existing complaints mechanism.

4.2.4.3. Indicator 11. Degree of access to information. (4%)

Indicator 11 obtained a score of 2.67 % since the degree of access to information needs further improvement.

Table 14. Summary of Scores for Indicator 11

Sub-Indicators	Score	Rating
11(a) – Information is published and distributed through available media with support from information technology when feasible	2	2.00
Score		2.67%

Sub-indicator 11(a) — Information is published and distributed through available media with support from information technology when feasible.

Score: 2

Condition Met:

Information is posted in media not readily and widely accessible or not user friendly for the public at large; or is difficult to understand to the average user; or essential information is lacking. However, the system does not protect the disclosure of proprietary, commercial, personal or financial information of a commercial and sensitive nature.

The Phil-GEPS is the single electronic portal providing information on government procurement. This is readily and widely accessible to all interested parties free of charge. As discussed earlier, it provides information on policies, guidelines, issuance on procurement as well information on bid opportunities posted by registered government agencies. However, not all agencies of the government submit information to the Phil-GEPS or avail of its services, particularly on the posting of information on contract award. A survey conducted by the Social Weather Station (SWS) revealed that only thirteen percent (13%) of the general

public were aware of the procurement law. Thus, there is a need to further disseminate procurement information to a larger base of the population and to utilize communication channels that will reach the target audience. The information system does not include provisions to protect the disclosure of proprietary, commercial, personal or financial information of a confidential or sensitive nature. The electronic bidding component, where many of these characteristics will be featured is still under development.

4.2.4.4. Indicator 12. The country has ethics and anticorruption measures in place. (8%)

Indicator 12 obtained a score of 6.69 % since there are sufficient ethics and anti-corruption measures in place.

Table 15. Summary of Scores for Indicator 12

Sub-Indicators	Score	Rating
12(a) – The legal and regulatory framework for procurement, including tender and contract documents, includes provisions addressing corruption, fraud, conflict of interest, and unethical behaviour and sets out (either directly or by reference to other laws) the actions that can be taken with regard to such behavior	3	0.60
12(b) – The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in fraudulent or corrupt practices	3	0.60
12(c) – Evidence of enforcement of rulings and penalties exists	2	0.20
12(d) – Special measures exist to prevent and detect fraud and corruption in public procurement	2	0.30
12(e) – Stakeholders (private sector, civil society, and ultimate beneficiaries of procurement/end-users) support the creation of a procurement market known for its integrity and ethical behaviors	2	0.20
12(f) – The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behavior	2	0.31
12(g) – Existence of Codes of Conduct/Codes of Ethics for participants that are involved in aspects of the public financial management systems that also provide for disclosure for those in decision making positions	3	0.30
Score		6.69%

Sub-indicator 12(a) — The legal and regulatory framework for procurement including tender and contract documents, includes provisions addressing corruption, fraud, conflict of interest, and unethical behaviour and sets out (either directly or by reference to other laws) the actions that can be taken with regard to such behavior.

Score: 3

Condition Met: all

The Philippine Bidding Documents contain adequate provisions on fraud and corruption in the Instruction to Bidders and the General Conditions of Contract (for goods and services).

Sub-indicator 12(b) The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in fraudulent or corrupt practices.

Score: 3

Condition Met: all

The procurement law (RA 9184) clearly defines the coverage of fraud and corruption and has very specific provisions on responsibilities of public officials and private entities; as well as offenses, penalties, civil liability and administrative sanctions that may be imposed on erring public officials or suppliers, contractors and consultants (Sections 67-71). The Procurement Manuals discuss the conditions when conflict of interest, intervention of active public officials and other related offenses may arise along with the corresponding penalties. The Anti-Graft and Corrupt Practice Law (RA 3019) prohibits the intervention of former public officials for a reasonable period of time after leaving office in procurement matters in ways that benefit them, their relatives, and business or political associates financially or otherwise.

Sub-indicator 12 (c) — Evidence of enforcement of rulings and penalties exists.

Score: 2

Condition Met:

There is evidence available on a few cases where laws on corrupt practices have been enforced.

There is evidence of increasing numbers of procurement related cases that have been resolved. The Office of the President through the Presidential Anti-Graft Commission (PAGC) has suspended and/or dismissed six public officials for procurement related offenses based on its records. There is no organized information on the number of graft related cases filed, prosecuted and resolved by the Ombudsman or the courts, hence, it is difficult to get the actual ratio.

Some members of the TWG, however, do not believe that evidence of prosecution may be a reliable indicator of enforcement since harassment cases may be filed against procurement officials by losing bidders.

Sub-indicator 12(d) — Special measures exist to prevent and detect fraud and corruption in public procurement.

Score: 2

Condition Met:

The government has in place an anticorruption program but it requires better coordination or authority at a higher level to be effective. No special measures exist for public procurement.

Different agencies have their respective anti-corruption programs, but these efforts were not coordinated at the central level for greater impact. Each government agency is required to submit an Integrity Development Action Plan (IDAP) to identify specific measures to avoid graft and corruption which includes detection and prevention activities. PAGC is responsible for supervising and monitoring the status of implementation of the IDAP of each government agency. The COA periodically posts the findings of its audit reports in its website and the same results are available to interested parties. The members of Congress conduct blue ribbon

investigations based on the audit reports particularly for controversial cases. The Ombudsman and the GPPB have their own anti-corruption programs. Civil society organizations are responsible for social audits and for monitoring of procurement to protect the public interest through the participation of observers in the bidding process.

Sub-indicator 12(e) — Stakeholders (private sector, civil society, and ultimate beneficiaries of procurement/end-users) support the creation of a procurement market known for its integrity and ethical behaviors.

Score: 2

Condition Met:

There are several civil society organizations working on the matter and the dialogue with the government is frequent but it has limited impact on improving the system.

These include such organizations as the Catholic Bishop Conference of the Philippines (CBCP), Procurement Watch Inc. (PWI), Transparency and Accountability Network (TAN), Makati Business Club (MBC), National Movement for Free Election (NAMFREL), among others; and professional organizations such as the Philippine Chamber of Commerce and Industry (PPCI), Philippine Constructors Association (PCA), Confederation of Filipino Consultants (COFILCO) who participate in the bidding process as observers and in the implementation of other procurement related reforms. However, the participation of civil society organizations has limited impact since they serve as non-voting members of the BAC. There is clamor to strengthen the role of civil society organizations by giving them the power to vote during the BAC deliberations. Other concerns in strengthening their role include ensuring sustainability and participation through training and the grant of honoraria to cover food and travel expenses.

The participation of civil society organizations in the procurement process as well as its duties and responsibilities are mandated by the procurement law.

The active participation of the civil society organizations shows improvement in promoting the integrity of public procurement in the country.

Sub-criteria 12(f) — The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behavior.

Score: 2

Condition Met:

There is a mechanism in place for reporting fraudulent, corrupt or unethical behavior but accessibility and reliability of the system undermine and limit its use by the public.

One of the responsibilities of Observers in the bidding process is the preparation of a Procurement Monitoring Report. This report indicates their observations on the specific bidding activity which they have observed. Their observations shall include irregularities or anomalies in the process, if any. It is submitted to the HOPE, copy furnished the BAC Chairman. . The Observer may also give a copy of the Report to the Office of the Ombudsman or the Resident Ombudsman and the COA Auditor of the Procuring Entity for

appropriate action. However, not all observers submit the Procurement Monitoring Report , which results to low reliability on the system. Compliance to the submission of the reports and enforcement of follow through activities are weak and are not monitored.

Sub-criteria 12(g) — Existence of Codes of Conduct/Codes of Ethics for participants that are involved in aspects of the public financial management systems that also provide for disclosure for those in decision making positions.

Score: 3

Conditions Met: a,b,c

(a) There is a code of conduct or ethics for government officials with particular provisions for those involved in public financial management, including procurement.

The Code of Conduct and Ethical Standards for Public Officials and Employees or Republic Act 6713 provide for norms of conduct as well as prohibited acts and transactions for public officials that include those involved in public financial management and procurement (Rule 7). In addition, RA 9184 provides provision on conflict of interest (disclosure of relations).

(b) The code defines accountabilities for decision making and subjects decision makers to specific financial disclosure requirements.

The code of ethics defines accountabilities and financial disclosure requirements in Section 8.

(c) The code is of obligatory compliance and consequences are administrative or criminal.

The code is obligatory compliance and consequences are administrative and criminal. The penalties are clearly spelled out in Section 11 of RA 6713.

SECTION FIVE

AREAS OF STRENGTHS AND IMPROVEMENTS

IN THE PHILIPPINE PUBLIC PROCUREMENT PROCESS

This Section of the report will discuss the specific strengths and weaknesses of the Philippine Public Procurement System as identified in the BLI assessment results and findings by Indicator. The Areas of Strength refer to those indicators where all baseline conditions were substantially met. The Areas for Improvement or weaknesses are those where not all the baseline conditions were met and are classified into high, medium and low categories with regard to the risk that it may impose upon the overall system. The suggestions on how to keep the risks at acceptably low levels are discussed. This will serve as basis for the Proposed Capacity Development Plan.

5.1. Strengths of the Philippine Public Procurement Process

Pillar I – Legislative and Regulatory Framework

The Assessment found that the legislative and regulatory framework conforms substantially to the standard set by the OECD Baseline Indicator System as discussed in the previous chapter.

The specific areas of strength are:

Indicator 1. Public procurement legislative and regulatory framework achieves the agreed standards and complies with applicable obligations.

- 1 (a) - Scope of application and coverage of the legislative and regulatory framework
- 1 (e) - Tender documentation and technical specifications
- 1 (f) - Tender evaluation and award criteria
- 1 (g) - Submission, receipt and opening of tenders

Indicator 2. Existence of Implementing Regulations and Documentation.

- 2 (a) - Implementing regulation that provide defined processes and procedures not included in higher-level legislation
- 2 (b) - Model tender documents for goods, works, and services
- 2 (c) - Procedures for pre-qualification
- 2 (d) - Procedures are suitable for contracting for services or other requirements in which technical capacity is a key criterion
- 2 (e) - User's guide or manual for contracting entities
- 2 (f) - General Conditions of Contracts (GCC) for public sector contracts covering goods, works and services consistent with national requirements and, when applicable, international requirements

Pillar II – Institutional Framework and Management Capacity

The public procurement system is substantially mainstreamed and well integrated into the public sector governance system and the country has a functional normative/regulatory body which is the GPPB.

The specific areas of strength are:

3(c) - No initiation of procurement actions without existing budget appropriations

Indicator 4. The country has a functional normative/regulatory body.

4(a) - The status and basis for the normative/regulatory body is covered in the legislative and regulatory framework

4(b) - The body has a defined set of responsibilities as specified

4(d) - Responsibilities provide for separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions

Pillar III – Procurement Operations and Market Practices

The Assessment shows that there are more areas for improvement under this pillar than in other areas.

The specific areas of strength are the following:

Indicator 8 (b). Contracts include dispute resolution procedures that provide for an efficient and fair process to resolve disputes arising during the performance of the contract

Pillar IV – Integrity and Transparency of the Public Procurement System

The assessment shows that the current protest and complaint mechanisms are sufficient to address the grievances of bidders or interested persons in the procurement process. It also showed that there are sufficient ethics and anti-corruption measures in place to address procurement related offenses.

The specific areas of strength are:

Indicator 10. Efficiency of the appeals mechanism

10(a) - Decisions of the appeals mechanism are deliberated on the basis of available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law

10(b) - The complaint review system has the capacity to handle complaints efficiently and has a means to enforce the remedy imposed

Indicator 12. The country has ethics and anticorruption measures in place.

12(a) - The legal and regulatory framework for procurement including tender and contract documents, includes provisions addressing corruption, fraud, conflict of interest, and unethical behavior and sets out (either directly or by reference to other laws) the actions that can be taken with regard to such behavior

12 (b) - The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in fraudulent or corrupt practices (12(b))

12 (g) - Existence of Codes of Conduct/Codes of Ethics for participants that are involved in aspects of the public financial management systems that also provide for disclosure for those in decision making positions

5.2. Areas for Improvement (Weaknesses)

The following are the areas for improvement (weaknesses) of the Philippine Public Procurement System. These are based on the scores of Indicators where not all of the baseline conditions were met. They are classified into high risks: those where the sub-indicators were given a score of 0; medium risks: those where the sub-indicators were given a score of 1; and low risks: those where the sub-indicators were given a score of 2.

Suggested activities to address these risks are also discussed.

5.2.1. High Risk Areas

High risk areas refer to those sub-indicators that scored 0 based on the OECD DAC guidelines or less than 50% and where the baselines of good performance for a public procurement system have not been met and the activities to address the weaknesses should be given high or top priority. These are:

Indicator 6 - Efficiency of procurement operations and practice

6(c) - The absence of established norms for the safekeeping of records and documents related to transactions and contract management. There are no established norms at the national level for records keeping and document retention for the conduct of procurement audits or for investigating and prosecuting cases of procurement related fraud and corruption.

To ensure that this issue is addressed, the Proposed Capacity Development Plan will include a program for the establishment of policies and procedures for records keeping and management for procurement, contract and financial management related transactions for government agencies.

Indicator 10 – Efficiency of the appeals mechanism

10(e) - The absence of an administrative complaint review body to handle appeals that has full authority and independence for resolution of complaints. There is no independent administrative body or special court established to review procurement related complaints and appeals outside of the courts.

The GPPB and the CPAR Working Group agreed that a review of policies and procedures for procurement related complaints and appeals will be conducted with the following options: (a) to study the best practices of other countries; (b) possible creation of an independent administrative review body; (c) tapping of an existing administrative body with the appropriate mandate; or (d) review of the reasonableness of the amount of protest fee.

5.2.2. Medium Risk Areas

Medium risk areas refer to sub-indicators that received a score of 1 or where more than 50% up to 75% of the baselines of a good performing public procurement system have been met, and there are a number of baselines where the existing system needs to be aligned with international standards. These are:

Indicator 1. Advertising rules and time limits (1(c)), complaints (1(h))

1 (c) - Publication of opportunities and time frames are not extended for foreign competition. The implementing rules and regulations of GPRA prescribe specific time frames for the advertisement and posting of bid opportunities to ensure that there are no unnecessary delays in the bidding process. However, these periods may not be extended in case foreign bidders are expected to compete. The Philippine government recognizes the need to develop implementing rules and regulations for foreign-assisted projects (IRR-B) and is now in the process of harmonizing its procurement rules with those of the IFIs. The above weakness will be addressed in the review and formulation of IRR-B.

1 (h) - There is no independent administrative body that has the authority to grant remedies for procurement related complaints.

As discussed earlier, a review of policies and procedures for procurement related complaints and appeals will be conducted.

Indicator 5. Existence of institutional development capacity for procurement related information.

5(a) – While there is a system for collecting and disseminating procurement information, including tender invitations, requests for proposals, and contract award information under the Phil-GEPS, accessibility is limited and not all agencies comply with the requirement to submit information or avail of its services. The quality and relevance of the information needs to be improved.

5(b) – While there are systems and procedures for collecting and monitoring national procurement statistics, the available information provided by agencies has not been verified through audit and there is no analysis of procurement information carried out on a national scale.

5(d) - There are quality standards for processing procurement action but there is limited monitoring or use of the standards for staff performance evaluation.

The GPPB and the CPAR Working Group agreed to strengthen the compliance and enforcement mechanisms for submission of procurement related information through the PHILGEPS through the development and strengthening of these mechanisms at the agency and national levels. This will include the development of systems for the analysis of procurement related information and the establishment of linkages with other government related data bases for policy making and decision making purposes. Measures will also be undertaken to strengthen the organizational capacity of GPPB-TSO to monitor and enforce procurement related laws.

Indicator 6 (a). There is a need to clearly define the skills and knowledge competency requirements for specialized procurement jobs to ensure that the level of procurement competence among government officials is consistent with their procurement responsibilities.

The Organization Position Classification and Compensation Bureau (OPCCB) of the DBM is in the process of preparing the position classification and qualification standards for procurement management officers. The GPPB and the CPAR Working Group also agreed to develop a performance management system for procurement unit and staff with the assistance

of the Civil Service Commission (CSC) and the Career Executive Service Board (CESB). The professionalization program of the GPPB is expected to address requirements on procurement competency standards, matching skills against the standards, ensuring that staff will have sufficient knowledge on procurement laws and procedures.

Indicator 7. Functionality of the public procurement market.

7(b) – The private sector is relatively weak and/or competition is limited owing to monopolistic or oligopolistic features in important segments of the market. There are no organized efforts to address the capacity of small, medium enterprises to encourage their participation in procurement.

The Proposed Capacity Development Plan will include a program for the development of training modules and conduct of regular training programs on public procurement for private sector bidders that will help address capacity requirements in particular of small businesses.

7(c) - There are multiple constraints inhibiting private sector access to the public procurement market which often affect competition levels even for small contracts. Among these constraints are: tedious payment processes, intervention of politicians in the procurement process particularly in local government units, cumbersome procurement requirements, difficulties in securing licenses and permits, lack of access to credit.

The Proposed Capacity Development Plan will include the conduct of a study to identify systemic constraints to private sector participation in public procurement. Priority will be given to the streamlining and harmonization of licensing and registration procedures for civil works projects.

Indicator 9. The country has effective control and audit systems.

9(c) – While there are written standards for the internal control unit to convey issues to management depending on the urgency of the matter, there are no established periods for reporting to management on internal audit and control findings. There are no existing mechanisms to monitor whether agencies comply with the standards and procedures for internal audit and control.

There is an existing program spearheaded by the Presidential Anti-Graft Commission to prepare a generic internal audit manual that will address issues on reporting timelines on and compliance to internal audit and control findings. The generic manual is expected to be completed by the end of 2007 and the mainstreaming of internal control systems for all government agencies is expected to follow after the release and roll out of the manual.

9(e) - A lot of external auditors need training on procurement audits and procurement laws, regulations and procedures and the GPPB and COA recognize this need.

The Proposed Capacity Development Plan will include the development of procurement audit guide and conduct of regular training programs for external auditors on procurement laws and procedures.

Indicator 10. Efficiency of appeals mechanism

10(d) - The publication of decisions on procurement related disputes resolved by the procuring entity is not mandatory and publication is left to the discretion of the review bodies making access difficult. These decisions are not posted even in the agency website of the Phil-GEPS.

The Proposed Capacity Development Plan will include a program to develop mechanisms to publish decisions and to provide access to information on procurement related disputes.

5.2.3. Low Risk Areas

Low risk areas refer to sub-indicators that received a score of 2 or where more than 75% of the baseline elements were met. These are areas where government efforts are paying off and where such reform measures need to be sustained.

Indicator 1. Procurement Methods (1(b)), rules on participation (1(d))

1 (b) – In the OECD DAC guidelines, one of the conditions under procurement methods is that fractioning of contracts to limit competition is prohibited. In actual practice, however, fractioning of contracts to limit competition is resorted to attract more local firms, including procurement under foreign funded projects. However, under RA 9184, packaging of contracts into smaller lots may be allowed in order to accommodate more bidders, provided it does not result in splitting of contracts. Splitting of government contracts occur when the contracts are divided into smaller quantities or to artificial phases for purposes of circumventing the law. is not allowed.

The observation is included in the comments on the OECD DAC methodology under Section 8 and will be addressed as part of the review and formulation of implementing rules and regulations for foreign funded procurement activities leading to the preparation and issuance of IRR – B.

1(d) – one condition under this indicator on rules on participation is that the procurement law should establish rules for the participation of government owned enterprise that promote fair competition. Under the procurement law, government agencies may directly transact with another government agency without need of conducting public bidding since this will result in lower costs to the government. Cost of goods, services and works provided by the GOCCs are normally lower than market prices since there are limited overhead and other hidden costs and these firms are granted tax exemptions or subsidies. In practice, there are very few GOCCs that are in direct competition with the private sector.

The GPPB is in the process of formulating policies, procedures and guidelines for procurement under the government to government arrangements that define the conditions for the participation of government owned enterprises in procurement for public projects to promote fair competition as well as standards for agency-to-agency transactions.

Indicator 3. The public procurement system is mainstreamed and well integrated into the public sector governance system.

3(a) - The majority of procurement plans are prepared based on the annual and multi-year operating plans independently from budget allocation but they are revised to meet the forward budget estimates for the sector or agency allocations before expenses are committed.

Most agencies, however, do not prepare multi-year plans that are linked to the annual budget process or to the preparation of annual procurement plans.

3(b) - Budget and financial procedures are in place to ensure that funds are committed or appropriated within a week from award of contract to cover the full amount of the contract but there are no published business standards for processing of invoices by government agencies that meet obligations for timely payment stated in the contract.

3(d) - Information on completion of the majority of large contracts is submitted for certification of budget execution and for reconciliation of delivery with budget programming. There is still a need to develop the system to integrate the procurement system with the budgetary and financial systems to provide information on the completion of all major contracts.

There is currently no system linking the financial management system and the procurement system to ensure enforcement of law.

The Proposed Capacity Development Plan will incorporate recommendations to improve the current budget and financial procedures to support timely contract execution and payment. Among the recommendations are: the development by the DBM of clear guidelines for multi-year contracts that will integrate budgeting, expenditure, and procurement program and the development of a generic financial management manual that includes procurement and logistics processes.

Indicator 4. Functional normative/regulatory body for procurement

4(c) - The organization, staffing, and authority of the GPPB are at an adequate level but financing is subject to administrative decisions and can be changed easily. Although, the GPPB does not have to justify its activities before Congress, its financial stability is not secured by the legal framework.

The Proposed Capacity Development Plan includes a program to strengthen the organizational capacity of GPPB-TSO to monitor and enforce procurement related laws.

Indicator 5. Existence of institutional development capacity

5(c) - A sustainable strategy and training capacity exists to provide training, advice and assistance to develop the capacity of government and private sector participants but there is no evaluation and feedback mechanism for these training programs

The professionalization program being developed by the GPPB will address the inclusion of the required evaluation and feedback mechanism. The training modules and methodologies are currently under development and implementation is expected to start in December 2007.

Indicator 6. Efficiency of procurement operations and practice.

6(b) - There are no regular training programs on public procurement for the private sector, although civil society organizations such as Procurement Watch, Philippine Constructors Association, offer training for their members who serve as Observers in the procurement

process. There is clearly a need to expand the network of third party observers and strengthen their capacity to participate in the procurement process.

The Proposed Capacity Development Plan includes as part of its institutional strengthening program the development of manual and training programs for third party observers (CSO) in the procurement process and the development and conduct of special training programs on fraud detection for purposes of prosecution.

6(d) - The procurement law establishes the responsibility for delegation of authority and accountability but there is no available information on compliance for all government agencies.

The Proposed Capacity Development Plan will include the conduct of a study to determine compliance by agencies on delegation authorities and accountabilities for procurement related activities particularly on decentralization consistent with accountability, risks and monetary amounts involved.

Indicator 7. Functionality of the public procurement market.

7(a) - There is a recognized lack of capacity building programs for private sectors, including small business and trainings to help new entries into procurement marketplace. This is compounded by the perception among private businessmen that the procurement procedures are long and tedious and susceptible to corruption.

The Proposed Capacity Development Plan will include a program for the development of training modules and conduct of regular training programs on public procurement for private sector bidders that will help address capacity requirements in particular of small businesses.

Indicator 8. Existence of contract administration and dispute resolution provisions

8(a) – Final payments are not processed promptly as stipulated in the contract by most agencies as this is done on a case to case basis depending on compliance with all requirements for final payments and the availability of funds.

The Proposed Capacity Development Plan will incorporate recommendations to improve the current budget and financial procedures to support timely contract execution and payment that will be included in the generic financial management manual.

8(c) - Monitoring of outcomes of the dispute resolution cases is rather weak. There are no defined procedures to monitor this area.

The proposal to strengthen coordinative linkages among oversight agencies (GPPB, COA, PAGC, DBM, OMB) on monitoring and enforcement of audit findings is one of the measures to address this. The Proposed Capacity Development Plan likewise includes the development of a data base on procurement related fraud cases that will hopefully provide a system to monitor the outcome of such cases.

Indicator 9. Effective control and audit systems

9(a) – While the legal framework, organization, policy, and procedures for internal and external control and audit of public procurement operations are in place, periodic risk assessment and controls are not carried out as part of the system.

9(b) - Audits are carried out annually but response to or implementation of the auditors' recommendations takes up to a year. The COA prepares its Audit Report of agencies annually but action on the auditors' recommendations takes up to a year.

9(d) - There are internal control procedures to allow performance audits to be conducted but there are omissions or practices that need some improvement, among them the development of an internal audit and control manual for use by different government agencies. Although there are written standards for the internal controls, there is no periodic reporting to management to ensure compliance with the standards.

Presidential Anti-Graft Commission (PAGC) is still in the process of institutionalizing a functional internal control system for all government agencies that includes the development of a generic internal audit manual. The completion and mainstreaming of internal control systems for all government agencies is expected to be completed by the end of 2007.

In addition to the above recommendations, the Proposed Capacity Development Plan includes a proposal to establish a covenant amongst oversight agencies (GPPB, COA, PAGC, DBM and OMB) to strengthen coordinative linkages on monitoring and enforcement of audit findings. This shall be supported by the creation of a sub-working group on procurement under the PDF governance and anti-corruption program.

Indicator 10. Efficiency of appeals mechanism.

10(c) - Available remedies for procurement related appeals focus on sanctions and do not provide corrective actions.

The proposed review of policies and procedures for procurement related complaints and appeals will include among others possible corrective action that may be taken by agencies in order to address the sources of such complaints and appeals.

Indicator 11. Degree of access to information.

11(a) - Information on procurement is easily accessible in media of wide circulation and availability, centralized at a common place, relevant and complete. However, not all agencies of the government submit information to the Phil-GEPS or avail of its services, particularly on the posting of information on contract award. The system does not protect the disclosure of proprietary, commercial, personal or financial information of a commercial and sensitive nature.

The Communication Plan will address the short, medium and long term communication strategy to promote awareness of and compliance to the procurement regulations. It will consider the possibility of dissemination of procurement related information through other forms of media for wider circulation and accessibility. The Proposed Capacity Development

Plan has, likewise included the formulation of a disclosure policy on procurement related information by the government.

Indicator 12. Ethics and anti-corruption measures in place

12(c) - There is evidence of increasing numbers of procurement related cases that have been resolved. However, there is no organized information on the number of graft related cases filed, prosecuted and resolved by the Ombudsman or the courts.

The Proposed Capacity Development Plan includes a program on the development of a data base on procurement related fraud cases that will initially include information from the GPPB, COA, PAGC and the OMB.

12(d) - The government has in place an anticorruption program but it requires better coordination or authority at a higher level to be effective. No special measures exist to prevent and detect fraud and corruption in public procurement.

The Proposed Capacity Development Plan includes the establishment of a covenant among oversight agencies (GPPB, COA, PAGC, DBM, OMB) to strengthen coordinative linkages on monitoring and enforcement of audit findings, and compliance with the procurement laws.

12(e) - There are several civil society organizations who participate in the bidding process as observers and in the implementation of other procurement related reforms. Their active participation is evidence that they shape and improve the integrity of public procurement in the country. However, the participation of civil society organizations has limited impact since they serve as non-voting members of the BAC and there is a need to train a wider base of observers to serve at the sub-national and local government levels.

There is a need to expand the network of third party observers and strengthen their capacity to participate in the procurement process. There is also a clamor to strengthen the role of civil society organizations by giving them the power to vote during the BAC deliberations.

The Proposed Capacity Development Plan will include the development of manual and training programs for third party observers (CSO) in the procurement process.

12(f) - There is a mechanism in place for reporting fraudulent, corrupt or unethical behavior but accessibility and reliability of the system undermine and limit its use by the public.

The Procurement Observation Report prepared by private observers is one of the ways by which fraud in the procurement process is reported. However, not all Observers submit the Procurement Observation Report and resulting in low reliability and accessibility of the system. Compliance to the submission of the reports and enforcement of follow-up action taken is not monitored and is rather weak.

Among the actions included in the Proposed Capacity Development Plan to address this weakness are:

- a. Establishment of a covenant among oversight agencies to strengthen coordinative linkages on monitoring and enforcement of audit findings;

- b. Development of systems for the analysis of procurement related information and linkage with other government related data bases for policy making and decision making purposes
- c. Development of mechanism for the utilization/optimization of observer's reports

SECTION SIX GOVERNMENT REFORM PROGRAMS

The following are some on-going government reforms that impact on the public procurement system:

6.1. Government-Wide Integrated Financial Management Systems

One of the major reforms instituted by the government is the integration of all financial information for the entire government using electronic means. This involves the simplification of financial management procedures to enable interconnection and computerization for internal use by agencies and by oversight organizations. The system includes the e-budget, government manpower information system, budget preparation and monitoring system, document tracking system, foreign funded projects data base, e-NGAS, other agency financial applications. The system is in various stages of development and when completed will be linked to procurement systems information available at the Phil-GEPS. Two of the more important components of the financial management system are:

6.1.1. Electronic Budget System (e-Budget)

The electronic budget system integrates the NEP and the General Appropriations Act with allotment and cash programs, release of allotments and generation of budget reports. Under the system, the budget release procedures have been streamlined to facilitate the release of budgetary obligations and allotments from the DBM to individual government agencies. Easy access to budget related information as appropriations, programs and releases are available to enable faster turn around time for budget requests and allocation and to minimize fraud. When completed, the budgeting system will be linked with systems on funds disbursement, plantilla of positions and staffing patterns (pay-roll), disbursements of foreign loans and physical performance.

6.1.2. Electronic National Government Accounting System (e-NGAS)

The e-NGAS is an electronic system developed by the COA to simplify government accounting procedures, make it conform to international accounting standards; and generate periodic and relevant financial reports for better monitoring of financial performance. Among the features of the NGAs are: improvements in the recording of disbursement transactions including payments, simplification and interconnections of budgetary appropriations, allotments and obligations with the accounting system, preparation of financial reports and generation of such financial information as balance sheet, statement of income and expenses and cash flow for an agency. The data provides information necessary to evaluate the financial performance of an agency as to income and expense for more effective management, improve the efficiency of monitoring public sector performance, and increase the transparency of government audits through civil society involvement.

6.2. Government-Wide Organizational Rationalization and Compensation Program

In 2004, the Executive Branch embarked on a strategic review of its operations and organizations and the rationalization of its functions and agencies by eliminating/minimizing overlaps and duplication, and by rationalizing delivery and support systems, organizational structures and staffing. All Departments of the Executive Branch, including component

units/bureaus/government-owned and/or controlled corporations (GOCCs)/government financial institutions (GFIs), boards, task forces, councils, commissions and all other agencies attached to or under their administrative supervision are covered by the rationalization program. The abolition, deactivation, merger, consolidation, or regularization of agencies and corporations can be pursued under the program. Each Department is required to prepare and submit to the DBM, a Rationalization Plan that will contain the intended shifts in the functions, programs, projects, activities, organizational units, agencies, staffing and personnel of the Department. Among the proposed actions under the Rationalization Plan is the creation of organic procurement units in each Department or agency in accordance with the provisions of RA 9184 as well as the establishment of new positions for procurement management officers. The savings that will be generated from the undertaking may be used to fund priority programs of government and salary increases or incentives for government personnel.

The DBM is in the process of evaluating the Rationalization Plans submitted by various government agencies.

6.3. Dispute Resolution

Republic Act No. 9285 or the Alternative Dispute Resolution Act institutionalizes the use of an alternative dispute resolution system (mediation, conciliation, arbitration, or any combination) for commercial and construction disputes which serves to promote the speedy and impartial administration of justice and unclog the court dockets. The system allows the enforcement and review of arbitral awards by the courts. RA 9285 amended RA 876 or the Arbitration Law was enacted in April, 2004.

6.4. Contract Implementation

6.4.1. Acquisition of Right-Of-Way

Republic Act No. 8975, An Act to Ensure the Expedious Implementation and Completion of Government Infrastructure Projects includes provisions prohibiting the lower courts from issuing Temporary Restraining Orders (TRO), Preliminary Injunctions and Preliminary Mandatory Injunctions, for the acquisition, clearance and development of the right-of-way and/or site or location of any national government project; bidding or awarding of contract/project of the national government; commencement, prosecution, execution, implementation, operation of any such contract or project; termination or rescission of any such contract/project; and This was enacted on November 7, 2000.

Republic Act No. 8974, An Act to Facilitate the Acquisition of Right-Of-Way, Site or Location for National Government Infrastructure Projects, defines the modes for acquiring real property for national government infrastructure project as well as guidelines for expropriation proceedings, and standards for the assessment of the value of land subject to expropriation proceedings. This was enacted on November 7, 2000.

6.5. Use of Official Development Assistance Funds

The “Foreign Borrowings Law” (R.A. No. 4860) and the “Official Development Assistance Act of 1996” (R.A. No. 8182) as amended by Republic Act No. 8555 specifically state that the President of the Philippines may waive the application of any provision of the law granting preferences in connection with, or imposing restrictions on, the procurement of

goods or services and that the matter of preference in favor of articles, materials, or supplies manufactured in the Philippines, including the procedure in the comparison of bids for purposes of selecting the winning bidder shall be the subject of agreement between the Philippine Government and the lending institution. Although the law states that the President may waive the application of local bidding rules for procurement undertaken through any loan, credit, or indebtedness, such act was further qualified by the statement that the application of such exemption may be applied only if it is in the agreement itself. These laws should be taken as consistent with the principle behind the observance of a treaty or international agreement to which the Philippines is a signatory, under Section 4 of R.A. 9184.

6.6. Nationality Requirements

“Foreign Investments Act of 1991” (R.A. 7042) provides as a general rule, that ownership of enterprises and all forms of economic activities are reserved for Filipino citizens. However, with the advent of globalization, the importance of foreign investments is recognized and is in fact encouraged. Thus, foreign investments may be allowed in areas which are not specifically reserved for Filipinos by the Constitution, to increase employment opportunities and expand livelihood, enhance value of farm products, and allow technology transfer. In certain areas, foreign investments are welcomed to supplement the Filipino capital and technology in enterprises serving domestic market. Generally, foreign ownership of even up to One Hundred Percent (100%) equity is allowed in export enterprises, except in areas included in the negative list or those areas of economic activity whose foreign ownership is limited to a maximum of forty percent (40%) of the equity capital. Likewise, the act also provides that in return, foreign-owned firms are encouraged to adopt measures that will gradually increase Filipino participation in their businesses by taking in Filipino partners, electing Filipinos to the board of directors, implementing transfer of technology to Filipinos, generating more employment for the economy and enhancing skills of Filipino workers.

R.A. 9184 reiterates Filipino First Policy in some of its provisions. Foreign participation is not absolutely prohibited but may be allowed in specific cases where the item to be procured by the government is not available locally or where no Filipino citizen has the capacity to perform the required services.

6.7. Anti-Graft and Corruption Measures

6.7.1. Existing Laws and Regulations

The Anti-Graft and Corrupt Practices Act (R.A. 3019) defines corrupt practices of public officials and private individuals as well as penalties for violations. This supplements the provisions on penal, civil and administrative liabilities and sanctions under R.A. 9184.

The Red Tape Reduction Act of 2004 (R.A. 2589) provides a maximum of fifteen and thirty working days for concerned government agencies to act on simple and complex transactions, respectively. It limits the number of signatories to the officers and employees directly supervising the specific unit where a particular transaction is being acted upon. It also institutionalizes a Report Card Survey that shall assess the performance of the different agencies.

6.7.2. Proposed Laws and Regulations

The following are proposed legislation pending with the House of Representatives related to anti-graft and corruption efforts:

An Act Providing for the Creation of the National Independent Commission Against Corruption, or National Independent Commission Against Corruption Act of 2004, creates a Commission mandated to implement and coordinate, at the national level, the prevention, control and elimination of graft and corrupt practices at all levels in government. The Bill has been pending with the House Committee on Government Reorganization since 2004.

An Act Providing Protection and Benefits to Persons Who Disclose Conduct Constituting Graft And Corruption and to Witnesses for the Prosecution, or Informers and Anti-Corruption Witnesses Protection Act of 2004, sets up a system of reward and protection for informants by: a) establishing a monetary basis rewards system; b) protecting informants against reprisal and civil or criminal liability; and c) ensuring that public disclosures are made to the proper public entity, d) share in the proceeds of the offense recovered; and e) enrollment in the Witness Protection Program. This Bill has been pending with the House Committee on Civil Service and Professional Regulation since 2005.

6.7.3. Anti-Corruption Programs

There are a lot of good governance and anti-corruption initiatives being undertaken both by the government, civil society, business and labor, and multilateral and development funding agencies. The types of intervention can be classified as those involving an understanding of the key factors that drive corruption, formulation/enhancement of governance and anti-corruption programs, leadership, coalition and capability building, monitoring and evaluation. Reporting systems must be in place to monitor progress, sustain public interest and support, and continuously enhance anti-corruption policies and programs.

The government has created an Inter Agency Anti-Graft Coordinating Council (IAAGCC) composed of representatives from the PAGC, COA, Civil Service Commission (CSC), National Bureau of Investigation (NBI), Department of Justice (DOJ), and the Office of the Ombudsman.

One of the agencies at the forefront of the anti-corruption drive is the Presidential Anti-Graft Commission (PAGC) It is mandated to conduct investigation or hearing of administrative complaints or cases against Presidential appointees. PAGC also investigates or hear administrative cases against non-presidential appointees in conspiracy or involved in Presidential appointees alleged to have done irregular acts.

Since its creation in April 12, 2001, PAGC handled 1,004 cases, 40 percent of which were dismissed for lack of jurisdiction, 9 percent carried punitive recommendations, 59 percent were dismissed for insufficiency of evidence.

Among its programs are: the conduct of lifestyle checks for public officials and the formation of lifestyle check and anti-graft units in seven government departments, the formulation of a National Transparency and Accountability program or Corruption Prevention Reform Program (CPRP) in partnership with anti-corruption agencies like the Office of the Ombudsman, the Presidential Committee on Effective Governance, and the Transparency and

Accountability Network where agencies were asked to develop and anti-corruption plans. The PAGC is also conducting Integrity Development Review (IDR) on ten lead agencies.

One of the plans is to create an Independent Commission Against Corruption (ICAC) similar to the powerful anti-graft body in Hong Kong.

SECTION SEVEN

PROPOSED PROCUREMENT CAPACITY DEVELOPMENT PLAN

This section of the report will summarize all the existing and proposed initiatives and recommendations to address the areas for improvement in the Philippine Public Procurement System based on the international best practice as prescribed by the BLI assessment and will provide a road map for further procurement related action to be taken by the GOP and the IFIs. The proposed actions were agreed upon in a workshop to discuss the results of the BLI assessment where members of the GPPB and its TWG and the CPAR Working Group participated. The meeting was held from May 30-31, 2007 at the Canyon Woods Resort in Laurel, Batangas, Philippines and the Proposed Action Plan is appropriately called the “Canyon Wood” Agreement. The “Canyon Wood” Agreement identifies proposed actions from the BLI assessment as well as recommendations from various CPAR studies and activities.

7.1. Key Areas and Actions

The following is a list of key actions based on the BLI assessment results. The key proposals were validated and prioritized by the GPPB with the CPAR Working Group in a Proposed Action Plan found in Annex B. This is to determine actions to be taken by the government and those that will require technical and financial support and assistance from donor agencies.

7.1.1. Pillar I – Legislative and Regulatory Framework

1. Review and formulation of implementing rules and regulations for foreign-assisted projects (IRR-B) including the harmonization of procurement rules with those of IFIs particularly with regards to time frames for publication of bid opportunities, blacklisting procedures, among others;
2. Implementation of agency to agency policies, rules and procedures on the participation of government owned enterprises in bidding for public projects to promote fair competition with the private sector;

7.1.2. Pillar II – Institutional Framework and Management Capacity

3. Development of a generic financial management manual that integrates procurement and logistics processes and address concerns such as: formulation of annual plans based on multi-year plans, submission of contract completion information for budget purposes, delegation of procurement related authorities and accountabilities, and issuance of policies and procedures for processing of payments;
4. Development of clear guidelines for multi-year contracts that will integrate budgeting, expenditure, and procurement program;
5. Development of alternative solutions to address the financing concerns of GPPB TSO with the aim of attaining fiscal autonomy and strengthening its organizational capacity to monitor and enforce procurement related laws;
6. Development and strengthening of a feedback or procurement monitoring system at the agency and national levels for procurement information and statistics;

7. Development of systems for the analysis of procurement related information and linkage with other government related data bases for policy making and decision making purposes;
8. Development of performance management systems for procurement units and staff

7.1.3. Pillar III – Procurement Operations and Market Practices

9. Implementation of the Professionalization Program on procurement;
10. Conduct of regular training programs on public procurement for private sector bidders, particularly for small businessmen and new entrants into the procurement market place;
11. Establishment and operationalization of a records management system for procurement and contract management transactions that will include the replication of good practices of model agencies;
12. Streamlining and harmonization of licensing and registration procedures for civil works;

7.1.4. Pillar IV – Integrity and Transparency of the Public Procurement System

13. Establishment of a covenant among oversight agencies to strengthen coordinative linkages on monitoring and enforcement of audit findings and compliance with the procurement laws.
14. Completion and mainstreaming of internal control systems for all government agencies;
15. Development of procurement audit guide and conduct of regular training program for external auditors on procurement laws and procedures;
16. Development of mechanisms to publish decisions on procurement related disputes of heads of procuring entities;
17. Review of policies and procedures for procurement related complaints and appeals with the following options:
 - a. Compare best practices of other countries and identify appropriate options for Philippine conditions;
 - b. Creation of an independent administrative review body as recommended by OECD DAC;
 - c. Tapping an existing administrative body with the appropriate mandate;
 - d. Study reasonableness of amount and need for protest fees
18. Formulation of a disclosure policy on procurement related information;
19. Development and implementation of a strategic communications plan for procurement reform;

20. Development of data base on procurement related fraud cases;
21. Development of mechanism for utilization/optimization of the observers report.

7.1.5. CPAR Related Actions

In addition to the above actions, the “Canyon Woods” Agreement decided to include the following CPAR related recommendations to further improve the implementation of procurement reforms:

Strengthening of the Legal and Policy Framework

22. Review and formulation of implementing rules and regulations and harmonized bidding documents for locally funded specialized procurements undertaken through international competitive bidding (ICB) for among others: arms and ammunition, pharmaceuticals, information technology;
23. Development of procurement manuals and standard bidding documents for LGUs consistent with budgeting, accounting and auditing procedures to address the peculiarities in the procurement practices and operations of local government units that were not reflected in the provisions of the existing law;
24. Development of simplified procurement guides for *barangays* (smallest local government units) consistent with financial management guidelines to address concerns of local officials that the procurement law may not be applicable to the nature of their procurements;

Procurement Operations and Market Practices

25. Review of detailed engineering guidelines with regards to compliance to standards by non-infrastructure agencies and determine accountabilities and sanctions for non-compliance among government agencies and consultants;
26. Pilot testing the adoption of value engineering as a policy in selected infrastructure projects costing Php 50 million and above as a means of rationalizing and achieving cost savings and efficiency in infrastructure investments and as provided for in the Medium-Term Philippine Development Plan for 2004-2010;

Integrity and Transparency of the Public Procurement System

27. Development of manual and training programs for third party observers (CSO) in the procurement process to expand their network and to strengthen their capacity to participate in the procurement process.

7.2. Responsibilities for Key Actions

The following is a tabular presentation of responsible institutions for the recommended actions to improve the Philippine public procurement system based on the findings of the BLI assessment and agreements reached during the Canyon Woods Workshop held on June

30, 2007. The specific details of the Proposed Action Plan are found in Annex B of this report. The Action Plan was discussed and prioritized during the Canyon Woods Workshop. Institutional supervision and monitoring of the programs will generally be done by the GPPB TSO and the CPAR Working Group.

Key Area	Proposed Action	Responsible Entity	Funding Source	Completion Schedule
BLI Findings and Recommendations				
Pillar I – Legislative and Regulatory Framework	1. Review and formulation of implementing rules and regulations for foreign-assisted projects (IRR-B) including the harmonization of procurement rules with those of IFIs particularly with regards to time frames for publication of bid opportunities, blacklisting procedures, among others	TWG, PDF	WB	July 2009
	2. Implementation of agency to agency policies, rules and procedures on the participation of government owned enterprises in bidding for public projects to promote fair competition with the private sector	GPPB	GOP	December 2007
Pillar II – Institutional Framework and Management Capacity	3. Development of a generic financial management manual that integrates procurement and logistics processes	DBM, COA	EC grant	December 2008
	4. Development of clear guidelines for multi-year contracts that will integrate budgeting, expenditure, and procurement program	GPPB, DBM	GOP	December 2007
	5. Development of alternative solutions to address the financing concerns of GPPB TSO	DBM	GOP	
	6. Development and strengthening of a feedback or procurement monitoring system at the agency and national levels for procurement information and statistics	GPPB, Internal Audit Units, Procurement Units, CSO	WB (IDF)	December 2009
	7. Development of systems for the analysis of procurement related information and linkage with other government related data bases for policy making and decision making purposes	GPPB, Internal Audit Units, Procurement Units, CSO	WB (IDF)	December 2009
	8. Development of performance management systems for procurement units and staff	GPPB, CSC, DBM, CESB		December 2010
	9. Implementation of the Professionalization Program on procurement	GPPB	WB (IDF Grant)	December 2008
Pillar III – Procurement Operations and Market Practices	10. Conduct of regular training programs on public procurement for private sector bidders, particularly for small businessmen and new entrants into the procurement market place	DTI, Phil-GEPS	GOP, ADB	January 2008 – start of training
	11. Establishment and operationalization	GPPB, COA	GOP, WB	December

Key Area	Proposed Action	Responsible Entity	Funding Source	Completion Schedule
	of a records management system for procurement and contract management transactions		(IDF)	2007
	12. Streamlining and harmonization of licensing and registration procedures for civil works	DTI		December 2007
Pillar IV – Integrity and Transparency of the Public Procurement System	13. Establishment of a covenant among oversight agencies to strengthen coordinative linkages on monitoring and enforcement of audit findings and compliance with the procurement laws	GPPB, COA, PAGC, DBM, OMB	GOP possible funding from PDF	December 2007
	14. Completion and mainstreaming of internal control systems for all government Agencies	PAGC, DBM	WB, AusAID	December 2007 - Completion of GIAM June 2008 - Pilot Testing and Customization of Manuals
	15. Development of procurement audit guide and conduct of regular training program for external auditors on procurement laws and procedures	COA	WB	December 2008 - 2010
	16. Development of mechanisms to publish decisions on procurement related disputes of heads of procuring entities	GPPB		December 2010
	17. Review of policies and procedures for procurement related complaints and appeals with options	GPPB	WB	December 2008
	18. Formulation of a disclosure policy on procurement related information	GPPB, TAN		December 2010
	19. Development and implementation of a strategic communications plan for procurement reform	GPPB	Possible funding from PDF	June 2007 - Medium Term Draft Plan
	20. Development of data base on procurement related fraud cases	GPPB, COA, PAGC, DBM, OMB	GOP possible funding from PDF	December 2008
	21. Development of mechanism for utilization/optimization of the observers report.	GPPB, OMB, COA	EU Possible funding from TAF	December 2009
	CPAR Findings and Recommendations			
Pillar I – Legislative and Regulatory Framework	22. Review and formulation of implementing rules and regulations and harmonized bidding documents for locally funded specialized procurements undertaken through international competitive bidding (ICB)	GPPB	GOP	Base guidelines 2007 Harmonization 2008

Key Area	Proposed Action	Responsible Entity	Funding Source	Completion Schedule
	23. Development of procurement manuals and standard bidding documents for LGUs	GPPB, LGU Leagues, COA, DBM	ADB EC grant	December 2007 Harmonization March 2008
	24. Development of simplified procurement guides for <i>barangays</i>	GPPB, LGU Leagues, COA, DBM	WB and ADB	December 2008
Pillar III – Procurement Operations and Market Practices	25. Review of detailed engineering guidelines with regards to compliance to standards by non-infrastructure agencies	COA	Possible IDF grant	December 2007 – DPWH projects
	26. Pilot testing the adoption of value engineering as a policy in selected infrastructure projects costing Php 50 million and above	DPWH, DOTC, GPPB and NEDA Infracom	GOP (DPWH and DOTC)	December 2007 - Start of pilot-testing December 2008 - Issuance of Guidelines by NEDA
Pillar IV – Integrity and Transparency of the Public Procurement System	27. Development of manual and training programs for third party observers (CSO) in the procurement process	GPPB, CSO	Possible funding from PDF	

SECTION EIGHT

COMMENTS ON THE BLI ASSESSMENT METHODOLOGY

The following are some of the comments of the TWG that conducted the BLI assessment to assist the OECD DAC in the improvement of the BLI methodology in terms of its applicability and practicability in evaluating national procurement systems. The comments may be categorized into two types. These are:

8.1. Differing Interpretations

Differing interpretations refer to differences in understanding the explanation of certain sub-indicators and conditions under the OECD DAC Methodology as encountered by the TWG and as practiced under the Philippine public procurement system. The OECD DAC may want to consider the merits, advantages and reason behind local practices.

8.1.1. Fractioning of contracts to limit competition

In sub-indicator 1(b) — Procurement Methods, one of the conditions (c) specified is that “Fractioning of contracts to limit competition is prohibited”

The TWG believes that “fractioning” as understood does not really limit competition but in fact increases the number of bidders. The practice of some agencies (for instance, DPWH for infrastructure projects) is to package contracts into such sizes (in terms of contract amount and scope of work) as to allow more bidders to participate. This does not limit competition but allows more bidders particularly locals to become eligible and to submit bids. Contract splitting into smaller amounts to evade rules on public bidding, however, is not allowed. This is sometimes resorted to when there are no sufficient funds to complete a project, when the eligibility requirements are designed to suit favored suppliers or contractors or to circumvent the law.

The OECD DAC may want to redefine or reconsider how “fractioning” of contracts can limit competition.

8.1.2. Extension of time frames for the publication of bid opportunities

In sub-indicator 1(c) — Advertising rules and time limits, one of the conditions (b) is that time frames for the publication of bid opportunities should provide sufficient time for potential bidders to obtain documents and respond to the advertisement and for such timeframes to be extended when international competition is sought.

The implementing rules and regulations of Republic Act 9184 prescribe specific time frames for the advertisement and posting of bid opportunities to ensure that there are no unnecessary delays in the bidding process. These time frames are not extended even if foreign bidders are expected to compete. In the case of foreign assisted projects, the publication time frames prescribed by the IFIs are followed. The TWG wants to be clarified why this has to be included in the Philippine procurement law when the procedures of IFIs are followed anyway.

8.1.3. Requirement of certification of availability of funds

In sub-indicator 3 (c) — No initiation of procurement actions without existing budget appropriations, condition (a) states that “the law requires certification of availability of funds before solicitation of tenders takes place”

The TWG asked the OECD DAC if the “ National Expenditure Program can be considered as enough safeguard to ensure that funds are allocated before initiation of procurement actions” or “ would the requirement for certification of availability of funds be applied strictly ?”

The OECD DAC replied that “the interpretation with regard to sub-indicator 3 (c) is fully acceptable. The **intent of this is to ensure that funds are available before a contract can be signed.** Xxx We feel that **you may proceed with the procurement process when you have a reasonable assurance of funds for the requirement. This is met when you have an approved budget.**”

The TWG submits its strong reservation to the description of the standard condition, i.e., that certification of availability of funds should be available *before solicitation*, since this will delay the procurement process. The certificate of availability of funds is a requirement prior to contract signing and not solicitation. The more important condition is that the budget is available prior to bidding. In actual practice, the Philippine government normally operates on a reenacted budget and it takes time before the budget is reenacted. Agencies take advantage of the period to conduct the procurement process in time for its approval.

8.1.4. Use of available media for publication of procurement information

In sub-indicator 11(a) — Information is published and distributed through available media with support from information technology when feasible, the condition to merit a score of 3 states that “information on procurement is easily accessible in media of wide circulation and availability. The information provided is centralized at a common place. xxxx”

The TWG believes that there is a need to define the term “media of wide circulation”, possibly referring to tri-media (print, radio and television), and wants to be clarified whether the Phil-GEPS is considered a media of wide circulation and availability, since this is the only conceivable media that can be accessed by users. The problem posed by access to the Phil-GEPS is the non-availability of computer facilities in the regional and local government level, so the TWG has difficulty in verifying accessibility.

Rather than focus on mere publication of procurement information, however, the TWG has embarked on a long term communications strategy to generate awareness and involvement among various stakeholders in procurement including the general public. This is included in its Proposed Capacity Development Plan.

There are on-going discussions with civil society organizations notably the TAN on the need to formulate a disclosure policy with regards to procurement information and this may affect the description given under this indicator, i.e., that the system should include provisions to protect the disclosure of proprietary, commercial, personal or financial information of a commercial and sensitive nature.

8.1.5. Evidence of enforcement of rulings and penalties

In sub-indicator 12 (c) — Evidence of enforcement of rulings and penalties exists, some members of the TWG believe that evidence of prosecution of procurement cases may not necessarily be an accurate indicator of enforcement of the law since losing contractors or suppliers may easily file harassment cases against procurement officials and this may not be an indication of corruption. There is a need to differentiate between harassment and real corruption cases.

8.2. Unclear Definitions

Unclear definitions refer to terms used in the description of certain sub-indicators and conditions that are ambiguous and resulted in confusion, differing interpretations and heated discussions among members of the TWG. The OECD DAC may need to issue clearer explanations and definitions of terms referred to in its methodology.

8.2.1. Mandatory association for purposes of registration

In sub-indicator 1(d) — Rules on participation, condition (b) states that registration if required shall not constitute a barrier to participation in tenders and does not require mandatory association with other firms. It further states that the regulatory framework should not include the obligation for foreign firms to associate with local firms or to establish subsidiaries in the country as a condition of bidding.

There is a need to clarify the difference between mandatory association and nationality requirements since the procurement law has very specific requirements: for goods and consulting services (partnerships, corporations and joint ventures at least 60% of ownership belonging to citizens of the Philippines) and infrastructure projects (partnerships, corporations and joint ventures at least 60% of ownership belonging to citizens of the Philippines).

The creation of local subsidiaries in the Philippines requires registration with the Securities and Exchange Commission (SEC) which may be incorporated with 100% foreign ownership. The nationality requirements, on the other hand, have been incorporated to assist the local industries and businesses to develop since most are highly dependent on the local market for its existence. There is also a need to define the reasonable range of participation for foreign bidders without killing the local industry.

8.2.2. Independent administrative body to review decisions with regards to complaints and appeals

In sub-indicator 1(h) — Complaints and sub-indicator 10 (e) – The system ensures that the complaint review body has full authority and independence for resolution of complaints, a query was raised by the GPPB on whether the courts can be considered as the complaint and appeals review body independent from the procuring entity since the description of condition (b) of sub-indicator 1(h) says xxxx “and includes the right for judicial review.”

The OECD DAC reply received states that “xxx *If a special administrative court exists, then it would be a viable and acceptable option to a fully administrative process.* Xxx”

The members of the TWG strongly argue that the courts should be considered as an independent review body since the criteria itself states that administrative review by an independent body “*includes the right for judicial review*”.

The OECD DAC should explain this further so that the assessors will not be confused on whether it is referring to only an administrative body or to judicial review or both. It should also distinguish between an administrative process and a judicial process since the Philippine experience shows that it is difficult to impose time frames for the issuance of decisions under the judicial process.

8.2.3. Separation and clarity of normative/regulatory body to avoid conflict of interest

In sub-indicator 4(d) — The responsibilities should also provide for separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions – The description states that the body is not responsible for direct procurement operations and is free from other possible conflicts (e.g. by being member of evaluation committees, etc.).

As a policy making body, the GPPB is composed of heads of agencies undertaking actual procurement but it does not by itself undertake or supervise actual procurement activities. It does not function as a Tender Board. In crafting the procurement law, the policy makers wanted to make sure that procurement policy will not be theoretical and needed the experience and best practices of the biggest procurement agencies. It did not see then nor does it see now that there is possible conflict of interest in this regard. The inputs of the major procuring agencies have proven to be valuable in crafting practical and realistic procurement guidelines. This has been questioned since in some countries, the practice is for policy makers to be independent of those involved in implementation.

The TWG wants to know the OECD DAC opinion on the ideal composition of the procurement body to ensure independence. It also wants to be clarified on the statement that the normative body should be “free from other possible conflicts”. The OECD DAC may also want to reconsider its description and discussions on this sub-indicator.

8.2.4. Private sector participation in the public procurement market

In sub-indicator 7 (b), - Private sector institutions are well organized and able to facilitate access to the market, there is a need to explain the level of involvement that the government is expected to take to enable the private sector to participate in the competition for public procurement contracts since such is highly dependent on market forces.

8.2.5. Appeals body

In sub-indicator 10(a) – condition (b) states that there should be an appeals body which has the authority to review decisions of the specified complaints body and issue final enforceable decisions.

The first appeal body that may review decisions and approve or disapprove Motions for Reconsideration (MR) issued by the BAC is the Head of the Procuring Entity (HOPE).

The Office of the President serves as the independent administrative body that has authority to grant remedies for procurement related decisions. The Regional Trial Courts has jurisdiction over the final decision of the HOPE.

There is a need to clarify whether the appeals body under this sub-indicator is an administrative entity or may include the courts.

The TWG wants to clarify with OECD DAC if the administrative body referred to in this condition is the same body referred to in sub-indicator 10e. The TWG interprets the body referred to under this sub-indicator to be the HOPE since it is responsible for acting upon complaints or protests made against the BAC.

8.2.6. Capacity of complaints review system to handle complaints

In sub-indicator 10b, one of the conditions is that the complaint review system has “precise and reasonable” conditions and timeframes for decision by the complaint review system and clear enforcement authority and mechanisms.

The OECD DAC needs to define the meaning of the word “precise and reasonable”.

ANNEXES