

Lao PDR
NATIONAL PUBLIC PROCUREMENT
SYSTEM ASSESSMENT
REPORT

Procurement Monitoring Office
Ministry of Finance
Lao PDR

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TABLE OF CONTENTS

INTRODUCTION – APPROACH AND METHODOLOGY	1
TEAM MEMBERS	2
ASSESSMENT RATINGS.....	3
BIS ASSESSMENT.....	4
SUMMARY OF FINDINGS	4
RECOMMENDATIONS.....	6
<i>Short Term Recommendations</i>	7
<i>Medium Term Recommendations</i>	15
<i>Long Term Recommendations</i>	18
ANNEXES	20

Introduction – Approach and Methodology

The assessment of the public procurement system of Lao People's Democratic Republic (PDR) was conducted using the Baseline Indicators System (BIS) for measuring the quality of a country's procurement policies and institutional capacity, which was developed by the joint World Bank and Organisation for Economic Co-operation and Development (OECD) Development Assistance Committee (DAC) Procurement Roundtable.¹ As such, the assessment was undertaken on the basis of four (4) key areas called "Pillars," which are composed of twelve (12) Indicators that have been identified as the core components of a public procurement system. These twelve (12) Indicators are, in turn, composed of Baselines that are considered the desirable standards against which the existing elements of Lao PDR's public procurement system may be assessed.

For the assessment, points were given to each Baseline, the total of which corresponds to weights assigned to each of the Indicators. In turn, the weights of these Indicators comprise the total score for each of the four (4) Pillars. To reflect their equal importance, each of the Pillars was given a weight of twenty-five percent (25%) each, amounting to a grand total of one hundred percent (100%). These points and weights were discussed with, and agreed upon by, the Procurement Monitoring Office (PrMO), Ministry of Finance (MOF) of the Government of Laos (GOL), so that the distribution thereof would be based upon the importance and relevance of each of the Baselines and Indicators involved, in relation to the GOL's public procurement reform program.

In conducting the BIS assessment, a review of Lao PDR's public procurement legislative and institutional framework had to be undertaken. This review included the following:

1. The Decree of the Prime Minister on Government Procurement of Goods, Construction, Maintenance and Service, dated 9 January 2004 (the "Procurement Decree");
2. The Implementing Rules and Regulations on the Decree of Government Procurement of Goods, Works, Maintenance and Services, specifically Ministry of Finance No. 0063/MOF, dated 12 March 2004 (IRR); and
3. The structure and operations of the PrMO, as well as its charter – the Decision of the Minister on the Establishment of the Procurement Monitoring Office, specifically Ministry of Finance No. 2382/MOF, dated 4 November 2004 (the "PrMO Charter").

Lao PDR's Budget Law and its recently enacted Anti-Corruption Law were also considered during the discussions.

¹ The World Bank (Operations and Country Services), *Increasing the Use of Country Systems in Procurement*, p. 5 (March 2005).

**Lao PDR: National Public Procurement
System Assessment Report**

In order to provide field data for the BIS assessment, a national consultant visited the following key institutions to interview officials therein and, when possible, gather data and documentation:

1. Ministry of Agriculture and Forestry (MAF);
2. Ministry of Communications, Transportation, Posts and Construction (MCTPC);
3. Ministry of Education (MOE);
4. Ministry of Health (MOH);
5. Vientiane Capital; and
6. Electricite du Laos (EDL), a State-Owned Enterprise.

The PrMO plans to have two (2) more institutions visited, in order to conduct further interviews and gather data that may be used for the BIS assessment.

The BIS weight distribution and the initial findings were presented to the GOL Procurement Technical Working Group (TWG) for review and further confirmation during a meeting held on 22 February 2006, at the PrMO office.

A Validation Workshop was held on 10 March 2006, at the International Cooperation and Training Center (ICTC), Vientiane Capital, to further validate the findings of this BIS Report. The participants of the Validation Workshop were technical experts and representatives of key institutions – including those approached for this Report – as well as those represented in the GOL Procurement TWG. Professional associations and private companies involved in GOL goods and civil works procurements were invited to gather their views and comments on the Report, but did not attend. The institutions/agencies that were represented during the Validation Workshop were:

1. MOH;
2. MOE;
3. MCTPC;
4. MOF;
5. MAF;
6. Ministry of Foreign Affairs (MOFA);
7. Vientiane Capital;
8. State Inspection Authority (SIA);
9. Lao Telecommunications (LTC) (a State-Owned Enterprise);
10. Enterprise Telecommunications of Lao (ETL) (a State-Owned Enterprise); and
11. The World Bank.

Team Members

The members of the team that conducted the BIS assessment are:

1. Mr. Thone PHONEPHACHANH – Director, PrMO
2. Mr. Phimpha PHOMMAVONG – Officer, PrMO
3. Mr. Passaya PHOLSENA – Officer, PrMO
4. Mr. Jose Luis SYQUIA – International Consultant
5. Ms. Phongxay WAHL – National Consultant

The representatives of the Procurement TWG who were present during the 22 February 2006 meeting and reviewed the BIS assessment are:

1. Mr. Viratha PHONEKEO – Supply Department Manager, EDL
2. Mr. Thongdeun KHAMMANY – Deputy Director of Division of Roads, MCTPC
3. Mr. Somthong PHOMTHAVIXAY – Deputy Director of Planning and Cooperation Department, MCTPC
4. Ms. Siriphone SOUPHANTHONG – Deputy Head of Division, Cooperation Planning and Investment (CPI)

Assessment Ratings

The Assessment Ratings per Indicator shown below were used to determine the Level of Achievement of Lao PDR in order to provide a mapping of its existing public procurement system. The Assessment Ratings are based upon the points garnered for each Baseline.

Level of Achievement:

0 – 19% of Indicator	20 – 69% of Indicator	70 – 89% of Indicator	90 – 100% of Indicator
NA	PA	SA	FA

Legend:

- NA – Not Achieved** (Less than 20% of Baseline elements achieved, or 1 or more Mandatory Baseline/s is/are not achieved)
- PA – Partially Achieved** (At least 20% but less than 70% of Baseline elements achieved, with all Mandatory Baselines achieved)
- SA – Substantially achieved** (At least 70% but less than 90% rating on Baseline elements, with all Mandatory Baselines achieved)
- FA – Fully Achieved** (90% to 100% rating on Baseline elements, with all Mandatory Baselines achieved)

It should be noted that a number of **mandatory** Baselines are identified as having critical importance, so that satisfactory compliance for each of these would always have to be required ex ante.² These mandatory Baselines/Sub-Baselines are highlighted in yellow in the attached BIS Assessment, and obtaining a "0" score in any of these would result to an NA rating for the Indicator where such Baseline/Sub-Baseline is found, regardless of the points attained therefor. These Assessment Ratings may also be applied to the scores attained by Lao PDR for each Pillar, or even to the Grand Total Score, but the effect of the presence or absence of the mandatory Baselines would have to be disregarded so that an accurate overall profile may be had.

² *Id.*, at 29.

BIS Assessment

Applying the BIS weights upon Lao PDR's public procurement system, a Grand Total Score of **46.15%** was garnered as a result of the scores attained in the attached BIS Rating Sheet. Adopting the above Assessment Ratings, this translates to a **PA** Level of Achievement, whereby at least twenty percent (20%) but less than seventy percent (70%) of ALL Baseline elements have been achieved.

The BIS Assessment Table, attached hereto as **Annex "A,"** provides for the descriptive analysis of the ratings as to where, how and why GOL fully, substantially, partially or fails to achieve the standards set by the Baselines. It contains: (i) the Pillars with their corresponding weights; (ii) the Indicators with their assigned weights; (iii) the Baselines and their allotted points; and (iv) the findings for each Baseline. The BIS Rating Sheet and Charts for this Report are attached hereto as **Annex "B."**

Summary of Findings

The BIS Rating Sheet shows GOL garnering a rating of FA for Indicator 1 (the country's procurement legislative and regulatory framework complies with applicable obligations deriving from national and international standards). This is due to the fact that the Procurement Decree satisfies majority of the Baselines therein. However, it should be noted that a concern was raised for a mandatory Sub-Baseline element under Indicator 1. In particular, on the matter of the existence of neutral specifications with reference to international standards, it was observed that complaints have been raised to PrMO regarding unclear specifications and high standards for goods procurement, as well as high qualification requirements for civil works – especially for foreign funded projects. Notwithstanding this, the Level of Achievement shows GOL attaining ninety-two percent (92%) of the Baselines under Indicator 1, and an overall score of seventy-one point twenty percent (71.20%) with a rating of SA for Pillar I (The Legislative and Regulatory Framework).

A look at the BIS Assessment Table would further show that GOL's strong rating in Pillar I is brought about by the fact that it recently passed a Procurement Decree on 9 January 2004, and that substantial portions of this Decree support – or at times are similar to – the principles and procedures found in the guidelines of International Financing Institutions (IFIs), e.g., The World Bank and the Asian Development Bank (ADB). For example, GOL attained positive marks on the use of open, competitive, fair and predictable procurement procedures, the use international competitive methods, the publication of opportunities, and the use of limited and controlled preferential clauses.

However, as with any reform legislation or initiative, the next step to take after the successful passage of a law is to ensure effective implementation through the institutionalization of reform measures. As such, it comes as no surprise that, although GOL attained encouraging ratings for Pillar I, the results for Pillars II, III, and IV show much room for improvement. Otherwise stated, it is apparent from the overall ratings that, after having successfully legislated its procurement reforms, GOL would now have to focus its efforts toward ensuring that this new law is

**Lao PDR: National Public Procurement
System Assessment Report**

successfully implemented in both the central and local governments, including the provincial and district offices.

In line with the above, the following weaknesses in GOL's public procurement system stand out:

1. The lack of Standard Bidding Documents and Generic Procurement Manuals;
2. Insufficient integration with governance systems;
3. The absence of a professionalization program and private sector orientation;
4. Insufficient competition in public biddings;
5. The lack of a system for collecting key data and monitoring performance;
6. Weak external and internal control and audit at the agency level; and
7. Low confidence of Private Sector in the legal and regulatory framework, as well as in the enforcement of administrative penalties.

To counter these weaknesses, GOL would have to work towards improving its ratings in the following indicators:

1. The integration of the public procurement system with the entire public governance system, such as establishing proper linkages between budgeting and procurement;
2. The capacity of public procurement practitioners and managers;
3. The actual procurement operations of local governments and field offices;
4. The competitiveness and capacity of local suppliers and contractors, as well as the overall confidence of the domestic market in the new system;
5. The external and internal audit and control system; and
6. The implementation of rules on ethics and anti-corruption.

At any rate, with the establishment of the normative/regulatory body, *i.e.* the PrMO, it is safe to say that GOL has set itself on the right track towards achieving an institutionalized and effective public procurement system. Although the BIS Rating Sheet shows that GOL has only achieved a PA rating for Indicator 4 (on the normative/regulatory body), it is only five (5) percentage points short of a satisfactory rating of seventy percent (70%). This shows that the PrMO satisfies most of the

**Lao PDR: National Public Procurement
System Assessment Report**

characteristics and functions required of a centralized normative/regulatory body, such as its establishment in law and the operation of a “help desk,” but would require more resources, assistance and a higher status in law to perform these functions effectively.

GOL also attained positive results in other aspects of the BIS, particularly in terms of:

1. Having clearly defined rules and procedures for contract administration, dispute resolution and enforcement mechanisms;
2. Having a framework for an administrative and judicial complaint review system, albeit one that needs strengthening in terms of structure and capacity, to efficiently handle complaints; and
3. Having a system that supports international publication of international public bidding opportunities.

Finally, with the recent approval by the National Assembly of the Anti-Corruption Law, GOL attained a high rating for Indicator 12, particularly for having a legal and regulatory system that defines responsibilities, accountabilities and penalties for individuals and firms engaged in fraudulent or corrupt practices, a code of conduct/ethics, and an anti-corruption program that covers fraud and corruption in public procurement. This rating is enforced by the existence of the SIA as the body with which complaints or reports of fraudulent, corrupt or unethical behavior may be filed.

All taken, the following strengths in GOL’s public procurement system may be listed:

1. The omnibus Procurement Decree;
2. The Implementing Rules and Regulations;
3. The Similarity of GOL procurement rules with IFI Guidelines;
4. A centralized oversight body;
5. The existence of rules on contract administration; and
6. An anti-corruption program.

Recommendations

Although the BIS assessment shows several areas in the GOL public procurement system where improvement may be had, this does not necessarily mean that all these areas would have to be addressed at this point. As such, this Report will make a distinction among short term (within 1 year), medium term (within 3 years), and long term (within 5 years) recommendations, in order to distinguish those areas of the procurement system that would have to be prioritized, and those that may be attained realistically within a short period. Needless to say, these recommendations take the aforementioned strengths and weaknesses of GOL’s public procurement

system into account, and are intended to assist it move from its current Assessment Rating to more comfortable rating.

Short Term Recommendations

To ensure that the reform measures provided in the Procurement Decree and its IRR are properly cemented and cascaded from the central government down to the local governments, provincial, district and project offices, GOL would have to focus much of its efforts on expanding knowledge of the new procedures, establishing a system for data collection and information generation, and building the capacity of the PrMO – as central office that may be used to catalyze all reform efforts, both within and outside the government. In particular, the following may be recommended:

- a. **Strengthen the PrMO (to improve results in Indicator 4).** The Procurement Decree, its IRR and the PrMO Charter provide several responsibilities for the PrMO, thereby making it a significant agency for GOL public procurement. Some of these functions are listed in Article 4 of the PrMO Charter, and No. 13 of this Article provides further that the PrMO shall “fulfill the objectives of the Decree 03/PM dated January 2004 (the Procurement Decree) and the Implementing Rules and Regulations.” This reference to the Procurement Decree brings up more responsibilities for the PrMO, not only covering the fields of policy and regulation, but well into the realms of administrative review and operations. This particular issue on the multiple responsibilities of the PrMO would have to be addressed, because it creates a scenario whereby the PrMO is not only involved in regulation and policy formulation, but also is also involved to a certain extent in the execution of contract, such as: (i) the approval of extension of bid validity; (ii) the approval of a substantial reduction in the scope of contract documents in case of rejection of bids, and (iii) the approval of the bid evaluation. On this point, it is recommended that any portion of the Procurement Decree and its IRR granting the PrMO the authority to approve aspects of the actual procurement operations of a procuring entity would have to be rethought and, if possible, removed, to isolate it from controversies that may arise in the execution of government contracts. Another crucial matter is to ensure that the PrMO is sufficiently established to perform its role as “the central organ of state administration in all matters of public procurement.”³ In view of all these, it appears that the current level of authority, structure, staffing and resources of the PrMO are incongruent with its tasks.
 - On the level of authority, Article 2 of the PrMO Charter establishes this office as a Division of Office under the Ministry of Finance. However, given the fact that the PrMO is tasked to provide advisory services to line agencies and review decisions of Tendering Committees on complaints filed in accordance with Article 33 of the IRR, among others, it is recommended that the PrMO Charter be amended to increase its level in the bureaucracy to at least that of a Department. A higher level would give the PrMO more ascendancy over other

³ Ministry of Finance No. 2382/MOF, dated 4 November 2004 (the “PrMO Charter”), Art. 3.

procuring entities and Tendering Committees, with respect to its decision-making, administrative review and regulatory functions. This would also allow it to have a structure composed of Division-level offices.

- On structure and staffing, Article 6, Chapter II of the PrMO Charter provides for a structure consisting of three (3) Units, namely, the Compliance Unit, the Advisory and Training Unit, and the Procurement Reference Unit. Although the functions of the Advisory and Training Unit are well provided, it appears that the division of work between the Compliance Unit and the Procurement Reference Unit may be improved further. The reason for this is that, as provided, the Compliance Unit would have to be responsible for all functions pertaining to the supervision and monitoring of suppliers, contractors and consultants, the supervision/authorization and monitoring of bidding activities, the collection and recording of statistics on public procurement, and the review of complaints. On the other hand, the Procurement Reference List Unit would only have to be responsible for the creation of reference lists. Moreover, a danger of a conflict of interest may arise if the recording, monitoring, supervision/authorization and review powers are all given to one unit. As such, it may be recommended that the responsibilities of the Procurement Reference Unit be expanded to include the monitoring of bidding activities, as well as the collection and recording of public procurement statistics, so that it now becomes a Procurement Monitoring and Reference Unit; while the Compliance Unit retain its supervisory/authorization and review functions. For obvious reasons, the staffing complement for each of these units would have to be increased to perform their functions properly. For example, the Advisory and Training Unit should be properly staffed with lawyers and trainers, so that the former would be responsible for drafting legal opinions, while the latter would be utilized to conduct continuous regional trainings and capacity building sessions. The Advisory and Training Unit should also have a regular phone-in “help desk” to answer telephone queries. By experience, these phone-in queries tend to increase once the regular regional training program comes into full swing.

- b. Professionalize Public Procurement (to improve results in Indicators 5 and 6).** Although the PrMO has already undertaken an information drive on the new Procurement Decree, there is a need for a sustainable procurement training program to be conducted regularly by experts from, or tapped by, the PrMO Advisory and Training Unit. This program should not only target GOL officials involved in procurement, but also private suppliers, contractors and consultants. It would be ideal for GOL to develop a course for government officers, employees, and even private contractors, covering all aspects of project management and government procurement, including project and procurement planning, IFI guidelines, the budget cycle, public contracts, and dispute resolution, among others; but this initiative would be best indicated as a medium or even long term objective. In the meantime, it would suffice for

the GOL to develop a short procurement training program which may run from one (1) to two (2) days, covering the following critical topics:

- General Principles of Procurement
- GOL Regulations on Procurement of Goods
- GOL Regulations on Procurement of Civil Works
- GOL Regulations on Hiring of Consultants
- IFI Guidelines, such as those of the World Bank, ADB and Japan Bank for International Cooperation (JBIC)

This short procurement training program may in fact be developed into a Public Procurement Training Certificate Program for all GOL officers and employees involved in the procurement process, so that attendance at this program and the receipt of a certificate from PrMO would be a prerequisite for one to perform any procurement function (including membership in a Tendering Committee). This program would help in ascertaining that those involved in the procurement process are properly trained on, and understand, all applicable rules and regulations, and would also help minimize the need for external consultants. On a related matter, due to the fact that several participants of the previous procurement training sessions were not necessarily involved in the procurement process, the objectives and advantages of these sessions were not fully achieved at the procuring entity level. To avoid this from happening again, the PrMO should develop a list of targeted participants for the program, and strictly invite only those whose position classifications fall within the said list.

The outcome of the Public Procurement Training Certificate Program – even if initially undertaken for only one (1) year – would allow GOL to assess the capabilities and training needs of its procurement practitioners in the central and local governments, as well as in the provincial, district and project offices; and would thus aid in determining whether a full-blown public procurement course would be necessary. Needless to say, the operation of a “help desk” would complement the training program, because it would provide a venue for participants to raise follow-up queries after the sessions, particularly those that arise during actual operations. In order to reach all levels of the government bureaucracy, *i.e.* central, local, provincial and district levels, within a shorter period of time, especially given the current limited staffing complement of the PrMO, GOL may consider establishing regional composite teams of trainers, utilizing selected professors from local state-owned universities or colleges and budget officers within the pertinent region or province. However, given the abstruse nature of public procurement, it would be necessary to conduct an intensive training-of-trainers workshop/seminar for these composite teams before sending them to the regions or provinces. It would also be imperative for the PrMO to be present – at least during the first training sessions of the composite teams – in order to ensure that issues are being addressed properly. The PrMO would also have to keep the lines of the “help desk” open, as several queries are expected to pour in during the early stages of the regional training sessions, most coming from the trainers themselves. Finally, the PrMO should regularly monitor the performance of the composite teams in order to ensure the quality of their presentations.

c. **Develop a Data Collection, Monitoring and Evaluation System (to improve results Indicators 5, 6 and 11).** Administrative systems and/or information databases on the following aspects of public procurement are absent in GOL:

- Procurement opportunities and awards (Indicator 5, Baseline a)
- National procurement statistics (Indicator 5, Baseline c)
- Quality control standards (Indicator 5, Baseline d)
- Public procurement operations and performance at the contracting entity level (Indicator 6, Baseline c)
- Recording and documentation of procurement and contract transactions at the contracting entity level (Indicator 6, Baseline e)
- Identified key data collected from the contracting entities to monitor national performance (Indicator 11, Baseline b)
- Relevant records to validate key data (Indicator 11, Baseline c)

Although the project offices are replete with procurement records and data, these appear to be project specific, and there exists no system that can identify the key data required to generate the information necessary for proper performance monitoring at both the national and line agency levels, generate the necessary procurement statistics, and report these to the central government. As an initial step towards developing a fully operational national and agency procurement information, monitoring and evaluation system, it is necessary to have a tool that:

1. Identifies critical indicators on agency procurement performance;
2. Specifies the standards or satisfactory thresholds that an agency would have to meet for each of the performance indicators;
3. Identifies the key data that are linked with the performance indicators and are thus needed to determine whether an agency meets the satisfactory thresholds;
4. Identifies the relevant contract and public bidding data;
5. Identifies the documents relevant for gathering the key data;
6. Guides the evaluator on the appropriate steps to take when conducting a procurement performance evaluation; and
7. Is sufficiently linked to the BIS, so that a comprehensive picture may be had, covering both the national and agency levels of procurement.

Attached hereto as **Annex “C”** is the Lao PDR Public Procurement Measurement Tool with Agency Performance Indicators (API), which was developed with the above-enumerated elements in mind.

d. Establish Permanent Tendering Committee Secretariats (to improve results in Indicator 6). Regardless of how well developed a data collection system may be, it would be of no practical use if there existed no permanent office in the line agencies to serve as the focal point where all the relevant data may be gathered and found. The BIS assessment reveals that line agencies tend to have ad hoc Tendering Committees and procurement offices, as procurements are generally project based, and officers in these agencies do not know, or have not identified, the specific office/s that would have to take custody of all relevant records and documents. It is recognized that Tendering Committees are usually ad hoc, as these consist of mid-level to high-level officials who perform other functions. The same may be said about technical working groups, because their members are experts who are usually drawn from other offices regularly involved in the type of project or procurement concerned. Given this scenario, it thus becomes vital for a procuring entity to have at least one permanent office that:

1. Takes custody of procurement documents and keeps all the records for all activities relevant or related to procurement;
2. Is responsible for the sale and distribution of bidding documents to interested bidders;
3. Provides administrative and secretariat support to the Tendering Committee and technical working groups;
4. Assists in managing the procurement processes;
5. Monitors procurement activities and milestones for proper reporting to the proper central government agencies, such as the PrMO and the SIA;
6. Functions as the focal point in the procuring entity concerned for purposes of implementing the professionalization program therein; and
7. Serves as the central channel of communications for the Tendering Committee with the end users, the Project Management Offices, other units of the line agency, other government agencies, the bidders, and the general public.

The requirement for the creation of this office or unit would have to be provided in an executive order or decree. It may be referred to as the Tendering Committee Secretariat, and the head of the agency may either create it as an entirely new office/unit or simply reorganize an existing office/unit and designate it as such. It would be very difficult to conduct an agency procurement performance evaluation without a procurement records system managed by a permanent office therein.

e. Provide Adequate International Standards for Technical Specifications (to improve results in Indicator 1). Although GOL's legislative framework achieves satisfactory ratings for majority of the Baselines under Indicator 1

(the country's procurement legislative and regulatory framework complies with applicable obligations deriving from national and international standards), thus attaining a score of ninety-two percent (92%), complaints have been received by the PrMO regarding unclear specifications and high standards for goods procurement. Complaints have also been raised to PrMO about high qualification requirements for civil works projects. These have been observed especially for projects covered by foreign funding. These issues may be addressed through the use of Standard Bidding Documents, preferably harmonized with IFIs such as the World Bank, ADB and JBIC, and by strictly monitoring the use of technical specifications, particularly for sensitive procurements, to ensure that the practice of "tailor fitting" or brand preference is avoided by line agencies and project offices. This should also be complemented by an intensive information campaign on the matter, which may coincide with the Public Procurement Training Certificate Program recommended above.

Article 11 (Two-Stage Bidding) of the Procurement Decree IRR, would also have to be revisited, because it allows the procuring entity to negotiate with potential bidders (prior to the second (2nd) stage) on the content of submitted initial offers, keeping confidential the content said negotiations. This seems to run counter to the concept of a sealed bidding, and the principles of equity and transparency – even for a two-stage bidding procedure – because it allows a bidder to improve its bid even before the Tendering Committee releases the revised technical specifications during the second (2nd) stage. In fact, under two-stage bidding procedures in IFI procurement guidelines, the procuring entity is only allowed to request for clarifications from bidders on their technical submissions, but not to negotiate on these.

- f. **Issue Standard (Harmonized) Bidding Documents and Generic Procurement Manuals (to improve results in Indicators 2 and 7).** To complement the public procurement professionalization program, it is recommendatory to issue Standard Bidding Documents and Generic Procurement Manuals, because these would ensure that all agencies and offices use the same procurement formats and follow the same guidelines. A single set of procurement documents would also minimize confusion on the part of both the procuring entity and the bidder, because standard templates would then be utilized throughout the entire bureaucracy for all public procurement activities. Since GOL is close to issuing its Procurement Manuals, it may also be pointed out that these manuals and the Standard Bidding Documents are excellent avenues for harmonizing the operational policies and procedures among the National Competitive Bidding (NCB) procedures of GOL, ADB, JBIC and the World Bank. It should be remembered that harmonization efforts began as a response to the increasing concerns about high transaction costs, fragmentation of administrative capacity, and reduction in aid effectiveness caused by the multiplicity of the donor institutions' operational policies, procedures and practices. Given this background, as the Procurement Decree is the embodiment of Lao PDR's efforts to introduce best practices into its public procurement framework, it has the effect of bringing GOL's procurement process much closer to those of the IFIs, whose procurement operations are based on currently accepted best

practices. Therefore, the next logical step would then be to initiate harmonization of GOL's procurement rules with the IFIs, e.g. the World Bank, ADB and JBIC. Lao PDR may be a ripe environment for harmonization efforts, given the new legislative framework of GOL, the fact that Standard Bidding Documents and Generic Procurement Manuals would still have to be issued, the IFIs' commitment to undertake harmonization efforts that are adapted to the country context, the IFIs' support for country-led efforts in this area, and the acknowledged need for collaboration to ensure that new or revised policies are harmonizable with those of the partner countries and donor institutions. It would thus be advisable for GOL to begin studying the possibilities for harmonization.

- g. Undertake Proper Planning and Require a Certification on Availability of Funds (to improve results in Indicators 3 and 7).** Although agencies are required to submit Annual Procurement Plans (APPs) as bases for budget requests, a strong link between the APP, the budget, the actual procurement and spending does not exist. This is revealed by findings on a persistent insufficiency of local funds for contracts, and the constant reallocation of budgets for procuring entities during the fiscal year. This means that there is a strong possibility that funds already appropriated for particular projects or contracts at the start of the year may no longer exist when the time for payment arrives, particularly for those sourced solely from national funds. Although the root of this problem may be traced to a need for budgetary and revenue collection/generation reforms, some solutions may also be provided on the procurement side. In particular, while appropriations based on APPs certainly have to exist before a procurement action is initiated, it should be noted that APPs tend to be submitted merely to comply with budgetary requirements, and are oftentimes not regarded as tools for efficient implementation, monitoring and evaluation. As such, in reality, the estimates indicated therein may not actually reflect prevailing market prices, but may rather contain inflated figures that take into account the eventuality of a decrease in budget allotments due to reallocations. The importance of the APP cannot be over-emphasized, because proper planning allows a procuring entity to schedule its procurements, determine its budgetary requirements for specific projects within a given period and check whether it has exceeded its spending limits for the same periods. As long as a procuring entity develops its procurement plan in line with its budgetary estimates; and provided that these estimates are not unduly inflated or based merely on historical data, but are actually validated with existing market prices; and provided further that the procuring entity remains faithful to its procurement plan during the calendar year, it would be able to maintain that critical link between spending and budgeting, for it is planning that integrates these two concepts.

Another important aspect to consider is that contracts tend to be signed regardless of whether or not actual funds exist to support these. During the assessment, it was discovered that a procuring entity is authorized to execute a contract as long as an appropriation exists to cover it. As such, before contract signing, the procuring entity only has to make a determination whether a line exists in the appropriations law for the relevant project. Based on the scenario described above regarding insufficiency of funds and the

practice of reallocating budgets for line agencies, it becomes apparent that a simple check on line appropriations would not suffice to ensure that funds exist for government contracts, particularly those covered by national funds. In fact, it has been reported that substantial delays in contract payments for nationally funded projects are a common occurrence in Lao PDR, because funds simply do not exist when needed. This also leads to the practice of procurement based on credit. The ultimate effects of such a practice are that suppliers and contractors are discouraged from participating in nationally funded projects, and that prices quoted by the private sector tend to be much higher than prevailing market prices, due to interest considerations for delayed payments. One immediate solution that may be recommended for this particular issue is the requirement for a certification of funds availability to be issued by the procuring entity's accounting officer as a prerequisite to contract execution/signing. This would instill some form of discipline upon contracting officers, so that no contract would be awarded and signed without ascertaining that funds actually exist therefor. In fact, a safer approach would be to require such a certification before bidding. Although the immediate effect of a certification requirement may be delays in contract execution or the postponement of procurement/bidding activities, it would eventually have the effect of instilling some form of self-discipline upon procuring entities in the preparation of budget estimates (as budget officers would be motivated to reflect estimates that are both realistic and attainable), in the procurement process, and in contracting. Moreover, this would eventually lessen the incidence of, or the period of, payment delays, as well as the incidence of procurements based on credit, so that more suppliers and contractors would be encouraged to participate in nationally funded projects and price quotations may be more reflective of prevailing market prices.

- h. Encourage a more Pro-active Participation from the National Audit Agency (to improve results in Indicator 9).** At present, most GOL projects and procuring entities utilize private external auditors whose scope of audit depend upon agreed Terms of Reference. Although GOL has a National Audit Agency, its reach is limited and it usually only reviews a procurement activity when a problem arises. It is advisable for GOL to increase the involvement of the National Audit Agency so that audits of procurement activities and contracts are undertaken on a regular basis, and so that contracts that do not conform to existing procurement, accounting and audit regulations are readily disallowed. With this, the dependence of GOL on private external auditors may be lessened, and confidence on government external auditors may be encouraged – especially given that the procurement, accounting and auditing standards of the public sector are dissimilar to those of the private sector. Moreover, the regular presence of government field auditors in procuring entities has proven to be very effective in checking the occurrence of fraudulent or grossly disadvantageous transactions. Their position and authority in the procuring entity also makes them a crucial partner of the PrMO, because they have immediate access to needed records and documents, and can provide unbiased findings on transactions and contracts therein. As such, it would also be advisable for PrMO to establish a partnership with the National Audit Agency on this regard. It is also recommended that PrMO conduct a focused public procurement training

program for government field auditors, to ensure that they have a common understanding of the new law. To strengthen procurement monitoring, it would also be advisable for SIA to be included in this partnership, by reason of its role in detecting fraud and corruption in procurement transactions, and due to the fact that it is tasked with monitoring the management performance of government agencies.

i. Enhance Competition at the Contracting Entity Level and Establish Blacklisting Mechanisms (to improve results in Indicators 7 and 12).

Field interviews have shown that competition in the provincial and district offices is much less than at the central level, because selection tends to be limited to suppliers and contractors within the locality, where only an average of three (3) to five (5) bidders participate. Moreover, selection tends to constantly involve the same list of suppliers or contractors. It was also reported that, in some instances, awards were made to bidders who did not necessarily submit the lowest bids. These practices were particularly observed for nationally funded contracts, and are prone to favoritism, collusion among the limited suppliers or contractors, and highly priced offers and awards. The problem is compounded by the absence of any blacklisting mechanism in the provinces and districts, so that even if a favored supplier or contractor defaults in its contract obligations, or performs in an unsatisfactory manner; its contract would not be terminated, nor would it be barred from future contracts. Rather, the existing contract is allegedly merely extended to allow the defaulting supplier or contractor to perform the contract. It may be noted that all the recommendations already mentioned would have a positive effect on enhancing competition and transparency at the contracting level. However, the following may still be suggested:

1. Strictly enforce Article 8 (4) of the Procurement Decree IRR, dealing with approvals for Direct Contracting and Limited Bidding;
2. Open procurement at the provincial and district levels to national competition;
3. Lessen the threshold value for Limited Bidding, or entirely strike out all provisions in the Procurement Decree and its IRR that provide for a threshold value for Limited Bidding, such as Article 8 (1) (a) and the relevant portion of Article 13;
4. Explicitly prohibit the head of any procuring entity to be the head or member of the Tendering Committee; and
5. Establish and strictly implement a national Blacklisting mechanism for suppliers, contractors and consultants.

Medium Term Recommendations

j. Follow-through on Professionalization (to improve results in Indicators 5 and 6). As discussed above, after a one (1) year run of the Public

Procurement Training Certificate Program, it would be advisable for GOL to assess the capabilities and training needs of its procurement practitioners in the central and local governments, as well as in the provincial, district and project offices, to determine the practicability of developing a full-blown public procurement course.

- k. Follow-through on Harmonization and Pilot-testing (to improve results in Indicators 2 and 7).** It was mentioned above that the Procurement Manuals and the Standard Bidding Documents are excellent avenues for harmonizing GOL procurement rules and regulations with IFI procurement guidelines for National Competitive Bidding (NCB) procedures, such as those of the World Bank, ADB and JBIC. As such, it may be appropriate for GOL to incorporate harmonized provisions in these documents and pilot test these with identified line agencies and local government units undertaking IFI funded projects.
- l. Develop a Website for PrMO (to improve Indicator 5).** Once sufficiently reorganized and staffed, GOL may begin efforts towards developing a simple website whereby basic information about national and local procurement information are posted and shared, such as tender invitations, requests for proposal, contract award information, and the blacklist of suppliers, contractors and consultants. This website would have to be managed by the PrMO, and the PrMO would need to have a staff dedicated to this initiative. This would be the first step towards introducing an Information Technology (IT) initiative for GOL procurement, as a full-blown e-procurement system is not recommended at this time. It should be kept in mind that most IT initiatives – e-procurement included – cannot exist independently of, and would thus require, the necessary legislative, institutional and administrative frameworks. For this reason, if GOL were to undertake an e-procurement program, the recommended approach would have to be one that:
1. Ensures that the procurement regulations are such that they allow adaptations to improvements in modern technology;
 2. Establishes the necessary institutional frameworks, and administrative and manual systems and procedures;
 3. Ensures proper linkages with other systems that may interact with the procurement process, such as financial management information systems and logistics management systems;
 4. Allows parallel manual operations; and
 5. Is unhurried in a deliberate and careful manner, to allow room for errors and improvements.
- m. Require the Posting of Contract Awards (to improve results in Indicators 5, 7 and 10).** Issuing an executive order or decree requiring the posting of contract awards is a step that would complement efforts at developing a data collection and monitoring system, and at strengthening the linkages among planning, budgeting, procurement and spending – by incorporating

transparency in the entire contracting process. Exposing contract awards to public scrutiny would make it easier for both the private and public sectors to compare the prices of similar procurements undertaken by different procuring entities, and to ultimately evaluate the effectiveness of Lao PDR's procurement reform program, *i.e.* whether it is able to procure quality goods and services at the most economical prices. For this reason, it would also encourage procuring entities to seek out and award contracts at reasonable prices. However, while issuing the relevant order or decree may not be difficult, enforcing it may prove to be more challenging, especially without a fully integrated data collection and monitoring system and a strong audit and control system within the procuring entity concerned. Due to the fact that the posting of contract award notices is a step that would necessarily have to come after the entire procurement process is undertaken and after critical decisions have been made, it would be easy to overlook or overstep, and difficult to enforce and monitor manually without the full cooperation of the procuring entity concerned. As such, experience has shown that a successful implementation of this requirement would require contract award notices to be linked electronically to bid notices and price estimates for individual contracts, so that red flags are raised and transmitted to the PrMO (and possibly the SIA and National Audit Agency) if an award exceeding a percentage of the original estimate is made. Although an e-procurement system is not being recommended at this point, it would still be advisable to issue a requirement for the posting of contract award notices, so that any consideration for an IT system may incorporate this requirement, and so that the appropriate legal basis exists with a sufficient level of awareness once the system is developed and ready for implementation.

- n. Strengthen the Internal Audit and Control System within Line Agencies and Local Government Units (to improve results in Indicators 6 and 9).** Although the assessment has shown that some agencies have created internal audit units, several of these existing units only function when a problem arises and that, at times, these units are not properly situated, *e.g.* the internal audit unit is established under the same department as the finance division, which thus creates a situation for a conflict of interest. Moreover, the organizational structures of some agencies may not support sufficient separation of the functions of authorization, recording and custody of assets within the procurement process. Therefore, it is advisable for GOL to conduct a mapping of its internal audit and control, develop generally accepted internal audit and control standards, and craft an internal audit and control manual and model that provides, among others, for the proper organization and institutional frameworks, and for audit functions that go beyond mere financial audits. Once developed, the manual and model would have to be pilot tested in selected line agencies and local government units (preferably the same agencies selected for the pilot testing of the harmonized manuals and documents) and properly adjusted.
- o. Develop a Procurement Records and Management System for Procuring Entities (to improve results in Indicators 5, 6 and 11).** To support the Data Collection, Monitoring and Evaluation System recommended above, a Procurement Records and Management System for line agencies and local

government units would have to be developed and pilot tested in selected agencies (preferably the same agencies selected for the pilot testing of the harmonized manuals and documents, and the internal audit and control manual). This system would ensure that the records and documents needed at the contracting entity level exist for appropriate data collection, monitoring and evaluation at the central level. It is suggested that the permanent Tendering Committee Secretariats recommended above be utilized for this purpose.

- p. Support the Development of a Pro-Active Civil Society (to improve results in Indicator 12).** To increase the transparency of GOL's procurement system and improve its credibility to the private sector and the international community, it would be advisable for the PrMO to support initiatives toward increasing the participation of civil society in procurement activities, such as:
1. Endorsing the inclusion of provisions in the Procurement Decree or its IRR on the participation of private associations and civil society organizations (CSOs) in public biddings as observers;
 2. Creating venues to galvanize public opinion on ways to improve transparency, accountability and equity in the procurement process, and forming partnerships with credible CSOs to build on these principles; and
 3. Developing training programs for CSOs, as part of its capacity building efforts.

Long Term Recommendations

- q. Fully Utilize the Harmonized Procurement Manuals and Standard Bidding Documents (to improve results in Indicators 2 and 7).** After pilot testing the harmonized Procurement Manuals and Standard Bidding Documents, and incorporating the necessary adjustments thereto, PrMO would have to ensure that these are used in all procuring entities of GOL, by officially issuing and disseminating these documents to take the place of the previously issued Procurement Manuals and Standard Bidding Documents; by developing training programs or sessions on the harmonized Procurement Manuals and Standard Bidding Documents, to be integrated with the professionalization program; and by monitoring the use of these manuals and documents.
- r. Fully Implement the Internal Audit and Control System (to improve results in Indicators 6 and 9).** Once the Internal Audit Manual and Model have been successfully pilot tested and adjusted, GOL would have to ensure that these are properly adopted and applied by line agencies and local government units. For this purpose, in addition to disseminating these documents nationwide, it may be best to design, develop and implement a national training and certificate program for government internal auditors.

- s. **Fully Implement the Procurement Records and Management System for Procuring Entities and Develop an E-Procurement System (to improve results in Indicators 5, 6 and 11).** After pilot testing the Procurement Records and Management System and incorporating the necessary adjustments thereto, the PrMO may then move into its full utilization by integrating it with the Data Collection, Monitoring and Evaluation System. At this point, the PrMO may also initiate efforts toward the design and development of an e-procurement system which, among others:
1. Has the capacity of gathering the data necessary for the Data Collection, Monitoring and Evaluation System;
 2. Incorporates the essential elements of the Procurement Records and Management System, and is able to link price estimates to bid notices and contract awards for individual projects/contracts;
 3. Must have the capability to link with other systems that may interact with the procurement process, such as financial management information systems and logistics management systems;
 4. Provides for an audit trail;
 5. Has a centralized electronic bulletin board for posting procurement opportunities, notices, awards and reasons for award, supported by the appropriate executive order or decree requiring all procuring entities to post these information;
 6. Features a registry of suppliers, contractors and consultants; and
 7. An indicative pricelist of goods commonly procured by GOL.

Once GOL has successfully developed and pilot tested an e-procurement system with the above features, it may decide to expand the features to include e-bidding, e-payment and other features that are appropriate and in line with modern technology capabilities of GOL's line agencies, provincial and district offices, and local government units. Moreover, it may be necessary to amend the Procurement Decree to provide for the pertinent rules and regulations on e-procurement.

Annexes