

Lao PDR
**PUBLIC PROCUREMENT
MEASUREMENT TOOL WITH
AGENCY PERFORMANCE
INDICATORS (API)**

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TABLE OF CONTENTS

INTRODUCTION.....	1
ANALYTICAL APPROACH.....	2
ESTABLISHING THE LINK BETWEEN THE API MAJOR CRITERIA AND THE BIS.....	3
THE API MAJOR CRITERIA.....	5
The Strategy.....	5
Organizational Structure.....	7
Accountability Measures.....	9
Agency Professionalization Measures.....	11
Agency Procurement Process.....	12
Competitiveness.....	12
Transparency.....	12
Efficiency.....	12
Effective Procurement.....	14
WEIGHTED AGENCY PERFORMANCE INDICATORS (API).....	16
NEXT STEPS.....	20

Introduction

The Baseline Indicators System (BIS) was developed during the joint World Bank and OECD/DAC Procurement Roundtable in response to the call for a tool that could be used for the assessment and comparison of national public procurement systems using baseline standards and quality. As such, the BIS helps identify when an element of the national public procurement system meets or exceeds the baseline and where it needs improvement or modification in order to meet the baseline. It is intended to help managers identify where to make changes in order to achieve better performance outcomes, and identify potential risks areas inherent in the existing system by identifying variances from the baseline.

From January to April 2006, the Government of Lao PDR, through the Procurement Monitoring Office (PrMO) of the Ministry of Finance (MOF), will be using the BIS to assess the quality of its public procurement system. During this activity, the PrMO will convene several technical group meetings among government experts to customize the macro-level BIS to the Lao setting by incorporating weights that are based upon their perception of the relative importance of each baseline and indicator. Furthermore, during the same period, the technical group will conduct the initial BIS assessment and determine the initial scoring. To validate the results thereof, these initial findings will be presented to a larger body of technical experts representing the key institutions of the ongoing Public Expenditure Review (PER) exercise, and to representatives of selected professional associations and private companies, during a workshop that would be held sometime within the period of February 27 to March 1, 2006. The final BIS assessment report may then be considered for the next Country Procurement Assessment Report (CPAR), and thus become the basis for the next steps on procurement reform in Lao PDR. In other words, the BIS is intended to serve as a tool for the Government of Lao PDR to recalibrate its public procurement reform strategy, and thus form the basis for further technical assistance from the International Financial Institutions (IFIs).

However, it should be noted that the BIS is predominantly based on macro indicators, which are intended to look at key elements of a public procurement system. For this reason, the BIS is not intended to measure performance and must be coupled with other management tools, like a performance measurement tool, in order to help guide actions on where to make changes and what changes need to be made in a particular agency. In other words, determinations as to whether better performance outcomes are achieved as a result of policy reforms need to be based on, among other things, collection and analysis of actual performance data. But even before identifying the various types and sources of data needed in an agency, a set of critical performance indicators would first have to be identified.

In view of the foregoing, to complement the BIS – a system based on national macro indicators – a tool is now required to monitor and evaluate actual implementation at the agency or micro level. This would demonstrate how performance at the transactional level is linked to the elements of the procurement system at the macro level.

Analytical Approach

To create such a linkage between the national procurement system and the agency-level procurement system, a model would have to be developed that would consider the following:

1. Whether the subject agency has a strategy for achieving an effective procurement program, and whether this strategy is in line with the national procurement reform policy.
2. Whether the organizational structure and employee capacity of the subject agency supports a strategy that is in line with the national procurement reform policy.
3. Whether the internal procurement processes of the subject agency supports a strategy that is in line with the national procurement reform policy and is in accord with its organizational setup.
4. Whether the subject agency is able to undertake its procurement in an effective manner.

From the above, it is obvious that the tool serves to measure performance by evaluating the effectiveness of a procurement system on an agency-level in the light of its organizational structure and internal processes, while at the same time ensuring connectivity between its own strategy and that institutionalized at the national level.

As the evaluation would assess the extent and manner by which an agency adopts the national procurement reform program of Lao PDR, it is clear that an important aspect to consider is its new public procurement reform legal framework, *i.e.* Decree of the Prime Minister on Government Procurement of Goods, Construction, Maintenance and Services, dated January 9, 2004 (the “Procurement Decree”) and its Implementing Rules and Regulations, Ministry of Finance No. 0063/MOF on March 12, 2004 (IRR). As such, the policy and principles contained in the Procurement Decree would serve as helpful starting points. In particular, the Government’s interest in procurement reform may be found in Article 1 of the IRR, which declares the principles of public procurement to be:

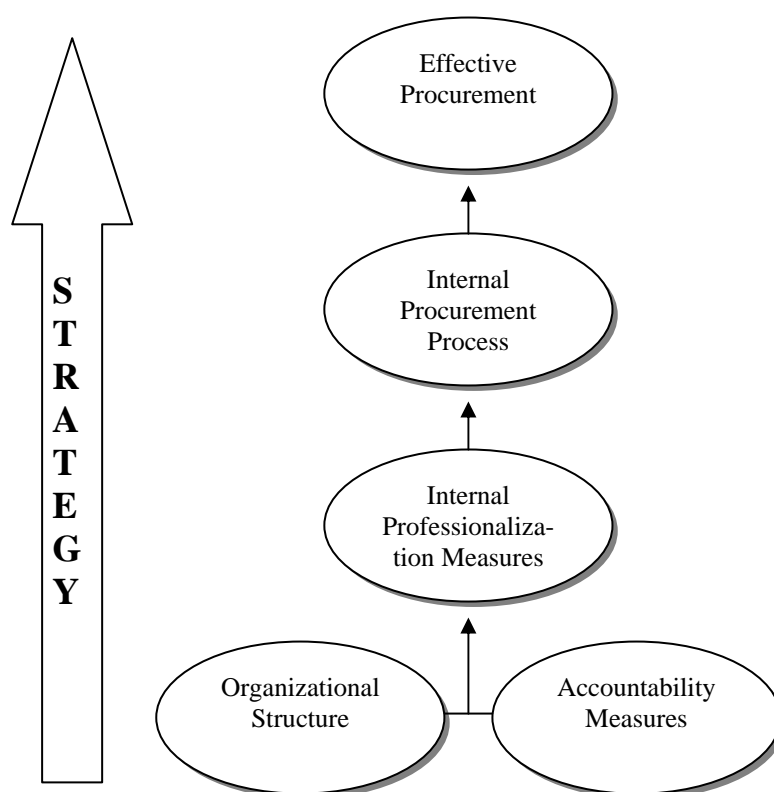
1. Transparency of public procurement through procedures set out in the Procurement Decree on government procurement of goods, works, maintenance and services, and the IRR;
2. Regularity and uniformity of procurement procedures of government entities and state enterprises;
3. Efficiency and economy in the government procurement of goods, works, maintenance and services; and
4. To guarantee all economic sectors fair and equal treatment in competitive bidding for the supply of goods, works and services to government entities and state enterprises.

Based on the above-enumerated principles, which are, by the way, reflective of currently accepted international best practices, the following major criteria for the Agency Performance Indicators (API) are suggested:

1. Strategy
2. Organizational Structure
3. Accountability Measures
4. Internal Professionalization Measures
5. Internal Procurement Process
6. Effective Procurement

Moreover, a careful consideration of the above-enumerated general principles, vis-à-vis the various elements of the BIS, would show that the API may be developed within a framework of cause and effect – such that the true value of performance measures would be derived by examining results in light of indicators that build upon the all the above considerations.

The illustration below show the “cause and effect” linkages among these major criteria:



Establishing the Link between the API Major Criteria and the BIS

The following four (4) key areas - called "Pillars" - have been identified in the BIS as a way of organizing the basic elements of a national public procurement system:

1. The Legislative and Regulatory Framework;
2. The Institutional Framework and Management Capacity;

3. The Procurement Operations and Market Practices; and
4. The Integrity of the Public Procurement System.

A number of Indicators are defined under these BIS Pillars for the purpose of expounding them. In turn, these Indicators are composed of Baselines that are considered the desirable standards against which the existing elements of the Government’s public procurement system may be assessed. **As such, the API would have to be developed within the context of the BIS Pillars.** In particular, the table below shows the four (4) BIS Pillars and its Indicators, the proposed API major criteria that correspond to each, and an explanation for such linkage.

<i>BIS Pillars and Indicators</i>	<i>API Major Criteria</i>	<i>Explanation</i>
<p>Pillar I - The Legislative and Regulatory Framework</p> <p><u>Ind. 1</u> – Procurement legislative and regulatory framework complies with applicable obligations deriving from the national and international requirements</p> <p><u>Ind. 2</u> – The country has appropriate implementing regulations, documentation, and tools to support implementation of its framework</p>	<ul style="list-style-type: none"> • Strategy 	<p>This will show whether the subject agency has developed a strategy that is linked with the national policy expressed in the legal and regulatory framework, and whether the initiatives it adopts under that strategy are aligned with the national policy</p>
<p>Pillar II - The Institutional Framework and Management Capacity</p> <p><u>Ind. 3</u> – The public procurement system is mainstreamed and well integrated into the public sector governance system</p> <p><u>Ind. 4</u> – The country has a functional management/normative body</p> <p><u>Ind. 5</u> – The country has institutional development capacity</p>	<ul style="list-style-type: none"> • Agency Professionalization Measures 	<p>This will show whether the subject agency gives importance to employee skills, dedication and proper alignment of its staff to achieve the objectives laid out in its strategy and the national policy, and whether any capacity building initiative is linked to the national development capacity program.</p>

<p>Pillar III - The Procurement Operations and Market Practices</p> <p><u>Ind. 6</u> – Efficient Procurement Operations and Practice</p> <p><u>Ind. 7</u> – Functionality of the Public Procurement Market</p> <p><u>Ind. 8</u> – Existence of Contract Administration and Dispute Resolution Provisions</p>	<ul style="list-style-type: none"> • Organizational Structure • Agency Procurement Process • Effectiveness 	<p>This will show whether the organizational structure and the internal procurement process of the subject agency is adequate to undertake the rules and procedures embodied in the national procurement reform program, and whether these result to genuine competition and cost-effective procurement.</p>
<p>Pillar IV - The Integrity of the Public Procurement System</p> <p><u>Ind. 9</u> – The country has effective control and audit systems</p> <p><u>Ind. 10</u> – The country has an efficient appeals mechanism</p> <p><u>Ind. 11</u> – The public has broad access to information</p> <p><u>Ind. 12</u> – The country has ethics and anti-corruption measures in place</p>	<ul style="list-style-type: none"> • Accountability Measures 	<p>This will show whether the subject agency adopts accountability measures that include an internal audit and control system, a protest and appeals mechanism and open access to information, and whether it is actually being implemented in an effective manner.</p>

The API Major Criteria

The Strategy

For purposes of this paper, a strategy may be considered as the priorities adopted by an agency under a given operating environment and in pursuit of implementing effective procurement reforms. Under this definition, although all agencies may invariably have one common goal or objective, *i.e.* cost-effectiveness, each agency may actually vary in its approach or strategy. For this reason, it becomes necessary to determine and outline the strategy that an agency may have identified in this area before any effective evaluation may be undertaken. This form of approach allows the evaluator to determine three (3) things:

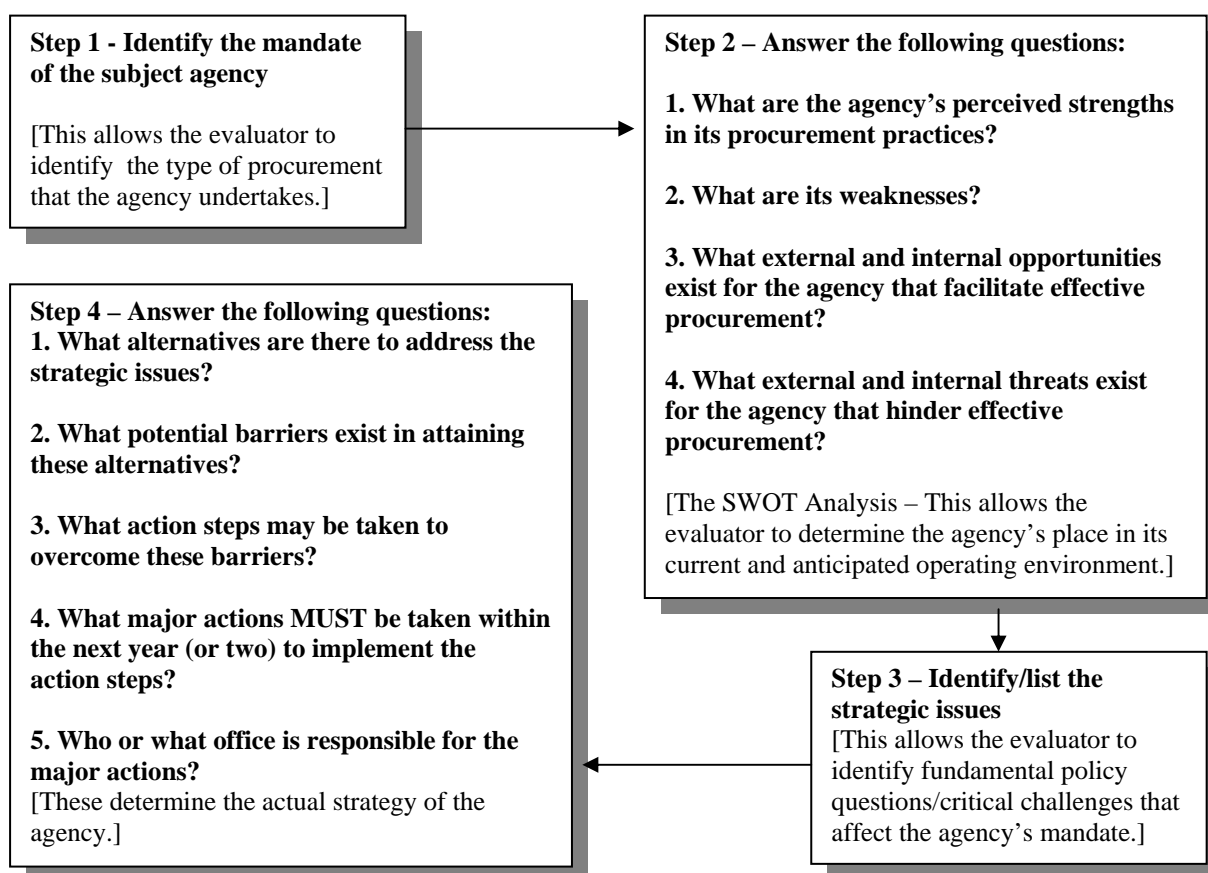
1. Whether the strategy adopted by the subject agency conflicts with the national public procurement reform program;
2. Whether the subject agency is actually able to execute its strategy; and
3. Given its strategy vis-à-vis the other major criteria, how far an agency is from attaining its objectives.

With these determinations, an evaluator may then tag deficiencies, or those areas of the strategy that an agency may have missed or underestimated, keeping in mind the Government’s broad reform program. An evaluator may utilize the following table:

<i>Legal Mandate of the Subject Agency</i>	<i>Key/Strategic Procurement Issues That Need to be Addressed</i>	<i>Initiatives To be Undertaken for Each Key/Strategic Issue</i>	<i>Relevance of Each Activity to the National Procurement Reform Policy</i>
1.	1.	1.	1.
2.	2.	2.	2.
3.	3.	3.	3.
4.	4.	4.	4.

It would be noted that the columns on the extreme right and the extreme left balance the strategy of the subject agency between the thrust of the national procurement reform agenda and the limitations of the agency’s charter.

In order to accurately determine the strategy adopted by an agency, the evaluator may have to avoid directly soliciting management’s own perception thereof, as it may lead to nothing more than broad self-serving statements. As such, to assist him in filling-up the above table, the evaluator may consider undertaking a combination of management tools that have been proven to work, as outlined in the diagram below:



The following documents are relevant:

1. The relevant national procurement law and its implementing rules and regulations;
2. The enabling charter of the agency;
3. All agency executive issuances/order relevant to procurement;
4. Legal Opinions on procurement issues; and
5. The minutes of all management and staff meetings where procurement issues have been raised.

Organizational Structure

In assessing the procurement process of an agency, it has to be stressed that all inputs, transformation of these inputs, and the final outputs, have to be properly considered. The procurement process covers all areas from the point of identifying an agency’s need, solicitation of sources, selection of sources, award of contracts, contract financing, contract performance, until contract administration; including all technical and management functions directly related to the process of fulfilling these needs. As such, the process of procurement does not only involve a single individual but different interacting groups whose roles become important at different parts of the said process. The assessment will touch heavily on the aspects of solicitation and selection of sources, as well as award of contracts. In passing, it should discuss the agency’s ability to point out its need and its contract financing aspects. It has to look into the presence of mechanisms for proper contract administration and the technical and management functions required for proper implementation of the whole process.

The effectiveness and efficiency in carrying out the whole procurement program would depend heavily on the capacity of individuals or groups involved in the process to perform their roles, as these are called forth in the process. Therefore, the different agencies’ set up, their current practices, and the manner by which their policies and procedures are followed, can either add value or create waste for all the “stakeholders” of the process.

In light of all these, an organization is better understood by examining its underlying foundation in terms of the following:

1. Formalization - This involves the amount of written documentation in the organization. It includes procedures, job descriptions, regulations and policy manuals, and describes the process to be adopted when different situations arise.
2. Specialization – This is the degree to which organizational tasks are subdivided into separate jobs.
3. Standardization – This is the extent to which processes are performed in a similar and uniform manner.
4. Hierarchy of Authority – This describes the span of control for each position.
5. Centralization – This refers to the hierarchical level that has authority to make decisions.

To begin with, agencies are obviously bureaucratic in nature. As such, in terms of formalization of jobs and standardized processes, an agency may already have set jobs and standard procedures that allow its activities to be routine and predictable. In fact, it would not be surprising if most agencies would have set general rules, procedures, and written documentation, such as policy manuals, handbooks and job descriptions, though at times they are broadly defined. However, despite the existence of formalized documentation and structures, once an evaluator begins his task within an agency, he may realize that what appears in paper may not necessarily be true in practice, particularly when it comes to regular monitoring/evaluation activities. In a worse case scenario for procurement, an agency may either have informal or no fixed rules, procedures, or written documentation, for the reason that it merely relies on what the law provides.

In view of the foregoing, it is important to determine and eventually rate how the procurement activities have been institutionalized within an organization, how standardized its documents and procedures are, the presence or absence of training programs, and the practice of management to monitor and improve personnel skills. For the reason that an agency follows a bureaucratic system, there may be difficulty in formalizing new offices and restructuring job functions across divisions and within departments; however, this does not mean that an agency may not adjust its current setup and complement of personnel to properly fit the right person to the job. It may involve scrapping some positions and creating new ones to cover all the requirements of the law.

By studying the dimensions mentioned above, a more accurate understanding of the organizations' capability to adjust to the needed change brought about by the national procurement reform program may be had. To be sure, an organization, as a whole, may have to be reengineered in order to adapt to these adjustments, as well as to maintain or improve its existing efficiency and effectiveness in the services it provides, although this can be the scope of a process walk-through that management can conduct, based on the results in this particular criteria.

In terms of specialization, agencies would also normally have outlined specific positions with the corresponding responsibilities and functions required for each. This would definitely allow for further specialization in the positions within each department. The general hierarchical structure of agencies would also have a number of layers starting from the head of the agency all the way down to the division or section level. It would be observed that the fewer layers there are within an agency's bureaucracy, the wider the span of authority a particular position may have, as it would mean that more offices within the organization are horizontally lumped under one layer, thereby implying a situation whereby an officer would need multiple expertise to be able to manage the flat set-up. Finally, it is a basic auditing principle that an individual would not be able to perpetrate and conceal fraud or theft, and the occasions for accidental errors would be reduced if, for a particular transaction stream, he does not have responsibility for more than one of the following activities:

- Authorization of transactions;
- Recording of transactions and events; and
- Custody of assets.

As such, separation among these three responsibilities would also have to be considered.

The following documents are relevant:

1. The agency executive issuance creating a Secretariat for the Tendering Committee, if any;
2. The agency’s Organizational Chart/Staffing Pattern, to identify all procurement related offices;
3. The agency’s Organizational Structure with Duties and Responsibilities, to identify all procurement related offices;
4. Job Descriptions for all procurement relevant positions;
5. The flow chart of activities for a typical procurement activity;
6. A sample action plan for a specific project;
7. Procurement Manuals, if any; and
8. Standard Bidding Documents.

The table below illustrates how the organizational structure of an agency is established in light of a few critical indicators dealing with hierarchy of authority and centralization, specialization, formalization and standardization:

	Agency 1	Agency 2	Agency 3	Agency 4	Agency 5	Agency 6
Levels of decisions/approvals for public bidding from advertising to contract approvals, within 3 – 6	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No
Tender Committee independent from Head of the Procuring Entity	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No
Existence of a Tender Committee Secretariat	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No
Use of Procurement Manuals	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No
Use of Standard Procurement Documents and Forms	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No
Use of Job Descriptions	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

Accountability Measures

This deals with the measures by which an agency, entity or individual, public or private, involved in the procurement activity is held to be responsible for its/his actions in accordance with the law. This criterion involves the issue of whether or not the agency has established systems and procedures for effective control and audit, for protests, for the imposition of the penal, civil and administrative sanctions required under the legal and regulatory framework, and whether it has imposed these sanctions where appropriate. The number and nature of cases in the procuring entity are factors to consider. The number of blacklisted entities in a procuring entity should also be noted. A person should be accountable to both the Government and the public at large and, as such, this criterion includes an item on the manner by which an agency treats the observations and complaints made or filed by non-

governmental organizations sitting as bidding observers. In particular, data on the following would have to be considered:

1. Administrative Sanctions
 - a) Existing Systems and Procedures of the Agency for Administrative Sanctions against defaulting suppliers
 - b) Documentation of Cases and Access thereto
 - c) Cases Handled to Completion versus Complaints Filed
2. Penal and Civil Sanctions
 - a) Existing Systems and Procedures of the Agency for Penal and Civil Sanctions against fraudulent bidders and/or suppliers
 - b) Documentation of Cases and Access thereto
 - c) Cases Handled to Completion versus Complaints Filed
3. Blacklisting of Suppliers, Contractors and Consultants
 - a) Existing Blacklisting Systems and Procedures of the Agency
 - b) Documentation of Cases and Access thereto
 - c) Cases Handled to Completion versus Complaints Filed
4. Observations and Complaints by Observers
 - a) Existing Systems and Procedures of the Agency for Handling Observations and Complaints
 - b) Documentation of Cases and Access thereto
 - c) Cases Addressed versus Complaints Filed by Observers
5. Internal Control and Audit
 - a) Existing Systems and Procedures
 - b) Documentation and Access
 - c) Actual cases handled
6. Protest Mechanism – Whether or not bidders are allowed to file protests in all stages of the procurement, provided that they observe the required form, amount and reglementary periods.

The following documents are relevant:

1. The Organizational Chart/Staffing Pattern, and Organizational Structure with Duties and Responsibilities, to determine if an Internal Audit Unit or an office with similar functions exists within the agency's bureaucracy;
2. The relevant agency's executive issuance creating the Internal Audit Unit, if any;
3. The agency's Internal Manual of Operations, particularly the sections dealing with administrative, civil and criminal cases;
4. The grievance procedures used by the agency; and
5. Records of cases handled and/or resolved by the agency.

Agency Professionalization Measures

Professionalism within an agency is brought about by three major areas:

1. Human Capital;
2. Information Capital; and
3. Climate for Positive Action.

Human Capital refers to employee skill levels, influenced by the formal education and training of the employees. In the field of procurement, each specific task would need its own specialized duties and specific technical competence required for the job, and so the training activities would have to be such as to cater to the varied needs of each individual undertaking a specific task. As such, this implies regular training needs assessments, as the frequency, scope and content of the training would depend thereon. This would also need regular monitoring and evaluation, to determine the effectiveness of the trainings conducted. For these purposes, it would be important to note whether or not the subject agency has a Human Resource Division or Section that can and should be tapped for trainings and skills development of all personnel. Its absence would mean that there exists no office to conduct regular monitoring/evaluation activities, training needs assessment and internal training sessions. At any rate, it is important to assess the presence or absence of programmed trainings and the practice of management to monitor and improve personnel skills.

Information Capital refers to information systems, but more than just utilizing the latest Information Technology, it involves access to information relevant to procurement, because the employees have to access information about products, pricing, suppliers, contractors, and other elements relevant to procurement.

Climate for Positive Action basically covers employee motivation and satisfaction. It is almost impossible to implement procurement reforms within an agency without committed staff, and so the practice of granting incentives, or at least employee recognition, to procurement officers and employees within the agency would also have to be evaluated, not only to determine whether these are appropriate, but also to ensure that these are in accordance with the law. As employee motivation is directly related to the capacity of an employee to perform, the agency's Human Resource Division or Section should also be tapped for continuously monitoring the needs of the procurement staff in this area.

The following documents are relevant:

1. Employee records for all individuals occupying the offices identified in the Organizational Chart/Staffing Pattern as procurement related/relevant;
2. Training Needs Assessment for procurement related offices;
3. Training Programs conducted by the agency for its procurement staff, with list of attendees;
4. Records showing that cost estimates and prices of goods commonly procured by an agency are regularly being validated;
5. Minutes of management meetings where the improvement of management skills and motivation have been discussed; and
6. The relevant executive issuances of the agency providing incentives to procurement staff, if any.

Agency Procurement Process

This criterion will focus on the principles of **competitiveness, transparency and efficiency** in the agency's procurement processes.

Competitiveness

As provided in Article 4 (Public Bidding), Part II of the Procurement Decree's IRR, competitiveness is achieved by extending equal opportunity to capable and legally constituted individuals, companies, enterprises, joint ventures or international enterprises to participate in public bidding. As such, this principle involves the concept of equity. Equity, in turn, deals with establishing a procurement system that is impartial, just and fair. In other words, a system that is not prone to favoritism, opportunities for collusion and excessive discretion. This is achieved through the use of non-discretionary criteria at various stages of the bidding procedure to determine the winning bidder. More importantly, it should be borne in mind that Public Bidding is the preferred mode of procurement under Procurement Decree, because it makes the entire process more equitable among suppliers and contractors by providing for increased open competition under a level playing field.

Transparency

Transparency deals with the manner by which an agency disseminates information about its procurement opportunities and activities to the public. Obviously, transparency implies a wide dissemination of advertisements of bid opportunities, notices, and general information about any procurement activity. The postings or publications of bid opportunities have to be such that these allow the widest possible participation of bidders and pertinent non-governmental organizations. Also, relevant information about all procurement activities have to be available to the public.

The following would have to be considered:

1. Advertising Requirement

Whether or not the agency posts its procurement advertisements and notices in a manner that ensures wider competition and information dissemination, in accordance with the law.

2. Observers

Whether or not the Tender Committee invites observers who do not have any direct or indirect interest in the contract to be bid.

Efficiency

An efficient procurement system is one that produces the desired product, service, output or yield at the lowest cost to resources. For this criterion, time would be the resource of central focus, in order that procurement procedures are not considered as cumbersome and subject to unnecessary delays. As such, with respect to public bidding, it is important to note critical areas of reform that were intended to streamline the entire process. It should be noted that

Annual Procurement Plans (APPs) may be considered as tools for efficient implementation, monitoring and evaluation. The importance of the APP cannot be over-emphasized, because plans ensure that the overall goal of the particular project will be achieved effectively and efficiently. As long as an agency develops its procurement plan in line with its budgetary estimates, and remains faithful to it during the calendar year, it is able to maintain that critical linkage between spending and budgeting, for it is planning that integrates these two concepts. For this reason, the Procurement Manual issued by the PrMO based on the Procurement Decree and its IRR provides that "[P]rocurement planning means the process by which the efforts of all personnel responsible for Procurement are coordinated and integrated through a comprehensive plan for fulfilling the Procuring Entities' need in a timely manner and at a reasonable cost. provide that no Government procurement shall be undertaken unless it is in accordance with the APP, duly approved by the head of the procuring entity or second-ranking official designated by the head to act on his behalf, and that the implementation of any project not included in the procuring entity's APP shall not be allowed.

The following documents are relevant:

1. The agency's APP for the relevant period;
2. Estimated costs/budgets for procurements conducted by the agency within the relevant period;
3. The list of alternative procurements within the relevant period;
4. The list of Limited Bidding within the relevant period;
5. The list of Direct Contracting procurements within the relevant period;
6. Copies of published and posted Invitations to Bid
7. Minutes of Bid Opening;
8. Abstract of Bids for all biddings conducted within the relevant period;
9. Copies of issued and posted Awards, if any;
10. The list of failed biddings within the relevant period;
11. The list of contracts procured within the relevant period;
12. Certificates of Acceptance for contracts that have been duly implemented;
13. Billing statements; and
14. Payment receipts.

Through the above documents, the following data may be established from the agency:

1. Total number of contracts procured
2. Contracts through Public Bidding
 - a. Number
 - b. Percentage of Total Amount of Contracts
3. Public Biddings with Invitation advertised
 - a. Number
 - b. Percentage of Total Public Biddings
4. Public Biddings with Invitation posted
 - a. Number

- b. Percentage of Total Public Biddings
5. Public Biddings with Award posted
 - a. Number
 - b. Percentage of Total Public Biddings
 6. Public Biddings with at least 45 days from Invitation or Issuance of Bidding Documents (whichever comes later) to Opening of Bids
 - a. Number
 - b. Percentage of Total Public Biddings
 7. Public Biddings with at most 90 days from Opening of Bids to Award of Contract
 - a. Number
 - b. Percentage of Total Public Biddings
 8. Public Biddings with at most 15 days from Bid Opening to determination of Lowest Evaluated and Responsive Bid
 - a. Number
 - b. Percentage of Total Public Biddings
 9. Public Biddings with at least 5 bidders submitting bids
 - a. Number
 - b. Percentage of Total Public Biddings
 10. Average Number of Bids per Contract
 11. Cancelled Public Biddings
 - a. Number
 - b. Percentage of Total Public Biddings
 12. Contracts procured included in APP
 - a. Number
 - b. Percentage of Total Contracts
 13. Contracts with Payments made more than 45 days
 - a. Number
 - b. Percentage of Total Contracts

Effective Procurement

This criterion simply means establishing a cost-effective expenditure and procurement program so that an agency, in particular, is able to procure the goods and services it requires

to serve the public at the least possible cost without sacrificing quality, and that the Government, in general, is able to keep budget deficits within controlled levels.

The following documents are relevant:

1. The agency's APP for the relevant period;
2. The list of contracts procured within the relevant period;
3. Estimated costs/budgets for procurements conducted by the agency within the relevant period;
4. Copies of signed contracts, indicating amount;
5. Payment receipts;
6. Variation Orders and Contract Amendments, focusing on contract price increases; and
7. Record of Complaints.

Through the above documents, the following data may be established from the agency:

1. Locally-funded Contracts awarded lower than Cost Estimates
 - a. Number
 - b. Percentage of Total Locally-funded Contracts
 - c. Sum of savings achieved
2. Locally-funded Contracts awarded higher than Cost Estimates
 - a. Number
 - b. Percentage of Total Locally-funded Contracts
 - c. Average percentage of prices above Cost Estimates
 - d. Estimated loss
3. Foreign-assisted Contracts awarded lower than Cost Estimate
 - a. Number
 - b. Percentage of Total Foreign-assisted Contracts
 - c. Sum of savings achieved
4. Foreign-assisted Contracts awarded higher than Cost Estimates
 - a. Number
 - b. Percentage of Total Foreign-assisted Contracts
 - c. Average percentage of Total Foreign-assisted Contracts
 - d. Estimated loss
5. Contract Price increases, whether through Variation Orders, Amendments or Direct Contracting
 - a. Number
 - b. Percentage of Total Contracts
 - c. Average percentage of prices above original Cost Estimates
 - d. Estimated amount of increases above original Cost Estimates

6. Public Biddings with Complaints filed
 - a. Number
 - b. Percentage of Total Public Biddings
7. Complaints successfully resolved within 14 working days from date of receipt by the Chairman of the Tender Committee
 - a. Number
 - b. Percentage of Total Complaints

Weighted Agency Performance Indicators (API)

Having established the major criteria for the API, the relevant components thereof, the documents relevant to each component, and the data that may be established from the data gathered, one would then have sufficient resources to conduct an assessment using the API. The table below shows:

1. The Major Criteria
2. The relevant Indicators falling within each Major Criteria;
3. The specific matters indicated thereby;
4. The Measures; and
5. The Satisfactory Thresholds (recommended).

It should be noted that although the above discussion may reflect a substantial amount of data that can be generated through the listed documents, the API only focuses on a few critical points that would help an evaluator conduct a simple yet meaningful assessment and rating of an agency. This is not to say, however, that those not incorporated into the API would not be relevant to the evaluator, as these may be used for future reference and may serve other purposes.

To help determine the standing of a particular agency with respect to its procurement practices, vis-à-vis the national procurement program, points are given to each Indicator, the total of which corresponds to weights assigned to each of the Major Criteria. The allocation of points for each Indicator is based on its relative importance compared to the others. A full point will be given a particular Indicator if it achieves a “pass” rating with respect to the Satisfactory Threshold. To stress the importance of an agency policy/strategy that is aligned with the national procurement reform program, Strategy is assigned as a Major Criterion with a weight of six percent (6%). Given the fact that effective procurement reform eventually lies in the proper operation of the procurement process, Agency Procurement Process as a Major Criterion is given a weight of thirty percent (30%). The other Major Criteria are assigned equal weights of sixteen percent (16%) each, to reflect the cause-and-effect link among these.

Similarly, if the evaluator is interested in determining the extent of alignment between an agency’s procurement practices with each of the Pillars of the BIS, all that needs to be done is to compute the total of each Indicator within each Pillar, without having to input the weight of each Major Criterion. As such, a total of one hundred percent (100%) among all the Indicators within a particular Pillar would indicate that an agency’s procurement practices within that area are more or less aligned with the said Pillar.

Table: Proposed Agency Performance Indicators for Lao PDR

<i>Major Criteria (MC)</i>	<i>Indicator name</i>	<i>Indicates</i>	<i>Measured by</i>	<i>Satisfactory Threshold</i>
PILLAR I – The Legislative and Regulatory Framework				
Strategy (6%)	1. Agency procurement reform strategy (40% of MC)	Whether the agency has an established strategy to cascade the national Procurement Decree at the agency level	Existence of an agency order/ issuance to implement procurement reforms	Existing
	2. Strategic policy initiatives outlined by the agency (30% of MC)	Whether the strategy adopted by the subject agency conflicts with the Procurement Decree	Number of policy initiatives that deviate from the national Procurement Decree	None
	3. Key/Strategic procurement issues (30% of MC)	Whether the subject agency is actually able to execute its strategy	Percent of unresolved issues faced in fully implementing the national Procurement Decree, against the total number of identified issues	No more than 20% of total number of identified issues
PILLAR II – The Institutional Framework and Management Capacity				
Agency Professionalization Measures (16%)	4. Human capital (60% of MC)	Employee skill levels, influenced by the training of the employees	Percentage of procurement staff who have been trained on procurement guidelines versus actual number of procurement staff	Not less than 60%
	5. Information Capital (30% of MC)	Access to information	The regular validation of prices of goods commonly purchased by an agency with current market prices and price indexes	At least once a month or prior to finalizing cost estimates for each procurement activity
	6. Climate for Positive Action (10% of MC)	Motivation of procurement staff	Existence of an agency order/ issuance for procurement staff pertaining to a program for employee recognition or grant of incentives	Existing
PILLAR III – The Procurement Operations and Market Practices				
Organizational Structure (16%)	7. Tendering Committee independent from head of agency with an independent Secretariat (40% of MC)	Formalized procurement offices	Chairman of the Tender Committee is not the head of agency and has a Secretariat	Independent Chairman of Tendering Committee with at least 1 Secretariat

<i>Major Criteria (MC)</i>	<i>Indicator name</i>	<i>Indicates</i>	<i>Measured by</i>	<i>Satisfactory Threshold</i>
	8. Hierarchical structure of agency (30% of MC)	Balance between specialization and centralization of authority, and organizational efficiency	Number of layers from the head of the procuring entity that are involved in separate action/decisions/ approvals within the public bidding, from advertisement to contract approval	Not less than 3; not more than 6
	9. Standard documentation and procedures (30% of MC)	Formalization within the agency covering procurement manuals, standard procurement forms, and job descriptions for procurement practitioners	Presence or absence of complete standard documentation and procedures for procurement adapted to the agency	Presence of: Procurement Manual = 1/3 of score Standard Procurement Forms = 1/3 of score Job Descriptions = 1/3 of score
Agency Procurement Process (30%)	<i>On Competition (10%)</i>			
	10. Method of procurement used* (30% of 10%)	Level of competition	Number of alternative procurement methods conducted without valid justification (excluding procurements from other Government agencies)	No more than 10% of total value of contracts in APP
	11. Limited source competition/ Shopping (10% of 10%)	Level of competition	Percent of processes using limited source competition/shopping instead of public bidding/open competition	No more than 10% of total value of contracts in APP
	12. Direct contracting* (10% of 10%)	Level of competition	Percent of processes using Direct Contracting instead of public bidding/open competition	No more than 10% of total value of contracts in APP
	13. Bidders participation in public biddings (40% of 10%)	Level of competition and level of confidence of private sector in the bidding process	Number of bidders submitting bids in each public bidding process	5 bidders or more for at least 75% of publicly bid contracts
	14. Time for preparation of bids in public biddings (10% of 10%)	Level of competition by determining real opportunity for bidders to prepare bids	Number of days between last issuance of invitation to bid or issuance of bidding documents, which ever comes later, and bid opening	Not less than 45 days for at least 75% of public biddings (not including alternative methods)
<i>On Transparency (10%)</i>				

Major Criteria (MC)	Indicator name	Indicates	Measured by	Satisfactory Threshold
	15. Advertisement of bid notices * (70% of 10%)	Transparency and openness of the bidding system	Percent of public biddings for which invitations to bid are publicly advertised in a newspaper	100%
	16. Participation of observers in public biddings (30% of 10%)	Transparency of procurement practice through independent and disinterested observers	Percent of public biddings where independent and disinterested observers have been invited and/or participated	Not less than 75% of public biddings conducted
<i>On Efficiency (10%)</i>				
	17. Procurements in APP (30% of 10%)	Efficiency of procurement activities through proper planning	Percent of procurement activities incorporated within original APP	Not less than 75% of all procurement activities
	18. Time for public bidding (25% of 10%)	Efficiency of bidding process	Number of days between bid opening and award of contract	Not more than 3 months for at least 75% of publicly bid contracts
	19. Time for bid evaluation (15% of 10%)	Efficiency of bidding process	Number of days from bid opening to determination of Lowest Evaluated and Responsive Bid	No more than 15 days for at least 75% of publicly bid contracts
	20. Bidding process cancelled (15% of 10%)	Efficiency of bidding process by determining quality of bidding process	Percent of bid processes declared null before contract signature	No more than 5% of total number of contracts in the APP
	21. Late payments (15% of 10%)	Efficiency, quality and consistency of payment process	Percent of payments made more than 45 days	No more than 10% of total number of contracts
Effectiveness (16%)	22. Award prices lower than cost/budget estimates (Distinguish between locally-funded and foreign assisted projects) (40% of MC)	Cost-effective procurement	Percent of awards made lower than cost/budget estimates	Not less than 75% of publicly bid contracts
	23. Contract amount increase* (30% of MC)	Cost-effectiveness through quality bidding and contract management	Percent of contracts with a price increase (whether through variation order, amendment or direct contracting) of more than 20% of original contract price	No more than 10% of total number of contracts in the APP
	24. Number of Complaints (10% of MC)	Effectiveness of public bidding process through quality and fairness	Percentage of public biddings with complaints against number of public biddings conducted	No more than 10% of total number of public biddings conducted

<i>Major Criteria (MC)</i>	<i>Indicator name</i>	<i>Indicates</i>	<i>Measured by</i>	<i>Satisfactory Threshold</i>
	25. Time to resolve Complaints (10% of MC)	Efficiency and fairness of Complaints System	Number of days between receipt and resolution	No more than 14 working days for 75% of Complaints filed
	26. Satisfactory resolution of Complaints (10% of MC)	Effectiveness of Complaints System	Percent of complaints raised to PrMO against number of Complaints filed	No more than 10% of total number of Complaints filed
PILLAR IV – The Integrity of the Public Procurement System				
Accountability Measures (16%)	27. Internal audit units (60% of MC)	Existence of formal internal control and audit mechanisms	Presence or absence of an internal audit unit	Existing in accordance with law
	28. Systems and procedures to hear and document administrative cases (40% of MC)	Administrative due process	Presence or absence of formal systems and procedures to hear and document administrative cases	Existing

Next Steps

Evaluation is an instrument for learning, in that it is supposed to enhance the operation of an organization by enhancing the know-how through the information it generates.¹ It is also a primary mechanism of accountability, in that, depending on the user of its findings, it either provides the basis for sound decision-making within an organization or informs those who may be concerned about its operations.² In this light, the purpose of the API is to identify and describe the strengths and weaknesses of the agency with respect to the depth by which its officers understand, and the manner by which it complies with, current public procurement laws. It is also intended to identify general and specific procurement practices that may affect the manner by which the basic principles of a sound procurement system are observed, namely competition, transparency, accountability, efficiency, equity, economy and effectiveness. Through the API, the procurement environment of an agency is presented by outlining gaps in critical areas of procurement processes and practices, including organizational matters, it may be said that the ultimate purpose of the API is a formative one. In other words, as a product of the evaluation, general and specific recommendations may be submitted to the head of the subject agency to assist it move from its current evaluation ratings to more comfortable ratings, vis-à-vis the national procurement agenda and the BIS evaluation. Needless to say, these agency ratings would have to be given within the parameters of an assessment of the general level of assistance or intervention required for the subject.

In view of the above, the API would need a rating sheet in order to compute the scores garnered by the subject for each major criterion, and also to determine the grand total score obtained by it, because the level of assistance or intervention required for the subject would depend thereon. Below is an example of the levels of assistance or interventions that may be recommended for an, based upon the grand total score it garners for all the major criteria:

¹ Joseph J. Norton, *International Financial Institutions and the Movement toward Greater Accountability and Transparency: The Case of Legal Reform Programmes and the Problem of Evaluation*, 35 THE INTERNATIONAL LAWYER 1443, 1447 (2001), citing Michael Patton, *Practical Evaluation*, 33-37 (1982).

² *Id.*, at 1448.

0 – 20%	21 – 40%	41 – 60%	61 – 80%	81 – 100%
Needs substantial assistance in both internal policy development and implementation measures, coupled with in-depth capacity building and monitoring activities	Needs some assistance in internal policy development, and substantial assistance in implementation measures, coupled with in-depth capacity building and monitoring activities	Needs some assistance in both internal policy development and implementation measures, coupled with in-depth training on the procurement reform measures and monitoring activities	Needs some assistance in implementation measures, coupled with training on the procurement reform measures and monitoring activities	Needs monitoring activities to determine other possibilities for continuous improvement

The API may be utilized in Lao PDR by the PrMO of the MOF in the evaluation of the effectiveness of public procurement reforms. In fact, the PrMO may undertake this activity with the assistance or in partnership with Civil Society Organizations (CSOs). For example, the latter may want to focus on the transparency portion of the model. Another alternative is to hire a consultant to undertake this activity, if the PrMO does not have the manpower for the task. Given this scenario, the API model would then be considered as an external evaluation tool, because the activity would then be conducted by an external office that is not part of the specific organizations it evaluates, and is not involved in the activities/projects subject of the evaluation. However, the API may also serve as a self-evaluation or internal evaluation tool, whereby the agency itself designates an independent office to conduct the evaluation. In any case, the existence of an adequate filing and recording system to provide reliable data for the performance assessment and for allowing post review and auditing of transactions is essential. As such, the agency would need to establish a data collection system that will enable the API to be monitored and, within the procuring office of each agency, a member would have to be designated to take on the responsibility for the data collection. In any case, as an agency’s planning and budget cycle normally covers one calendar year, and much of the data for the API would depend upon an agency’s APP, it would make sense to conduct the API assessment at least once a year to gauge its performance and levels of improvement on a year-to-year basis.

As discussed above, to use the API, examination of actual transaction data would have to be undertaken, based on significant sample of contracts covering bidding processes for international and national competitive biddings, and other less competitive procurement methods. This may be complemented and validated by a survey of contractors and suppliers to determine their perception of the system’s transparency and fairness. For each of the indicators, the team may assign a simple pass/fail rating, as room for non-compliance is allowed in the satisfactory thresholds of several indicators through the allocation of percentages.