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Sverige



Assessment Report on:
**Review of the Legal Framework for
Public Procurement Transparency
and its Enforcement in the Kingdom
of Cambodia**

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I. Introduction

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Public Procurement: *a process of identifying what is needed; determining who the best person or organization is to supply this need; and ensuring what is needed is delivered to the right place, at the right time, for the best price and that all this is done in a fair and open manner.*

I. Introduction

Public Procurement in Cambodia:

- **Legislations:**
 - Law on Public Procurement dated 14 January 2012
- **Objects of procurement:** Goods, construction, service, and consultation services.
- **Methods:**
 - Public competitive bidding: 1) Domestic, and 2) International
 - Non-competitive bidding: 1) Direct contracting; 2) Repeat order; 3) Force account; and 4) Contracting with communities.
 - Other competitive bidding: 1) restricted competitive bidding, competitive shopping, and canvassing
- **Stages:** 1) Pre-tender, 2) Tender, and 3) Post-tender

I. Introduction

Public Procurement in Cambodia (Cont.):

- **Public Procurement Reform Strategy (2018-2025):**
 - decentralizing the procurement process and procedures except for certain type of procurement that requires centralization for cost efficiency;
 - enhancing efficient and effective procurement procedure via using technology and guidelines; and
 - harmonizing procurement procedures with PFM cycle
- Draft Law on Public Procurement (Draft Version 1 dated 18 July 2022)

II. Assessment, Findings and Recommendation

III. Recommendation

Matter	Issue		Recommendation
a. Transparency	i. Public Information:	Silence of the legislation regarding the publicity of the negotiated procedure and the single-source procurement	The draft PPL should specify the publicity of these procedures.
		Lack of legal provision on the principle of sufficient time	The RGC should adopt legislation to provide specific timeframe for: 1) publication of bidding notice; and 2) the provision of responses or holding clarification meeting.

III. Recommendation

Matter	Issue		Recommendation
a. Transparency	ii. Online Portal for Public Procurement:	At the moment, not available in Cambodia.	For transparency purpose as well as for the purpose of providing access to information in relation to public procurement to the citizens and relevant stakeholders, the RGC should establish an online portal for the disclosure of all non-confidential information in relation to the entire public procurement process.

III. Recommendation

Matter	Issue	Recommendation
a. Transparency (Cont.)	iii. Debrief on the Award Decisions: <ul style="list-style-type: none">○ The PPL and the draft PPL did not mention anything about the requirement to publish a notice on the entry into force of a procurement contract.○ There is no provision requiring the procuring entity to provide a specific reason to the failed bidders.	<ul style="list-style-type: none">○ The entire procurement process should be transparent. This includes also the contracts signed between the procuring entity and the awarded tenderer.○ Failed bidders should be provided with reasons from the procurement committee.

III. Recommendation

Matter	Issue	Recommendation
b. Good Management	i) Issue with the management of public funds in relation to on-going procurement projects	This issue may be improved after the full adoption of: 1) the medium-term budgetary framework; 2) the harmonization of capital budget with current budget; and 3) the harmonization of public procurement with budget preparation, budget execution and asset management.
	ii) Risk of undue influence imposed on the procurement committee due to lack of protective mechanism	1) Adoption of a legislation to provide protection to the procurement committee and whistle blower; 2) Provision of regular training to the procurement committee on how to react to difficult situations and whom to approach.

III. Recommendation

Matter	Issue	Recommendation
c. Accountability and Integrity	i) the DRAFT PPL sets the public competitive bidding as the “ <i>preferred method</i> ” to be carried out in public procurement	i) Should be changed to “ <i>Default procurement method</i> ”
	ii) No provision regarding the possibility for a procuring entity to act as a centralised purchasing entity	ii) Need to consider to regulate such possibility and integrate provisions setting a clear chain of command
	iii) Lack of legal regime governing the cancellation of the procurement	iii) Insert provisions regulating the possibility of cancellation of procurement, including the obligation to record the reasons for cancellation.

III. Recommendation

Matter	Issue	Recommendation
c. Accountability and Integrity (Cont.)	iv) No obligation to publish to the general public a notice of the award of the procurement contract	iv) Provide for obligation to publish a notice and the detailed information of the procurement contract.
	v) Lack of obligation to record any decisions made by the procuring entity, or by the MEF	v) Provide for a principle to record decision for the purpose of tracking the decision making process.

III. Recommendation

Matter	Issue	Recommendation
d. Control and Monitoring	i) Lack of Prakas on procedure for the establishment of <i>Committee for Delivery and Acceptance (of goods and works)</i>	The MEF should adopt this Prakas.
	ii) Lack of regular risk assessment	The RGC should adopt an approach to require procurement management institution and procuring entity to map out risks of irregularities and potential corruptions in public procurement on a regular basis.

III. Recommendation

Matter	Issue	Recommendation
d. Control and Monitoring (cont.)	iii) Legal protection for whistle blower	<ul style="list-style-type: none">• Report mechanism needs to be established for relevant officers to report any irregularities in relation to the procurement project;• Protective system needs to be adopted to provide protection to the officers; and• Officers should be provided with trainings on integrity and be encouraged to report any irregularities in the procurement process

III. Recommendation

Matter	Issue	Recommendation
e. Right to Redress	i) Lack of mechanism for interested third-party to file complaint against irregularities during procurement procedure	Need consider developing a mechanism to address the lack of administrative and/or legal remedies for third party having a legal interest in the matter to challenge, such as the choice of the bidding method.
	ii) Non-Explicit Wording of Article 51 of the draft PPL in relation to the challenge against the decision of procurement committee on the awarded contract	Need to provide a comprehensive regime on the effects of the challenge, including challenges made during the standstill period.

III. Recommendation

Matter	Issue	Recommendation
e. Right to Redress (Cont.)	iii) Scope of party autonomy in relation to the choice of dispute resolution mechanism	The draft PPL may provide the scope of the autonomy of the parties to the procurement contract with regards to the possibility to choose arbitration or any other means for dispute settlement as a means to resolve dispute.

III. Recommendation

Matter	Issue	Recommendation
f. Public Participation	i) Involvement of the public during the amendment of public procurement system	The RGC should continue inviting relevant stakeholders to make comments on the draft laws and regulations relating to public procurement while ensuring that the comments provided are taken into consideration and amendments are made where appropriate.

III. Recommendation

Matter	Issue	Recommendation
f. Public Participation (cont.)	ii) Lack of public and stakeholders' participation at pre-tender stage	For the purpose of an efficient participation in the bid submission, the RGC should organize transparent and regular dialogues with the stakeholders to keep updated of the market and to keep the stakeholders, who may be potential tenderers, informed of the objectives of the procurement projects.

III. Recommendation

Matter	Issue	Recommendation
f. Public Participation (cont.)	iii) Non-involvement of the citizens in the drafting of annual budget law	The RGC should try to: 1) submit the brief of procurement projects with the annual budget documents to the parliament for review; 2) publish the brief execution and planning reports of procurements projects as well as potential procurement projects; and 3) involve the citizens more on the procurement process as well as the budgeting process for public procurement expenditure.

III. Recommendation

Matter	Issue	Recommendation
g. Openness and Inclusiveness	i) Lack of mechanism to encourage participations from international tenderers	The RGC may consider removing the requirement to register with the MEF to be eligible to participate in any public procurement project for International Competitive Bidding.
	ii) Lack of inclusive mechanism favoring the participation of SME	Consider to introduce provisions in favor of participation of SMEs.

III. Recommendation

Matter	Issue	Recommendation
g. Openness and Inclusiveness	iii) Lack of standardized procedures for an effective use of <i>Contracting with Communities</i> procurement method	<p>The RGC should align public procurement cycle with national socio-economic policies.</p> <p>For instance:</p> <ul style="list-style-type: none">➤ the Draft PPL Art. 54 may be reformulated in a way that incorporate the sustainable procurement concept by adding that “the environmental characteristics of the subject matter” may be used by the procuring entity as a selection criterion in the bidding documents.➤ Alternatively, the implementing regulation may enumerate such criteria, but it will provide less impact as being a general concept in the law.

III. Recommendation

Matter	Issue	Recommendation
g. Openness and Inclusiveness	Iv) -	the DRAFT PPL should also consider about decentralization of public procurement save for any procurement that require large bargaining power for efficient and effective purchase. Therefore, the social accountability at local administration can be adopted for enhancing public participation in procurement.

List of References

No.	Law
1.	Draft Law on Public Procurement (Draft Version 1 dated 18 July 2022) as provided by API
2.	Law on Public Private Partnership dated 18 November 2021
3.	Law on Public Procurement dated 14 January 2012
4.	Law on Finance and the Management of the Asset of the Local Government dated 31 May 2011
5.	Law on Public Financial System dated 04 April 2008
6.	Law on Concession dated 10 September 2007
No.	Sub-Decree
1.	Sub-Decree No. 105 ANKr.BK dated 18 October 2006 on Public Procurement
2.	Sub-Decree No. 13 ANKr.BK dated 23 February 2015 on the Procedure on the Establishment, Organization and Functioning of the Procurement Committee and Procurement Unit
3.	Sub-Decree No. 21 ANKr.BK dated 21 February 2018 on the Formality and Procedure for Filing Complaint and the Resolution of Complaint against Procurement
4.	Sub-Decree No. 181 ANK.BK on Promulgating the Standard Operating Procedure for Implementing All Externally Financed Projects/Programs

List of References

No.	Prakas
1.	Prakas No. 045 SHV.BrK dated 31 January 2005 on the Execution of the Decentralization of Public Procurement Matter
2.	Inter-Ministrial Prakas No. 324 SHV.BrK dated 01 April 2013 on the Provision of Right to Decision Making on Procurement Project to Capital, Provincial, District and Khan Administration
3.	Prakas No. 1844 SHV.BrK dated 26 December 2014 on the Determination of Budget for Procurement Execution
4.	Prakas No. 249 SHV.BrK dated 03 March 2015 on the Establishment of Procurement Team under the Budget Unit
5.	Prakas No. 986 SHV.BrK dated 31 August 2016 on the Security Deposit for Bidding and Security Deposit for the Implementation of Agreement
6.	Prakas No. 987 SHV.BrK dated 31 August 2016 on Code of Ethics for Procurement
7.	Prakas No. 988 SHV.BrK dated 31 August 2016 on the Implementation of the Guidebook on the Post Procurement Examination
8.	Prakas No. 851 SHV.BrK dated 28 August 2017 on Procurement Planning
9.	Prakas No. 1613 SHV.BrK dated 24 December 2018 on the Management of the Performance of Obligation under Public Procurement Agreement
10.	Prakas No. 1614 SHV.BrK dated 24 December 2018 on the Procedure of the Registration, List Clearance, and Announcement of Black List
11.	Prakas No. 010 SHV.BrK dated 14 January 2019 on the Limitation of Budget for Decision Making on Procurement Project

List of References

No.	Decision
1.	Decision No. 001 SHV.ALSa dated 23 February 2012 on the Implementation of the Law on Public Procurement
2.	Decision No. 002 SHV.ALSa dated 14 January 2014 on the Implementation of Public Procurement
3.	Decision No. 013 SHV dated 06 November 2015 on the Implementation of Procurement on Certain Products and Services Necessary Immediate Use at the Beginning of the Budget Year
4.	Decision No. 002 SHV.ALSa dated 06 November 2015 on the Methodology and Procedure for Procurement by City, District and Khan Administration
5.	Decision No. 015 SHV dated 23 November 2015 on the Seizure of Deposit during the Execution of Public Procurement Project at City, District, Khan, Commune and Sangkat Administration
6.	Decision No. 013 SHV dated 12 December 2017 on the Procedure for the Classification of Construction Type and Classification of Construction Team
7.	Decision No. 001 SHV dated 05 March 2019 on the Provision of Security Deposit for Bidding and Security Deposit for the Implementation of Public Procurement Agreement
8.	Decision No. 006 SHV dated 17 July 2019 on the Preparation of Annual Procurement Plan
9.	Decision No. 002 SHV.ALSa dated 28 January 2014 on the Methodology and Procedure for Procurement by City, District and Khan Administration

List of References

No.	Guidelines
1.	Guideline No. 014 SHV on the Procedure for the Determination of Pre-Conditions for Tenderers dated 31 May 2019
Standard Operating Procedures	
1.	Standard Operation Procedure on Procurement for All Externally Financed Projects/Programs in Cambodia, Volume I, 22 July 2020
2.	Standard Operation Procedure on Procurement for All Externally Financed Projects/Programs in Cambodia, Volume II, 05 October 2020
No.	Books and Articles
1.	Asia Development Bank, ADB Procurement Policy: Goods, Works, and Non-consulting and Consulting Services, 2017
2.	OECD, OECD Recommendation of the Council on Public Procurement, 2015
3.	OECD, Compendium of Good Practices for Integrity in Public Procurement, 2014
6.	United Nations, Guide to Enactment of the UNCITRAL Model Law on Public Procurement, 2012
7.	United Nations Office on Drugs and Crime, Guidebook on Anti-Corruption in Public Procurement and the Management of Public Finances: Good Practices in Ensuring Compliance with Article 9 of the United Nations Convention Against Corruption, 2013

List of References

No.	National Legislations of Foreign Countries
1.	Indonesia Presidential Regulation on Government Procurement promulgated on 22 March 2018
2.	Government Procurement Act 1997 of Singapore
3.	Public Procurement Law of Laos dated 2 November 2017 Public Procurement Law of Turkey dated January 2012

No.	Other Regional and National Legislations
1.	Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts, OJ L 335, 20.12.2007
2.	Public Procurement Law of Turkey dated January 2012

No.	International Instruments
1.	United Nations, UNCITRAL Model Law on Public Procurement dated 2011

Thank you!