

RESEARCH FINDING  
PUBLIC PROCUREMENT SYSTEMS IN CAMBODIA  
(Public Works and Transportation, and Public Health Sector)



Conducted by

Researchers of the Cambodian Defenders Project (CDP)

Analyzed by Attorney SOK Sam Oeun

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## FOREWORD of CHAIRMAN

Coalition for Integrity and Social Accountability

Because the Coalition for Integrity and Social Accountability (CISA) has just been established but we need to participate actively in promoting good governance, we thought that all of our members shall understand clearly on Public Procurement. It is the reason that CISA decides to conduct this research on Public Procurement in Cambodia.



This research has not purpose to inspect or criticize the public procurement of the Government. It is to find out what the public procurement is and share knowledge on public procurement to its members so that they can understand it clearly and can assist this work to be more effectively and more transparency.

Fortunately, during its workshop on launching this report on 27 April 2011, we know that the Government is drafting the law on Public Procurement. Therefore, this research report is also useful for the Government to review the recommendations in this report and use them to improve the draft of law on Public Procurement.

On behalf of Chairman of the Coalition for Integrity and Social Accountability, I would like to appreciate and thanks to all staffs of the Secretariat and members of CISA who have confidence on me to conduct this research, thanks to all efforts of lawyers and researchers of the Cambodian Defenders Project who collected data for this research.

I hope that this report will be useful to understand the Public Procurement Systems and to improve the public procurement systems in Cambodia.

Phnom Penh, 7 May 2011



Attorney SOK Sam Oeun

Chairman of CISA

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## ABBREVIATION

ADB	:	Asian Development Bank
BS	:	Bid Security
BSD	:	Bid Security Declaration
C/S	:	Commune/Sangkat
CC	:	Cost Consultation
CDP	:	Cambodian Defenders Project. It is an oldest legal aid NGO in Cambodia. It provides legal services to the poor and vulnerable free of charge, legal awareness and legal comments for sound legislation.
CS	:	Cost Survey
DPM	:	Direct Purchase Method
ExCom	:	Executive Committee
IRRPP	:	Implementing Rules and Regulations for Public Procurement
ISCB	:	International Standard Competitive Bidding
LSCB	:	Local Standard Competitive Bidding
MEF	:	Ministry of Economic and Finance
MOI	:	Ministry of Interior
MPWT	:	Ministry of Public Works and Transportation
NAA	:	National Auditing Authority
P/M	:	Provincial/Municipal
PIM	:	Commune/Sangkat Fund Project Implementation Manual
PMC	:	Procurement Management Committee
PPD	:	Public Procurement Department
PQSC	:	Pre-Qualification Sub-Committee
SFKC	:	Social Fund of Kingdom of Cambodia
TSU	:	Deputy of Technical Support Unit
WB	:	World Bank

## 1. INTRODUCTION

The Public Procurement in Cambodia has been being developed since 1995, in particular when the Asian Development Bank provided technical assistance to prepare regulations and established a procurement monitoring office in that year. In 2004, the World Bank staff with close cooperation of the Asian Development Bank and support from key agencies of the Royal Government of Cambodia issue a Country Procurement Assessment Report. It analyses strengths and weaknesses in practices at that time and outlines an action plan to bring public procurement further into line with internationally accepted best practice. As result of that report, on 16 July 2004, in the rectangular strategy of the Royal Government of the Kingdom of Cambodia announced by Samdech Decho Hun Sen, Prime Minister of the Kingdom of Cambodia, that the procurement must be implemented efficiently and agreed that the public procurement reform is an important part of the Rectangular Strategy.

The Cambodian Defenders Project (CDP) had conducted this research on the Public Procurement System in Cambodia. The research was conducted from November 2010 to April of 2011. There are three types of public procurement system in Cambodia. In general, all government institutions or public institutions shall implement procurement system stated in the Sub-decree 105 dated 18 October 2006 on Public Procurement. However, in case where the procurement is under a special provision in any bilateral agreement, the procurement shall be implemented according the agreement [see section 1.2.1. of Implementing of Rules and Regulations governing Public Procurement, dated June 2010]. The procurement conducted by Communes and Sections is a different one and it shall be implemented according to Guiding Books on implementing commune funding projects of reference No. 001 SSR/CJVV dated 14 January 2009.

## 2. BACKGROUND

After nearly three decades of internal armed conflict, Cambodia was ruined in both infrastructure and public procurement system. With the assistance of international community and the United Nations, the mutual understanding of all political leaders, in particular Samdech Akkeak Moha Sena Paddey Decho current Prime Minister Hun Sen, Cambodia started to be rebuilt and returned to relative peace and unity. Therefore, Cambodia needs time in rebuilding its infrastructure and public procurement system. Even though between 1979 and 1993, Cambodian Government was supported by Vietnamese expert, but according to the new Cambodian Constitution of 1993 which states that Cambodia should adopt the principles of Liberal Democracy and Free Market System, Cambodia need to be developed and reformed its government system and it must be according to those new principles.

In order to achieve these goals, Cambodia accepted technical assistance from many foreign countries in order to prepare and advise on how to rebuild administrative system and rule of law. In order to build rule of law, the fighting against corruption is also important to attract foreign investment. All these are reasons why Cambodian Government accepted the foreign technical assistance and hopes that they would help Cambodia to be reformed and modernized.

In 1994 and 1995, with technical assistance from the Asian Development Bank, Cambodia has developed a number of rules and regulations for implementing the public procurement effectively and can help the implementation of public procurement of the government with transparent, efficiency and in international standards. At first, the Cambodian Royal Government used it only for any project funded from the Asian Development Bank. They were changed many times and then at last, the Cambodian Royal Government has accepted it as guidelines for the reform of the public procurement system and to be used for all government institutions. In 1995, the Council of Ministers issued a sub-decree that add a number of articles to the Financial Law of 1994. They mean that all expenses of state budget and special financial account shall be implemented following to the procurement procedure according to a sub-decree issued by the Council of Minister and according to the request of the Ministry of Economic and Finance. In 2003, Ministry of Economic and Finance organized a workshop discussing on the public procurement system. The workshop recognized that the public procurement shall be reformed and must be transparent and efficiently because the public procurement is very important for economic growth and there shall be a law to guarantee the interests of all parties including local and international investors.

Both procurement system, public procurement system and procurement system under financial support from the World Bank and the Asian Development Bank and other foreign donors have been changed many times to ensure the betterment of those systems. All changes were based on practices and experiences and made them far better. The last version of rules and regulations of public procurement and has been declared to be in force by the declaration of Ministry of Economic and Finance No.381 MEF/D dated 15 June 2010.

Apart of public procurement system that can be used for two systems, general public procurement system and procurement for project funded by the World Bank or Asian Development Bank, there is another procurement system to be used for small projects called Commune/Section Projects. This system is under responsible by provincial governor and district officer under the Social Fund of the Kingdom of Cambodia (SFKC) and National Committee for Supporting the Communes. For this system, the World Bank and Royal Government agreed that it is different with Sub-decree of 1995 and the Sub-decree to implementing the rules and regulations on public procurement of 1998, however because it is for a small project, the system is acceptable.

### **3. OBJECTIVE AND RESEARCH METHODOLOGY**

#### **3.1. Objective**

This research is only to conduct a small survey and to gather the opinions of the interviewees. It is not to audit the procurement of any institution. Because the government has its rules and regulations of public procurement in place, this research may know how much the respondents know about the rules and regulations of the public procurement and how much the awareness of those rules and regulations.

In this research, the consultant also did analysis on those three public procurement systems and give recommendations for improvement.

#### **3.2. Research Methodology**

Apart of researching documents relating to public procurement implemented by government institutions, CDP researchers interviewed one official of Ministry of Public Works and Transportation, 8 provincial officials and 22 commune/Sangkat members who had experience with public procurement and 396 ordinary people. This survey was conducted in Phnom Penh and other four provinces: Svay Rieng, Kampot, Banteay Mean Chey and Kampong Cham. According to these five targeted municipality and provinces, this survey does not really reflect the understanding of public procurement in whole country but represents the areas where there were most construction of both public health section and road during the research. However, the four provinces are located in different regions, south, east, west and north, of Cambodia.

### **4. FINDINGS**

#### **4.1. Interview with Government Officials**

In general, when we asked any government official including commune officials, they are always reluctant and scared and do not agree to be interviewed unless we showed them the letter of permission from higher authority, commune needs letter from district, district needs letter from province, and province need letter from any ministry. Some ministers may give us permission but some of them absolutely not. In some case, the Secretary of state of Ministry agrees but he or she still cannot decide and must get approval from his or her minister first in accordance with their internal regulations. Like this, it reflects there is no delegation to the lower people or we can say that it is really centralized system and it is not decentralization like declaration of the government.

At first we requested to the Minister of Public Works and Transportation and Minister of Public Health. Minister of Public Works and Transportation agreed for the interview his



staff but Minister of Public Health did not agree, even though we sent him many requests.

For the interview, if the interviewees really understood the rules and regulations of public procurement, they would have no problems. In fact, it is not the secret things and the interviewees can answer according what he or she knew in the rules and regulations.

In contrast, the Ministry of Public Works and Transportation was in good cooperation with CDP's researchers and opened for the interview. It can show that the officials of the Ministry of Public Works and Transportation including officials in the provinces understand their duties and public procurement well.

CDP researchers interviewed an official of provincial public health but he said that he had never done any public procurement and all public procurement for his office were done by Provincial Finance Office. This answer is similar with what officials from Provincial Finance Office but Provincial Finance Office said that they did only Annual Plan for Public Procurement for whole province but most public procurement for the province was done by Public Procurement Department of Ministry of Economic and Finance.

According to the above experience, the closure of information and not allow the public access to information in particular refusing not allow the researcher did the interview or not allow information accessed by the public, can make the public perceive that:

- Cambodian people has not right to access official information from the state,
- There is no transparency in ministry,
- There may be some irregularity within ministry, and that's why ministry does not want the public to access information,
- Staff in ministry are lack competent.

#### **4.2. Interview with Commune/Section Officials**

CDP deployed its researchers to interview in Phnom Penh (6 sangkats), Banteay Mean Chey (4 communes), Kampot (4 communes), Kampong Cham (4 communes and Svay Rieng (4 sangkats).

- Phnom Penh: Khann Dangkor (1 section), Khann Daun Penh (2 sections), Khann Mean Cheay (2 sections), Khann Reussey Keo (1 section).
- Banteay Mean Chey: Poi Pet District (2 communes), Serey Sophorn District (2 communes)
- Kampot: Chhouk District (2 communes), Banteay Meas District (2 communes)
- Kampong Cham: Memot District (2 communes), Srey Santhor District (2 Communes)

- Svay Rieng: Svay Rieng District (3 communes), Svay Teab District (1 commune)

Among the interviewees from commune authorities, there are 9 commune or section leaders, 6 commune council members, 5 commune clerks, one commune administrator and one chief of village.

**Table 1: Seniority Within Commune of the Respondents**

Seniority	C/S Chief	C/S Council Member	C/S Clerk	Administrator	Village Chief	Total
Over 10 yrs	4	1	2		1	8
5-10 yrs	2	3	3	1		9
New	3	1	1			5
<b>Total</b>	<b>9</b>	<b>5</b>	<b>6</b>	<b>1</b>	<b>1</b>	<b>22</b>

In fact, Cambodia has not yet had law on Public Procurement. The public procurements are based on the guidebook on Implementation of Project. However, this book is in force by a sub-decree and declaration of the relevant ministry. Answering the question what legal documents their procurement in commune and section based on? (There are four multiple choices 1. Law, 2. Sub-decree, 3. Administrative Decision, and 4. Do not know), 6 commune/section officials choose law (Answer 1), 3 choose administrative decision (Answer 3) and one choose do not know. Therefore, only 12 officials (55%) choose right answer. 27% of them choose law. It means they may not understand the meaning of law. However, new officials seem know more than the old ones.

Answer of Commune/Section Staff to the question what legal documents that the procurement in their commune/section:

**Table 2: Understanding the Rules and Regulations by Seniority**

Seniority	Law	Sub-Decree	Administrative Decision	Don't know	Total
Most Senior	2	3	2	1	8
5-10 yrs	3	5	1		9
New	1	4			5
<b>Total</b>	<b>6</b>	<b>12</b>	<b>3</b>	<b>1</b>	<b>22</b>

**Recommendation 1:** Building capacity on public procurement of the members of the Commune/section Council, in particular after they have been elected.

For this Recommendation 1, during the workshop launching this initial report<sup>1</sup>, April 27, 2011, the representative of the Ministry of Interior said that the Government is providing a lot of training to the members of the Commune/Sangkat Councils. But, according to this research the understanding of the member of Commune/Sangkat Council is limited. It may be the training is not good enough or poor training methodology. It recommends to the Ministry of Interior to review it.

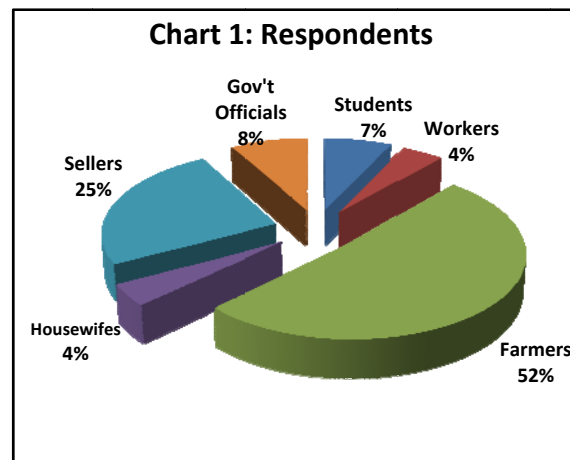
Among 22 respondents who from commune/section authority, are supporting on requirements of public procurement as following:

**Table 3: Understanding of Procurement Requirements**

Procurement Requirements	Among 22	Percentage
Limiting time of notice before procurement	18	82
Define conflict of interests between who decide on procurement and bidding contestants	14	64
Requirement on Quality/Value for procurement	21	95
Open for public to observe the bidding	20	91
Requirement of deposit for bidding contestants	12	55

### 4.3. Interview with the Ordinary People

The researchers interviewed 396 ordinary people in Phnom Penh and other four provinces and in above said districts and communes. After the research there are six groups of them: 28 students (7%), 17 workers (5%), 204 farmers (54%), 17 housewives (5%), 80 sellers (21%) and 32 government officials (8%).



<sup>1</sup> This purpose of workshop is to seek for recommendations in order to finalize as this research report. The workshop was organized by CISA with cooperation of CDP on April 27, 2011 at Intercontinental and participated by representatives of government body and CSOs under the honorable delegate of H.E Ou Bunlong, Secretary of Minister, Ministry of Economic and Finance.

#### 4.3.1. Understanding of the Definition of Procurement

Among 396 people respondents, there are only 16 people (4%) said that they understand the word “Procurement”, 258 of them (65%) said that they had never heard this word and 122 of them (31%) said that they had heard or told but they did not understand this word.

**Table 4: Understanding of Procurement of the People**

	Students	Workers	Farmers	H. wives	Sellers	Govt.	Total	Percentage
Never heard	22	3	132	15	74	12	258	65%
Not understand	4	6	31	1	14	11	67	17%
Not clear	2	6	38	1	6	2	55	14%
Understand	0	2	3		4	7	16	4%
<b>Total</b>	<b>28</b>	<b>17</b>	<b>204</b>	<b>17</b>	<b>98</b>	<b>32</b>	<b>396</b>	

In general, there are some disseminations of procurement, in particular about constructions. Among target provinces, Kampot province is most active in educating about procurement and Svay Rieng province is less active than others.

**Table 5: Awareness of Procurement**

	Banteay Mean Chey	Kampong Cham	Kampot	Phnom Penh	Svay Rieng	Total
Some Awareness	27 34%	36 46%	59 76%	34 43%	12 15%	168 42%
Never	53	43	19	46	67	228
<b>Total</b>	<b>80</b>	<b>79</b>	<b>78</b>	<b>80</b>	<b>79</b>	<b>396</b>

However, we can see that, 42 percents of all respondents said that they have been informed by the authority about the construction (See table 5) but 65 percents said that they had never heard the word “Procurement”. Therefore, even though there were some education but because the word “procurement” is a new technical word, it is hard to explain and make the people remember it.

#### 4.3.2. Information about Construction

Relating to construction of road and health center, the respondents (69%) are better informed about road construction than the construction of health center (16%). It is

similar with situation faced by our researchers that we are more difficult to access for interview with Ministry of Public Health than to access with Ministry of Public Works and Transportation. Relating to transparency among Phnom Penh and those four provinces, Kampot is most transparent. 95% of respondents from Kampong Cham and 97% from Kampot were aware about road construction but only 28% of respondents from Svay Rieng were aware about road construction.

**Recommendation 2:** Must increase awareness among the public about any constructions, in particular the ones financed by the state.

**Table 6: Awareness about Road Construction**

	Banteay Mean Chey	Kampong Cham	Kampot	Phnom Penh	Svay Rieng	Total
Never heard	28	4	2	31	57	122
Aware	52 65%	75 95%	76 97%	49 61%	22 28%	274 69%
<b>Total</b>	<b>80</b>	<b>79</b>	<b>78</b>	<b>80</b>	<b>79</b>	<b>396</b>

**Table 7: Invitation to Observe Procurement for Road Construction**

Road Construction	Students	Workers	Farmers	H. wives	Sellers	Govt.	Total
Never heard	0	7	70	5	31	9	122
Aware	9	29	134	12	67	23	274
<b>Total</b>	<b>9</b>	<b>36</b>	<b>204</b>	<b>17</b>	<b>98</b>	<b>32</b>	<b>396</b>

**Table 8: Awareness about Construction of Provincial/Municipal Health Center**

Construction of Health Center	Banteay Mean Chey	Kampong Cham	Kampot	Phnom Penh	Svay Rieng	Total
Never heard	70	58	58	69	79	334
Ever seen	10 13%	21 27%	20 26%	11 14%		62 16%
<b>Total</b>	<b>80</b>	<b>79</b>	<b>78</b>	<b>80</b>	<b>79</b>	<b>396</b>

**Table 9: Information about Construction of Provincial/Municipal Health Center**

	Students	Workers	Farmers	H. wives	Sellers	Govt.	Total
Never heard	8	28	170	15	88	25	334
Ever seen	1	8	34	2	10	7	62
<b>Total</b>	<b>9</b>	<b>36</b>	<b>204</b>	<b>17</b>	<b>98</b>	<b>32</b>	<b>396</b>

#### 4.3.3. Public Opinions on Procurement Process

There are main questions relating to procurement process:

*Question 1: Do the people need to be informed about development plans in their locality?*

For this question, 93% of respondents said that it is better for the state to inform to the people in advance. There are 32 respondents from government and all of them agree that the people should be informed about this.

**Table 10: Do you need being informed in advance about any development project?**

	Students	Workers	Farmers	H. wives	Sellers	Govt.	Total
Must be informed	9	32	190	15	92	32	<b>370</b> <b>93%</b>
No need	0	1	0	0	0	0	1
Not necessary	0	2	11	2	5	0	20
No opinion	0	1	3	0	1	0	5
<b>Total</b>	<b>9</b>	<b>36</b>	<b>204</b>	<b>17</b>	<b>98</b>	<b>32</b>	<b>396</b>

*Question 2: Do the people need to have information about each development project?*

**Table 11: Do the people need to know what the project is?**

	Students	Workers	Farmers	H. wives	Sellers	Govt.	Total
Very important	9	33	193	16	95	32	<b>378</b> <b>95%</b>
Not necessary		1					1
Not important		1	9	1	3		14
No idea		1	2				3
<b>Total</b>	<b>9</b>	<b>36</b>	<b>204</b>	<b>17</b>	<b>98</b>	<b>32</b>	<b>396</b>

For this question, 95% of respondents said that it is very so important. All government officials and students who responded the interview agree that the people have right to know and be informed.

*Question 3: Do the people need to participate and observed the procurement process?*

92 percents of respondents said that it is really so important (See in table 12).

**Table 12: Participation in Procurement Process**

	Students	Workers	Farmers	H. wives	Sellers	Govt.	Total
Very important	8	35	180	15	95	30	<b>363</b> <b>92%</b>
Not necessary	0	1	0	0	0	0	1
Not important	1	0	21	2	3	2	29
No idea	0	0	3	0	0	0	3
<b>Total</b>	<b>9</b>	<b>36</b>	<b>204</b>	<b>17</b>	<b>98</b>	<b>32</b>	<b>396</b>

**Recommendation 3:** For procurement, in particular during bidding process, it is important to open for information access and to let the people participating in bidding. It is better to state clearly in the law that at every bidding opening the procuring entity shall open for observers of at least one from private sector and another one from civil society.

*Question 4: is it better for the government to open to the public to observe the implementing the project?*

89% of respondents think that it is very important (see table 13).

**Table 13: Is it necessary to open for the public in participating to observe the procurement process?**

	Students	Workers	Farmers	H. wives	Sellers	Govt.	Total
Must open	8	32	180	15	89	30	<b>354</b> <b>89%</b>
Not necessary		1	5	1	3		10
Not important	1	2	19	1	3	2	28
No idea		1			3		4
<b>Total</b>	<b>9</b>	<b>36</b>	<b>204</b>	<b>17</b>	<b>98</b>	<b>32</b>	<b>396</b>

In conclusion, all respondents understand the usefulness of the main requirements of the procurement. Therefore, if the government has clear rules and regulations on public

procurement, the people will participate to make the public procurement done by the government better and with transparency.

#### 4.3.4. Participation in Complaining in Procurement Irregularity

For the question of whether the state shall open for the public to file complaints relating to irregularities in procurement, 90% of respondents stated that the state shall open for such participation.

For the question of whether the respondent dare to file complaint or not, 41% of them said that they did not dare to do that (See table 15).

**Table 14: Must open for filing complaint on irregularities in public procurement**

	Students	Workers	Farmers	H. wives	Sellers	Govt.	Total
Must open	8	32	184	15	86	30	<b>355 90%</b>
Not necessary		1	6	1	6		14
Not important	1	3	14	1	5	2	26
No idea					1		1
<b>Total</b>	<b>9</b>	<b>36</b>	<b>204</b>	<b>17</b>	<b>98</b>	<b>32</b>	<b>396</b>

Among 233 respondents (59% of total respondents) who answer that they do not dare to file complaint, the reasons are (See Table 16):

- 47 respondents (20% of them) said that they do not dare to complaint because they concern about the counter-criminal complaint on charge Filing of False Complaint to the judicial authority.
- 39 respondents (17% of them) said that they do not dare to complaint because they do not trust on the judiciary and at last they may be persecuted.
- 108 respondents (46% of them) said that they do not dare to complaint because they concern their future safety.

**Table 15: Dare to Complaint or Not**

	Students	Workers	Farmers	H. wives	Sellers	Govt.	Total
Dare	3	19	72	9	35	25	163 41%
Don't dare	6	17	132	8	63	7	233
<b>Total</b>	<b>9</b>	<b>36</b>	<b>204</b>	<b>17</b>	<b>98</b>	<b>32</b>	<b>396</b>



**Table 16: Concerned Consequences of Complaint**

Concern of	Students	Workers	Farmers	H. wives	Sellers	Govt.	Total
Counter criminal complaint	1	5	30	2	8	1	47 20%
No trust on judiciary	1	2	18	3	11	4	39 17%
Future safety	3	8	68	2	25	2	108 46%
Others	1	2	16		19		38
<b>Total</b>	<b>6</b>	<b>17</b>	<b>132</b>	<b>8</b>	<b>63</b>	<b>7</b>	<b>233</b>

In conclusion, we can see that the people understand the importance of participation of the people in procurement process and it is for everybody but they concern on future safety and do not trust the judicial system.

**Recommendations 4:** *The state should prepare and facilitate the complaint mechanism on irregularities in public procurement. Because the irregularity in public procurement can be a crime relating to corruption, this mechanism shall include the National Authority of Anti-Corruption.*

**Recommendations 5:** *In both IRRPP and PIM, the disputes settlement is conducted by procurement entity before sending to the court. The research recommends establishing an Arbitration Council to settle the procurement disputes so that the settlement can be trusted and find a fair solution.*

**Recommendations 6:** *The state shall strengthen and reform security system and gain confidence from the people.*

**Recommendations 7:** *According to this research, the judicial reform is very important and the lack of trust on judicial system is a big obstacle of the participation in democratic process.*

## **5. GENERAL VIEW ON PUBLIC PROCUREMENT**

In general, the three systems have similar stages of procurement, such as:

- Procurement Planning
- Preparation of Procurement
- Roles and Responsibilities in procurement
- Roles and Responsibilities in implementing procurement and
- Monitoring Procurement

Even though the procurement processes are similar but the processes in each stage are different from one system to another system. The procurement processes of the procurement system for any project under funding from the World Bank and Asian Development Bank (hereafter called "Special Procurement System") can be in international standard, the second standard is the Public Procurement System and the third one is the Procurement System for Commune/Sangkat Project.

Even though, the procurement stating in the Implementing Rules and Regulation for Public Procurement (hereafter called IRRPP) can be accepted as transparent and efficient if the procurement is implemented properly, but it is not enough to and the following points shall be reformed:

- It shall have internal monitoring mechanism including Internal and External Auditing by an independent auditor. In this issue, we can see that all three systems have both internal and external control. However, the controlling agents are different from each other. In Special Procurement System, the project shall be audited by external independent auditing firm but for other two systems, it shall be done by the National Auditing Authority (NAA). However, the auditor must be independent, otherwise, it will be useless.
- There should be punishment for who breaks the rules and regulations of procurement. The current rules and regulations of public procurement, until now no criminal punishment can be applied for any irregularities in procurement. They can use only civil sanctions according the contract or agreement (For example, the agreement between the Cambodian Royal Government and the World Bank, etc...) or administrative sanction which are not serious ones. However, the new Penal Code has some criminal offenses relating to the procurement, such as the favoritism which can be used to punish anyone who favors to his or her relatives or friends.

In order to have better procurement, there shall be monitoring mechanism and shall be reformed all the time by consultation in workshops participated by concern people and collect recommendations from them.

According to the IRRPP of the Cambodian Government, the Government put main requirements to make sure the procurement shall be in transparent and efficient. Those requirements are:

1. *Saving*: The procurement must be:
  - Cheap and less expense according the types of goods, construction, services and consultancy,
  - The products shall be in high quality and
  - Shorter time is better.

2. *Transparency*: In the IRRPP, it focuses on two points: 1. Properly implementation according to methodology and procedure of procurement (IRRPP: 1.5.2.1.) and 2. Encourage the competition in bidding among suppliers and bidding contestants (IRRPP: 1.5.2.2.). For opening for public participation, all three systems stated that all bidding shall be open for public observation, but in practice in according to the survey all do not widely open and the people do not perceive that they have right to participate or observe and do not think that it is useful for them.
3. *Accountability*: For this requirement, the IRRPP has clear need the government officials who are implementing the procurement so that they shall be accountable for their duties and works. In order to achieve these goals, the government incorporates policies provisions and procedural guidelines with check and balances, separation of powers and functions, and delegation, approval and authorization procedures that ensures accountability in the management of procurement.
4. *Equality*: According to the IRRPP, the Government's aim is to ensure that all suppliers and bidders are provided notices of all procurement opportunities and provided a fair competition for public procurement.
5. *Effectiveness*: Apart of saving the expenses, the ultimate objectives are the effective result.

Apart of the above said principles, the IRRPP also stipulates about the code of ethics of all concern people. We will detail it in other chapter.

In conclusion, besides the concerning with the implementation, which the good rules or regulations do still not work if the implementation is bad, we can see that those rules and regulations are still lack and needed to be improved.

## **6. PROCUREMENT ETHICS**

In special procurement system and in IRRPP, there are some codes of ethics for members of procurement committee, bidders and consultancy bidders who participate in bidding. Both codes of ethics are similar. We can say the ethics in the IRRPP is copied from the Special Procurement System.

The ethics for members of the procurement committee are:

1. An individual shall take no benefit, including cash or materials, from outsiders, abider, or consultant, part of his or her salary,
2. Must report immediately any fraud, corruption, conspiracy or any threats,
3. Shall not have any conflict of interests in making decision of agreement.

The ethics for bidders and consultant who participates the bidding are:

1. Shall not have relationship with any ones who can have conflict of interests,
2. Shall declare any personal interest that can be the conflict of interests to the implementing agent of procurement immediately,
3. Shall not commit any corrupted acts, forgery, conspiracy and threats relating to the bidding,
4. Shall open to the government agency or development partner to inspect any documents relating to bidding, whether the bidding can be success or not, and
5. Shall not compensate to any one for any purpose who is participating the procurement including their relatives or friends.

All above ethics are included in forms with the title “Declaration of Ethics”. This Declaration form includes above described ethics to give to the concerned people to read and sign before they have started working or applying for bidding.

For local procurement at communes or sections, there is no separate declaration of ethics like in procurement by IRRPP and special procurement of projects funded by both banks. But there are some notices raised these ethics in all relating documents. We hope that those terms may have some affect on their morale. However, the meanings are the same like the declaration of ethics like in other two kinds of public procurements, IRRPP and Special procurement for World Bank (WB) and Asian Development Bank (ADB).

***Recommendation 8:*** *Concerning with procurement, there are a number criminal offenses such as Favoritism (Art. 599-600), Illegal Bidding (Art. 387) and Making obstacles for Free Bidding (Art. 388) in the new Penal Code to punish anyone who committed any wrong during procurement. But the definitions of some of these offenses are not much clear. It may mean any irregularities stated in the IRRPP and PIM can be crimes. Therefore, it is very important to change and divided more details in a law on Public Procurement so that the implementation can be more simple and easy.*

## **7. PROCUREMENT PLANNING**

There are two types of procurement planning. They are:

1. Annual Planning and
2. Project Planning

The goals and procedures in planning for those three procurement systems are different from each others. However, all of them have similar goals as following:

- Ensure that the procurement managing unit can manage and monitor the procurement efficiently,
- Easy to make final report,
- Can monitor the procurement process since the beginning,
- Good planning can help manager to prepare budget for the project well,
- Manager can prepare resource allocation well,
- Can prevent any unreasonable delay of procurement.

## **7.1. Planning for Public Procurement**

All public institutions that receive funding from national budget must know what they will do their project in the year and must prepare their annual planning and submit to the Ministry of Economic and Finance (MEF) (see IRRPP: 2.3). Chairman of the Procuring Entity shall check his or her procurement plan and submit to MEF to check and for approval through the Department of Public Procurement of MEF in the first week of January of the Fiscal Year.

According to Section 2.4 of IRRPP, how to make annual planning for procurement must be based on the political guidelines of the Royal Government and the National Budget which has been debated and approved during the budget defense, which is called Annual Financial Law<sup>2</sup>. In principles, the budget package of each ministry shall be prepared since October of previous year and it would be approved in December of previous year. Therefore, each ministry must know well about their next year budget. So, it is rarely changed or delayed the adoption of next year budget law. In particular, there have never been delayed for adoption of Annual Financial Law and have never objected by the Parliament. However, because the public procurement funded by the state shall be monitored by MEF, the annual planning for Public Procurement is very important for MEF.

## **7.2. Planning for Procurement for WB or ADB Funded Project**

For Special Procurement System for any project funded by either World Bank or Asian Development Bank, they need to have procurement planning the same but for different goals. This procurement planning does not need annual procurement plan but for each procurement process the implementer needs to submit procurement plan to Manager and copies to the Representative of MEF and donor partners. But, because all ministries

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<sup>2</sup> MEF sends the annual budget (called Annual Financial Law) to COM in first week of October and COM review and send to National Assembly in first week of November, and finally it shall be sent to Senate in first week of December. This law has to be approved before 25 December.

and provincial/municipal governors shall submit their annual plan to the MEF, the procurement plan for project under funding of either WB or ADB shall be included.

This plan shall be reviewed every 6 months and can be modified as necessary. But, if the plan has been well prepared, it is rarely to be changed and it will be easily implemented.

Therefore, even though it is more focused only annual planning, but the procedure of procurement is focused more on management and details.

### **7.3. Procurement Plan for Communes/Sections**

For procurement in commune or section, there is no requirement of making annual procurement plan to submit to the Ministry of Interior (MOI) but each Commune and Sangkat Council shall made its annual development plan before sending annual budget plan.

The procurement plan includes:

- Check the need for studying the impact against environment, land and minorities under the project
- Establishment of Procurement Management Committee (PMC)
- Preparing the studies of the Project
- Mapping the project
- Studying and collecting general information and technical information
- Studying and analysis on the impact against environment
- Studying about land (report of the volunteer contribution of land and report of land procurement)
- Preparing report on safety measures for minorities (if necessary)
- Preparing project plan
- Cost assessment
- Preparing Using and Preservation Plan of the Project
- Defining the results and cost estimation of the Project
- Adoption of Project
- Checking the information relating to Project by Provincial/Municipal Administration and
- Technical Check.

Each stage has following duration:

**Time Table for Procurement Planning**

N <sup>o</sup>	Types of Bidding	Date of Beginning	Date of Contract	Duration						Start	End	Cost By Trimester
				Total	Pre-Conditions	Preparation of Doc.	Announcement	Evaluation	Enter Contract			
				No. of Day	No. of Day	No. of Day	No. of Day	No. of Day	No. of Day			
	1	2	3	4	5	6	7	8	9	10	11	
1	<b>ISB</b>			120	-	20	60	20	20			
2	<b>NSB</b>			60	-	10	30	10	10			
3	<b>CC</b>			40	-	8	15	10	7			
4	<b>CS</b>			17	-	5	-	7	5			

Notes: ISB: International Standard Bidding, NSB: National Standard Bidding, CC: Cost Consultation, CS: Cost Survey

**Conclusion:**

The concept of requiring each institution to have annual plan for procurement like stated in the IRRPP is very good. Therefore, if the commune and section is required to have such annual procurement plan is very good. However, we also recognize that sometimes any plan can be changed in particular when we receive any new project by chance. Therefore, it is important to review plan in every three months.

**Recommendation 9:** *Because of all expenses of all government institutions are in the national the National Budget, all of them shall make their annual procurement planning except any project that is not in the planning. Any change shall inform to the MEF in advance.*

**8. PREPARATION FOR PROCUREMENT**

According to the IRRPP, the preparation for procurement is in many stages. Those main stages are:

- Pre-Qualification
- Defining Technical Conditions
- Preparing bidding documents
- Bidding Process
- Evaluation of bidding documents, and
- Making Contract.

## 8.1. Pre-Qualification

Pre-qualification is selecting qualified bidders without considering their bidding proposal or documents first. It is existed only in National and Local Procurement systems only, not applied in Special Procurement System.

### 8.1.1. The Pre-Qualification in General

Pre-qualifications shall be based on four following requirements:

- *Completeness*: The pre-qualification shall have complete information about the bidding. Where appropriate, drawing, including site plans should be attached to the specification.
- *Clarity*: The information about pre-qualification shall be precise and clear so that the bidders can submit the right and relevant documents, in particular necessary information for competition.
- *Competition*: In order to encourage more competition in bidding. The specification or prequalification must be drafted to permit the widest possible competition.
- *References to Brand and Trade Names*: In general, the bidder cannot include any references to brand or trade name, except any necessity.

### 8.1.2. Pre-qualification in Public Procurement

In public procurement, the pre-qualification is not used for all goods and construction. They use prequalification only for complicated goods or big construction which needs high cost for bidding such as equipments used for custom office, industrial plants, special services, contract for complicated technology and information, and agreement for management.

### 8.1.3. Pre-qualification in Local Procurement System

In the local procurement system, they also use the word “prequalification” like other two systems, but it is different. The prequalification in this system is defined by Pre-Qualification, Evaluation and Contracting or Pre-qualification Sub-Committee (PQSC), in order to define the minimum qualification of bidders and make a list of competent bidders. It means that the PQSC has decided which bidders competent to responsible the project and can join the bidding.

The Pre-qualification Sub-Committee (PQSC) has following members:

- Permanent Member of the Executive Committee of Provincial/Municipal Rural Development Committee



- Deputy of Technical Support Unit (TSU)
- One representative of Provincial/Municipal Administration Unit
- One representative of Commune/Section Council
- Other member and advisor sent by Provincial/Municipal governor.

One good point in the local procurement system is that after having accepted any new bidder, the PQSC will check its past experience and performance first before accepting it in bidder list (see IRRPP: 3.2.6b.). For old contractors who have working experience with the commune or section, the commune or section shall send its performance report for re-checking.

In pre-qualification conditions, in some cases they shall add technical specification if the project needs technical works.

According to the IRRPP, the descriptions of techniques are:

- Report on quality and special characteristics of products or services,
- Information of everything required,
- Means for comparing bidding cost, and
- Description of implementing capacity which are needed.

#### **8.1.4. Advantages and Disadvantages of Pre-Qualification**

In both national and local procurement systems, there are two main groups involving in procurement implementation, group for Pre-Qualification and Procuring Group. At a glance, it looks very transparent because there are many groups of people involved, but if each group did something wrong the procurement is still bad. For example, of the PQSC is favor to any one and select the bidder unfairly, the procuring entity will lose its chance to consider other qualified bidder or contractor. So if the prequalification is not fair, it will discourage other qualified contractor to join the bidding. On another hand, using many groups of people will waste time, money, and human resource and it is against the concept of one-window service initiated by the Royal Government.

***Recommendation 10:*** *It is better to abolish the Pre-Qualification Sub-Committee and provide capacity building to members of procuring entity and open for independent auditing.*

## **8.2. Bidder Registration**

According to the Draft Law on Public Procurement (Art. 29) that is being drafted by the Ministry of Economic and Finance needs all companies, contractors and consultants that

want to join any bidding for public procurement shall register with the Ministry of Economic and Finance. It has some advantages that all companies including foreign and local ones and all contractors should be selected by MEF. But it also has some following disadvantages:

- Majority of foreign companies will not join the bidding because of the complication of registration which they will not be able to know that they can win the bidding or not in advance.
- It is a centralization which is inconsistent with the policy of the Royal Government in expanding decentralization.
- It is inconsistent with the policy of the Royal Government which is expanding the one-window services in Cambodia.

**Recommendation 11:** *It is not necessary to have bidders' registry (of companies and individuals).*

For the above Recommendation 11, there was a reaction from the representative of the Ministry of Economic and Finance. It also shows that the government does not trust its subordinate institutions. However, it is better to decentralize to the lower level institutions.

**Recommendation 12:** In case that it is important to do pre-qualification, so it should be decentralized by permitting of all companies who want to bid should be register at national, provincial and local level. Every registration at national level should be registered at MEF. The registration can be based on budget of each project. Particularly, any national registration of company can apply for bidding at local level by not necessary to register again at that level.

### **8.3. Bidding Process**

#### **8.3.1. Bidding Methodology**

According to the IRRPP, there are five methods of bidding. They are:

- *International Standard Competitive Bidding (ISCB):* It is the best method that all institution shall use this method, because the implementing institution can chose bidders widely and the potential bidder can have enough, fair and equal opportunity in competition. In contrast, the IRRPP states that this kind of bidding can be used only for high cost project which can be participated by foreign bidder. In this bidding process, the implementing institution shall open for all concerned companies and shall be announced in national and international newspaper of at least 2 years operation. All bidders shall deposit in amount of money bidding guarantee.

- *Local Standard Competitive Bidding (LSCB)*: It is similar with the ISCB but the announcement is not so wide. Even though it is called local bidding but it also opens for foreign bidders, not only local companies, and without discrimination. However, the cost of project is smaller than in ISBC. The bidders shall put the deposit for bidding guarantee the same.
- *Cost Consultation (CC)*: In this bidding process, the bidders shall put their bidding documents in closed envelope with seal. There shall be at least competing bidders and shall be invited in Cost Consultation meeting in person. The announcement and distributing Cost Consultation Documents at least 15 days before opening cost consultation in public. Each bidder shall have opportunity to get all relevant documents. The announcement should be publicized in national newspaper that has been operating at least 2 years. If in the cost consultation meeting, there are less than three bidders, the implementing procurement agency shall delay the opening the bidding envelopes and call for more competent bidders. For Cost Consultation, there is no need for deposit for bidding guarantee.
- *Cost Survey (CS)*: This method will be used if the cost of project is less than the amount of Cost Consultation. There is no need for announcement for this method. In this case, the Procurement Officers shall contact at least three or many as possible good companies either in person or by phone to submit their quotations in closed envelope attached with information of cost, name and address of companies. The best price quotation will be chosen. The Chairman of Implementing Procurement Institution shall sign the records and approved by Pre-Qualification Sub-Committee. The bidder has seven days to submit its quotation after has been noticed.
- *Direct Purchase Method (Direct Negotiation)*: Direct Purchase or Direct Contracting is the method that implies dealing or negotiating directly with a single supplier or contractor. According to the IRRPP, this method is used in any of the following circumstances:
  - The cost of goods or services, civil work and repair does not exceed 400,000 Riel (activities other than Local Development).
  - The contract is for recurrent expenditures for Local Development, of cost less than 2 Million, where the proposed contractor is a Local Community Based Organization and support to a community development program is a specific objective of the contract.

### **8.3.2. Deposit for Bidding Guarantee**

For joining the competition bidding and in order to ensure that the bidding companies or contractors are competent and capable enough, they are obliged to put deposit for their bidding guarantee which is not less than 2% of the total bidding cost. The bidding losers

can take this deposit back but they must participate the bidding in whole process. For Special Procurement, the bidder can choose one of the two following securities:

- *Bid Security (BS)*: Deposit in the Bank of the amount of at least 2% of the bid cost. In case that he or she abandons the bidding or refuses to take the contract, the deposit shall be confiscated.
- *Bid Security Declaration (BSD)*: For another type of security, the bidder does need to deposit the money in the bank, but in case he or she abandons the bidding or refuses entering the contract shall pay equal amount to be deposited or shall be in the black list for three years (IRRPP: Annex 3 page 17 and 21).

According to what the Representative of Ministry of Economic and Finance in the workshop on 27 April 2011, the MEF does not agree to have Bid Security Declaration. However, this security is in the IRRPP of the WB and ADB. It is also useful for low cost bidding.

### **8.3.3. The Bidding in Local Procurement Process**

The bidding process in communes and sections is different with the other two procurement systems. However there are many committees involved. Each province and municipality shall establish a Provincial or Municipal Rural Development Committee (P/MRDC). This committee shall have one Executive Committee (ExCom) chaired by Provincial or Municipal Governor which has duties to manage the rural development projects in the province or city.

For procurement, the P/MRDC shall establish a Pre-Qualification Sub-Committee (PQSC) (Please see 8.1.3.). This sub-committee has duty to screen and select competent contractors in a list. Any contractor that is in the list, is the one competent enough to implement the contract.

In order to do this work, The Technical Support Unit (TSU) shall assist the PQSC in selecting competent contractors and the Provincial/Municipal Local Unit shall have duty in collecting relevant information for this process.

In general, the project can be divided in three types of activities: 1. General Construction Contractors, 2. Land Management Contractors and 3. Technical Consultants. Each bidder can apply for more than one activity if they are competent enough.

A registered contractor can be disqualified by the Provincial or Municipal governor, if they have enough evidences to prove:

- Used any illegal or dirty means,
- Withdrawn his or her bidding proposal after opening the bidding,

- Failed to enter any bidding agreement,
- Failed to implement the contract terms,
- Did not respect the term of agreement entered with the Commune or Section Council,
- The implementation is not qualified.

In implementing procurement, the PQSC does not implement procurement by its own. While they are implementing procurement, the Commune/Section Council shall decide to select a contractor from the contractors list. It means the Commune/Section Council is the one who makes final decision in selecting the contractor. All contractors qualified to be bidders selected by the Commune/Section Council shall be provided all of any relevant bidding document by the Procurement Sub-Committee.

The announcement of construction or services contract shall show following points:

- Results of Contract,
- Minimum qualification of bidding contractors,
- Places for bidding documents,
- Cost Assessment,
- Date of dead line and place for bidding application and registration, and
- Time and place for bidding meeting.

According to Procurement Implementing Book for Commune/Section Fund Project, after the Commune/Section Council has selected the competent bidders, the procurement or bidding is the duty of the Procurement Sub-Committee that is established by the Commune/Section Council. This PSC has three member consisting Commune/Section Chief as the Chair, and other two Commune/Section Council Members as members. In case that the Commune or Section Chief is busy, one of his or her deputies or Commune/Section Council shall be assigned as the Acting Chairman of the Procurement Sub-Committee.

#### **8.3.4. The Bidding Opening**

In general, the Procurement Sub-Committee shall call a meeting to open the bidding documents for any contract of construction, service and any purchase that are in the budget of Commune/Section Fund Project. Each commune or section shall organize this meeting once a year at least. This meeting shall be organized for half day. This meeting shall be organized in Commune or Section Office or in any proper public places, such as school, etc... (See PIM: 3.5.1.).

The bidding meeting shall be organized by the Procurement Committee. All members of the Procurement Committee shall be present in the meeting and only members of the

Procurement Committee has rights to make decision on the result of the bidding. The Commune or Section Clerk shall be minute recorder (See PIM: 3.5.2).

The bidding meeting shall be in public, therefore every person who wants to participate he/she can attend this meeting but they are only observers and have no rights to make any decision.

In order to be able to open the bidding, there shall be at least three bidders. Each bidder can apply only for one project. If there is only one or two bidders, the bidding must stopped. In this case, the procurement committee shall request in writing to the Provincial or Municipal Governor to get permission to choose direct contracting (See PIM: 7.2.1).

Before approving the request, the Provincial or Municipal Governor shall consider the reasons of the request. The reasons that can choose the direct contracting instead, are:

- Any procurement of goods, services or any constructions that has failed in conducting the bidding to select contractor, service providers or suppliers once time ready.
- Any procurement of goods, services, or any constructions that needs technical qualification and there is only one competent contractor.
- Any procurement of goods, services, or any construction that cannot be delayed waiting for bidding and it is an urgent need and lack of planning in advance.
- Any procurement of goods, services, or any construction that needs to be expanded or needs more equipments.
- A purchase order that was bought ready through a fair competing bidding and it cannot be cheaper even though through any bidding.
- A purchase that can be done by another government institution or any construction that can be done by another government institution that is using existing means and equipment and that project is a necessary and urgent.

## **9. ROLES AND RESPONSIBILITIES OF PROCURING ENTITIES**

The procurement implementer is the one that allocates a budget to implement a project such as purchase goods or any equipment, need any services or give a construction to any company.

Ministry of Economic and Finance has a Public Procurement Department that is responsible to provide technical advice to all other procurement departments, offices or national and sub-national institutions. In case that the cost of procurement object is high, the Public Procurement Department of the MEF shall conduct the procurement itself.

Each ministry has one procurement department that has duty to implement procurement and monitors the procurement conducted by each own subordinate institution but at province and municipality, the provincial and municipal authority shall establish one Pre-Qualification Sub-Committee (PQSC) (See Chapter 6 of IRRPP). This PQSC has duty to define the minimum qualification of contractors or bidders, evaluate and contracting. In case this sub-committee needs technical advice or the cost of bidding project is high, it shall consult with the Procurement Department or offices of the Ministry of Economic and Finance.

In each province and municipality, the provincial and municipal hall represents Ministry of Interior and other provincial or municipal office/ department represents other ministries. The provincial or municipal office has a Finance Office that is in charge of procurement but in practice the Provincial Finance Office which is a subordinate institution of MEF is in charge procurement in the province and municipality. Each province or municipality shall establish one Pre-Qualification Sub-Committee each.

After the establishment of Provincial or Municipal Councils, there is an attempt to establish Procurement Sub-Committee of the P/M Council to monitor procurement in the province or municipality. It can be similar with mechanism in communes and sections, but it is still an opinion.

At communes and section level, the commune and section council and commune and section procurement sub-committee are responsible for procurement but the Provincial or Municipal Rural Development Committee and Pre-Qualification Sub-Committee are the ones selecting the contractors.

## **10. PROCUREMENT CONTROL AND COMPLAINING PROCEDURES**

### **10.1. Clarification**

The bidders, contractors and consultants who have participated and failed have right to ask for clarification or appeal to the Procurement Implementing Institution or the court. The clarification made by the Procurement Implementing Institution must be only on any points requested by the appellant who is a bidder, contractor, or consultant and any information disseminated publicly consisted in bidding opening report and the summary of bidding but cannot clarify any things relating to bidding document of other companies.

In the IRRPP (section 8.1.1.) set four purposes for the clarification as following:

1. Strengthening transparency in procurement,
2. Providing main points (in particular for local companies) their strengths and weaknesses in their bidding documents. The local companies can have

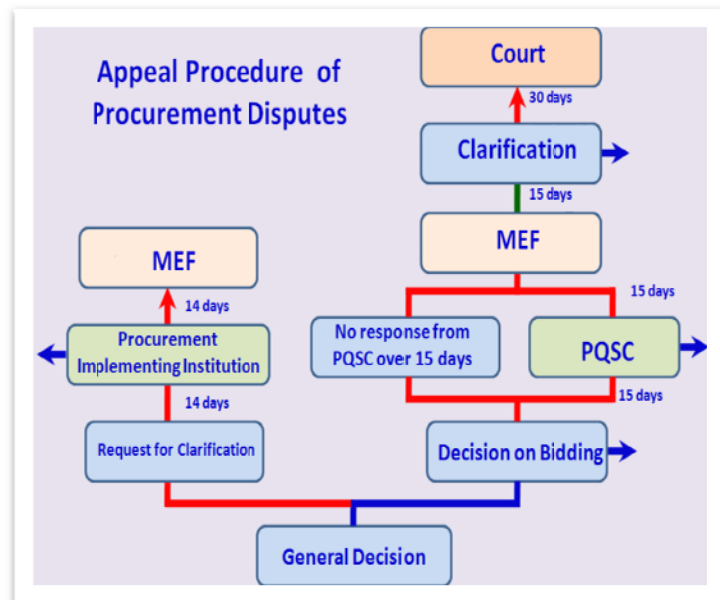


- opportunity to improve their future bidding documents and make better competition.
3. While the potential bidders and consultants perceive that the bidding is fair, more of them will join the bidding so that they will have good competition.
  4. Providing standard guidelines to the bidders and consultants that have been passed so that they will understand the qualification and cost which are required by the project.

However, the clarification note must be carefully and must not release any commercial secret.

## 10.2. Procedures on Public Procurement Disputes (Notional or International Standards)

In bidding process, if any bidder or bidding participant does not agree with any decision made by the procurement implementing institution, he or she can ask that institution to clarify. The Procurement Implementing Institution shall send a clarification note in writing to him or her within 14 days of working day (Annex 4 of IRRPP). The IRRPP does not state clearly what the complainant should do if there is no response over 14 days or the contract is made before clarification. It is better to state clearly whether he or she can file complaint to the higher officers or the contract shall be suspended before final decision.



While the complainant does not happy with the clarification of the Procurement Implementing Institution, he or she can file an appeal to the Public Procurement Department of the MEF. The Department shall respond in writing. In case that the Department of Public Procurement agrees with the complaint, the Department has rights to suspend the bidding and can implement itself.

When the bidding is finished, the Procurement Implementing Institution shall inform about the bidding result to the all concerned people. After having been informed, and if any one does not happy with the bidding process, he or she can file a request to the



PQSC to clarify within 15 days after receiving the news of his or her failure (Section 8.1.4. of IRRPP) .

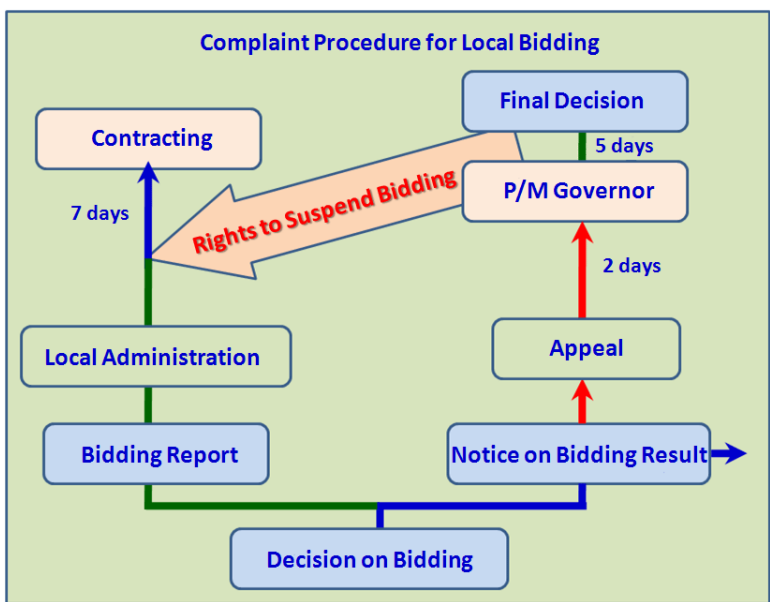
PQSC shall review the complaint and review the bidding performance of the Procurement Implementing Institution and send back to the complainant, company or contractor, the clarification. In case there is no response from PQSC within 15 days (Section 8.1.4. of IRRPP) or the complainant does not happy with the clarification of PQSC, the complainant can file an appeal to the Public Procurement Department of MEF.

The Public Procurement Department of MEF shall check and response to the appellant within 15 days of working day. In case that the complainant does not agree with the explanation or clarification of the Department, he or she can file a complaint to the court. The Court must solve this dispute within 30 days.

### 10.3. Procedures for Local (Commune/Sangkat Level) Procurement Disputes

In Local Procurement System, after the Procurement Committee has made their decision, this committee shall make a report of their procurement implementation to the Provincial or Municipal Administration and put a copy on the information board at the commune/ section office (Guiding Book for C/S section 3.12.1). Apart of the result report, the Technical Support Officer shall make a briefing report about the bidding (Form 43 of Guiding Book for C/S) send to the Provincial/Municipal Governor through Provincial or Municipal Local Unit.

If any bidder thinks that the bidding is not fair or unjust, he or she can file a complaint to the P/M Governor within 2 days of working day after the bidding result. This complaint



must be copied of one copy to the Commune Chief or Section Leader. The P/M Governor shall make final decision for this complaint within 5 days of working day.

According to the Procurement Guiding Book for Commune or Section Social Fund, after the Local Administration received the report of bidding and received no any objection from the P/M Governor, the Commune Chief or Section

Leader can sign the contract with the winning bidder(s).

This Guiding Book also states that within seven days after the bidding decision, the Provincial or Municipal Governor has power to suspend or stop signing the contract between the Commune Chief or Section Leader with the contractor. Therefore, it can be the problem if the contract has been signed between the Chief of Commune or Section with the contractor before the objection of the Governor. Therefore, in order to avoid such problem, the Guiding Book also advise the Commune Chief and Section Leader must delay the signing until over seven days after the bidding decision.

***Recommendation 13:*** *In order to have legal binding, the Public Procurement shall be stated in a special law.*

***Recommendation 14:*** *The Dispute Resolution Procedure for Public Procurement can be in one of the following options (or other):*

- Keeping current system like stated in the PIM.
- Keeping current system, but the one who does not agree with the decision of the Public Procurement Department, can file an appeal to the Public Procurement Chamber of the Court of First Instance (But it is so good because the Public Procurement Department is located in Phnom Penh). For this option, the Court of First Instance shall have one Public Procurement Chamber that has duty to decide on Public Procurement Disputes. The case shall be decided by a judicial panel of three judges and they must permanently be assigned and well understanding the public procurement problems.
- Keeping current system but the appeal can be filed directly to the Court of Appeal. In future, there will be more than one Appeal Court and each of them shall establish one special chamber for Public Procurement Disputes. The decision of these appeal court shall be final.
- It shall establish an Arbitration Council on Public Procurement Disputes. The complaint can be filed directly to that council after the complainant does not agree with the clarification or decision of other Procurement Implementing Institution.

***Recommendation 15:*** *Right to appeal shall be limited according to the cost of procurement. It should be opened only for small project.*

***Recommendation 16:*** *The appeal shall have a statute limitation. It must be stipulated in the law.*

***Recommendation 17:*** *For public procurement offenses, they shall be solved by judicial proceeding and cannot be settled. The Law-Enforcement Agencies shall be National Police and Officials of National Authority of Anti-Corruption.*

**Recommendation 18:** *It is better to establish a Public Procurement Arbitration Council of same structure of Labor Arbitration Council. At national level, it shall have a National Public Procurement Council (NPPC). The NPPC is not an appeal court of the P/M Public Procurement Arbitration Council. Any public procurement dispute occurred in the province or municipality shall be appealed to the P/M Public Procurement Arbitration Council. Any appeal against the award of the P/M.PPAC shall be sent to the P/M Court of First Instance and any appeal against the award of the NPPAC shall be filed to the Appeal Court. The decision of the Court of First Instance and of the Appeal Court is the final ones.*

**Recommendation 19:** *Any contract award can be signed until over the statute limitation of public procurement dispute and there is no any complaint. In case there is a complaint on irregularity in the procurement, the bidding shall be finally decision by whole C/S Council for C/S Fund Project, by P/M Council for any project in the province or municipality and by Minister for any project within the ministry.*

## **11. PROCUREMENT CONTROLS**

The efficiency of the procurement implementation does not depend on the bidding process only but depends on substances of the contract. In the IRRPP and PIM, there is a number of guidelines for all procuring entities. Because both IRRPP and PIM are not law, those guidelines or principles have no legal binding. Therefore, it can apply punishment on public institution and no affect or no legal biding on the contractors except stipulated clearly in the agreement.

The main principles for controlling and managing contract are:

- Setting up clear schedule or time table of procurement implementation and operation plan of the contractor,
- Inspection of quality,
- Operation Security (see IRRPP: 3.13.1),
- Termination of Contract (Abandon the works, fail to implement the requirement of contract owner or bankrupt).

If the contract controlling and management stipulated in law, it is good if the contract is not made properly and does not state clearly.

**Recommendation 20:** *A special law on Public Procurement shall be made.*

**Recommendation 21:** *The law shall stipulate the obligation of the contractor and the sanctions (Can be fine or contract termination) if he or she failed to implement the obligation.*

**Recommendation 22:** *Building capacity on contract law to the member of C/S council member and P/M council member. Each local institution shall have their legal counsel to review contract and control the contract implementation*

**Recommendation 23:** *All procurement of at least in an amount of cost shall be audited but external independent auditor at the end of the year or of the project.*

## 12. PENALTIES

There is a penalty provision stated in Chapter 9 of the IRRPP. This chapter consists some legal term such as Corruption, Misapplication, conspiracy and forcing, but because it is not the law, the Government can only terminate the contract as punishment (IRRPP: 9.1.3) or blacklisting any bidder for a period of time (three years in IRRPP: 9.1.5.) and administrative sanction for any official of the procuring entity (IRRPP: 9.1.4) but they are not criminal punishment.

Like mentioning above, even though the Cambodian Royal Government (in IRRPP) and P/M Governor (in PIM) has rights to suspend the contract signed by procuring entity and the contractor and no one dares to appeal those decision, but according to the law, the Government may compensate to the victims of contract suspension or corrupted procurement, except stating clearly by law.

### 12.1. Wrongdoing in Procurement

**Corrupted Practices:** Means the offering or receiving any valuable thing to influence the action of a public official in the selection process, contracting or contract implementation.

**Fraudulent Practices:** Means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Government, and include collusive practices among bidders and consultants (prior to or after submissions of bids and proposals).

**Collusive Practices:** Means a scheme or arrangement between two or more bidders, designed to establish bid prices at artificial, non-competitive levels or to influence the action of any party in the procurement process or the execution of a contract.

**Coercive Practices:** Means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract.

## 12.2. Crimes Relating to Public Procurement

In Penal Code 2009, there is a number of criminal offenses relating the procurement. Those offenses are Bribery, Official Corruption (Art.605), Bribery (Art.594), Illegal Bidding (Art.387), Making obstacles in Bidding (Art.388) and Favoritism (599-600).

**Official Corruption:** Acts of Public Servant or People elected for public mandate to solicit or accept directly or indirectly a gift, a present, a promise or any benefit in order to perform or not perform his/her duty. According to the Article of 594 of the penal Code the perpetrator is punishable for an imprisonment from 7 to 15 years.

**Bribery:** Acts of, either directly or indirectly, providing with any donation, present, gift, promise or any benefit to any public servants or people elected for public mandate in order to either fulfill any act in his or her functions or abstain from fulfilling any act in his or her function. According to the Article 605 of Penal Code, the perpetrator is punishable for an imprisonment from 5 to 10 years.

**Illegal Bidding:** It is any act of giving, promising, agreeing with any one or using any illegal acts to eliminate a bidder from a bidding process. Who commits this act may be punishable according the Article 387 of the New Penal Code and of 6 months to 2 years and fined from 1 to 4 million Riel.

**Obstruction of Bidding:** Acts of using violence or threats on any bidder in order to obstruct a bidding process, shall be punishable on Obstruction of Bidding and for an imprisonment from 1 to 3 years and a fine from 1 to 4 million Riel.

**Favoritism:** Acts of Public Servant or People elected for public mandate providing benefit illegally during procurement process. According to the Article 600 of Penal Code, the perpetrator is punishable for an imprisonment from 6 months to 2 years and fine from 1 to 4 million Riel.

For bribery and corruption, there is no problem in definition but there is problematic with Favoritism that is to be used in procurement. “Illegal Providing” is the key term of this offense. What does “Illegal Providing” mean? Therefore, are any un-ethic conducts in IRRPP or PIM illegal? All these can be solved by only the law.

**Recommendations 24:** *There shall be a special law on Public Procurement<sup>3</sup> and shall have punishment and crimes relating to procurement. Three offenses in new Penal Code such as Illegal Bidding, Obstruction of Bidding and Favoritism shall be amended and break them down in more detailed articles.*

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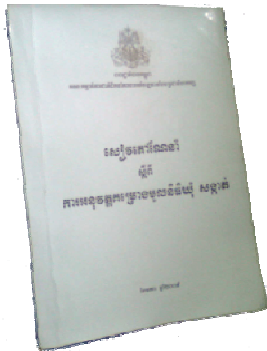
<sup>3</sup> It is being drafted by the MEF.

### **13. CONCLUSION**

Corruption can be happened easily in procurement process and easy to waste state budget and cause the products of procurement unqualified and make the people lose trust on the government. However, the too much centralization by Ministry of Economic and Finance does not help development. Therefore, a law on public procurement shall be made in order to save the state budget and help the subordinates accountable. The findings of the research can be useful for the draft law and encourage the government to pass that law.

## REFERENCES

- Declaration of Ministry of Economic and Finance of Reference No. 045 MEF. Dated on 31 January 2005 on the Implementation of Deconcentration on Public Procurement.
- Declaration of Ministry of Economic and Finance of Reference No. 319 MEF.DCL dated on 31 August 1995 on the Implementing the Rules and Regulations on Public Procurement.
- Declaration of Ministry of Economic and Finance of Reference No. 381 MEF.DCL dated on 15 June 2010 on the Implementing the Rules and Regulations on Public Procurement.
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- Decision of National Commission on the reform for Decentralization and Co-decentralization of Reference No. 001 DSN/NCDC dated on 14 January 2009 on the Implementing Project of Commune/Sangkat Fund 2.
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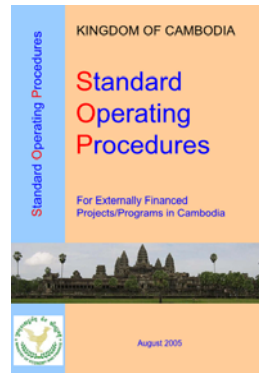


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- Sub-decree of Reference No. 14 SUBD dated on 26 February 2007 on the Using of Manual on Standard Operating Procedure for Projects/ Programmes funded by World Bank and Asian Development Bank.
- Sub-decree of Reference No. 105 SUBD dated on 18 October 2006 on Public Procurement.
- Sub-decree of Reference No. 60 SUBD dated on 14 June 1995 on Governing Public Procurement.



## TERMINOLOGIES

**Accomplice:** Any act or plan committed by two or more bidders to make a fake bidding cost and bidding or influence the bidding process or on the contract implementation.

**Accountability:** All efforts in implementing the IRRPP with loyalty and all decision making shall be made without any conflict of interest and with professional ethics.

**Auditing:** Actions of checking regularly or annually the implementation of procurement which was done by procuring entity or under the decision made by the procuring entity conducted by procuring entity itself, by Ministry of Economic and Finance, by National Auditing Authority.

**Bidder:** An individual, a company or a consultant who wants to participate and submits the application of bidding.

**Bidding Documents:** Any document produced by procuring entity for applying for bidding or applying for pre-qualification and any instruction documents including detailed information relating to technical requirement, terms of reference and contract conditions.

**Bidding:** A type of procurement process which a project proposal is applied, accepted, evaluated in order to grant a contract.

**Bidding Proposal:** Relevant documents that are filled by a bidder including bidding proposal and attached documents and applied to the procuring institution in purpose to get contact of supplying goods, construction, providing any services or consultant services.

**Black List:** A list of bidders that have no right to apply for any bidding for public funded project.

**Code of Ethics:** In general, they are rules for a group of professionals to apply so that their profession can be conducted fairly, with loyalty and properly. In procurement, code of ethics is an agreement made by involved persons to respect a number of rules properly during procurement process so that he or she can implement his or her duties and functions properly and fairly.

**Construction:** Any service or action relating to construction, repairing, building, digging, pumping or relevant services that used human labor, machine, equipments or technologies.

**Consultant Service:** The service of expertise provided by a consultant company or individual consultant for any project or to strengthen any project or institutional capacity or building capacity of staff.

**Consultant:** A consultancy company or any consultant who provides intellectual supplies.

**Contract:** An agreement made between procuring entity and bidder for purchase, providing construction services or consultant services.

**Favoritism:** Acts of Public Servant or People elected for public mandate providing benefit illegally during procurement process. According to the Article 600 of Penal Code, the perpetrator is punishable for an imprisonment from 6 months to 2 years and fine from 1 to 4 million Riel.

**Fraudulent Practices:** Means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Government, and include collusive practices among bidders and consultants (prior to or after submissions of bids and proposals).

**Goods:** Any liquid thing, solid or gas that has value or economic value such as machine, equipment, materials, furniture, food, drugs and any other products including electric equipments.

**Implementing Rules and Regulations governing Public Procurement (IRRPP):** A manual on Public Procurement Procedures adopted by Ministry of Economic and Finance.

**Local Procurement:** It is a short cut for the Rules and Regulations on Procurement for commune or sangkat fund.

**Private-Public Partners:** Any private company that received rights and authority to implement any projects funded by the state relating to construction, supplying goods, or any services for the Royal Government of the Kingdom of Cambodia.

**Procurement Commission:** A working group appointed by Chief of Procuring Entity to be responsible in implementing procurement plans and organizing the bidding, making contract with bidders, governing the implementation of contract and solve disputes relating to procurement (Definition in the IRRPP).

**Procurement:** Acts of purchasing, finding goods, construction service or consultant service by following the rules and procedure stated in law or any rules and regulations.

**Procurement Package:** a group of same category of procurement subjects which should be processed at the same time.

**Procuring Entity:** A ministry, institution, municipal or provincial authority, district, commune or sangkat authority, public enterprise, public administrative institution or private-public partner that is conducting a public procurement.

**Procuring:** Actions of procurement starting from bidding documentation until a contract of purchases of goods, constructions, or consultant services is signed.

**Public Procurement:** Any procurement done by any government institution, capital, municipality or provincial authority, district, khan, commune or sangkat authority, private enterprise or private institution, administrations or any autonomous financial institution and any private-public partners.

**Threats:** Any acts of prohibiting or threatening to harm another person or his or her property directly or indirectly in order to influence the procurement process or contract implementation.

**Transparency:** Process of open for public participation and allow the people to access to information.

# APPENDIXES

## QUESTIONNAIRES

### For Officials

Names: \_\_\_\_\_ (may not need) Age: \_\_year, Gender: \_\_\_\_\_

Address: Commune \_\_\_\_\_ District \_\_\_\_\_ Province: \_\_\_\_\_

Title: \_\_\_\_\_ Since \_\_\_\_\_

1. Does Cambodia have any law or any rules for public procurement at national level? If Cambodia has, is it law, sub-decree or administrative order?

Law     Sub-decree     Administrative Order     Nothing     Don't know

#### In case that Cambodia has no any legal documents on Public Procurement

2. If Cambodia has not yet law or sub-decree issued, is the Government planning for that?

being drafted     Just in planning process     Not yet consider

3. If the governing is considering, what kind of documents the government is preparing?

Law     Sub-decree

4. If there is no law on Public Procurement, what is the government planning to do? It will pass a law or only a sub-decree?

Draft a law     Just a sub-decree

#### In case that Cambodia has a law, sub-decree or administrative order

5. What legal documents you are referencing on for the procurement in your institution? (Can choose more than one answers)

Law     Sub-decree     Ministerial Decision     Internal Rules

6. How many procurement procedure you used for your institution?

Only on     Two different procedures     Many

7. Even though whatever legal documents you use for procurement in your institution, what requirements you have for procurement?

	Yes	No
1) Period for giving notice on Procurement	<input type="checkbox"/>	<input type="checkbox"/>
2) What conflict of interests between procuring officers and the bidder.	<input type="checkbox"/>	<input type="checkbox"/>
3) Requirements for procurement (Quality/value)	<input type="checkbox"/>	<input type="checkbox"/>
4) The Procurement must open for public participation during bidding.	<input type="checkbox"/>	<input type="checkbox"/>
5) Is there any deposit for bidding security?	<input type="checkbox"/>	<input type="checkbox"/>

8. Is there any requirement to secure the contract implementation of the winning bidder?

Yes there is     No, nothing

9. If yes, by what means?

- Don't know
- Deposit in the bank , and not providing whole disbursement
- Others\_\_\_\_\_

10. Is there any dissemination of law/sub-decree/or any other decisions relating to procurement?

- Yes, there is
- Nothing

If yes by what means (may be more answers)

- TV
- Radio
- Printed documents
- Forum

Can you rate those disseminations?

- Many enough
- Very few

11. What punishment for who commits wrong in procurement

Types of Punishment	Is it used before?	
<input type="checkbox"/> Imprisonment	<input type="checkbox"/> yes	<input type="checkbox"/> never
<input type="checkbox"/> fine	<input type="checkbox"/> yes	<input type="checkbox"/> never
<input type="checkbox"/> Suspension right to bidding	<input type="checkbox"/> yes	<input type="checkbox"/> never
<input type="checkbox"/> Administrative sanction	<input type="checkbox"/> yes	<input type="checkbox"/> never

12. Did you face any obstacles below?

- Influence by Powerful People
- Procuring Officer does not understand
- Bidders do not understand procedure
- Many corrupted officers
- Officers are deterred with wrong doing
- Other\_\_\_\_\_

13. Do you have any other comments to improve procurement?

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Interviewed on Date\_\_\_\_\_2010  
Interviewer

**QUESTIONNAIRES**  
**For Commune/Sangkat Staff**

Names: \_\_\_\_\_ (may not need) Age: \_\_year, Gender: \_\_\_\_\_

Address: Commune \_\_\_\_\_ District \_\_\_\_\_ Province: \_\_\_\_\_

Title: \_\_\_\_\_ Since \_\_\_\_\_

1. Does Cambodia have any law or any rules for public procurement at national level? If Cambodia has, is it law, sub-decree or administrative order?  
 Law     Sub-decree     Administrative Order     Nothing     Don't know

2. In your commune/sangkat, is there any actions below? (Can be more than one)

	Happened	Never	Don't know
1. Road Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Construction of School Building	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Construction of Hospital or Public Health Center	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Purchasing medicine and equipment for hospital or Public Health Center	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Any actions above that were happened in you commune/sangkat before, did your commune or sangkat council decide to hire, give fund to any contractor?  
 Yes     Never

4. Has you commune or Sangkat any rules or regulation on procurement?  
 Yes we have     No, nothing

5. If yes what type of legal documents?  
 Law     Sub-decree     Administrative Order     Nothing     Don't know

6. If you have some kinds of legal document on procurement (such as sub-decree or Decision of MEF), is it disseminated by higher institution?  
 Yes clearly     Yes but not clear     Nothing

7. If your commune or sangkat has some rules even if law, sub-decree or only you internal rules, what requirements do you have for procurement?

	Yes	No
1) Period for giving notice on Procurement	<input type="checkbox"/>	<input type="checkbox"/>
2) What conflict of interests between procuring officers and the bidder.	<input type="checkbox"/>	<input type="checkbox"/>
3) Requirements for procurement (Quality/value)	<input type="checkbox"/>	<input type="checkbox"/>
4) The Procurement must open for public participation during bidding.	<input type="checkbox"/>	<input type="checkbox"/>
5) Is there any deposit for bidding security?	<input type="checkbox"/>	<input type="checkbox"/>

8. Is there any requirement to secure the contract implementation of the winning bidder?

- Yes there is                       No, nothing

9. If yes, by what means?

- Don't know  
 Deposit in the bank , and not providing whole disbursement  
 Others \_\_\_\_\_

10. What punishment for who commits wrong in procurement?

Types of Punishment	Is it used before?	
<input type="checkbox"/> Imprisonment	<input type="checkbox"/> yes	<input type="checkbox"/> never
<input type="checkbox"/> fine	<input type="checkbox"/> yes	<input type="checkbox"/> never
<input type="checkbox"/> Suspension right to bidding	<input type="checkbox"/> yes	<input type="checkbox"/> never
<input type="checkbox"/> Administrative sanction	<input type="checkbox"/> yes	<input type="checkbox"/> never

11. Did you follow up the implementation and the result of procurement?

- Follow up carefully     Can follow but no time     Cannot follow up

12. Did you face any obstacle below?

- Influence by Powerful People                       Procuring Officer do not understand  
 Bidders do not understand procedure     Many corrupted officers  
 Officers are deterred with wrong doing  
 Other \_\_\_\_\_

14. Do you have any other comments to improve procurement?

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Interviewed on Date \_\_\_\_\_ 2010

Interviewer



## QUESTIONNAIRES For Citizen

Names: \_\_\_\_\_ (may not need) Age: \_\_year, Gender: \_\_\_\_\_

Address: Commune \_\_\_\_\_ District \_\_\_\_\_ Province: \_\_\_\_\_

Address Location:  Town     Close to the road     Far from the road over 500m

Occupation:  Government Officials             Seller             Farmer

Knowledge:     Post Degree             University             High School

Primary                     Only can read             Cannot read

1. Do you understand the word "Procurement"? (the interviewer need to understand the interviewee before deciding to rate him or her)  
 Understand clearly                     Heard but not understood  
 Understood but not clear             Not understand at all.
2. Is there any construction of road or hospital in your commune or Sangkat?  
 Road Construction  
 Construction of Hospital/Public Health Center  
 Nothing
3. Is there any government officials came to explain on public procurement procedure?  
 Yes                                     Never

### PUBLIC HEALTH

4. If there were any construction for hospital or public health center in your village or commune, did your commune/sangkat authority inform you about that project?  
 Never                                     They did  
  
If they did inform, how long before the project started?  
 less than 3 days                     3-7 days             7-15 days             over 15 days
5. When you commune or sangkat did their procurement, did the authority inform you and invite you to observe the bidding?  
 Never                                     Yes sometimes  
  
If you was invited or participated how long had they informed your before the process?  
 less than 3 days                     3-7 days             7-15 days             over 15 days
6. If you was observe any procurement conducted by Public Health sector, how do you evaluate their process?  
 Perfect                     Trusted             Not good, some doubts             Very bad
7. If you participated as observer in procurement of public health sector, did you observe their bidding process?  
 seriously                     Can but no time             Cannot do that

8. Did the procuring entity explain clearly about the project?
- Understand clearly
  - Good explanation, but lack of knowledge to understand them
  - Not good explanation
  - Explain nothing

### **PROCUREMENT ON ROAD CONSTRUCTION**

9. If there were any road construction in your village or commune, did your commune/sangkat authority inform you about that project?
- Never
  - They did

If they did inform, how long before the project started?

- less than 3 days
- 3-7 days
- 7-15 days
- over 15 days

10. When you commune or sangkat did their procurement, did the authority inform you and invite you to observe the bidding?
- Never
  - Yes sometimes

If you was invited or participated how long had they informed your before the process?

- less than 3 days
- 3-7 days
- 7-15 days
- over 15 days

11. If you was observe any procurement on road construction conducted by commune or sangkat authority, how do you evaluate their process?
- Perfect
  - Trusted
  - Not good, some doubts
  - Very bad

12. If you participated as observer in procurement of road construction, did you observe their bidding process?
- seriously
  - Can but no time
  - Cannot do that

13. Did the procuring entity explain clearly about the project?
- Understand clearly
  - Good explanation, but lack of knowledge to understand them
  - Not good explanation
  - Explain nothing

### **GENERAL QUESTIONS**

If there is any procurement (construction or purchase)

14. Do you want the procuring authority to announce about this project in advance?
- Yes I want
  - Don't know
  - Not important

15. Do the people need to know what the project is about?
- Yes I want
  - Don't know
  - Not important

16. Is it better for the Procuring Entity to open for public participation?
- Yes I want
  - Don't know
  - Not important

17. Is it better the Procuring Entity open for the people to follow up this procurement?

Yes I want                       Don't know                       Not important

18. Is it better for the higher authority open for complaint on procurement?

Yes I want                       Don't know                       Not important

19. If you know about any irregularities in procurement, do you dare to file complaint?

Yes I dare                       No I do not dare

20. If you do not dare, why?

- Security Concern
- Concern for counter complaint
- No confidence on court system

Other \_\_\_\_\_  
\_\_\_\_\_

Interviewed on Date \_\_\_\_\_ 2010  
Interviewer