

PHILIPPINES COUNTRY PROCUREMENT ASSESSMENT REPORT



A Joint Document of

The Government of the Philippines, The Asian Development Bank and The World Bank



ADB



October 3, 2008

PHILIPPINES
COUNTRY
PROCUREMENT
ASSESSMENT
REPORT

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CURRENCY
 Currency Unit = Philippine Peso (Php)
 US\$ 1.00 = Php 46 (June 2007)

FISCAL YEAR
 July 1 – June 30

ACRONYMS AND ABBREVIATIONS

ADB	Asian Development Bank	DOH	Department of Health	MDB	Multilateral Development Bank
AF	Asia Foundation	DPWH	Department of Public Works & Highways	NCB	National Competitive Bidding
APP	Annual Procurement Plan	DTI	Department of Trade and Industry	NEDA	National Economic & Development Authority
APPI	Agency Procurement Performance Indicator	EGP	E-Government Procurement	NGAs	National Government Agencies
AusAID	Australian Agency for International Dev't	GDP	Gross Domestic Product	NGAS	New Government Accounting System
BAC	Bids and Awards Committee	GFI	Government Financial Institutions	OECD	Organisation for Economic Cooperative & Development
BIR	Bureau of Internal Revenue	GOCC	Government Owned and Controlled Corp's	OMES	Optimised Microturbine Energy Systems
BIS	Baseline Indicators System	GOP	Government of the Philippines	PAGC	Presidential AntiGraft Commission
BLI	Baseline Indicators	GPMs	Generic Procurement Manuals	PBDs	Philippine Bidding Documents
CAC	Coalition Against Corruption	GPPB	Government Procurement Policy Board	PCA	Philippine Constructors Association
CAS	Country Assistance Strategy	GPRA	Government Procurement Reform Act	PDF	Philippine Development Forum
CBCP	Catholic Bishops' Conference of the Philippines	IAEB	Invitation to Apply for Eligibility & to Bid	PER	Public Expenditure Review
CIDA	Canadian International Development Agency	IAU	Internal Audit Unit	PhilGEPS	Philippine Electronic Procurement System
COA	Commission on Audit	ICM	Initiating Concept Memorandum	PICE	Philippine Institute of Civil Engineers
COFILCO	Confederation of Filipino Consulting Organizations	IDF	Institutional Development Fund	PPMP	Project Procurement Management Plan
CPAR	Country Procurement Assessment Report	IOM	International Overseas Management	SEC	Securities and Exchange Commission
CPI	Compliance/Performance Indicators	IRRA	Implementing Rules and Regulations Part A	SGV	Sycip, Gorres, Velayo & Co.
CSC	Civil Service Commission	IRRB	Implementing Rules and Regulations Part B	SMEs	Small and Medium Enterprises
CSO	Civil Society Organization	ISO	International Organization for Standardization	SUCs	State Universities and Colleges
CWG	CPAR Working Group	JBIC	Japan Bank for International Cooperation	SWS	Social Weather Stations
DAC	Development Assistance Committee	LAIKO	Council of the Laity of the Philippines	TAF	The Asia Foundation
DBM	Department of Budget & Management	LB	League of Barangays	TAN	Transparency Accountability Network
DENR	Department of Environment & Natural Resources	LCP	League of Cities of the Philippines	TSO	Technical Support Office of the GPPB
DepEd	Department of Education	LGA	Local Government Academy	TWG	Technical Working Group
DPEM	Development Planning and Environmental Management	LGUs	Local Government Units	UGB	Uniform Guidelines for Blacklisting
DILG	Department of Interior & Local Government	LMP	League of Municipalities of the Philippines	UNDP	United Nation Development Program
DND	Department of National Defense	LPP	League of Provinces of the Philippines	USAID	US Agency for International Development
DO	District Offices			WB	World Bank
DOF	Department of Finance				

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Preface

Date and Basis of the Report

At the March 2006 Philippine Development Forum (PDF), the Government of the Philippines (GOP) and its development partners, including the World Bank (WB), the Asian Development Bank (ADB), the Japan Bank for International Cooperation (JBIC), United Nations Development Program (UNDP), the European Commission (EC), The Asia Foundation (TAF), and bilateral donors (USA's USAID, Australia's AusAid, Canada's CIDA), discussed the importance of pursuing procurement reform. The partners agreed that it was time to assess the new public procurement system mandated by the 2003 procurement law, and to set plans to build upon what had been thus far achieved. A new CPAR, the document that records the progress of procurement reform, was needed to diagnose the health of the existing public procurement system and, in the process, renew the dialogue between the GOP and all stakeholders to determine and agree on the actions to push the needed reforms further. This CPAR process would be the second full exercise, the first CPAR having been carried out in 2002, with updates in 2003 and 2005.

In June 2006, the Initiating Concept Memorandum (ICM) for the conduct of the CPAR process was discussed and finalized, including meetings with the GOP and development partners to secure critical support for, participation in, and commitment to the CPAR process. On the basis of the objectives, scope, and activities presented in the ICM and agreed following the guidance of the June 29, 2006, review meeting, a team of WB staff and consultants, and representatives of development partners conducted the review and assessment from July 2006 to February 2007. SWS, a local survey firm, conducted a survey and follow-up in 2006-07 on the public's perception of procurement and how it could contribute to combating corruption. The survey was coordinated by TAF and funded by USAID. The assessment result was integrated with that of the GOP's OECD Baseline Indicator Assessment in an intensive three-day workshop in Canyon Woods Resort, Province of Laguna, in late May 2007, where participants agreed on an action plan to push procurement reform forward, with particular focus on enforcement and combating procurement-based corruption. Based on the integrated assessment result, the CPAR Team drafted and finalized the Country Procurement Assessment Report.

The CPAR Team was led by Ms. Cecilia Vales (Lead Procurement Specialist and Task Team Leader, EAPCO) and included WB's

Dominic Aumentado (Procurement Specialist, EAPCO), Rene SD. Manuel (Procurement Specialist, EAPCO), Noel Sta. Ines (Procurement Specialist, EAPCO), Leonora Gonzales (Senior External Affairs Officer, EACPF), Cecilia Verzosa (Communications Adviser, EXTCD), and ADB's Candice McDeigan (Procurement Specialist), as well as consultants David Howarth (international procurement practice), Jose Luis Syquia (baseline indicators survey and performance assessment), Heidi Mendoza (local government and civil society), Dennis S. Santiago and Shalini Bhagat (legal and policy reform), Alice Tiongson (capacity building and blacklisting mechanisms), and Sofronio Ursal and Robert Doller (anti-corruption efforts). Mr. Jose Dalisay laymanized the text of key areas of the report including the Executive Summary. The CPAR was edited by Suzanne Snell (EAPPR consultant).

The Decision Meeting took place on May 6, 2008, and the final report was issued to Government before the end of June 2008, and accepted by GOP on October 3, 2008. Implementation of the CPAR Agreed Action Plan will be handled and coordinated by the newly created PDF Sub-Working Group on Procurement, which will meet every other month, under the oversight of the PDF Working Group on Governance and Anti-Corruption.

Ownership of Procurement Reform

The GOP and development partners have been working closely on procurement reform for many years as an essential element of good governance and an integral part of their joint country assistance strategies. The goals of procurement work have been to analyze and improve public procurement policies, organization, and procedures by increasing capacity, improving accountability and transparency, reducing the scope for corruption, and bringing systems into harmony with internationally accepted principles and practices.

The CPAR process is the latest phase of this effort and has been spearheaded by GOP. The Government's Procurement Policy Board's Technical Support Office (GPPB-TSO) collaborated closely with the WB at the ICM stage to define the CPAR's objectives, scope and methodology, the mission's activities and timelines, and the priority areas for assessment.

The GPPB then organized a CPAR Working Group (CWG) to work with the WB team members, forming together the CPAR team. The CWG members included the champions of procurement reform in the Government, the representatives

of the voting and non-voting members of the GPPB, and the development partners that comprise the PDF Working Group on Governance and Anti-corruption. The chair of the CWG was the Department of Budget and Management (DBM), and the co-chair was the National Economic and Development Authority (NEDA). Since enforcement is a major area of coverage, the working group included representatives from anti-corruption agencies such as the Office of the Ombudsman and the Presidential Anti-Graft Commission (PAGC). Representatives from the civil society organizations, private sector and other stakeholders were also represented in the CWG, including the leagues of barangays¹, municipalities, cities, and provinces. Development partners were also represented in the CWG. The full composition of the CWG is presented in **Annex 1**.

Acknowledgements

The CPAR Team wishes to acknowledge the extensive cooperation and assistance received from all CWG and GPPB team members, during and between the team's visits and throughout many meetings, and from ADB, JBIC, TAF, USAID, AusAID, CIDA and WB staff who provided inputs. The CPAR Team expresses its particular thanks for the cooperation, assistance and inputs to the report contributed by DBM Undersecretary Laura Pascua, who was overall CWG coordinator, and Executive Directors Estanislao Granados (Procurement Service) and Ruby Alvarez (GPPB-TSO), who were the working group coordinators.

At the June 2006 ICM review meeting, the former WB Country Director for the Philippines, Mr. Joachim von Amsberg, and Regional Procurement Manager, Shaun Moss, offered guidance on the scope and overall direction of the assessment. The present Country Director, Mr. Bert Hofman, who co-chaired the decision meeting in May 2008, supported the finalization and delivery of the CPAR to the Government. Mmes. Irina Luca (WB-AFTPC) and Vera Songwe (WB-MDO), and Messrs. Naseer Rana (WB-SARPS), and Robert Rothery (ADB) provided constructive and valuable comments as Peer Reviewers.

Mr. Christopher Hoban, former WB Portfolio Manager in Manila, and the current Portfolio Manager, Ms. Maryse Gautier, provided the CPAR Team advice and guidance in the conduct of the assessment. Mr. Yasuhiko Matsuda provided initial comments on the draft Report. Ms. Evelyn Quirante and Susan Cristobal of the WB Country Office in Manila, and Atty. Sygrid Promentialla and Ms. Mila Manalastas of GPPB-TSO, helped the team in arranging the logistics for the missions and workshops. Mesdames Nor Gonzales, Evelyn Quirante and Maria Krizette Hermoso facilitated the publication of the document.

¹A barangay is the basic political unit in the Philippines that serves as the primary planning and implementing unit of government policies, plans, programs, projects and activities in the community, as a forum where the collective views of the people may be expressed and considered, and where disputes may be amicably settled.

Foreword


The Country Procurement Assessment Report (CPAR) process proved to be a successful mechanism in assessing the country's public procurement system, identifying its strengths and weaknesses, and providing a platform for a dialogue amongst key stakeholders. The previous CPAR in 2002 and its two updates had been recognized, not only as an assessment tool, but more so, as the vehicle for recording the progress of the reform and the measures to pursue to move the reform agenda forward. Moreover, it has become an instrument for instituting innovative and modern reform approaches and standards, and cementing the collaborative partnership between the Government and its development partners. It is indeed commendable to witness consistent Government's cooperation and commitment to the CPAR process, through the Government Procurement Policy Board and its Technical Support Office.

The CPAR focuses largely on assessing the country's public procurement system by comparing it against international procurement standards, and following the OECD/DAC-WB Baseline Indicators for a good performing public procurement system. The CPAR provides a score card of achievements and progress, and identifies the challenges as well as measures to address these challenges. Although much has been achieved in reforming the legislative and regulatory framework, much remains to be done in strengthening the institutional framework and management capacity, enhancing the competitiveness of the public procurement market, and improving the integrity and transparency of the system. The CPAR records the action plan that the Government and its development partners have agreed, including commitment to financial resources, to mitigate those challenges.

It is worth citing the significant achievement made in the harmonization and alignment efforts towards the use of county systems. Foremost of which is the harmonization of bidding documents and procurement manuals for works, goods and consulting services that brought the country's system more aligned to the procedures of multilateral banks where less than ten exceptions were noted. Very well recognized in the Report is the commitment to pursue a harmonized eGovernment

Procurement System, through the PhilGEPS, which would result to greater transparency and accountability as the system would be open for easy civil society monitoring and scrutiny.

We wish to commend the executive and legislative branches of government for continuing to support and pursue procurement reform which would be a deterrent against corruption in the long term. Much will now depend on the continuous implementation, monitoring and enforcement of this key institutional and policy reform to ensure its sustainability in achieving good governance.



Bert Holman

Country Director, Philippines
East Asia and the Pacific Region
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Foreword

We welcome the CPAR process as an objective yardstick of the Philippine government's accomplishment in pursuing procurement reform. It gives us a measure of how well we have done in the past, but also reveals the amount of work to be done for the future.

Many challenges remain. For one, further harmonization of our country system with that of our development partners is necessary in order to fully govern the participation of international bidders. Thus, one of the recommendations of the CPAR is to finalize the implementing rules for foreign funded procurement. With the cooperation of our development partners, we hope to accomplish this before end of 2009.

The professionalization of our procurement practitioners is another. By pursuing the education and equipping the front liners of procurement reform—the members of the various Bids and Awards Committees and its support units—with the necessary skills, they will soon be recognized as true champions and professionals in the field of public procurement.

In ending, allow me to note that only two things are certain: Reforms do not happen overnight and that its success depends on each of us working together. Towards this our development partners have been truly instrumental in this process of change, providing the necessary support when and where the government needs it.



Rolando G. Andaya, Jr.
Chairman

Government Procurement Policy Board

Executive Summary

Public Procurement Cycle

1. Every year, the Philippine government spends hundreds of billions of pesos to buy the goods and services it needs to carry out projects and deliver services to its citizens. This money comes from the budget that it funds out of its own revenues and from loans and grants extended by foreign sources such as multilateral development banks and bilateral donors.

2. Deciding how to spend this money is a very important responsibility on the part of government leaders and officials, not only because of the large amounts but also the public trust involved. Citizens and taxpayers have a right to expect that their government will spend these funds wisely and honestly, for the greatest public good.

3. Procurement is a key step in the process of getting the best value for the people's peso. The process involves announcing or advertising what the government needs, inviting qualified parties or individuals to offer their bids, evaluating those bids, awarding contracts to the chosen bidders, monitoring their delivery and performance, paying them and recording the results of the whole process for others to see. It also involves making sure that the bidding is fair and transparent to all, and that anyone with a legitimate complaint can be given speedy justice. For the past four years, an average of Php121 billion worth of infrastructure, equipment, materials, supplies and services has passed through this process each year, about 15 percent of the country's total annual budget, equivalent to about 3 percent of its Gross Domestic Product. Thus, procurement is a major government activity.

Procurement Reform

4. While the procurement process is straightforward enough on paper, it has met many difficulties and problems in practice. Corruption, inefficiency, ignorance, and disorganization have resulted in the effective loss of many billions of pesos and in the procurement of substandard materials and services. By one estimate, an average of 20 percent to 30 percent of every contract goes to leakages, or about Php30 billion annually.

5. While many problems arise from dishonest officials and bidders, procurement systems also need to be improved, and those involved in procurement need to become familiar with the correct methods and practices. The private sector also needs better information and tools in order to participate more actively and compete on a level playing field. The general public needs to be made aware of the importance of the procurement

process and of the need for vigilance in its implementation, so that it can play a greater role in effectively safeguarding the public interest.

6. Before 2003, the Philippines had many laws and many agencies dealing with procurement. But because they did not function as a unified system, it was very difficult to implement real procurement reform. Some rules and regulations worked unfairly against foreign bidders who could have offered competitive prices.

7. When it first reviewed the country's public procurement system in 2001, the Government of the Philippines (GOP), with the assistance of its development partners such as the World Bank (WB), the Asian Development Bank (ADB), and the Japan Bank for International Cooperation (JBIC), saw that much needed to be done. The 2001-02 Country Procurement Assessment Report (CPAR) noted that the system at that time was at "average risk" but also fragmented, cumbersome, and prone to corruption.

The Government Procurement Reform Act

8. A breakthrough came with the passage and promulgation in January 2003 of the Government Procurement Reform Act (GPRA) (Republic Act No. 9184), "providing for the modernization, standardization and regulation of the procurement activities of the government and for other purposes." It was designed to streamline the Philippine procurement system, reduce opportunities for graft and corruption, harmonize the system with international standards and practices, and promote transparency, competitiveness, and accountability.

9. The GPRA replaced what had been more than 100 laws, rules, and regulations with a single unified public procurement system. It created the Government Procurement Policy Board (GPPB), a policy and monitoring body with the mandate of handling all procurement matters affecting the national interest. It provided for standard bidding documents and for generic procurement manuals intended to make it easier for everyone to understand and to participate in the procurement process.

10. The GPRA also included anti-corruption provisions, including stiff penalties and sanctions – administrative, civil, and criminal – against offenders who are found guilty, with a minimum criminal penalty of six years in prison.

What Has Been Achieved

11. Since the passage of the GPRA, the public procurement system has become more efficient, and many loopholes for

corruption opportunities have been closed. The promotion of e-procurement through the Philippine Government Electronic Procurement System (PhilGEPS) has brought the system into the digital age and vastly improved transparency and efficiency. In implementation, standard bidding documents and manuals are being used by the key actors in procurement, the procuring agencies and the private sector providers. In reviewing compliance and closing the loop in implementation, the auditors and the GPPB are now looking at the same rules and documents as the actors, which should be making it easier to conduct review and audit.

12. In January 2003, the GOP and its development partners agreed to align and harmonize the new public procurement system with the requirements of foreign-assisted projects. As of December 31, 2007, four areas have been harmonized: the standard bidding documents, the generic procurement manuals, the training of procurement staff and the use of the PhilGEPS. Efficiency also increased following the imposition of deadlines for each procurement step. Alignment with international practice improved, and the national procurement system became more widely used following the increase in the National Competitive Bidding (NCB) thresholds to US\$1million for goods and US\$5 million for works. From 2004 to 2006, a total of Php 400 billion in contracts, or about US\$8.7 billion, went through the NCB system, including government-funded and foreign-funded contracts.

13. Many government agencies adopted e-procurement and have benefited from the transparency and competitiveness it fosters. The town of Lo-on in Bohol, for example, does all its buying online. Using competitive bidding, the Department of Education's bulk purchases of textbooks for all schools nationwide saved 50 percent compared to previous practice, a substantial saving to the education sector. One textbook that was being purchased for an average of Php100 came down to Php45 in competitive bidding. Such examples have encouraged others to try the system.

The Challenges That Remain

14. Allegations of procurement corruption. Most recent corruption perception surveys indicate that perception of corruption in the Philippines remains very high. However, procurement is ranked as strong, an indication of good procurement processes. Much progress has been made in procurement reform in terms of rules and regulations but implementation and enforcement are still weak, and the objectives of the reform have not been fully achieved. This

scenario is consistent with perceptions of a high level of corruption in procurement and with the SWS survey findings that only 13 percent of the public is aware of the new procurement law and its intended benefits, and only 29 percent of people interviewed agreed that corruption in government contracts is less common now than five years ago.

15. However good the new public procurement system under the GPRA is, like any system, it can fall prey to deliberate abuse through inappropriate use of power. By themselves, the law and the new procurement system alone may not be sufficient to control either the grand corruption—the theft of large sums by high-level politicians or officials—or political corruption—misuse of state power by officials who shape the rules of the game to benefit them and those who pay them—that prevailed prior to procurement reform, and that are reportedly continuing². The success of procurement reform will require measures to stimulate strong public awareness and support for procurement reform.

16. Public Awareness: Communication of the reform to the public. Most Filipinos are unaware of the impact of procurement on their daily lives, through the delivery of public services, and of the importance of procurement reform. A recent survey by the Social Weather Stations (SWS) found that only 13 percent of the general public and 30 percent of government employees knew about the 2003 procurement reform act. A better communication strategy needs to be devised and implemented to raise the public profile of procurement so that its stakeholders and beneficiaries can participate more actively and safeguard it against wrongdoing. It is therefore necessary to deepen civil society and private sector involvement in vigilant monitoring of procurement operation.

17. Procurement law implementation and enforcement. These seven of the CPAR's some 30 recommendations are critical to improving implementation and enforcement.

- Review, revise, and issue a national training program in line with the strategic communication plan to ensure change in behavior of the current crop of procurement practitioners. Private sector should also be included to improve competitiveness;
- Hasten the implementation of the career program of professionalizing procurement practitioners;

² Source: Accelerating Inclusive Growth and Deepening Fiscal Stability Report for Philippine Development Forum 2008, World Bank.

- Improve procurement processes and procedures through the development of simpler bidding documents and procurement manuals for small users, especially local government units, barangays, people's organization and communities;
- Issue policies on record-keeping and public disclosure of documents to provide the public with better access to procurement data and information;
- Provide funding for the GPPB Technical Support Office (TSO) at a level adequate to strengthen its capacity to perform an expanded role to oversee the implementation and enforcement of the law, and to ensure its relevance;
- Pursue the expansion of PhilGEPS Phases 2 to 5, as it is the sole e-procurement portal for the country. Its expansion will provide ready and adequate information that will make the procurement process truly transparent; and
- Preparation and issuance of Implementing Rules and Regulations–B to institutionalize the harmonization of procurement bidding documents and manuals that will specify the regulatory framework for procurement under foreign-assisted projects. This will strengthen the implementation and enforcement of the law and clarify the application of the MDBs' Procurement Guidelines in international or executive agreements, including at the local government level.

18. Procurement Policies and Mechanisms. The GPRA is considered a good procurement law as it has incorporated most international procurement practices, including competitive public bidding as the default mode, the mandatory use of standard bidding documents, forms, and manuals, the use of an electronic government procurement system to enhance transparency and access to information, an effective oversight policy body to oversee implementation by procuring agencies, sanction mechanisms against erring participants in the process, and other features. However, some features of the law are not in accordance with international procurement practices.

- **Approved Budget for the Contract (ABC).** GPRA mandates imposition of an Approved Budget for the Contract (ABC) that sets a price bid ceiling; any bids that are above the ABC are automatically rejected. The Government's rationale for this rule is that it helps contain the incidence of corrupt and collusive activities and so far, the GPPB has been satisfied with the result of the mandatory imposition of ABC in all locally funded contracts. However, ABC is not an acceptable rule for foreign-funded contracts because it limits competition; it also imposes particular limitations in international bidding because international firms face higher costs than local ones and ABC does not always take this into consideration. In fact, ABC can encourage collusion among a small number of bidders.

The development partners believe that ABC should be abolished once the Government is satisfied that its current purpose in limiting collusive bidding has been served. Thus,

they recommend that empirical data be gathered and presented to Government demonstrating that ABC-type price ceilings do not provide long-term benefits. This analysis should be accompanied by the results of three other empirical studies: (i) a comparison of cost or engineer's estimates with ABC to determine how reasonable the ABC limits have been in practice, (ii) and an analysis of whether the current low participation of bidders is the result of imposing a bid ceiling, and (iii) a report on the effectiveness of the ABC rule in relation to contract administration and the quality of completed works.

- **Absence of an independent complaints review body.** An independent administrative review body should be established to accord the appeal process credibility and efficiency. Independence is paramount in ensuring a credible decision of the merits of the appeal and, being administrative, it will avoid the lengthy process of a judicial proceeding, which invariably cannot be completed in time to fix problems in a procurement procedure. The CPAR action plan includes the conduct of a study to review the existing appeals mechanism in line with international procurement practice.
- **Pre-qualification and Eligibility Screening.** Under the procurement law and its implementing rules and regulations, pre-qualification is replaced by an eligibility check and a strict post-qualification process. To lessen subjectivity, a pass/fail evaluation is applied during eligibility check based on a defined set of legal, technical and financial criteria. Only bidders that pass the eligibility check are allowed to secure bid documents and submit a bid. Thereafter, the winning bid undergoes verification and validation during postqualification to ensure that it has passed all the requirements and conditions as specified in the bidding documents. However, development partners believe that eligibility screening, like use of ABC, results in restricting competition and has contributed to the low observed number of competing bidders (an average of three per contract). To improve competition, the development partners recommend that empirical data be gathered and presented to Government demonstrating that eligibility screening is less effective than pre-qualification, and that an independent review be conducted on the effectiveness of eligibility screening requirements in the Philippines, in particular for documents that are not related to the technical and financial capacity of the bidder.

19. Private and public sector partnership. Conditions of weak competition that prevailed in the pre-GPRA era continue to persist. A few private companies tend to corner the biddings for specific types of civil works and goods. Many companies who are not aware of the new public procurement system said they prefer not to deal with Government due to its cumbersome and difficult procurement processes. Legitimate companies should be made

aware of the changes due to the GPRA that have streamlined the new procurement process and created a level playing field. An aggressive communication strategy, including targeted capacity building for private sector participants would strengthen the private-public sector partnership.

The CPAR

20. This CPAR is the product of the latest effort to monitor and assess the effectiveness of procurement reform in the Philippines, spearheaded by the GOP in close collaboration with the WB and other development partners such as ADB, JBIC, AusAID, EC, USAID, CIDA, TAF, and the UNDP. The GPPB organized a CPAR Working Group, comprising the champions of procurement reform in the Government and representatives of the voting and non-voting members of the GPPB, and of the donors, private sector, and civil society.

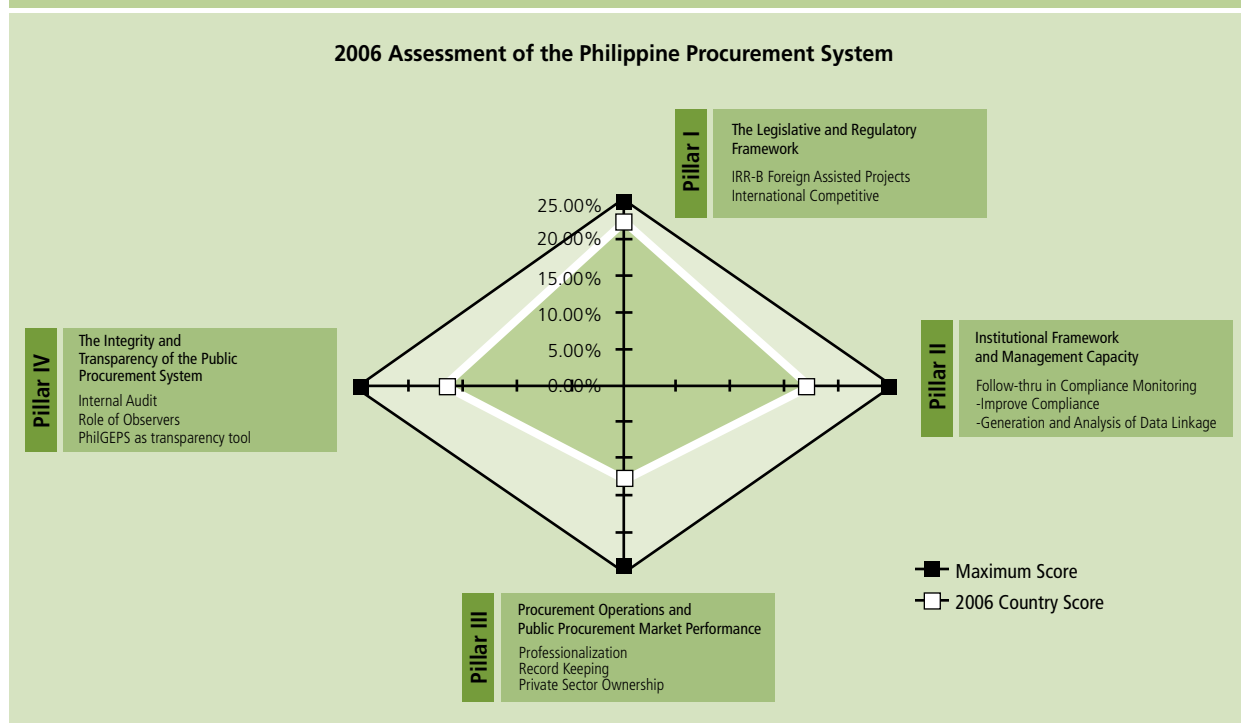
21. The CPAR found that the country's public procurement system has an assessed overall risk level of Medium or Moderate. The overall risk level is arrived by combining separate assessments for four major aspects or pillars, as represented graphically in Figure 1. The Legislative and Regulatory Framework substantially met international standards for a Low assessed risk level. Two other pillars, Institutional Framework

and Management Capacity, and Integrity and Transparency of the Public Procurement System, partially met the standards and were assessed as having a Medium or Moderate Risk. However, Procurement Operations and Public Procurement Market Performance did not meet standards and were assessed at a High risk level. The details of the specific risk assessments are discussed at length in Chapter 3 of the CPAR.

Looking Ahead

22. Almost all weaknesses identified in the CPAR are addressed in the agreed Action Plan for 2008-10 presented at the end of this report. The GPPB has already initiated concrete steps to address the three critical challenges mentioned above: allegations of corruption, public awareness, and implementation and enforcement. A Strategic Communication Plan has been drafted to increase public awareness. A long-term and sustainable professionalization program has been designed, including a specific training module for private sector participants, and the certification of procurement professionals has been agreed to with the Civil Service Commission. To ensure that CPAR action plan is acted upon, funded and fulfilled, a Sub-Working Group on Procurement was formed in August 2007 under the auspices of the Philippine Development Forum Working Group on Governance and Anti-Corruption, and was officially convened in November 2007.

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





Implementing Procurement Reform

Supported by international development agencies, the Government's core reforms in procurement are promoting competitiveness, economy, transparency and accountability. These reforms, amongst others, led to reducing the cost of textbooks from an average of P100 to P40, for a cumulative savings of about P3 billion for the Government in the 2005-2006 procurement.

I. Background

Country Economic Context

1. The Philippines has high potential to achieve rapid social and economic progress. It enjoys a strong set of assets: world-class talent, a well-educated population of 83 million, rich natural resource potential (mineral, oil, gas, geothermal), and a location that offers excellent trade opportunities. The Philippines also benefits from a very active civil society that can be an important agent for change. However, overall development outcomes in the Philippines over the last decades have fallen short of potential, according to the World Bank (WB) Country Assistance Strategy (CAS) Progress Report for the Philippines (June 2007). Per capita growth has lagged significantly behind other East Asian countries. Relatively low domestic and foreign investment flows reflect weaknesses in the investment climate. Investors and enterprises consider macroeconomic instability, corruption, and poor infrastructure as significant constraints.

2. Ever since the late 1990s, the Philippine economy has shown consistent and steady growth culminating in a 7.2 percent expansion in real GDP for 2007. Largely supported by a favorable international environment, strong domestic consumption, and high remittance inflows, last year's growth was the highest in over three decades. The last time GDP expanded close to this was in 1988 when it recorded a 6.8 percent growth. The past three years have also shown marked improvements especially in the fiscal front. Painful reforms introduced earlier have allowed the country to improve revenue generation and reduce its debt burden. Similarly, the political environment has stabilized to some extent, particularly following the recent mid-term elections, when pre-electoral tensions and violence abated. The elections resulted in the President's party maintaining control of the House of Representatives and local chief executives' seats, while the opposition solidified its control of the Senate. The next major political exercise will be the 2010 Presidential election. The ceasefire in the conflict-affected region of Mindanao is holding, in anticipation of the signing of a peace agreement, the timing of which has not yet been set.

The WB adopted a strategy of supporting “islands of good governance” as a way of supporting institutions and reform experiences that demonstrate how progress can be made in an environment where public institutions are often unable to work effectively for the common good

Country Assistance Strategy

3. In response to the initially uncertain policy environment in which the 2006-2009 CAS was prepared, the WB adopted a strategy of supporting “islands of good governance” as a way of supporting institutions and reform experiences that demonstrate how progress can be made in an environment where public institutions are often unable to work effectively for the common good. The strategy addressed four key objectives: (a) achieving fiscal stability to generate resources aimed at spurring growth; (b) generating economic growth to accelerate job creation and poverty alleviation; (c) ensuring social inclusion and improved delivery of basic services; and (d) improving governance.

4. During 2006-2007, the Philippines' public financial situation entered a decisive turnaround. Following a near-crisis situation in 2004, the consolidated public sector (CPS) financial position

has been steadily improving. From a deficit of 1.9 percent of GDP in 2005, the CPS turned into a surplus amounting to 0.1 percent of GDP in 2006 and 0.5 percent in 2007. Together with steady real growth and an appreciation of the peso in real terms, the non-financial public debt/GDP ratio rapidly fell from over 100 percent in 2003 to just 75 percent by the third quarter of 2006. With the positive growth registered in 2007, the Philippines has extended its run to four consecutive years of registering 5 percent or better real economic growth.

WB Portfolio

5. The WB's portfolio in the Philippines comprises 22 active projects, with net loan commitments of \$1.1 billion. Seven of these are in the agricultural sector; six support urban projects for water, sanitation, transport, finance and development; three support health and education; and two each support power, social development, and judicial and administrative reform. Portfolio risk has been stable, with the number of problem projects remaining steady at three since 2001. The lending program for FYs 08-10 currently includes 30 proposed projects, including a follow-on judicial reform project, a development policy loan, local government support for performance grants, sector support for social welfare, and program support for financial management information systems, agrarian reform, and disaster management; four transport projects; three power projects; six water and sanitation projects; and eight loans supporting environmental actions, including wetland and coastal marine environments, climate change adaptation, two for persistent organic pollutants, three for prototype carbon funds, and a program loan for environment and natural resources. The composition of the WB's current loan portfolio and lending program is provided in **Annex 2**.

6. As a result of the 2007 Portfolio Performance Review, efforts are being made to further improve portfolio performance through systematic preparation of semiannual project portfolio reviews with implementing agencies and periodic joint portfolio reviews with the Asian Development Bank (ADB), Japan Bank for International Cooperation (JBIC), and the Government. For its part, the WB will pursue efforts to accelerate and improve project preparation and start-up and to closely monitor project implementation plans agreed with implementing agencies. Other elements of portfolio management include a strengthened governance agenda, support to Government's ongoing reforms of procurement and financial management processes in line with the CAS governance agenda, capacity-building initiatives, and measures to improve quality at entry and monitoring of loans and trust funds.

The volume of public expenditure passing through the public procurement system has increased rapidly in the last few years. Averaging around Php121 billion per year from 2003 to 2005, procurement expenditure jumped to Php168 billion when the Government's infrastructure program kicked off in 2006, and increased further to Php229 billion by 2007

ADB Portfolio

7. The current ADB portfolio in the Philippines comprises 42 active projects (17 loans, 24 Technical Assistants, and one grant). Total net loan commitment is US\$1,529.36 million plus US\$21.2 for Technical Assistance and US\$9 million for the grant. Over the next three years the ADB's Country Partnership Strategy (CPS) concentrates on addressing two principal constraints: uncertainty of the budget outlook, and the investment climate. Tighter focus in these two areas will eventually help the Government reduce poverty as well as support faster achievement of the Millennium Development Goals. To effectively address budget and investment constraints, ADB's CPS will intensify its policy engagement in three broad areas: the power sector, financial markets, and governance, including local government and judicial reform. High policy engagement in these areas would manifest itself in program loans, while supporting the Government's fiscal responsibility program. The ADB Country Operations Business Plan may be viewed on www.adb.org/Documents/CPSs/PHI/2007/COBP-PHI-2007.pdf.

Public Sector Procurement

8. The volume of public expenditure passing through the public procurement system has increased rapidly in the last few years.

Averaging around Php121 billion per year from 2003 to 2005, procurement expenditure jumped to Php168 billion when the Government's infrastructure program kicked off in 2006, and increased further to Php229 billion by 2007 (see Table 1). The increasing trend of budgetary allocation for procurement expenditure is a direct consequence of the increasing focus of the Government of the Philippines (GOP) on extending infrastructure networks and providing more services to the public.

Procurement Reform

9. The 2002 CPAR. When the GOP, working closely with the WB and other development partners, took a good look at its own public procurement system in 1999, it saw much room for improvement. The 2001-02 CPAR noted that the system at that time was fragmented, cumbersome, and prone to corruption. There were too many procurement laws, rules, and regulations, and many agencies with overlapping functions. Given this setup, it was impossible to implement real procurement reform—including enforcement, monitoring, and performance evaluation—across the bureaucracy. Competition

among bidders was low, the process was susceptible to corrupt practices, and foreign bidders found it difficult to participate. In foreign-assisted projects, the thresholds for the use of NCB in the Philippines were very low (averaging US\$200,000 for goods and US\$500,000 for works), and strict fiduciary controls applied prior-review thresholds at the same low levels. The WB identified more than 20 rules that were unacceptable because they made it difficult for bidders, especially foreign bidders, to participate in any bidding process.

10. Preparation of the first CPAR thus became a crucial instrument in generating dialogue allowing Government, its key development partners, and other stakeholders to focus and agree on key reform measures. Following completion of this first CPAR, many reform measures were institutionalized through the passage of an omnibus procurement law that is aligned with international best practices, in that it is structured around the principles of transparency, competition, economy and efficiency, fairness and accountability. The Government Procurement Reform Act (RA 9184) or GPRA was passed by both houses of Congress, approved by the President on January

Table 1: Philippine Government Procurement Budget, 2003-07. (in thousand pesos)

EXPENSE CLASS	2003	2004	2005	2006	2007
	Actual (in thousand pesos)				
Maintenance and Operating Expenses					
Repair and Maintenance	8,315,775	12,181,299	12,581,866	17,917,968	23,465,563
Supplies and Materials	17,359,408	20,078,844	19,917,216	25,742,846	39,637,080
Utility Expenses	4,431,342	4,827,572	5,525,995	6,123,188	6,442,858
Training and Scholarship Expenses	2,840,775	3,493,190	4,145,486	4,481,290	6,209,303
Professional Services	10,714,849	14,309,428	12,445,625	13,567,429	15,964,613
Printing and Binding Expenses	622,646	701,908	523,469	621,855	1,871,709
Advertising Expenses	237,901	308,681	330,930	480,258	609,565
Subscription Expenses	1,381,716	171,633	125,237	134,848	171,309
Sub-Total	45,904,412	56,072,555	55,595,824	69,069,682	94,372,000
Capital Outlay					
Land and Land Improvement	3,477,582	4,471,246	4,621,993	6,671,426	12,127,661
Buildings and Structures	2,956,275	3,349,326	5,513,794	5,820,924	8,472,219
Office Equipment, Furniture and Fixtures	11,296,904	4,872,374	2,882,669	2,961,520	4,944,178
Transportation Equipment	1,515,993	1,679,816	1,815,319	1,038,869	1,380,911
Machineries and Equipment	2,605,938	1,585,144	1,503,100	4,563,132	8,084,841
Public Infrastructure	54,189,418	53,770,213	42,848,594	77,784,263	99,936,131
Sub-Total	76,042,110	69,728,119	59,185,469	98,840,134	134,945,941
Total	121,946,522	125,800,674	114,781,293	167,909,816	229,317,941
Percent of National Government Budget (five-year average: 14.5%)	14.78%	14.51%	12.11%	16.07%	19.84%
Percent of Gross Domestic Product at current prices	2.82%	2.58%	2.11%	2.78%	3.45%

Source: Budget of Expenditures and Sources of Financing (2005-2009), Department of Budget and Management

The Government Procurement Reform Act (RA 9184) or GPRA was passed by both houses of Congress, approved by the President on January 10, 2003, and became effective on January 26, 2003 (15 days after its publication in a newspaper of nationwide circulation).

10, 2003, and became effective on January 26, 2003 (15 days after its publication in a newspaper of nationwide circulation). The new law has had a major impact by eliminating more than 100 laws, rules, and regulations and replacing them with a single public procurement system that is attuned to the local culture and governance environment. The law also created the Government Procurement Policy Board (GPPB), a policy and monitoring body with the mandate of handling all procurement matters affecting the national interest.

11. Legal and institutional reform. The GPRA was the outcome of a widely participatory consultation process that included the key development partners and resulted in the inclusion of international procurement best practices: streamlined and time-bound procedures, standardization of procurement documents, manuals and forms, mandatory use of e-procurement, protest and complaint mechanisms, and penalties for procurement offenders and those involved in corrupt practices. Organizational reforms were also mandated through the creation of an oversight procurement agency, increased accountability of bidding organizations, staff professionalization, and the presence of civil society organizations as observers of the bidding process. The GPRA also created opportunities for foreign bidders to participate when: (a) the items are not locally available; (b) there are parity or reciprocity rights between countries, or applicable international or executive agreements; or (c) when there is a need to prevent a situation that defeats competition or restrains trade. This reform has allowed a number of foreign companies to participate in both foreign-assisted and fully government funded projects.

12. Alignment and harmonization. Harmonization activities were agreed upon in January 2003 and vigorously pursued by the GOP and its development partners, leading to the near-alignment of the new public procurement system with the Multilateral Development Bank (MDB) Guidelines for foreign-assisted projects. As of February 2007, three areas have been fully harmonized: (a) standard bidding documents, through the issuance in August 2004 of the Philippine Bidding Documents (PBDs) for Works, Goods, and Consulting Services as harmonized with the ADB, JBIC, and WB; (b) Generic Procurement Manuals (GPMs) in four volumes, as harmonized with the ADB, JBIC, and WB, approved under a June 2006 GPPB resolution, for mandatory nationwide implementation by January 2007; (c) joint training of procurement staff through the national training program using the State Universities and Colleges (SUCs), where about 50 percent of the procurement staff had been introduced to the law, the implementing rules, and the harmonized PBDs and GPMs as of December 2006. Further harmonization of implementing rules, reporting, and monitoring has since occurred and is discussed further in Chapter 4 of this report (Foreign-assisted Projects).

13. The outcome of alignment efforts has been that the national procurement system has become more widely used in foreign-assisted projects. The Philippine Government Electronic Procurement System (PhilGEPS) was assessed to be acceptable for MDB-funded projects. The NCB threshold was raised from US\$200,000 to US\$1 million for goods and from US\$2 million to US\$5 million for works. Greater reliance on the country's public procurement system and the use of higher prior review thresholds have led to the need for carrying out joint WB and GPPB-TSO procurement capacity assessments for project implementing agencies.

14. The procurement law as an anti-corruption measure. Reforming the procurement system is a vital part of the Government's anti-corruption agenda, and the GPRA did much to push that agenda forward. The procurement law consolidated a multiplicity of laws and other issuances, making all procurement matters subject to it and its implementing rules and regulations. The law provides for penalties and sanctions – administrative, civil, and criminal – against public offenders who are found guilty, and bidders, contractors, suppliers, and consulting firms found guilty of corrupt practices will also be subject to prosecution. The minimum penalty for a criminal offense is six years in prison. The anti-corruption agencies – Office of the Ombudsman, Presidential Anti-Graft Commission (PAGC), and the Commission on Audit (COA) – have used the GPRA as a basis for investigations and prosecutions of some high-profile cases discussed in Chapter 2 of this Report (see section on Integrity and Transparency).

Reforming the procurement system is a vital part of the Government's anti-corruption agenda, and the GPRA did much to push that agenda forward.

Further Challenges

15. While the legal framework has been satisfactorily set up and harmonization with the development partners is moving forward, big challenges remain in implementation and monitoring of compliance with the procurement law, including the enforcement of anti-corruption measures. This CPAR identifies the challenges, presents recommendations, and has generated a continuing dialogue on an action plan to move towards making most, if not all, of the procuring entities GPRA compliant.

16. Allegations of procurement corruption. After five years of implementation, 29 percent of people interviewed in the SWS survey agreed that corruption in government contracts is less common, while 37 percent disagreed and 30 percent remain undecided (see Annex 4, Para. 3.4). Most recent corruption perception surveys indicate that perception of corruption in the Philippines remains very high. The recently published Global Integrity Index 2007 ranks the country as weak, with no change from last year. However, procurement is ranked as strong, an indication of good procurement processes. Much progress has been made in procurement reform in terms of rules and regulations but implementation and enforcement are still weak, and the objectives of the reform have not been fully achieved. This scenario is consistent with perceptions of a high level of corruption in procurement and with the SWS survey findings that only 13 percent of the public is aware of the new procurement law and its intended benefits.

17. The CPAR team found that this low level of awareness is due to the fact that the law has not been communicated properly to civil servants, the private sector, civil society and other stakeholders. In particular, the private sector has not been informed of the provisions in the law that level the playing field and encourage competition. Both citizens and business community are the intended beneficiaries of procurement reform, and therefore need to be well-informed and vigilant watchdogs participating in the enforcement of the procurement law. However good the new public procurement system under

the GPRA is, like any system, it can fall prey to deliberate abuse through inappropriate use of power. By themselves, the law and the new procurement system alone may not be sufficient to control grand corruption—the theft of large sums by high-level politicians or officials—and political corruption—misuse of state power by officials who shape the rules of the game to benefit them and those who pay them—that prevailed prior to procurement reform, and that are reportedly continuing. The success of procurement reform will require measures to stimulate strong public awareness and support for it.

The CPAR Process

Objectives

18. This CPAR was designed mainly to assess the current public procurement system and generate a dialogue to improve public procurement practices and help civil society and the private sector better understand these processes and procedures. An additional objective was to measure accountability in the expenditure of public funds through procurement and link this assessment to the parallel WB assessments of the systems for Public Expenditure Management and Public Financial Management.

Scope

19. The assessment covers the implementation of the procurement law at all levels, from the national agencies, regional and district offices, sub-national agencies, and government-owned and controlled corporations, down to local government units, including the barangay. It also covers the marketplace for public procurement, comprising private sector bidders, suppliers, contractors, and consultants. The effectiveness of civil society's participation was also assessed. Procurement transactions and contracts were reviewed and analyzed for the period 2004 to 2006.

20. The scope of the work for this CPAR includes: (a) a review of the effectiveness of the policy and procedural reforms; (b) the development and design of a strategy for the nationwide implementation of tools to monitor and measure the impact of the reform; (c) the assessment of the implementation and enforcement of anti-corruption measures and the recommendation of measures to strengthen them; (d) the assessment of the sustainability of civil society and private sector participation in public procurement and recommendations of ways to improve it; and (e) the assessment of the effectiveness of the GOP communication strategy and the suggestion of recommendations to improve the public and international perception of the procurement system.

The Philippines was selected as a pilot country for the testing of the Baseline Indicator System and Compliance Performance Indicator System (version 4, July 2006) developed by the OECD-Development Assistance Committee (DAC)–WB Joint Venture on Procurement.

21. In the course of the review, special attention was paid to assessing the implementation and enforcement of the GPRA and its Implementing Rules and Regulations Part A (IRR-A), focusing largely on (i) a national training and professionalization program; (ii) e-procurement and its linkage with electronic budgeting and the new electronic government accounting system; (iii) recordkeeping, monitoring and evaluation; (iv) anti-corruption measures; (v) civil society and private sector observers; and (vi) a strategic communication plan to strengthen coalition and build public support. In line with the WB CAS approach, the assessment classified the impacts on three groups of stakeholders: national and local government entities and the private sector.

Methodology

22. Three Stages. The CPAR process was conducted in three stages. First, the kick-off mission had the whole team discussing and agreeing on the objectives, scope, covered areas, methodologies, and approaches. The second stage involved consultations with concerned groups and stakeholders, the private sector, and development partners, after the technical consultants had recorded the initial findings and analysis. The third stage was the final mission which generated dialogue on the draft CPAR, using the indicator-based reports, and achieved consensus on how to concretely address the weaknesses of the current public procurement system. Participants in the process are listed in Annex 1.

23. OECD/DAC-WB Baseline and Performance Indicators. The Philippines was selected as a pilot country for the testing of the Baseline Indicator System and Compliance Performance

Indicator System (version 4, July 2006) developed by the OECD-Development Assistance Committee (DAC)–WB Joint Venture on Procurement. The system is divided into four (4) pillars with twelve (12) indicators and fifty four (54) baseline sub-indicators. The scoring system ranges from 3 to 0 for each baseline sub-indicator. A score of 3 indicates full achievement of the stated standard. A score of 2 is given when the system exhibits less than full achievement and needs some improvements in the area being assessed. A score of 1 is for those areas where substantive work is needed for the system to meet the standard. A rating of 0 is the residual indicating a failure to meet the proposed standard. In aggregating the scores to determine the overall country score, the user country is allowed to decide on the weights used to aggregate at indicator and pillar levels. The GOP decided to aggregate the scores by allocating equal weights for each pillar at 25 points and provided certain weights for each sub-indicator and indicators depending on the national procurement focus or strategies. The full GOP BLI report is disclosed in the OECD website: www.oecd.org.

24. For this CPAR, the indicator level score is arrived at by adding the scores of sub-indicators and dividing the sum by the total maximum scores. The resulting percentage determines the level of achievement per indicator, and the percentage levels are given the following interpretation: the lowest level is none achieved (NA) for compliance with baselines from 0-20 percent, the highest is fully achieved (FA) for compliance of 81-100 percent, with two levels in between: partially achieved (PA) for 21-60 percent, and substantially achieved (SA) for 61-80 percent. This CPAR decided not to further aggregate the scores to the pillar or country level.

25. From February through May 2007, the BLI-CPI assessment methodology was introduced in a series of workshops that compared and validated the findings coming from the earlier focus group discussions, workshops and field work. The validation process took four workshops for the GOP self-assessment, and three workshops with the development partners, civil society, and the private sector to validate the self-assessment.

26. Agency Procurement Performance Indicator. The BLI is predominantly based on macro indicators intended to look at key elements of a public procurement system, and is not intended to measure performance. It must be coupled with a performance measurement tool to determine where to make changes and what changes need to be made, based on collection and analysis of actual performance data. GPPB therefore developed 28 Agency Procurement Performance Indicators (APPI) that are related to the four pillars of the

BLI October 2004 version, in order to monitor and evaluate actual implementation at the agency or micro level, linking performance at the transactional level to the elements of the procurement system at the macro level.

27. Starting in 2006, the joint procurement capacity assessment of implementing agencies for WB-assisted projects had adopted the APPI as its main assessment tool. To assess actual performance of the public procurement system, the CPAR used the APPIs of ten entities: eight national government agencies—the Department of Public Works and Highways (DPWH), Department of Health (DOH), Department of Education (DepEd), Department of National Defense (DND), Armed Forces of the Philippines (AFP), Department of Interior and Local Government (DILG), Department of Environment and Natural Resources (DENR), and the Bureau of Internal Revenue (BIR)—one Government-owned corporation, the National Power Corporation; and one Local Government Unit (LGU), the City of Marikina. The consolidated APPI became the basis for assessing the performance of the procuring entities in the implementation of the GPRA. The results of this exercise are summarized in **Annex 3**.

28. Public Perception Survey. Social Weather Stations (SWS), a local survey firm, conducted surveys in November and December 2006, with 20 questions aimed at assessing the public's perception of the effectiveness of the new procurement system and how it could contribute to combating procurement corruption. The results of the survey shaped relevant portions of this report, particularly on Strategic Communication of the Reform. The SWS survey was coordinated by TAF with USAID funding, and the survey results were released in February 2007. Follow-up surveys to monitor progress in the public perception will be conducted in the future update of the CPAR. The results of the 2006 survey are summarized in **Annex 4**.

29. Procurement transactions and experts' reviews. A review of the Philippines' procurement legal framework was carried out from July to November 2006. Reviews of procurement transactions were also undertaken to assess the impact of the law in the field. These reviews were followed by focus group discussions with relevant sectors, such as civil society organizations, the private sector, and the leagues of barangays, municipalities, cities, and provinces. A team of consultants also conducted assessments on the status and effectiveness of the communication strategy for procurement reforms, the sustainability of civil society and private sector participation in public procurement, the effectiveness of the capacity-building and professionalization programs, the enforcement of blacklisting and disqualification procedures,

and the state of record-keeping, monitoring, decision-making and control systems within procuring entities. Auditing and legal/prosecutorial experts reviewed the effectiveness of the anti-corruption measures of the procurement law by monitoring the investigation and prosecution process in selected high-profile procurement cases. The assessment highlighted the strengths and weaknesses of those cases handled by anti-graft bodies such as the Ombudsman, PAGC and COA.

30. Planning sessions were conducted with the leagues of barangays, municipalities, cities and provinces, to discuss the initial findings of the consultants on procurement practices and the state of records management in the Local Government Units (LGUs). Workshops were also conducted among representatives from the GOP, civil society, and the private sector to discuss the state of their participation in procurement reforms and activities and the status and effectiveness of communicating the procurement reforms to the various stakeholders, and to develop a communications strategy that effectively builds awareness of the general public and generates increased support for the reforms.

31. To promote e-procurement, an E-Government Procurement (E-GP) Mission was fielded in November 2006, to determine PhilGEPS acceptability for foreign-funded procurement and possible linkages with other public financial management systems such as the electronic budget and the electronic National Government Accounting System.

Links with Other Studies

32. In parallel with the CPAR, the WB carried out an assessment of the GOP's public financial management system using the Public Expenditure and Financial Accountability (PEFA) framework. The PEFA methodology includes one indicator, out of the total of 28, on public procurement, which measures the extent to which competitive bidding is used for public procurement above a specified minimum threshold and the adequacy of justification provided when competitive bidding is not used. PEFA is not intended to be a comprehensive assessment of the public procurement system, but rather an approach for performance assessment in public financial management in general. As such, it should be seen as a complement to the CPAR for those interested in gaining a sense of the overall quality of the country's public financial management system. The PEFA review is presented in the PEFA, Public Financial Management Performance Report and Performance Indicators where procurement garnered a satisfactory passing score of B+.



Bringing Justice to the Least Privileged

Three large buses converted into mobile courts have been making the rounds of detention centers and jails in Luzon, Visayas and Mindanao, to hear simple cases, de-clog regular courts and decongest jails. Procurement of the buses were done efficiently and customized to the needs of justicial proceedings. Good procurement practices support the Judiciary's mission.

II. FINDINGS, ASSESSMENTS AND RECOMMENDATIONS

Pillar I: Legislative and Regulatory Framework

33. This pillar looks at the laws governing public procurement and at the implementing rules and regulations. Graph 1 shows the BLI assessment result for this procurement pillar, based on two indicators: (1) legal framework, where international standards are found to be substantially achieved; and, (2) implementing regulations and documentation, where the existing system is found to fully achieve the standards.

Procurement Legislative Framework

Findings

34. Governance Structure. The Philippines is a democratic and republican state that, under the 1987 Constitution, adopted the centralized presidential form of government. The powers of government are exercised by three independent and co-equal branches: (a) the Executive Branch, which enforces the laws and is headed by an elected President for a term of six years; (b) the Legislative Branch, which promulgates the laws and is vested in a bicameral Congress consisting of a Senate and a House of Representatives; and (c) the Judicial Branch, which settles disputes involving rights of contending parties under the law, and is vested in the Supreme Court, an appellate court, and other lower and special courts.

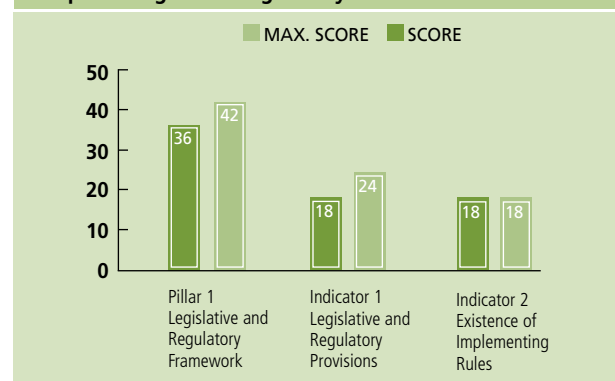
35. There are four independent constitutional bodies that are directly accountable to the people and not beholden to the three branches of government: (a) the Civil Service Commission, which oversees the civilian bureaucracy; (b) the Commission on Election, which administers the electoral process; (c) the Commission on Audit, which audits government accounts; and (d) the Office of the Ombudsman, which investigates and prosecutes graft and corruption cases involving civil servants.

36. Within this governance structure, the management and operation of the public procurement system is a function of the Executive Branch, because it is a mechanism for the acquisition of goods, works, and services that enable the Government to deliver public services.

37. Legal System and Hierarchy of Issuances. The Philippine legal system is primarily civil law, with a written Constitution and a body of legislated statutes as the principal sources of law. However, common law influence is traceable in some commercial and procedural laws derived from US legal institutions. Also, the Shari'ah legal system is recognized for Muslims and enforced in the Autonomous Region in Muslim Mindanao.

38. In terms of the hierarchy of legal issuances, the 1987 Constitution is the supreme law of the land, and no law or issuance can run counter to it. At the second level are the laws passed by Congress or those issued by the President during the few occasions that the President exercised law-making power, followed by a third level of executive orders issued by the President, which have the force of law as long as they do not violate the laws passed by Congress and the Constitution. At the fourth level are administrative orders issued by government agencies and ordinances issued by LGUs, which have localized and limited coverage and effectiveness but may not violate the Constitution, laws passed by Congress, or to some extent Executive Orders issued by the President.

Graph 1 - Legal and Regulatory Framework

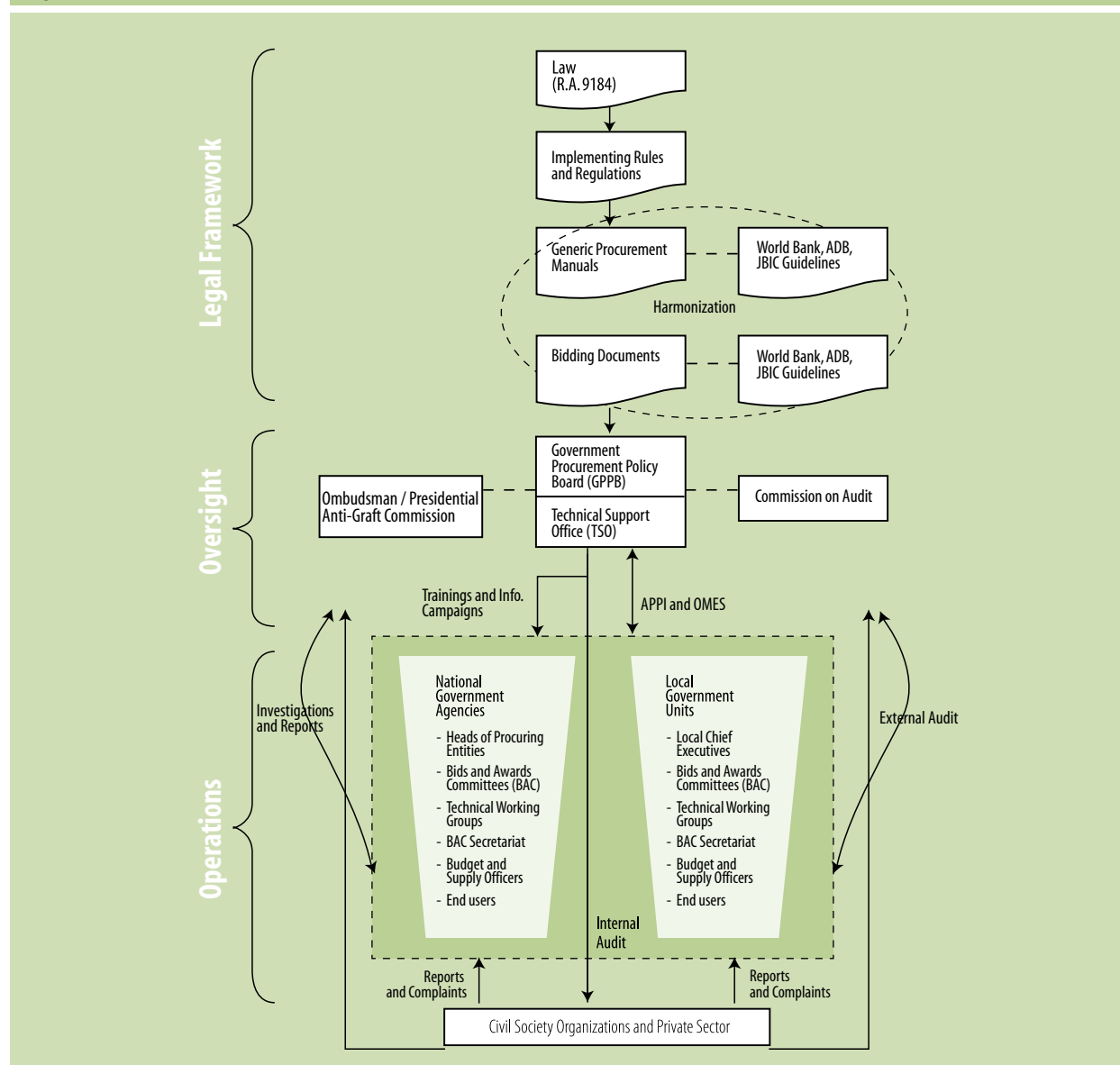


39. The Government Procurement Reform Act. The GPRA covers all procurement of the national government, its departments, bureaus, offices and agencies, including SUCs, Government Owned and Controlled Corporations (GOCCs), Government Financial Institutions (GFIs), and LGUs. The full text of the law is posted on the GPPB website (www.gppb.gov.ph). The law may not be revised, amended, or repealed, except through Congress. It has been cited and applied by the Supreme Court in a number of cases. Figure 2 shows the hierarchy of laws and issuances in the GOP Procurement Reform Framework, their coverage, and areas for harmonization with donors.

40. Coverage and Principles of the GPRA. The law adopts the following principles:

- Transparency in the procurement process and in the implementation of procurement contracts;
- Competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding;
- A streamlined procurement process applicable to all government procurement, simple and adaptable to advances in modern technology;
- System accountability, whereby both the public officials directly or indirectly involved in procurement and in the implementation of contracts as well as the private parties that deal with government are, when warranted by circumstances, investigated and held liable for their actions; and
- Public monitoring of the procurement process and the implementation of awarded contracts to make sure that these contracts are awarded lawfully and are undertaken strictly according to specifications.

Figure 2. GOP Procurement Reform Framework



41. Procurement Reform Measures. The law is considered a good procurement law because it incorporates almost all attributes of a good public procurement system. These include:

- (a) linking procurement with public financial management by incorporating annual procurement plans in the budgeting system;
- (b) modernization through the adoption of electronic government procurement (PhilGEPS) and mandating its use;
- (c) requiring competitive bidding as the primary mode of procurement;
- (d) prescribing a balanced procurement organization in all procuring entities through the Bid and Awards Committee, chaired by at least a third-ranking permanent official;
- (e) reducing opportunities for corruption by
 - (i) prohibiting the head of the procuring entity from being a member of the committee,
 - (ii) prescribing rules on fraud and corruption in the Instruction to Bidders and Standard Contract Forms,
 - (iii) requiring disclosure of relations by the bidder through a sworn affidavit that no officer of the corporation is related to the Head of the Procuring Entity by consanguinity or affinity up to the third civil degree,
 - (iv) inclusion of penal clauses, civil liabilities, and administrative sanctions against violators of the law,
 - (v) provision of legal assistance for, and indemnification of, Bids and Awards Committee (BAC) members who are subjected to harassment; and
 - (vi) requiring civil society organizations or NGOs to observe the bidding process;
- (f) facilitating the process through the issuance and mandatory use of standard bidding documents and forms, and generic procurement manuals;
- (g) providing avenues for transparency by means of a clearly defined protest mechanism and procedures;
- (h) streamlining contract implementation and settlement of disputes; and
- (i) creation of an oversight and normative body mandated to protect the national interest in all matters affecting public procurement, with due regard for the country's regional and international obligations.

42. Procurement methods. The GPRA provides for public bidding as the primary mode of procurement and defines the circumstances and criteria by which methods other than public bidding may be used by the procuring entity. However, the GPRA does not specify the appropriate standards for international competitive tendering. It simply acknowledges, under its Section 4, that the procurement rules agreed in treaties and in international or executive agreements (such as donor loan and grant agreements) should be respected. While the procurement principles governing the Philippine procurement system and those of the multilaterals are the

same, this is not the case for other development partners; the Government is concerned that there are some development partners, particularly bilateral ones, that are not following open competitive bidding principles of procurement. It is for this reason that the Government is pursuing the preparation and issuance of an Implementing Rules and Regulations-B (IRR-B) to prescribe appropriate implementing rules for foreign-funded contracts. At the April 2008 Philippine Development Forum, the development partners agreed to prepare IRR-B to institutionalize the harmonization of documents and manuals and attain effective implementation of the new procurement system at the national and LGU levels. The WB will lead this effort on behalf of the development partners. **Recommendation:** *To provide guidance in the implementation of international competitive tendering, Implementing Rules and Regulations B (IRR-B) should be drafted and issued, as provided for in Section 1 of IRR-A: "[T]he IRR-B for foreign funded procurement activities shall be subject of a subsequent issuance." The proposed CPAR Action Plan includes the drafting, finalization and issuance of IRR-B.*

43. Advertising rules and time limits. The GPRA requires that public advertisement and posting of bid opportunities for competitive bidding and for procurement done through alternative methods. The lead times for the advertisement up to the bid submission are provided for in the implementing rules. For foreign-funded international competitive bidding (ICB), the GPRA requires that the MDB's Procurement Guidelines be followed. However, the law does not provide for extension of the timeframes when international competition is sought. **Recommendation:** *The proposed IRR-B should include a provision for appropriate timelines for international bidding to encourage the participation of foreign bidders.*

44. Rules on Participation. The GPRA provides for fairness and transparency in public bidding rules as indicated in the Instruction to Bidders. However, it does not provide specific rules for the participation of GOCCs or state-owned enterprises in public bidding that would promote fair competition and encourage legitimate private enterprises to bid. The entry of a GOCC bidder would cast doubt on the fairness of the process that would undermine competition. Consequently, the procuring entity would often resort to direct purchase or negotiation with the GOCC, which is allowed under the GPRA. **Recommendation:** *To promote fairness in public bidding, the implementing rules and regulations should include specific rules when a GOCC participates as a bidder.*

45. Complaint and Protest Mechanisms. The GPRA and its IRR-A clearly define the protest mechanism. All complaints by a bidder are filed with the procuring entity's BAC, which is tasked to resolve it in the first instance. Should bidders not be satisfied, they may then file an appeal with the head of the procuring entity, in the form of a verified protest and upon payment of

a non-refundable protest fee. However, no independent third-party review body is designated to resolve the complaint or protest. Furthermore, the IRR-A sets the protest fee as one percent of the approved budget for the contract. Based on the experiences of the nine APPI pilot agencies and one pilot LGU, there are hardly any protests from the bidders, because of the restrictive provisions on protests and the lack of an independent review body. While an appeal from the decision of the Head of the Procurement Entity may be filed with the office of the President or the judicial courts, these are not independent administrative review bodies as required by the standards. **Recommendation:** *A study should be conducted on how the appeals mechanism could be strengthened based on the requirements of the law and international standards. The Study should aim to find ways of making the protest mechanism a tool for upholding the integrity of the bidding process.*

Results of BLI Assessment

46. The above findings are reflected in the BLI assessment. Indicator 1 garnered a score of 18 percent out of a possible 24 points for a 75 percent compliance level, indicating that the legislative framework substantially achieves the standards agreed upon. The legislative framework is adequately recorded and organized, the law is comprehensive enough to cover all types of procurement using the national budget, and it defines and provides for allowable procurement methods. The legal framework also provides for public bidding as the default procurement method and clearly sets out the procedures and time limits for this method. Table 2 provides a summary of the ratings for the assessment of this indicator.

Implementing Regulations and Documentation

Findings

47. Implementing Rules and Regulations. The Implementing Rules and Regulations Part A (IRR-A) of the GPRA, which provides specific guidelines and procedures for the procurement of goods, works, and consulting services that are fully funded by the Government, was jointly formulated by the GPPB and the Joint Congressional Oversight Committee. Both bodies then endorsed the IRR-A to the President, who officially signed and issued it on September 18, 2003, under Administrative Order No. 119. The IRR-A amplifies and clearly discusses each provision of the GPRA, from procurement planning, procurement organizations and responsibilities, bidding documents and forms, protests and appeals, to procurement methods and alternative methods, procurement procedures, contract implementation, dispute resolution, liabilities, and sanctions and penalties against violators. Although IRR-A does not apply to procurement under foreign-assisted projects, which will be covered in a future IRR-B, it is applied as a supplement to the procurement guidelines and the loan or grant agreements of the development partners, whenever these are silent on specific areas or procedures.

48. The Philippine Bidding Documents. The PBDs are standard documents used for procurement through competitive bidding that set the rules of the bidding process and are binding on all participating parties, that is, the procurement entity or buyer and the bidders from the private sector. The PBDs for works, goods, and consulting services include instructions to bidders, bid data sheets, qualification requirements, award criteria, specifications, protest and complaint procedures, general and special contract conditions, and bidding forms. The standard forms, including conditions of contract, are based on international standards. As part of procurement harmonization, and except for a very few differences mentioned in the PBDs, the same documents are used by procuring entities

Table 2: Summary of Scores for Indicator 1, Pillar I

Sub-Indicators	Score	Max. Score
1(a) – Scope of application and coverage of the legislative and regulatory framework	3	3
1(b) – Procurement methods	2	3
1(c) – Advertising rules and time limits	1	3
1(d) – Rules on participation	2	3
1(e) – Tender documentation and technical specifications	3	3
1(f) – Tender evaluation and award criteria	3	3
1(g) – Submission, receipt and opening of tenders	3	3
1(h) – Complaint	1	3
Total Score	18	24
<i>Rating: 18/24 or 75%; Level of Achievement is Substantially Achieved (SA)</i>		

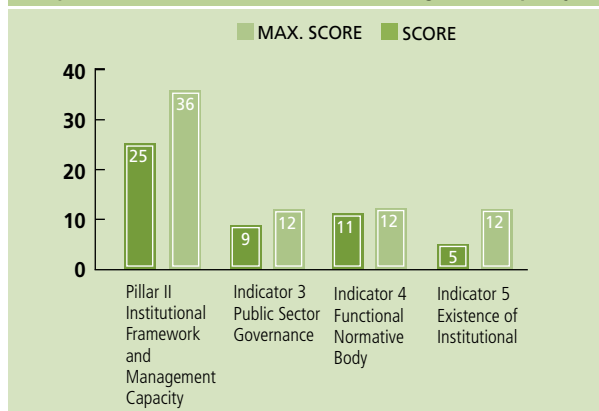
implementing National Competitive Bidding (NCB) for foreign-assisted projects. However, since regional and district offices and LGUs have found the PBDs to be too comprehensive and tedious for small local procurements, simplified PBDs for small procurements up to certain thresholds are being developed by the GPPB.

49. The Generic Procurement Manuals. The GPMs explain the steps of the procurement process within a procuring entity and serve as user guides for practitioners. The GPMs also define the roles and responsibilities of the procurement organizations, the technical working groups, the private sector, and civil society observers. There are four volumes, one each on systems and organization, goods and services, infrastructure projects, and consulting services. Government agencies are allowed to customize and modify the GPMs to suit their needs, subject to the approval of the GPPB, and providing the changes remain consistent with existing procurement laws, rules, and regulations. Like the PBDs, the four GPMs were harmonized in July 2006 with the manuals used by ADB, JBIC, and WB. While the GPMs provide a holistic approach to procurement in all agencies, LGUs are understandably concerned that they may not always be appropriate for small LGUs. The GPPB's challenge is to address this concern. **Recommendation:** *GPPB should develop simpler bidding documents and procurement manuals for small users, especially LGUs, barangays, and people's organizations and communities.*

Results of BLI Assessment

50. The above findings are reflected in the BLI assessment. Indicator 2 garnered a perfect score of 100 percent due to the existence of implementing regulations and documentation in the legal and regulatory framework that have been assessed to have met all the baseline elements of a good public procurement system. The regulatory framework is adequately recorded and organized, it implements and complements the law, and provides standard documentation and generic

Graph 2 - Institutional Framework and Management Capacity



manuals that are accessible to the public. Table 3 provides a summary of the ratings for this assessment.

Pillar II: Institutional Framework and Management Capacity

51. Pillar II looks at how the procurement system operates in practice through the institutions and management systems that are part of the overall public sector governance. Graph 2 shows the BLI scores for the three indicators which confirm the following findings as to their levels of achievement:

- (3) linkages to PFM systems: The public procurement is found not to be fully mainstreamed or integrated into the public financial management system.
- (4) management capacity: The country's functional normative/regulatory body, the GPPB, substantially achieves the baselines.
- (5) institutional development capacity: The existing monitoring systems are found to be inadequate to monitor performance and collect and disseminate procurement information, and the quality of training programs needs to be improved.

Table 3: Summary of Scores for Indicator 2, Pillar I

Sub-Indicators	Score	Max. Score
2(a) – Implementing regulation that provides defined processes and procedures not included in higher level legislation	3	3
2(b) – Model tender documents for goods, works, and services	3	3
2(c) – Procedures for pre-qualification	3	3
2(d) – Procedures suitable for contracting for services or other requirements where technical capacity is a key criterion	3	3
2(e) – User's guide or manual for contracting entities	3	3
2(f) – General Conditions of Contracts for public sector contracts covering goods, works, and services consistent with national requirements and when applicable, international requirements (20% of Indicator)	3	3
Total Score	18	18
<i>Rating: 100%; Level of Achievement is Fully Achieved (FA).</i>		

Linkages of Public Financial Management Systems

Findings

52. Linkage of Annual Procurement Plans to the Budgetary Process. Procurement plans are mandated by law to be one of the bases for the preparation of the proposed annual budget submitted to Congress. Every year, procuring entities prepare their annual operating plans and budget for the succeeding calendar year. While these proposals are supposed to reflect the thrust of national government and agency policies and programs, and identify the resources required to deliver public services, in practice procuring entities prepare the APPs in a spirit of compliance and do not take advantage of their potential as a tool to improve the procurement process and monitor its efficiency. Nor do most agencies prepare multi-year plans that are linked to the annual budget process or to the preparation of APP, and some NGAs and LGUs do not even prepare or consolidate an APP. **Recommendation:** GPPB needs to monitor the required submission of the APP and the PPMP, which are important internal financial and expenditure control mechanisms mandated by law, in order to ensure full compliance. The provision to revise the APP should be evaluated in light of abuses by some agencies. Clear guidelines should be developed for multi-year contracts that will integrate budgeting, expenditure and procurement programming.

53. Budget Before Bidding. Since the budget contains the initial list of projects to be procured and the corresponding budgetary requirement, as soon as the national budget is approved by Congress, the procuring entities can refine their annual procurement plans to conform to the approved allocations before expenses are committed. Before the procurement process begins, the inclusion of the requirements in the budget is checked by the procuring entity. The GPRA requires an approved budget for the contract before starting the procurement process. Moreover, a certification of availability of funds is required to be appended to the contract, as an internal control point to ensure that funds are appropriated and available. Reviews of transactions show that the procuring

“The creation of the GPPB in January 2003 was a major milestone in the implementation of the GPRA”

entities have been complying with this rule. However, delays in the payment of suppliers and contractors is a perennial concern. There are no business standards for the processing of invoices by NGAs and LGUs that meet the obligations for timely payment stated in the contract. **Recommendation:** Business standards for the processing of invoices for timely payment need to be developed in tandem with a generic financial management manual that covers procurement and logistics processes. The procurement system needs to be fully integrated with the budgetary and financial systems, in order to provide information on the completion of major contracts.

Results of the BLI Assessment

54. The above findings are reflected in the assessment. Indicator 3 garnered a score of 9 percent out of a possible 12 points or 75 percent compliance, because the public procurement system is mainstreamed and integrated into the public sector governance system. However, compliance with the requirement to prepare an APP is uneven, and the linkage between the budget process and procurement planning is weak (no multi-year plans). Table 4 provides a summary of the BLI assessment.

Management Capacity

Findings

55. Normative/Regulatory Body: The Government Procurement Policy Board. The creation of the GPPB in January 2003 was a major milestone in the implementation of the GPRA. GPPB is a policy-making and monitoring body for public

Table 4: Summary of Scores for Indicator 3, Pillar II

Sub-Indicators	Score	Max. Score
3(a) – Procurement planning and associated expenditures are part of the budget formulation process and contribute to multi-year planning	2	3
3(b) – Budget law and financial procedures support timely procurement, contract execution, and payment	2	3
3(c) – No initiation of procurement actions without existing budget appropriations	3	3
3(d) – Systematic completion reports are prepared for certification for budget execution and for reconciliation of delivery with budget programming.	2	3
Total Score	9	12
Rating: 9/12 or 75%; Level of Achievement is Substantially Achieved.		

procurement empowered to formulate and amend the IRR and relevant forms, to ensure that procurement entities regularly conduct procurement training programs, to prepare operations manuals, and to conduct annual reviews of the effectiveness of the GPRA and recommend amendments. It is an interagency body composed of top-level officials from 12 key line agencies tasked to formulate and issue policies and regulations on procurement. The Board is chaired by the cabinet's economic managers—the Secretary of the Department of Budget and Management, and the Director General of the National Economic Development Authority as alternate chair—with a representative from the private sector as a voting member and observers from anticorruption bodies. The GPPB meets regularly at least once a month, following agenda set in the monthly meetings of its Technical Working Group (TWG), which also preliminarily deliberates on the issues and prepares policy recommendations.

56. In its short existence, the GPPB has quickly become effective in performing its functions as mandated by law. It has issued several circulars and resolutions in pursuance of its mandate, published on the GPPB website (www.gppb.org.ph), and has been recognized both locally and internationally as a well-functioning interagency policy-making body. Its success may be attributed to its multi-faceted structure that allows feedback directly from the stakeholders.

57. Organizational, Technical and Funding Support. The GPPB is ably assisted by its Technical Support Office (TSO), a relatively small office that has quite a notable line of accomplishments. In particular, the TSO Help Desk has gained strong support from many procurement practitioners, who rely on it as one of the most popular and easily accessible sources of procurement information. Since its 2003 launch, it has accommodated more than 4,821 phone queries and 404 walk-in queries from both government and private organizations, and issued 291 written non-policy opinions, 32 written policy opinions, and 72 resolutions. However, the GPPB-TSO lacks

sufficient financial support from the national government. It is dependent for funding on the Procurement Service (PS), a separate entity fully owned by the Government that is mandated to procure commonly used office supplies and equipment. The demand for TSO to perform the full mandate of the GPRA is an issue, because of the need to expand its coverage and staffing so it can perform its other mandated functions, such as monitoring, enforcement and public relations and strategic communications. **Recommendations:** *The GPPP-TSO should be provided with sufficient financial resources to perform the full range of its function under the GPRA. Its ability to monitor the implementation of procurement-related laws should be strengthened by creating a monitoring and enforcement group and a public relations and strategic communications unit.*

Results of the BLI Assessment

58. The creation and successful operation of the GPPB and its TSO are reflected in the positive findings of the BLI assessment. Indicator 4 scored 92 percent because there is a functional normative body for procurement that is empowered by law to protect national interest in all matters related to procurement. It is an independent board that has the authority to promulgate rules to implement the law. Table 5 provides a summary of the findings for this assessment.

Institutional Development Capacity

Findings

59. Collection and dissemination of Procurement Information: PhilGEPS. The PhilGEPS is the country's new electronic system for government procurement, a single, centralized electronic portal to be used by all government agencies in the procurement of commonly-used goods. It also serves as a central portal providing the primary source of information on the procurement of other goods and general support services, civil works, and consulting services, including policies, regulations, issuances, and contract awards. Launched

Table 5: Summary of Scores for Indicator 4, Pillar II

Sub-Indicators	Score	Max. Score
4(a) – The status and basis for the normative/regulatory body is covered in the legislative and regulatory framework	3	3
4(b) – The body has a defined set of responsibilities	3	3
4(c) – The body's organization, funding, staffing, and level of independence and authority (formal power) to exercise its duties should be sufficient and consistent with the responsibilities	2	3
4(d) – The responsibilities should also provide for separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions	3	3
Total Score	11	12
<i>Rating: 11/12 or 92%; Level of Achievement is Fully Achieved.</i>		

in August 2006, it replaced a pilot electronic procurement system and offers more functionality for better transparency and efficiency. A five-year, US\$5 million contract was signed with a private service provider in charge of operating the PhilGEPS and developing additional functionalities. A detailed description of PhilGEPS may be found on the PhilGEPS website (www.philgeps.net).

60. Currently, PhilGEPS provides the following features and functions: (a) Electronic Bulletin Board: Posting of procurement opportunities, notices of awards, electronic distribution of bid documents and automatic notification of bid notices and amendments; (b) Supplier/Subscriber Registry: Registry of government agencies and all government suppliers, contractors and consultants; and (c) Electronic Catalogue: A price list of common-use goods, supplies, materials and equipment which are to be purchased from a centralized procurement system being implemented by Procurement Services. Phase 2 development plans will introduce a Virtual Store for government agencies nationwide to obtain common-use items. To facilitate payments, an electronic payment facility will be developed, including provisions for electronic transfer of funds. The Government will introduce charges and fees aimed at making the system financially self-sustaining. Lastly, the system's functionality will be expanded to support online procurement of both common and non-common use items, and to allow support of Electronic Bid Submission and the full implementation of e-bid submission processes.

61. Initial indications are that PhilGEPS provides significant benefits to Government and suppliers. It is a major tool for implementing government procurement policy, and has established an open, transparent, efficient and competitive marketplace for government procurement, allowing Government to obtain better prices and document audit trails (reports on government purchases and winning bidders). It provides suppliers easy access to government tenders 24/7, electronic documents for downloading, and automatic notification of bid notices and supplements. It reduces suppliers' transportation and time costs and allows them to do market research on government procurement.

62. As of July 31, 2007, PhilGEPS had achieved significant compliance: 85 percent of NGAs and 79 percent of government entities overall had registered (excluding barangays, which are allowed by law to procure through a municipal or city government). More than 6,000 agencies and 22,000 suppliers had registered, and more than 380,000 notices and 58,000 awards had been posted. The level of compliance by procuring entities as of July 31, 2007 is shown in Table 6:

63. However, currently, the PhilGEPS provides only information on some of the contract awards and its acceptability is limited. Moreover, its data has not been verified by audit and so far, there has been no analysis of procurement information. Recommendations: GPPB should monitor compliance by procuring entities on the use of PhilGEPS. The Procurement Service (PS) should develop PhilGEPS' Phases 2 to 5. Moreover, the PS should engage the services of the Commission on Audit to verify the system, and a periodic analysis of information should be included as part of the audit.

64. PhilGEPS Acceptability to Donors. An assessment of PhilGEPS' acceptability for projects by MDBs was conducted in November 2006. The assessment found that the WB and ADB are ready to accept the PhilGEPS for application on ADB- and WB-funded NCB and shopping procedures, subject only to five modifications:

- For MDB-funded projects, waive the PhilGEPS requirement that the entry of the Approved Budget Ceiling (ABC) field be mandatory.
- Include a rule-based approach to validate the duration of the procurement notice period, so that PhilGEPS would not allow the publication of the tender notice submitted by a procuring entity attempting to advertise a tender for a period of time shorter than that required by GPRA.
- Include a rule-based approach for the MDB Shopping threshold of USD\$100,000.
- Allow the options of downloading of bidding documents electronically and include a mailing option upon the request of the bidder.
- Allow the downloading by buying agencies of the order request form the PhilGEPS website.

Table 6: PhilGEPS Compliance

Government Procuring Entities	Total Number	Total Registered	Level of Compliance
National Government Agencies (NGA's)	1,702	1,456	85.55%
Government Own and Controlled Corporations (GOCCs)	1,041	575	55.24%
State Universities and Colleges (SUC's)	190	180	94.74%
Local Government Units (LGU's)			
City	117	113	96.58%
Provincial	79	71	89.87%
Municipal	1,501	818	54.50%
Barangay	41,995	2,136	5.09%

The system development work required to address the short-term acceptability requirements was completed in November 2007, and six pilot agencies (DPWH, DOH, DepEd, DA, DENR, and the Local Water Utilities Administration) have begun using the enhanced system for the posting of bid and awards notices associated with WB and ADB funding. Long-term requirements will be addressed with the implementation of new PhilGEPS features for virtual store, charges and fees, e-payment and e-bidding beginning in 2009.

65. National Procurement Statistics: The Online Monitoring and Evaluation System. In November 2006, GPPB's TSO launched the Philippines' first web-based public procurement monitoring tool, OMES. The OMES is designed to function as a self-help tool for government agencies that wish to identify their own strengths and weaknesses in the field of procurement. It also provides GPPB with immediate feedback on reform impact and with signals pointing to specific areas where an agency may require technical assistance and guidance or where amendments to the law and the IRR may be needed. The system offers three online survey forms: the APPI Survey, the GPPB-TSO Survey, and the Savings Monitor, which evaluate different aspects of an agency's compliance with GPRA and IRR-A. In the first eight months, 185 agencies registered and 130 of these completed the Agency Performance Indicators (API) and the GPPB-TSO surveys. Although enhancements will be needed to perfect the OMES, the Government is very optimistic that it is on the right track.

66. The Agency Procurement Performance Indicators.

The APPI is a micro-level procurement system evaluation tool designed to monitor the performance of an agency's procurement system based on the four key pillars using 28 indicators (see CPAR Methodology section in previous chapter). GPPB selected ten procuring entities to pilot the APPI in 2005-2006, based on the volume of procurement transactions, with the support of the WB, because most of the agencies selected are implementing WB-financed projects. The performance evaluation results were validated and agreed with each agency, together with the oversight agencies, private sector and civil society organization (CSO) representatives. Since then, due to its effectiveness, it has been added as a tool for procurement capacity assessments of agencies implementing WB-assisted projects, thereby making the APPI a joint WB-GOP assessment tool. In summary, the key APPI findings for the ten selected agencies are as follows:

- The 10 pilot procuring entities are adopting the GPRA and its IRR-A internally through the issuance of circulars or department orders. The procuring entities are therefore familiar with the law and they are making sure that it is implemented.
- Most entities are not complying with the national training policy. The training program is therefore weak and must be strengthened.

- Almost all procuring entities (92 percent) have established their organizational procurement units and are therefore compliant with the procurement organizational requirement.
- Six of 10 procuring entities used public bidding in more than 90 percent of the total value of contracts in their APPs. GPPB should be strictly enforcing the competitive bidding requirement for all not in compliance.
- Only one out of 10 procuring entities had at least five bidders in each bidding process, signifying that competition is weak.
- All 10 procuring entities comply with the required time for bidders' preparation of bids, which gives bidders enough time to prepare proper bids.
- Seven out of 10 procuring entities did not comply with the transparency requirement to post the award of contracts on the PhilGEPS website.

67. The National Training Program. The GPRA requires the GPPB to establish a regular training program to professionalize and improve the skills of government procurement officers and employees, who are required to avail themselves of this training. In line with this policy, and in response to the increasing demand for training on GPRA, GPPB's strategy is designed to address the training needs of all government agencies nationwide. GPPB-TSO developed a series of training programs, which include: (a) basic training on the GPRA and the PBDs for LGUs, NGAs, GOCCs, and SUCs; (b) the training of trainers, and a refresher course on the GPRA and the PBDs for trainers and resource persons; and (c) specialized training courses on value engineering and fraud detection for selected participants.

68. In March 2004, the GPPB conducted the first Training of Trainers session for representatives from DBM, COA, DILG, and the Philippine League of Local Budget Officers. Subsequently, regional composite teams of trainers were formed, with the DBM as lead agency. The Local Government Academy is also involved at the LGU level. In October 2005, the GPPB formed partnerships with selected state SUCs in order to augment the number of trainers and conduct training for NGAs and GOCCs. As of March 2007, 19 percent of these national-level entities, and more than 80 percent of LGUs, had at least one representative trained on the content of the GPRA and in the use of PBDs; 3 percent of national entities and 15 percent of LGUs had at least one representative trained in the use of the Generic Procurement Manuals (GPMs).

69. However, the training programs have not yet achieved their intended impact, other than that of information sharing, and appear to be designed to inform rather than to meet specific competency requirements. The selected composite team and SUC trainers either lacked the appropriate training skills or the technical expertise/experience to discuss procurement in detail. An assessment of the Training of Trainers and Refresher

Courses reveals that the modules and materials focus only on the technical provisions of the law, and thus lack substance that would focus on building the capacities of these individuals as trainers, such as skill-building sessions on how to manage the learning process. Only 64 percent of attendees believed that the resource speakers chosen were proficient in the subject matter. The GPPB is aware of the problem and has conducted several validation workshops, however, even these workshops have not been effective in accurately identifying and addressing issues with the capability of the lecturers as trainers and presenters. Another area of weakness identified is the lack of quality evaluation mechanism to measure improvements in the capability of the procurement staff as a result of training.

Recommendation: *The national training program should be reviewed, revised, and reissued in line with the strategic communication plan in order to ensure a change in behavior of the current crop of procurement practitioners. The private sector should also be included in the training program in order to improve competitiveness.*

70. Professionalization Program. In 2006, GPPB launched a significant professionalization initiative, intended to provide a career path for procurement practitioners in the Government and correct weaknesses in capacity building identified in the 2004 CPAR exercise. Supported by a WB Institutional Development Fund (IDF) Trust Fund, the formal training involves a four-stage certification program that will raise the level of efficiency and effectiveness of public sector procurement. In the current phase of the project, 15 modular syllabi and study materials are being developed by a consulting firm, which will train lecturers from selected SUCs and regional composite teams in the delivery of the modules. Under the GPRA, a Bids and Awards Committee (BAC), BAC Secretariat, BAC TWG and Procurement Unit are to be created in each government entity to facilitate the professionalization of procurement. Heads of procuring entities are to consider procurement proficiency as one of the factors in the designation of officials to the BAC, BAC Secretariat,

Procurement Unit and TWGs. **Recommendation:** *The GPPB's professionalization program, a long-term capacity building program that will include procurement as a professional career stream, is being pursued albeit slowly. As this is an important reform initiative with sustainable impact, it is recommended that the program be pursued more vigorously.*

Results of the BLI Assessment

71. The above findings are reflected in the BLI assessment. The APPI assessment of the 10 pilot agencies and field visits revealed that several procuring entities either do not faithfully comply with the legal requirement to post tender invitations and awards in the PhilGEPS, or only do so irregularly. Weaknesses in the delivery of the training programs were also discovered and the professionalization program has yet to be implemented. Finally, although the procurement system has quality standards, there is limited monitoring and use of these standards for staff performance evaluation. Table 7 provides a summary of the findings for this assessment.

Pillar III: Procurement Operations and Market Practices

72. This pillar looks at the operational effectiveness and efficiency of the procurement systems within the implementing entity responsible for the conduct of the procurement actions. It looks at the market response as one way of judging the quality and effectiveness of the system. Graph 3 shows the BLI assessment scores of the following indicators that confirm the CPAR findings regarding their levels of achievement:

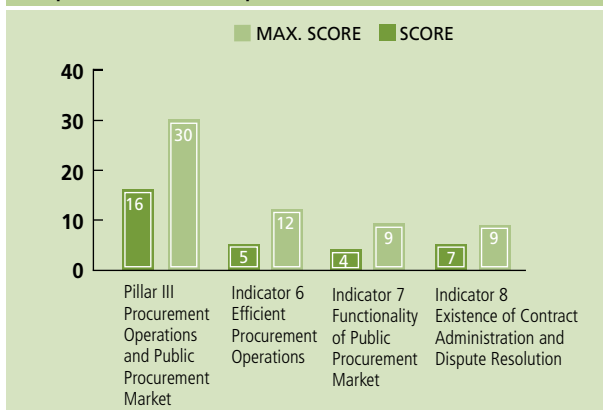
- (6) efficiency of procurement operations and practices:
Less than 50 percent of the baselines were found to be met.
- (7) functionality of the public procurement market: Market response to public procurement solicitation is weak and less than 50 percent of the baselines were met.

Table 7: Summary of Scores for Indicator 5, Pillar II

Sub-Indicators	Score	Max. Score
5(a) – The country has a system for collecting and disseminating procurement information, including tender invitations, requests for proposals, and contract award information	1	3
5(b) – The country has systems and procedures for collecting and monitoring national procurement statistics	1	3
5(c) – A sustainable strategy and training capacity exists to provide training, advice and assistance to develop the capacity of government and private sector participants to understand the rules and regulations and how they should be implemented	2	3
5(d) – Quality control standards are disseminated and used to evaluate staff performance and address capacity development issues	1	3
Total Score	5	12
<i>Rating: 5/12 or 42%; Level of Achievement is Partially Achieved.</i>		

- (8) existence of contract administration and dispute resolution provisions: Adequate provisions exist for contract administration and dispute resolution and quality of contract administration practices substantially met the baseline elements.

Graph 3 - Procurement Operations and Market Practices



Efficiency of Procurement Operations and Practices

Findings

73. Procurement Competence and Skills. The first volume of the GPMs on Procurement Systems and Organizations defines the qualification requirements for members of the BAC, TWG, and the BAC Secretariat to be established in each government entity. It defines the duties and responsibilities of these procurement officials and spells out their skills and knowledge requirements. The DBM, as chair of the GPPB and agency in charge of the rationalization program of the government, is set to approve the guidelines for the creation of Procurement Units, depending on the number and amount of procurement transactions handled by the entity. However, there is no systematic matching of skills against requirements for competitive recruitment. Moreover, some staff required to undertake procurement activities on an ad hoc basis have insufficient knowledge or have no access to professional staff that can provide the knowledge.

74. Performance at the National Level. Institutional policies and procedures consistent with the new procurement law exist at NGAs, particularly at the central offices, indicating sufficient capability to implement the intended procurement reforms. Competitive bidding since the GPRA's implementation has shown substantial savings. The DPWH reported an average reduction of 15 to 20 percent of contract cost when compared with budget estimates. The DOH reported an average reduction of 27 percent in the prices of pharmaceuticals due to increased competition. As of 2006, the DepEd had realized a total of Php2.6 billion in savings, with an average reduction of 50 percent in the price of textbooks that allowed achievement of

“Good procurement performance at the national government level is the result of effective training programs offered at the national level. Likewise, poor performance at the LGU levels reflects the inadequacy of training programs that do not meet local government demands. The private sector is excluded from training altogether.”

a textbook-to-student ratio of one to one. Moreover, bidding time has been cut in half, and transparency is attained through compliance with the requirement of posting advertisement in the PhilGEPS by some agencies.

75. Performance at the Local Government Level. While there are built-in provisions within the law that ensure fair competition and wider coverage of participation, such as the publication and posting of bid notices at the PhilGEPS website, public bidding at the LGU level still fails to attain a sufficient level of competitiveness. There are a number of contributing factors.

- Contractors are required to undergo accreditation prior to participating.
- Some city governments require suppliers and contractors to secure a local business registration, effectively excluding those located outside the city.
- Competition is limited because suppliers are not interested in the small amounts of LGU contracts and the project locations may not be convenient.
- Not all LGUs visited were aware of the PhilGEPS website and not all are posting the results of bidding.
- Public officers within the LGUs have reported collusion among bidders and between bidders and officials, as well as political interference.
- Public officers have also reported monopolies established by some pharmaceutical companies for public purchasing of medicines and medical equipment.

76. While the law requires that procurement should as a rule be done by public bidding, in almost all LGUs, alternative modes of procurement are still preferred, particularly shopping, direct contracting and contracts “by administration.” One reason for this may be that in several LGUs, especially the smaller ones, officials agreed that transactions subjected to public bidding end up costing more, and they feel that contracts in small-sized LGUs are not worth the extra time and documentation. For small contracts, like the construction of artesian wells and some barangay maintenance works, seeking registered contractors may at times become more costly, especially in the case of small LGUs where there are limited choices. The length of time contractors must wait for payment also discourages participation, since small contractors do not have the necessary resources.

77. Good procurement performance at the national government level is the result of effective training programs offered at the national level. Likewise, poor performance at the LGU levels reflects the inadequacy of training programs that do not meet local government demands. The private sector is excluded from training altogether. **Recommendations:** (a) *The national training program should be improved as a short-term solution and should include potential private sector bidders.* (b) *The Professionalization Program, which is the long-term solution, should be expedited.*

78. Recordkeeping. The Commission on Audit has issued guidelines that enumerate the procurement records that must be kept for auditing purposes. However, in the case of both NGAs and LGUs, recordkeeping practices vary from one agency to another, as there is no integrated policy on the creation, identification, classification, retrieval, receipt and transmission, storage and protection, disposition and preservation, or sharing of information and records. Neither the GPRA nor the GPMs provide for systematic records management, and no common standards have been set to maximize utility and avoid duplication and repetitive operations. None of the agencies sampled had systematically managed the information recorded

In the case of both NGAs and LGUs, recordkeeping practices vary from one agency to another, as there is no integrated policy on the creation, identification, classification, retrieval, receipt and transmission, storage and protection, disposition and preservation, or sharing of information and records.

in procurement transaction documents in order to maximize its value. **Recommendation:** *The GPPB should immediately establish norms for safekeeping of records and documents related to transactions and contract management. A disclosure policy should be issued.*

Results of the BLI Assessment

79. The above findings are based primarily on field visits and the APPI assessment of the pilot agencies, and provide a ground-level view of the difficulties and issues that are faced in actual procurement operations that hamper procurement reform. Indicator 6 received a score of 5 out of a possible 12 points, or 42 percent compliance, for a partial achievement of baselines and a high level of risk because of the procurement operations and practices that need further improvements to correct substantial weaknesses and gaps at both the national and local levels. Table 8 provides a summary of the ratings for this assessment.

Table 8: Summary of Scores for Indicator 6, Pillar III		
Sub-Indicators	Score	Max. Score
6(a) – The level of procurement competence among government officials within the entity is consistent with their procurement responsibilities	1	3
6(b) – The procurement training and information programs for government officials and for private sector participants are consistent with demand	2	3
6(c) – There are established norms for the safekeeping of records and documents related to transactions and contract management	0	3
6(d) – There are provisions for delegating authority to others who have the capacity to exercise responsibilities	2	3
Total Score	5	12
<i>Rating 5/12 or 42%; Level of Achievement is Partially Achieved.</i>		

Functionality of the Public Procurement Market

Findings

80. Effective mechanism for public-private sector partnership. In a procurement process, there are two actors, the buyer and the seller. The acquisition of goods, works or services will not be complete if these two actors are not able to come to an agreement. Recognizing this, the GPRA prescribes various rules that create a level playing field for prospective bidders, based on two governing principles: transparency in the procurement process and contract implementation, and competitiveness fostered by extending equal opportunity to private contracting parties who are eligible and qualified to participate. Transparency and access to information on public bidding is assured through posting of notices in the PhilGEPS, national newspapers and in other conspicuous public places. To enhance transparency, the law mandates the presence of two observers, “one from a duly recognized private group in a sector or discipline relevant to the procurement at hand, and the other from a non-government organization.” Competitiveness is strongly encouraged by the required use of standard bidding documents, forms and contracts, and generic specifications, reducing discretion in the bidding process, and by ensuring full disclosure of the award and post-qualification criteria. To further ensure a level playing field, a private sector representative is appointed as a voting member of the GPPB, and the accreditation of an umbrella organization for consultants is also provided in the GPRA.

81. However, statistics showed that an average of only three bidders participate in public biddings, indicating the absence of a competitive market. One reason is lack of knowledge by private companies of how the public procurement system operates, because Government has not included them in its training program. **Recommendation:** *The bidders and other interested private sector companies, particularly small businesses, should be encouraged to attend training programs on the procurement system.*

82. Private Sector Organizations. Three major groups of trade organizations have an interest in the public procurement system: (i) two prominent associations of civil works contractors, who number over 8,000: the Philippine Contractors’ Association (PCA) and the National Contractors Association of the Philippines (NACAP); (ii) suppliers or traders, most of whom are members of the Philippine Institute of Supply Management (PISM); and (iii) registered consultants, who may be members of the Confederation of Filipino Consultants or of the Council of Engineering Consultants of the Philippines (CECOPHIL). These organizations have an important role to play in keeping the playing field level.

83. However, the private sector dealing with the public procurement market appeared to be relatively weak and

competition is limited due to monopolistic or oligopolistic features in important segments of the market. In works contracts, the trend is that many bidders submit expression of intent to bid, but few actually submit bids. There is a perception that collusion or rigging of bids is common, particularly for big ticket contracts. Another reason for the low competition rate is the perception that government processes in general, and procurement in particular, are cumbersome and bureaucratic. Procuring entities have difficulty in attracting a larger number of legitimate bidders. **Recommendation:** *A strategic communication plan that would change the behavior and attitude of the private sector should be implemented. Quality training programs for the private sector should be included as part of the national training and professionalization programs.*

84. Constraints to Market Access. Many constraints inhibit private sector access to the public procurement market and reduce competition even for small contracts. Among the multiple constraints identified by the assessment team are: tedious payment processes, the intervention of politicians in the procurement process, cumbersome procurement requirements, difficulties in securing licenses and permits, and lack of access to credit. In the 2006 survey conducted by SWS on the effectiveness of the procurement law, five factors were identified by respondents as probable reasons for delays in the implementation of government projects: corrupt government officials (55 percent); lack of funds (55 percent); corrupt contractors (43 percent); lack of coordination between government officials and contractors (29 percent); and red tape (16 percent).

85. Constraints in the Procurement of Textbooks. In the procurement of textbooks by the DepEd, the losing bidders protested the award even though the winning bid met the specifications and requirements for content, quality of materials, and printing. Despite the WB’s thorough review of the process and documents, the losing bidders evidently used the influence of some politicians to raise their protests to the level of a Congressional inquiry, making this procurement a much publicized event. Not content with the political arena, the losing bidders brought the case to the courts, questioning the propriety of the awards and the application of the WB Procurement Guidelines. Although the lower court sided with the losing bidders, the highest court of the land, the Supreme Court, reversed the lower court’s decision and ruled in favor of the propriety of the award and the application of the WB Guidelines, in effect clarifying that the WB Loan Agreement is an international or executive agreement as provided for in the GPRA.

86. Constraints in Civil Works Projects. A case of collusion in DPWH procurement contracts resulted in three failed biddings. The recommendations of award for two contract packages were rejected by the WB on the grounds of excessive

bid price and unbalanced bids, and DPWH was requested to investigate the matter but found no evidence of collusion among the bidders. A subsequent rebidding took place after the project cost estimates were revised upwards by about 10 percent. When the bids came in high again (about 30 percent higher than the revised cost estimates), the WB again rejected the award recommendations for the same reasons. The two rejected packages were then redesigned into three packages by changing the pavement types, and a third bidding took place. This time, the results for each package showed the lowest bidders submitting bids 15 percent above the cost estimates, with the losers' bids in each case quite closely bunched together and significantly higher than the lowest bidders' bid. The analysis of the bid data presented unmistakable evidence of collusion in each of the three packages, and the recommendations of award were rejected for the third time.

87. Constraints to Contracting in LGUs. The fixed and limited term of office of the local chief executive (three years, with a maximum of three terms), coupled with the time taken to build local procurement capacity, are among the issues confronting local governments. However, the role of the private sector is also a factor. Misbehavior of certain contractors can result in rejection of bids and delays in completing bidding, slowing project implementation to the detriment of rural residents. The LGU of Panaon, Misamis Occidental, responded to such a situation by creating an "Island of Good Governance." This LGU rejected bids that clustered above the pre-bid estimates and offered identical unit prices for most items, submitted by contractors who had obtained bid securities from the same entity. But proving cases of collusion remains difficult, so despite the LGU's commendable efforts, these erring contractors have been allowed to continue bidding in Panaon until collusion is adequately proven and the appropriate sanctions are imposed.

88. Pre-qualification and Eligibility Screening. Under the procurement law and its implementing rules and regulations, pre-qualification is replaced by an eligibility check and a strong post-qualification process. To lessen subjectivity, a pass/fail evaluation is applied during eligibility check based on a defined set of legal, technical and financial criteria. Only bidders that pass the eligibility check are allowed to submit a bid³. Thereafter, the winning bid undergoes verification and validation during postqualification to ensure that it has passed all the requirements and conditions as specified in the bidding documents⁴. However, the development partners believe that eligibility screening, like use of ABC, results in restricting competition and has contributed to the low observed number of competing bidders (an average of three per contract). The eligibility check required, among other things, submission of documents that did not provide evidence of the technical, financial and legal capacity of the bidder, and, a bidder might be disqualified for non-submission of a minor documentary requirement. For these reasons, eligibility screening cannot be

applied for foreign funded procurement. *Recommendation.* To improve competition, development partners recommend that empirical data be gathered and presented to Government demonstrating that eligibility screening, even though complemented by a strong postqualification process, is less effective than pre-qualification, and that an independent review be conducted on the effectiveness of eligibility screening requirements in the Philippines, in particular for documents that are not related to the technical and financial capacity of the bidder.

89. Approved Budget for the Contract or Bid Ceiling.

GPRA mandates imposition of an Approved Budget for the Contract (ABC) that sets a price ceiling; any bids that are above the ABC are automatically rejected⁵. The Government's rationale for this rule is that it helps contain the incidence of corrupt and collusive activities. So far, the GPPB has been satisfied with the result of the mandatory imposition of ABC in all locally funded contracts. However, the situation is different for foreign-funded contracts, where ABC is not an acceptable rule because it limits competition. In the Philippines, the CPAR found that the average number of bids is three, too few to achieve real competition for public contracts. For this reason, The WB does not accept ABC for ICB, and ADB and JBIC do not accept it for their local competitive bidding method either⁶ (the WB does allow ABC as bid ceiling under certain conditions for NCB).

90. The ABC rule imposes particular limitations in international bidding because international firms face higher costs than local ones and ABC does not always take this into consideration. The CPAR carried out an analysis of bid prices in relation to engineers' estimates and Approved Budget for the Contract (ABC), based on a November 2004 study report on contractors' qualification and bid prices that covered the procurement of DPWH from 2002 to 2004 of 164 contracts funded by the WB, ADB and JBIC. The CPAR analysis found that the lowest evaluated bids (LEB) for foreign-funded contracts were 1.3 times the ABC (see Figure 3). The reasons for the variance were identified as follows:

- a. materials, equipment and labor costs quoted by the winning contractors are higher;
- b. the indirect cost or mark-up is higher than the standard set by the GOP.

91. International practice rejects such price control mechanisms because price control is inappropriate in a market system, where contract prices should be set through open competition. In fact, ABC can actually encourage collusion among a small number of bidders. Thus, the development partners believe that the bid ceiling should be abolished once Government is satisfied that its current purpose in limiting the incidence of collusive

³ Section 23 of the Government Procurement Reform Act, Republic Act No. 9184

⁴ Section 34, *Id.*

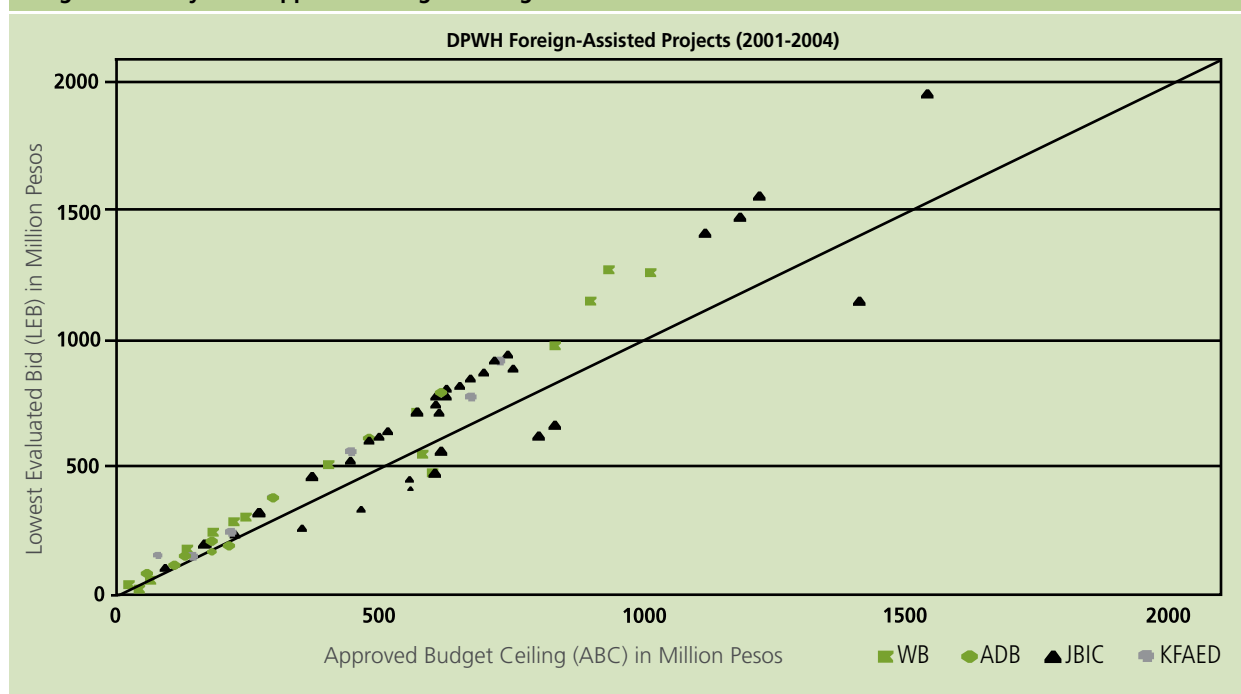
⁵ Section 5(a) of the Government Procurement Reform Act, Republic Act No. 9184

⁶ Procurement Guidelines of ADB, JBIC and WB

bidding environment has been served. **Recommendation:** Development partners recommend that empirical data be gathered and presented to Government demonstrating that ABC-type price ceilings do not provide long-term benefits. This analysis should be accompanied by the results of three other empirical studies (i) a comparison of cost or engineer's estimates with ABC to determine how reasonable the ABC

limits have been in practice, (ii) and an analysis of whether the current low participation of bidders is the result of imposing a bid ceiling, and (iii) a report on the effectiveness of the ABC rule in relation to contract administration and the quality of completed works. The Study will also cover variation orders resulting to substantial cost increases in the contracts awarded using ABC.

Figure 3: Analysis of Approved Budget Ceiling and Lowest Evaluated Bid



Results of the BLI Assessment

92. Indicator 7 was given a score of 4 points out of maximum score of 9 points, or 44 percent level of compliance, indicating partial achievement as several areas in the functionality of the public procurement system need further improvement. Government needs to promote programs that build capacity among private companies, including small businesses, and offer training to help firms enter the public procurement

marketplace. The private sector is relatively weak, competition is limited because of monopolistic or oligopolistic features in important segments of the market and because there are constraints to access to the public procurement market. Table 9 provides a summary of the ratings for this assessment.

Table 9: Summary of Scores, Rating for Indicator 7, Pillar III

International Standard/Sub-Indicators	Score	Max. Score
7(a) – There are effective mechanisms for partnerships between the public and private sector	2	3
7(b) – Private sector institutions are well organized and able to facilitate access to the market	1	3
7(c) – There are no major systemic constraints (e.g. inadequate access to credit, contracting practices, etc.) inhibiting the private sector's capacity to access the procurement market	1	3
Total Score	4	9
Rating: 4/9 or 44%; Level of achievement is Partially Achieved.		

Contract Implementation and Completion

Findings

93. Contract Administration. The General Conditions of Contract of the PBDs and the Guidelines on Contract Implementation provide procedures for final acceptance, inspection, testing, quality control, and contract amendment for each type of procurement. The standard clauses are based on internationally accepted standards and largely harmonized with those of the WB, ADB, and JBIC. Quality control procedures for specific types of goods (books, drugs, computers) are normally specified in the contract documents. Quality control is carried out through the agencies' own testing facilities or by competent outside firms. In the DPWH, construction supervision for foreign-assisted infrastructure projects is normally done by independent engineering firms in coordination with government supervisors and inspectors. For government-funded infrastructure projects, construction supervision is done by qualified government supervisors and inspectors. However, while payment schedules are written in contracts, final payments for completed deliveries or works generally take a long time to be released, often extending beyond the contract provisions. The delay is due to cautious handling by the procuring entity of the inspection process and documentation review. **Recommendation:** *Procedures for final payment should be streamlined and the changes should be reflected in the Generic Procurement Manual.*

94. Dispute Resolution. The GPRA provides for disputes arising from contract implementation to be submitted for arbitration under the Arbitration Law (RA 876), replaced by the Alternative Dispute Resolution Act (RA 9285), which is consistent with generally accepted practices for neutrality of arbitrators, due process, expediency, and enforceability. Alternative Dispute Resolution provisions may be resorted to by parties upon mutual agreement and it is assumed that both parties will honor the decision rendered by the duly appointed authority. For construction disputes, Executive Order No. 1008

creates an Arbitration Machinery for Construction Disputes. The GPRA further provides that the parties may agree in writing to other alternative modes of dispute resolution. The settlement of disputes through arbitration is incorporated in the Form of Contracts in the PBDs. The Government accepts international arbitration for international competitive bidding, so long as this provision is included in the conditions of the loan agreement and contract documents. However, there is no system to monitor the final resolution and outcome of dispute resolutions.

95. Enforcement of Dispute Resolution Process. The Philippines is a member of the New York Convention on Enforcement of Arbitral Awards, which treats an arbitral award as final, unless an appeal is filed on pure questions of law before an appellate court within a given period. The GPRA provides that arbitral awards are appealable by way of Petition for Review to the Court of Appeals on questions of law. A party may also go to court for enforcement of the award.

Result of the BLI Assessment

96. The above findings support the BLI assessment results. A good assessment score was achieved for this indicator at 7 points out of possible 9, or 78 percent compliance. Except for the element of "final payment being processed promptly as stipulated in the contract", the public procurement system meets all other elements of good contract administration and implementation. While all the elements of a good dispute resolution process are met, including enforcing the outcome there is no mechanism for monitoring the outcome of dispute resolution cases. Table 10 provides a summary of the ratings for this assessment.

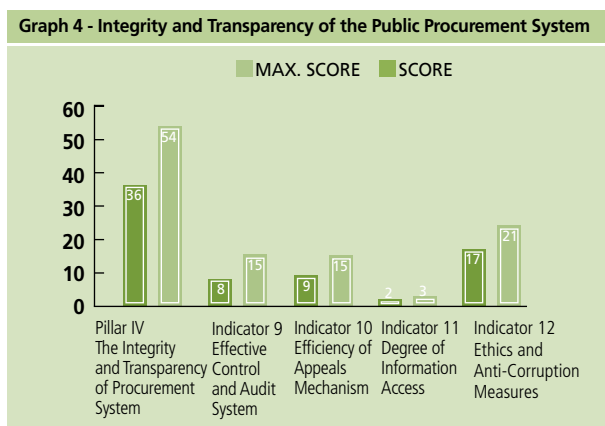
Pillar IV: Integrity and Transparency of Public Procurement System

97. Pillar IV looks at whether the public procurement system operates with integrity, has adequate internal controls,

Table 10: Summary of Scores and Rating for Indicator 8, Pillar III

Sub-Indicators	Score	Max. Score
8(a) – Procedures are clearly defined for undertaking contract administration responsibilities that include inspection and acceptance procedures, quality control procedures, and methods to review and issue contract amendments in a timely manner	2	3
8(b) – Contracts include dispute resolution procedures that provide for an efficient and fair process to resolve disputes arising during the performance of the contract	3	3
8(c) – Procedures exist to enforce the outcome of the dispute resolution process	2	3
Total Score	7	9
<i>Rating: 7/9 or 78%; Level of achievement is Substantially Achieved.</i>		

sufficient appeals mechanisms, and has appropriate measures in place to address the potential for corruption. Graph 4 shows the BLI assessment levels based on four indicators.



(9) Internal control and audit: The elements of quality, reliability and timeliness of the internal and external controls are partially achieved. Internal Audit Units need to be created in all entities or strengthened, and enforcement of the GPRA using the auditing system needs to be improved.

(10) Appeals mechanism: Efficiency and integrity of the existing appeals mechanism partially achieves the baseline elements of a well-functioning public procurement system, except that the independence of the administrative review body is not assured.

(11) Access to information: Although the quality, relevance, ease of access and comprehensiveness of information on the public procurement system substantially met the baselines, making the information available has not been effective in changing behavior. There is an urgent need to implement a strategic communication strategy to increase awareness of the procurement law.

(12) Ethics and anti-corruption: The nature and scope of the anticorruption provisions in the public procurement system substantially met the baselines, as sufficient ethics and anti-corruption measures are in place.

Internal Control and Audit

Findings

98. Legal Framework. The 1987 Constitution provides for an independent Commission on Audit (COA) that has the power to audit all accounts pertaining to government funds nationwide, including procurement-related transactions. COA is required to submit an annual report of each entity's financial statements to the Legislative Branch in time for review prior to deliberation of the proposed annual budget appropriation. The Government Auditing Code (RA 1445) and the Government Accounting and Auditing Manual discuss the procedures for internal control and management of all financial transactions and define the system of checks and balances. The powers

of COA, aside from auditing the books of accounts, include promulgation of accounting systems, which it carried out in 2001 through the issuance of the National Government Accounting System (NGAS). The NGAS is now being used by all NGAs and LGUs⁷. While the COA conducts post-audit of transactions, it also carries out special fraud audit. The COA does not have prosecutorial functions, although it may initiate criminal, civil or administrative action by filing a complaint before the appropriate body, such as the Department of Justice or the Office of the Ombudsman. Criminal prosecutions are initiated by the Ombudsman as a complainant, with COA providing the evidence or witnesses for the prosecution. Complaints brought by private parties generally attach a COA report as a vital component of the complaint.

99. Enforcement and Follow-up on Audit Findings and Recommendations.

Records of the COA National Capital Region office from 2004 to 2006 show that an average of 56 percent of all notices of disallowance were procurement related. However, disallowances with finality are few, as the cases tend to linger on at various stages of appeal, further aggravated by the length of time between the discovery of anomalies by COA and the filing of a case (up to 12 months). A comparison of records at COA and the Ombudsman found that COA's mandated task of monitoring the cases referred to the Ombudsman for prosecution is not being effectively undertaken, and that there is no comprehensive database of procurement and other related cases. Much weight has been placed on interagency cooperation among the Civil Service Commission (CSC), COA and the Ombudsman that was supposed to deliver results with respect to the prosecution of cases. Internally, however, the COA regional offices that were supposed to submit comprehensive reports to the Head Office on cases filed and pending have not generally been performing this task. Records at the Ombudsman show that there were only a few instances when cases or complaints were brought to the Ombudsman by COA, but this does negate the fact that COA plays a significant role in the prosecution of cases.

100. Financial audits are carried out annually by COA as part of its mandate to report to Congress and the President on the accounts of all agencies and instrumentalities of government. Procurement audit is not yet given enough focus in most of the audit programs because most auditors have inadequate knowledge of the law, its implementing rules, the harmonized bidding documents and contract forms, and the procurement manuals; and there is no procurement audit guide to act as the basis for including procurement audit in the annual audit program. Most auditors are not trained to carry out risk-based audit tailored for risk management. **Recommendation:** *A procurement audit guide should be developed and implemented by COA, with particular focus on the audit of the implementation of the GPRA. A training program on procurement should be developed and implemented for auditors, with the procurement audit guide as a primary*

“Procurement audit is not yet given enough focus in most of the audit programs because most auditors have inadequate knowledge of the law, its implementing rules, the harmonized bidding documents and contract forms, and the procurement manuals; and there is no procurement audit guide to act as the basis for including procurement audit in the annual audit program.”

training material, and both the guide and the training should include a risk-based approach to audit. The professionalization program of GPPB is expected to include COA auditors as participants.

101. Internal Audit Units in National Agencies. Under a 2003 Administrative Order, each agency is mandated to strengthen internal control through the creation of Internal Audit Units (IAUs) with adequate personnel and budgetary provision. As of January 2007, 56 percent of NGAs, 52 percent of SUCs and 73 percent of GOCCs had created IAUs⁸. However, only an average of 28 percent of these units are functioning in accordance with international standards. In the APPI review of 10 pilot agencies, seven had established internal control units for annual audit of procurement activities, but they were found to be mostly performing pre-audit and checking of completeness of supporting documents, which does not meet international internal auditing standards. **Recommendation:** *Where they are lacking, IAUs should be created. Where they have been set up but are not performing in accordance with standards, they should be strengthened. It would be timely to factor this requirement into the ongoing rationalization of public administration. An Internal Audit Manual that incorporates international standards and the local internal*

⁷ e-NGAS, the computerized version of NGAS developed by COA, was rolled-out beginning 2003. As of 30 September 2008, 196 NGAs and 141 LGUs have completed its installation.

⁸ DBM and PAGC continue to collaborate to ensure the systematic issuances of internal control guidelines and internal audit manuals. Also, DBM issued a circular last 14 April 2008 advising all agencies that they could create and activate IAUs pending approval of their Rationalization Plans.

control rules and regulations should be finalized and approved for roll-out nationwide. DBM and PAGC should collaborate to ensure satisfactory performance of internal control systems in government, particularly in implementing and enforcing the procurement law.

102. A WB IDF Grant is supporting an effort to strengthen IAUs for effective procurement monitoring and enforcement that is being implemented by the Presidential Anti-Graft Commission (PAGC). Under this project, the Government has mapped the creation of IAUs nationwide, including in LGUs, assessed the quality of the internal audit function, and will develop a quality assessment guide for periodic internal agency oversight. The project will also develop an internal audit manual for national agencies that will be in accordance with international standards and also incorporate national internal control rules and regulations. Completion of the project will, at the agency level, close the loop on procurement implementation, as it is expected that the IAUs will regularly advise the head of the procuring entity of any inadequacy in procurement controls and promptly submit reports of deviation from policies and standards. This will significantly contribute to the implementation of procurement reforms at the agency level.

103. Internal Audit Units in LGUs. More than 65 percent of LGUs (cities and municipalities) do not have IAUs. Where they have been created, the quality of performance is not on a par with international internal auditing standards. Some of these units are commonly referred to as pre-audit units and are actually the divisions under the Office of the Accountant in charge of the conduct of pre-audit. All LGUs that had established an IAU admitted that they have not yet conducted a procurement system audit. Most of the findings of internal auditors are not formally communicated, but treated informally as “inside information.” Government procurement, as it is practiced in the LGUs, is still far from fulfilling the provisions and intent of the law, however neither the internal nor the external auditors have come up with a comprehensive audit of procurement systems in order to identify areas of significant deviation and the causes and consequences of non-compliance.

104. Auditors’ Procurement Training. Auditors play a major role in ensuring that the appropriate controls support the implementation of the public procurement system in accordance with the legal and regulatory framework and that appropriate measures are in place to address the potential for corruption in the system. However, it was reported that most field auditors of COA are not properly trained in the GPRA, its implementing rules and regulations, bidding documents, forms and standard contracts, the generic procurement manuals, and internal control features that they are supposed to assess during audit. To date, there is no procurement audit guide to standardize input to the annual audit program. **Recommendation:** *A Procurement Audit Guide should be developed to guide the conduct of auditors, and training in its implementation should be conducted for all auditors on a regular basis.*

Result of BLI Assessment

105. The above findings support the BLI assessment results.

The score is 8 out of 15 points, for 53 percent compliance, or partial achievement of the baselines. An adequate legal framework, organization, policy and procedures for internal and external control exist, but there is no specific periodic risk assessment or controls tailored to risk management. Audits are carried out annually, but response to or implementation of the auditors' recommendation can take up to a year. The creation of an Internal Audit Unit in each agency is mandated, but most agencies have not complied with this requirement, and those that have are not performing in accordance with international standards. There is no internal audit manual to guide internal auditors. While auditors have general knowledge of the GPRA, they are not supported by specialists on procurement, because there is no training for auditors on procurement. Table 11 provides a summary of the ratings.

Efficiency of Appeals Mechanism

Findings

106. Due process. The GPRA provides that protests in the form of "motions for reconsideration" with respect to decisions involving contractor eligibility and qualification may be filed with the procuring agency's BAC. The motions are decided, based on the facts, within seven days; if the motion is denied, the bidder may file a protest in writing with the head of the procuring entity. Protests are resolved strictly on the basis of BAC records. Procuring entity heads have the authority to resolve the protest and render a final decision up to the limit of their approving authority. The decision of the head of the procuring entity is normally considered final, and the procurement process proceeds to the next steps.

More than 65 percent of LGUs (cities and municipalities) do not have IAUs. Where they have been created, the quality of performance is not on a par with international internal auditing standards.

107. Administrative Review. Review of decisions is currently lodged with the Office of the President which, by virtue of the President's broad administrative supervisory and review powers under the Administrative Code of 1987, has authority to grant remedies for procurement-related decisions made by heads of procuring entities. The GPRA further states that decisions of the heads of the procuring entities are subject to judicial review, and designates the Regional Trial Court as having jurisdiction. However, there is no independent administrative review body to conduct a review of appealed complaints as required by the standards. The protest mechanism is also viewed as ineffective and is not utilized in view of the high and non-refundable protest fees. **Recommendation:** A study should be conducted to review existing policies and procedures related to complaints and appeals in light of best practice in other countries, and to consider the designation of an independent administrative body, tapping an existing administrative review body with the appropriate mandate, and setting reasonable protest fees.

Table 11: Summary of Scores for Indicator 9, Pillar IV

Sub-Indicators	Score	Max. Score
9(a) – A legal framework, organization, policy, and procedures for internal and external control and audit of public procurement operations are in place to provide a functioning control framework	2	3
9(b) – Enforcement and follow-up on findings and recommendations of the control framework provide an environment that fosters compliance	2	3
9(c) – The internal control system provides timely information on compliance to enable management action	1	3
9(d) – The internal control systems are sufficiently defined to allow performance audits to be conducted	2	3
9(e) – Auditors are sufficiently informed about procurement requirements and control systems to conduct quality audits that contribute to compliance	1	3
Total Score	8	15
<i>Rating: 8/15 or 53%; Level of achievement is Partially Achieved.</i>		

108. Publication of decisions: The publication of decisions on disputes resolved by the procuring entity is not mandatory and is left to the discretion of the review bodies, making access difficult. **Recommendation:** *A mechanism, which could be the subject of an executive issuance, should be developed to publish the decisions of the BACs and entity heads on procurement-related disputes and protests.*

109. Complaint review body. The GPRA prescribes that appeals from the decision of the Head of Procurement Entity be filed either with the Office of the President or the judicial courts. OECD has clarified that the body should be an independent administrative review body. The Office of the President is not an independent administrative review body, neither are the judicial courts. In this regard, the public procurement system is not meeting the standards. **Recommendation:** *A study should be conducted to determine whether there is a need to create an independent complaint review body in accordance with international standards.*

Result of BLI Assessment

110. The above findings support the BLI assessment results. This indicator scored 9 out of a possible 15 points, for 60 percent achievement level. The GPRA prescribes that the decisions of entity heads and the Office of the President, as appeal bodies, should be based on facts and rendered with authority and enforceability under the law. The complaints review system is efficient, but the complaint review body is not independent and autonomous. While the system operates in a fair manner, it does not result in corrective remedies but only in sanctions and penalties. Decisions are not required to be published and access is difficult. Table 12 provides a summary of these findings.

Access to Information

Findings

111. Publishing Procurement Information. Several readily and widely accessible systems are now providing procurement information. PhilGEPS, the primary and definitive source of information on government e-procurement, now offers an electronic bulletin board, e-catalogue, and suppliers' registry. Except for barangays, 70 percent of all public procuring entities are registered as PhilGEPS users. While not all agencies submit their procurement information to the PhilGEPS or avail of its services, and the required Internet technology is accessible in only about 30 percent of the whole country, cyberspace modernization is spreading so fast that the new technology should overtake other channels of communication in a short time. Investing in modernization has proven to be a good decision by GOP.

112. The GPPB website (www.gppb.gov.ph) provides information on policies, guidelines, issuances on procurement, and bid opportunities that government agencies are required to post. It publishes the names of companies and firms that are blacklisted URB and suspended. The Uniform Guidelines on Blacklisting (UGB) requires all agencies to publish blacklisted company names on the GPPB website.

113. Public Perception Survey on the Effectiveness of the GPRA. The 2006 survey conducted by local survey firm SWS on the public perception of the effectiveness of the GPRA revealed that only 13 percent of the general public is aware of the procurement law after four years of implementation. The result is alarming to GOP because the GPRA was primarily designed to be an anti-corruption measure, with stiff penalties for simple procurement graft and misbehavior, the shortest of which is imprisonment of at least six years. The less people know about it, the less value will the GPRA add

Table 12: Summary of Scores for Indicator 10, Pillar IV

Sub-Indicators	Score	Max. Score
10(a) – Decisions are rendered on the basis of available information, and the final decision can be reviewed and ruled upon by a body or authority with enforcement capacity under the law	3	3
10(b) – The complaint review system has the capacity to handle complaints efficiently and a means to enforce the remedy imposed	3	3
10(c) – The system operates in a fair manner, with outcomes of decisions balanced and justified on the basis of available information	2	3
10(d) – Decisions are published and made available to all interested parties and to the public	1	3
10(e) – The system ensures that the complaint review body has full authority and independence for resolution of complaints	0	3
Total score	9	15
<i>Rating: 9/15 or 60%; Level of achievement is Partially Achieved.</i>		

to the fight against corruption. A dire need therefore exists for GPPB to quickly disseminate procurement information via communication channels that will reach a broad majority of citizens. GPPB has addressed this important issue by developing a Strategic Communication Plan, with WB support. The plan is discussed further in the next section. **Recommendation:** *The proposed Strategic Communication Plan should be approved and implemented, with the support of development partners. Adequate resources should be allotted to ensure its success.*

114. Public disclosure. Civil society has been clamoring for a systematic and rationalized disclosure policy for procurement information and how specific bids relate to budgeted public expenditures. However, there is no disclosure policy on procurement-related information. Recommendation: A disclosure policy on procurement-related information should be formulated, approved by GPPB, and implemented nationwide by all procuring entities.

Results of BLI Assessment

115. The indicator scored 2 out of 3 points, or 67 percent. Although there is an electronic government procurement system and procurement information is published, accessibility is limited due to: (a) technology limitations in far-flung areas; (b) lack of coordinated and consistently implemented strategic communications; (c) lack of compliance by some agencies with the rules on publication; (d) absence of a disclosure policy. Table 13 provides a summary of the ratings.

Ethics and Anti-corruption Measures

Findings

116. Ample Legal and Regulatory Provisions Addressing Corruption. The laws and regulations addressing corruption include the Anti-Graft and Corrupt Practices Act, RA 3019, issued as early as 1955, the Code of Conduct and Ethical Standards for Public Officials and Employees issued in 1989, and the most recent GPRA to address public procurement corruption, issued in 2003. These are adequate laws to implement good governance and prevent corruption. The issues arise in the implementation and enforcement of these laws, and the Department of Finance, the Office of the Ombudsman and the Presidential Anti-Graft Commission have recently begun concerted efforts to address these issues through several programs, such as Run After Tax Evaders, Run After Smugglers, Lifestyle Checks, Integrity Development Reviews, and Integrity Development Action Plans of corruption-laden agencies.

117. In instituting measures to reduce procurement corruption, the GPRA requires bidders to disclose in writing whether they are relatives of the head of the procuring entity up to the third civil degree. The GPRA provides for the issuance of blacklisting guidelines, as well as sanctions and penalties for civil, criminal and administrative cases. The PBDs contain adequate provisions on fraud and corruption in the Instruction to Bidders and the General Conditions of Contract.

118. Defined responsibilities, accountabilities and penalties. The GPRA clearly defines the coverage of fraud and corruption, and has very specific provisions on the responsibilities of public officials and private entities. It also covers offenses, penalties, civil liabilities, and administrative sanctions that may be imposed on erring public officials or suppliers, contractors, and consultants. The GPMs discuss the conditions when conflict of interest, intervention of active public officials and other related offenses may arise, along with the corresponding penalties. The Anti-Graft and Corrupt Practices Act prohibits the intervention of former public officials in procurement matters in ways that benefit them, their relatives, and business or political associates, financially or otherwise, for a reasonable period of time after leaving office.

119. Evidence of enforcement. Records from the anti-corruption agencies provide evidence of a few cases where laws on corrupt practices have been enforced and of many more that have not been acted on.

(i) The Office of the Ombudsman investigated 38 procurement-related cases from 2004 to 2006 for various violations of the Anti-Graft and Corrupt Practices Act (RA 3019 issued in June 1955), Code of Conduct and Ethical Standards for Public Officials and Employees (RA 6713 issued in November 1989) and GPRA issued in January 2003. Some of these investigations have resulted in the dismissal from service or suspension of public career officials and elected officials. However, a large number of complaints have not been acted upon, and some cases take a very long time: some of the cases pending before the Sandiganbayan (the Philippines' anti-graft court) were filed more than ten years ago. The low enforcement capacity of the Ombudsman's special prosecution office and that of the courts is a major concern.

(ii) The PAGC investigated 37 procurement-related cases from 2001 to 2006, resulting in the dismissal from service of some high-ranking political appointees.

(iii) In line with its legal mandate, from 2004 to 2006, COA–

Table 13: Summary of Scores for Indicator 11, Pillar IV

Sub-Indicators	Score	Max. Score
11 – Information is published and distributed through available media with support from information technology when feasible <i>Rating is 67%; Level of achievement is Substantially Achieved.</i>	2	3

National Capital Region had 43 notices of disallowance: 6 cases for the year 2004, 27 cases for 2005, and 10 cases for 2006. More than half of these were procurement related (24 cases), with values involved ranging from Php100,000 to Php279,144,701. Of the ten notices of disallowance in 2006, one had been lifted, one had become final, and the rest are in various stages of appeal. Notices of disallowance are being used as basis for the initiation of administrative or criminal actions against erring government officials and employees.

(iv) The Senate Blue Ribbon Committee investigated such high-profile procurement cases as the Commission on Election poll computerization contract, which the Supreme Court nullified for running contrary to the GPRA requirement of public bidding; the Batangas Port land acquisition project; and the International Airport Passenger Terminal III Project.

Unsuccessful prosecution and delays in the trial of procurement-related cases are due to inadequate capacity and training and to failure to detect fraud in procurement and gather proper evidence. **Recommendation:** *A special training program should be developed on procurement contract fraud detection, evidence gathering, and prosecution techniques. The target participants should be investigators, prosecutors and auditors.*

120. Special measures: Blacklisting and suspension of erring bidders, suppliers, and contractors. As required by the IRR-A, the GPPB issued Guidelines for the Blacklisting of Erring Bidders, Suppliers, and Contractors in August 2004. Compliance is good for infrastructure projects, largely because the DPWH is the only agency with specific internal procedures for blacklisting infrastructure constructors. At present, the list of blacklisted contractors is available and updated regularly at the GPPB website, where GPPB has published more than 250 blacklisted or suspended firms, and this list is submitted and actively monitored by the Philippine Constructors Accreditation Board (PCAB). The process of blacklisting is coordinated with the Construction Industry Authority of the Philippines (CIAP), which is mandated by the Contractors' Licensing Law to conduct the blacklisting of contractors and the cancellation of their licenses based on specified offenses.

121. However, the UGB has very limited application, and lacks the coordinated enforcement tools to be effective. The UGB can effectively strengthen the provisions of the GPRA for administrative penalties, only if mechanisms for its implementation are in place and functioning. Without a concerted effort by all government agencies, the mere existence of the guidelines is no deterrent to erring suppliers, contractors or consultants. Unfortunately, there is a clear indication of limited compliance by most agencies with blacklisting procedures and in the submission of their blacklists to the GPPB. It is likewise clear that penalties linked with the blacklisting process, such as contract termination, forfeiture of securities, and imposition of liquidated damages, are not

imposed by the agencies on erring suppliers of goods, services and consulting services. Some of the reasons cited are staff and time shortages and tediousness of the procedures.

122. The situation is even more critical in the LGUs, where blacklisting is rarely undertaken. Field visits found no LGUs with internal systems or procedures for blacklisting bidders, suppliers, contractors or consultants. Not all LGUs are aware of GPPB blacklisting guidelines, and those that are aware, seldom comply. While some LGUs admitted that there are some suppliers and contractors who fail to perform after an award has been made, they are simply reprimanded.

123. GOP Performance on Blacklisting. As of March 31, 2006, there were 182 blacklisted constructors for infrastructure projects on the GPPB list, with 78 blacklisted by 8 different agencies and 104 by PCAB. Of those blacklisted by government agencies, 63 were from DPWH, 4 from Metropolitan Waterworks and Sewerage System, 3 from National Power Corporation, 3 from National Housing Authority, 2 from National Irrigation Administration, and one each from Philippine Food Drugs Authority, DOH, and PPA. The most common grounds for blacklisting constructors by government agencies were:

- rescission of contract due to failure to complete project (33 percent),
- abandonment of project (16.7 percent),
- failure to comply with contractual obligations or any lawful instructions (14.1 percent),
- intolerable negative slippage of more than 15 percent (12.8 percent),
- falsification of public documents (11.5 percent), and
- quality of materials not complying with specifications, poor performance, or unsatisfactory quality of work (9.0 percent combined)

Of those blacklisted by PCAB, 56 licenses were revoked, 20 suspended, and 28 denied licenses. The most common types of offenses of PCAB blacklisted constructors were:

- misrepresentation of technical employees (58.6 percent),
- misrepresentation of financial qualifications (21.1 percent),
- misrepresentation of track record (9.6 percent),
- submission of spurious or falsified documents (5.8 percent), and
- abandonment of project (1.9 percent).

124. Application of national blacklisting to MDB-funded projects. The nationally blacklisted firms are not automatically blacklisted in MDB-funded projects. Since the imposition of such sanction against a firm triggers an inquiry and review of the process leading to the blacklist, due process is being observed; use of blacklisting in MDB-funded projects would further require that the grounds for blacklisting are acceptable to the MDBs and that the rules are disclosed to the public.

Recommendation: A study should be conducted to review the UGB with the objective of strengthening its enforcement mechanism and align it with international good practice.

125. Special Anti-Corruption Program. Different agencies have their own anti-corruption programs. The Ombudsman (OMB) is the primary graftbuster under the Constitution and has embarked on a number of anticorruption initiatives.

- Lifestyle Check of public servants, where the actual assets of officials holding sensitive positions are compared with their income from government service. The Statement of Assets and Liabilities mandated by law to be annually filed with the Ombudsman is a basic document for investigations in case there are large disparities between assets and salary income.
- A more structured and elaborate approach is the Integrity Development Review (IDR), which looks at how government agencies are addressing corruption and governance issues internally. The IDR has been piloted in 17 agencies and it is expected to become a regular program to address systemic issues of corruption.
- A Multi-Sectoral Anti-Corruption Council was launched in March 2007 involving the Executive Department, the Senate and House of Representatives, Judiciary and Constitutional Bodies, LGUs, and CSOs. The Council serves as the consultative and coordinating body for the National Anti-Corruption Program of Action.

126. As the arm of the President for implementing the anti-corruption program of the Executive Branch, PAGC launched in 2005 the Integrity Development Action Plan, which aims to identify specific measures needed to avoid graft and corruption, including detection and prevention activities within an agency. So far, more than 50 agencies are participating in this plan. The Department of Finance (DOF) implements, through the Bureau of Internal Revenue, the Run After Tax Evaders program aiming to discover, investigate and penalize tax evaders, and through the Bureau of Customs (BOC), the Run After Smugglers program aiming to catch smugglers of goods through the ports and ensure that duties are collected.

127. While Government has a number of anti-corruption programs in place implemented by several anticorruption agencies, these measures are not coordinated and synchronized to achieve results. **Recommendation:** A covenant among the oversight agencies (GPPB, COA, PAGC, DBM and the Ombudsman) should be agreed upon to strengthen the coordinative linkages, monitoring and enforcement of audit findings, and compliance with the procurement law. The covenant could be supported by the creation of a procurement sub-working group under the PDF Working Group on Governance and Anti-corruption. Special training programs on fraud detection for purposes of prosecution should be developed and conducted, targeting investigators, prosecutors and auditors.

While Government has a number of anti-corruption programs in place implemented by several anticorruption agencies, these measures are not coordinated and synchronized to achieve results.

128. CSO and Private Sector Participation in Procurement Biddings. The landscape of public service delivery has been changing. Where government was once the sole actor in the arena of public service delivery, nowadays, citizens are both beneficiaries and active participants. Non-state or civil society organizations (CSOs) are taking the initiative where government is absent or where the private sector does not find it profitable to participate. The GPRA recognizes the significance of the CSOs and has given them a critical role in public procurement, providing for their participation as observers at all stages of public bidding.

129. A private sector representative sits in the GPPB and in its TWG, to provide private sector inputs in discussions on procurement policies, procedures, and concerns. Representatives from professional organizations and non-government organizations serve as observers in the BACs of government agencies to ensure transparency in the procurement process. These include, among others: PCA, Philippine Chamber of Commerce and Industry, Philippine Institute of Civil Engineers, NACAP, Philippine Institute of Certified Public Accountants, and the Confederation of Filipino Consulting Organizations of the Philippines. The Transparency and Accountability Network, the Catholic Bishops' Conference of the Philippines, the Makati Business Club, and the National Citizens' Movement for Free Elections are some of the more active CSOs that send their representatives as observers.

130. Although the GPRA's objective of ensuring transparency in procurement by means of mandating CSO observers in the bidding process is laudable, its implementation is not producing the desired impact on the ground. Moreover, its sustainability is at risk unless serious remedial measures are introduced by the GPPB and the CSOs themselves. **Recommendation:** A list of activities to increase CSO participation was agreed on at the August 8, 2007 CPAR consultation workshop (see Annex 5). This list should become the basis for a study to be undertaken on sustaining the involvement of CSO observers in the bidding process, including contract implementation.

131. Mechanism for Reporting Fraudulent, Corrupt or Unethical Behavior. The anticorruption agencies have established channels for receiving information from the public on fraudulent, corrupt or unethical behavior. The Ombudsman has embarked on a communication campaign using the radio and print media to inform and encourage the public to report such behavior. The report may be made in writing, anonymously or otherwise, addressed to a given Ombudsman Office, or through the public assistance hotlines using secured telephone lines. PAGC also encourages written complaints containing information on corrupt behavior of particular government officials, which it then investigates. DPWH has a policy of placing project billboards to inform the public about specific construction projects in conspicuous places at construction sites, providing a phone number or location where concerns about the project may be reported.

132. Code of Conduct. The Code of Conduct and Ethical Standards for Public Officials and Employees issued in November 1989 provides for norms of conduct and specifies prohibited acts and transactions on the part of public officials, including those involved in public financial management and procurement. The Code defines accountabilities and financial disclosure. Compliance with this Code is obligatory, with administrative or criminal consequences for non-compliance.

133. Public Perception Survey on Procurement Corruption. Despite the adequacy of the anti-corruption laws and regulations and the presence of anti-corruption agencies, the public perception of corruption is high. The 2006 SWS survey on the GOP's procurement system revealed that the public perceives the level of corruption in government contracts to be the same as it was five years ago, about the same time that the GPRA was passed. The SWS survey also found that only 13 percent of the respondents were aware of the GPRA. About 35 percent of more than 700 Filipino firms surveyed in the 2004 WB/ADB Investment Climate Survey reported corruption as a major constraint in doing business in the Philippines, second only to macroeconomic instability. The recently published October 2007 World Governance Indicator reported that the control of corruption is lower in the Philippines than in comparable East Asian economies.

134. Optimism for the GPRA. Despite the low awareness ratings and continuing negative public perception of government biddings, two results from the 2006 SWS survey provide encouraging signs that the public is willing to help. A large majority (76 percent) believe that the GPRA can help reduce corruption in government contracts. Among the 13 percent who are aware of the GPRA, 87 percent of them believe that it can help reduce government corruption. Significantly, the survey indicated that 73 to 77 percent of Filipinos agree with the reform measures incorporated in the GPRA, with 42 to 49 percent saying that these reforms are definitely needed. Further, 42 percent of those who were aware

The 2006 SWS survey on the GOP's procurement system revealed that the public perceives the level of corruption in government contracts to be the same as it was five years ago, about the same time that the GPRA was passed.

of the GPRA thought it is now easier to punish government officials responsible for irregularities in government contracts compared to about five years ago. A large proportion of all respondents (55 percent) said that they would report incidents of corruption to the media, and nearly as many (46 percent) said it was important for people to know the procurement reform laws and regulations. More than 40 percent are willing to join a citizens' group or a CSO to monitor government bidding procedures. And 23 percent said they will refuse to vote for corrupt politicians. **Annex 4** provides a summary of the SWS survey results.

135. Desired Impact for the Strategic Communication Plan. The challenge is to develop an informed belief that the GPRA is not only intended to work against corruption, but that it truly does so. The objective is to change behavior so that citizens become more vigilant and less tolerant of corruption, private sector bidders come to respect the integrity of the procurement system, and public procurement officials follow the law and regulations for the sake of good public service. Regular publication of the results of audit and monitoring would document that procurement reform is indeed being implemented successfully. This is the desired impact of GPPB's proposed Strategic Communication Plan. However, while the Government has allotted some funds from its own budget, it is not enough for nationwide roll-out. **Recommendation:** *Adequate resources should be provided for the Strategic Communication Plan in MDB projects as part of technical assistance for capacity building. One way of implementing the Plan to the subnational levels would be to support activities sponsored by the powerful university network, Knowledge for Development Centers, who have a high level of interest in procurement reform and have already requested information with the objective of organizing procurement training at local level Public Information Centers.*

Result of the BLI Assessment

136. The above findings support the BLI assessment results. The GPRA's legal and regulatory framework on anticorruption fully achieves best practice standards. The legal and regulatory

systems define the responsibilities, accountabilities and penalties for individuals and firms found to have engaged in fraudulent or corruption practices. However, evidence of enforcement is few and far between. The full impact of existing measures is not yet achieved because these measures are not yet fully integrated across anti-corruption agencies to ensure coordinated action and prevent overlapping and conflicting actions. There are several CSOs working as observers and dialogue with the GOP is frequent, but efforts so far have had limited impact. There are mechanisms in place for reporting fraudulent, corrupt, or unethical behavior, but their accessibility and reliability undermine and limit their use by the public. There is a code of ethics for public servants with administrative, civil and criminal penalties for non-compliance. Table 14 provides a summary of these findings.

137. The CPAR Working Group and the WB CPAR Team have thoroughly analyzed the obvious inconsistency between the BLI Ratings and the prevailing public perception of a high level of corruption in procurement and with the SWS survey findings that only 13 percent of the public is aware of the new procurement law and its intended benefits. The inconsistency makes better sense when viewed alongside the paradox from which it stems: much progress has been made in procurement reform in terms of rules and regulations but implementation and enforcement are still weak, and the objectives of the reform have not been fully achieved. Mindful of the contradictions

Adequate resources should be provided for the Strategic Communication Plan in MDB projects as part of technical assistance for capacity building. One way of implementing the Plan to the subnational levels would be to support activities sponsored by the powerful university network, Knowledge for Development Centers.

inherent in the current situation, the Working Group and CPAR Team carefully reviewed the ratings of the sub-indicators and rated them conservatively. One reason for the high rating is that the indicator focused on process and not on results. It would have been different if some sub-indicators on enforcement and resulting outcomes had been included.

Table 14: Summary of Scores for Indicator 12, Pillar IV

Sub-Indicators	Score	Max. Score
12(a) – The legal and regulatory framework for procurement, including tender and contract documents, includes provisions addressing corruption, fraud, conflict of interest, and unethical behavior and sets out (either directly or by reference to other laws) the actions that can be taken with regard to such behavior	3	3
12(b) – The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in fraudulent or corrupt practices	3	3
12(c) – Evidence of enforcement of rulings and penalties exists	2	3
12(d) – Special measures exist to prevent and detect fraud and corruption in public procurement	2	3
12(e) – Stakeholders (private sector, civil society, and ultimate beneficiaries of procurement/end-users) support the creation of a procurement market known for its integrity and ethical behaviors	2	3
12(f) – The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behavior	2	3
12(g) – Existence of Codes of Conduct/Codes of Ethics for participants that are involved in aspects of the public financial management systems that also provide for disclosure for those in decision making positions	3	3
Total score	17	21
<i>Rating: 17/21 or 80%; Level of achievement is Substantially Achieved.</i>		



Building Roads to Prosperity

An efficient system of roads and bridges linking the country's 72 provinces is necessary for economic growth. External monitoring initiatives have also been put in place, including Road Watch, a civil society undertaking that monitors the performance of the road sector and the impact of road projects with a strong focus on anti-corruption and good governance. Moreover, the Government Procurement Reform Act requires the involvement of civil society organization in the bidding process, a demonstration of transparency in the public procurement system.

III. COUNTRY RISK ASSESMENT

138. Combining the levels of achievement against BLI international standard for the four key result areas or Pillars, the Philippine public procurement system is rated as medium or moderate risk, based on the following:

Pillar I: Legislative and Regulatory Framework scored 86 percent of baseline (full achievement), Low risk;

Pillar II: Institutional Framework and Management Capacity scored 69 percent of baseline (substantial achievement), Medium or Moderate risk;

Pillar III: Procurement Operations and Public Procurement Market Performance scored 53 percent of baseline (partial achievement), High risk; and

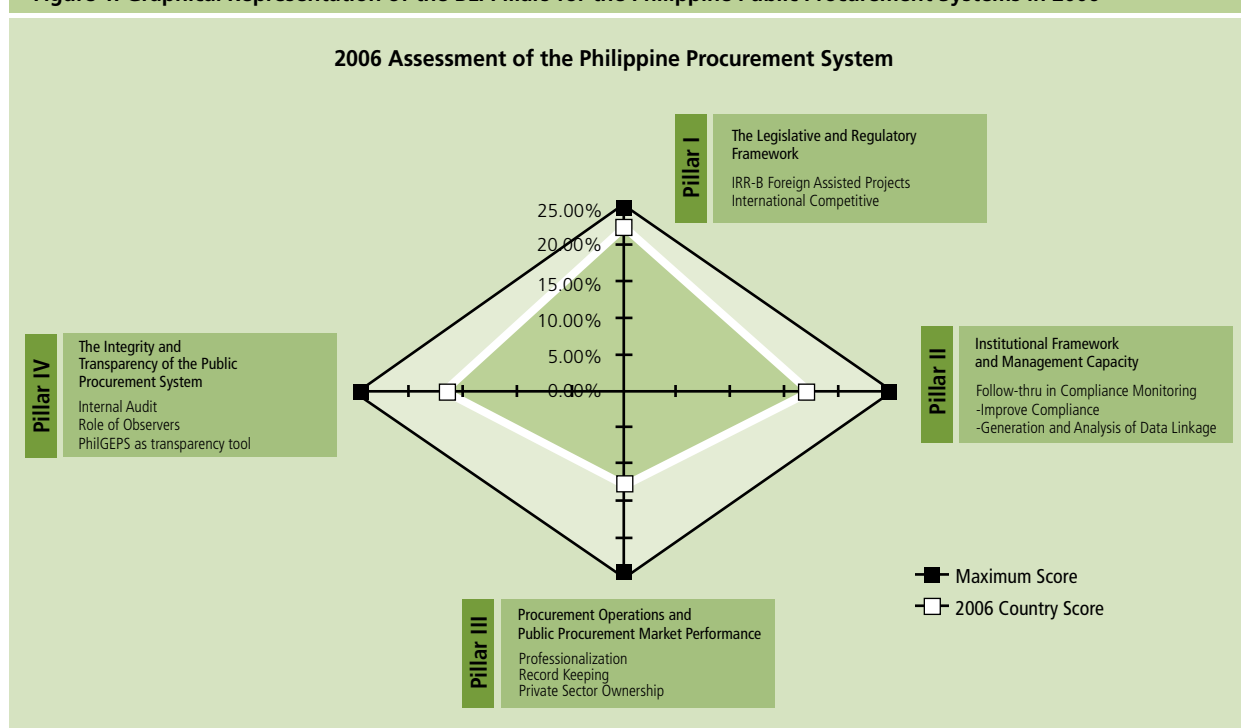
Pillar IV: Integrity and Transparency of the Public Procurement System, scored 68 percent of baseline (substantial achievement), Medium or Moderate risk.

In Figure 1, comparing the country score (white inner diamond) to a perfect score (black outer diamond), indicates at a glance

the status of the country's public procurement systems as compared with international standards.

139. Risk Analysis. While the GPRA appeared to have substantially met the baselines for a good procurement legal and regulatory framework, a number of risks in the implementation and enforcement of the law remain. The private sector is not yet confident of a level playing field, although measures are now in place to address the issue from the national to the sub-national government level. There are indications that some of the bidders are cornering markets or colluding to win bids. Procurement monitoring and collection of data to evaluate performance are not yet fully in place as the PhilGEPS is not yet fully implemented and compliance is not yet at a satisfactory level. The law is being enforced and violators punished by several anti-corruption bodies that are not fully coordinated in order to ensure successful enforcement. The sustainability

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



“Sustainability of the CSO involvement as observers in the bidding process is an issue. Overall, the public awareness on the law is very low at 13%, and this was analyzed as due to poor communication of the reform down to the grassroots level.”

of the CSO involvement as observers in the bidding process is an issue. Overall, the public awareness on the law is very low at 13%, and this was analyzed as due to poor communication of the reform down to the grassroots level. While the legal framework has been strengthened, implementation and enforcement are weak. Against this backdrop, the CPAR using

the OECD-DAC 12 BLI indicators came up with an aggregate BLI score of 67 percent at the country level. This would translate to a Medium risk for the national agencies and High risk for LGUs' procurement as shown in Table 15.

140. Mitigating the Risk. At the country level, the CPAR Working Group included risk-mitigating activities in a comprehensive Action Plan to Improve the Public Procurement System, presented in the last chapter of this report. Measures intended to mitigate the country procurement risk in foreign-assisted projects financed by loans and grants are addressed in the procurement arrangements for these projects and are presented in the next chapter. They include the use of Philippine country systems through the adoption of harmonized bidding documents, forms and manuals, and the use of GOP's PhilGEPS. Foreign technical assistance to support these measures in the area of strengthening implementation and enforcement of the system is reflected in the funding resources pledged by development partners indicated in the Proposed Action Plan. Specific project procurement risk will be based on the project capacity assessment normally conducted during project preparation. Moreover, an anti-corruption plan on procurement is normally discussed and agreed with the implementing agency and incorporated in the Loan Agreement.

Table 15: Level of Risk Per Indicator				
INDICATOR	ACHIEVEMENT LEVEL	Level of Risk		MITIGATING MEASURES
		Nat'l	LGU	
1. Presence and use of legal and regulatory instrument from highest level down to detailed regulation and bidding documents	SA – 75%	L	L	Formulate IRR-B to cover foreign assisted procurement.
2. Existence, availability and quality of implementing regulations and documentation	FA – 100%	L	M	Simplified Barangay and LGU bidding documents and manuals will be developed and implemented.
3. Procurement mainstreamed into the public sector governance system	SA – 75%	M	M	Development and issuance of clear guidelines on multi-year plan linked to annual budget, and PFM manual.
4. Presence of a functional and normative/regulatory body	FA – 92%	L	L	Provide more resources to GPPB-TSO for an expanded role.
5. Existence of institutional development capacity	PA – 42%	H	H	Strengthen monitoring and evaluation performance; develop PhilGEPS Phases 2 to 5; accelerate the professionalization program; upgrade the quality of training for procurement and procurement audit
6. Operational effectiveness and efficiency of the system at the entity level	PA – 42%	H	H	Establish and implement a records management system; deepen CSOs and private sector awareness and involvement in the system.
7. Positive market response to procurement solicitations	PA – 44%	H	H	Conduct regular private sector training on procurement; strengthen train-the-trainers program; upgrade the cost estimating process; reduce eligibility requirements to comprise only technical and financial capacity.
8. Existence of contract administration and dispute resolution	SA – 78%	M	H	Monitor progress of dispute resolution cases; strengthen contract implementation monitoring by CSOs.
9. Existence of effective control and audit system	PA – 53%	H	H	Establish a covenant of coordination among oversight agencies; mainstream internal control and internal audit system in entities.
10. Efficient appeal mechanism	PA – 60%	H	H	Study the creation of an independent administrative review body; publish resolution of complaints decided by heads of entities.
11. Access to information	SA – 67%	M	H	Implement the strategic communication plan.
12. Presence of ethics and anti-corruption measures	SA – 80%	M	M	Establish a covenant of coordination among anti-corruption bodies; develop a database on fraud cases; conduct special training programs on fraud detection; develop a mechanism to follow-up reported irregularities by CSO observers.
Country Average	67%	M	H	



Empowering Young People through Knowledge

College students are trained to monitor government procurement by accessing on-line the Philippine Government Electronic Procurement System (PhilGEPS) and reporting perceived anomalies to partner government agencies and civil society groups.

IV. Foreign-Assisted Projects

Legal Basis

141. Section 3 (Scope and Application) of the GPRA provides that "[T]his Act shall apply to the procurement of infrastructure projects, goods and consulting services, regardless of source of funds, whether local or foreign by all branches and instrumentalities of government.... Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine government is a signatory shall be observed." Therefore procurement based on a treaty or international or executive agreement will follow the procurement procedures specified in the treaty or agreement. The question of whether JBIC, ADB, and WB loan agreements should be considered as treaties or international or executive agreements was brought before the Supreme Court, and on June 8, 2007, the Court ruled that such loan agreements do indeed partake the nature of an executive or international

agreement within the purview of Section 4 of the GPRA. On this basis, the Supreme Court stated that the MDB's procurement guidelines agreed upon in the loan or grant agreement have primacy on the conduct and implementation of the bidding/procurement process for foreign-assisted projects.

Harmonization

142. In January 2003, the GOP and its development partners, particularly ADB, JBIC and the WB, agreed to harmonize six procurement areas in order to reduce transaction costs, simplify procedures, facilitate decision-making and reduce capacity-building costs for foreign-assisted contracts. The WB's move towards further reliance on Philippine country systems will depend largely on completion of these harmonization activities. Since then, four of the six areas have been completed or are underway, as shown in Table 16.

Table 16: Update on Harmonization Activities for GOP

AREA	UPDATE AS OF JUNE 30, 2007	Expected Completion Date	Funding Support
1. Implementing Rules and Regulations	IRR-A issued for domestic funded contracts in September 2003. Foreign-assisted projects are covered by Section 4 of the GPRA and Section 6 of the Harmonized GPMs. IRR-B agreed to be drafted and issued.	December 2009	USAID and WB-IDF
2. Bidding documents for works, goods and consulting services.	PBDs issued in August 2004. Works and Goods Documents harmonized with ADB, JBIC and World Bank. Consulting Service harmonized with WB.	Done	WB
3. Training and certification program	Included in the professionalization study	December 2008	WB-IDF
4. Procurement manual	GPM issued in July 2006. Mandatory adoption in January 2007.	Done	USAID and ASEM 2 Grant
5. Procurement reporting format	Included as part of the GPM.	Done	ASEM 2 Grant
6. Registration and licensing procedures with eligibility screening.	It was agreed to pursue this between DPWH and CIAP/PCAB, without MDB involvement.	Not to be done	

Regulations

143. Implementing Rules and Regulations B. While for the past four years MDB-funded projects have been satisfactorily implemented on the basis of Section 4 of the GPRA and Section 5 of the GPMs, there are also projects that are funded from bilateral and other sources. In view of recent controversies, there are now requests from various sectors to include in the harmonization activities, the drafting of the IRR-B to cover exclusively procurement under foreign-assisted projects, which will include not only the ODA from the MDBs, but also those from bilateral sources, as provided for in Section 1 of IRR-A: “[T]he IRR-B for foreign funded procurement activities shall be the subject of a subsequent issuance.” The proposed CPAR Action Plan includes the drafting, finalization and issuance of IRR-B.

Bidding Documents

144. Philippine Bidding Documents as Harmonized with ADB, JBIC and WB. The country's Procurement Harmonization Program took a big leap forward with the issuance of GPPB Resolutions in August 2004 and January 2005, requiring mandatory use of the PBDs for Works and Goods as harmonized with ADB, JBIC and WB for NCB method, and for Consulting Services as harmonized with the WB. The mandatory use of the documents nationwide by all procuring entities starting in June 2005 is enforceable by law based on Section 6 and Article VI of the GPRA. From the first identification of conflicting rules for each document, to workshops and discussion meetings, and then to final compromises to harmonize the conflicting rules, it took 19 months to finish the First Edition of the PBDs, which then became the first harmonized bidding documents issued within the East Asia and Pacific Region. The magnitude of this achievement is documented in Table 17.

145. Assessment of the Effectiveness of the Harmonized Philippine Bidding Documents. The August 2004 First Edition of the Harmonized PBDs was updated in a Second Edition in May 2005. The MDBs prescribed the use of the harmonized PBDs for NCB in all projects, effective upon the issuance of the Joint Letter from the MDBs advising the GPPB of its acceptability in May 2004. Since then, procurement arrangements with NCB method automatically prescribe the

use of Harmonized PBDs and the SUCs use the Harmonized PBDs as the materials for training on bid document preparation. The use of the same document by the GOP for its public bidding and by the MDBs for their NCBs has facilitated training and reduced, if not eliminated, confusion in the application of the procurement rules. However, challenges have arisen in implementing PBD use in the regions, districts and the LGUs, where the documents were found to be too comprehensive and the procedures too tedious for small local procurements. Simplified PBDs for small procurements up to certain thresholds are being developed and will be harmonized with MDBs prior to nationwide roll-out.

Procurement Manuals

146. Harmonization of the GPM. The development of the GPMs provided the opportunity to harmonize previous multiple procurement guidelines and mandate this one standard series of manuals to be used by all agencies and entities. Prior to the issuance of the GPMs, a number of large procuring entities had their own internal procurement guidelines and procedures, others used a compendium or compilation of procurement-related issuances, and every WB project had a separate procurement manual that was annexed to the Project Operations Manual. Procurement practitioners in agencies like DENR, DepEd, DOH and DPWH were referring to two or more procurement manuals, which could be inconsistent and confusing. The process of manual harmonization lasted a year—from May 2004 to May 2005—including pilot testing the GPMs in six national agencies, one GOCC, and one LGU. The harmonized GPMs were declared acceptable for use in MDB-financed projects through a joint letter dated September 14, 2006, signed by the country directors and representatives of ADB, JBIC and WB. It became effective for mandatory use starting January 2007.

147. While it would be premature to measure the effectiveness of the Harmonized GPMs, the following outcomes are expected:

- Having a single set of GPMs facilitates operational actions for the rules mandated in the GPRA and its IRR-A, which includes the MDB-funded projects.
- The GPMs provide a very informative reference and guide to public procurement practitioners and administrative

Table 17: Number of Conflicting Paragraphs in the PBDs

BIDDING DOCUMENTS	Number of Conflicting Paragraphs		
	WORKS	GOODS	CONSULTING SERVICE
Original number of conflicting paragraphs	128	145	171
Harmonized paragraphs	101	117	162
Remaining un-harmonized paragraphs	27	28	9
Percent harmonized	79%	81%	95%

staff, including the head of the procuring entity.

- They provide a clear definition of roles, responsibilities, and accountabilities in the procurement process.
- They serve as the sole procurement document specifying control measures to be used as authoritative reference in their regular or special audits by internal and external auditors.

An assessment on the effectiveness of the harmonized GPMs should be conducted after a year of mandatory adoption.

Acceptable Private and Commercial Practices

148. Procurement practices in the private sector generally adopt competitive methods, usually via the Internet since the June 2000 passage of the E-Commerce Law (RA 8792). Commercial firms make use of Bayantrade, a privately run enterprise for online e-procurement of goods and services that competitively selects the lowest complying offers, and of the suki or accreditation/registration system, where companies list their preferred suppliers, contractors and service providers in good standing, and solicit competition from those listed. Company policy may also require them to buy directly from their own affiliated or subsidiary companies, which is not competitive but keeps profits within the company. In the latter case, the Bank will not accept the practice as it connotes conflict of interest, except when the subsidiary company acts as procurement arm and the process undertaken is economic and efficient.

NCB Procurement Annex to the Loan Agreement

149. **Remaining Differences from WB Rules.** Prior to the issuance of the Harmonized PBDs and GPMs, the WB Loan Agreement Annex to the Procurement Schedule for WB-financed projects in the Philippines identified 27 national procurement rules for Works and Goods and six for Consulting Services as unacceptable due to non-conformance with best practices. While harmonization has not yet resolved 100 percent of these differences, it has drastically reduced the number of non-conforming rules from 27 for Works and Goods to 8 or

by 70 percent. This reduction was achieved by comparing the national rules against the Checklist of Acceptable Rules which was issued as Annex A of the May 2002 WB CPAR Guidelines, taking into consideration implementation experience during 2000-02. Following this comparison, the revised NCB Procurement Annex to the loan agreement is proposed to be changed to reflect an updated list of unacceptable rules as shown Annex 8A. As the CPAR was carried out in close collaboration with the ADB, ADB's National Competitive Bidding annex to their procurement plan is also provided as Annex 8. Harmonization will continue, and experience during the first year's use of the documents will open further avenues for greater harmonization.

Procurement Method Threshold

150. Thresholds per Contract for Procurement Methods.

Progress in harmonization between the GOP and its development partners is considered to have been successful because it has resulted in closer alignment of country and MDB systems. The reduction in the number of unacceptable rules has resulted in a greater reliance on country systems. The first step towards this outcome was the passage of a good legislative and regulatory framework that promoted the use of acceptable tools and procedures: the procurement manuals, the bidding documents and forms, the e-procurement system, and the national training program for NCB. However, this CPAR has pointed to high risk in the area of the institutional capacity and operations in the marketplace, in particular: (a) implementation, monitoring and enforcement; (b) capacity building; and (c) linkage to public financial management. The adoption of harmonized rules and the greater use of country systems is too recent for their full impact to be comprehensively assessed. In this regard, the WB's and ADB's fiduciary thresholds are shown in Table 18.

Anti-Corruption Measures in WB Projects

151. It is often said that the issue of governance in the Philippines presents a paradox. There is a strong presence of civil society in the country, an open media, and highly capable

Table 18: Amount of Threshold per Contract

ITEM	CATEGORY	CURRENT AMOUNT
ICB	Works	Over US\$5million
	Goods	Over US\$1million
NCB	Works	Over US\$100,000 to \$5million
	Goods ^(a)	Over US\$100,000 to \$1million
Shopping	Works and Goods	Not more than US\$100,000
National Consulting		
Shortlisting	Consulting Services	Not more than US\$200,000

^(a) ADB NCB threshold for Goods is set between US\$500,000 and US\$1 million depending on the project

individuals working in public administration. Nonetheless, corruption remains a critical barrier to the achievement of good governance. Governance indicators from a cross-country database indicate that, despite democratic processes, indicators for the rule of law, political stability, and control of corruption are lower in the Philippines than in comparable East Asian economies. Additionally, about 35 percent of Filipino firms surveyed in the 2004 ADB/WB Investment Climate Survey reported corruption as a major constraint to doing business in the Philippines, second only to macroeconomic instability. Corruption and collusion, particularly in procurement, also pose significant challenges for government expenditures, including those financed by the WB. It is therefore necessary for the WB to know how the Government is responding to procurement corruption and what specific strategies the program has employed to help mitigate the risk of corruption in procurement.

152. Project Appraisal Documents for projects in the WB portfolio for the Philippines that were approved starting in FY 2007 have therefore included an anti-corruption action plan as part of the WB's fiduciary responsibility. Once discussed with the implementing agency, the measures are incorporated into the agency's customized procurement manual or operation manual and are referenced in the loan or grant agreement. While each project will have its own implementation set-up and anti-corruption plan, it would be helpful to have a guide for the assessment and preparation of anti-corruption action plans for procurement. **Recommendation:** *A procurement anti-corruption guide or manual specific to the Philippines' public procurement system should be developed by the WB Procurement Team to assist project procurement specialists and task team members during project preparation. Once cleared by the Regional Procurement Manager, the anti-corruption guide or manual would be issued as a country directive for the preparation of procurement arrangements for new WB projects in the Philippines.*

153. The anti-corruption plan would consolidate the anti-corruption initiatives mentioned in the CPAR and would also incorporate the WB's GAC strategy, including:

- (a) mandatory adoption of PhilGEPS and its user guide under NCB once these have been successfully piloted and assessed by the WB and ADB;
- (b) customization of the Generic Procurement Manual for implementing agencies and for LGUs;
- (c) the strict use of bidding documents and contract forms;
- (d) the application of fraud and corruption policies of the Government and WB;
- (e) the involvement of civil society organizations as observers in the bidding process, as mandated by law, and as observers in contract implementation.

Governance in the Philippines presents a paradox. While there is a strong presence of civil society, an open media and highly capable individuals in public administration, corruption remains a critical barrier to achieving good governance.

A country-specific action plan for mitigating risks identified in the capacity assessment of the implementing agencies would become the basis for discussion with the agency and borrower in finalizing the project-specific procurement anti-corruption plan.

Use of Philippines Country System

154. The 2003 Paris Declaration emphasizes the importance of strong procurement and financial management systems in enabling more and better support from development partners. As a signatory of the Declaration, the GOP has strongly committed to improving development effectiveness in several areas, including the alignment and harmonization of procurement systems. The framework of the Philippines public procurement system is now closely aligned with international best practices, resulting from the harmonization of the basic tools for procurement: (a) a law and its implementing rules, which contain most of the best features of international procurement principles and standards, as suggested by international experts; (b) PBDs harmonized with ADB, JBIC and the WB; (c) GPMs harmonized with ADB, JBIC and the WB; (d) acceptability of the electronic procurement system for use in MDB-funded procurement; and (e) joint delivery of training programs.

155. The results and impacts of these aligned activities in MDB projects are: (a) increased thresholds for local or national competitive bidding methods; (b) reduced differences in rules for public bidding that are indicated in the NCB Annex to the loan agreement, making it easier to attain procurement proficiency regardless of funding source; (c) use of harmonized bidding documents that facilitate the work of bidders, procurement staff, members of the BAC, and auditors; (d) streamlined processes as a result of the adoption of GPMs that apply to all projects regardless of funding source; and (e)

“As a signatory of the Paris Declaration, the GOP has strongly committed to improving development effectiveness in several areas, including the alignment and harmonization of procurement systems.”

strengthened monitoring of compliance through the use of e-procurement resulting from the acceptability of PhilGEPS for MDB projects. The harmonization shortens the learning curve for new procurement practitioners and enables auditors to pinpoint those accountable at each procurement step.

156. Given these advances, all procurement arrangements in WB-assisted projects as recorded in the Project Appraisal Document will provide for:

- the loan agreement to contain the revised NCB Procurement Annex as shown in Annex 7 to this CPAR;
- joint procurement capacity assessment using primarily the

GPPB's agency procurement performance indicator (APPI) system to arrive at a joint risk rating and integrated measures to improve the capacity of the procuring entity;

- the use of the Harmonized PBDs for Goods and Works;
- the use of the Harmonized GPMs as part of the project operation manual. The GPM may be customized to be specific to the organizational and operational needs of the procuring entity, subject to the approval of the GPPB;
- the use of PhilGEPS as the primary source of procurement information, particularly in advertising for invitation to bid and posting of awards;
- joint procurement training programs for NCB, the procurement documents, forms and manuals, and alternative methods; and
- the adoption of anti-corruption measures in procurement based on a procurement capacity assessment of the implementing agency and the resulting procurement fiduciary arrangements. The anti-corruption measures will incorporate established anti-corruption measures of the Government, including the participation of CSO and private sector observers during the bidding and contract implementation stages.



Empowering Poor Communities

The KALAHI-CIDDS program of the Department of Social Welfare and Development aims to empower 4,000 communities in 183 of the country's poorest municipalities by strengthening popular participation in grassroots governance. Over 10,000 villagers, local government staff and project shaff have been trained in project planning, technical design, financial management, procurement and fiduciary oversight. It has the highest rate of community cost-sharing among all Official Development Assistance projects in the country.

V. Action Plan

157. The Proposed Action Plan to Improve the Public Procurement System shown on the following pages was developed by the CPAR Working Group from the BLI exercise at the Canyon Woods Workshop in Batangas, Philippines, held in May 2007. The matrix of the proposed action plan incorporates the agreed recommendations of the CWG, indicates the responsible agencies and entities, and provides for timelines to accomplish the action. The plan takes into account achievements and ongoing actions that were agreed during the second update of the 2002 CPAR and that have been monitored since that update, carried out in 2005 (see **Annex 9.**)

158. In view of scarce resources and limited capacity, the CWG prioritized the key result areas as follows: (a) implementing the strategic communication plan; (b) strengthening of monitoring and enforcement institutions and mechanisms; (c) strengthening of capacity on procurement; (d) improvements in procurement processes and procedures; (e) enhancing linkages between financial management and procurement; and (f) development of complaint and review mechanisms for procurement related disputes. The specific actions included in the Action Plan were presented to the PDF Working Group on Governance and Anti-Corruption in its meeting of August 2, 2007. The PDF Sub-Working Group on Procurement accepted the handling of the implementation of the activities in the Action Plan in its meeting of September 12, 2007.

In view of scarce resources and limited capacity, the CWG prioritized the key result areas as follows: (a) implementing the strategic communication plan; (b) strengthening of monitoring and enforcement institutions and mechanisms; (c) strengthening of capacity on procurement; (d) improvements in procurement processes and procedures; (e) enhancing linkages between financial management and procurement; and (f) development of complaint and review mechanisms for procurement related disputes.

Action Plan for Philippine Public Procurement System

KEY RESULT AREA	RECOMMENDED ACTION/MEASURE	BLI INDICATOR	
I. Communications Strategy	a. Develop and Implement Strategic Communication Plan for Procurement Reform	11 a)	
	b. Formulate a disclosure policy on procurement related information	11 (a)	
II. Strengthening of Monitoring and Enforcement Institutions and Mechanisms	a. Establish a covenant among oversight agencies (GPPB, COA, PAGC, DBM, OMB) to strengthen coordinative linkages on monitoring and enforcement of audit findings, and compliance with the procurement laws, and supported by the creation of a procurement sub-working group under the PDF governance and anti- corruption program	8 (c), 9 (b), 12 (d)	
	b. Establish and operationalize a records management system for procurement and contract management transactions. Replicate current good practices systems (cost estimation process, document tracking)	6 (c)	
	c. Complete and mainstream internal control systems for all government agencies	9 (c)	
	d. Implement phases 2 to 5 of PhilGEPS	4 (c), 5 (b)	
	e. Develop Database on Procurement-Related Fraud Cases	8 (c), 12 (c)	
	f. Develop and strengthen feedback or procurement monitoring system at the agency and national levels	5 (b)	
	g. Develop systems for the analysis of procurement-related information and linkage with other government-related databases for policy-making and decision-making purposes	5 (b)	

SPECIFIC WEAKNESSES	RESPONSIBLE ENTITY	FUNDING SOURCE	SCHEDULE
Lack of a communication plan for dissemination of information on procurement reform	GPPB	Possible funding to be raised before the PDF Working Group on Governance and Anti-Corruption (GAC)	June 2007 - Medium Term Draft Plan
Absence of policy on the protection and/or disclosure of proprietary, commercial, personal or financial information of a commercial and sensitive nature related to procurement.	GPPB, TAN	GOP, raise to PDF WG on GAC	December 2010
Weak monitoring of outcomes of dispute resolution cases. Compliance of only few agencies with the internal control procedures. The anticorruption program requires better coordination at a higher level and there are no special measures to prevent and detect fraud and corruption in public procurement.	GPPB, COA, PAGC, DBM, OMB	Possible funding to be raised before the PDF Working Group on GAC	December 2007
Lack of established norms for the safekeeping of records and documents related to procurement transactions and contract management that must be kept at the operational level.	GPPB, COA	GOP, WB (IDF for Internal Audit - August 2007)	December 2007
Although there are written standards for the internal controls, there is no periodic reporting to management to ensure compliance with the standards.	PAGC, DBM	WB, AusAID	December 2007 - Completion of Government Internal Audit Manuals June 2008 - Pilot Testing and Customization of Manuals Strengthen Internal Audit Units.
Lack of compliance with requirement to submit procurement information. Feedback mechanism has not been established to monitor procurement activities.	PhilGEPS, PS, GPPB	WB IDF Grant approved. ADB's Technical Assistance Grant being processed.	April 2008 - 2011
Lack of procedures to monitor outcomes of dispute resolution cases. There is no organized information on the number of graft-related cases filed, prosecuted and resolved.	GPPB, COA, PAGC, DBM, OMB	GOP possible funding to be raised before the PDF WG GAC	December 2008
Lack of compliance with requirement to submit procurement information. Feedback mechanism has not been established to monitor procurement activities.	GPPB, Internal Audit Units, Procurement Units, CSO	WB (IDF for Internal Audit - August 2007)	December 2009
Lack of analysis of procurement information carried out on a national scale.	GPPB, Internal Audit units, Procurement units, CSO	WB (IDF for Internal Audit - August 2007)	December 2009

Action Plan for Philippine Public Procurement System

KEY RESULT AREA	RECOMMENDED ACTION/MEASURE	BLI INDICATOR	
	h. Strengthen organizational capacity of GPPB-TSO to monitor and enforce procurement-related laws	4 (c)	
	i. Develop mechanism for utilization/optimization of observer's reports	12 (f)	
III. Strengthening of Capacity on Procurement	a. Pilot the adoption of value engineering as a policy for selected infrastructure projects costing over P 50M	1 (b), 6 (a)	
	b. Implement the Professionalization Program on Procurement including cost estimation and value engineering	5 (c), 6 (a)	
	c. Conduct of regular training programs on public procurement for private sector bidders	6 (b), 7(a), 12(d)	
	d. Develop procurement audit guide and conduct of regular training programs for external auditors on procurement laws and procedures	5(d) , 9(e)	
	e. Develop manual and training programs for third party observers (CSO) in the procurement process	6(b)	
	f. Develop and conduct special training programs on fraud detection for purposes of prosecution (target: investigators, prosecutors, auditors)	12 (d)	
	g. Develop performance management systems for procurement unit and staff	5 (d)	

SPECIFIC WEAKNESSES	RESPONSIBLE ENTITY	FUNDING SOURCE	SCHEDULE
Although the GPPB does not have to justify its activities before Congress, its financial stability is not secured by the legal framework.	DBM	GOP	
Weak compliance with the requirement to submit observers' reports; lack of monitoring of enforcement of follow-up action taken.	GPPB, OMB, COA	EU (existing), Possible funding from TAF	December 2009
The Medium-Term Philippine Development Plan provides for the application of value engineering in infrastructure projects to ensure the most cost-efficient designs and avoid overpricing of projects and there is a need to jump start such application	DPWH, DOTC, GPPB and NEDA Infracom	GOP (DPWH and DOTC budget)	December 2007 - Start of pilot-testing of selected GOP funded infrastructure projects (DPWH, DOTC, PPA) December 2008 - Issuance of Guidelines by NEDA
There is a need to develop a sustainable strategy to develop the capacity of government officials to understand and implement the procurement rules and regulations.	GPPB	WB (IDF Grant on Professionalization)	December 2008
Absence of organized efforts to address the capacity of small and medium enterprises to encourage their participation in procurement and to help new entries into procurement marketplace.	DTI, Phil-GEPS	GOP, ADB	January 2008 - start training
Need to strengthen knowledge of auditors on procurement.	COA	WB	December 2008 – 2010
Need to expand the network of third-party observers and strengthen their capacity to participate in the procurement process.	GPPB, CSO	Possible funding to be raised before the PDF Working Group on GAC	
Need to train investigators, prosecutors and auditors on fraud detection	GPPB, OMB, COA	Possible funding to be raised before the PDF Working Group on GAC	December 2008
Need to define the skills and knowledge competency requirements for specialized procurement jobs and to monitor agency compliance with standards..	GPPB, CSC, DBM, CESB	Raise to PDF WG on GAC	December 2010

Action Plan for Philippine Public Procurement System

KEY RESULT AREA	RECOMMENDED ACTION/MEASURE	BLI INDICATOR	
IV. Improvements in Procurement Processes and Procedures	a. Review and formulate implementing rules and regulations for foreign-funded procurement activities (IRR-B), including harmonization of blacklisting guidelines with IFIs	1 (b) (c)	
	b. Review and formulate implementing rules and regulations for locally funded specialized procurements for ICB including harmonized bidding documents (IRR-A) (arms and ammunition, pharmaceuticals, information technology)	1 (c)	
	c. Review detailed engineering guidelines with regard to standards and determine accountability for non-compliance among government agencies and consultants		
	d. Streamline and harmonize licensing and registration procedures for civil works	7 (a) (b) (c)	
	e. Develop procurement manuals, standard bidding documents for LGUs consistent with budgeting, accounting and auditing procedures	1 (b)	
	f. Develop simplified procurement guides for barangays consistent with financial management guidelines	1 (b)	
V. Enhancing Linkages Between Financial Management and Procurement	a. Develop clear guidelines for multi-year contracts that will integrate budgeting, expenditure, and procurement program	3 (a)	
	b. Develop a generic financial management manual that includes procurement and logistics processes with financial management	3 (b), 8 (a)	
VI. Development of Complaint and Review Mechanisms for Procurement Related Disputes	a. Review policies and procedures for procurement-related complaints and appeals covering: <ol style="list-style-type: none"> 1. Best practices of other countries 2. Creation of an independent administrative review body 3. Tapping of an existing administrative body with the appropriate mandate 4. Reasonableness of amount of protest fees 	1 (h), 10 (e)	
	b. Develop mechanisms to publish decisions on procurement related disputes (of HOPE on procurement related protest)	10 (d)	

SPECIFIC WEAKNESSES	RESPONSIBLE ENTITY	FUNDING SOURCE	Schedule
Lack of implementing rules and regulations governing procurement of foreign-funded projects The legal framework does not provide for the extension of timeframes even if foreign bidders are expected to compete.	TWG, PDF	WB	One year June 2008- July 2009
Lack of implementing rules and regulations and harmonized bid documents for specialized procurements	GPPB	GOP	Base guidelines One (1) year Harmonization One (1) year
Some agencies do not comply with guidelines on detailed engineering guidelines	COA	WB IDF grant supporting COA on various audit activities approved.	December 2007 – DPWH projects Include the others in the long list of COA
Many constraints inhibit private sector access to the procurement market, such as difficulties in getting licenses and permits.	DTI		December 2007 PCAB licensing
Differences in procurement practices and operations of local government units were not reflected in the provisions of the existing law.	GPPB, LGU Leagues, COA, DBM	ADB Harmonization TA EC grant	December 2007 Harmonization March 2008
Barangay officials say the procurement law may not be applicable to the nature of their procurements.	GPPB, LGU Leagues, COA, DBM	WB and ADB	December 2008
Agencies do not prepare multi-year plans that are linked to the annual budget process or to the preparation of annual procurement plans.	GPPB, DBM	GOP	December 2007
There is no link between financial management system and the procurement system to ensure enforcement of law.	DBM, COA	EC Grant	December 2008
Lack of independent administrative body or special court to review procurement related complaints and appeals Existence of policies that discourage filing of protest (protest fee requirement)	GPPB	Possible hiring of international consultant to be funded by the World Bank	December 2008
Decisions are not mandated to be published nor posted in the website.	GPPB	Raise to PDF WG on GAC	December 2010

Annex 1: Composition of the CPAR Working Group

Country Champions and Other In-Country Stakeholders

Undersecretary Laura Pascua, DBM, Chairperson
Assistant Director General Ruben Reinoso (represented by Engr. Elmer Dorado), NEDA, Co-Chairperson
Director Estanislao Granados DBM, Vice-Chairperson
Department agencies and observers of the GPPB and their representatives
The GPPB-TSO, led by its Executive Director Ruby Alvarez
Representatives from the leagues of barangays, municipalities, cities and provinces
Representatives from the private sector professional organizations
Representatives from civil society organizations

Development Partners:

The World Bank:
Cecilia Vales (Task Team Leader), Dominic Aumentado, Rene Sd. Manuel, Noel Sta. Ines, Cecilia Verzosa, Evelyn Quirante
Consultants: Jose Syquia, Jr., Sofronio Ursal, Alice Tiongson, Cipriano Ravanos, Heidi Mendoza, Maricel Lopez, Rosario Larracas, Dennis Santiago, Roberto Dollar

Collaborating Development Partners:

ADB: Michiel Van der Auwera, Robert Rothery, Candice McDeigan, Galia Ismakova, Joven Balbosa
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IOM: Mylene Caraig
TAF: Steven Rood, Maribel Buenaobra, Ky Johnson

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Aida Carpentero, Department of Education
Francisco Delfin, Department of Energy
Atty. Criselda Funelas, Department of Energy
Lorraine Sanchez, Department of Finance
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Crispinita Valdez, Department of Health
Connie Liberan, Department of Health
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Venancio Santidad, Department of Transportation and Communication
Mark Jalandoni, Office of the Ombudsman
Ador Paulino, Office of the Ombudsman
Cyril Ramos, Office of the Ombudsman
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Jose Concepcion, Barangay Forbes Park
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Jose Lugay, CBCP-LAIKO
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Gil Garcia, Sycip, SGV
Rebecca Sarmenta, SGV
Oly Anastasio, Sycip, SGV

Annex 2: WB Loan Portfolio and Lending Program

A. World Bank Loan Portfolio

SECTOR	PROJECT NAME	EFFECTIVENESS DATE	CLOSING DATE	NET LOAN Amount (US\$M)
1. ACTIVE LOANS				
EASHD	2nd Women's Health & Safe Motherhood	12/28/2005	06/30/2012	16.00
	Nat. Prog. Supp. for Health Reform	03/27/2007	06/30/2011	110.00
	National Basic Education	01/01/2007	12/31/2011	200.00
	EC-Trust Funds for Health Sector	06/04/2007	12/31/2010	8.6
	Subtotal - EASHD			334.6
EASRE	Agrarian Reform Communities Development 2	06/04/2003	12/31/2008	50.00
	Diversified Farm Income & Market Development	10/29/2004	06/30/2009	60.00
	Land Administration and Management II	10/11/2005	03/31/2011	19.00
	Ozone Depletion Substance (Montreal Protocol)	10/06/1994	06/30/2010	30.00
	Laguna de Bay Institutional Strengthening	04/02/2004	01/31/2009	5.00
	Mindanao Rural Development Program 2	07/03/2007	12/31/2012	83.80
	NPS-Environment & Natural Resources Management	11/27/2007	12/31/2012	50.00
	Subtotal - EASRE			297.80
EASTE	Metro Manila Urban Transport	12/06/2001	03/31/2009	60.00
	Bicol Power Restoration Project	5/21/2008	07/30/2008	12.9
	National Roads Improvement Project	12/31/2012	232.0	
	Rural Power Project	05/06/2004	12/31/2009	10.00
	Electric Cooperative System Loss Reduction (GEF)	05/05/2004	12/31/2011	12.00
	Subtotal - EASTE			326.90
EASUR	LGU Finance & Development	02/28/2000	06/30/2008	60.00
	LGU Urban Water & Sanitation Project APL2	05/16/2002	11/30/2008	15.0
	Strategic Supp. Loc. Dev & Inv. Proj.	02/28/2007	06/30/2012	100.00
	Manila Third Sewerage Project	03/06/2006	06/30/2010	64.00
	Subtotal - EASUR			239.0
EASSD	Kalahi-CIDSS	12/16/2002	06/30/2009	100.00
	ARMM Social Fund	05/19/2003	06/30/2008	33.60
	Mindanao Trust Fund	3/30/2006	12/31/2010	3.0
	Subtotal - EASSO			136.60
EASPR LEGES	Judicial Reform Support	12/04/2003	12/31/2009	21.90
	NPS Tax Admin. Reform	06/25/2007	12/31/2011	11.00
	Subtotal - EASPR			32.90
	SUBTOTAL - ACTIVE LOANS			1,367.8
2. GEF-supplements to projects (not counted separately in the system)				
	Rural Power Project (GEF)	05/06/2004	12/31/2009	9.00
	GEF-ENRMP	11/27/2007	12/31/2012	7.00
	Manila Third Sewerage (GEF)	02/06/2008	11/30/2012	5.00
	SUBTOTAL - GEFs			21.0
TOTAL- FY07 ACTIVE PORTFOLIO				1,388.8
CLOSED in FY07				
	Rural Finance 3	05/06/1999	09/30/2007	147.50
	Water Districts Development	09/10/1999	12/31/2006	17.80
	National Road Improvements & Management	07/07/2000	03/31/2007	150.00
	Social Expenditure Management 2	12/11/2002	06/30/2007	100.00
	Community Based Resources Development	10/06/1998	06/30/2007	38.00
	MMURTRIP (GEF)	12/06/2001	12/31/2007	1.3
	SUBTOTAL - CLOSED			454.6

B. World Bank Lending Program		
BANK BUDGET FUNDED	PROJECT NAME	COST/LOAN (US\$M)
FY08		
P079935	2nd National Road Improvement and Management Program	232
P106262	Bicol Power Restoration Project	12.9
FY09		
P101581	Private Sector Development Support for the Calamba Laguna North South Highway	140
P082144	National Sector Support for Social Welfare	50
P097445	Local Government Support for Performance Grants	70
P096822	Local Government Support for Regional Water Supply	50
P096821	Light Rail Transit Line 1 South Extension	260
P105325	Second Judicial Reform Support Project	40
P107630	National Program Support for Government Financial Integrated Management Information System	10
P108904	Local Government Support for Water (Development Bank of the Philippines 3)	50
P088926	National Program Support - Participatory Irrigation Development Project	50
P071119	Manila West Water Network	125
P095375	Partial Risk Guarantee to Power	250
P101763	Development Policy Loan 2	250
FY10		
P108836	National Program Support - Disaster Management	30
P108835	Pasig River Urban Rehabilitation	50
P078252	National Program Support - Agrarian Reform	60

B. World Bank Lending Program		
NON-BANK BUDGET FUNDED	PROJECT NAME	COST/LOAN (US\$M)
FY09		
P096836	Global Environmental Facility-Mindanao Rural Development Program 2-Coastal Marine	7
P106732	Ethanol Plant Waste	-
P090966	Prototype Carbon Fund -Burgos Wind Project	-
P106260	Manila Bus Dispatch	-
FY10		
P106890	Persistent Organic Pollutants Contaminated Unintentional Persistent Organic Pollutants Release	2 10
P106885	Climate Change Adaptation	5
P101076		

Annex 3: Summary of APPI Assessment Scores for 10 Agencies (as of June 22, 2007)

MAJOR CRITERIA	BIS INDICATOR NAME	BLI INDICATOR	DPWH	DEPED	
1. Strategy (6%)	PILLAR I – The Legislative and Regulatory Framework				
	1. Agency Procurement Reform Strategy (40%)	Indicator 1	2.40%	2.40%	
	2. Strategic policy initiatives outlined by the agency (30%)	None	1.80%	0.00%	
	3. Key/Strategic procurement issues (30%)	None	0.00%	0.00%	
	Total for Strategy		4.20%	2.40%	
Agency Professionalization Measures (16%)	PILLAR II – The Central Institutional Framework and Management Capacity				
	4. Human Capital (60%)	5 (c)	9.60%	9.60%	
	5. Use of the Government Procurement System (G-EPS) (20%)	5 (b)	3.20%	3.20%	
	6. Legal incentives to procurement officers and employees (20%)	None	1.40%	0.00%	
	Total for Agency Professionalization		14.20%	12.80%	
Organizational Structure (16%)	PILLAR III – The Procurement Operations and Market Practices				
	7. BAC and BAC Secretariat (40%)	None	6.40%	6.40%	
	8. Hierarchical structure of agency (30%)	6 (d)	1.60%	4.80%	
	9. Standard documentation and procedures (30%)	2 (e), 2 (b), 6 (c)	4.80%	4.80%	
	Total for Organizational Structure		12.80%	16.00%	
Agency Procurement Process (30%)	On Competition (10%)				
	10. Method of procurement used: Shopping (30% of 10%)	None	3.00%	0.00%	
	11. Limited Source Competition/ Shopping (20% of 10%)	None	2.00%	0.00%	
	12. Direct contracting (20% of 10%)	None	2.00%	0.00%	
	13. Bidders participation (15% of 10%)	7(b)	0.00%	0.00%	
	14. Time for preparation of bids (15% of 10%)	None	1.50%	1.50%	
	Total for Competition		8.50%	1.50%	

	DOH	AFP	DND	NPC	CITY OF MARIKINA	DILG	DENR	BIR	AVERAGE STORES
	2.40%	2.40%	2.40%	2.40%	2.40%	2.40%	2.40%	2.40%	2.40%
	1.80%	0.00%	1.80%	1.80%	1.80%	1.80%	1.80%	1.80%	1.44%
	1.80%	0.00%	1.80%	1.80%	0.00%	1.80%	1.80%	1.80%	1.08%
	6.00%	2.40%	6.00%	6.00%	4.20%	6.00%	6.00%	6.00%	4.92%
	0.00%	0.00%	0.00%	0.00%	9.60%	0.00%	0.00%	0.00%	2.88%
	3.20%	3.20%	3.20%	3.20%	3.20%	3.20%	3.20%	3.20%	3.20%
	0.00%	3.20%	0.00%	0.00%	1.40%	0.00%	0.00%	3.20%	.92%
	3.20%	6.40%	3.20%	3.20%	14.20%	3.20%	3.20%	6.40%	7.00%
	6.40%	6.40%	6.40%	6.40%	6.40%	6.40%	6.40%	6.40%	6.40%
	4.80%	4.80%	4.80%	4.80%	1.60%	4.80%	4.80%	4.80%	4.16%
	4.80%	3.20%	4.80%	4.80%	4.80%	4.80%	2.40%	3.20%	4.24%
	16.00%	14.40%	16.00%	16.00%	12.80%	16.00%	13.60%	14.40%	14.80%
	3.00%	0.00%	0.00%	3.00%	3.00%	0.00%	3.00%	3.00%	1.80%
	2.00%	0.00%	0.00%	2.00%	2.00%	0.00%	0.00%	2.00%	1.00%
	2.00%	0.00%	0.00%	2.00%	2.00%	0.00%	0.00%	2.00%	1.00%
	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	1.50%	0.00%	.15%
	1.50%	1.50%	1.50%	1.50%	1.50%	1.50%	1.50%	1.50%	1.50%
	8.50%	1.50%	1.50%	8.50%	8.50%	1.50%	6.00%	8.50%	5.45%

Annex 3: Summary of APPI Assessment Scores for 10 Agencies (as of June 22, 2007)

MAJOR CRITERIA	BIS INDICATOR NAME	BLI INDICATOR	DPWH	DEPED	
	On Transparency (10%)				
	15. Advertisement of bid notices and publication of awards (70% of 10%)	1 (c)	7.00%	7.00%	
	16. Posting of all procurement opportunities, activities, awards in G-EPS (30% of 10%)	5 (a)	1.50%	0.00%	
	Total for Transparency		8.50%	7.00%	
	On Efficiency (10%)				
	17. Procurements in AP (30% of 10%)	3 (a)	0.00%	3.00%	
	18. Time for public bidding (25% of 10%)	6	2.50%	2.50%	
	19. Time for bid evaluation (15% of 10%)	None	1.50%	0.00%	
	20. Bidding process cancelled (15% of 10%)	None	1.50%	1.50%	
	21. Late payments (15% of 10%)	3 (b)	0.00%	0.00%	
	Total for Efficiency		5.50%	7.00%	
	Total for Agency Procurement Process		22.50%	15.50%	
	Effectiveness (16%)				
	22. Award prices lower than ABC	None	6.40%	6.40%	
	23. Contract amount increase (30%)	None	4.80%	4.80%	
	24. Number of Protests (10%)	1 (h)	1.60%	1.60%	
	25. Time to resolve protests (10%)(10)b	1.60%	1.60%	1.60%	
	26. Action taken on protest (10%)	10 (c)	1.60%	1.60%	
	Total for Effectiveness		16.00%	16.00%	
Accountability Measures (16%)	PILLAR IV – The Integrity of the Public Procurement System				
	27. Internal audit units (60%)	9 (a)	9.60%	9.60%	
	28. Systems and procedures to hear and document administrative cases (40%)	10 (b)	6.40%	6.40%	
	Total for Accountability Measures		16.00%	16.00%	
	TOTAL AGENCY RATING		85.70%	78.70%	

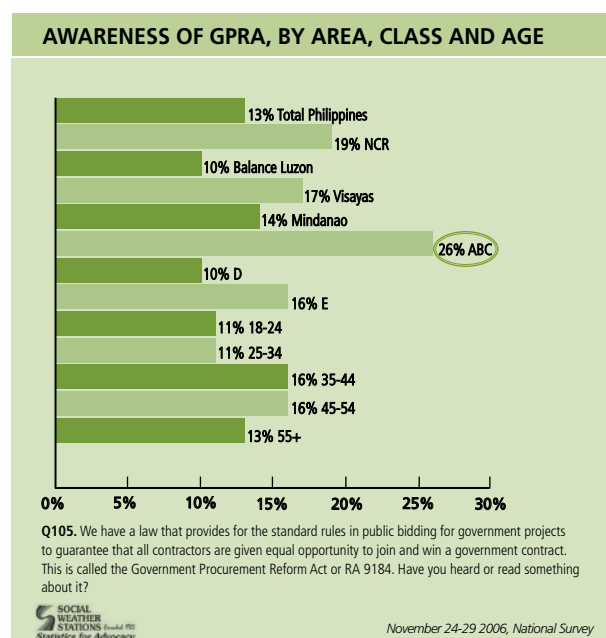
	DOH	AFP	DND	NPC	City of Marikina	DILG	DENR	BIR	Average Stores
	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%
	3.00%	0.00%	0.00%	3.00%	1.50%	0.00%	0.00%	3.00%	1.20%
	10.00%	7.00%	7.00%	10.00%	8.50%	7.00%	7.00%	10.00%	8.20%
	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	3.00%	3.00%	.9%
	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%
	0.00%	1.50%	2.50%	0.00%	1.50%	1.50%	1.50%	1.50%	1.15%
	1.50%	1.50%	1.50%	1.50%	1.50%	1.50%	1.50%	1.50%	1.50%
	0.00%	1.50%	0.00%	0.00%	0.00%	1.00%	1.50%	1.50%	.55%
	4.00%	7.00%	6.50%	4.00%	5.50%	6.50%	10.00%	10.00%	6.60%
	22.50%	15.50%	15.00%	22.50%	22.50%	14.00%	23.00%	28.50%	20.25%
	6.40%	6.40%	6.40%	6.40%	6.40%	6.40%	6.40%	6.40%	6.40%
	4.80%	4.80%	4.80%	4.80%	4.80%	4.80%	4.80%	4.80%	4.80%
	1.60%	1.60%	1.60%	1.60%	1.60%	1.60%	1.60%	1.60%	1.60%
	1.60%	1.60%	1.60%	1.60%	1.60%	1.60%	1.60%	1.60%	1.60%
	1.60%	1.60%	1.60%	1.60%	1.60%	1.60%	1.60%	1.60%	1.60%
	16.00%	16.00%	16.00%	16.00%	16.00%	16.00%	16.00%	16.00%	16.00%
	9.60%	9.60%	0.00%	9.60%	9.60%	0.00%	0.00%	9.60%	6.72%
	6.40%	6.40%	0.00%	6.40%	6.40%	0.00%	0.00%	6.40%	4.48%
	16.00%	16.00%	0.00%	16.00%	16.00%	0.00%	0.00%	16.00%	11.20%
	79.70%	70.70%	56.20%	79.70%	85.70%	56.20%	61.80%	87.30%	74.17%

Annex 4: SWS Survey Results on the Effectiveness of the Public Procurement System

[Excerpt from February 2007 report, "Public Opinion on Procurement Reform"]

13% Aware of the Government Procurement Reform Act (GPRA)

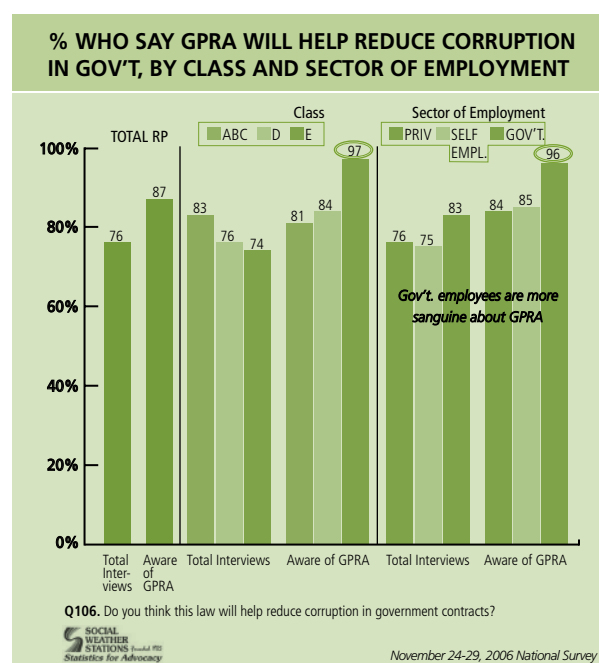
Based on survey results, only one in ten (13%) of Filipinos are aware of the Republic Act No. 9184, or the Government Procurement Reform Act. Most of the respondents who are aware of the GPRA belong to classes ABC (26%) and are college graduates (30%). WHAT DOES ABC, D, E MEAN? WHERE ARE COLLEGE GRADUATES?



Further, compared to other sectors of employment, more respondents employed by the government are aware of the GPRA constituting 29%; while those employed in the private sector or are self-employed comprise 18% and 11%, respectively. However, the 29% awareness rating for government employees is still low considering that the GPRA is being implemented by the public sector and that the training program of the GPPB-TSO is primarily aimed at educating government employees.

76% Optimistic that GPRA Can Reduce Corruption

Nevertheless, 76% of total respondents believe that the GPRA can help reduce corruption in government contracts. Further, 87% of the 13% respondents who are aware of the GPRA believe that implementation of the law can help reduce corruption in government. All stakeholders see these figures as very encouraging signs.



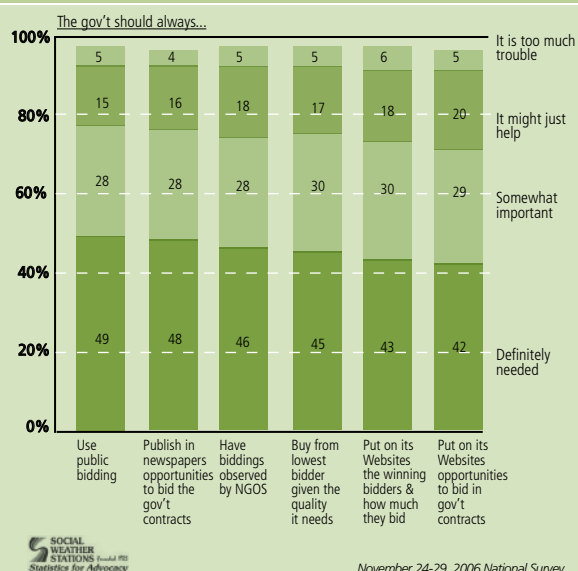
Interestingly, out of those aware of the GPRA, more respondents belonging to class E are optimistic about the anti-corruption features of the GPRA, with 97% who believe that the law can lessen corruption. Ombudsman Marcelo, therefore, recommends that the communication strategy should not take for granted Filipinos belonging to the class E. He believes that Filipinos belonging to class E may be tapped to be observers. He cites, as examples, the non-governmental organizations in Iloilo which, in partnership with the Ombudsman, have filed cases against their local government officials for procurement related cases.

Further, more government employees are optimistic about the impact of GPRA in lessening corruption. Four out of five (83%) of government employees, whether aware of the GPRA or not, believe that the GPRA can help reduce corruption. More importantly, almost all (96%) of the government employees who are aware of the GPRA believe that it can help reduce corruption in government.

73% to 77% Agree with Reform Measures in the GPRA

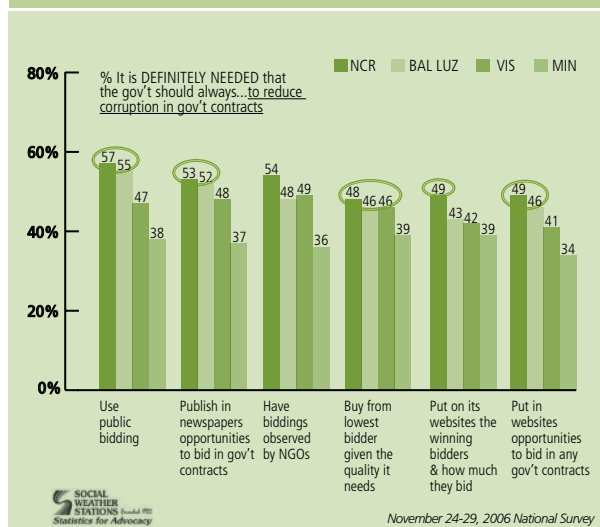
To ensure an open, competitive, and transparent public procurement system, the GPRA prescribes public bidding as a general mode of procurement. Further, the GPRA mandates that all invitations to bid must be published in a newspaper of general circulation and in government Websites. Names of winning bidders and the amount of contracts awarded to them must likewise be posted in the Philippine Government Electronic Procurement System (PhilGEPS). Government agencies are also mandated to invite observers from non-government organizations and professional associations. These are some of the reform measures incorporated in the GPRA in order to enhance transparency and lessen corruption in public procurement. Survey results indicate that about three-fourths (73-77%) of Filipinos agree with these measures, with pluralities (42-49%) of them who say they are *definitely needed*.

EVALUATION OF EFFECTIVENESS OF SPECIFIC WAYS TO REDUCE CORRUPTION IN GOV'T CONTRACTS



When further dissected according to area, survey results indicate that more respondents from NCR and Balance Luzon feel strongly about the need to adopt these reform measures. On the other hand, the least number of respondents who believe in these reform measures are from Mindanao.

% WHO SAY SPECIFIC WAYS TO REDUCE CORRUPTION IN GOV'T CONTRACTS ARE DEFINITELY NEEDED, BY AREA

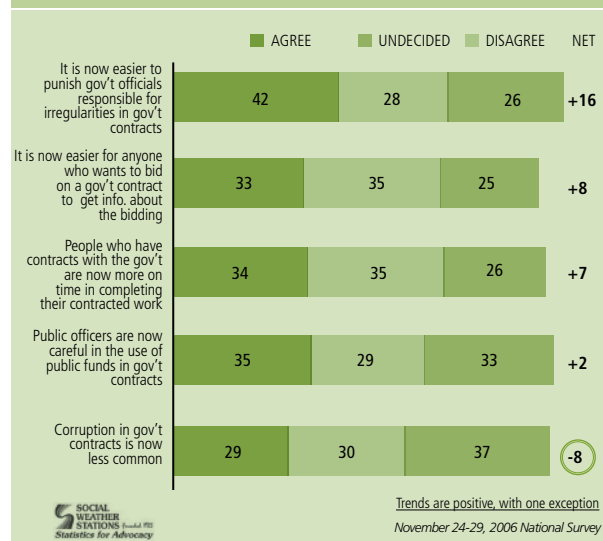


Moreover, most of the respondents who believe that these reform measures are definitely needed belong to classes ABC and are college graduates. Also, it appears that older people (aged 55 and above) feel more strongly about the need to implement these measures.

3.4. Public Perception on Effectivity of GPRA

To examine the public perception on the effectivity of the GPRA with respect to reducing corruption in government contracts, and accountability and transparency, SWS asked the respondents' opinion on a battery of trend questions. On the whole, trends are positive with one exception. Pluralities of the general public agree that compared to about five years ago, when GPRA was not yet implemented, it is now easier to make government officials accountable for irregularities in government contracts, to get information about government biddings, contractors are now more on time in completing government contracts, and public officers are now more careful in the use of government funds. But more of those who say that corruption in government contracts is more prevalent now than about five years ago.

BATTERY OF TREND QUESTIONS: COMPARED TO ABOUT FIVE YEARS AGO...



The Asia Foundation

Annex 5: Recommendations and Agreements on CSO Participation

ISSUES	RECOMMENDATIONS	COMMENTS/AGREEMENTS
1. Sustaining participation	<p>Financial support.</p> <p>Ensure the commitment of trained CSOs to participate in actual monitoring, by establishing operating networks outside Metro Manila.</p> <p>Quality monitoring of trainings and trained observers, and the possibility of coming up with a registration system to ensure that only appropriately trained observers are invited.</p> <p>Consider the possibility of entering into an agreement between church-based organizations acting as observers in LGUs.</p> <p>Explore the possibility of tapping the services of graduating students and the others in academe.</p>	<p>Financial support should come outside of the government. The organization should take care of the expenses of the deployment of their own members in observing public bidding.</p> <p>The government should inform the CSOs of alternative sources of funding.</p> <p>One percent of earnings from sale of bid documents should be spent on training CSOs, rather than as financial incentives.</p> <p>Observers should be armed with user-friendly checklists during biddings, so that less effort is spent in having to develop Diagnostic Reports. This will also provide a single format that readily provides the necessary data to relevant oversight agencies.</p> <p>Networks would have to be established to process the data from the observers' checklists to generate information.</p> <p>The retirees can also be tapped.</p>
2. Absence of clear procedures in the selection of observers (especially in the LGUs)	<p>Reiterate the provision of the law regarding the selection of observers, and improve the existing guidelines in order to increase the participation of appropriate observers.</p>	<p>A pledge of commitment from CSOs and the GOP is needed.</p>
3. Absence of a guide in observing public biddings	<p>Develop a guide on the conduct of third party observation, defining the role of observers in relation to promoting transparency and accountability.</p> <p>Issue standard checklists that are user-friendly to observers, but provide substantial information for monitoring and policy agencies.</p>	<p>Reports should not only cover the procedures, but also the actual conditions/problems, e.g., funding problems, attendance of BACs members.</p> <p>A standard checklist and a narrative observation.</p> <p>Observers should not be considered as voting members, because the moment they become voting members, they immediately gain an interest in the bidding and lose their third party objectivity.</p>
4. Trained observers not being invited	<p>See # 2 above.</p>	<p>See # 2 above.</p>
5. Observers in the LGUs are not trained on the law	<p>Develop training programs for observers outside Metro Manila.</p> <p>Informing the LGUs of the need to train their observers.</p> <p>An LGUs should be motivated to into a MOA with a CSO that has a deep network nationwide. See # 3 above.</p>	

Annex 5: Recommendations and Agreements on CSO Participation

ISSUES	RECOMMENDATIONS	COMMENTS/AGREEMENTS
6. Quality of training	A government agency should be in charge of accrediting CSO training programs, with emphasis not only on compliance with procurement rules and procedures, but more on identifying RED FLAGS and prevalent modes of circumventing controls.	Central management is needed in order to set the focus, and manage the whole program. Provide for an avenue to consolidate findings. Trainings using the vernacular in the case of the barangays. Customized trainings for barangays.
7. Absence of mechanism for maximizing observers' report	Institutionalize a mechanism for gathering, summarizing and establishing trends based on existing reports. Publication of success stories of CSOs. Creation of networks of trained CSO observers armed with easy-to-use checklists and standard reporting formats	The report will be self-serving if only the BAC and the local chief executive would be furnished with copies of these. An alliance/coalition of CSOs should be a force to reckon with, as they synthesize the reports, and rate agencies based on these. Empowering the CSOs thru the use of their reports. The alliance/coalition of NGOs should be nationwide so that an oversight agency can easily touch base with an observer in the region.
8. Improving feedback handling mechanism	GPPB and other oversight agencies to enter into an agreement to institutionalizing feedback handling mechanisms. This may be conducted after consultation with CSOs. Utilization of the checklists and standard reporting formats for information generation by a centralized agency, such as the GPPB and the Ombudsman.	See # 7 above.

ANNEX 6: UNACCEPTABLE GOP PROCUREMENT RULES

A. CHECKLIST COMPARING NCB PROCEDURES AND WB AND ADB POLICIES

ISSUES	YES	NO	WB AND ADB POLICY	REMARKS
1. Are there eligibility restrictions based on nationality of bidder and/ or origin of goods (other than primary boycotts)?	/		Not allowed	There are preferences on nationality of bidders in the law. To be retained in the NCB Annex as an unacceptable rule
2. Are there primary boycotts which are established by law?		/	Only primary boycotts are acceptable ADB: No boycotts are allowed	The law has no policy on boycott. Acceptable
3. Are bidding opportunities advertised in the local press?	/		WB: Required for all public bidding. ADB: Requires advertising above \$500,000 for goods and \$1million for works.	The law mandates advertisement of all public biddings and posting in PhilGEPS for all procurement. Acceptable
4. Are prospective bidders allowed at least 30 days for bid preparation (except for commodities/small goods contracts)?		/	Required	Latest GPPB directive shortened the bid preparation time less than 30 days for public bidding. Unacceptable.
5. Are contractors/suppliers prequalified for large/specialized contracts?	/		Required	The law mandates for eligibility screening (ES) process, but the ES requires long list of documents that could disqualify bidders for non-submission of one unnecessary document. Unacceptable
6. Are minimum experience, technical and financial requirements (for pre-or post-qualification) explicitly stated in the documents? Registration should not be used as a substitute for advertisement when open competition is required. However, when advertising for civil works, borrowers could indicate the required minimum category of contractor specified in the registration system.	/		Required Required	Yes, the minimum requirements are explicitly stated in the bidding documents. Acceptable There is a registration of contractors that captures basic qualification data. Acceptable
7. Is an invitation to prequalify advertised for each procurement involving large or complex potential contracts?	/		Required	Advertisement for public bidding is required. Acceptable

Annex 6: Unacceptable GOP Procurement Rules

A. CHECKLIST COMPARING NCB PROCEDURES AND WB AND ADB POLICIES

ISSUES	YES	NO	WB AND ADB POLICY	REMARKS
8. Are joint ventures with local firms required for foreign firms' eligibility?	/		Not allowed	Foreign firms are encourage, but not required to joint venture with local firms. Acceptable.
9. Are joint venture partners jointly and severally liable?	/		Required.	Yes. Acceptable
10. Are there set limitations to the number of firms who can bid for a contract?		/	Not allowed	The law does not set limitation. Acceptable
11. Are parastatals allowed to bid?	/		Acceptable only if they (i) are financially autonomous, (ii) operate under commercial law, and (iii) are independent from borrower and its purchasing/contracting authority.	Parastatals follow commercial law, are autonomous and independent as provided in their Charter. Acceptable
12. Are bidders required to register with a local or federal authority as a prior condition for bidding?	/		Should be discouraged. Acceptable only if registration criteria, process and cost reasonable/efficient and qualified foreign firms are not precluded from competing.	There is a separate law on licensing and registration for contractors and it requires licensing prior to submission of bids. Unacceptable. To be retained in the NCB Annex
13. Are extensions to bid validity allowed?	/		Acceptable only if justified by exceptional circumstances	Yes, they are allowed to extend only for valid reasons. Acceptable.
14. Are there restrictions on the means of delivery of bids?		/	Not allowed, except when bidders have to submit physical samples. Then they can be required to deliver bids by mail, by courier, by hand, etc.	There are no restrictions on the means of delivery of bids, hence acceptable.
15. Is preference given to suppliers or contractors based on region or locality of registration, small size, ethnic ownership, etc.?	/		Not allowed.	Flag law and provincial preferences are provided in the law. Unacceptable and to be retained in the NCB Annex.
16. Are there restrictions on sources of labor and material?		/	Not allowed, except for unskilled labor, if available locally.	There are no restrictions on sources of labor and materials in the law. Acceptable. The provision in the current NCB Annex should be deleted.

Annex 6: Unacceptable GOP Procurement Rules

A. CHECKLIST COMPARING NCB PROCEDURES AND WB AND ADB POLICIES

ISSUES	YES	NO	WB AND ADB POLICY	REMARKS
17. Is public bid opening required? Does it occur immediately or closely following the bid submission deadline?	/		Required	Yes, open public bidding is the primary mode of procurement. Acceptable
18. Is a "two envelope" bid opening procedure permitted for procurement of goods or works? ⁹ NOTE: ADB allows two envelope bidding.	/		Should be discouraged. Allowed only if (i) domestic law precludes use of one envelope and (ii) provided adequate safeguards against retaining second envelope unopened are incorporated in the two envelope procedures and effective bid protest mechanisms are already in place for the due processing of bid complaints.	While the law requires two or three envelopes, the envelopes are required to be opened on the same day on the same bid opening event. Transparency is achieved. This practice is acceptable.
19. Is automatic rebidding required if too few bids are received?		/	Acceptable, provided all responsive bidders are allowed to bid, the process is efficient and no serious delays result.	The law allows award to only one bid provided it is responsive. This is acceptable.
20. Is "bracketing" used in bid evaluations? ¹⁰ Are bid evaluation criteria other than price allowed?	/		Not allowed. Only if quantified in monetary terms	ABC is used as ceiling. It is allowed by WB under certain conditions as indicated in Annex 8.3. Therefore acceptable provided the conditions are met. ADB does not allow it. Yes, they are allowed provided quantifiable. Acceptable.
21. Is award made to lowest evaluated qualified and responsive bidder?	/		Required	The law mandates that award be made to the lowest calculated and responsive bid. Acceptable.
22. Are price negotiations conducted with "winning" bidders prior to contract signature?		/	Not allowed, except where the bid price is substantially above market or budget levels and then only if negotiations are carried out to try to reach a satisfactory contract through reduction in scope and/or reallocation of risk and responsibility which can be reflected in a reduction in Contract Price. (See Guidelines para 2.60)	The law prohibits negotiation with lowest calculated and responsive bidder. Acceptable.

⁹ All technical envelopes are opened first and, after review, price envelopes of all or only qualified/responsive bids are opened in the second round.

¹⁰ Rejection of bids outside a range or "bracket" of bid values.

Annex 6: Unacceptable GOP Procurement Rules

A. CHECKLIST COMPARING NCB PROCEDURES AND WB AND ADB POLICIES

ISSUES	YES	NO	WB AND ADB POLICY	REMARKS
23. Are price adjustment provisions generally used?		/	Not required, but recommended for works contracts of one year or more in duration when domestic inflation rate is high.	Price adjustment is allowed for extraordinary inflation, fortuitous event or extraordinary circumstances per GPPB Res. 07-2004 dated July 22, 2004. Acceptable
24. Are the terms and conditions used in goods and works procurement generally appropriate for the size and nature of contract intended?	/		Required (to be acceptable they should be balanced, reasonable, and clearly address the most important issues that lead to problems during performance, e.g. risk allocation, payment, inspection, completion/ acceptance, insurance, warranties, changes, contract remedies, force majeure, governing law, termination, etc.)	The size and nature of the contract are the bases for the terms and conditions specified in the bidding documents. Acceptable.
25. Are contract scope/conditions modified during implementation?	/		Acceptable, but the Bank's approval is required for changes in those contracts that were subject to prior review under the Loan Agreement.	Acceptable. Retain the rule in NCB Annex that for contracts subject to prior review, 15% or more modification should be subject to prior review.

Annex 7: Review of WB's NCB Procurement Annex

CURRENT VERSION	RESULT OF REVIEW USING CHECKLIST	PROPOSED CHANGES
1. Eligibility screening shall not be applied. However, bids that do not contain any of the following documents will not pass the documentary compliance check: (a) evidence of the required financial, technical or production capability; (b) audited financial statements; (c) credit line or cash deposit certificate; (d) bid security; and (e) authority of the bid signatory	Eligibility screening is not acceptable. Retain the same wording.	No change.
2. In case of prequalification, if any bidder is denied access to the bidding process for reasons unrelated to its financial and technical qualifications to perform the contract, prior concurrence of the Bank shall be sought.	There is no prequalification process under the Procurement Law. Eligibility Screening process per Section 23 of the law is similar to a prequalification process where the documentary submissions relevant to the qualification of the bidders are screened using pass or fail criteria. Since prequalification is non-existent in the law, this superfluous.	For deletion.
3. A ceiling may be applied to bid prices, with prior concurrence of the Bank in advance of bidding. However, the Approved Budget Estimate may be disclosed in the advertisement or in the bidding documents.	Following harmonization process, ceiling is now allowed provided four conditions are met, which should be indicated in the Annex.	A ceiling may be applied to bid prices provided the following conditions are met: (a) Bidding documents are obtainable free of charge on a freely accessible website. (b) The agency has procedures in place to ensure that the ABC is based on Engineer's Estimate; (c) The agency has trained cost estimators on estimating prices and analyzing bid variance; (d) the agency has established a system to monitor and report bid prices relative to ABC and Engineer's estimate.
4. Domestic or regional preferences will not be applied in the evaluation of bids, and other preference in effect in the Philippines will not be used except with prior concurrence of the WB.	Provincial preferences and general preferences are still in effect. Retain this in the NCB Annex.	No change.
5. Suppliers and contractors will not be required to purchase only local goods or supplies or materials.	There is no requirement in the law or the IRR to purchase only local goods or supplies or materials. Hence this should be Acceptable. The provision in the current NCB Annex should be deleted.	For deletion.

Annex 7: Review of WB's NCB Procurement Annex

CURRENT VERSION	RESULT OF REVIEW USING CHECKLIST	PROPOSED CHANGES
6. In case of contracts for prior review, modification exceeding 15% of contract amount and materials changes in the conditions during implementation require prior Bank concurrence.	Acceptable. Retain the rule in NCB Annex that for contracts subject to prior review, 15% or more modification should be subject to prior review.	No change.
7. Foreign suppliers and contractors shall be allowed to participate, if interested, without first being required to associate with, or enter into joint venture, with local firms. Moreover, foreign bidders shall be allowed to bid, even without registration, licensing, and other government authorizations, leaving these requirements for after award and before signing of contract	Unacceptable.	No change.
8. For works contract, the experience qualification requirement shall be: (a) at least one previous contract at 80% of the estimated cost of the contract being procured; and (b) an annual turnover from all works averaged over the last three years equal to 100% of the estimated cost of the contract being procured.	Based on experience, this requirement is useful to ensure contractor capability.	No change.

Annex 8A: World Bank's NCB Requirements

1. Eligibility screening shall not be applied. However, bids that do not contain any of the following documents will not pass the documentary compliance check: (a) evidence of the required financial, technical or production capability; (b) audited financial statements; (c) credit line or cash deposit certificate; (d) bid security; and (e) authority of the bid signatory.
2. A ceiling may be applied to bid prices provided the following conditions are met: (a) Bidding documents are obtainable free of charge on a freely accessible website. (b) The agency has procedures in place to ensure that the ABC is based on Engineer's Estimate; (c) The agency has trained cost estimators on estimating prices and analyzing bid variance; (d) the agency has established a system to monitor and report bid prices relative to ABC and Engineer's estimate.
3. Domestic or regional preferences will not be applied in the evaluation of bids, and other preference in effect in the Philippines will not be used except with prior concurrence of the Bank.
4. In case of contracts for prior review, modification exceeding 15% of contract amount and materials changes in the conditions during implementation require prior Bank concurrence.
5. Foreign suppliers and contractors shall be allowed to participate, if interested, without first being required to associate with, or enter into joint venture, with local firms. Moreover, foreign bidders shall be allowed to bid, even without registration, licensing, and other government authorizations, leaving these requirements after award and before signing of contract.
6. For works contract, the experience qualification requirement shall be: (a) at least one previous contract at 80% of the estimated cost of the contract being procured; and (b) an annual turnover from all works averaged over the last three years equal to 100% of the estimated cost of the contract being procured.
7. Alternative procurement methods defined in the implementing rules and regulations such as Limited Source Bidding, Direct Contracting and Shopping are acceptable. The use of the other alternative methods will require prior Bank concurrence.
8. A period of at least 30 days for bid preparation shall be required.

Annex 8B: ADB's NCB Annex to Procurement Plan

1. General

The procedures to be followed for national competitive bidding shall be those set forth in Republic Act 9184 of the Republic of the Philippines, effective 26 January 2003, and Implementing Rules and Regulations, effective 8 October 2003, with the clarifications and modifications described in the following paragraphs required for compliance with the provisions of the Procurement Guidelines.

2. Eligibility

- (a) Eligibility screening shall not be applied. However, bids that do not contain the following documents will not pass the documentary compliance check if a specific requirement of the bidding documents: (i) evidence of the required financial, technical or production capability; (ii) audited financial statements; (iii) credit line or cash deposit certificate; (iv) bid security; and (v) authority of the bid signatory.
- (b) National sanction lists may be applied only with prior approval of ADB

3. Advertising

Bidding of NCB contracts estimated at \$500,000 or more for goods and related services or \$1,000,000 or more for civil works shall be advertised concurrently with the general procurement notices on ADB's website.

4. Price Ceiling

The approved budget for the contract (ABC) may be published, but it shall not be stated or implied that bid prices shall not exceed the ABC, or that bid evaluation will in any way take into account the ABC. The ABC, budgetary allocation, ceiling price, or similar estimates of contract value shall not be used to reject bids without prior concurrence of ADB.

5. Preferences

- (a) No preference of any kind shall be given to domestic bidders or for domestically manufactured goods.
- (b) Suppliers and contractors shall not be required to purchase local goods or supplies or materials.
- (c) Foreign suppliers and contractors from ADB member countries shall be allowed to participate, if interested, without first being required to associate with, or enter into joint venture with, local firms.
- (d) Foreign suppliers and contractors from ADB member countries shall be allowed to bid, without registration, licensing, and other government authorizations, leaving compliance with these requirements until after award and before signing of a contract.

6. Experience Qualification

For a works contract, the experience qualification requirement shall be: (i) at least one previous contract at 80% of the estimated cost of the contract being procured; and (ii) an annual turnover from all works averaged over the last three years equal to 100% of the estimated cost of the contract being procured.

7. Bid Security

Where required, bid security shall be in the form of a bank guarantee from a reputable bank.

8. Contract Amendment

ADB's concurrence shall be obtained before approving modifications to contracts under implementation where (i) the value of the modification exceeds 15% of contract amount, or (ii) it results in material changes to the conditions of contract.

9. Member Country Restrictions

Bidders must be nationals of member countries of ADB, and offered goods must be produced in member countries of ADB.

Annex 9: Status of Actions Agreed in 2005 CPAR Update (as of November 2007)

INDICATOR	SPECIFIC WEAKNESS
Existence of institutional development capacity.	1. Contract award information not available and accessible in the existing system
	2. Sustainable strategy is not yet developed to provide training advice and assistance to develop the capacity of government and private sector participants to understand the rules and regulations and how they should be implemented.
	3. Lack of systems and procedures for collection and monitoring of national procurement statistics
	4. Lack of quality control standards to evaluate performance of staff and address capacity development issues
Efficient procurement operation and practice	5. At the contracting entity level, the level of procurement competence among government officials within the entity is not yet consistent with their procurement responsibilities
	6. At the contracting entity level, the procurement training and information programs implemented for government officials, as well as for private sector participants is not yet consistent with demand.
	7. While administrative systems exist at the contracting entity level, they do not adequately support monitoring procurement performance in most agencies.

	CURRENT ACTIVITIES/ACTIONS TO BE UNDERTAKEN	RESPONSIBLE AGENCIES, FUNDING AND TIMETABLE
	Being done and monitored by GPPB TSO - GPPB issued letters to non-complying entities reminding all heads of procurement entities and BACs to post in PhilGEPS awards of contract.	GPPB –TSO; PhilGEPS with funding assistance from ADB-WB
	a) Ongoing, implementation of national training the trainers program for agencies and LGUs. b) Ongoing as medium-term approach to capacity building is to accredit State Universities and Colleges, including the National Defense College; c) Ongoing, as the development of long-term plan to professionalize procurement as a career for practitioners. d) To be done - private sector training to be included in the training and professionalization program.	GPPB, SUCs, PCA carried in this CPAR.
	To be done- a) Develop actual performance indicators and implement a system for data collection and information analysis from contracting entities up to GPPB; b) Replicate appropriate BIS to assess national agencies and LGUs, as management tool.	GPPB, carried in this CPAR
	To be done - Include setting up of quality control standards to evaluate staff performance and address capacity development issues in the professionalization program mentioned in No. 2(c).	GPPB-TSO, carried in this CPAR.
	a) Link to No. 2. b) To be done – conduct of training program to improve of skills in estimating prices and analyzing bid variances. c) To be done as follow-up to Value Engineering (VE) Briefings are: (i) to enhance capacity for value engineering focusing more on upstream reviews; (ii) issuance of guidelines to agencies for the use of VE.	GPPB, carried in this CPAR
	a) Ongoing, should be linked to No. 2. Expansion of the training should be done to meet demand. b) To be done - The training program should include the private sector and the civil society observers.	GPPB, carried in this CPAR
	a) Link to No. 3. b) Ongoing development of G-EPS will provide online information on commonly used supplies procurement such as prices, contracts performance. c) To be done - Collection of technical specifications on non-commonly used supplies such as drugs, catalogue and disseminate online. d) To be done — Stand-alone study on comparison of bid prices for common procurement items, such as classrooms, medical supplies, water supply and books procured by s elected agencies. e) Ongoing. Implementation of E-Procurement as a transactional tool. f) To be done as follow-up to recommendations in the Security Report: (i) discuss procurement security relevance with BSP and Office of Insurance Commission, and (ii) issue guidelines on selective reputable surety companies.	GPPB, Procurement Service – PhilGEPS Office – ongoing implementation. The agreed action is carried in this CPAR, with funding assistance ADB and WB.

Annex 9: Status of Actions Agreed in 2005 CPAR Update (as of November 2007)

INDICATOR	SPECIFIC WEAKNESS
	8.. Inadequate internal control mechanisms for undertaking procurement operations at the contracting level.
Functionality of the Public Procurement Market	9. The participation rate of bidders in response to competitive tender invitations is not consistent with the capacity of the marketplace. Less use of complaint and protest mechanisms.
Effective control and Audit System	10. Lack of enforcement and follow-up on findings and recommendations from the control framework.
	11. The internal control system does not provide timely information on compliance to enable management action.
Degree of Access to Information	12. While the law requires publication in the G-EPS, websites and newspapers, the full access to information by the civil society is not yet fully institutionalized.
	13. System does not exist yet to collect key data related to performance of the procurement system and to report regularly.
	14. Some agencies and LGUs are not maintaining records to validate data.

	CURRENT ACTIVITIES/ACTIONS TO BE UNDERTAKEN	RESPONSIBLE AGENCIES, FUNDING AND TIMETABLE
	<p>a) Done - implementation of Procurement Manual in all agencies and harmonization with donors.</p> <p>b) To be done – (i) strengthen the internal control mechanism at agency level by: enforcing the law that mandates creation of internal audit units; (ii) prepare internal audit manual on procurement; and (iii) implementation of a training program for internal auditors.</p>	<p>a) Procurement Manual issued in January 2007; Pilot testing in 6 agencies done.</p> <p>b) IDF Grant on Strengthening Internal Audit on-going; IA manual being drafted).</p>
	<p>a) To be done - intensive information dissemination and familiarization on the new law to the private sector and civil society to bring trust and confidence in the new system.</p> <p>b) To be done - support to private sector initiatives on trainings on the new system.</p> <p>c) To be done - include private learning institutions in accreditation of procurement training institutes to cater to private demand.</p> <p>d) To be done - issuance of a policy that advertisements should include key evaluation criteria.</p>	<p>Communication Plan to be developed and implemented by GPPB, as agreed in this CPAR.</p>
	<p>a) Ongoing. Implement the Guidelines for Suspension and Blacklisting of Bidders, Suppliers and Constructors. Donors will review for possible adoption in FAPs.</p> <p>b) To be done - Strengthen the role of Presidential Anti-Graft Commission in ensuring that procurement audit is institutionalized through the internal audit units of each agency. Training on fraud examination and audit.</p> <p>c) To be done – (i)COA should include as part of its Annual Report an assessment of adequacy of internal control mechanism in weak agencies; and, (ii) training of investigators on fraud examination and audit.</p> <p>d) To be done – Provide active assistance to Ombudsman for successful prosecution of procurement cases.</p>	<p>a) & b) Done. Guidelines being implemented. List of blacklisted suppliers and contractors published in the GPPB website (www.gppb.gov.ph).</p> <p>c) COA will develop and implement Procurement Audit Guide.</p> <p>d) training of Ombudsman staff carried in this CPAR.</p>
	<p>To be done – Agencies should institute adequate internal control mechanism to ensure that timely information are provided to agency management. Link to No. 10.</p>	<p>DBM, under AusAID funding, is developing internal control system.</p>
	<p>a) Ongoing. Support to PWI in improving training design and delivery for BAC civil society observers (CSOs).</p> <p>b) To be done - Information support system for trained BAC CSOs.</p> <p>c) To be done - Administrative support to the new coalition of BAC-CSOs.</p>	<p>These actions are carried in this CPAR as part of Communication Strategy.</p>
	<p>Link to No. 3.</p>	<p>Carried in this CPAR.</p>
	<p>To be done - Issuance of guidelines for proper record management for national agencies and LGUs. Prepare the TOR and hire consultant.</p>	<p>Carried in this CPAR</p>

Annex 10: Key Source Documents

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