



មជ្ឈមណ្ឌលនៃអង្គការមិនមែនរដ្ឋាភិបាល ស្តីពីកម្ពុជា
The NGO Forum on Cambodia

Summary of NGO Comments on the draft Law on Public Procurement by the NGO Working Group

Submitted to:

- Ministry of Economy and Finance, Office of the Council of Ministers and Prime Minister of the Royal Government of Cambodia on 22nd June 2011
- Development Partners on 27th June 2011
- Second Commission of the National Assembly on 22nd June 2011

Prepared by NGO Working Group on the
Law on Public Procurement

21 June 2011

1. General comments

- 1.1 Although the terms “transparency” and “accountability” are included in the law, there are no procedures to insure transparency or accountability. There should be independent, outside or independent observers who monitor the procurement process, and clear procedures to ensure transparency and accountability.
- 1.2 Numerous categories of contracts are excluded from the provisions of the draft law. These include procurements selling, leasing and transferring of state properties.
- 1.3 The law should establish competitive bidding as the preferred method of procurement. Similarly, the law should clearly define “conditions for use” of procurement methods other than competitive bidding. In addition, the law should clearly define criteria for deciding whether domestic or international bidding should be used, and include procedures for “competitive negotiation.” [Articles 12-14]
- 1.4 The MEF is given relatively much power. Many of the functions given to MEF should be given to independent bodies.
- 1.5 There should be clear criteria to be used for deciding whether to blacklist a bidder and how long bidders will be blacklisted. There should be clear procedures by which a blacklisted bidder can appeal its blacklisting.
- 1.6 The early release of bidding documents should be prohibited, and all bidders should have the same access to information. Similarly, bid opening procedures should be strengthened. [Articles 40, 45]
- 1.7 Provisions regarding performance security should be modified so that security is not required in all contracts. [Article 49]
- 1.8 Requirement that all subcontractors be approved should be relaxed. [Article 64]

2. Table of Specific Comments

Chapter/Article	Comments on Article
Chapter 1:	
Article 3:	<p>The following are excluded from the law, but should not be:</p> <ul style="list-style-type: none"> i. Any procurement that “...obtain[s] approvals from the Council of Ministers or Prime Minister.” ii. Selling, leasing, transferring, and other arrangements on state properties and the granting of concessions by the Government that shall comply with specific Laws and regulations.
Chapter 2:	
Article 5:	<p>Several problems:</p> <ul style="list-style-type: none"> • MEF should not have “authority and responsibility over the development of public procurement policy” – that belongs to the National Assembly. • Separate, independent bodies, not MEF, should have the power to: <ul style="list-style-type: none"> ○ Revoke the rights of decision-making of Procuring Entities ○ Address procurement disputes and complaints ○ Register and classify bidders into different levels (Article 28), and blacklist bidders (Article 31) ○ Conduct audits over public procurements. • If MEF has such powers, they must be limited. For example: <ul style="list-style-type: none"> ○ Circumstances under which MEF can “provide or revoke the rights of decision-making of Procuring Entities” should be specified.
Chapter 3:	
Article 10:	<p>Members of Procurement Committee should be clearly specified – they should not be anyone the Head of the Procuring Entity selects.</p> <p>Apart from officials and technical experts the committee must include civil society/consumer representation.</p>
Chapter 4:	
Articles 11-14 and 18-26:	The "conditions for use" of specific procurement methods are very poorly defined
Article 11:	<p>The term “special circumstances” needs to be defined.</p> <p>“The conditions, the threshold (limitation of budget), and the procedures to implement each method” are important enough to be in the law, not the IRRPP.</p>
Article 12:	<p>The underlined language should be added:</p> <p>Public Competitive Bidding is the method for selecting suppliers, contractors or service providers and open to domestic and international bidders. This method is highly transparent and is preferred for all public</p>

	<p>procurements. <u>Public Competitive Bidding is to be used unless (i) there is only one source capable of performing the work or (2) there is an emergency that urgently requires the award of a contract.</u> This method consists of:</p> <ul style="list-style-type: none"> a- International Competitive Bidding. This method is used for procurement project with large value and highly technical <u>and there is insufficient domestic bidders.</u> b- Domestic Competitive Bidding. This method is used in cases where there are sufficient domestic products, production or construction. <p>Conditions for when to use international or domestic bidding are not well defined.</p>
Article 14:	<p>The law should state that competitive bidding is the preferred method and provide strict limitations on when non-competitive bidding may be used.</p> <p>The underlined language should be added:</p> <p>Non Competitive bidding Method is used for selecting suppliers, contractors, or service providers without <u>competitive</u> bidding. This method can be used <u>only</u> if <u>competitive bidding is not possible</u> and there is a prior approval from the Ministry of Economy and Finance.</p> <p>Procurements for “the purpose of research, experimentation, or development” should have competitive bidding.</p> <p>The number of times that a “Repeat Order” can be used with one contractor (or one contract) should be limited.</p> <p>Provisions for “competitive negotiation” should be added.</p>
Chapter 5:	
Article 25:	<p>Cost should be added as a factor on which the selection of consultants will be made.</p>
Chapter 6:	
Article 28:	<p>Should specify that registration is free of charge and that a bidder may not be denied registration.</p> <p>Should include that bidders will be informed of their classification, and include a process by which bidders can appeal their classification.</p>
Article 31:	<p>A separate, independent entity should have these responsibilities.</p> <p>The law needs to include the procedures for blacklisting a bidder and the criteria that will be used to decide whether a bidder will be blacklisted.</p> <p>The maximum time period for blacklisting and the criteria that will be used when deciding whether a bidder should be taken off the blacklist should be specified.</p>

	Bidders should be given a clear right to appeal the blacklisting.
Chapter 7:	
Article 32:	The procurement plan with detail information should be a publicly available document.
Chapter 8:	
Article 39:	<p>The underlined language should be added, and the crossed-out language should be deleted:</p> <p>The procurement units of the Procuring Entities shall prepare notification on bidding <u>to be posted on the website and</u> to be advertized to select bidders. The notification shall consist of the key information as follows:</p> <ul style="list-style-type: none"> - Description of type and quantity of goods, works, or services to be procured - Address, e-mail, and faxes of Procurement Unit - Method of procurement to be used, <u>including the evaluation criteria</u> - Requirements of qualifications or pre-qualifications ...
Article 40:	<p>Underlined language should be added:</p> <p>... The standards of bidding documents are specified in the IRRPP. <u>Bidding documents are not to be released outside the Procuring Entities until bidding notification.</u></p>
Article 43:	<p>The underlined language should be added:</p> <p>... by inviting all bidders who received bidding documents to participate. <u>Bidding documents may be amended but the time for receipt of bids shall be extended for such reasonable time as necessary for all bidders to have the opportunity to review the amendment and make any adjustments in their bids. Bidding documents may not be amended after bid submission.</u></p>
Article 45:	<p>The underlined language should be added:</p> <p>All bids shall be opened in public immediately after the deadline for receipt. <u>No bid shall be opened before the deadline, and any bid received after the deadline for receipt shall be rejected and returned to the bidder unopened.</u> The important details of each bid shall be announced in front of the participants who attend bid opening and be recorded in the minutes of bid opening, then make copies to all bidders and participants....</p>
Article 46:	<p>The underlined language should be added:</p> <p>... The Evaluation Procedures are specified in IRRPP. <u>The Procurement Committee shall make a written record of its evaluation of all bids and the reasons for its selection of the winning bidder.</u></p> <p>Bid-opening procedures are not well defined.</p>

Article 48:	<p>The underlined language should be added:</p> <p>After the bidding evaluation completed, The Procuring Entity shall immediately <u>and publicly</u> announce bidding result to the successful bidder and all the failed bidders and announce the information on contract award. For the procurement activities which require a review by Ministry of Economy and Finance, the notification of the awarding contract decision shall be done after obtaining an approval from Ministry of Economy and Finance. <u>The Procurement Entity shall provide to the failed bidders an explanation of why the successful bidder was selected.</u></p>
Article 49:	<p>Seems to assume that performance security will be required in all procurements. That is not the norm as international good practice, as costs of replacement are not high in some markets, and requiring performance security in all procurements can work as a serious barrier to market entry.</p>
Chapter 12:	
Article 77:	<p>Should clarify that both the contracting firm and the responsible individuals will be blacklisted, Otherwise, the wrongdoer will just set up another company if his firm is blacklisted.</p>
Other	
	<ul style="list-style-type: none"> • There should be a standardized procurement process and standardized forms. • There should be training for Procurement Committee members • Offenses, penalties and liabilities should be detailed • A diversified Oversight Committee should be created to oversee implementation of the law • There should be requirement that rules and regulations are formulated quickly following suggestion made above.

**List of NGOs/CSOs Working Group
on
the Public Procurement Law**

No.	Name	Organizations
1	Mr. Chhith Sam Ath Executive Director	The NGO Forum on Cambodia (83 NGOs as members and over 180 network members)
2	Mr. Sok Sam Oeun Executive Director	The Coalition for Integrity and Social Accountability (CISA) (29 NGOs as members)
3	Mr. San Chey Network Fellow for Cambodia	Affiliated Network for Social Accountability in East Asia and the Pacific (13 NGO members)
4	Mr. Lun Borithy Executive Director	The Cooperation Committee of Cambodia (CCC) (126 NGOs as members)
5	Ms. Chet Charya Executive Director	Star Kampuchea (with supporting network with 273 NGOs as members)
6	Mr. Yong Kim Eng Executive Director	People Center for Development and Peace (PDP-center)
7	Ms. Thida Khus Executive Director	Silaka
8	Mr. Mam Sambath Chair and Executive Director	Cambodians for Resource Revenue Transparency (CRRT) Coalition; Development and Partnership in Action (DPA); and Extractive Industry Social and Environmental Impact Network (EISEI) (56 NGOs as members)
9	Mr. Nep Sinthay Director	The Advocacy and Policy Institute
10	Mr. Sin Somony Executive Director	MEDiCAM (118 NGOs as members)
11	Ms. Ros Sopheap Executive Director	Gender and Development for Cambodia (GAD/C) (over 60 member organizations)
12	Mr. In Samrithy Executive Director	NGO Education Partnership (104 NGOs as members)
13	Dr. Oum Sopheap Executive Director	Khmer HIV/AIDS NGOs Alliance (Khana)
14	Mr. Koul Panha	The Committee for Free and Fair Election in Cambodia (Comfrel)

	Executive Director	
15	Mr. Meas Samnang Secretary General	NGOCRC (50 NGOs as members)
16	Mr. Suon Sareth Executive D	CHRAC (23 NGOs as members)
17	Mr. Cheang Sokha Executive Director	Youth Resource Development Program (YRDP)
18	Ms. Prak Sokhavy Director	Cambodian Civil Society Partnership (CCSP)
19	Andrew Boname Chief of Party	East-West Management Institute - Program on Rights and Justice (EWMI-PRAJ)
20	Greg Priyadi Country Director	Jesuit Service-Cambodia