

**SRI LANKA
COUNTRY PROCUREMENT ASSESSMENT REPORT**

**VOLUME I
MAIN REPORT**



**SOUTH ASIA REGIONAL PROCUREMENT UNIT
THE WORLD BANK**

JUNE, 2003

Report No: 29188-LK

First Print June 2004

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Published by
The World Bank
73/5 Galle Road
Colombo 3
Sri Lanka

Designed & Produced by
Ari Investments Ltd
42/1 St. Joseph Road
Nugegoda
Sri Lanka

ISBN: 955-8908-05-3

ABBREVIATIONS AND ACRONYMS

ADB	Asian Development Bank
BOO	Build, Own, Operate
BOT	Build, Operate, Transfer
CATB	Cabinet Appointed Tender Board
CF	Consolidated Fund
CFAA	Country Financial Accountability Study
CIABOC	Commission to Investigate Allegations of Bribery or Corruption
CPAR	Country Procurement Assessment Report
DTB	Departmental Tender Board
ERD	External Resources Department
GCC	General Conditions of Contract
GOSL	Government of Sri Lanka
ICB	International Competitive Bidding
ICTAD	Institute for Construction Training and Development
IDA	International Development Association
JBIC	Japan Bank for International Cooperation
LC	Letter of Credit
LD	Liquidated Damages
M	Million
MOF	Ministry of Finance
MOU	Memorandum of Understanding
MTB	Ministerial Tender Board
NCB	National Competitive Bidding
NCCASL	National Construction Contractors Association of Sri Lanka
NDO	New Delhi Office of World Bank
PD	Project Director
PMU	Project Management Unit
PRA	Procurement Regulatory Agency
PSB	Procurement Support Bureau
PTB	Project Tender Board
RFP	Request for Proposals
Rs.	Rupees (Sri Lanka)
SBD	Standard Bidding Document
SCC	Special Conditions of Contract
TA	Technical Assistance
TB	Tender Board
TEC	Tender Evaluation Committee
UNCITRAL	United Nations Commission on International Trade Law
WB	World Bank

CURRENCY EQUIVALENTS (Exchange Rate Effective February 2004)

Currency Unit = Sri Lanka Rupees (Rs.)
US\$ 1 = 98 Rs.

FISCAL YEAR

January 1 to December 31

IDA

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SRI LANKA COUNTRY PROCUREMENT ASSESSMENT REPORT

VOLUME I: MAIN REPORT

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PREFACE

Date and Basis of Report

The World Bank, with the agreement of and in association with, the Government of Sri Lanka (GOSL), carried out a comprehensive assessment of the Public Procurement System in the country. The review was carried out during the period April to November 2002 and addressed all the issues listed in the Initial Concept Memorandum (ICM) approved in February 2002. The outcome of the review is this Country Procurement Assessment Report (CPAR), which has been extensively reviewed internally by the Bank and by the Government of Sri Lanka. Recommendations from the Government have been incorporated in the final report and action plan. In particular, GOSL's recommendation to implement an accreditation system to professionalize procurement is a notable inclusion. A workshop will be held in 2004 to disseminate the findings and recommendations of this report. A Technical assistance grant of US\$0.75 million has been proposed to assist the Government in implementing the agreed Action Plan.

The CPAR team comprised Deepal Fernando, Implementation Specialist (Task Leader), K.N Venkata Raman and Narayan D. Sharma (Consultants) and W.D. Jayasinghe, Additional Director General of Public Finance and Project Director, Public Expenditure Management Systems Project and Procurement Support Bureau, Sri Lanka. The report was prepared under the close guidance of William B. Herbert, Operations Advisor, World Bank Colombo Office. Advisory support was provided by A. Litvak, Procurement Manager and S. Krishnan, Senior Procurement Specialist, of the World Bank South Asia Regional Procurement Hub, Peter Harrold, Country Director, World Bank Colombo Office, and Faiz Mohideen and N. Pathmanathan, Deputy Secretaries, Treasury, Ministry of Finance, Sri Lanka.

The report is presented in two volumes: Volume I is the Summary Report and Volume II is the Detailed Report. Volume I describes the key findings on the effectiveness and transparency of the present Public Procurement System and includes a recommended action plan for improving the system. Vol. II presents the in-depth study of the existing Financial Regulations, Guidelines and the legal system in relation to procurement (in the absence of a Public Procurement Law), procedures followed for Government-funded programs vis-à-vis those funded with external assistance, standardization of documents, and the organizational setup for procurement processing and implementation, together with a General Risk Assessment.

The CPAR is based on the responses to the Questionnaires received, documents reviewed and interviews held. The team sent out three sets of Questionnaires: one for selected Government Ministries, a second for the selected Implementing Agencies which had major procurements, and a third for the Contractors' Association; and reviewed their responses. The team also collected and reviewed the Guidelines on Government Tender Procedure issued by the Ministry of Finance, Codes and Manuals of some Departments, Standard Bidding Documents issued by the Institute for Construction Training and Development (ICTAD) as well as the actual practices followed in a sample group of Government Departments, Statutory Bodies and Public Sector Undertakings. The team reviewed some Audit Reports and Bribery Commission Reports. They also held discussions with Public Sector officials at various levels, and with some Private Sector representatives (Contractors and Suppliers).

Acknowledgements

The CPAR Team acknowledges with thanks the support provided by the Officers of the Procurement Support Bureau (PSB), Ministry of Finance, GOSL, particularly Mr. W.D Jayasinghe, Chief Executive Officer and Miss Nalini Madanayake, Director Monitoring, without whose support this report would not have been possible. The team is thankful to Mr. Agustin Litvak, Procurement Hub Manager, New Delhi; Mr. Peter Harrold, Country Director, Colombo; Mr. William Herbert, Operations Advisor, Colombo; Mr. S. Krishnan, Senior Procurement Specialist, New Delhi; all of the World Bank. The team is thankful to Mr. Ajay S. Guha, Procurement Specialist, Central Operations Services Office, Asian Development Bank, Manila, who joined the team on visits to offices in Colombo and the Northwestern Province and provided valuable inputs; and to Mr. K.M. Tilakaratne, Project Specialist, ADB, and Mr. S. Arinda I. Elapata, Project Officer, JBIC. Mr. Deepal Fernando, Implementation Specialist of World Bank, Colombo, who arranged all the meetings, participated in most of the meetings, and provided the logistics for the various visits in Sri Lanka. The team is extremely thankful to the Heads of various offices/agencies of GOSL for sparing their valuable time, providing information and other inputs. The team is also thankful to the office bearers of the Contractors' Association and representatives of Suppliers for their valuable inputs.

Government and Other Participating Organizations

The report was carried out with the full cooperation and participation of the Government of Sri Lanka, the Asian Development Bank, the Japan Bank for International Cooperation, and the National Construction Contractors Association of Sri Lanka.

The GOSL organizations which participated in the CPAR preparation by attending the meetings and supplying the replies to the questionnaires and data are listed below. Names of key persons met from all participating organizations are given in Annex 1.

GOSL organizations:

1. Procurement Support Bureau under the Ministry of Finance and Planning;
2. Ceylon Electricity Board under the Ministry of Power and Energy;
3. Road Development Authority and Railways Department under the Ministry of Transport, Highways and Aviation;
4. Department of Legal Draftsman under the Ministry of Justice, Law Reform and National Integration;
5. Department of Irrigation and Mahaweli Authority of Sri Lanka under the Ministry of Irrigation;
6. State Pharmaceuticals Corporation under the Ministry of Health, Nutrition and Welfare;
7. Ministry of Port Development and Shipping;
8. National Water Supply and Drainage Board and Institute of Construction, Training and Development under the Ministry of Housing and Plantation Infrastructure;
9. Ministry of Human Resources Development, Education and Cultural Affairs;
10. Department of Government Printer under the Ministry of Mass Communication;
11. Department of Buildings under the Ministry of Public Administration, Management and Reforms;
12. Ministry of Commerce and Consumer Affairs.

The participation in the meetings and effective interaction was encouraging, although the responses to the questionnaires was not up to expectation. The interviews with the Deputy Auditor General, Director General Bribery Commission, Officers of Railways, Water Board, and ICTAD were fruitful. The field visits to the North Western Province and the Southern Province and interaction with the officials provided useful inputs to the Report. The officials of PSB participated in all the meetings. The CEO of PSB was himself present in most of the meetings. He accompanied the team to the Southern Province and actively participated in the discussions. Though the officers of GOSL were not directly involved in the preparation of the report, the interim Report of Volume I containing the recommendations and Action Plan was discussed line by line in a marathon meeting with the CEO, PSB and his staff along with officers of ADB and JBIC.

EXECUTIVE SUMMARY

Overview

As a part of its Business Process requirements, the World Bank, with the agreement of and in association with the Government of Sri Lanka (GOSL), carried out a comprehensive assessment of the Public Procurement System in the country, of which this two-volume Country Procurement Assessment Report is the result. The review was carried out during the period April 2002 to November 2002 with full cooperation and participation of the GOSL, ADB and JBIC. An extensive review of the draft report was carried out by the World Bank and the Government of Sri Lanka, prior to finalization, and an action plan was drawn up based on the recommendations.

Sri Lanka is an outlier among developing nations. Its social indicators are comparable to those of high-income countries and its per capita income (US\$841) remains the highest in the region, only second to the Maldives. Strategically well placed in the Indian Ocean, Sri Lanka was ahead of its neighbours in liberalizing the economy. Paradoxically, with over 150 Statutory Boards, Public Corporations and Enterprises, Sri Lanka's per capita employment in the public sector is the largest in Asia. The current volume of public procurement is about US\$ 0.65 billion.

Major external assistance comes from three donors: the Japan Bank for International Cooperation, the Asian Development Bank and the World Bank. The combined portfolio for Sri Lanka as of September 30, 2002, comprised a total of 128 projects with commitments totaling US\$2,061.50 million financed by the three major International Financing Institutions. Of these, the WB supported 13 projects (US\$465.2 M); the ADB, 27 projects (US\$1,033 M); and the JBIC, 88 projects (563.3 billion Yen).

Major Findings

Legal and Regulatory Framework

In order to keep the procurement process fully transparent, speed up the process, and to obtain financially the most advantageous and qualitatively the best services and supplies for the country, the Ministry of Finance and Planning issued on September 30, 1996, Guidelines on Government Tender Procedure. The introduction of the Guidelines was a watershed for Procurement Reforms in the Country. Revised Guidelines (containing procedures both for projects financed from GOSL Consolidated Funds and those financed by Foreign Financing Agencies) were issued on September 25, 1997, for implementation with effect from November 1, 1997, by all Government institutions inclusive of Ministries, Departments, Public Corporations and Statutory Bodies, fully owned Government Companies, Provincial Councils and Local Authorities (including Pradeshiya Sabhas) for the procurement of works, services and supplies and disposal of government assets.

Enactment of a Public Procurement Law based on the United Nations Commission on International Trade Law (UNCITRAL) model for Procurement of Works, Goods and Services (with established International practices, an appeal/challenge mechanism, debriefing to unsuccessful bidders, dispute resolution mechanism, suspension and blacklisting of firms and publication of awards) is normally the preferred route. In the case of Sri Lanka, successive Governments regardless of political affiliation have been committed to Procurement reform,

underpinned by the Guidelines. The occasional modifications have been in the nature of delegation and transparency. The Guidelines cover all the relevant areas under UNCITRAL, and have been ruled to have the force of law. In the short term, some provisions require strengthening as per the review of procedures and practices (detailed in this report). The Government of Sri Lanka will be in a better position to decide whether the process, as set out under the Guidelines, should be endorsed through legal enactments, following experience with Guidelines revised to take into account recommendations of this report.

Entity with oversight responsibility for procurement policy

There is no independent entity to oversee policy related matters in Public Procurement, including policy formulation. The Ministry of Finance (MOF) has assumed this responsibility. The Procurement Support Bureau (PSB) was created under the MOF in 1999 to assist in clearance functions relating to awarding and execution of contracts. There is a need to create a small high powered, professionally staffed, independent Procurement Regulatory Agency (PRA) to develop the procurement legal framework with functions which are confined mainly to policy, standardized documentation and development of rules. The details can be worked out as convenient by GOSL. The Regulatory/Policy agency should be kept distinctly separate from the agency carrying out line functions.

Framework for Audit, Anti-bribery and Anti-corruption Measures

The Department of the Auditor General is seen as a watchdog, currently carrying out financial audits only. There is no formalized system for conducting Procurement, Technical and Performance Audits. The Legal provisions dealing with bribery offences are adequate. However reportedly, the process for implementation of these laws is weak. In 2000, only about 12 percent of cases received for investigation by the Bribery Commission were disposed of. Of 1,135 complaints referred for legal opinion, only 12 resulted in prosecution being launched. Progress of cases in the Courts is slow and few are convicted (14 out of 41 cases concluded in 2000). The Bribery Commission should be fully staffed and strengthened, and should become pro-active in seeking active support of non-governmental agencies (national and international), such as Transparency International, in making the public aware of the seriousness of the problem and prompting them to fight against Bribery and Corruption. Introduction of an appeal procedure in the public procurement system is recommended.

Standard Functional Specifications for Goods

There is a need to develop Standard Functional Specifications for goods that are commonly and regularly procured centrally by various implementing agencies, to bring in consistency and increase competition. Specifications should be broad and non-discriminatory and clear evaluation criteria/methodology for comparative evaluation should be developed simultaneously. Introducing these specifications on the PSB website and inviting comments from manufacturers, suppliers and users will lead to refinement of the specifications.

Standard Tender Documents for Goods, Works and Services

Except for procurement of works, there are no standard tender documents for Goods, and Design, Supply and Erect contracts as well as for Consulting Services. Standard tender documents need to be developed, standardized and mandated for use by all Public Procuring Entities.

Registration of Firms and Contractors

Since pre-qualification/post-qualification is required for works of more than Rs.5 M, the need for Registration and Grading by the Institute of Construction Training and Development (ICTAD) for this category of contracts appears not relevant and serves no purpose. However, for works of value less than Rs.5 M, which may be very large in number, going through the process of verification to meet the specified qualification criteria in each case may turn out to be cumbersome and lead to delays, and hence determining the eligibility on the basis of a simplified method of registration would be preferable. Membership in the National Construction Contractors Association of Sri Lanka (NCCASL) should not be made compulsory.

Procurement Procedures and Practices

Though commendable efforts have gone into drafting of the Guidelines on Government Tender Procedure, which are broadly based on the Procurement Guidelines of the Donor Agencies, there are some provisions that are not conducive to transparency and fairness and need to be clarified, supplemented, enlarged and strengthened. The important ones are as follows.

Tender Evaluation and Approval for Award of Contracts

The procedure for the constitution of Tender Boards (TBs) and Technical Evaluation Committees (TECs) needs to be streamlined to cut down the time period for the evaluation and contract award recommendations/approval process. The number of Standing TBs and TECs may be increased, if need be, to expedite the evaluation and approval process. The multi-layered review/approval process, particularly for large value contracts, needs to be simplified to expedite the process and minimize opportunities for malpractice and corruption. Tenders should be awarded within the initial tender validity period as a rule. Although the Guidelines indicate that contract award has to be made within 21 days of bid opening, compliance with this milestone is not being systematically monitored.

Negotiations

The provisions in the Government Guidelines are ambiguous with regard to negotiations, permitting (in fact encouraging) negotiations. Negotiations should be permissible only in very exceptional circumstances with prior approval by a high level committee.

Tender Capacity as an Evaluation Criterion for Award of Contracts

Tender Capacity should be made a mandatory criterion for award of contracts. Specific requirements in this respect should be pre-disclosed in the tender documents. The contracts currently being executed by the tenderer need to be assessed to determine the available capacity net of current commitments and ability of the tenderer to perform the new contract satisfactorily, if awarded. Additionally, where the tenderer is lowest in more than one tender or slice of a package, the qualification requirements to be satisfied by the lowest tenderer need to match the aggregate of the individual tenders or slices of a package.

Comprehensive Guidelines on Procurement of Consultant Services

Chapter VI of the Guidelines needs to be extensively redrafted to give clear and precise procedures for the hiring of Consultants. Corresponding Standard RFP Documents should be prepared for various methods of selection and various types of contracts.

Electronic Tendering

One of the major steps towards E-Governance is E-Tendering. Systems are now available to introduce electronic tendering in Public Agencies. This will substantially increase transparency and efficiency and reduce opportunities for malpractice and corruption.

Organization and Resources

Public Procurement functions are mostly decentralized. The line Ministries and Provincial Councils are responsible for procurement within their organizations. However, the level of delegation to the contracting authority within these organizations is inadequate. Since tender awards beyond a certain value have to be referred to the Cabinet for decision, the possibility of political interference in decision making cannot be ruled out.

There is no separate procurement cadre or procurement core group in the country. Most of the staff carrying out the procurement function are from general Engineering and Accounts cadres, often inexperienced and not trained specifically in procurement. Additionally, contract administration is weak. This has resulted in cost and time overruns.

With the move to decentralize procurement accountability fully, steps need to be taken to build a critical mass of procurement proficient staff. This is to be achieved through the introduction of a procurement accreditation system. In the interim, a Procurement Core Group is required to provide specialized inputs to the various organizations.

The PSB needs to be strengthened and manned by competent officers, technical experts, and be entrusted with the responsibility for implementation of the Agreed Action Plan based on the CPAR recommendations. This has to be consistent with the recommendation to create a separate regulatory agency mentioned above.

Procurement Capacity Building

Training in procurement is one of the responsibilities of the PSB. Due to the magnitude of the task and the large number of officers requiring training in the area of public procurement procedures, a Train the Trainer type approach has been adopted by PSB. Selected senior officers in the key sector agencies are being trained and supported to conduct training within their respective agencies. The Training Master Plan prepared by the PSB needs to be reviewed, updated and implemented effectively.

Public Sector Management Performance

Contract Administration and Monitoring is a neglected area reflecting poor implementation capability in general. Clear contract provisions and right sizing of contracts play a vital role in efficient implementation. Similarly clear and complete specifications and well defined performance standards can largely reduce disputes and ensure satisfactory works contract performance. In respect of Goods contracts, contract administration is weak, particularly in

respect of inspection and taking over. Even in the case of Consultancy contracts, monitoring of the completion of all stipulated tasks as per Description of Services, and the timing and contents of the Reports to be submitted, are inadequately monitored.

Performance on World Bank and ADB Financed Projects

The most serious shortfalls in contract award and implementation are due to: (i) delays in contract awards resulting from delays in carrying out procurement actions according to the Guidelines, inadequate authority given by Executing Agencies to Project Directors, delays in evaluation and approvals by Tender Evaluation Committees (TECs) and Tender Boards (TBs) and unfamiliarity with the Procurement Guidelines of the Financing Institutions; (ii) delays in establishment of Project Management Units (PMUs) and appointment of Project Staff; (iii) time-consuming procedures for land acquisition and resettlement resulting in delays in on-site mobilization; (iv) delay in preparation of documents and finalization of Terms of Reference (TOR) for consultant services; and (v) inadequate counterpart funds and budget allocation.

Competitiveness and Participation of Private Sector in Public Procurement

The private sector needs to be equally efficient, competent, honest and vigilant if public procurement is to function effectively. The Construction Industry in Sri Lanka has yet to reach full potential to meet the required capacity for the country's development programs. Until recently all the large contracts were awarded to foreign contractors. The Institution for Construction Training and Development (ICTAD) has been conducting training courses for the construction industry in the recent past. This training has enabled domestic contractors to improve their efficiency and capability and win some large tenders in recent years. The Consultant Services profession however, has not developed sufficiently in Sri Lanka. Consultants are usually hired from outside the country. Local consulting firms and/or individuals often associate with foreign firms, working as sub-consultants or providing individual experts.

Performance on Public Procurement Contracts

The performance in public procurement is not encouraging. Since a technical auditing mechanism is not in place, quality of construction, particularly for small value contracts supervised by the Employer has scope for improvement. Most contracts are not completed in time, thereby causing cost and time overruns. Disputes are reported to be settled amicably more often than going to litigation. Mediation and Arbitration are not very common. With an almost negligible manufacturing industry in the country, most of the finished goods and supplies are procured from outside the country and their quality is reported to be satisfactory.

Recommendations

The principal recommendations of the CPAR can be presented in three time frames:

Short Term Actions

1. *Strengthening of the Procurement Support Bureau*
2. *Simplification of the Review and Approval Process*
3. *Revision of Guidelines*
4. *Development of Standard Tender and Contract Documents*
5. *Standardization of Goods Specifications*

Medium Term Actions

6. *Creation of a Procurement Regulatory Agency*
7. *Establishment of a Procurement Accreditation System*
8. *Strengthening of the Bribery Commission and the Auditor General's Department*
9. *Introduction of a Code of Conduct/Ethics Oversight*
10. *Introduction of Electronic Tendering*
11. *Creation of a Procurement Tracking System and Contractor Database*
12. *Revision of Procedures for Registration of Contractors*
13. *Introduction of Technical and Performance Auditing*
14. *Introduction of Rules for Blacklisting*

Long Term Actions

15. *Enactment of a Public Procurement Law, if found necessary*
16. *Review, revision and implementation of the Procurement Training Master Plan.*

Measures to be Taken by Bank and other Donors/Financing Institutions

The Donor Agencies should support the Procurement Reform process by providing technical support for implementation of the Action Plan. Donors should take a proactive role in its implementation and periodically review the progress, identify bottlenecks and help GOSL overcome them. Implementation of the Action Plan should be completed in four years. An estimated US\$0.75 M in technical and financial assistance from World Bank, ADB, and JBIC would be required for drafting a new Procurement Law and revising the Guidelines; preparation of Standard Bidding Documents (SBDs) and Standard Specifications; revision of the Training Plan and development of training material; strengthening of procurement training institutions and development of curricula for procurement related courses; e-governance and e-commerce. One of the donors could be the lead agency with active support and cooperation from other donor agencies for monitoring and follow-up action.

A. Background

1. Country Background

Sri Lanka, formerly Ceylon, is an island republic in the Indian Ocean off the south-eastern coast of India. It is a member of the Commonwealth of Nations. The Palk Strait and Gulf of Mannar separate Sri Lanka from India. Lying between the two nations is a chain of tiny islands known as Adam's Bridge. Sri Lanka is somewhat pear shaped, with its apex in the north. The map of Sri Lanka is provided at the end of this report. Table 1 shows a profile of the country.

Table 1. Sri Lanka: Facts and Figures

Area	65, 610 sq. km
Greatest length from North to South	435 km
Greatest width	240 km
Total Population (2002)	19 million
Population Density	304 persons per sq.km
Urban Population	23 percent
Administrative Capital	Sri Jayawardhanepura (Kotte)
Commercial Capital and Largest City	Colombo
Average Monsoon Rainfall (May to Nov.)	1020 mm
Literacy Rate	90.1 percent
Per Capita GNP	US\$858
Life Expectancy:	
Male	70.7 years
Female	75.4 years
Infant Mortality (2001)	12.2 per 1000 live births
Access to safe water	70% population
Gross Primary Enrolment: ¹	of school-age population
Male	107%
Female	104%
GDP (US\$ billion)	16.6 (2002)
Total debt outstanding (2002): ¹ IBRD	4 M US\$
IDA	1734 M US\$
Network of Roads (A and B)	11,547 kms
Operated rail road track	1,447 kms
Number of Newspapers	9 (total circulation 530,000)
Telephones; Radios; TVs per 1000 population	142 phones, 211 radios, 84 TVs

Source: Annual Report, 2002 – Central Bank of Sri Lanka

Sri Lanka gained independence on February 4, 1948, and became a Republic on May 22, 1972. The country is a member of the Commonwealth of Nations, governed under a constitution adopted in 1978. The chief of state and head of government of Sri Lanka is the President, who is elected directly for a term of six years. The President appoints the Prime Minister and members

¹ World Bank Country Brief, 2002

of the cabinet and may dismiss parliament at will. According to the constitution, unicameral parliament is the “legislative power of the people”. The 225 members of parliament are elected directly by a system of proportional representation.

Sri Lanka is divided into 9 provinces and 25 administrative districts. Each district is headed by a Government Agent, District Secretary. Local government units include 12 municipal councils, 39 urban councils and 200-plus Pradeshiya Sabhas.

The Sri Lanka legal system is based on British Common Law, Roman Dutch Law and customary practices of Sinhalese, Tamils and Muslims. Sri Lanka was a British Colony from 1802 (the entire Island came under British control in 1818) until 1947, after the Dutch ceded the Island’s maritime provinces to the British. Today, the influence of the British common law system is much greater than the Roman Dutch Law. The legal system is very well established. There is a hierarchy of courts, the apex body in the country being the Supreme Court of Sri Lanka. The country is divided into five judicial circuits, subdivided into districts with district courts. Lowest courts are conciliation boards with responsibility to deal with minor criminal and civil cases. The Chief Justice of the Supreme Court and two subordinate justices appointed by the President make up the Judicial Service Commission, which has appellate and judicial powers in criminal cases and exclusive powers in most serious criminal cases.

Sri Lanka is an outlier among developing nations, with social indicators comparable to those of high income countries. Its per capita income remains second highest in the region, after the Maldives. It is strategically well placed in the Indian Ocean and was ahead of its neighbours in liberalizing the economy. With strong social indicators and natural endowments, Sri Lanka could have achieved a substantially high socio-economic status, had it not been for the history of ethnic conflict, an excessively large public sector, and deteriorating governance. The war is reported to have taken over 60,000 lives, displaced 700,000 people (of which about 170,000 are living in government welfare centers) and continues to drain human and financial resources of the country.

Per capita employment in the public sector is the largest in Asia, providing employment for more than 850,000 people. In addition to Ministries and Departments, Sri Lanka has over 150 statutory Boards, public corporations and public enterprises, which combine commercial and regulatory activities. Public sector contribution to GDP is 12.3 percent and that of the private sector 87.7 percent.

The Fiscal situation is dominated by defence and interest payments. Defence expenditure accounts for 28 percent of the total current outlays. Interest payments account for a further 28 percent - a legacy arising from a decade of fiscal excesses. Around 25 percent of the current outlays is on civil service salaries and pensions and a further 12 percent on ill-targeted subsidies to the poor and transfers to state owned enterprises. Budget deficit was Rs.124.5 billion (9.8 percent of GDP) in 2000 and is the highest in the region in terms of GDP percentage. Public debt increased significantly in the past three years and amounted to 97.1 percent of GDP in 2002.

Political instability and a weak regulatory environment continue to erode investor confidence. Public accountability systems, processes and institutions are weak, outdated, and not sufficiently independent, according to the WB Country Financial Accountability Assessment (2002). Government efforts to tackle this problem by establishing investigative and punitive mechanisms, such as the Bribery Commission and other Commissions of Enquiry, have been ineffective.

According to the WB Country Report, the economy, which remained resilient despite the intensified conflict, turbulence in the Asian financial markets, and unstable political environment, deteriorated significantly in 2001. Real GDP growth rate was a negative 0.7 percent for the first nine months of 2001, compared with the modest average of 4-5 percent growth over the last decade. Fiscal deficit rose to 10.5 percent of GDP. In September 2001, total outstanding debt had increased by 14.4 percent compared to December 2000 figures. Of the US\$6.8 billion outstanding as of September 2001, 78 percent is owed to three major donors – JBIC, ADB and IDA.

It has not been possible to make an estimate of the volume of public procurement, in the absence of details in documentation furnished by the various Ministries and Implementing Agencies. However a rough estimate of the volume of Public Procurement could be made from the Anticipated Expenditure on Capital Account², which is Rs.1,059 billion. Taking a rough percentage of 65 percent, the volume of Public Procurement could be assessed at Rs.70 billion or \$US0.65 billion.

2. Donor Agency Portfolios

2.1 World Bank

According to the Sri Lanka Country Portfolio Performance Review, 2002³, the current WB portfolio as of September 2002 includes 13 projects with commitments totalling US\$ 462.5 million and several economic and sector work tasks focusing on poverty alleviation, institutional development and governance. The details are given in Annex 2.

Future Bank lending is proposed to focus on programmatic and adjustment lending, emphasize community driven approaches and seek to use the existing government system (Central and Provincial governments) for transfer of resources and implementation of development programs. Projects expected to be negotiated and completed during the FY03-09 period are as follows:

- (i) Improving Relevance and Quality of Undergraduate Education: US\$40 M (IDA)
- (ii) National HIV/AIDS Prevention: US\$13 M (Grant)
- (iii) Economic Reform Technical Assistance: US\$15 M (IDA)
- (iv) Poverty Reduction Support Credits I and II: US\$250 M (IDA)
- (v) Community Water II: US\$40 M (Grant)
- (vi) Community Development: US\$51 M (Grant)
- (vii) Health Sector: US\$60 M (Grant)
- (viii) Education Sector: US\$50 M (IDA)
- (ix) E-Sri Lanka: US\$50 M (IDA)

2.2 Asian Development Bank

According to the ADB 2002 Sri Lanka Country Portfolio Review Mission report, there were 27 on-going loan projects as of September 30, 2002. Total loan commitments were \$1,033 million of which net un-disbursed funds amounted to \$688 million (67 percent of total loan commitments). The sector wise distribution in terms of the amount of ongoing portfolio is Agriculture (15 percent); Natural Resources (11 percent); Water Supply and Urban Development (14 percent); Education (8 percent) and Finance (18 percent), Transport and Communications (24 percent),

² Budget Estimates 2002 Volume I, Summary of Expenditure by Category, Page xxxix

³ Sri Lanka Country Portfolio Performance Review FY 2002 – World Bank/GOSL

Energy (7 percent) and Relief and Rehabilitation (3 percent). In addition there are 27 on-going Technical Assistance projects. The details are given in Annex 2.

2.3 *Japan Bank for International Cooperation*

As of September 30, 2002, there were 88 ongoing JBIC loan projects with a total loan commitment of 561.3 billion Yen, of which net undisbursed funds amounted to 268.9 billion Yen (51 percent of total loan commitments), according to data provided by the JBIC Colombo office. The sectoral distribution for the ongoing portfolio is Transportation (31 percent), Electric Power and Gas (24 percent), Commodity Loans (12 percent), Social Services (11 percent), Telecommunications (10 percent), Irrigation and Flood Control (7 percent), Mining and Manufacturing (4 percent), Agriculture, Forestry and Fisheries (1 percent). JBIC ODA Loans to Sri Lanka for the last five years are given in Annex 2.

B. Findings

Public Sector

1. *Legal and Regulatory Framework*

1.1 Regulations and Guidelines

The Constitution of Sri Lanka has no specific provision regarding award of contracts (Vol. II, A-1).⁴ Under Article 44 (1) (a) of the Constitution, the President may assign any subject/function to a Minister/Ministry. In pursuance of this, the President has assigned to the Minister of Finance the subject of the Government Financial Regulations, Interpretation and Amendments. The Financial Regulations was originally published in 1966 (revised in 1992) and Chapter XIII laid down the rules to be followed for procurement of works, goods and services. Apart from this there is no central law or provincial law as such that regulates public procurement.

In order to keep the procurement process fully transparent and honest (ensuring a level playing field for all tenderers), speed up the process, and obtain financially the most advantageous and qualitatively the best services and supplies for the country, the Ministry of Finance and Planning closely examined the Financial Regulations 1992 and issued on September 30, 1996, Guidelines on Government Tender Procedure. The main objective of the Guidelines is to expedite procurements and reduce delays, while obtaining the maximum economic advantage to the nation keeping in line with the Government's policy of transparency. Part II of the Guidelines defined the procedure by which Build-Own-Operate (BOO), Build-Operate-Transfer (BOT) and unsolicited proposals can be presented, evaluated and accepted.

The introduction of the Guidelines was an epoch-making step and ushered in Procurement Reforms in the Country.

With the experience gained in implementing the Guidelines and with useful feedback from individuals and from seminars held on the subject, the Department of Public Finance, General

⁴ Cross-references to detailed discussion in Volume II of this CPAR are indicated in parentheses.

Treasury issued Revised Guidelines (containing procedures both for projects financed from Consolidated Funds and Foreign Financing Agencies) vide Public Finance Circular No. Fin-352 dated September 25, 1997, to be implemented with effect from November 1, 1997, by all Government institutions inclusive of Ministries, Departments, Public Corporations and Statutory Bodies, Government Companies (having more than 50 percent ownership by the Government), Provincial Councils, and Local Authorities (including Pradeshiya Sabhas) for the procurement of works, services and supplies and disposal of government assets. The applicability of the 1997 Guidelines is the same as for the original Guidelines. Part II of the Guidelines on Private Sector Financed Projects—Revised Edition, was to be issued separately. This has since been issued vide Public Finance Circular No. Fin.355 on January 23, 1998, implementable from March 1, 1998. The Ministry of Finance and Planning issued the Revised Guidelines on Government Tender Procedure for Projects assisted by Foreign Financing Agencies vide Public Finance Circular FIN 350(1) of December 6, 2000 (with effect from December 15, 2000), repealing Chapter XIII of the Revised Guidelines August 1997. With further experience gained in the implementation of the 1997 Guidelines, the Ministry of Finance has prepared a Second Revised Edition—February 2002 Part I, incorporating the amendments and clarifications issued from time to time. This is yet to be approved and issued.

1.2 Need for a Procurement Law

The basic contract law has no specific provision directly bearing on Public Procurement. Other than the Financial Regulations and the Guidelines, there is no separate body of laws that regulates Public Procurement. However other bodies of the law regulating the procurement related aspects are: Unfair Contract Terms Act, The Sale of Goods Ordinance, Labour, Taxes, Customs, Insurance, Banking, Export & Import and Foreign Exchange Control.

The source of the Financial Regulations is through the Allocation of Duties by the Minister of Finance acting under the powers vested on him/her by Article 44 (1) (A) of the Constitution. The Financial Regulations and Guidelines are approved only by the Minister of Finance/Cabinet and not by the Parliament.⁵ These Rules and Guidelines are applicable to the entire Public Sector Procurement process with a proviso that the local councils could establish lower thresholds for the delegated authority for approval. Discussion with the Secretary, Ministry of Justice revealed that the Courts have accepted that the provisions of the Guidelines have the force of Law on Procurement issues. The Honorable Supreme Court Justice, Dr. Amerasinghe, while delivering judgment on a procurement related case⁶ drew attention to provisions of Article 12(1) of the Constitution, that “All persons are equal before the Law and are entitled to the equal protection of Law,” and also stating “With great respect, I am unable to accept a view that Law in Article 12(1) is confined to enactments of Parliament. In my view Law includes Regulations, Rules, directions, instructions, guidelines and schemes that are designed to guide public authorities.”

Several member countries of the Bank have Public Procurement law enacted by Parliament, which alone can change it, dealing with the Public Procurement of Goods, Works and Services by governmental entities at all levels, and most often both for the central authorities as well as for those at provincial and community level. Only very few countries today still follow a different approach, as the one used in Sri Lanka, represented by Financial Regulations and Guidelines. For most developing countries, the United Nations Commission on International Trade Law

⁵ GOSL is processing the enactment of Finance Act, which stipulates that all contracts shall be awarded following the Procurement Rules and Regulations.

⁶

(UNCITRAL) model on Procurement of Works, Goods and Services has formed the basis for National Procurement Legislation. Nonetheless, since Sri Lanka's Guidelines have been accepted as having the force of law, the continued use of the Guidelines, as modified in accordance with the recommendations of this CPAR, would be deemed satisfactory, at least for the near term.

Recommendation: Considering the commitment of the State and level and ease of acceptability both by interested parties as well as by the judiciary, the GOSL may consider enactment of a Procurement Law as deemed necessary in the long term. GOSL will be in a better position to decide whether the process, as set out under the Guidelines, should be endorsed through legal enactments, following experience with Guidelines revised to take into account recommendations of this report.

1.3 Appeals/Challenges against determination

Guidelines have provision to deal with appeals from unsuccessful tenderers. However the appeal board is constituted by the same authority (Cabinet) which also approves tenders against the prescribed threshold (Vol. II-A.1.1.4).

Recommendation: To inculcate confidence in the minds of the contracting business community, and to create a perception of impartiality in the disposal of appeals, the Appeal Board should be an independent judiciary/quasi judiciary body or alternatively, a body outside the purview of the tender accepting authority, located in the President's Secretariat, manned by persons of high integrity, equipped with the requisite knowledge. In order to discourage frivolous challenges, a system of deposit (which could be forfeited should the appeal be determined frivolous) could be introduced. A timeframe of 30 days may be prescribed for disposal of the appeal/challenge. The Appeal procedure should be common for all challenges related to contract procurement, irrespective of the jurisdiction of the various Tender Boards. This mechanism will help ensure that the procurement is fair, equitable, competitive and transparent.

1.4 Debriefing Procedure for unsuccessful tenderers

The Guidelines provide for debriefing to the unsuccessful tenderers in respect of donor-financed contracts only.

Recommendation: Debriefing procedure should be introduced to all contracts irrespective of the source of funding.

1.5 Mediation mechanism

The country has a Commercial Mediation Centre set up under the Sri Lanka Act 2000, which was to come into operation with effect from the date to be appointed by the Minister by order published in the Gazette. Standard Bidding Documents introduced by the Institution for Construction Training and Development (ICTAD) have provision for the appointment of an Adjudicator who is required to function as a Mediator and give the outcome of the mediation in writing to the parties within 28 days of the dispute being referred to him. Either dissatisfied party may refer the dispute to Arbitration within 28 days of the Adjudicator's written communication.

Recommendation: The proposed mechanism is a mix of an Adjudication and Mediation mechanism and should be modified to bring in the Mediation process following the Adjudicator's decision, and before referring to Arbitration. An Adjudicator may be appointed for all contracts

above Rs.5 M and a Dispute Resolution Board or Dispute Resolution Expert appointed for contracts above Rs.500 M for settlement of disputes (Vol. II-A.2.31).

1.6 Arbitration

Arbitration Act No.11 of 1995 of Sri Lanka is based on the UNCITRAL model law on Arbitration but with several changes. However there are no Rules. Paragraph 7 of the Act as in the case of UNCITRAL Model Law (Article 11. (3)), is clear about how the Arbitrators are to be appointed if one of the parties fails to appoint its arbitrator. However the time limit for appointing the second and third Arbitrators by the intervention of the court is 60 days compared with 30 days, as suggested by the Model Law. This is not in line with the spirit of Arbitration in respect of speed.

The UNCITRAL Model, in Article 29, provides that the decision is by majority when there is more than one arbitrator, leaving open the question as to what happens if there is no majority decision (e.g., if there are two arbitrators, and they are deadlocked, or if there are three, and each has a different opinion). Here, the Act seems to provide for better answers. First, there can never be an even number of arbitrators, because, as provided for under sub-section 6(3), if the number of arbitrators is even, they have to jointly appoint an additional arbitrator, who shall act as Chairman. Second, the sub-section 19 (1) of the Act provides that, if there is no majority award, the decision of the Chairman shall be binding.

Subsection 25(1) of the Arbitration Act, similar to UNCITRAL Model Law, in Article 29, however, provides in arbitral proceedings with more than one arbitrator, that the signatures of the majority of the members shall suffice. This is not consistent with the provision of sub-section 19(1) of the Act as mentioned above, as it does not specify that the Chairman's signature would suffice for his decision to be binding in accordance with the said sub-section 19(1) of the Act.

Recommendation : Arbitration Rules which are in conformity with International practices should be framed and issued.

1.7 Suspension and Blacklisting of Contractors/Suppliers

The provisions of the Guidelines appear somewhat stringent. To deny issue of the tender documents for the reason that a contractor is in the list of defaulting Contractors may not be fair. Though the world 'Blacklist' is used, rules for blacklisting have not been framed except for defaulting contractors (Vol. II-A.2.30).

Recommendation: Comprehensive rules for 'blacklisting' for a specified period or permanently, should be framed to include all offences such as furnishing false information, default, submission of false Bid Bonds or Guarantees, moral turpitude, conviction by court, no justification for high rates quoted, collusion, assignment of contract, non-payment of government dues.

1.8 Entity with oversight responsibility for procurement policy

There is no independent entity to oversee policy related matters in Public Procurement, including policy formulation. The Ministry of Finance has taken on this responsibility. The Procurement Support Bureau (PSB) was created under the Ministry of Finance with the support of an ADB-financed Technical Assistance (TA) Project in 1999. The PSB is required to provide procurement implementation support including providing advice on evaluation of tenders and assessment of

tender proposals. It also has a tender monitoring function. PSB is a specialized unit involved in implementation, including day-to-day activities, similar to an executive agency. Presently the policy aspects and functions of a regulatory nature, essentially to be carried out by an independent organization, are also being carried out by PSB.

Recommendation: A small, high-powered, professionally staffed, independent Procurement Regulatory Agency (PRA) should be set up to develop the procurement legal framework with functions which are confined mainly to policy, documentation, and development of rules. Its functions should not include line clearance for awarding and execution of contracts as presently partially done by PSB. The exact modalities of the PRA/PSB arrangement should be developed by GOSL. It should include two distinct authorities – one for Regulation and the other for execution.

1.9 Framework for Anti-bribery and Anti-corruption measures

The Bribery Act of 1954 and the Commission to Investigate Allegations of Bribery or Corruption Act of 1994 provide the legal framework for anti-bribery and anti-corruption measures. A detailed description of the Commission's activities is given in Section 4 below and Vol. II-A.4.2. The provisions to deal with bribery offences are adequate. However reportedly, the process for implementation of these laws is weak. In 2000, only about 12 percent of cases received for investigation by the Bribery Commission were disposed of. Of 1,135 complaints referred for legal opinion, only 12 resulted in launching prosecution. Progress of cases in the Courts is slow and few are convicted (14 out of 41 cases concluded in 2000).

Recommendation: The Bribery Commission should become pro-active in seeking active support of non-governmental (national and international) agencies such as Transparency International in making the public aware of the seriousness of the problem and prompting them to fight against Bribery and Corruption.

2. Procurement Procedures and Practices

The Guidelines on Government Tender Procedure, which are broadly based on the Procurement Guidelines of the Donor Agencies, have provided a much needed framework of procedures. However the Guidelines have some provisions which are not conducive to transparency and fairness. The important ones are discussed briefly hereunder and provisions that need to be clarified, supplemented, enlarged or strengthened are indicated below. More details on all aspects of public procurement are discussed in Volume II – A-Public: Section 2.

2.1 Tender Documents for Goods, Works and Services

The quality of the tender documents, which includes contract format and conditions, decides the level of competition, the transparency of the process, the risks imposed on the tenderer and consequently the prices. However, except for procurement of standard works, there are no standard tender documents for other types of Works, Goods, Design, Supply and Erect contracts or for Consulting Services (Vol. II-A.2.7). Even the Works document which has been developed by ICTAD has some deficiencies. This document, though suggested for use by the Guidelines, is not always being used in the Provinces.

Different procurement entities prepare their own documents, which result in a number of non-uniform contract documents, prepared with considerable time and effort. Further, there is a possible risk of claims and litigation as the documents are not conducive to transparency in some aspects. In order to remedy this situation, PSB has started preparing Sample/Trial documents for the Procurement of Goods and ICTAD is preparing Sample/Trial documents for Works (Major) and Design and Build contracts.

In the case of hiring consultants, there are no standard documents for invitation of proposals. ICTAD has only issued a model form of Agreement and Client Guides – General and Selection of Consultants.

Recommendation: GOSL should develop and publish a set of standard tender and contract documents for Works, Goods, Industrial Plant and Professional Services, that are made easily and widely available to the business community. They should be mandated for use by all public procurement entities. The standard documents should be given reference numbers, which could be referred to in the invitation for tenders. User entities should not be allowed to change any clause in the Standard General Conditions but may add any specific requirements or modifications only through Special Conditions/Contract Data.. The set of tender documents standardized by the World Bank and approved by the Government of Sri Lanka could form a basis to start with and appropriately modified to suit country specific requirements, wherever needed. This step is of the highest priority and would greatly improve the quality of procurement, save time, minimize abuses, and enhance transparency. PSB should develop a website where the Standard Bidding Documents (SBDs) are placed for reference by the business community.

2.2 *Registration of Firms and Contractors*

Registration of contractors for Works is done in different grades and is mandatory in Sri Lanka, irrespective of the value of works (Vol. II-A.2.10). Membership in the National Construction Contractors Association of Sri Lanka (NCCASL) is also mandatory. For works costing more than Rs.5 M, registration with ICTAD is mandatory. For works costing less than Rs.5 M, contractors could be registered with the respective Head of Department or ICTAD. Bidding documents are issued only to registered contractors.

Guidelines specify that pre-qualification of tenderers is generally required for large and complex works, (which have been defined as those estimated to cost more than Rs.20 M) and is mandatory for tenders of value more than Rs1000 M. Since pre-qualification is generally required for works of more than Rs.20M, the need for Registration and Grading by ICTAD for this category of contracts appears not relevant. Irrespective of the registration and grading, the criteria for qualification need to be checked by the Employer at the time of evaluation of the tenders and before award of the contract. In view of the above, Registration and Grading by ICTAD and membership of the NCCASL does not really serve any purpose.

In respect of tenders of value between Rs.5 M and Rs.20 M, the qualification criteria for tenderers, as stipulated in the tender document, has to be verified (post-qualification) before award of the contract, irrespective of whether the tenderer is registered and graded by ICTAD and is a member of NCCASL. Hence in such cases too, the registration and grading system is not relevant and does not serve any meaningful purpose. In fact it may lead to discrimination and possible abusive practices, escalation of costs and delay in the procurement process.

For works of value less than Rs.5 M, which may be very large in number, going through the process of verification to meet the specified qualification criteria in each case may turn out to be

cumbersome and lead to delays. Determining eligibility on the basis of a simplified method of registration (either by the Heads of Departments or ICTAD) would be preferable. In these cases also membership of NCCASL should not be made compulsory.

Recommendation: Registration of contractors does not serve any purpose for works of value more than Rs.5M and should be dispensed with. In respect of works for which pre-qualification is not carried out, tender documents should contain contract-specific qualification criteria and tenderers should be post-qualified before award of contract. Registration of Suppliers/Vendors for materials, goods and equipment of value above the threshold limit for which open tenders are to be invited, may be discontinued. Minimum post-qualification criteria should be incorporated in the tender documents. Use of Registration should be restricted to procurement against limited tenders.

2.3 *Tender Evaluation and Approval for Award of Contracts*

There are multi-tiered Tender Evaluation Committees (TECs) and Tender Boards (TBs) for different thresholds of estimated contract values (Vol. II-A.2.22). These include the Head of Department/Project Director/Minor Tender Board, Project Tender Board (PTB), Departmental Tender Board (DTB), Ministerial Tender Board (MTB), and Cabinet Appointed Tender Board (CATB). Corresponding TECs and TBs are appointed for each separate tender. The procedure for the appointment of TECs and TBs appears fairly simple and feasible on paper. However in practice, the procedure is cumbersome and contributes to considerable delays (reference: ADB-financed study⁷).

The CPAR Team also analyzed procurement decision data collected through a Local Consultant, covering 30 contracts. Based on the team's analysis which is corroborated by the findings of the ADB consultants and of the World Bank FY 2002 Portfolio Review⁸, the findings of the CPAR team are:

- The existing process, involving multiple referrals, is unnecessarily lengthy, inefficient, and outdated in terms of its capacity to deal with the volume of public procurement. It has also not contributed to greater transparency; the two tiered TEC/CATB contract award process, involving a number of steps for large tenders, is a fundamental cause for delays;
- The delegation of approving authority is inadequate⁹.
- Despite constitution of 30 CATBs, cases referred to CATBs are generally more protracted than those referred to lower levels, such as the MTB, the single most delaying factor being the requirement of Cabinet approval¹⁰, which accounts for about 70 percent of total period taken for award decision;

⁷ ADB-financed Final Report on Technical Assistance to the Democratic Socialist Republic of Sri Lanka for Establishment of Sri Lanka Tender Support Bureau (SLTSB) Project - a detailed analysis of the tendering and awarding process in relation to a sample of 154 contracts awarded in the period 1994-2000 was carried out. Consultants: Overseas Project Corporation of Victoria Ltd. in association with Resource Development Consultants Ltd.

⁸ Sri Lanka Country Portfolio Performance Review FY 2002 GOSL/World Bank

⁹ Authority Limits for Projects funded by Consolidated Funds have recently been increased w.e.f September 10, 2002

¹⁰ Vide Public Finance Circular No.Fin 358(5) dated September 6, 2002 recommendations of CATBs along with a briefing note shall be submitted to the Cabinet Sub-Committee on Budget and Tenders by the Chairman of CATB with copy to the Line Ministry, which will submit the observations if any to the

- The recent constitution of a Cabinet Sub-Committee on Budget and Tenders may contribute to further delays.

Recommendation: The procedure for the constitution of TBs and TECs should be streamlined to cut down the tender evaluation and award period. The number of Standing TBs and TECs should be increased, in particular if they need to meet at short notice. The multi layered review/approval process, particularly for large value contracts, should be simplified to expedite the process and minimize opportunities for malpractices and corruption. TBs should be empowered to make award decisions on the recommendations of TECs. The TB may seek clarification from the TEC or reject the TEC recommendations, giving its reasons for the TEC to re-evaluate, but should not itself re-evaluate tenders. Tenders should be awarded within the initial tender validity period.

2.4 *Negotiations*

The provisions in the Guidelines are ambiguous and permit (in fact encourage) negotiations before selection of the successful tenderer, presumably to improve outcome and benefits including cost reduction, and reduce uncertainties. Another provision permits possible negotiations to reduce the cost when the tendered amount exceeds the total cost estimates (Vol. II-A.2.23).

This practice is totally against the principles of competition and transparency. Further, with this practice, every bidder is likely to make a provision in his price for negotiations and, during negotiations, possibly give up less than what he provided. This may give a perception of savings in public expenditure, but if negotiation is totally prohibited and the tenderers understand this, they would offer competitive and comparatively lower prices upfront. World Bank procedures prohibit routine negotiations to push down a competitively quoted price and there is overwhelming evidence to show that the procedure results in more competitive prices in the long run. Above all, negotiation opens up opportunities for corruption.

Recommendation: Negotiations should not be held merely to push down the competitively quoted price of the lowest (selected) tenderer. Negotiations should be permissible only in very exceptional circumstances (single, substantially high tender; evident/obvious collusion etc.) with prior approval by a high level committee. Detailed guidelines on exceptional situations where negotiations are to be conducted and the procedures for conducting negotiations should be prescribed. Detailed guidelines on exceptional situations where negotiations are to be conducted and the procedures for conducting negotiations should be prescribed.

2.5 *Standard Functional Specifications for Goods*

In the absence of standard functional specifications for goods, each procuring entity frames its own specifications and incorporates evaluation criteria/methodology for comparative evaluation (Vo. II-A.2.4). This has brought in subjectivity and more often reduced competition, especially for commonly procured goods, such as vehicles, computer hardware etc.

Ambiguous specifications in the tender documents for materials, goods and equipment lead to procurement of low quality goods. Similarly non-incorporation of detailed specifications in the works documents may lead to low quality work, claims, litigation and arbitration.

Cabinet Sub- Committee within one week. The Cabinet Sub-Committee will review the recommendations of CATB and make its observations to the Cabinet.

Recommendation: Standard Functional Specifications, which are broad and non-discriminatory, with corresponding evaluation criteria/methodology for comparative evaluation, should be developed for goods that are commonly procured by various implementing agencies. For specialized goods and equipment, whenever in-house expertise is lacking, experts/consultants should be hired to develop specifications. The draft specifications for commonly procured goods and equipment as well as the evaluation criteria/methodology for comparative evaluation should be placed on the web site of PSB, inviting comments from manufacturers, suppliers and users. After review and refinement, the specifications should be circulated to the implementing agencies for adoption and adherence.

2.6 *Tender Capacity as an Evaluation Criterion for Award of Contract*

The tender documents usually stipulate the minimum qualification criteria to be satisfied by the tenderer for award of a contract (Vol. II-A.2.34). It may so happen that a tenderer is awarded multiple contracts by satisfying the stipulated qualification criteria, each work being taken individually. However, if multiple contracts are awarded to a tenderer, it may be beyond his capacity to satisfactorily perform all the contracts simultaneously. Subjective decisions are taken by Tender Boards which may not stand in a court of law.

Recommendation: Tender capacity should be made a mandatory criterion for award of contract. Specific requirements in this respect should be pre-disclosed in the tender documents. The contracts on hand must be assessed to determine available capacity net of current commitments and ability of the tenderer to perform the new contract satisfactorily, if awarded. Additionally where the tenderer is lowest in more than one tender or slice of a package, the qualification requirements to be satisfied by the lowest tenderer should be the aggregate of the individual tenders or slices of a package. Otherwise the contract award should be made only for the tender(s) for which the tenderer satisfies the criteria.

2.7 *Electronic Tendering*

One of the major steps towards promoting Electronic-Governance is Electronic-Tendering. Systems are now available to introduce electronic tendering in Public Agencies. This will substantially increase transparency, efficiency and reduce scope for malpractice and corruption.

Recommendation: Electronic tendering procedures should be introduced progressively, initially as a pilot for procurement of Goods by selected implementing agencies, for example, the Railways and Electricity Departments. After its successful implementation, it should be piloted for civil works having a few items. In the meantime GOSL should encourage the use of documents and forms downloaded from the web for various transactions. Apart from reducing printing costs, it will reduce problems associated with timely availability of the documents and forms.

2.8 *Consulting Services*

Guidelines prescribe the procedure to be adopted for hiring of Consultants in Donor assisted projects (Vol. II-A.2.32). Consultants are hired in accordance with the respective Donor Consultant Guidelines. Request for Proposal (RFP) documents as prescribed by the respective Donor Agencies are being used. However there are no prescribed documents to be used for consultancy assignments financed from the Consolidated Fund of GOSL. The Guidelines do not

make any mention of the RFP document to be used. Some documents have been prepared by ICTAD but these publications address the subject partially and do not provide comprehensive documentation for invitation of proposals.

The Guidelines do not treat the subject cohesively, though the contents in general appear to have been based on the Guidelines of the Donor Agencies. It provides the procedure for Quality Based selection but does not prescribe the procedures for other methods of Selection, such as Quality cum Cost-Based Selection (QCBS), Least Cost Method of Selection, Single Source Selection, Selection Based on Consultants Qualification, and Fixed- Budget Selection.

The Guidelines do not prescribe a clear procedure for hiring of Individual Consultants. They also do not prescribe the types of Contracts such as Lump Sum, Time based, Percentage, Cost plus etc. and their applicability.

Recommendation: The Guidelines should be comprehensively redrafted to give clear and precise procedures for the hiring of Consultants. Standard RFP Documents should be prepared for various methods of selection and various types of Contracts. The models as approved by the World Bank for use in Sri Lanka can form a basis for preparation of the Sri Lanka specific Standard RFPs.

2.9 *Other areas for improvement in the Guidelines*

Some of the other procurement aspects/areas covered in the Guidelines which need to be clarified, supplemented, enlarged, and strengthened are listed hereunder. The list is illustrative and not exhaustive. Details are extensively covered in Volume II.

- Making mandatory the preparation of Procurement Plans, consisting of methods of procurement, packaging and scheduling of activities for projects financed from Consolidated Fund (Vol. II-A.2.1)¹¹;
- Identifying in the Guidelines, linkages to the currently stipulated procedure (in Financial Regulations etc) for framing of Estimates (Vol. II-A.2.2);
- Periodic updating of Data-Book/Analysis of Rates, commensurate with the current construction practices, to arrive at realistic and workable estimates (Vol. II-A.2.3);
- Specifying the various methods of procurement including their applicability, for contracts financed by the Consolidated Fund of GOSL and making the documents available at a single place for easy usage by the Executive Agencies (Vol. I-A.2.5);
- Identifying in the Guidelines the various types of contracts, the situations where they should be used and the tender documents to be used for each type (Vol. I-A.2.6);
- Standardizing and harmonizing the formats for securities and guarantees between the Guidelines and prescribed SBDs.(Vol. II-A.2.8);
- Reducing the gap between the thresholds for optional and mandatory pre-qualification requirements (Vol. II-A.2.9);

¹¹ Instructions for holding Procurement Planning Meetings as envisaged in Paras 205 and 206 of Guidelines for Foreign Funded Projects has been reiterated on September 6, 2002.

- Prohibiting the use of the two envelope system generally, and prescribing use of two stage tender system for procurement of complex equipment/plant and installation (Vol. II-A.2.11);
- Varying the tender validity period for different types and values of works/goods (Vol. II-A.2.12)¹²;
- Providing adequate guidance to the implementing agencies on the incorporation of the Price Adjustment provision without leaving it to the discretion of the Implementing Agencies (Vol. II-A.2.13);
- Providing additional guidance on contract administration including handling of variations, claims, obligation of parties, breach of contract and liquidated damages (Vol. II-A.2.14);
- Stipulating the scale of publicity for different procurements by method and value (Vol. II-A.2.15);
- Reviewing restrictive provisions for sale of tender documents; introducing uniform stipulations on the date of start and close of issue (sale) of tender documents¹³; and reviewing the need for different tendering periods for tenders financed by internal and external sources¹⁴ (Vol. II-A.2.16);
- Providing in the Guidelines procedures for conducting pre-tender meetings and incorporating details in the SBDs (Vol. II-A.2.17);
- Reviewing the procedure for submission of Withdrawal and Modification of tenders as given in Specimen ITB Appendix II of 1997 Guidelines (Vol. II-A.2.18);
- Removing inconsistencies within and between Guidelines and SBDs for opening of tenders and simplifying the procedures (Vol. I-A.2.19);
- Reviewing the need for different procedures for correction of errors and establishing the tender price, between Donor and Consolidated Fund financed tenders¹⁵ (Vol. II-A.2.20);
- Reviewing the price and/or purchase preferences provision, and exemptions for submission of tender security deposit to a group of organizations (such as approved societies and parastatals)¹⁶ (Vol. II-A.2.21);
- Introducing a computerized system for procurement tracking and setting up a contractor performance database (Vol. II-A.2.24 and 2.28);
- Specifying the types of insurances to be taken out, and coverage¹⁷ (Vol. I-A.2.26);
- Introducing specific Guidelines on pre-shipment, post-delivery inspections, inspection by third party for goods. The case is similar for works which includes such items (Vol. I-A.2.27);
- Prohibiting repeat orders in the Guidelines (Vol. II-A.2.29);

¹² Specimen ITB in Appendix II of 1997 Guidelines indicates normal validity of 120-150 days

¹³ Some agencies sell the documents till the date of submission, others close the sale a week prior to the deadline for submission

¹⁴ Minimum period of 30 days is desirable

¹⁵ The method prescribed for Consolidated Fund financed contracts is one-sided favouring the Employer

¹⁶ This is not in the public interest and is against the principles of competitive procurement and equality, as embodied in the preface to Guidelines signed by the President

¹⁷ Stipulating that all insurance should be obtained from Government owned insurance companies is discriminatory and has an element of conflict of interest

- Reviewing the cumbersome procedures for evaluation of unbalanced tenders and differing procedures for tenders financed from donor-funded projects and consolidated fund (Vol. I-A.2.33).

Recommendation: Though a commendable effort has gone into the drafting of the Guidelines, they need revision to include provisions as discussed above and exclude those provisions which shall be covered by the Standard Tender Documents.

3. Organization and Resources

The Procurement functions are mostly decentralized. The concerned Ministries and Provincial Councils are responsible for procurement within their organizations (Vol. II-A.3). Except for a few Executing Agencies such as the Ministry of Railways, procurement and supply functions are not separate.

The Guidelines framed by the Ministry of Finance govern public procurement in all organizations. These Guidelines are available on sale and all the procurement entities are aware of the guidelines and the thresholds prescribed therein. The delegation of contracting authority is inadequate and hence CATB refers contracts of value more than \$US1 million (\$US0.5 M for CF-funded projects) to a Cabinet Subcommittee representing the Cabinet of Ministers for decision, after receiving recommendations from the TEC and inputs from the concerned Ministry. Since tenders beyond a certain value have to be referred to the Cabinet for decision, the possibility of political interference in decision-making cannot be ruled out.

There are no well-defined Technical or Procurement Audits and quality control mechanisms. Audit is usually restricted to financial audit.

Procurement entities implementing externally financed projects and Ministries which are responsible for a large share of Public Procurement follow International Competitive Tendering procedures. There is no separate procurement cadre or procurement core group in the Country and most of the staff carrying out the procurement function are from general Engineering and Accounts cadres, are inexperienced and are not trained specifically in procurement. Lack of expertise coupled with lack of interest shown by senior officers in procurement matters has caused considerable delays due to poor procurement planning, as well as delays in the preparation of tender documents, evaluation of tenders and contract awards. Contract administration is weak. This has resulted in cost and time overruns.

The Government of Sri Lanka has been concerned for some time about the extent to which its development projects were being delayed, particularly before implementation begins, by lengthy internal approval procedures for procurement of civil works, goods and services and also due to paucity of trained staff. The Government's concern is shared by foreign financing agencies which are assisting projects where pre-implementation delays and consequently lengthy delays in the completion dates are occurring. The situation has led to considerable increases in project costs and loss of project benefits and an overall slowdown in delivery of benefits to the target group.

3.1 Procurement Support Bureau

In 1997 GOSL received Technical Assistance from the ADB to establish and make operational the Procurement Support Bureau (PSB) within the Ministry of Finance and Planning (Vol. II-A.3.1). In April 1999, the PSB became operational with core staffing and an office located in the Treasury Secretariat.

The PSB was established with the vision to improve Sri Lanka's public procurement performance and with the mission to improve the efficiency of the public procurement process in order to expedite economic and social development for the betterment of the people of Sri Lanka. The objectives of the PSB are:

- *Providing support for public procurement* : To operate as a client-oriented organization that provides, as the key procurement reference point, quality support and expertise to all government agencies to enable efficient and effective public procurement;
- *Monitoring the performance and progress of tenders* : To operate a systematic and effective method of monitoring procurement performance and processes;
- *Developing policy initiatives to improve performance* : To formulate, in consultation with donors, industry groups and client agencies, policy recommendations and guideline refinements to provide the necessary regulatory framework to support procedural reform initiatives and ensure effective implementation;
- *Procurement Training* : To develop, and facilitate implementation of, procurement training programs to improve the competency level of procurement officers and promote procedural reforms; and
- *Project management* : To provide appropriate project management tools and skills to allow PSB to properly plan, implement and monitor its tasks.

At present it is difficult for PSB to work towards achieving the above objectives, as the CEO and the other directors are involved in mainly supporting the Ministry of Finance in preparation of briefs for the CATB subcommittee, as well as the CATB and the Cabinet. This also involves processing the CATB decisions and communicating them to the relevant institutions. Following the decentralization of procurement functions to Ministerial levels, the PSB needs to provide guidance to MTBs in procurement-related matters. At this stage, PSB should be working towards devolving its functions and achieving its original goals in the medium term, after providing adequate training to the relevant ministries. This necessitates strengthening of the PSB with more technically competent staff. A Procurement Regulatory Agency should however separately evolve and the PSB role should decline once the procurement functions are further decentralized and capacity is built in the line agencies to handle procurement independently.

Recommendation: The PSB needs to be strengthened and manned by competent officers, technical experts, and should deal with planning, setting of standards and monitoring of outcomes, and capacity building including training. PSB should also be entrusted with the responsibility for implementation of the Action Plan agreed in accordance with the CPAR recommendations. This should be consistent with the recommendation to create a separate Regulatory authority as mentioned in para 1.8 above.

3.2 *Procurement Capacity Building*

The PSB has a Training Unit which is headed by a Director (Vol. II-A.3.2). Due to the magnitude of the task and the large number of officers requiring training in the area of public procurement procedures, a Train-the-Trainer type approach has been adopted by PSB, with selected senior officers in the key sector agencies being trained and supported to conduct training within the respective agencies. The Unit has two subunits, Training Delivery, and Promotion and Material

Development, and each of these subunits is headed by a Deputy Director. The Unit has developed 10 training manuals covering various aspects of public procurement.

ADB Consultants in their Final report on the TA (2950-SRI) have included the Training Master Plan, which includes a Report on Private Sector Capacity to assist in Training of Government Procurement Officers.

The Training Unit of PSB has conducted 81 Procurement Training Events covering 2,248 participant days up to August 2001, which has reportedly improved the quality of procurement marginally. Sixty-five Training Programs were planned in 2002. The training effort is inadequate and needs to be increased considerably to cover all the officers and staff involved in procurement functions.

Recommendation: Training courses should be developed for various levels of staff (administrative and policy making, senior managers, professionals in procurement, law, audit and the bribery commission) on Public Procurement Policies, Rules, Good Practices, Standard Tender Documents, Evaluation of Tenders, and Contract Management. The Training Master Plan as prepared by the ADB financed TA Consultants needs to be reviewed, updated and implemented effectively. Universities should be encouraged to include Public Procurement and Contract Administration topics in Engineering, Commerce, Law and Business Management Courses.

3.3 *Institute for Construction Training and Development*

The Institute for Construction Training and Development (ICTAD) was set up by the GOSL to develop the Domestic Construction Industry (Vol. II-A.3.3). Established in 1986, it drew upon the experience of its predecessor, the Construction Industry Training Project (CITP) to carry forward the training activities for the Construction Industry. ICTAD currently functions under the Ministry of Housing and Plantation Infrastructure and enjoys the status of a para-statal body.

With its Headquarters in Colombo, it acts as a co-ordinator, facilitator and enabler to develop the construction industry in Sri Lanka by mobilizing the efforts and resources of the Government and Private Sector. Its main objectives are:

- To improve training capacities of vocational training institutions and facilitate the qualitative improvement of vocational training programs to meet the needs of semiskilled, skilled and managerial personnel in the construction industry;
- To improve the quality and efficiency of the construction industry by encouraging innovative approaches in technology and industrial development activities and in achieving economy in construction works.

The World Bank gave financial assistance to ICTAD for a period of 9 years (closing year 1994); ILO and UNDP financed a Technical Assistance Component.

ICTAD has three functional Divisions in its organization structure:

Training: To act as the Coordinating Agency for man power training in the Construction Industry and to produce well trained personnel in construction trades;

Construction Industry Development: To improve the efficiency and productivity of the Domestic Construction Industry; and

Resource management: To mobilize manpower, financial and physical infrastructure resources and manage them in conformity with the statutory administrative and financial

stipulations of ICTAD and to provide support services to the other two functional divisions of ICTAD.

These divisions function under three Directors. The Director-General is the Chief Executive of the Institute.

ICTAD has been compiling, preparing and publishing model contract documents including Standard Bidding Documents for procurement of works. ICTAD proposes to devolve some selected functions as follows:

- Instructor training to the proposed National Technical Teacher Training College to be established under the Ministry of Higher Education;
- Grading and registration of contractors and the promotion of private sector of the Construction Industry to the Association of Construction Contractors of Sri Lanka.

4. Audit and Anti-corruption measures

4.1 Audit

Articles 153 and 154 of the Constitution provide for the appointment and details the duties and functions of the Auditor General (Vol. I-A.4.1). The Constitution mandates that the Auditor General shall audit the accounts of all the departments of Government, offices of the Cabinet Ministers, the Judicial Service Commission, the Public Service Commission, the Parliamentary Commissioner for Administration, the Secretary General and the Commissioner of Elections, local authorities, public corporations and businesses or other undertakings vested in the Government by law.

The Auditor General reports his findings on unauthorized expenditures, waste of public funds, and abuse of procedures resulting in loss to the Treasury. The institution is generally well respected and is viewed as a watchdog and feared. However the audit staff tend to take a clerical approach, demanding strict compliance with procedures often missing the objective. Minor aberrations and misuse of funds are highlighted, missing major systemic lapses and resulting in big losses to the Treasury. Audit staff sometimes question why negotiations were not conducted to reduce contract price. Procurement Audit is not conducted in the true sense. Audit officers and staff need the same training as for other GOSL officers, on public procurement concepts, objectives, processes and their rationale.

There are no specific provisions in the Constitution for conducting regular/periodical Technical and Performance Audits of public financed projects. Therefore though Technical Auditing is not included in the purview of the Auditor General's functions, the constitutional provision under Article 154 (5) (ii) may yet give an impression that the Auditor General has authority to conduct Technical Audits, including verification of assets. However reportedly this does not appear to have been exercised.

Recommendation: Institutionalize both Technical Auditing and Performance Auditing Systems by creation of an independent organization or at least strengthen the Auditor General's Department to conduct Technical and Performance Audits, hiring the services of Technical

expertise as and when needed. This mechanism will improve quality and help minimize corrupt practices.

4.2 Anti-Corruption Measures:

Transparency International in its latest Report has assigned a corruption index of 3.7 to Sri Lanka, ranking it as less corrupt than China (3.5), India (2.7), Pakistan (2.6) and Bangladesh (1.2). There has been an increasing public discussion over the issue recently, especially with regard to government transactions and procurement. The Annual Report of the Bribery Commission states that the country is faced with a serious problem of Bribery and Corruption. The Report also states that the Public response to minimize corruption is lukewarm. Bribery is an offence punishable under the Penal Code, introduced as far back as 1883. It was during the British Rule that Bribery was introduced as a criminal offence in the Statute Book. An Act to provide for the prevention and punishment for Bribery and to make consequential provisions relating to the operation of other written law was enacted on March 1, 1954. The Act has undergone several amendments and the current reprint of the Bribery Act incorporates all amendments issued up to December 31, 1995.

An independent Bribery Commission was established under a Parliamentary Act in 1994. This Act provides for the establishment of a permanent Commission to Investigate Allegations of Bribery or Corruption (CIABOC) and to direct the institution of prosecution for offences under the Bribery Act and the declaration of Assets and Liabilities Law No.1 of 1975 and for matters connected therewith or incidental thereto. Unfortunately the Commission has been mostly inoperative. The Commission has recently received a fresh lease of life with the appointment of a new Bribery Commission to investigate allegations of corruption, fraud, and financial mismanagement in state transactions and activities. All Public Sector institutions such as Ministries, Departments, statutory authorities, local councils and public officials including politicians and the judiciary are subject to the Charter of the Commission to investigate Allegations of Bribery or Corruption. The Commission operates as an independent body and is accountable only to the Parliament.

The Bribery Act is comprehensive and includes all types of offences, including procurement/contract related offences. The provisions to deal with bribery offences are adequate. However reportedly the implementation is poor. As of December 31, 2000, out of an approved cadre of 246, there were 77 unfilled posts. In 2000, only about 12 percent of cases received for investigation by the Bribery Commission were disposed of. Of 1,135 complaints referred for legal opinion, only 12 resulted in launching prosecution. Progress of cases in the Courts is slow and few are convicted (14 out of 41 cases concluded in 2000).

Recommendation: The Bribery Commission should be fully staffed and strengthened and become pro-active in seeking the support of non-governmental (national and international) agencies such as Transparency International in making the public aware of the seriousness of the problem. Introduction of an appeal procedure is recommended.

5. Public Sector Management Performance

It is apparent that Contract Administration and Monitoring is a neglected area reflecting poor implementation capability in general (Vol. II-A.5). Clear contract provisions and right sizing of contracts play a vital role in efficient implementation. Similarly clear and complete specifications,

and well-defined performance standards can largely reduce disputes and ensure satisfactory Works contract performance. In respect of Goods contracts, contract administration is also found to be weak, particularly in respect of inspection and taking over. Even in the case of Consultancy contracts the monitoring of the completion of all the stipulated tasks as per Description of Services, and the timing and contents of the Reports to be submitted, are poorly managed.

The 1997 Revised Guidelines under Chapter XI Implementation of Tender Award discuss among other things, forms of contract agreement, client's obligations, contract management, extension of time, payment, completion report, extra contractual payments, revision of cost estimate, price escalation formula, defaulting contractors, district price fixing committee etc. Many of the provisions are out of context and are in conflict with the provisions of the SBD and those specified elsewhere.

Recommendation: The Guidelines should adequately address the issues related to handing over the site to the contractor; delay and /or non-payment of advances; payment for work done; variations; compensation events; extension of time; monitoring system; quality assurance; dispute resolution; skill improvement of managers; timely completion of contracts; records keeping etc. The Guidelines should cover all aspects of Contract Administration for Goods and Consultancy Services.

6. Performance in World Bank and ADB Financed Projects

World Bank

One of the systemic issues affecting the WB portfolio is slow procurement (Vol. II-A.6)¹⁸. Lengthy time lags in assigning and appointing members of tender committees and competing demands of committee members result in long delays in award of contracts. Political interference in contract awards also causes delays.

To address these issues the External Resources Department (ERD) will chair a small task force of senior line Secretaries to recommend ways to make the tender committees more efficient, and identify ways to strengthen management of the procurement cycle.

Asian Development Bank

The most serious shortfalls in contract awards and disbursement for ADB are in the Roads, Natural Resources, and Education sectors due to: (i) delays in contract awards resulting from delays in carrying out procurement actions according to Guidelines, lack of authority given by Executing Agencies to Project Directors, delays in approval procedure of TEC and CATB and unfamiliarity with ADB's Procurement Guidelines; (ii) delays in establishment of PMU's and appointment of Project Staff; (iii) time-consuming procedures for land acquisition and resettlement; (iv) Delay in preparation of documents and finalization of TOR; and (v) inadequate counterpart funds and budget allocation.

7. General Risk Assessment

¹⁸ Sri Lanka Country Portfolio Performance Review FY 2002 – GOSL/World Bank

The Donor Agencies finance a substantial portion of public sector procurement in Sri Lanka. GOSL follows the procurement procedures as stipulated by the Donor Agencies in the Loan/Credit Agreements. Prior review thresholds are generally low¹⁹ and hence most of the procurement is prior reviewed by the donor agencies and the risk is minimal. The procurement under post review is also meant to be done as per the prescribed procedures. In the absence of third party independent post review audits, the exact position of procurement under post review is not known. However a review made by the ADB-financed TA Consultants of a sample number of projects, which included post review contracts, ex-post review carried out by IDA mission, and field inspection (Northwest and South Province) undertaken by the CPAR consultants reveal that the procedures as laid down in the Legal Agreements with Donor Agencies are generally being followed, although there is scope for improvement.

GOSL issued the Guidelines for Government Tender Procedure in 1996 which has been revised in August 1997 and in December 2000 (Chapter related to Foreign Financing Agencies). These Guidelines have established the procedures and are generally being followed for contracts financed from Consolidated Fund. The implementation part of the contracts lacks efficiency and needs improvement.

However there are inadequacies in the Guidelines and SBDs as discussed in earlier paragraphs. Public Procurement would improve vastly if the recommendations made in this report are fully implemented. This may take some time. However with the introduction of SBDs, marginal improvement in Guidelines, better implementation monitoring by PSB, and intensified capacity building effort, Sri Lanka could be rated as a medium risk country for procurement purposes.

8. Supervision Plan and Practices for Use in Donor-Financed Projects

Project Supervision Missions fielded by the Donors should include a Procurement Specialist, who should review the administration of the contracts in the field. In addition the Procurement Specialist should make a half yearly review of the procurement progress and carry out ex-post review of contracts (not subject to prior review) selected on a random basis.

The procurement procedures and practices have been discussed in Section 2 of this Volume. NCB contracts under donor-financed projects follow the procedures as specified in the Legal Agreements. The checklist in Annex 4 compares practices in NCB contracts financed by Consolidated Fund of Sri Lanka with those acceptable under WB procurement guidelines (as reviewed by the WB). The conditions in Annex 4 are those agreed with IDA for application in IDA-financed contracts awarded following NCB procedures in Sri Lanka.

Private Sector

9. Competitiveness and Participation in Public Procurement

The private sector needs to be equally efficient, competent, flourishing, honest and vigilant if public procurement is to function effectively. The Construction Industry in Sri Lanka has yet to

¹⁹ The new Loan/Credit Agreements will have higher review threshold depending on the risk assignment of the country concerned.

reach full potential to meet the required capacity for the country's development programs. Until recently all the large contracts were awarded to foreign contractors. The Institution for Construction Training and Development (ICTAD) has been conducting training courses for the construction industry in the recent past. This training has enabled domestic contractors to improve their efficiency and capability and win some large tenders in recent years.

The Consultant Services profession in comparison, has not developed sufficiently in Sri Lanka. Consultants are usually hired from outside the country. However local consulting firms and/or individuals often associate with foreign firms, working as sub-consultants or providing individual experts.

It is reported that outstanding payments to contractors involved in public sector contracts is currently in the order of Rs.2 billion and there is perceived uncertainty in the minds of the contractors as regards timely payments. This will reduce competitiveness and increase the cost of the tenders. The National Contractors Association has recently put forward a proposal for Letters of Credit to be issued for the full Contract amounts and payments be released against the payment certificates as the work progresses. This has not been agreed to so far.

10. Performance on Public Procurement Contracts

The performance of the private sector in public procurement is not encouraging. In the absence of a technical auditing mechanism, quality of construction particularly for small value contracts supervised by the Employer has scope for improvement. The contracts are not completed in time, thereby causing cost and time overruns.

Disputes sometimes arise but they are reported to be settled amicably without going to litigation. Mediation and Arbitration are not very common.

With an almost negligible manufacturing industry in the country, most of the finished goods and supplies are procured from outside the country and their quality is reported to be satisfactory.

Consultants are usually hired from outside the country as there is a dearth of local consultants. However foreign consultants often associate with local experts generally appointing them as sub-consultants.

11. Commercial Practices as they Relate to the Public Procurement System

International commercial practices - ICC INCOTERMS - are being followed for all procurement from abroad. There is no customs duty on importation of construction and transport equipment. There are no restrictions on the importation of construction equipment.

Letters of Credit (for importation), Securities and Guarantees, are easily obtainable on payment of fees. A Construction Guarantee Fund has been established under the Ministry of Urban Development, Housing and Construction to facilitate issuance of Bonds and Guarantees to domestic contractors (for contracts up to Rs.20 M) without collateral, but on payment of a levy which ranges from 1.0 to 1.75 percent.

C. Summary of Recommendations

Major:

1. *Enact Public Procurement Law if necessary;*
2. *Create an Entity for Procurement Policy oversight;*
3. *Strengthen PSB;*
4. *Introduce Procurement Accreditation System*
5. *Develop Standard Functional Specifications for Goods;*
6. *Develop and Mandate Standard Tender and Contract Documents;*
7. *Revise Guidelines (major changes);*
8. *Simplify and Streamline Review and Approval Process;*
9. *Introduce Electronic Tendering;*
10. *Review, Update and Implement Training Master Plan;*
11. *Introduce Technical and Performance Auditing; and*
12. *Dispense with Requirement of Registration for High Value Contracts.*
13. *Review and Revise Data Book/Schedule of Rates*

Minor:

14. *Revise Guidelines (minor changes);*
15. *Introduce Computerized Procurement Tracking and Contractor Performance Database;*
16. *Introduce Rules for Blacklisting.*

General:

17. *Strengthen the Bribery Commission and Auditor General's Department);*
18. *Conduct Seminars and Workshops; and*
19. *Prescribe a Code of Conduct for procurement professionals and the business community.*

D. Recommended Action Plan

1. Sequential Actions Summarized by Major Categories

The sequential actions for implementation of the Procurement Reforms by Category are:

Category 1: Long Term Actions (by item of recommendations):

1. Introduction of Public Procurement Law (Item 1)
2. Training and Workshops (Items 10 and 17)

Category 2: Medium Term Actions

17. Creation of Procurement Regulatory Agency (Item 2)
18. Establishment of Accreditation System (Item 4)
19. Strengthening of Bribery Commission and Auditor General's Department (Item 16)
20. Introduction of Code of Conduct/Ethics Oversight (Item 18)
21. Introduction of Electronic Tendering (Item 9)
22. Creation of Procurement Tracking System and Contractor Database (Item 14)
23. Revision of Procedures for Registration of Contractors (Item 12)
24. Introduction of Technical and Performance Auditing (Item 11)
25. Introduction of Rules for Blacklisting (Item 15)

Category 3: Short Term Actions

6. Strengthening of Procurement Support Bureau (Item 3)
7. Simplification of Review and Approval Process (Item 8)
8. Revision of Guidelines (Items 7 and 13)
9. Development of Standard Tender and Contract Documents (Item 6)
10. Standardization of Goods Specifications (Item 5)

2. Measures To be taken by Government/ Private Sector

All the above actions should be taken by the Government, with the concurrence of the Private Sector where they are directly involved/affected.

3. Measures to be Taken by Bank and other Donors/ Organizations

The Donor Agencies should support the Procurement Reform process by providing technical support through hiring of consultants for assisting in implementation of the Recommended Action Plan. Donors should take a proactive role, assisting in periodical review of progress on the Action Plan and helping GOSL to identify bottlenecks.

4. Technical and Financial Assistance

Technical and Financial Assistance estimated to cost \$US0.75 M would be required for drafting the new Procurement Law and Guidelines, preparation of SBDs; development of Training Plan and development of materials; strengthening of institutions for imparting training; development of curricula for procurement related courses run by academic institutions; e-governance and e-commerce.

5. Timetable

The timetable for the implementation of Recommended Action Plan is shown in Table 3 below.

6. Potential Sources of Financing

Financing could come from World Bank, ADB, JBIC and other multi- and bilateral financing agencies through a Technical Assistance Project or through already approved Project/s.

7. Monitoring and Follow-up Plans

One of the Donors could be the lead agency with active support and cooperation from other donor agencies for monitoring and taking follow up actions.

After the finalization of the CPAR, an Action Plan for implementation of the recommendations should be drawn up by PSB, which should be reviewed jointly by the Lead and other agencies and an agreed action plan with monitorable milestones should be drawn up. PSB Should be made responsible for implementation of the Action Plan.

The Task Manager should be assisted by a full-time Procurement Specialist, who would closely monitor the progress, coordinate the output of the Consultants and Liaise with PSB and GOSL. The PSB should prepare quarterly progress reports, which may be reviewed by Donor Agencies.

Table 3. Timetable for Implementation of the Recommended Action Plan

Sl.No.	Action	Year 1	Year 2	Year 3	Year 4
1	Strengthen PSB	*	*		
2	Simplify and streamline review and approval process	*	*	*	
3	Revise Guidelines	*	*		
4	Develop and implement accreditation system; update annually	*	*	*	*
5	Review, Finalize and Implement the Procurement Training Master Plan	*	*	*	*
6	Develop and mandate Standard Tender and Contract Documents	*	*		
7	Develop Standard Functional Specifications for Goods	*	*		
8	Review and revise the Data-Book		*	*	
9	Introduce Code of Conduct/Ethics Oversight		*	*	
10	Prepare Procurement Tracking System and Contractor Database; update annually		*	*	
11	Revise Procedures for Registration of Contractors		*	*	
12	Introduce Technical and Performance Auditing		*	*	
13	Introduce Electronic tendering		*	*	*
14	Create Entity for Procurement Policy Oversight (PRA)		*	*	
15	Strengthen Bribery Commission and Auditor General's Department		*	*	
16	Introduce Rules for Blacklisting		*	*	
17	Enact Public Procurement Law, if found necessary		*	*	*
18	Conduct Seminars/Workshops for the business community		*	*	*

GLOSSARY

Employer	One of the two parties to a Works Contract, the other party being the 'Contractor'.
Contractor	The legal entity that is party to and performs a Works Contract, the other party to the contract being the 'Employer'.
Works	The total work involvement in a construction contract, including the 'Permanent' Works or finished product as specified, and the 'Temporary' Works required by the Contractor for execution of the contract.
Lump Sum Contract	It is one in which the contractor is required to quote a fixed sum for execution of work complete in all respects in accordance with the designs, drawing and specifications and within the stipulated time. Lump Sum contracts are used in particular for buildings and other forms of construction where the works are well defined and are unlikely to change in quantity or specification, and where encountering difficult or unforeseen site conditions (for example hidden foundation problems) is unlikely.
Design and Build	This type of contract is used for important buildings, major bridges, and other infrastructure, when an Employer wishes to explore, on a competitive basis, the most innovative designs and the special expertise and technology of individual contractors, which may not be available to the Employer's own Engineer/Architect.
Management Contractor	A firm acting in the role of 'Contractor', that does not usually perform contract construction work directly, but manages the work of other (sub) contractors, while bearing full responsibility and risk for price, quality and timely performance of the contract.
Turnkey contract	The turnkey contract requires the contractor to provide design, procure the plant and equipment, erect, test and commission the plant and hand over to the Employer for him to 'turn the key'. The contract may also require the contractor to operate the plant for an initial period, train local staff before handing over.
Pre-qualification	An assessment made by the Employer of the appropriate level of experience and capacity of firms expressing interest in undertaking a particular contract, before inviting them to tender.
Post-qualification	An assessment made by the Employer after the evaluation of tenders and immediately prior to award of the contract, to ensure that the lowest evaluated, responsive, eligible tenderer is

	qualified to perform the contract in accordance with previously specified qualification requirements.
Third Party Inspection	Inspection of work, goods to check conformity to the laid out specifications in the tender documents by an entity other than the Employer or Purchaser.
Data Book	It is an “Analysis of Rates’ for various items of work encountered in the execution of Civil Works detailing the number/quantity of labour, material and other inputs required for completion of an unit measurement of the item depending on the type of equipment used, methodology of construction etc. It also includes the element of overheads and profits.
Measurement Book	It is a book in which measurements of work (executed either by contractor or by daily labour or by piece works and of materials/supplies received are recorded.
Adjudicator	‘Adjudicator’ means the person named in the Agreement between the Employer and the Contractor to make a decision on or to settle any dispute or difference arising out of and in connection with the contract, between the Employer and the Contractor referred to him by the parties pursuant to the provisions in the contract.
Dispute Review Board	It is a Board of three Members experienced with the type of construction involved in the works and with the interpretation of contractual documents. It is a Board to settle any disputes arising between the Employer and Contractor in connection with, arising out of, the contract or the execution of the work.

Annex 1**LIST OF KEY PERSONS MET**

Sl.No	Name	Designation	Office
1	Mr. N. Pathmanathan	Deputy Secretary to the Treasury	Ministry of Finance, Colombo
2	Mr. W.D. Jayasinghe	Additional Director General of Public Finance and Project Director, Public Expenditure Management Systems Project	Procurement Support Bureau Department of Public Finance, Ministry of Finance and Planning, Colombo
3	Mr. Banderathna	Former Additional Director General	Procurement Support Bureau,
4	Mr. K.G. Wimalasena	Director of Procedural Development, Donor Liaison and Director Public Finance	Procurement Support Bureau Department of Public Finance, Ministry of Finance and Planning, Colombo
5	Miss Nalini Madanayake	Director, Monitoring	Procurement Support Bureau, Colombo
6	Mrs. Ranjani V. Nanayakkara	Director ERD	Ministry of Finance, World Bank Division, Colombo
7	S.R. Kanaganayogan	Director Works	Housing and Infrastructure
8	Mr. W.M. Bandusena	Director Policy and Planning	Ministry of Power and Energy, Colombo
9	Mr. K. Haputantri	Snr Asst Secretary	Ministry of Transport, Highways and Civil Aviation, Colombo
10	Mr. K. Ratnam		Ministry of Education, Colombo
11	Mr. H.P.W. Premadasa		Ministry of Education, Colombo
12	Mr.D.S.B. Hattiarbehi	Chief Engineer	Sri Lanka Port Authority, Colombo
13	Mr. A.D. Wickramasinghe	Director Buildings	Buildings Department, Colombo
14	Mr. W. Gamage		Irrigation Department, Colombo
15	Mr. D.M.D. Kulawadken		Irrigation Department, Colombo
16	Prof. K.U. Kamalgora		State Pharmaceutical Corporation, Colombo
17	Mr. Lakshman Goonawardana		Department of Government Printing
18	Mr. A.A. Karunarathi	Deputy Superintendent Railway Stores	Railways Department
19	Mr. Nimal Amaratunga	Assistant Superintendent of Railway Stores	Railways Department

Sl.No	Name	Designation	Office
20	Mr. W.S. Molligoda	Additional Director, Buildings	Buildings Department
21	Mr. Priyasena	Chief Accountant	Mass Communications Department
22	Mr. R.W. Ranjith Pemasiri	General Manager	Southern Provincial Road Development Authority, Galle
23	Mr. W.G. Wimal Zoyza	Chief Engineer (Other Works)	Deputy Chief Secretary's (Engineering) Office, Galle
24	Mr. M. Rathappuli	Engineering Assistant	Deputy Chief Secretary's (Engineering) Office, Galle
25	Mr. T. Paskaran	Project Director and Chairman TEC	Road Development Authority, Colombo
26	Mr. W.D.N. Xavier	Deputy General Manager (Procurement)	Ceylon Electricity Board, Colombo
27	Mr. J.K. Lankatilake	Director General	Institute for Construction Training and Development, Colombo.
28	Mr. D.D. Wijemanne	Chairman	National Construction Association of Sri Lanka and M.D. Walkers Group, Colombo
29	Mr. D.W. Balachandra	Chief Executive Officer	National Construction of Association of Sri Lanka, Colombo
30	Mr. Gerard Fernando	Managing Director	Senok Trade Combine Ltd., Colombo
31	Mr. Peter Harrold	Country Director for Sri Lanka	The World Bank
32	Mr. William Herbert	Operations Advisor	The World Bank, Colombo
33	Mr. Deepal Fernando	Implementation Specialist	The World Bank, Colombo
34	Mr. Eduardo Talero	Lead Procurement Advisor- Informatics	Operations Policy and Services Vice Presidency Procurement Unit, Washington
35	Mr. Ajay S. Guha	Procurement Specialist	Central Operations Services Office, Asian Development Bank, Manila
36	Mr. K.M. Tilakratne	Project Specialist	Asian Development Bank, Colombo
37	Mr. S. Arinda I. Elapata	Project Officer	Japan Bank For International Cooperation, Colombo
38	Ms D. Wijayatilake	Secretary	Ministry of Justice
39		Managing Director	Construction Guarantee Fund Ministry of Urban Housing

Annex 2

WB, ADB, AND JBIC LENDING PORTFOLIOS IN SRI LANKA

World Bank Current Portfolio

Credit No.	FY	Project Name	IDA (US \$M)	Approval date	Closing date
2880	1996	Private Sector Infrastructure Development	62.0	06/13/96	06/30/03
2881	1996	Teacher Education and Teacher deployment	64.1	06/13/96	12/31/02
2928	1997	Health Services	15.3	12/19/96	06/30/02
2938	1997	Energy Services Delivery	24.2	03/18/97	12/31/02
N014	1997	Environmental Action 1	14.8	03/27/97	12/31/02
3014	1998	General Education II	70.3	12/09/97	06/30/03
3058	1998	Mahaweli Restructuring	57.0	04/14/98	12/31/03
3301	2000	North East Irrigated Agricultural	27.0	12/02/99	06/30/05
3384	2000	Legal and Judicial Reforms	18.2	06/20/00	06/30/05
3469	2001	Distance Learning	2.0	03/02/01	06/30/05
3496	2001	Land Titling	5.0	03/22/01	12/31/04
3525	2001	Central Bank Strengthening	30.3	06/19/01	07/31/05
3673	2002	Renewable Energy for Rural Economic Development	75.0	06/20/02	06/30/08

Asian Development Bank Current Portfolio

Loan No.	Project Name	Loan (US \$M)	Approval date	Closing date
1575	Third Water Supply and Sanitation Project	75.0	6/11/97	30/06/2005
1632	Urban Development and Low Income Housing Project	70.0	24/9/98	30/06/2005
1312	Third Road Improvement Project	55.0	15/9/94	31/12/2003
1649	Road Network Improvement Project	80.0	8/12/98	30/6/2005
1567	Southern Provincial Road Improvement Project	30.0	30/10/97	31/12/2003
1711	Southern Transport Development Project	90.0	25/11/99	31/12/2006
1414	Second Power System Expansion Project	80.0	14/12/95	30/6/2002
1767	Protected Area management and Wild Life Conservation Project	12.0	19/10/00	30/6/2007
1402	Plantation reform Project	54.749	8/11/95	
1639	Tea Development Project	35.0	10/11/98	30/6/2005
1707	Skills Development Project	18.8	28/10/99	31/10/06
1535	Science and Technology Personnel Development Project	20.0	11/9/97	30/6/2003

Loan No.	Project Name	Loan (US \$M)	Approval date	Closing date
1462	North Central Province Rural Development Project	20.0	24/9/95	30/6/2004
1552	Second Perennial Crops Development Project	20.0	25/9/97	30/06/04
1545	Upper Watershed Development Management Project.	16.6	24/9/97	30/06/05
1744	Forest Resources Management Project	27.0	28/6/00	30/06/08
1716	Coastal Resources Management Project	40.0	7/12/99	30/12/2005
1757	Water resources management Project	19.7	22/10/2001	30/6/2006
1846	North East Community Restoration Project	25.0	9/1/2002	30/6/2007
1841	Colombo Port Efficiency and Expansion Project	12.4	7/5/2002	29/2/2004
1849	Southern Province Rural Economic Advancement Project	25.0		31/7/2008
1756	Secondary Education Modernization Project	50.0	18/12/2000	30/6/2006
1800	Private Sector Development Program	86.99	12/12/2000	
1801	Private Sector Development Program (sub program 1)	15.0	12/12/2000	
1894	S&M Enterprise Sector Development Program	20.5	20/12/2001	
1895	S&M Enterprise Bus Services Support Facility	6.31	20/12/2001	
1896	S&M Enterprises Sector Development Program	60.0	20/12/2001	

Japan Bank for International Cooperation Portfolio, 1997-2002

year	Details of Loans/Project	million Yen
1997	Thirtieth ODA Loan Commitment (L/A signed in August 1997)	35,926
1998	Transmission and substation Development Project	3,114
1998	Baseline Road project (II)	2,342
1998	Telecommunication Network Expansion Project in Colombo area	10,023
1998	Kalu Ganga Water Supply Project for Greater Colombo	11,278
1998	Mahaweli System C Upgrading Project	3,737
1998	Small and Micro Industries Leader and Entrepreneur Promotion Project	5,432
1998	Thirty-first ODA Loan Commitments (l/A Signed in September 1998)	26,102
1999	Transmission and Substation Development Project (II)	4,030

year	Details of Loans/Project	million Yen
1999	Medium Voltage Distribution Network Reinforcement Project	5,973
1999	Telecommunication Network Expansion Project in Colombo (II)	13,369
1999	Environmentally Friendly Solutions Fund	2,730
1999	Thirty-Second ODA Loan Commitments (L/A signed in August 1999)	23,476
2000	Bandaranaike International Airport Development Project	12,384
2000	Road Network Improvement Project	3,078
2000	Poverty Alleviation Micro Finance Project	1,368
2000	Engineering Services for the Southern Highway	381
2000	Project for reduction of non-revenue water	4,217
2000	Urgent up-grading of Colombo Port Project	2,048
2001	Thirty-Third ODA Loan Commitments (L/A signed on January and March 2001)	30,267
2001	Small and Micro Industries Leader and Entrepreneur Promotion Project (II)	4,838
2001	Improvement of National Blood Transfusion Services Project	1,508
2001	Southern Highway Construction Project	18,770
2001	Greater Kandy Water Supply Project	5,151
2001/02	Thirty-Fourth ODA Loan Commitments (L/A Signed in December 2001 and March 2002)	46,130
2002	Colombo City Electricity Distribution Development Project	5,959
2002	Lunawa Environment Improvement and Community Development Project	6,906
2002	Upper Kotmale Hydro Power Project	33,265

Annex 3**ACCEPTABLE PROCEDURES FOR NATIONAL COMPETITIVE BIDDING**

1. Only the model bidding documents for NCB agreed with the Bank/Association shall be used for bidding;
2. Invitations to bid shall be advertised in at least one national newspaper with wide circulation;
3. The bidding period shall be a minimum of 30 days reckoned from the date of publication of the invitation to bid in the press or from the date of making available the document for sale, whichever is later;
4. The bidding documents should be made available for sale up to a day prior to the date of submission and opening of bids;
5. Bid documents shall be made available by mail or in person to all who are willing to pay the stipulated fee;
6. Foreign bidders shall not be precluded from bidding;
7. No special preference (price or purchase or other terms and conditions of contract) shall be given to any state owned enterprises, small scale enterprises, approved societies;
8. Qualification criteria including bid capacity (in case pre-qualification was not carried out) shall be stated in the bidding documents, and if a registration process is required, a foreign firm or any other firm declared as the lowest evaluated responsive bidder shall be given a reasonable opportunity of registering without let or hindrance;
9. Bidders may deliver bids, at their option, either in person or by courier service or by mail;
10. Bids shall be opened in public in one location, immediately (not later than 30 minutes) after the deadline for submission of bids;
11. Bids shall not be rejected merely on the basis of the bid being outside a pre-determined margin or 'bracket' of prices, without the prior concurrence of the Bank/Association;
12. Extension of bid validity shall not be allowed without the prior concurrence of the Bank/Association (a) for the first request of extension if it is longer than eight weeks; and (b) for all subsequent requests for extension irrespective of the period;
13. Re-bidding shall not be carried out without prior concurrence of the Bank/Association;
14. Evaluation of bids shall be made in strict adherence to the terms specified in the Instructions to Bidders and criteria disclosed in the bidding document, in a format and specified period agreed by the Bank/Association

15. Contracts shall be awarded to the lowest evaluated responsive bidder who satisfies the stipulated qualification criteria;
16. Negotiations shall not be held with the lowest evaluated responsive bidder or any other bidder;
17. All bidders/contractors shall provide bid/performance security as stipulated in the bidding documents;
18. A bidder's bid security shall apply only to a specified bid and a contractor's performance security shall apply only to the specific contract under which it was furnished;
19. Bids shall not be invited on the basis of percentage premium or discount over the estimated cost;
20. National Rate contracts (if any) will not be acceptable as a substitute for NCB procedures. Such rate contracts shall be acceptable for any procurement under national shopping procedures, with the approval of Bank/Association.

Annex 4

**ASSESSMENT OF SRI LANKAN COMPETITIVE TENDER PROCEDURES AGAINST
WB PROCUREMENT GUIDELINES**

Note: In respect of contracts financed by the Donor Agencies, the procedures as laid out by the Donor Agencies in the legal agreements are followed. The Checklist is in respect of the procedures followed/stipulated in the Guidelines for contracts financed from Consolidated Fund of Sri Lanka Government.

Sl.No	WB Guidelines Item	Does CF comply?		Remarks
1	Are there eligibility restrictions based on nationality of tenderer and/or origin of goods (other than primary boycotts)		No	
2	Are there primary boycotts which are established by law?		No	
3	Are tendering opportunities advertised in the local press?	Yes		
4	Are prospective tenderers allowed at least 30 days for tender preparation (except for commodities/small goods contracts)?		No	Only 21 days are allowed
5	Are contractors/suppliers pre-qualified for large/specialized contracts?	Yes		
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, Employers could indicate the required minimum category of contractor specified in the registration system	Not fully Yes		It is there in pre-qualification documents and not there in documents prescribing Post Qualification process.
7	Is an invitation to pre-qualify advertised for each procurement involving large or complex potential contracts?	Yes		
8	Are joint ventures with local firms required for foreign firms' eligibility?			Criteria to be satisfied by the Joint Venture partners are not specified in the Guidelines for CF financed contracts. There is no such stipulation in Donor financed contracts.

Sl.No	WB Guidelines Item	Does CF comply?		Remarks
9	Are joint venture partners jointly and severally liable?	Yes		
10	Are there set limitations to the number of firms who can tender for a contract?		No	
11	Are parastatals allowed to tender?	Yes		
12	Are tenderers required to register with a local or federal authority as a prior condition for tendering?	Yes		For Civil Works. Registration of contractors and Suppliers are made each year by all EAs
13	Are extensions to bid validity allowed?	Yes		
14	Are there restrictions on the means of delivery of tenders?		No	
15	Is preference given to suppliers or contractors based on region or locality of registration, small size, ethnic ownership, etc.?	Yes		Approved Societies
16	Are there restrictions on sources of labour and material	Yes		Restriction is there for unskilled labour
17	Is public tender opening required? Does it occur immediately or closely following the tender submission deadline?	Yes		
18	Is a 'Two Envelope' tender opening procedure permitted for procurement of goods or works?	Yes		Adequate safeguards against retaining second envelope unopened are not incorporated in the Guidelines and protest mechanism is not effective.
19	Is automatic retendering required if too few tenders are received?		No	
20	Is 'bracketing' used in tender evaluation?	Yes		
21	Are tender evaluation criteria other than price allowed	Yes		Allowed in some cases even when there was no specified criteria in the document
22	Is award made to the lowest evaluated, qualified and responsive tenderer	Yes		Specific minimum qualification criteria is not mentioned in the documents. However the qualifications are checked before award of the contract.
23	Are price negotiations conducted with 'winning' tenderers prior to contract signature?	Yes		

Sl.No	WB Guidelines Item	Does CF comply?		Remarks
24	Are price adjustment provision generally used?			It is not mandatory. The EAs can provide for PA if they so desire.
25	Are the terms and conditions used in goods and works procurement generally appropriate for the size and nature of contract intended?	Yes		
26	Are contract scope/conditions modified during implementation?	Yes*		* Conditions of contract are not modified.

