

MAHAWELI WATER SECURITY INVESTMENT PROGRAM

PROCUREMENT CAPACITY ASSESSMENT

JUNE 2015

ABBREVIATIONS

ADB	–	Asian Development Bank
BLI	–	Base Line Indicator
CAG	–	Comptroller and Auditor General
CAPC	–	Cabinet Appointed Procurement Committee
CPI	–	Compliance Performance Indicators
DOI	–	Department of Irrigation
DPC	–	Department Procurement Committee
EOI	–	Expression of Interest
GOSL	–	Government of Sri Lanka
ICTAD	–	Institute for Construction Training and Development
ISEWP	–	improving system efficiencies and water productivity
MASL	–	Mahaweli Authority of Sri Lanka
MDP	–	Mahaweli Development Program
MLBCRP	–	Minipe Left Bank Canal Rehabilitation Project
MFF	–	multitranches financing facility
MFP	–	Ministry of Finance and Planning
MMDE	–	Ministry of Mahaweli Development and Environment
MOI	–	Ministry of Irrigation
MPC	–	Ministry Procurement Committee
MPP	–	Master Procurement Plan
MRB	–	Mahaweli River Basin
NCASL	–	National Construction Association of Sri Lanka
NCPCP	–	North Central Province Canal Project
NPA	–	National Procurement Agency
NWPCP	–	North Western Province Canal Project
PAC	–	Public Accounts Committee
PE	–	procurement entity
PMU	–	Program Management Unit
PMDSC	–	program management, design and supervision consultant
PPC	–	Project Procurement Committee
PPP	–	public-private partnership
PPTA	–	project preparatory technical assistance
PSB	–	Procurement Support Bureau
RPC	–	Regional Procurement Committee
SIWRM	–	strengthening integrated water resources management
SLRs	–	Sri Lankan Rupees
UECP	–	Upper Elahera Canal Project
UNCITRAL	–	United Nations Commission on International Trade Law

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EXECUTIVE SUMMARY

A. Overall Assessment of Sector and Investment Program Procurement Risk

1. Sri Lanka possesses a strong legal system based on British Common Law, Roman Dutch Law. The procurement guidelines of the country are applicable to all government institutions inclusive of ministries, departments, public corporations and statutory bodies, fully-owned government companies, provincial councils and local authorities, encompassing procurement of works, services and supplies and disposal of government assets. These guidelines were drafted and strengthened by the Procurement Support Bureau (PSB) established in 1999 and its successor National Procurement Agency (NPA) formed in 2004. The NPA was absorbed to the Ministry of Finance and Planning (MFP) in 2009, which has seen a partial loss of operational freedom thereafter. Although there are financial audit procedures in place for national sector organizations, they are not customized for addressing procurement related issues. Procurement procedures in the country do not address means of preventing corruption, fraud, conflict of interest and unethical behavior. Although many cases have been investigated, few have resulted in court action

2. Given the overall Sri Lanka procurement context, the experience of Ministry of Mahaweli Development and Environment (MMDE)¹, the executing agency and the implementing agencies Mahaweli Authority of Sri Lanka (MASL) and the Department of Irrigation (DOI) in implementing ADB funded procurement, the procurement classification for the investment program is assessed as Category A with substantial procurement risks. A summary of the assessment is included in Attachment 1. Detailed completed questionnaires for sector and the investment program are presented in Attachment 2 and Attachment 3, respectively.

B. Summary of Identified Weaknesses and Risks

3. The executing agency and the implementing agencies do not possess recent experience in procuring large contracts through competitive bidding as many large projects are being financed bilaterally on non-competitive basis. A consolidated, reliable database of procurement was not available for assessment. While the private sector is competitive for small contracts in the sector, the number of potential firms for large contracts is few. On the other hand, good international firms show interest in directly participating in fairly large contracts only, opting to sublet works for a fairly medium sized, \$10-40 million range contracts. The procurement approval thresholds of the Ministry Procurement Committee (MPC), Department Procurement Committee (DPC), Project Procurement Committee (PPC) and Regional Procurement Committee (RPC) are low. The Cabinet Appointed Procurement Committee (CAPC) gets overburdened. 'Goods' Contract administration is found to be weak.

C. Summary of Mitigation and Management Measures to be adopted

4. The government needs to strengthen its overall fiduciary, monitoring capacity efforts earlier promoted by the National Procurement Agency for public sector procurement and to increase MPC, DPC, PPC and RPC approval thresholds. As the capacity of local irrigation works contractors is limited to small-size packages, MMDE should take steps to encourage road sector contractors, where Sri Lanka shows better capacity, to participate in bidding. While the government is interested in increasing NCB threshold to allow domestic contractors to gain

¹ The assessment was of the Ministry of Irrigation and Water Resources Management which changed its name to MMDE in January 2015.

experience, it is recommended to keep NCB packages below \$ 7.5 million threshold. Program Management Unit (PMU) should devise its own procedures to address complaints adequately and transparently. MMDE, MASL and DOI should establish a mechanism for any protest on procurement actions to be properly recorded and incorporated in evaluations. The mechanism should allow any appeal on a contract award decision to be reviewed properly, independently of the employer. The MMDE should also conduct hands-on procurement training to relevant project staff and take measures to retain them. The EA and the Project Management Unit (PMU) should prepare cost estimates based on realistic market rates while using agency schedule of rates as a reference.

I. INTRODUCTION

1. The Asian Development Bank conducted this procurement capacity assessment for the Mahaweli Water Security Investment Program, in accordance with ADB's "Guide on Assessing Procurement Risks and Determining Project Procurement Classification."¹ ADB undertook the assessment from May to November 2014 during ADB's project preparation through meetings and discussions with MMDE MASL, DOI, National Construction Association of Sri Lanka (NCASL), and the World Bank-financed Dam Safety Project. The assessment included reviewing documents, collecting information on completed and ongoing projects on procurement performance, review of reports and information from internet (notably assessment report on Sri Lanka procurement system based on OECD-DAC Benchmarking Framework), ADB's ongoing procurement experience review, and discussions with other stakeholders.

II. SECTOR/AGENCY PROCUREMENT ASSESSMENT

A. Overview

2. In the irrigation sector, the government accords high priority to completing the Mahaweli Development Program (MDP). Under the proposed investment program, the government aims to complete the outstanding water conveyance investments for transferring Mahaweli river basin's water resources to the country's northern dry zone areas for irrigation, drinking and commercial purposes. This will accelerate local and national economic growth.

3. The investment program will be financed under a \$675 million multi-tranche financing facility (MFF). The MFF will finance the government's Upper Elaheera Canal Project (UECP), North Western Canal Project (NWCP) and Minipe Left Bank Canal Rehabilitation Project (MLBCRP) through three tranches. The government aims to implement the investment program over 10 years from 2015 to 2024. Tranche¹ will be implemented over five years from 2015 to 2019.

4. The executing agency for the project is MMDE. A full-time Program Director leads the PMU. The Program Director reports directly to the Secretary of MMDE. MASL and DOI will second staff to the PMU and individual Project Implementation Units (PIUs) for the three projects. MASL is under the jurisdiction of the MDDE while DOI is under the Ministry of Irrigation (MOI).² A Project Director will lead each PIU and will be supported by construction, procurement, accounts and administration staff.

1. Legislative and Regulatory Framework

5. Sri Lanka has a common law tradition. The Constitution was enacted in 1978 followed by eighteen amendments. The Court system distinguishes between civil and criminal action. Court houses have been set up for dedicated high value commercial transactions (Commercial High Court of Colombo) including those dealing with company law matters. The system allows two stages for appeal and the final appeal lies to the Supreme Court. Breach of contract and similar civil law matters are heard in the District Court (high value contract in the Commercial High Court) and the Civil Procedure Code together with the Evidence Ordinance, provide for the procedure. Attorneys at Law provide legal services and the Prescription Ordinance sets the time limits for parties to institute legal action. The Court Proceedings are generally considered to be tedious and time consuming.

¹ ADB. 2014. *Guide on Assessing Procurement Risks and Determining Project Procurement Classification*. Manila

² During the assessment DOI was under MMDE however was placed under MOI in January 2015.

6. Sri Lanka does not have dedicated Parliamentary legislation for public procurements. Guidelines, Financial Regulations and Finance Circulars issued by the Cabinet of Minister and the Ministry of Finance and Planning (MoFP) regulate public procurement. The present guidelines on Government Tender Procedures have a separate section (Part II – Ed.1998) dealing with private sector infrastructure projects with special emphasis on Build-Own-Operate (BOO), Build-Own-Transfer (BOT) and Build-Own-Operate-Transfer (BOOT) projects. Public Procurement is driven by the above mentioned comprehensive guidelines and manuals of procedures NPA formulated.

7. In 1987, the Parliament enacted Public Contracts Act No. 3 requiring registration of public contracts and persons who tender or enter into public contracts, exceeding Rupees 5 million (approximately US \$ 50,000) in value, with any public institution. The Act set up a Registrar of Public Contracts with whom any 'person who acts as an agent or sub-agent, representative or nominee for or on behalf of any tenderer' must register if they wish to enter into any contracts with the Government or any of its agencies. The registration can be cancelled for fraud or other grounds such as misrepresentation, deceit or malpractice and violating any of the conditions in the Certificate of Registration (Section 14). A party has to be given a hearing before a cancellation is affected.

8. The government established the Procurement Support Bureau (PSB) with assistance from the ADB under the Ministry of Finance and Planning (MFP) ³ in 1999 to assist in awarding and execution of contracts. PSB was further strengthened and transformed into National Procurement Agency (NPA) in 2004 under a Presidential Directive to independently regulate public procurement activities of the country, directly reporting to the President of Sri Lanka. However, in 2009, NPA came under the administrative control of MFP which resulted in a partial loss of its operational freedom.

9. The NPA, when it was established in 2004 was mandated to study, revise and adopt the procedures and processes of public procurement. The NPA drafted Procurement Guidelines and a Procurement Manual in 2006 applicable for goods and works. These Guidelines and the Manual replaced the previous Guidelines on Government Tender Procedure (Revised Edition, 1997), Revised Guidelines on Government Tender Procedure for Projects assisted by the Foreign Financing Agencies (Revised Edition, 2000) and Treasury Circulars pertaining to the Guidelines on Government Tender Procedure issued till 2005. During 2007, NPA issued standard requests for proposal and guidelines for consultants, non-consultant services, standard bidding documents (SBD) for works and goods and SBD for shopping procedures.

10. The procurement guidelines have the backing of the country's laws and are applicable to 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. These guidelines have been drafted in association with the major funding agencies such as the World Bank, ADB, the Japan Bank for International Cooperation, to ensure they are harmonized to the maximum extent in order for their usage in foreign-funded projects as well. The Guidelines are available on the NPA's website as downloadable documents in English, Sinhalese and Tamil.

11. The objectives of the NPA are to:
- (i) Standardize the government procurement procedures
 - (ii) Accelerate the procurement process
 - (iii) Improve transparency and good governance

³ It was the Ministry of Finance and Planning at the time of the assessment.

- (iv) Ensure equal opportunity to eligible and desirous of participating in public bidding
- (v) Ensure value for money in terms of price, quality and timely delivery
- (vi) Ensure that the government procurement system is made efficient and simplified to promote development need of the country
- (vii) Monitor the system relating to selection of successful bidders and award of contracts

12. The NPA performs in three main areas: (i) policy and regulation, (ii) monitoring, and (iii) capacity building. In the area of policy and regulatory initiatives, the NPA covers the issuance of Guidelines, Manuals and Directives for Procurement of Goods, Works, Services and Consultant Services and public private partnerships (PPPs); formulation of SBDs; Indicative Specifications for Procurement of Goods; Appeal Board Procedures; formulation of black-listing procedures; and plays the key advisory role in public procurement.

13. In respect of procurement monitoring, the NPA was mandated to prepare National Procurement Plans, monitor procurement activities, accredit personnel for Procurement Committees and Technical Evaluation Committees (TECs), appoint Procurement Committees and TECs, assist and advise line ministries/agencies on issues related to the procurement process, and facilitate and coordinate publication of procurement activities and awards.

14. In order to strengthen capacity building in public procurement, NPA was mandated to prepare curricula for procurement training, conduct short-term training and diploma programs, training-of-trainers programs on aspects of public procurement and contract administration for public sector, private sector and professional organizations. It was also expected to establish and maintain Resource Center on procurement, and conduct research and development activities relating to public procurement.

15. The NPA increased the efficiency and effectiveness of public procurement in the three areas of policy, monitoring and capacity building through a number of initiatives. These include:

- (viii) Instructions, issued in March 2006 to all public institutions to furnish details on procurement preparedness when seeking annual Treasury budget allocations.
- (ix) Instructions issued to Ministries and provincial councils to prepare Master Procurement Plans for procurement monitoring.
- (x) Introduction of a web-based system for monitoring large-value procurement based on the master plans.
- (xi) Establishment of Procurement Cells, headed by a senior a ministry Procurement Liaison Officer and supported by procurement assistants to provide e specialized procurement services in each line ministry and provincial council. As of 2007, 72% of the cabinet ministries, 10% of non-cabinet level ministries and 100% of the provincial councils had established these cells.

16. The previous government proposed a Construction Industry Development Bill in August 2014. The present government is reported to be proposing a National Procurement Council. Due to the uncertain political situation at present, these ideas are unlikely to materialize in the very near future.

2. Institutional Framework and Management Capacity

17. The capacity assessment reviewed the institutional structures of the MMDE, MASL and DOI. The findings are as follows.

a. Ministry of Mahaweli Development and Environment

18. MMDE is the EA for the investment program and its structure is shown below (information about MMDE, DOI and MASL from MMDE website).⁴ The organization chart of MMDE is shown in Error! Reference source not found.

19. MMDE consists of a Ministry Procurement Committee (MPC) which has been empowered to take procurement decisions. The responsibility of procurement actions is vested with the Secretary of MMDE, who also acts as the Chief Accounting Officer of the ministry.

b. Mahaweli Authority of Sri Lanka

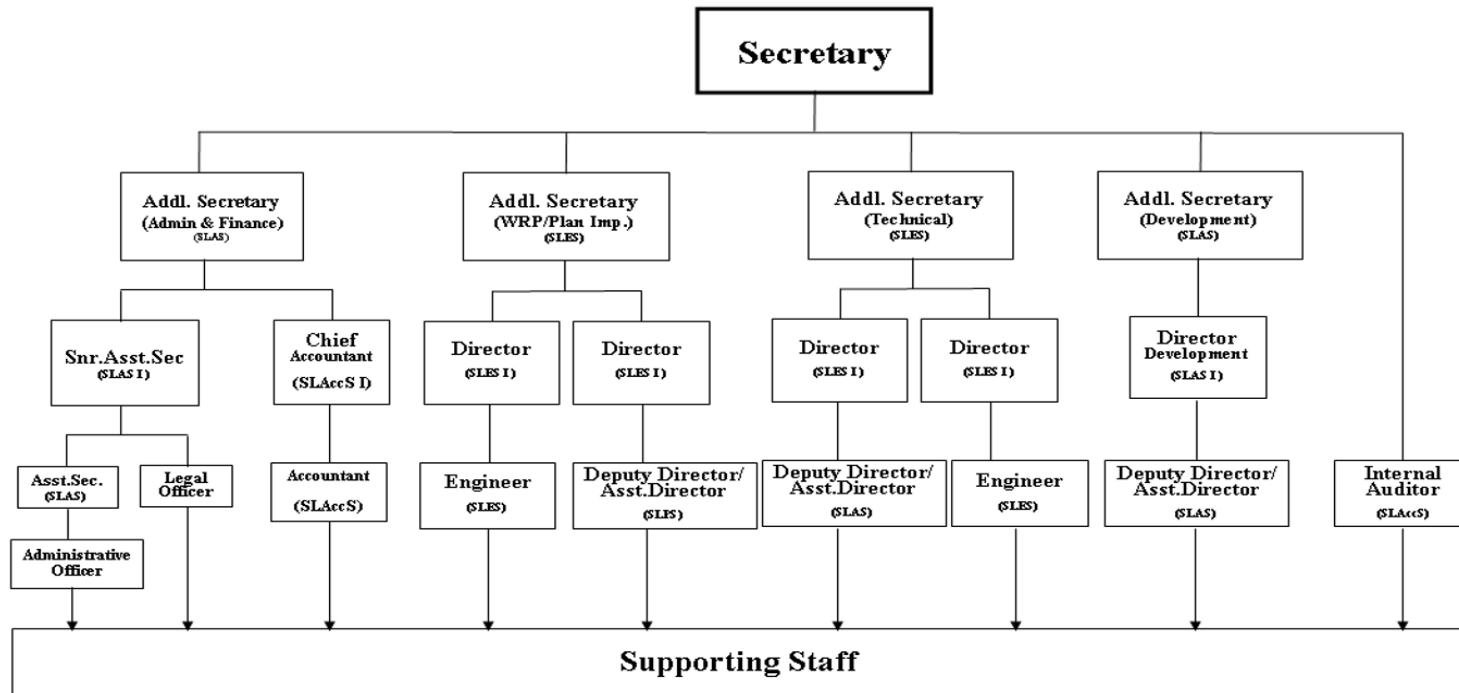
20. MASL functions under the MMDE. MASL was established in 1979 by a Parliament Act with a mandate to implement the Mahaweli Development Plan (MDP). Presently, it is tasked with developing the remaining Master Plan and other gazetted areas, maintenance and rehabilitation of irrigation systems, land administration, measures to increase agricultural production and post-settlement activities. Further, the MASL is responsible for managing irrigation water for over 180,000 hectares of irrigable land in the dry zone.

21. The Board of the MASL consists of five directors. The Minister appoints three directors while the Secretary to the Ministry charged with the subject of Finance and the Secretary to the Ministry charged with the administration of the MASL Act are appointed ex officio. The Minister, with the approval of the President, appoints one of the Directors as the Director General of the Authority.

22. The Director General is the Chief Executive Officer in the Authority. Four executive directors are assigned in the fields of Technical, Development, River Basin Management and Administration and 20 subject-specialized directors, 2 project directors and 12 resident project managers support the management. The Chief Internal Auditor's Division functions as a separate unit under the Director General. MASL head office is located in Colombo. There are 17 site offices located in Northern, North-Central, Eastern, Central and Southern provinces. MASL follows the instructions issued under 'Delegation of Functions and Financial Control and Procurement Procedures (March 2013)'. This delegation is from MMDE and specifies the value limits, authorization, procurement procedure, payment approval authority in detail within the framework of NPA Procurement Guidelines. Staff recruitment is done after obtaining prior cadre approval from MMDE.

⁴Information about MMDE, DOI and MASL sourced from organizations' official websites.

Figure 1: Organizational Chart of the MMDE

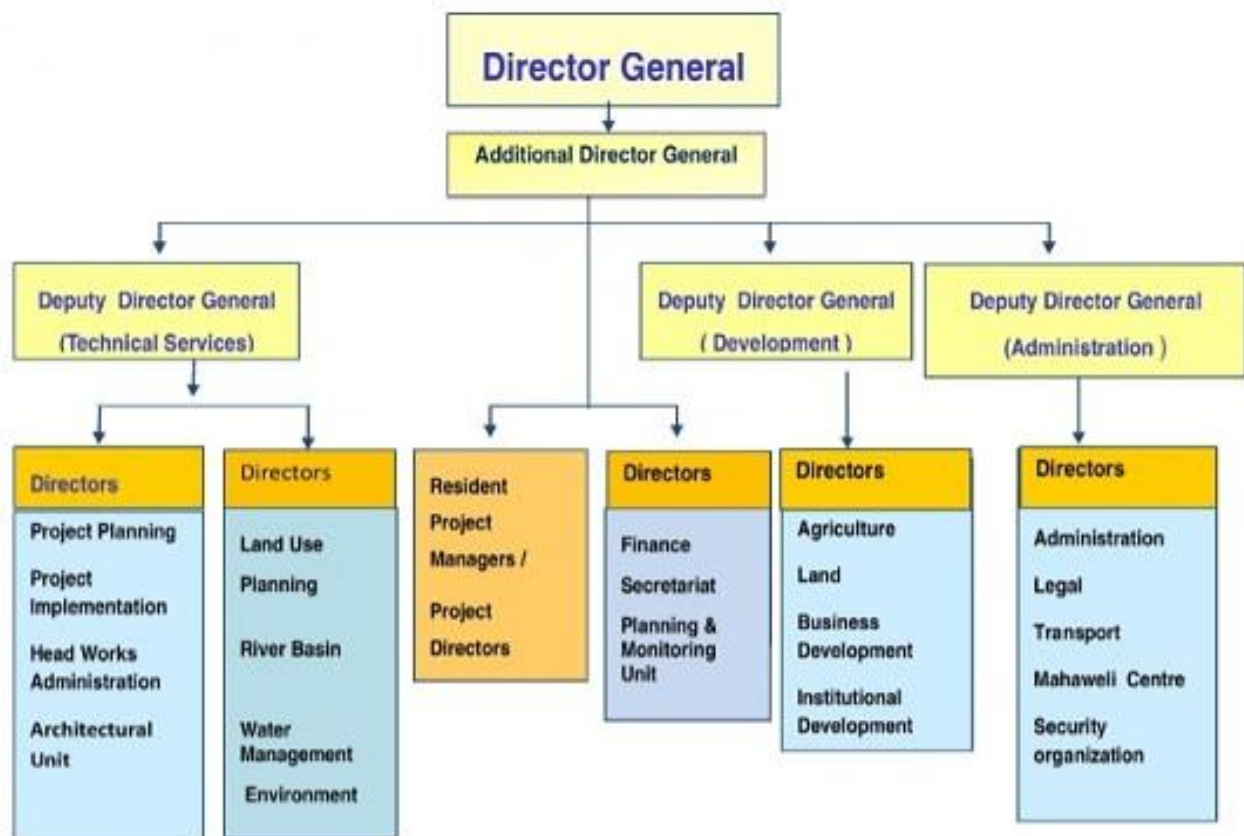


Source: MMDE, 2015

23. The total capital budget of MASL in 2013 was SLRs 1,950 million (\$15.29 million) and actual expenditure was SLRs 1,879 million (\$14.74 million). MASL is implementing bilaterally financed major projects: (i) the Moragahakanda Reservoir (estimated cost \$557 million) contract under financial assistance from China Development Bank and is due for completion in 2016; and (ii) the Kalu Ganga Reservoir (estimated cost of \$283.97 million) is financed by the Saudi Fund for Development (SFD), Kuwait Fund for Arab Economic Development (KFAED) and OPEC.

24. MASL is also implementing the “Dam Safety and Water Resource Planning Project,” financed by World Bank. The total estimated project cost is SLRs 8,187 million (\$75.8 million) of which SLRs 7,585.64 million (\$70.23 million) is financed by the IDA-WB, with the balance being financed by the government. The project has achieved 72% financial progress and 67% physical progress by end of December 2013.

Figure 2: Organizational Structure of the MASL



c. Department of Irrigation

25. DOI was previously under MMDE, however since January 2015, is under MOI. It carries out the construction work of projects mainly on force account using departmental machinery as well as hired machinery. Some of the small scale works and supplies are awarded to local contractors. DOI awards some of the specific construction work (such as maintenance and emergency works) to specialized contractors / agencies after negotiation.

26. DOI has a Contract and Procurement Division which prepares and manages procurement plans, bidding documents for standard civil works and goods contracts above SLRs 5 million. It issues relevant bid documents, selects bidders and report same to DPC for award and follow up. It

also maintains lists of registered supplies and services providers, defaulted contractors which is published online at ICTAD website www.ictad.lk

3. Procurement Operations and Market Practices

27. Procurement performance of ADB portfolio in Sri Lanka including agriculture sector has improved significantly from 2012. The ADB financed \$ 360 million Colombo Port Project contract and ADB JBIC co-financed \$210 million Southern Transport Development Project contracts are the largest procurement done to date in the ADB portfolio. The transport sector domestic contractor capacity is considered mature for contracts of less than \$ 15 million, with a fair number of contractors developing their capacity during the last few years of heightened infrastructure development in the country.

28. Review of the last four years (2010, 2011, 2012 and 2013) procurement performance indicators of ADB's Sri Lanka portfolio leads to the following inferences.

- (i) Against a benchmark of 107 days for NCB contract advertising to award, the average time taken was 178 (in 2010), 101 (in 2011), 88 (in 2012) and 90 (in 2013). Performance in last 3 years is better than the benchmark.
- (ii) Against a benchmark of 165 days for ICB contract advertising to award, average time taken is 234 (in 2011), 167 (in 2012) and 177 (in 2013). Performance in last 2 years meets the benchmark.
- (iii) A total number of 229 contracts of value \$207 million were procured in the four years during 2010-2013. Average value per contract is \$0.90 million and average number of bids received per procurement was 4.72. While the size of contracts was small, procurement was largely done in time and competitiveness, as indicated by nearly five bidders per procurement, was good.
- (iv) Number of contracts exceeding engineers estimate by 15% was 63 out of 229, appears engineers estimates are slightly on lower side.
- (v) Instances of rebids reduced gradually from a high of 44% in 2010 to 7% in 2013.
- (vi) Instances of contract termination, major non-compliance of ADB procurement guidelines, and re-evaluation of bids were few.

29. However, in the irrigation sector, many large projects (ranging from \$92-804 million) are being financed bilaterally. The bilateral financiers include EXIM Banks of China and India, Iran, Credit Agricole of France, Australia, New Zealand and private investment banks. Procurement for these projects is on direct-award basis, usually to entities from the financing country. It is felt that such large-scale investments cannot be handled through normal tender procedures. Presently, the bulk of Sri Lanka's foreign assistance is not mobilized through ADB, WB and JICA whose procurement is considered competitive. While there are perceptions about long, time-consuming processes on both sides before a project was finalized. There are concerns in some quarters that these large size procurements on non-competitive basis are not transparent and value for money. The route of unsolicited proposals, it is widely agreed, is quick. Notwithstanding quality concerns, the government is getting its infrastructure in place fast.

30. There is inadequate competition and capable domestic contractors in the irrigation sector, primarily due to lack of major work and opportunity during the internal strife and during the last few years where main development assistance to the sector has been bilaterally linked. Under the World Bank-financed Dam Safety and Water Resources Planning Project, it is observed that most contracts are small in size due to nature of work (repairs and scattered locations). Eighty three contracts (25 by MASL, 58 by DOI) had been awarded with a total value of \$69 million, the largest being \$3 million. ; (ii). DOI and MASL consider overall contractors performance as satisfactory, with

some delays due to local factors, land acquisition, unsatisfactory contractor performance and the short window of time available for work since irrigation systems cannot be closed for longer periods. Out of 58 contracts of DOI, 35 are completed, one contract terminated and rest in progress. Of the 25 contracts of MASL, 8 are completed, 15 are in progress and 2 are yet to be awarded including an ICB of estimated cost \$7.7 million (data as of June 2014).

31. The ADB-financed Conflict Affected Region Emergency Project under implementation from 2011 with DOI as the implementing agency presents a similar picture. For an outlay of \$17 million, there are 74 contracts with the largest contract value being \$2.96 million. The March 2014 project progress report lists same problems as mentioned above.

32. The National Construction Association of Sri Lanka (NCASL) is the apex body in Sri Lanka for development of the construction industry. It was originally formed as the Association of Construction of Sri Lanka in 1981, with the support of the government of Sri Lanka and the World Bank. Presently, NCASL has over two thousand five hundred regular members. NCASL cites (i) delayed payments; (ii) shortage of qualified and capable domestic consultants who can perform duties independent of the employer; (iii) difficulty in obtaining bank guarantees for bidding, performance guarantees (especially for smaller contractors); and (iv) award of projects without competitive bidding to government-owned entities.

33. With the recent government change, however, Sri Lanka has seen fundamental changes in government allocations for development activities. The new government expects to curtail public expenditure to maintain fiscal discipline and is reducing overall capital expenditure as a percentage of gross domestic product from 6% to 4.6% in 2015. This will compel domestic contractors to participate in irrigation sector as well in larger numbers and adequate domestic competition for contracts of less than \$7.5 million value can be expected. International contractors who have developed considerable construction capacity in Sri Lanka are expected to follow suit and bid for contracts with a lesser estimated value.

4. Integrity and Transparency of the Public Procurement System

34. Sri Lanka has a multi-layered procurement decision-making structure, depending on the value of the procurement, with authority levels at the Cabinet Appointed Procurement Committee (CAPC), the Ministry Procurement Committee (MPC), the Department Procurement Committee (DPC) and the Project Procurement Committee (PPC). This system still continues and the authority of the respective procurement committees for contract award recommendation and determination is set for both government and foreign-funded projects. The applicable authority levels are in Annex 7.

35. CAPC-level contract evaluations are supposed to be completed within a 100-day period. However, it is observed that a substantial number of such evaluations have taken a considerable time, with some going beyond a year. In the case of MPC-level contracts, the situation is better with 67% being completed within a 50-day period.

36. Each procuring entity¹ (PE) is required to establish a procurement unit or designate a unit with responsibility for procurement and contract management. Each PE must also form an evaluation committee. Depending on the size of the annual volume of procurement, some PEs form

¹ Procuring Entity means a Government ministry, provincial council, Government department, statutory authority, government corporation, government owned company, local authority or any subdivision thereof or any other body wholly or partly owned by the Government of Sri Lanka or where the Government of Sri Lanka has effective control of such body, that engages in Procurement.

more than one evaluation committee. There is no separate procurement cadre or procurement core group in the country. Most of the staff carrying out procurement functions is from general engineering and accounting cadres, often inexperienced and not trained specifically in procurement. Additionally, contract administration is weak. This has resulted in cost and time overruns. The NPA continues with PEs capacity needs assessment, training and establishment of a national procurement training system.

B. Strengths

37. The strengths of the sector agencies' procurement practices are based mainly on the results of Sector Assessment Tool, identified areas with scores of 2 or 3. Please refer to Annex... for a full review.

38. Sri Lanka does not have dedicated Parliamentary legislation for public procurements. However, government institutions follow well established NPA Guidelines, Financial Regulations and Circulars. These administrative systems allow a fair level of continuity required for public procurement processes.

39. Sri Lankan agencies have improved procurement efficiency for ADB funded projects in recent years (please refer to para 28).

40. Due to the increased levels of public investments in recent years, the construction industry in general has increased its overall industry capacity. The decreased levels of public investments expected in the next few years will compel the contractors to compete, in the irrigation sector which has hitherto failed to attract the attention of main players in the construction industry.

C. Weaknesses

41. The weaknesses of the sector agencies' procurement practices are based mainly on the results of Sector Assessment Tool, identified areas with scores of 0 or 1. Please refer to Annex... for a full review.

42. 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 (>\$3.92 million for externally financed contracts and >\$1.18 million for State financed contracts) have to be referred to the Cabinet for approval, the possibility of political interference in decision making cannot be ruled out. In addition, Procurement approvals, especially those under CAPC purview, take considerable time.

43. There are no procurement related cadre positions in the government services, and procurement activities are handled by general staff. Although they have received training in basic procurement procedures, updating of skills is not apparent.

44. During the period 2004-2007, all government departments and agencies were trained by the NPA. From 2008, training opportunities are limited to those administered by multilateral development banks and some government programs. And usually when training is available, they cover basic procurement procedures only. This is reflected in private sector operations as well. As a result, both general and specialized procurement knowledge has declined in general. This is reflected in private sector as well.

45. MMDE, MASL and DOI at present collect and disseminate procurement related information manually. As a result, monitoring is cumbersome. Present manual systems of collecting and disseminating of procurement information, and monitoring of procurement statistics are cumbersome and ineffective. Further the training and capacity building of government sector staff appears inadequate to meet the need, and is almost non-existent for the private sector.

46. While sector agencies have considerable experience in procuring and managing civil works contracts, those related to goods contracts is perceived to be insufficient.

47. Sri Lankan government agencies are not exposed to properly defined procurement audits. Although there are financial audit procedures in place for government sector organizations, they are not customized for addressing procurement. In addition, procurement procedures do not address means of preventing corruption, fraud, conflict of interest and unethical behavior. There is a Commission to Investigate Allegations of Bribery and Corruption. Although many cases have been investigated, few have resulted in court action. Sanctioning of contractors for poor performance is not practiced well, in general.

D. Procurement Risk Assessment and Management Plan (P-RAMP)

48. Since the absorption of NPA under the MFP, the effectiveness of NPA in promoting sound procurement practices and improving nationwide procurement capacity has deteriorated. The government needs to strengthen its overall fiduciary, monitoring capacity efforts considerably. The multilateral donors can play a major role in these efforts. The country / sector procurement risk assessments need to be updated and donor support needs to be aligned with fresh government efforts in this regard.

49. The procurement approval authority levels are concentrated. Given the level of public development expenditure, the MPC, DPC, PPC and RPC approval thresholds needs to be increased. For the irrigation sector MFF funding, efforts should be made to explore possibilities of increasing these levels procedurally, until the government makes blanket changes.

50. As the capacity of local irrigation works contractors is limited to small-size packages, MMDE should take steps to encourage road sector contractors, where Sri Lanka shows better capacity, to participate in bidding. MMDE, MASL and DOI need to disseminate opportunities that will be available in the irrigation sector to the construction industry, in a broad, transparent manner, to stimulate interest of capable contractors who have hitherto not participated in such work.

51. While the government is interested in increasing NCB threshold to allow domestic contractors to gain experience, it is recommended to keep NCB packages below \$ 7.5 million threshold for tranche 1 of the MFF, given the present irrigation sector contractor capacity. This should be reviewed during tranche 2 processing.

52. MMDE, MASL and DOI should establish a mechanism for any protest on procurement actions to be properly recorded and incorporated in evaluations. The mechanism should allow any appeal on a contract award decision to be reviewed properly, independent of the employer. The investment program may consider financing of a procurement professional to independently investigate complaints, protests and provide recommendations to Program Director and to conduct regular procurement performance audits.

53. In addition, MMDE, MASL and DOI need to improve systems for collecting procurement data for monitoring, analysis and feedback. The unit rates used for contract estimates need to be updated.

54. The MMDE should also conduct hands-on procurement and contract management training to relevant project staff and take measures to retain them. This should cover areas especially specific to goods contracts. The EA and the Project Management Unit (PMU) should prepare cost estimates based on realistic market rates while using agency schedule of rates as a reference.

III. SECTOR/AGENCY PROCUREMENT THRESHOLDS

55. The executing agency and implementing agencies in the sector have prior experience in ADB funded project implementation. However, they are not exposed to the level of ADB funding that is envisaged under the MFF. The agencies also have not implemented civil works contracts that include complex tunneling previously with multilateral donor funding. Therefore, project procurement is classified as Category A with a concurrent procurement risk classified as substantial.

56. All large NCB and ICB contracts will be based on prior review. Post review will be applied to only very small contracts to be implemented with force account procedure.

57. While present country NCB/ICB thresholds will be maintained in general, given the present industry capacity, all NCB civil works packages will be below \$ 7.5 million. Procurement Plan for tranche 1 has been formulated taking the present industry capacity into consideration. This will be reviewed in ensuing tranches. The Procurement Plan also includes an improved NCB Annex.

IV. CONCLUSION

58. Due to Common Law tradition and long years of donor assistance to Sri Lanka, Sri Lanka's procurement legal, regulatory and institutional frameworks are sound. ADB and the government have an inclusive approach to each other's systems and this will continue. The executing agency and the implementing agencies have substantial experience in implementing large scale development projects in the sector. The cited overall project procurement classification and procurement risk assessments are mainly based on the fact that the executing agency and the implementing agencies are not exposed to the level of ADB funding that is envisaged under the MFF. The ensuing risk mitigation / management measures have been identified and addressed.

ANNEX 1

SECTOR / PROGRAM PROCUREMENT RISK ANALYSIS AND MANAGEMENT PLAN

SL. No / Ref	RISK	IMPACT	LIKELIHOOD	MITIGATION MEASURES / RISK MANAGEMENT PLAN
I. Program Procurement Risk Analysis				
A.6.	Agencies do not have a regular procurement training program	S	Likely	- Regular hands on procurement training and retention of trained staff. - Provide training budget in the program
A 19	Procurement specifications approval Goods: By the Divisional level officers. Works: For routine procurements the specifications are approved centrally by MMDE. Specifications for uncommon specialized items of works are initially drafted by the Divisional level officers and approved by MMDE.	S	Likely	- Ensure project consultants involvement in drafting procurement specifications - Technical and procurement committees of investment program to be fully empowered to approve procurement specifications
B.7.	Copies of invoices not included with the contract papers, separately maintained by Accounts Office.	S	Unlikely	- PMU and Project Directors to ensure invoices are included with the contract papers.
C.16	Advertising to contract award delays; in case of high value procurements more time taken since it has to go up to higher levels of contract approval committee	S	Unlikely	- MMDE to ensure higher level review and approval committees act in a timely manner.
C.45	Delay in negotiation after the selection of Consultant is approved by appropriate Consultant Selection Committee based on technical and financial evaluation.	S	Unlikely	- PMDC Consultant selection on behalf of the investment program is being done by ADB - Once PMU is empowered for all program procurement, the delay would be reduced for other consultant procurement
C. 48	Contract signing after negotiations varies from 2 to 5 months depending on the level of the approval authority	S	Likely	- Large sized consultancy contracts are proposed to be procured under investment program. Key is to empower PMU for all procurement.

	and necessity of prior review by the Development Partner.			
C.53.	When late payment is made, are the beneficiaries paid interest?	S	Unlikely	<ul style="list-style-type: none"> - With PMU and finances in place, delays could be minimized. - Payment delays to be regularly monitored by PMU
II. Sector Procurement Risk Analysis				
Sector PCA questionnaire 3.2	Do measures exist in the sector to ensure the adequacy and accuracy of cost estimates before bidding, and to manage contract price variations	S	Unlikely	<ul style="list-style-type: none"> - Existing processes of cost estimate cannot easily capture costs of items new to Sri Lanka. Also cost estimates have to follow department schedule of rates which do not afford adequate flexibility. - The investment program will be supported by international consultants and program specific PMU which Should be empowered to prepare cost estimates based on realistic market rates while using department schedule of rates as a reference.
Sector PCA questionnaire 3.3	Have bidders used the complaint and protests mechanisms?	S	Likely	<ul style="list-style-type: none"> - The Appeals Board has no independence for the resolution of complaints. There is also a lack of transparency as the outcome of appeals reviews are not made public. - The PMU should devise its own procedures to address complaints adequately and transparently. ADB's complaints resolution system could be adopted by the program. - Program may consider having on a retainer basis an independent professional to independently investigate complaints, protests and provide recommendations to Program Director.
Sector PCA questionnaire 4.1	Is there a formal internal control and audit framework in the sector?	S	Likely	<ul style="list-style-type: none"> - Yes. The audit reports highlight only procedural lapses and unauthorized expenditures rather than major non-compliance, irregularities, malpractice, or corruption in procurement. - It is recommended that agencies in the sector are subjected to regular procurement performance audits by independent external auditors. - Increased level of oversight by PMO recommended.

S - Substantial

ANNEX 2

Program Procurement Classification

Procurement factors to consider when recommending “Category A” projects

Characteristic	Assessor’s rating: ‘Yes’ or ‘No’ with brief comments, if ‘Yes’
Is the Procurement Environment Risk for this project assessed as “High” based on the country and sector/agency risk assessments according to Figure 4 above?	No
Are multiple (typically more than three) and/or diverse Executing (EAs) and/or Implementing Agencies (IAs) envisaged during project implementation? Do EAs/IAs lack prior experience in ADB project implementation?	Yes. The EA/ IAs have prior experience in ADB project implementation, but not in the scale envisaged under this MFF.
Are multiple contract packages and/or complex and high value contracts expected (compare to recent donor projects in DMC)?	Yes. High value TBM tunnel contracts not carried out previously under MDB finance. A southern roads project (ADB finance) contract of \$210 million took 11 years to implement (scheduled 5 years). A \$60 million has been procured in urban sector. WB has not financed any program with large contracts.
Does the project plan to use innovative contracts (PPP, Performance-based, Design & Build, O&M, etc.)?	No
Are contracts distributed in more than three geographical locations?	No
Are there significant ongoing contractual and/or procurement issues under ADB (or other donor) funded projects? Has mis-procurement been declared in the DMC?	No. Mis-procurement declared in a Public Resources Management, MOF project (one off instance).
Does the DMC have prolonged procurement lead times, experience implementation delays, or otherwise consistently fail to meet procurement timeframes?	No.
Do EAs/IAs lack capacity to manage new and ongoing procurement? Have EAs/IAs requested ADB for procurement support under previous projects?	No.
OVERALL PROJECT CATEGORIZATION RECOMMENDED	A

Note: If the answer to one or more questions in the above table is ‘Yes’, the project officer shall make an assessment (with comments, if necessary) and determine if additional procurement support to the EA/IA will be required or if despite the assessment the EA/IA has adequate resources and/or institutional capacity to address procurement issues. The project officer shall also assess if the ADB project team includes sufficient experience/skills to deliver such support or additional support will be required from OSFMD. If additional support is required from OSFMD procurement specialist, the project should be recommended as Category A. If not, it should be recommended as Category B. OSFMD must confirm the classification during interdepartmental circulation of the project concept paper.

Overall recommendation of the concerned project officer

Propose overall project category of A, with substantial procurement risks.

Recommendation of OSFMD's procurement specialist

Agree with the project officer's recommendation.

ANNEX 3

SECTOR PROCUREMENT ASSESSMENT OF MMDE, DOI AND MASL

Indicators/Questions	Sector/Agency Questions	Score	Narrative ¹
1. Legislative and Regulatory Framework			
<p>1.1 Does the national public procurement law (including supporting regulations, standard bidding documents and operational manuals/guides) apply to the sector?</p>	<p>Is the sector exempted by legislation from being subject to the national public procurement law?</p> <p>Even if subject to the national public procurement law, does the sector tend to follow it?</p> <p>Do agencies in the sector use government-issued public procurement manuals or guidance?</p> <p>Have government-issued documents been tailored to meet sector requirements?</p> <p>In absence of government-issued documents, does the sector have its own standard bidding documents/guidelines?</p>	2	<p>The procurement guidelines have the backing of the country's laws and are applicable to all government institutions inclusive of ministries, departments, public corporations and statutory bodies, fully-owned government companies, provincial councils and local authorities for the procurement of works, services and supplies and disposal of government assets. These Guidelines have been drafted in association with the major funding agencies such as the World Bank, the ADB and the Japan Bank for International Cooperation, to ensure they are harmonized to the maximum extent in order for their usage in foreign-funded projects as well.</p> <p>Following the national public procurement law is mandatory and all agriculture sector agencies follow it.</p> <p>Yes, nationally applicable procurement guidelines and manuals were published in 2006. Agencies in the sector use government-issued public procurement manuals and guides. Guidelines and manuals have been amended many times.</p> <p>The procurement documents are not sector specific.</p> <p>Not applicable since government-issued documents are mandatory.</p>

¹ Describe how the sector meets the guidance applicable to the score allocated, or other justification for the score.

Indicators/Questions	Sector/Agency Questions	Score	Narrative ¹
<p>1.2 Is the supply market for the sector sufficiently competitive to give full effect to the national procurement law and/or open competitive tendering?</p>	<p>Is competitive bidding a common feature under the sector?</p> <p>Is there a core of suppliers in the sector who regularly submit responsive bids?</p> <p>What proportion, by %, of the sector's procurement is undertaken through open competitive bidding?</p> <p>What is the average number of bidders for publicly bid contracts?</p> <p>Do EAs tend to make sufficient efforts to attract bids (eg. adequate advertising, bidding periods)?</p> <p>Is there availability and quality of suppliers, labor force and/or related goods and services in the domestic market ?</p>	<p>2</p>	<p>Yes.</p> <p>Yes for small contracts. Since qualified contractors for larger contracts are few, there is a tendency to split packages. 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.</p> <p>At CAPC-level 79% of the procurement by numbers and 97% by value, are through Open Tendering. Single Source procurement of spare parts for plant and equipment results in the relatively low 79% of open procurement. At MPC level 96% of the procurement by numbers and 99% by value is through Open Tendering.</p> <p>CAPC -5, MPC -4. ADB projects (all sectors) - 4.55</p> <p>Yes, they follow Sri Lanka's Public Procurement Act and guidelines which mandate advertising and bidding periods.</p> <p>Adequate competitiveness exists for small contracts (<\$4 million) and for large contracts. Very large contracts, many above \$100 million are awarded to mostly foreign firms without bidding. Better capacities exist among road contractors but much less in irrigation sector contractors for medium sized contracts. Contracts of size \$10-40 million would face inadequate competition since very few domestic firms would qualify, foreign firms may not be</p>

Indicators/Questions	Sector/Agency Questions	Score	Narrative ¹
			interested. Large contracts (>\$40 million) attract international bidders due to perceived good business environment in Sri Lanka.
1.3 If there is a sector specific legal framework, does it support non-discriminatory participation, transparent tender processes (including advertisement, tender documentation, tender evaluation, complaints mechanism)?	<p>Has the sector adopted non-discriminatory, transparent tender processes?</p> <p>What is the average number of bidders for publicly bid contracts?</p>	2	<p>Yes. Complaints resolution mechanism a bit weak; not many convictions.</p> <p>CAPC -5, MPC -4. ADB projects (all sectors) - 4.55</p>
1.4 Is the sector subjected to excessive regulation or government control such that competition is limited or non-existent?	<p>Does the sector apply a domestic preference scheme?</p> <p>Does the sector require pre-registration of bidders?</p> <p>Are there acceptable provisions in the sector for the participation of State Owned Enterprises?</p>	2	<p>There are no restrictions on participation in public procurement based on nationality for ICB.</p> <p>No such requirement for ICB. While there is no domestic preference, all bidders are to be registered with ICTAD for NCB and shopping.</p> <p>Yes. SOEs are treated at par with private sector and get no preferential treatment.</p>
2. Institutional Framework and Management Capacity			
2.1 Is the procurement cycle in the sector required to be tied to an annual budgeting cycle (i.e. can a procurement activity commence only when budget has been duly appropriated for it)?	<p>Are procurement plans in the sector prepared on as part of the budget planning and formulation process?</p> <p>Do systems and processes in the sector or key agencies in the sector require certification of availability of funds before solicitation of tenders?</p>	3	<p>From March 2006 all institutions are required to furnish details of procurement preparedness activities when seeking annual financial allocations. This led to the mandating of procurement planning for Treasury budget allocations.</p> <p>Ministries and provincial councils prepare Master Procurement Plans based on the institutional plans for the purpose of monitoring.</p> <p>Yes</p>
2.2 Does the system foster efficiency through	Does the sector, or key agencies in the sector,	3	Yes, as above

Indicators/Questions	Sector/Agency Questions	Score	Narrative ¹
the use of adequate planning?	have a formalized procurement planning process(s)?		
2.3 Does the procurement system in the sector feature an oversight /regulatory body?	Does the sector fall under the remit of the national oversight/regulatory body? If a national body does not exist, is there a sector-specific body that oversees/regulates procurement?	3	Yes, NPA Not applicable.
2.4 Is there a public procurement capacity development or professionalization program?	What proportion of procurement-related officers and staff in the sector have been trained under the national or sector capacity development program or participated in any formal procurement training program?	2	Yes, more than 60%. The NPA conducted a wide range of training programs for the government sector. A need for more training at the awareness level, and more importantly at the specialized level, is felt. Further, there is a need for awareness and training courses for the private sector. During the period 2004-2007, all government departments and parastatals were trained by the NPA. From 2008, training opportunities are limited to those administered by multilateral development banks and some government programs.
3. Procurement Operations and Market Practices			
3.1 Is private sector competitive, well organized and able to access the sector market?	Is the private sector well organized and able to access the sector market? Do civil society organizations regard public procurement in the sector to be open and accessible to the market?	2	Yes for small contracts. Limited competitive capacity for large contracts. Qualified yes. Yes for small contracts. No for large contracts
3.2 Do measures exist in the sector to ensure the adequacy and accuracy of cost estimates before bidding, and to manage contract price variations?	What percentage of contracts are awarded for values less than the original cost estimates? What percentage of contract variations amount to a cumulative impact of more than 10% of the original contract price?	1 2	While reliable data is not available, the percentage of contracts awarded for values less than estimated cost are assessed to be under 10%. ADB contracts exceeding 15% (Y2013) - 0.27% CAPC - 19%, MPC - 46% (from OECD report)
3.3 Is there a mechanism in the sector to receive and handle observations, complaints and	Are there sector-specific procedures to receive and handle observations, complaints and protests?	1	National procedure exists, same is adopted for the sector.

Indicators/Questions	Sector/Agency Questions	Score	Narrative ¹
protests?	<p>Are complaints and protests in the sector processed within the maximum time limit provided for in the law?</p> <p>Have bidders used the complaint and protests mechanisms?</p>		<p>Yes.</p> <p>Yes, to a limited extent. The Appeals Board for the CAPC contracts cannot issue enforceable final decisions and hence the Appeals Board has no independence for the resolution of complaints. There is also a lack of full transparency as the outcome of appeals reviews are not made public.</p>
4. Integrity and Transparency of the Sector Public Procurement System			
4.1 Is there a formal internal control and audit framework in the sector?	<p>Do key agencies in the sector have an independent internal audit function?</p> <p>Do key agencies in the sector have adequate internal control mechanisms to oversee the procurement function?</p> <p>Are key agencies in the sector subjected to regular performance or value for money audits?</p> <p>Are key agencies in the sector subjected to annual financial audits?</p> <p>Are internal or external</p>	1	<p>Yes. The institutional framework of internal financial control in Sri Lanka is under the supervision of the MFP and external audit under the independent Comptroller and Auditor General (CAG), who audits all public sector expenditures and submits annual and special reports to the Public Accounts Committee (PAC) of the national assembly.</p> <p>The audit reports, to the extent directed towards procurement, highlight only minor procedural lapses and unauthorized expenditures rather than major non-compliance, irregularities, malpractice, or corruption in procurement. Major non-compliances and corruption are handled by established departmental disciplinary procedures and by the Commission to Investigate Allegations of Bribery and Corruption.</p> <p>No</p> <p>Yes</p> <p>Acted on, delayed.</p>

Indicators/Questions	Sector/Agency Questions	Score	Narrative ¹
	audit findings /recommendations acted on in a timely fashion?		
4.2 Is information pertaining to public procurement in the sector easy to find, comprehensive and relevant?	<p>What percentage of bids is published in a medium that is easily and freely accessible? Can bidders easily and freely access bid information? What is the percentage of contract awards announced in medium that is easily and freely accessible?</p> <p>Are third party observers invited to attend public biddings?</p>	2	<p>99%</p> <p>Yes</p> <p>All competitive procurement results listed in PE website</p> <p>No</p>
4.3 Does the sector have ethics and anticorruption measures in place?	<p>Are there sector-specific procedures to verify a bidder's legitimate existence, track records, financial capacity and capacity to complete the job?</p> <p>Are there sector-specific procedures to rate performance and/or debar bidders, supplier, contractors and consultants for ethical or integrity violations?</p> <p>Does the sector, or key agencies in the sector, maintain a register of debarred suppliers, contractors and consultants?</p> <p>Are there sector-specific integrity principles and guidelines?</p>	2	<p>Yes, not sector specific. ICTAD registration procedures which include bidder's verification are applicable countrywide.</p> <p>Yes, but not sector specific and are handled by ICTAD.</p> <p>Maintained by ICTAD and available on its website.</p> <p>Yes, not sector specific, NPA set processes including integrity principles are applicable countrywide</p>

ANNEX 4
SECTOR/AGENCY PROCUREMENT ASSESSMENT
SCORING GUIDE

Indicators/Questions	Sector/Agency Questions	Scoring Guide ²
1. Legislative and Regulatory Framework		
<p>1.1 Does the national public procurement law (including supporting regulations, standard bidding documents and operational manuals/guides) apply to the sector?</p>	<p>Is the sector exempted by legislation from being subject to the national public procurement law?</p> <p>Even if subject to the national public procurement law, does the sector tend to follow it?</p> <p>Do agencies in the sector use government-issued public procurement manuals or guidance?</p> <p>Have government-issued documents been tailored to meet sector requirements?</p> <p>In absence of government-issued documents, does the sector have its own standard bidding documents/guidelines?</p>	<p>3 – <i>The sector has its own regulations, processes, guidelines, bidding documents that are superior to those in the national public procurement system.</i></p> <p>2 – <i>The sector is subject to the national procurement law and tends to follow it. Generally uses the national procurement processes, guidelines, bidding documents</i></p> <p>1 – <i>The sector is subject to the national procurement law but tends to not follow it. Frequent deviations from national procurement processes, guidelines, bidding documents.</i></p> <p>0 – <i>The sector is exempt from, or does not follow, the national public procurement system, and does not have its own regulations, processes, guidelines, bidding documents that compensate for this.</i></p>
<p>1.2 Is the supply market for the sector sufficiently competitive to give full effect to the national procurement law and/or open competitive tendering?</p>	<p>Is competitive bidding a common feature under the sector?</p> <p>Is there a core of suppliers in the sector who regularly submit responsive bids?</p> <p>What proportion, by %, of the sector's procurement is undertaken through open competitive bidding?</p> <p>What is the average number of bidders for publicly bid contracts?</p> <p>Do EAs tend to make sufficient efforts to attract bids (eg. adequate advertising, bidding periods)?</p> <p>Is there availability and quality of suppliers, labor force and/or related goods and services in</p>	<p>3 – <i>Competitive bidding is more prevalent (by %) in the sector than generally evident in the country. A core of suppliers in the sector regularly submit responsive bids. At least 5 bidders on average per contract. EAs make sufficient efforts to attract bids.</i></p> <p>2 - <i>Competitive bidding in the sector is consistent with that generally evident in the country. A core of suppliers in the sector regularly submit bids, but often nonresponsive. At least 3 bidders on average per contract. EAs generally make sufficient efforts to attract bids.</i></p> <p>1 - <i>Competitive bidding in the sector is less prevalent than that generally evident in the country. Suppliers tend to submit one-off but often responsive bids. At least 2 bidders on average per contract. EAs often do not make sufficient efforts to attract bids.</i></p>

² This guide does not replace professional judgment about the capacity of the sector relative to that of the country procurement system. If considerations other than this guide are used, mention them in the 'Narrative' column of the questionnaire.

Indicators/Questions	Sector/Agency Questions	Scoring Guide ²
	the domestic market ?	0 – <i>Competitive bidding in the sector is much weaker than that generally seen in the country. Suppliers tend to submit one-off, nonresponsive bids. Less than 2 bidders on average per contract. EAs rarely do not make sufficient efforts to attract bids.</i>
1.3 If there is a sector specific legal framework, does it support non-discriminatory participation, transparent tender processes (including advertisement, tender documentation, tender evaluation, complaints mechanism)?	<p>Has the sector adopted non-discriminator, transparent tender processes?</p> <p>What is the average number of bidders for publicly bid contracts?</p>	<p>3 – <i>At least 5 bidders on average per contract</i></p> <p>2 – <i>At least 3 bidders on average per contract</i></p> <p>1 – <i>At least 2 bidders on average per contract</i></p> <p>0 – <i>Less than 2 bidders on average per contract</i></p>
1.4 Is the sector subjected to excessive regulation or government control such that competition is limited or non-existent?	<p>Does the sector apply a domestic preference scheme?</p> <p>Does the sector require pre-registration of bidders?</p> <p>Are there acceptable provisions in the sector for the participation of State Owned Enterprises?</p>	<p>3 – <i>There are no restrictions on nationality of bidders or origins of goods, there is no domestic preference scheme, effective pre-registration processes rigorously followed, acceptable provisions govern participation of state owned enterprises.</i></p> <p>2 – <i>No restrictions on nationality of bidders or origin of goods, or pre-registration process exists but not rigorously followed, or weak or unclear provisions governing participation of state owned enterprises.</i></p> <p>1 – <i>Some restrictions on nationality of bidders, or domestic preference scheme exists, improvements needed pre-registration process, lack of clarity on participation by state owned enterprises.</i></p> <p>0 - <i>Restrictions on nationality of bidders, domestic preference scheme in place, no pre-registration of bidders required, no specific guidance with respect to state owned enterprises</i></p>
2. Institutional Framework and Management Capacity		
2.1 Is the procurement cycle in the sector required to be tied to an annual budgeting cycle (i.e. can a procurement activity commence only when budget has been duly appropriated for it)?	<p>Are procurement plans in the sector prepared on as part of the budget planning and formulation process?</p> <p>Do systems and processes in the sector or key agencies in the sector require certification of availability of funds before solicitation of tenders?</p>	<p>3 – <i>Procurement plans are prepared as part of the annual budget process; budget availability confirmed prior to solicitation of tenders.</i></p> <p>2 – <i>Budget availability confirmed prior to solicitation of tenders; limited procurement planning serving as input to budget formulation</i></p> <p>1 – <i>Procurement planning factors into budget formulation, but budget availability need not be</i></p>

Indicators/Questions	Sector/Agency Questions	Scoring Guide ²
		<p><i>confirmed prior to solicitation of tenders.</i></p> <p>0 – <i>Procurement planning does not factor into budget formulation and budget availability need not be confirmed prior to solicitation of tenders</i></p>
2.2 Does the system foster efficiency through the use of adequate planning?	Does the sector, or key agencies in the sector, have a formalized procurement planning process(s)?	<p>3 – <i>There is a regular planning exercise that starts with the preparation of multiyear operating plans followed by annual procurement plans with associated expenditures that forms part of the annual budget formulation process.</i></p> <p>2 – <i>Multiyear operating plans and annual procurement plans are prepared independently of budget preparation, but these are revised in line with forward budget estimates</i></p> <p>1 – <i>Annual procurement plans are prepared, but these are not linked to multiyear operating plans an/or not linked to budget formulation.</i></p> <p>0 – <i>Procurement plans are not prepared</i></p>
2.3 Does the procurement system in the sector feature an oversight/regulatory body?	<p>Does the sector fall under the remit of the national oversight/regulatory body?</p> <p>If a national body does not exist, is there a sector-specific body that oversees/regulates procurement?</p>	<p>3 – <i>There is a national procurement oversight body that covers agency procurement</i></p> <p>2 – <i>There is no national body, however, a sector specific body oversees and regulates procurement in the sector.</i></p> <p>1 – <i>There is a national regulatory body, but limited clarity with respect to its scope and or ability to oversee/regulate procurement in the sector</i></p> <p>0 – <i>There is no body, at the national or sector level, that oversees or regulates procurement</i></p>
2.4 Is there a public procurement capacity development or professionalization program?	What proportion of procurement-related officers and staff in the sector have been trained under the national or sector capacity development program or participated in any formal procurement training program?	<p>3 – <i>At least 80% of procurement staff</i></p> <p>2 – <i>At least 60% of procurement staff</i></p> <p>1 – <i>At least 20% of procurement staff</i></p> <p>0 – <i>Less than 20% of procurement staff</i></p>
3. Procurement Operations and Market Practices		
3.1 Is private sector competitive, well organized and able to access the sector market?	<p>Is the private sector well organized and able to access the sector market?</p> <p>Do civil society organizations regard public procurement in the sector to be open and accessible to the market?</p>	<p>3 – <i>The private sector is competitive, well organized and able to participate in the competition for sector procurement contracts; there are no major constraints inhibiting private access to sector procurement.</i></p> <p>2 – <i>There is a reasonable well-functioning private sector serving the agency but competition for large contracts is concentrated in a relatively small number of firms; there are some constraints inhibiting private sector access to sector procurement.</i></p>

Indicators/Questions	Sector/Agency Questions	Scoring Guide ²
		<p>1 – <i>The private sector serving the agency is relatively weak and/or competition is limited due to monopolistic or oligopolistic features; there are multiple constraints inhibiting private sector access to sector procurement.</i></p> <p>0 – <i>The private sector is not well organized and lacks capacity to access sector procurement markets; there are major constraints which discourage competition from the private sector.</i></p>
<p>3.2 Do measures exist in the sector to ensure the adequacy and accuracy of cost estimates before bidding, and to manage contract price variations?</p>	<p>What percentage of contracts are awarded for values less than the original cost estimates?</p> <p>What percentage of contract variations amount to a cumulative impact of more than 10% of the original contract price?</p>	<p>3 – <i>More than 75% of the contract awards sampled</i></p> <p>2 – <i>50 – 75% of contracts awards sampled</i></p> <p>1 – <i>20 - 50% of contracts awards sampled</i></p> <p>0 – <i>Less than 20% of contract awards sampled</i></p> <p>3 – <i>Less than 10% of contracts sampled</i></p> <p>2 – <i>10 – 20% of contracts sampled</i></p> <p>1 – <i>20 – 50% of contracts sampled</i></p> <p>0 – <i>More than 50% of contracts sampled</i></p>
<p>3.3 Is there a mechanism in the sector to receive and handle observations, complaints and protests?</p>	<p>Are there sector-specific procedures to receive and handle observations, complaints and protests?</p> <p>Are complaints and protests in the sector processed within the maximum time limit provided for in the law?</p> <p>Have bidders used the complaint and protests mechanisms?</p>	<p>3 – <i>The complaint review system has precise and reasonable conditions and timeframes for decision with clear enforcement authority and mechanisms; more than 90% of complaints are processed with stipulated timeframes;</i></p> <p>2 – <i>There are terms and timeframes for resolution of complaints but authority for enforcement is unclear; more than 75% of complaints are processed within stipulated timeframes;</i></p> <p>1 – <i>Terms and timeframes for resolution of complaints are vague; the time to resolve complaints is tracked by the agency.</i></p> <p>0 – <i>There is no effective or functioning complaints mechanism</i></p>
<p>4. Integrity and Transparency of the Public Procurement System</p>		

Indicators/Questions	Sector/Agency Questions	Scoring Guide ²
<p>4.1 Is there a formal internal control and audit framework?</p>	<p>Do key agencies in the sector have an independent internal audit function?</p> <p>Do key agencies in the sector have adequate internal control mechanisms to oversee the procurement function?</p> <p>Are key agencies in the sector subjected to regular performance or value for money audits?</p> <p>Are key agencies in the sector subjected to annual financial audits?</p> <p>Are internal or external audit findings/recommendations acted on in a timely fashion?</p>	<p>3 – <i>The sector has an effective internal control framework including an independent internal audit function; annual financial audits are conducted; audit recommendations are implemented within six months; no significant outstanding audit findings for more than six months.</i></p> <p>2 – <i>The sector has effective segregation of duties; an internal audit function exists but capacity is weak, or the function is not sufficiently independent; annual financial audits are audited with reasonable time disposition of audit findings.</i></p> <p>1 – <i>The sector has effective segregations of duties and is subjected to annual audit; There is no internal audit function and/or audit findings are not disposed of in a timely fashion.</i></p> <p>0 – <i>The internal system is weak, with no internal audit, limited external audit and audit findings are not disposed of in a timely fashion</i></p>
<p>4.2 Is information pertaining to public procurement in the sector easy to find, comprehensive and relevant?</p>	<p>What percentage of bids is published in a medium that is easily and freely accessible?</p> <p>Can bidders easily and freely access bid information?</p> <p>What is the percentage of contract awards announced in medium that is easily and freely accessible?</p> <p>Are third party observers invited to attend public biddings?</p>	<p>3 – <i>At least 80% of bids are published; at least 80% of contract awards are published; bidders can easily and freely access bid and contract award information; third partner observes invited to attend public biddings.</i></p> <p>2 – <i>A least 60% of bids are published; at least 60% of contract awards are published; bidders can easily and freely access either bid and/or contract award information; third partner observers may attend public biddings.</i></p> <p>1 – <i>At least 20 % of bids are published; at least 20% of contract awards are published; bidders have some access to bid and contract award information</i></p> <p>0 – <i>Less than 20% of bids are published, less than 20% of contract awards are published.</i></p>

Indicators/Questions	Sector/Agency Questions	Scoring Guide ²
<p>4.3 Does the sector have ethics and anticorruption measures in place?</p>	<p>Are there sector-specific procedures to verify a bidder's legitimate existence, track records, financial capacity and capacity to complete the job?</p> <p>Are there sector-specific procedures to rate performance and/or debar bidders, supplier, contractors and consultants for ethical or integrity violations?</p> <p>Does the sector, or key agencies in the sector, maintain a register of debarred suppliers, contractors and consultants?</p> <p>Are there sector-specific integrity principles and guidelines?</p>	<p>3 – <i>The sector has an active anticorruption/ Integrity program(s) in place; the sector has mechanisms to debar firms for failure to perform and/or integrity violations; the sector has sufficient supplier due diligence processes; the sector has clear policy, procedures and/or frameworks governing conflict of interest.</i></p> <p>2 – <i>The sector has mechanisms to debar firms for failure to perform and/or integrity violations, or mechanisms to report suspected violations to a national or sector wide anticorruption body; they sector has sufficient supplier due</i></p> <p>3 <i>diligence processes; the concept of conflict of interest is defined.</i></p> <p>1 – <i>The sector has sufficient supplier due diligence processes including need to address conflict of interest.</i></p> <p>0 – <i>The sector does not have a formal system(s) to deal with integrity violations, conflicts of interest, and/or fraud and corruption.</i></p>

ANNEX 5

PROCUREMENT CAPACITY ASSESSMENT OF MDDE, DOI AND MASL

Risk Ratings	High (H)	Substantial (S)	Moderate (A)	Low (L)
I. Specific Assessment and Ratings:				
Question	Answer/Finding			Risk
A. ORGANIZATIONAL AND STAFF CAPACITY				
A.1. How many years experience does the head of the procurement department/unit have in a direct procurement role?	More than 10 years for all 3 agencies – MMDE, DOI, MASL			L
A.2. How many staff in the procurement department/unit are: Full Time? Part Time? Seconded?	Adequate Staff. Decentralized at Ministry, Department, Division and Subdivision Level. All Full time staff Not Applicable Not Applicable			L
A.3. Does the procurement staff have English language proficiency?	Yes			L
A.4. Are the number and qualifications of the staff sufficient to undertake the additional procurement that will be required under the proposed project?	Yes			L
A.5. Does the unit have adequate facilities, such as PCs, internet connections, photocopy facilities, printers, etc., to undertake the planned procurement?	Yes			L
A.6. Does the agency have a procurement training program?	Not a routine program of its own but procurement staff have been trained by the NPA and ADB/ WB programs for projects financed by them.			S
A.7. Does the agency have a Procurement Committee that is independent from the head of the agency?	Yes. Procurement Committees exist at Cabinet, Ministry, Department and Project Levels. In addition, Technical Evaluation Committees exist at all these levels.			L
A.8. Does the agency have a procurement department/unit, including a permanent office that performs the function of a Secretariat for the Procurement Unit, and which serves as the main support unit of the Procurement Committee?	Yes. Technical Evaluation Committees support Procurement Committees. No separate office, both PC and TEC are embedded within the respective organizations. The members of PC / TEC are appointed by NPA for Cabinet Appointed Procurement Committees and by Secretary, MMDE for MPC, DPC & PPC.			L
A.9. If yes, what type of procurement does it undertake?	Works, goods, services and supplies; both national and international.			L
A.10. At what level does the department/unit report (to the head of agency, deputy etc.)?	Secretary, MMDE			L

A.11. Do the procurement positions in the agency have job descriptions, which outline specific roles, minimum technical requirements and career routes?	Procurement positions are not specifically designated. Procuring entities such as, Chief Engineer, Superintending Engineer, Executive Engineer, Sub-divisional Engineer, Director, Deputy Director etc. are assigned with the procurement activities, who have their respective job descriptions, which outline their specific roles, minimum technical requirements and career routes.	M
A.12. Is there a procurement process manual for goods and works?	Yes, nationally applicable procurement guidelines and manuals published in 2006.	L
A.13. If there is a manual, is it up to date and does it cover foreign-assisted projects?	Yes, guidelines and manuals are amended many times and are closely aligned with requirement of foreign-assisted projects	L
A.14. Is there a procurement process manual for consulting services?	Yes	L
A.15. If there is a manual, is it up to date and does it cover foreign-assisted projects?	Yes, covers foreign-assisted projects too.	L
A.16. Are there standard documents in use, such as Standard Procurement Documents/Forms, and have they been approved for use on ADB funded projects?	Yes. The draft Standard Documents/Forms issued by NPA are in use for all Multilateral Development Banks including ADB funded projects.	L
A.17. Does the ToR follow a standard format such as background, tasks, inputs, objectives and outputs?	Yes, includes as follows: (i) background of the assignment (ii) objectives of the assignment (iii) scope of services (iv) transfer of knowledge (training), when appropriate (v) list of reports, schedule of deliveries, period of performance data, personnel facilities & local services to be provided by the Procuring Entity (vi) institutional & organization arrangements	L
A.18. Who drafts the procurement specifications?	Differently done for Goods and Works as follows: Goods: Usually the Divisional level Officers with support from Technical experts, where necessary. But where there is Consultant's support, the Consultant. Works: For routine procurements the specifications are drawn centrally by MMDE. Specifications for uncommon specialized items of works are initially drafted by the Divisional level officers. But where there is Consultant's support, the Consultant.	M

A.19. Who approves the procurement specifications?	Goods: Usually the Divisional level officers. But where there is Consultant's support, the Consultant recommends. Works: For routine procurements the specifications are approved centrally by MMDE. Specifications for uncommon specialized items of works are initially drafted by the Divisional level officers and approved by MMDE. But where there is Consultant's support, the Consultant recommends.	S
A.20. Who drafts the bidding documents?	Usually the Divisional level Officers. But where there is Consultant's support, the Consultant.	L
A.21. Who manages the sale of the bidding documents?	Divisional level officer or Procuring Entity (PE).	L
A.22. Who identifies the need for consulting services requirements?	Identified at the project planning and feasibility stage by the senior officers tasked with the project.	L
A.23. Who drafts the terms of reference (ToR)?	Usually the Divisional level Officers. But where there is Consultant's support, the Consultant.	L
A.24. Who prepares the request for proposals (RFPs)?	Usually the Divisional level Officers. But where there is Consultant's support, the Consultant.	L
B. INFORMATION MANAGEMENT		
B.1. Is there a referencing system for procurement files?	Yes	L
B.2. Are there adequate resources allocated to record keeping infrastructure, which includes the record keeping system, space, equipment and personnel to administer the procurement records management functions within the agency?	Yes, but inadequate	M
B.3. For what period are records kept?	Minimum 3 years.	L
B.4. Are copies of bids or proposals retained with the evaluation?	Yes	L
B.5. Are copies of the original advertisements retained with the pre-contract papers?	Yes	L
B.6. Is there a single contract file with a copy of the contract and all subsequent contractual correspondence?	Yes	L
B.7. Are copies of invoices included with the contract papers?	No. Separately maintained by Accounts Office.	S

C. PROCUREMENT PRACTICES		
Goods and Works		
C.1. Has the agency undertaken foreign-assisted procurement of goods or works recently (last 12 months, or last 36 months)? (If yes, please indicate the names of the development partner/s and the Project/s.)	Yes. ADB: Conflict affected region emergency project, Loan no. 2626, ongoing project from 2011. MMDE and DOI are among the implementing agencies. Project substantially complete. WB: Dam Safety and Water Resource Planning Project (2008-2018). MMDE is the EA, MASL and DOI are implementing agencies. Phase 1 of the project substantially complete, Phase 2 has just begun. JBIC: The Pro Poor Economic Advancement and Community Enhancement (PEACE) project is being implemented for rehabilitation of Irrigation. Project began in 2006, and is in completion stage.	L
C.2. If the above answer is yes, what were the major challenges?	Major challenges: (i) Time and Cost overrun (ii) Complexity in land Acquisition (iii) Capacity limitation of contractors (iv) working period limited due to short closure period of irrigation canals (v) To many works contracts, overloading project administration	M
C.3. Is there a systematic process to identify procurement requirements (for a period of one year or more)	Yes. Procurement requirements are systematically identified at the pre-implementation stage of the project/program during the planning phase in the form of Procurement Plan for 3 year period. Subsequently, updated annually.	L
C.4. Is there a minimum period for preparation of bids and if yes how long?	<ul style="list-style-type: none"> • ICB/LIB 42 days (more for complex Procurement) • NCB/LNB 21 days • Restricted competitive bidding under District/Divisional level Construction Contracts 14 days • Shopping 7 days minimum For emergency Procurement the above periods may be reduced. 	M
C.5. Are all queries from bidders replied to in writing?	Yes. Pre-bid meeting is optional	L
C.6. Does the bidding document state the date and time of bid opening?	Yes	L
C.7. Is the opening of bids done in public?	Yes.	L
C.8. Can late bids be accepted?	No	L
C.9. Can bids be rejected at bid opening?	No	L

C.10. Are minutes of the bid opening taken?	Yes	L
C.11. Who may have a copy of the minutes?	All those Bidders attending the Bid Opening.	L
C.12. Are the minutes free of charge?	Yes	L
C.13. Who undertakes the evaluation of bids (individual(s), permanent committee, ad-hoc committee)?	TEC is constituted prior to the deadline for submission of Bids.	L
C.14. What are the qualifications of the evaluators with respect to procurement and the goods and/or works under evaluation?	Officers from agencies and Specialists from universities or professional bodies having knowledge in procurement and integrity	L
C.15. Is the decision of the evaluators final or is the evaluation subject to additional approvals?	TEC recommends, Procurement decisions are made by appropriate procurement committee (depending on procurement threshold empowerment as set out in procurement manual). Clear separation of role of TEC and procurement committee maintained.	L
C.16. Using at least three real examples, how long does it normally take from the issuance of the invitation for bids up to contact effectiveness?	<p>Normally within 100 days. In case of high value procurements more time taken since it has to go up to higher levels of contract approval committee.</p> <p>Real examples: Contracts of Dam Safety and Water Resources Planning Project financed by WB;</p> <p>Implementing Agency MASL (a) DSWRPP-1/works/NCB/57, -Contract value \$1.12 million -Bid invitation 17 April 2012 -Contract signed 13 July 2012 -Time taken 87 days</p> <p>(b) DSWRPP-1/works/NCB/64, -Contract value \$0.11 million -Bid invitation 8 April 2011 -Contract signed 13 July 2011 -Time taken 96 days</p> <p>Implementing Agency DOI (a) DSWRPP-1/works/NCB/6, -Contract value \$3.00 million -Bid invitation 1 Nov 2012 -Contract signed 28 May 2013 -Time taken 208 days</p> <p>(b) DSWRPP-1/works/NCB/34, -Contract value \$0.14 million -Bid invitation 24 Sept 2013 -Contract signed 31 Jan 2014 -Time taken 127 days</p>	S

	<p>Contracts of Conflict Affected Region Emergency Project financed by ADB;</p> <p>Implementing Agency DOI (a) CARE/NPC/ID/NCB/W3 -Contract value \$0.06 million -Bid invitation 11 Mar 2011 -Contract signed 20 May 2011 -Time taken 69 days</p> <p>(b) CARE/NPC/ID/NCB/W12 -Contract value \$0.20 million -Bid invitation 30 June 2011 -Contract signed 16 Sept 2011 -Time taken 79 days</p> <p>(c) CARE/NPC/ID/NCB/W19 -Contract value \$1.15 million -Bid invitation 25 Aug 2011 -Contract signed 9 Apr 2012 -Time taken 227 days</p> <p>(d) CARE/NPC/ID/NCB/W25 -Contract value \$2.78 million -Bid invitation 6 June 2011 -Contract signed 16 Sept 2011 -Time taken 102 days</p>	
C.17. Are there processes in place for the collection and clearance of cargo through ports of entry?	Yes	L
C.18. Are there established goods receiving procedures?	Yes	L
C.19. Are all goods that are received recorded as assets or inventory in a register?	Yes	L
C.20. Is the agency/procurement department familiar with letters of credit?	Yes	L
C.21. Does the procurement department register and track warranty and latent defects liability periods?	Yes	L
Consulting Services		
C.22. Has the agency undertaken foreign-assisted procurement of consulting services recently (last 12 months, or last 36 months)? (If yes, please indicate the names of the development partner/s and the Project/s.)	<p>Yes in 2011 for WB project, DOI hired 3 international consulting firms. In 2011 for ADB project one national consulting firm was hired. .</p> <p>ADB: Conflict affected region emergency project, Loan no. 2626 WB: Dam Safety and Water Resource Planning Project.</p>	L
C.23. If the above answer is yes, what were the major challenges?	<p>Major Challenges:</p> <p>(i) Capacity to short-list, prepare</p>	M

	<p>RFP and evaluate of the proposals</p> <p>(ii) Some delays in approval process particularly in case of high level procurement, including prior review by the Development Partners</p> <p>(iii) Inadequate oversight and monitoring by the Client</p> <p>(iv) Replacements of Key Professional staff by the Consultant</p> <p>(v) Delays in Contract, deciding upon contract variation</p>	
C.24. Are assignments and requests for expressions of interest (EOIs) advertised?	Yes. Also posted on the relevant websites.	L
C.25. Is a consultants' selection committee formed with appropriate individuals, and what is its composition (if any)?	Yes, composition as detailed in consultant procurement manual and guideline.	L
C.26. What criteria is used to evaluate EOIs?	<p>Criteria used to evaluate EOIs generally includes:</p> <p>(i) Consultant's facilities & areas of expertise</p> <p>(ii) descriptions of similar assignments</p> <p>(iii) experience in similar operating environments & conditions</p> <p>(iv) appropriate experience & professional qualifications and adequate resources</p> <p>(v) managerial strength & financial capacity</p> <p>(vi) Others as defined in SRFP</p>	L
C.27. Historically, what is the most common method used (QCBS, QBS, etc.) to select consultants?	QCBS	L
C.28. Do firms have to pay for the RFP document?	No. RFP is issued only to short-listed Consultants free of cost	L
C.29. Does the proposal evaluation criteria follow a pre-determined structure and is it detailed in the RFP?	Yes and the criteria and sub-criteria, with points allocated are detailed in the RFP	L
C.30. Are pre-proposal visits and meetings arranged?	Yes, based on necessity and complexity of the assignments	L
C.31. Are minutes prepared and circulated after pre-proposal meetings?	Yes	L
C.32. To whom are the minutes distributed?	All those short-listed Consultants and members of the Consultant Selection Committee	L
C.33. Are all queries from consultants answered/addressed in writing?	Yes.	L
C.34. Are the technical and financial proposals required to be in separate envelopes?	Yes	L

C.35. Are proposal securities required?	No	L
C.36. Are technical proposals opened in public?	Yes, in presence of consultant's representatives.	L
C.37. Are minutes of the technical opening distributed?	Yes	L
C.38. Do the financial proposals remain sealed until technical evaluation is completed?	Yes. Retained with Employer	L
C.39. Who determines the final technical ranking and how?	Consultant Selection Committee, based on pre-determined evaluation criteria and scoring of proposals.	L
C.40. Are the technical scores sent to all firms?	Technical scores are not sent to the firms but those who secure the minimum pass marks are invited to attend the public opening of Financial proposals.	L
C.41. Are the financial proposal opened in public?	Yes. But limited to technically qualified Consultants only as mentioned in SI. C.40 above	L
C.42. Are minutes of the financial opening distributed?	Yes.	L
C.43. How is the financial evaluation completed?	Financial evaluations are done by Consultant Selection Committee where cost is a factor for only technically qualified proposals.	L
C.44. Are face to face contract negotiations held?	Contract negotiations are mandatorily held, face to face, between the highest ranked selected Consultant and the Evaluation Committee.	L
C.45. How long after financial evaluation is negotiation held with the selected firm?	After the selection of Consultant is approved by appropriate Consultant Selection Committee based on technical and financial evaluation. Varies from 1 to 4 months	S
C.46. What is the usual basis for negotiation?	The basis of negotiation is to rationalize the cost of the proposal in respect of the aspects as follows: (i) Methodology (ii) Work plan and activity schedule (iii) Organization and staffing (iv) Deliverables & TOR (v) Training inputs, if training is a major component (vi) PE's inputs (vii) Proposed contract price (viii) Reimbursables in case of Time-based Contract (ix) Replacement of experts.	L
C.47. Are minutes of negotiation taken and signed?	Yes, including the draft negotiated contract duly initialed	L
C.48. How long after negotiation is the contract signed?	Varies from 2 to 5 months depending on the level of the approval authority and necessity of prior review by the Development Partner.	S

C.49. Is there an evaluation system for measuring the outputs of consultants?	Yes. Broadly the progress reports and final report submitted by the consultants.	M
Payments		
C.50. Are advance payments made?	Yes, if so provided in the Contract Documents.	L
C.51. What is the standard period for payment included in contracts?	2 months.	L
C.52. On average, how long is it between receiving a firm's invoice and making payment?	General practice is to pay within a month of claim certification for works. No intermediate payments are made for procurement of Goods	L
C.53. When late payment is made, are the beneficiaries paid interest?	No. Generally avoided.	S
D. EFFECTIVENESS		
D.1. Is contractual performance systematically monitored and reported?	Yes	L
D.2. Does the agency monitor and track its contractual payment obligations?	Yes	L
D.3. Is a complaints resolution mechanism described in national procurement documents?	Yes	L
D.4. Is there a formal non-judicial mechanism for dealing with complaints?	Yes	L
D.5. Are procurement decisions and disputes supported by written narratives such as minutes of evaluation, minutes of negotiation, notices of default/withheld payment?	Yes	L
E. ACCOUNTABILITY MEASURES		
E.1. Is there a standard statement of ethics and are those involved in procurement required to formally commit to it?	Yes	L
E.2. Are those involved with procurement required to declare any potential conflict of interest and remove themselves from the procurement process?	Yes	L
E.3. Is the commencement of procurement dependent on external approvals (formal or de-facto) that are outside of the budgeting process?	Mostly no	M
E.4. Who approves procurement and do they have procurement experience and qualifications?	Appropriate procurement committee approves. Comprises of people experienced in procurement,	M
E.5. Which of the following actions require approvals outside the procurement unit or the evaluation committee, as the case may be, and who grants the approval?	None	L
Bidding document, invitation to pre-qualify or RFP		

Advertisement of an invitation for bids, pre-qualification or call for EOIs		
Evaluation reports		
Notice of award		
Invitation to consultants to negotiate		
Contracts		
E.6. Is the same official responsible for: (i) authorizing procurement transactions, procurement invitations, documents, evaluations and contracts; (ii) authorizing payments; (iii) recording procurement transactions and events; and (iv) the custody of assets?	(i) Yes, except for evaluations. (ii) Yes. But payments disbursed by Accounts Office except for projects where Bank Accounts maintained by Project Directors in Development partner funded projects (iii) Yes (iv) Yes	L
E.7. Is there a written auditable trail of procurement decisions attributable to individuals and committees?	Yes Internal, Statutory Comptroller & Auditor General (CAG) audits are carried out. No external audit (by private sector auditors) done.	M

II. General Ratings

Criterion	Risk
A. Organizational and Staff Capacity	M
B. Information Management	L
C. Procurement Practices	M
D. Effectiveness	M
E. Accountability Measures	L
OVERALL RISK RATING	M

Annex 6
AUTHORITY OF PROCUREMENT COMMITTEES FOR CONTRACT AWARD
RECOMMENDATION

Authority	GOSL Funded Projects	Foreign Funded Projects
Cabinet Appointed Procurement Committee (CAPC) ¹³ for Works	More than or equal to Rs.100 m	More than or equal to Rs.500 m
Cabinet Appointed Procurement Committee (CAPC) ¹⁴ for Goods and Services	More than or equal to Rs.100m	More than or equal to Rs.300 m
Ministry Procurement Committee (MPC) for major contracts - Works	Less than Rs.100 m	Less than Rs.500m
Ministry Procurement Committee (MPC) for minor contracts ¹⁵ – Works (when Procuring Entity is ministry)	Less than Rs.10 m	Less than Rs.25 m
Ministry Procurement Committee (MPC) for major contracts - Goods and Services	Less than Rs.100 m	Less than Rs.300m
Ministry Procurement Committee (MPC) for minor contracts ¹⁶ – Goods and Services (when Procuring Entity is ministry)	Less than Rs.5 m	Less than Rs.10 m

Details of the financial threshold limits of committees as presented in page 24 of the NPA published Consulting Services Manual (2007)

FIRMS- When Competitive Procedure (QCBS, QBS, FBS, or LCS) following Guideline 3.8, 3.9, 3.10 or 3.11 respectively is used :		
Authority	Nationally Publicized	Internationally & Nationally Publicized
Cabinet Appointed Consultant Procurement Committee (CPCC)	Greater than or equal to Rs. 100 m (\$0.78 m)	Greater than or equal to Rs. 200 m (\$1.57 m)
Ministry Consultant Procurement Committee (CPCM)	Less than Rs. 100 m (\$0.78 m)	Less than Rs. 200 m (\$1.57 m)
Department Consultant Procurement Committee (CPCD) or Project Consultant Procurement Committee (CPCP)	Less than Rs. 20 m (\$0.16 m)	Less than Rs. 50 m (\$0.4m)
FIRMS - When CQS Procedure (Guideline 3.12) or SS Procedure (Guideline 3.13) is followed:		
Cabinet Appointed Consultant Procurement Committee (CPCC)	Greater than or equal to Rs. 25 m (\$0.20m)	Greater than or equal to Rs. 100 m (\$0.78m)
Ministry Consultant Procurement Committee (CPCM)	Less than Rs. 25 m (\$0.20 m)	Less than Rs. 100 m (\$0.78m)
Department Consultant Procurement Committee (CPCD) or Project Consultant Procurement Committee (CPCP)	Less than Rs. 5 m (\$0.04 m)	Less than Rs. 20 m (\$0.16 m)
CAO Upon a recommendation made by a committee appointed by CAO	Less than Rs. 5 M (\$0.04 m)	Less than Rs. 5 m (\$0.04 m)
AO/PD Upon a recommendation made by a committee appointed by CAO or by delegation	Less than Rs. 250,000 (\$1,961)	Less than Rs. 3 m (\$23,529)
59. INDIVIDUALS :		
Cabinet Appointed Consultant Procurement Committee (CPCC)	Greater than or equal to Rs15 m (\$0.12 m)	Greater than or equal to Rs. 25 m (\$0.20 m)
Ministry Consultant Procurement Committee (CPCM)	Less than Rs. 15 m (\$0.12 m)	Less than Rs. 25 m (\$0.20 m)
Department Consultant Procurement Committee (CPCD) or Project Consultant Procurement Committee (CPCP)	Less than Rs. 5 m (\$0.04 m)	Less than Rs. 10 m (\$0.08 m)
CAO	Less than Rs. 3 m (\$23,529)	Less than Rs. 5 m (\$0.04 m)
AO/PD	Less than Rs. 1m (\$7,843)	Less than Rs. 3m (\$23,529)

Annex 7 NCB Annex

National Competitive Bidding

1. General

National competitive bidding shall conform to the provisions for "National Competitive Bidding" as prescribed in the *Procurement Guidelines 2006 for Goods and Works* issued in January 2006 by the National Procurement Agency, and the specific procedures prescribed by the *Procurement Manual* issued on March 2006, with the clarifications and modifications described in the following paragraphs required for compliance with the provisions of the ADB Procurement Guidelines.

2. Registration

- (i) Bidding shall not be restricted to pre-registered firms under the national registration system of the Institute for Construction, Training and Development (ICTAD), and such registration shall not be a condition for the submission of bids in the bidding process.
- (ii) Where registration is required prior to award of contract, bidders: (i) shall be allowed a reasonable time to complete the ICTAD registration process; and (ii) shall not be denied registration for reasons unrelated to their capability and resources to successfully perform the contract, which shall be verified through post-qualification.
- (iii) National sanction lists or blacklists may be applied only with prior approval of ADB.

3. Prequalification

Post qualification shall be used unless prequalification is explicitly provided for in the loan agreement/procurement plan. When used for large or complex Works contracts, *i.e.* turnkey, design and build, or management contracts; or custom-designed equipment, industrial plants, and specialized services, prequalification evaluation shall not include the evaluation of equipment and personnel. This assessment shall be undertaken at the bid evaluation stage. Irrespective of the procedure applied (whether prequalification or post-qualification), no domestic or foreign contractor shall be precluded from participation.

4. Advertising

Bidding of NCB contracts estimated at \$500,000 or more for goods and related services or \$1,000,000 or more for civil works shall be advertised on ADB's website via the posting of the Procurement Plan.

5. Bidding Documents

Procuring entities shall use standard bidding documents acceptable to ADB for the Procurement of Goods, Works and Consulting Services, based ideally on the standard bidding documents issued by ADB.

6. Packaging

Slicing or splitting of contracts within a package shall not be used to change the contract sizes and their corresponding methods of procurement as approved in the Procurement Plan.

7. Bid Security

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

8. Preferences

- (i) No preference of any kind shall be given to domestic bidders or for domestically manufactured goods.
- (ii) Foreign suppliers and contractors from ADB member countries shall be allowed to bid, without registration, licensing, and other government authorizations, leaving compliance with these requirements for after award and before signing of contract.

9. Procurement of Works

- (i) Specifications for works may be based on specifications recommended by ICTAD to the extent possible, but ICTAD approval shall not be required for adoption of specifications in a particular procurement activity.
- (ii) The determination of the financial capacity of a bidder for award of the contract in post-qualification evaluation shall take into account current contract commitments and shall not be confined, for domestic bidders, to the ICTAD registration.

10. Bid Rejection for Unrealistic Rates

Bids shall not be subjected to a test for unrealistic rates. No lowest evaluated and substantially responsive bid shall be rejected on the basis of comparison to rates, including but not limited to market, historical, or agency established rates, without prior approval of ADB.

11. Rejection of All Bids and Rebidding

Bids shall not be rejected and new bids solicited without the ADB's prior concurrence.

12. Price Negotiations

Price negotiation shall be allowed only where the price offered by the lowest evaluated and substantially responsive bidder substantially exceeds costs estimates. Approval of ADB is required prior to any negotiation of prices.

13. Participation by Government-Owned Enterprises

Government-owned enterprises in the Democratic Socialist Republic of Sri Lanka shall be eligible to participate only if they can establish that they are legally and financially autonomous, operate under commercial law, and are not a dependent agency of the procuring entity, or the Project Executing Agency or Implementing Agency.

14. Member Country Restrictions

Bidders must be nationals of member countries of ADB, and offered goods, works and services must be produced in and supplied from member countries of ADB.