

LAO PEOPLE'S DEMOCRATIC REPUBLIC

PEACE INDEPENDENCE DEMOCRACY UNITY PROSPERITY

Ministry of Finance

No. 01639/MOF

**IMPLEMENTING RULES AND REGULATIONS ON GOVERNMENT
PROCUREMENT OF GOODS, CONSTRUCTION, REPAIRS AND SERVICES**

Based on the Decree on the establishment of the Ministry of Finance No. 104/PM dated 6 July 1993;

Based on the Decree on government procurement of goods, constructions, repairs and services No. 95/CM dated 15 December 1995;

The Minister of Finance decides as follows:

PART 1
GENERAL PROVISIONS

Article 1 Purposes

The purpose of these IRRs is to clarify the provisions of the Procurement Decree and establish the detailed implementing rules and regulations thereof, in doing so, they will:

1. ensure the transparency of public procurement through the application of the procurement procedures set out in the Procurement Decree and supplemented herein;
2. achieve regularity and uniformity of the procurement procedures of government entities and State enterprise;
3. achieve economy and efficiency in the procurement of goods and services or the constructing of works;
4. guarantee suppliers and contractor fair and equal access to the award of contracts for the supply of goods, services or works;

Article 2 Definitions

For the purposes of these IRRs, the following words and phrases shall be understood as defined hereunder:

Award of contract the decision of the procuring entity to enter into a contract with the successful bidder following a procurement procedure which is notified to the successful bidder;

Bid an offer to supply goods or services or to contract works made in accordance with the terms and conditions set out in the invitation to bid;

Bid Security a security underwritten by a Bank which is delivered by the bidder as a guarantee that the validity of the bid will be maintained until the contract is awarded to until the expiration of the period of validity; at the conclusion of a contract with the successful bidder, the bid security will be replaced by a performance security or bond; the terms “bid security” “bid bond”, “bid guarantee” and “earnest money” are synonymous in terms of their effect and purpose, although the mechanism whereby the guarantee is provided will differ; for example, a “security” is issued by a bank, a “bond” by an insurance organization.

Bidder qualified individual or legal person who participates in competitive bidding under a procedure selected by the procuring entity;

Bidding Document documents sent by the purchaser or project owner to potential bidders in which it sets out the terms and conditions of the procurement; they will include such things as a copy of the invitation to bid, instructions to bidders, bid forms, specifications for the works, goods and services, form and conditions of contract, bid security requirements, etc.

Competitive Bidding the process whereby qualified individuals or legal persons compete for the supply of goods or services or the contracting of works under one of the procurement procedures set out herein;

Conclusion of Contract the point at which a contract for the supply of goods, services or works is considered to be legally binding in accordance with Article 12 of the Law on Contracts;

Contract a formal agreement in writing entered into between the procuring entity and the successful bidder on terms and conditions which are acceptable to the parties and which are in compliance with all relevant provisions of the Contract Law of the Lao PDR;

Contractor an individual or legal person which enters into a contract to execute works;

Donor a country or international finance institution which promotes economic and social progress by lending funds and providing technical assistance;

Goods any object in solid, liquid or gaseous form that has an economic utility or value which can be exchanged or traded such as materials, equipment, machinery, vehicles or other products;

Government Entities all sectors of the Government of the Lao PDR at national, provincial or local level which are using the national budget;

Invitation to bid/ Notification document published or notified, in accordance with Article 12, by the procuring entity which informs potential bidders that it intends to commence a contract award procuring entity, the contract to be awarded and the address for further information;

IRRs Implementing Rules and Regulations;

National Budget domestic funds and funds derived from aid and loans of foreign countries and financial institution;

Procurement the purchase of goods or services or the hiring of contractors for the performance of works as defined hereunder;

Procurement Procedure one of the methods, set out in Parts II and III herein, by which works, goods or services are procured;

ProMO Procurement Monitoring Office;

Procuring Entity Purchaser or Project Owner;

Public Procurement Procurement which is carried out by government entities and all State enterprises;

Project Owner the Government entity or State enterprise that enters into a contract with the successful contractor for the execution of works;

Purchaser the Government entity or State enterprise that will purchase the goods or services to be procured;

Services expert services provided by a consulting firm or individual consultant, for example to conduct research, surveys, designs and supervision of other works, provide technical assistance and training and assist in project formulation and implementation;

State Enterprise a business entity established and wholly owned by the State or established in a joint venture with one or more business entities in which the State holds at least 51% of the shares;

Supplier an individual or legal person who enters into a contract with a procuring entity to provide the goods or services to be procured;

Threshold Value monetary value, expressed in kip, above or below which certain procurement procedures are used.

Works 1) civil works: any activity involving construction, repair, renovation, decoration, installation, erection, excavation, dredging and similar activities for the purposes of roads, bridges, irrigation, houses, office buildings, hospitals, schools or any other works which make use of a combination of labor, machinery, equipment and technology.

2) mechanical & electrical works: any activity involving repair overhaul, renovation, installation, erection and similar activities of a mechanical or electrical nature in the context of a works project or for the purpose of, for example, turbines, generators, transformers or other mechanical and electrical equipment in power plants, substations or other works which make use of a combination of labor, machinery, equipment and technology.

Article 3 Application

1. Subject to Article 3(2) and Article 10, all public procurement shall be carried out in accordance with the provisions of these IRRs. Government entities and State enterprises shall take all necessary measures within their competence and means or ensure that these provisions are in the appropriate manner.

2. These IRRs do not apply to contracts awarded by the procuring entities for:

- (a) goods and equipment intended for military use;
- (b) works or services contracts which are declared secret or the execution of which must be accompanied by special security measures or when the protection of the basic interests of the State so requires.

PART II
PROCUREMENT PROCEDURES

Article 4 Public Bidding

This is the basic method of public procurement and must be used unless there are circumstances which justify the use of the exceptional procedures described below.

Under this procedure, all firms and individuals who are capable of providing the goods or works sought shall be given an equal opportunity of submitting bids following notification in accordance with Article 12.

The procedure involves the following steps:

- a) Preparation of bidding documents:

Bidding documents must be prepared in such a way as to enable bidders to prepare complete and responsive bids. They must contain all the information necessary to enable a bidder to make an informed decision as to whether or not to participate in the procurement procedure. They must be written in terms which are clear and precise.

The procuring entity is at liberty to require bidders to furnish a bid security of between 0.5% and 1% of their bid price. Where a bid security is required, no bid will be accepted without such bid security.

The bid security will be refunded to the unsuccessful bidders at the date on which they are notified that their bid is unsuccessful. The procuring entity will return the bid security to the successful bidder at the time of the conclusion of the contract. If the successful bidder fails, for unjustifiable reasons, to conclude the contract, the bid security will be liquidated.

In the event that the successful bidder fails to conclude the contract, the procuring entity may then enter into negotiations to conclude a contract with the second lowest evaluated substantially responsive bidder.

An example of bidding documents used in the context of works is contained in Annex 1.

(b) Notification: The invitation to bid must be notified to potential bidders in accordance with Article 12.

(c) Issue of bidding documents: the bidding documents should be available at the date of notification and a complete set should be given without unreasonable delay to any interested supplier or contractor at cost price (i.e. the cost to the procuring entity of providing the documents only).

(d) Time limits: Bidders must be given adequate time to prepare and submit their bids. The minimum time limits which must be the same for all bidders are set out in Article 12. Additional information may be requested in writing and the responses of the procuring entity should be given expeditiously and sent to all bidders together with a copy of the request. The time limit should take account of the time necessary for any site visits required for the preparation of the bids.

(e) Receipt of bids: Bids must be submitted within the stated time limit and in the manner specified in the bidding documents. They must be delivered by hand or by registered post in sealed envelopes to the appropriate addressee and must be marked "Confidential". Any bid received after the deadline or in the incorrect form shall be rejected.

Subject to sub-paragraph (f), the contents of the bids, the process of evaluation of the bids and information relating to the selection of bidders shall remain strictly confidential until the award of the contract has been announced.

(f) Opening of bids: All bids received must be opened publicly at the date, time and place stipulated in the bidding documents. The bidders or their representatives may attend at this request. The procurement committee shall announce the names of the bidders and the price offered by each bidder. A record of the bid opening will be prepared and will contain at least the names of the bidders, bid prices and any discounts offered.

Where the bidding documents require the fulfillment of certain formal requirements such as the existence of a business license, the furnishing of a bid by the proper authority, then these requirements shall be verified and recorded at the bid opening. Following opening of the bids, all negotiations with bidders on fundamental aspects of the bids which may affect the principle of equal treatment, in particular on prices, are prohibited; only clarifications which do not alter the substance or price of the bids may be requested or accepted by the procuring entity. Records of all clarifications sought or received must be kept by the procuring entity.

(g) Examination of bids: following the opening of the bids, they will be examined individually to determine:

- the suitability of the bidders in accordance with the provisions of Article 15;
- the compliance of the bids with the terms and conditions set out in the bidding documents;
- the responsiveness of the bids to the technical specifications.

In the event that no bid satisfies all of the above conditions, the procurement committee may decide that there are no responsive bids and follow the provisions of sub-paragraph (j).

(h) Evaluation of bids: All responsive bids, as defined in Article 21, will be evaluated according to the provisions of Article 22. The evaluation process shall be completed within 15 days.

(i) Award of contract: The contract shall be awarded to the bidder which submits the lowest evaluated bid and the successful bidder shall be notified forthwith. The unsuccessful bidders shall be notified within 7 days of the decision of the procuring entity and the successful bidder to proceed with the contract. The procurement committee shall prepare a record of the reasons for its decision.

(j) Rejection of bids: In the absence of any responsive bid in accordance with sub-paragraph (g) or any suitable bid in accordance with this sub-paragraph, any or all bids may be rejected. There are no suitable bids where there has been no effective competition (less than 3 bidders) or where all bid prices substantially exceed the budget allocated.

The procuring entity shall incur no liability, for invoking this sub-paragraph (j), towards suppliers or contractors that have submitted tenders, proposals, offers or quotations.

Following the rejection of all bids, the procurement committee may either (1) proceed with re-bidding, but only after measures have been taken to remedy the causes of the failure of the bidding, or (2), in cases where all bids exceed the allocated budget, proceed to the direct contracting procedure pursuant to Article 7 with the lowest evaluated substantially responsive bidder with a view to a reduction in price.

Article 5 Limited bidding

Under this procedure, the number of bidders may be limited to a range of between 3 to 5 individuals or companies who are capable of providing the goods or works sought and who will be given an equal opportunity of submitting bids following notification in accordance with Article 12.

Subject to the provisions of Article 12, the procedure for limited bidding follows the procedure outlined in Article 4(a)-(b) and (d)-(j), above. The bidding documents will be sent to the bidders with the notification.

Article 6

(1) Local Price Comparison

This procedure allows the procuring entity to compare the prices solicited from at least three domestic companies or individuals and award the contract to one of those suppliers.

In this procedure:

- a) quotations are invited from at least three domestic suppliers indicating the specifications and terms and conditions sought;
- b) the offers will be evaluated and compared and the contract will be awarded on the basis of the lowest price;
- c) if the procedure fails to result in the award of a contract, the direct contracting procedure may be used.

(2) International Price Comparison

This procedure allows the procuring entity to compare the offers solicited from at least three companies or individuals in at least two different countries and award the contract to one of those suppliers or contractors.

In this procedure:

- a) quotations are invited from at least three suppliers or contractors in at least two different countries indicating the specifications and terms and conditions sought;

- b) quotations submitted by other suppliers or contractors who were not invited may also be considered;
- c) the offers will be evaluated and compared and the contract will be awarded on the basis of Article 23;
- d) if the procedure fails to result in the award of contract, the direct contracting procedure may be used.

Article 7 Direct Contracting

This procedure allows the procuring entity to negotiate the terms and conditions of its procurement directly with one or more suppliers or contractors.

In this procedure:

- a) a quotation is invited from one or more particular suppliers or contractors indicating the specifications and terms and conditions sought;
- b) the quotations received are then reviewed for conformity with the specifications and terms and conditions contained in the invitation;
- c) the offer or offers which comply with the above will be considered by the procuring entity to determine whether the price is fair and competitive. Negotiations to bring down the price may be carried out if the prices offered are deemed to be excessive or exceed the entity's allocated budget;
- d) the contract will be awarded on the basis of Article 22.

Article 8 Conditions for use of procedures

1. Limited bidding

This procedure may only be used where:

- a) The value of the goods or works does not exceed the appropriate threshold values set out in Article 11; or where
- b) for reasons of urgency, there is insufficient time available to follow the measures required by the public bidding procedure but where it is still possible to seek competition without resorting to the direct contracting procedure of Article 7;
- c) no suitable or responsive bids were received in response to a public bidding procedure carried out in accordance with Article 4.

2. Local price comparison

This procedure may be used for purchases of goods to be used in day-to-day administration and which are subject to frequent purchase where the annual aggregate value of such goods does not exceed the appropriate threshold values set out in Article 11.

3. International Comparison

This procedure may be used for purchases of works or goods where the annual aggregate value of such works or goods does not exceed the appropriate threshold values set out in Article 11.

4. Direct Contracting

This procedure may be used:

- a) in the absence of bids or responsive or suitable bids which comply with the requirements of the invitation to bid following the notification announcing a public or limited bidding procedure;

- b) where, for technical reasons or for reasons concerned with the protection of industrial property rights, the contract may only be executed by one supplier or contractor provided there is no suitable substitute;
- c) in the case of additional supplies which are intended either as a partial replacement for or for the repair of existing equipment;
- d) in the case of additional works or the repetition of similar works previously procured through competitive bidding where it is unlikely that lower prices will be obtained through the use of a further procurement procedure; the value of the additional purchases may not exceed 20% of the value of the original contract;
- e) insofar as strictly necessary, when, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the minimum time limits involved in the public or limited bidding procedure cannot be followed.
- f) when the value of the services contract to be awarded to a consultant does not exceed 20 million kip.

Article 9 International Procurement

The procurement procedures defined in Article 4-7 will be subject to international procurement where their value exceeds the thresholds set out in Article 11.

Whenever international procurement is used, offers must be sought from and invitations to bid must be notified to suppliers and contractors both from the Lao PDR and from other countries.

The notification of invitations to bid shall be carried out in accordance with Article 12.

In the case of international comparison, invitations to bid must be notified to suppliers and contractors from at least two different countries.

The obligation, in the context of international procurement, is to notify invitations to bid and seek bids internationally. The contract will be awarded to the responsive bid which meets the award criteria of Article 23. The successful bidder may be a Lao company or foreign company, whichever makes the best bid.

Article 10 Funded Procurement

In the case of foreign grants or loans, the provisions of these IRRs shall apply with full effect, amended where necessary to comply with donor requirements (such as threshold levels and access of member country contractors and suppliers to the procurement procedures), unless the relevant donor country or financial institution require adherence to its own specific procurement procedures, in which case such prescribed procedures shall be followed.

In both cases, the procurement procedures shall be executed by way of a procurement committee as defined in Part V.

Article 11 Thresholds

1. Levels

The procurement procedures described in Article 5-8 above will be applied to contracts whose estimated value, before any applicable taxes and duties, is as follows:

(a) in case of domestic procurement

Value in kip	Public Bidding	Limited Bidding*	Price Comparison (Annual Aggregate Value)
Works	300-3000 million	30-300 million	
Goods	150-1500 million	30-150 million	below 30 million or below 75 million**

* Article 8(1)(a)

** for the purchase of medical equipment

(b) in the case of international procurement

Value in kip	Public Bidding	International Comparison
Works	above 3000 million	below 3000 million
Goods	above 1500 million	below 1500 million

2. Revision

The threshold values of sub-paragraph (1) above shall be reviewed every two years by the Ministry of Finance. The threshold levels shall normally be increased in relation to the consumer price index. Revision should normally be increased where such index evidences an increase of 25% and the Ministry of Finance shall adjust the threshold values accordingly, rounding the values up to the most appropriate figure.

A notice indicating the increase shall be published in a mass circulation newspaper and Article 11(1) shall be amended accordingly.

3. Calculation

Contracts for the purchase of goods or for the hiring of contractors shall not be split or based on special methods of calculation with the purpose of avoiding the application of these IRRs.

In particular, the value of the contracts for the purposes of the threshold set out above shall take into account the total value of the remuneration which pertains to a “transaction”. For the purposes of calculating threshold values, the value of a “transaction” means:

- a) in the case of the works, the total value of works which are the result of building and civil engineering activities which, taken as a whole, are intended to fulfil an economic and technical function;
- b) in the case of supplies which are awarded over a given period of time by means of a series of contracts awarded to one or more suppliers or which are to be renewed, the total aggregate value of the contracts with similar characteristics to be awarded during the twelve months following the first award or during the whole term of the contract, where that is longer than twelve months;

4. Lots

Notwithstanding sub-paragraph (3) above, the Procuring entity may separate a transaction into a series of contracts (lots) which may be awarded to different suppliers and contractors. However, for the purposes of these provisions, the values of such lots must be aggregated to calculate the total value of the transaction in order to determine the procurement procedure which will apply. The lots must then be awarded following such procedure. The procuring entity may, in the public bidding procedure, indicate the existence of lots and state that suppliers or contractors may bid for one or more or all such lots. The lots may be awarded accordingly. The overriding principle is that the lots, the aggregate value of which exceeds the threshold for a particular procurement procedure, must be awarded according to that procedure.

Article 12 Notification

1. Invitations to bid covered by these IRRs shall be notified at least as follows:
 - a) Domestic Public Bidding: in a mass circulation Lao language newspaper;
 - b) International Public Bidding: in a mass circulation English language newspaper published in Lao PDR and, where possible, in an international English Language newspaper;
 - c) Limited Bidding: invitations to bid should be sent at the same time by registered post to the suppliers or contractors selected by the procuring entity in accordance with Part IV; invitations to bid should be sent to at least 3 bidders and, in the case of international procurement to at least 3 bidders in at least 2 different countries; Direct Contracting and Price Comparison: the procuring entity may directly approach the suppliers or contractors from whom it intends to solicit quotations.
2. The Time limits used by the procuring entities should be reasonable, take into account the nature of goods, services or works to be procured and give adequate and equal time for all bidders to prepare their bids. The following minimum time limits must be observed:

From Date of Notification	Public Bidding	Limited Bidding & Price Comparison	Direct Contracting
Normal Procedure	45 days	Domestic & International: 30 days	20 days
Accelerated Procedure*	30 days	Domestic: 15 days International: 20 days	10 days**

* in cases of justifiable urgency

** or by mutual agreement in cases falling within Article 8(4)(e)

3. The notification shall include reference to:
 - the identity of procuring entity;
 - a summary of the works or goods sought;
 - address for bidding documents, further information and submission of bids;
 - cost of bidding documents;
 - procedural requirements;
 - final date for submission of bids.

Part III
Procurement of Consultants' Services

Article 13 Use of Consultants

The procuring entity may contract with firms of consultants or individual consultants for the purposes of provision of expert advice or assistance in institutional matters and specialized services in connection with the implementation of projects and detailed engineering and design.

Consulting firms will be preferred where the work involves the application of multi-disciplinary expertise and requires the support of an organization with competent personnel. Individual consultants will be used where a particular assignment can best be carried out by an individual expert with the requisite qualifications and experience.

The award of contracts to such consultants shall follow the procurement procedures of this Section where the value of the contract exceeds 20 million kip.

Article 14 Procedure

1. Terms of Reference: once the terms of reference have been completed, the procuring entity will draw up a short list of potential consultants from which it will invite proposals;

2. Short-list: the short-list will be compiled from all available and appropriate sources, including, but not limited to, responses to a notification of the proposed contract in a mass circulation of Lao and English language newspapers; domestic or international consultants registered to do business in the Lao PDR; consultants admitted to a Roster established in accordance with the provisions of Article 16; consultants identified by associations of consulting firms or by international organizations and financial institutions providing assistance. In selecting consultants for the short-list, the procuring entity will have regard to the objective selection criteria enumerated in Article 15, below;

3. Invitation to submit Proposals: the procuring entity shall send a letter of invitation together with the terms of reference to at least five consultants appearing on the short list; the letter will invite the consultants to submit their proposals within a specified number of days which shall be no less than 30 days and no more than 45 days;

The invitation shall require the consultant to prepare and submit two proposals, one technical, the other financial. The technical proposal will contain information relating to the consultant's technical capacity and proposed methods of completing the contract. The financial proposal which may only be opened after evaluation of the technical proposal, will contain the price for which the consultant is prepared to carry out the contract on the terms included in the technical proposal. Each proposal which must be submitted at the same time, shall be contained in two separate sealed envelopes and must be clearly identified.

4. Evaluation of proposals: the aim of the evaluation is to select the most suitable proposal on the basis of the requirements set out in the terms of reference; the proposals received will be analyzed and compared with respect to the proposed methodology, schedules, experience and capabilities of the proposed personnel, the quality of the management to be provided and the technical facilities to be made available.

With the exemption of price, the award criteria should be those set out in Article 23(3).

5. Price and Contract Negotiations: once a consultant has been selected, the procuring entity may then open the financial envelope submitted by the technically superior consultant. The procuring entity may then enter into direct negotiations with the consultant to determine the financial and other terms of the contract;

The representatives of the consultants, who must have the authority to conclude a binding contract, must be prepared to discuss and may be required to justify, with appropriate documentation, their cost estimates and the individual elements thereof.

6. Failure of negotiations: if the parties fail to reach agreement on the financial or other terms of the contract, the procuring entity may terminate negotiations with the selected consultant and open the financial proposal of the next ranked consultant with a view to entering into fresh negotiations with that consultant.

Part IV Selection of Bidders

Article 15 Selection Criteria

Bidders must all be afforded fair and equal treatment and must be admitted to the public bidding procedure or selected for the limited bidding, domestic price comparison, international comparison or direct contracting procedures on the basis of objective selection criteria. For these reasons, bidders may be excluded from these procedures only where they fail to satisfy one or more of the selection criteria chosen by the procuring entity.

Reasons for exclusion must be given in writing to any bidder excluded from a procurement procedure.

The information required by this Article shall be limited to the subject of the contract; the procuring entity shall protect the technical or trade secrets of the bidders disclosed during this procedure.

The permitted selection criteria is set out in paragraph (1)- (3) below:

(1) General suitability

Any bidder may be excluded from participation who:

- a) is in a bankruptcy situation whose affairs are being administered by the Assets Administration Committee established by the court; or has entered into an arrangement with creditors; or has suspended business; or is in any analogous situation arising from similar procedures under the laws and regulations of the country of establishment;
- b) has been found guilty of professional misconduct by a recognized tribunal;
- c) has not fulfilled his obligations with regard to the payment of taxes, social security or other payments due in accordance with the laws of the country in which he is established or of the Lao PDR;
- d) is guilty of serious misrepresentation in supplying information required under this Section.

Evidence establishing that none of the above applies may be furnished by whatever means are appropriate for the country of establishment and include, but are not limited to, extracts from a judicial record or equivalent official document issued by a competent judicial or administrative authority, certificates or other documents issued by the competent authorities of the country of establishment or solemn declarations made by the bidders concerned before a judicial or administrative authority in those countries which recognize such declarations and which have designated such authorities.

(2) Financial and Economic Capacity

The procuring entity may require the bidders to furnish evidence of their financial and economic capacity to fulfil the requirements of the contract subject to competitive bidding. The level of economic and financial capacity required of the bidders shall be set out by the procuring entity in the bidding documents.

Evidence of such capacity may be furnished by:

- a) certified statements from bankers;
- b) the presentation of the bidder's balance sheets or extracts from the balance sheets; or
- c) a statement of the bidder's overall turnover and the turnover in respect of civil works, supply of goods or services similar to those to which the contract relates for the previous three years.

The procuring entity shall state in the bidding documents which references are required.

(3) Technical Ability

Evidence of the bidders' technical ability may be furnished by any of the following means depending on the nature, quantity and purpose of the works, goods and services to be provided:

- a) the bidder's educational and professional qualifications and/or those of bidder's managerial and supervisory staff and, in particular, those of the person or persons responsible for carrying out particular works or services.
- b) in the case of works: a list of works carried out over the last 3-5 years, together with certificates of satisfactory execution for the most important works, issued by the previous clients, such certificates will indicate the value, date and site of the works and shall specify whether they were properly completed.

In the case of goods or services: a list of the principal deliveries affected or services provided in the past 3 years, with the sums, dates and purchasers (public or private) involved; such lists to be evidenced by certificates issued or countersigned by the purchaser.

- c) a description of the bidder's technical facilities, including reference to the tool, plant and technical equipment available to the bidder as well as the measures taken for ensuring quality control, either directly or by way of sub-contracting.
- d) In the case of goods : samples, descriptions and/or photographs of the goods to be supplied, the authenticity of which must be certified at the request of the procuring entity;
- e) in the case of goods incorporated into works: certificates drawn up by official quality control institutes or agencies of recognized competence attesting conformity to identified and recognized specifications or standards for products.

The procuring entity shall state in the bidding documents which references are required together with any minimum requirements concerning particular references.

Article 16 Rosters

1. Rosters maintained by the competent authorities of the Lao PDR in accordance with Article 17 and 18 below shall be adapted to the provisions set out in Article 15, above.

2. The Roster system is a system of formal pre-qualification and is not limited to a particular contract. Proof of enrolment on such a Roster shall constitute a presumption of overall suitability pursuant to Article 15 above and will, subject to sub-paragraphs (3) and (4) below qualify bidders to participate in the procurement procedure without further investigation.
3. In procedures which are not restricted to bidders who have been pre-qualified public bidding, (for example) by a Roster system, bidders who are not registered do not benefit from such a presumption of suitability and will be required to demonstrate their qualifications to participate in the procurement procedure. These bidders may only be excluded from the procurement procedure on the basis of the criteria listed in Article 15 above.
4. Following participation in a procurement procedure by way of a Roster or pre-qualification, a procuring entity may further consider the suitability of the participating bidders for the specific contract in question; such suitability will be restricted to the criteria enumerated in Article 15.

Article 17 Roster of Civil Works Contractors in Domestic Bidding

1. In the case of civil works Contracts which are subject to the domestic public or limited bidding procedures of Articles 4 and 5, the bidder admitted to the public bidding procedure or selected for the limited bidding procedure may be taken from among those who have been pre-qualified by the Ministry of Construction in co-operation with the ProMO and who appear on the Official Roster of Works Contractors.
 - a) The Roster is formally established by the Ministry of Finance and is updated annually in September. A list of those contractors admitted to the Roster is available to any interested party upon request.
 - b) Admission to the Roster is by way of written application pursuant to the procedure set out in Article 18. Potential bidders may seek admission to the Roster at any time by written request to the appropriate authority.
 - c) The grounds for admission to the Roster will be grounds enumerated in Article 15, above.
 - d) Reasons for the rejection of any applicant must be notified to the unsuccessful applicant.
2. Bidders are not restricted to the names appearing on this Roster. They must, however, satisfy the selection criteria required by the procuring entity in accordance with Article 15.

Article 18 Creation of New Rosters

The purpose of the Roster described in Article 17, above, is to limit the waste of time caused by the repeated qualification of bidders for similar projects and to ensure a continued pool of suitably qualified contractors. Its purpose is not to exclude bidders who meet the appropriate selection criteria.

The first Official Roster concerns the qualification of civil works contractors in the case of domestic bidding. The creation of a new Roster may be foreseen for other purposes, such as for the suppliers of sophisticated machinery.

New Rosters may be created by the Minister of Finance on the recommendation of the Director of the ProMO and may be done in the following manner:

1. a Ministry or a number of Ministries wishing to establish a Roster for particular bidders shall forward a request to the Director of the ProMO;

2. the request shall be accompanied by an outline of the requirements the Ministry of Ministries would like to see;
3. representatives of the Ministry or Ministries and the ProMO will meet to discuss the requirements to be met by the bidders for admission to the Roster;
4. the deliberations will be assisted by appropriately qualified officers from the Ministry or Ministries involved or by external consultants chosen, in accordance with Part III herein, for their particular competence in the sector concerned;
5. once the selection criteria have been finalized in accordance with the provisions of Article 15 above, the existence of the Roster shall be notified by the ProMO in a mass circulation Lao language newspaper and, where appropriate, in a mass circulation English language newspaper published in the Lao PDR;
6. following notification, initial admission to the Roster shall remain open for 2 months from the date of notification;
7. potential bidders may apply for admission in writing enclosing all relevant information; the written application may be followed by further discussions between the applicant and the representatives of the relevant authorities to clarify and/or supplement the information contained therein;
8. the evaluation of suitability of the potential bidders will be made within a further 2 months by the appropriately qualified engineers in accordance with paragraph (4) above in conjunction with qualified representatives of the ProMO; the Roster will be formally adopted by the Minister of Finance upon the recommendation of the Director of the ProMO;
9. the Roster will be kept both at the ProMO and at the relevant Ministry or Ministries where it may be consulted by any interested party upon request;
10. requests for admission to the Roster may thereafter be made at any time and a decision on admission will be taken within 2 months; the Roster will be updated by the Director of the ProMO accordingly; it will be formally updated annually, in September, by the Minister of Finance upon the recommendation of the Director of the ProMO;
11. where a Roster provides of a system of classification, potential bidders admitted to the Roster may, at any time, apply in writing for re-classification in order to reflect their changed capabilities. The re-classification procedure will follow the procedure of paragraphs (7), (8) and (10) above;
12. reasons for the rejection of any applicant or for the re-classification of any applicant must be notified to the unsuccessful applicant.

Part V Organization of Procurement

Article 19 Procedural Compliance by the Procurement Committee

The procurement procedures defined in Parts II and III shall be executed by way of a permanent procurement committee which shall ensure full and strict compliance with these IRRs.

In the case of uncertainty, the Procurement Committee may, at any time before the conclusion of the contract, seek the advice and guidance of the Director of the ProMO on the correct application of the relevant procurement procedures.

Where the decision of the Procurement Committee is subject to approval in accordance with Article 21 below, such approval shall be withheld where the procurement has been carried out in breach of these IRRs.

Article 20 Procurement Committee

The Procurement Committee shall be set up on a permanent basis by the procuring entity, as follows:

1. In the case of public or limited bidding and international comparison, the committee shall be composed of 1-3 representatives from the procuring entity, 1 representative from the Ministry of Finance and 1 representative from each relevant organization. Relevant organizations are:
 - a) the Central Bank and the Committee for Planning and Co-operation, for contracts involving international procurement; and
 - b) the Committee for Planning and Co-operation, for contracts involving foreign aid and loans.
2. In the case of direct contracting, the committee shall be a permanent committee set up within a Ministry or an equivalent organization within Department located in the provinces and shall be composed of either the Vice-Minter or the Chief of the Financial Division of the Department as chairman, 2 representative from the finance department. In addition to the members of the permanent committee, there shall also be 1 representative from the department seeking the procurement.
3. In the case of price comparison, the committee shall be a permanent committee set up within the Ministry or an equivalent organization within Department located in the provinces and shall be composed of either the Vice-Minister or the Chief of the Financial Division of the Department as chairman, 2 representatives from the Cabinet and 1 representative from the Finance department. In addition to the members of the permanent committee, there shall also be 1 representative from the department seeking the procurement.
4. The power of the permanent procurement committee may be delegated by the responsible officer to one or more authorized personnel within the relevant Ministry. Such delegation must be in writing, must give clear and precise instructions and describe the extent of the personnel's authority and must impose adherence to these IRRs on the authorized personnel. They must follow the IRRs strictly, may refer questions for advice and guidance to the ProMO, shall benefit from the training programs organized by the ProMO and shall be directly accountable for their actions to the responsible Minister. They are the responsible parties under these IRRs.

Article 21 High Value Procurement

1. In the case of contracts to be awarded by the central government whose value exceeds 50 million kip, the award decision of the procurement committee shall be subject to approval by a meeting of the Ministers or Vice-Ministers who were represented in the joint committee.
2. In the case of contracts to be awarded by the provincial government whose value exceeds 30 million kip, the award decision of the procurement committee shall be subject to approval by a meeting of the officials who were represented in the joint committee.
3. In both the above-mentioned cases, the meeting:
 - a) will be convened and presided over by the Minister or Vice-Minister, in the case of central government procurement, or the Governor or his Deputy, in the case of provincial government procurement, will approve responsibility for the procurement within 15 days of the notification of the proposed award decision;
 - b) will be attended by a representative of the Ministry of Finance.

4. In the case of any contract whose value exceeds 1,000 million kip, the award of the contract shall be approved by the Government.

Part VI
Criteria for Awarding Contracts

Article 22 Responsive bids

On receipt of responsive and suitable bids, the procuring entity shall award the contract on the basis of the award criteria set out in the bidding documents in accordance with Article 23 or condition of bidding document.

1. For the purposes of these IRRs, ‘responsive bids’ shall mean “substantially responsive bids”.

Substantially responsive bids are those which conform to the terms, conditions and specifications of the bidding documents without material deviation or reservation.

A material deviation or reservation is one:

- a) which affects in any substantial way the scope, quality or performance of the works, suppliers or services;
 - b) which limits in any substantial way and inconsistently with the bidding document, the Project Owner/Purchaser’s rights or the bidder’s obligations under the contract; or
 - c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.
2. In particular, bids are responsive where:
- a) the bidders fulfil the selection requirements of Article 15 or are enrolled on an official Roster pursuant to Article 16-18;
 - b) the bids comply with the terms and conditions set out in the bidding documents;
 - c) the bids respond to the technical specifications detailed in the bidding documents;
3. Bids are not suitable where:
- a) except in the case of direct contracting, there has been no effective competition (less than 3 bidders);
 - b) all bid prices substantially exceed the allocated budget of the procuring entity.

Article 23 Award Criterion

- (1) The procuring entity shall base the award of a contract on the most appropriate evaluated bid. Price is only one of the criteria to be used.
- (2) The price offered by the bidder must be the final all-inclusive net price and must include all incidental costs of carrying out the contract such as the costs of insurance and transportation. This must be made explicit in the bidding documents.
- (3) In addition to price, the evaluation criteria may include criteria from the following non-exhaustive list, as appropriate:
 - a) date of completion of works and services and/or delivery of goods;
 - b) running costs and cost-effectiveness;
 - c) after-sales service and technical assistance;

- d) commitments with regard to spare parts, security of suppliers and price thereof;
 - e) quality and technical merit of the works or supplies;
- Any additional criteria used must be objective and non-discriminatory.

The procuring entities shall state in the bidding documents all the criteria they intend to apply to the award, where possible in descending order of importance. Where a scoring system is used, the bidding documents must also include an explanation of such system.

4. The price element contained in any bids should be dominated in the currency specified in the bidding documents. Where such prices are dominated in other currencies, the prices shall be converted into the currency specified in the bidding documents for the purposes of bid evaluation. The conversion of the prices shall take place at the date of bid opening using the selling exchange rate prevailing at that date as posted by the Bank of the Lao PDR.

5. Where the price of a particular tender appears abnormally low, the procuring entity may reject the tender. It may only reject the tender, however, after it has requested in writing details of the consistent elements of the tender which it considers relevant. It must verify those elements and take into account the explanations received. The procuring entity may take into consideration explanations which are justified on objective grounds, including the economy of the construction method or the method by which the goods or services are to be provided, or the technical solutions chosen, or the exceptionally favorable conditions available to the tender for the execution of the contract, or the originality of the work, product or service proposed by the person tendering.

Part VII Contract Formalities

Article 24 Conclusion of Contract

1. Following the decision to award the contract to the successful bidder pursuant to Article 4 or 5, the chosen contractor or supplier pursuant to Article 6 or 7, the parties shall enter into a written contract must be compatible with the law on Contracts of the Lao PDR.
2. The contract document must be signed by the duly authorized representatives of the parties and must bear the date of signature.
3. Where the contract is not signed by both parties simultaneously,
 - a) The procuring entity shall send to the proposed contractor or supplier two original copies of (1) the full agreed contract and (2) the letter of acceptance, each copy to be signed by its duly authorized representative, together with the date of signature;
 - b) the letter of acceptance shall indicate the deadline for acceptance which would normally be no more than 30 days;
 - c) the contractor or supplier, if he agrees to conclude the contract, must sign and date all original copies of the contract and letter of acceptance and return one copy of each to the procuring entity before the expiry of the deadline indicated in the letter of acceptance.

Article 25 The Contract Documents

The contract is the formal document which sets out the complete agreement between the parties. It must, therefore, contain all the terms and conditions of the contract, define the rights and obligations of the contracting parties and incorporate any documents necessary for the fulfillment of the contract as appropriate. Any such documents must be clearly marked and referred to in the signed and dated contract. Conditions of contract may be based on existing standard form contracts such as the model contract documents distributed by the ProMO or those developed by the International Federation of Consulting Engineers (FIDIC). These standard form contracts will contain “general” conditions of contract. Where the parties agree to include further conditions of contract or where further conditions are required by the standard form contracts, such conditions are usually referred to as “special” conditions of contract.

Any contract falling within the terms of these IRRs should include provisions concerning the following:

- a) the purpose of the contract, which must be clear, precise, lawful and enforceable;
- b) the price and methods of payment which should also include provisions relating to the possibility and use of advance payments and the mechanisms relating to retention of monies;

the price of a contract will normally be based on one of the following:

- fixed-price or lump-sum price, which means that the final all-inclusive price is negotiated and agreed in advance; payment may be made either as a lump sum at the end of the contract or at such other time as agreed between the parties OR at prescribed intervals coinciding, for example, with the progress of the execution of the works or services;
- unit price, which means that the price of particular items (units) of work will be agreed between the parties based on estimated quantity of units enumerated in a document known as a “bill of quantities”, and that the final price will be the unit price multiplied by the actual quantity of units provided; payment shall be made within the agreed time period, usually 45 days following the submission of a payment certificate;
- cost-plus-fee, used for services contracts, which means that the final price is based on an agreed “billing rate” per unit of time (hour, day, month, for example) multiplied by the units of time actually spent, together with any reimbursable costs foreseen and agreed upon in the contract; a contract of this type may include a “maximum payment” clause with an obligation on the service provider to complete the tasks assigned without exceeding the amount of the agreed maximum payment; payment of the fee will be made at prescribed intervals (weekly or monthly, for example) coinciding with the progress of the execution of the services provided during the relevant period; payment of the costs will similarly be made upon the submission of an “invoice” which shall include all relevant receipts required by the contract. Provisions relating to the possibility and method of price adjustments must also be included in the contract. These are permitted in the case of works contracts of more than 12 months’ duration in relation only to the fluctuating cost of labor or construction materials. Either party may seek a price adjustment and must support the request by documentary evidence of the market prices.

- (c) period of performance, place of performance, time and place of delivery, as appropriate; in construction contracts, for example, this may include such things as:
- the time limit for the contract or for the submission of a detailed schedule or program setting out the specific manner in which the contractor proposes to perform the contract and a description of the construction plan and its proposed operation;
 - the starting and completing dates, particularly where complete projects are broken down into several “stages” or “key dates.”
- (d) the scope, quantity and quality of the contractual obligations; these are fundamental conditions of the contract and will consist, among others, of:
- the identification and proper definition of the key elements of the contract such as the parties, the nature and quantity of the works, goods or services concerned, the specifications used, etc;
 - specifications which must be based on performance requirements; during the bidding procedure, any reference to brand names, catalogue numbers or any other method of specification of single which results in the identification of a single supplier must be avoided UNLESS the goods cannot be described sufficiently and objectively without recourse to such a specification. If such a specification is used, the reference should be followed by the words “ or equivalent” and the specifications should permit offers of alternative goods which offer equivalent guarantees of performance, safety and reliability;
 - standards with which goods, equipment or materials must comply, or any performance standard; these must be defined, both in the bidding and contract stages, by reference to internationally accepted standards, where they exist and to nationally accepted standards where do not; in all cases, the procuring entity should accept any standards which ensure equivalent or superior quality or performance to the standards mentioned:
 - the responsibilities of the parties;
 - provisions relating to a guarantee of the quality of workmanship and materials for a stipulated period beyond the completion of the contract and a requirement for the contractor or supplier to make good at his own expense, any defects that may arise during the warranty period;
 - provisions relating to the costs of insurance and transportation;
 - provisions relating to compensation for the procuring entity in the event of delays in the completion of works or delivery of goods resulting in extra cost loss of revenues or deprivation of other benefits to the procuring entity;
 - lawful requirements relating to the use of locals labor and materials;
 - provisions relating to performance securities to ensure the completion of works or of the supply, installation and proper performance of goods and to protect the procuring entity against the failure of the contractor or supplier to perform his contractual obligations; these may be in the form of cash deposits for the period of the validity of the contract or preferably, performance bounds or bank guarantees; the level of such securities should not exceed 5-10% of the contract value;
- (e) the conditions for the variation of the contract and early termination; these may include:

- details of the circumstances under which adjustments may be made to terms and conditions of the contract, notably the contract price, and the mechanism for adjustment;
 - a force majeure clause which provides that the failure on the part of the parties to fulfil their contractual obligations will not be considered to be a breach of contract if such a failure is due to unforeseeable events outside the control of the parties; such a clause should set out the consequences of such an event;
- (f) the mechanisms for dispute resolution intended to regulate events following the breach of a contract by one of the parties; this will include:
- the language of construction and interpretation of the contract; where more than one language is used, reference must be made to the language version which takes precedence;
 - the governing law and forum of dispute resolution; the governing law will be the law of the Lao PDR and the forum may be the courts of the Lao PDR, the Office of Arbitration of the Lao PDR or any other recognized mediation or arbitration authority designated by the parties by common agreement;
 - a clause requiring the parties to attempt to reach an amicable settlement before turning to the courts or other tribunals.

Part VII Implementation

Article 26

All Ministries, bodies equivalent to Ministries, Provinces, Vientiane Prefecture and special zones together with all State enterprises shall strictly adhere to these rules and regulations.

Article 27

These rules & regulations replace The Previous Implementing Rules No 2642/MOF, dated 21/9/96, and shall take effect on the date of signature.

Vientiane,.....
Deputy Prime Minister
Minister of Finance

Khamphoui KEOBUALAPHA