



FURTHERING BUSINESS ENVIRONMENT REFORMS IN THAILAND

Public Procurement Efficiency

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WORLD BANK GROUP

Acknowledgments

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Executive Summary

The analysis below aims at evaluating the constraints that affect the ability of private sector companies to compete in the public procurement market and do business with the government of Thailand. It is based on input received through interviews of key public and private sector stakeholders about their perception and experience accessing the public procurement market in Thailand. Interviews were conducted in Bangkok by a local procurement expert during the period of November 2022 – January 2023, as well as a review of relevant literature and available information. Private sector respondents included firms from various sectors (construction, ICT, healthcare, etc.). The team also collected information from law firms chosen based on their expertise in Thailand’s public procurement and in advising suppliers interested in doing business with public entities. Data was also collected from various public entities¹.

Desk research corroborated the collected data. Additional information on the data collection methodology adopted can be found in Annex 2 below.

The Ministry of Finance’s Comptroller General Department (CGD) kindly provided procurement-related texts governing public tenders. The findings and subsequent recommendations focus on regulatory and administrative reform options in the areas of public procurement as attested by bidders and suppliers, as the end users of the system.

Thematically, the emphasis is on the efficiency of public procurement in order to promote public market entry, competition and a level playing field for private sector suppliers. As competition grows, the government could benefit from procurement savings and better-quality goods and services (Value for Money, VfM)².

The Thai public procurement market is a dynamic and growing market with significant opportunities for local and international businesses. The government has taken steps to make the procurement process more transparent and efficient, and the market offers stability, size, and a friendly business environment. Despite these advantages, there is still room for improvement in terms of competition and transparency, and the government needs to continue to work to address these challenges in order to ensure the long-term success of the market.

The data analysis, stakeholder consultation and desk research have identified the following areas along the procurement lifecycle as the focus areas of this Reform Memo:

- Leveling the playing field through equal access to opportunities
- Electronic procurement
- Tendering requirements: From bid security to bid submission, bid evaluation to contract guarantees
- Acceptance and review process during contract management
- Complaint mechanisms and bid protests

¹Royal Irrigation Department, Department of Highway and Department of Rural Highway, three government agencies in the education sector, King Mongkut’s University of Technology North Bangkok, National Institute of Development Administration and Office of the Basic Education Commission, and Administration Court kindly accept the interview appointment. A different questionnaire was specifically developed by WB for interviewing the sampling unit in a particular sub-population, the Administrative Court and the lawyer firms in the private sector stakeholder and for interviewing CDG, key procuring agencies and Administration court in the public sector.

² Given the scope of the agreement and technical merits, analysis and recommendations will not focus on PFM aspects, efficiency of how public resources are spent, or a spend analysis by procuring entities (rather it will primarily focus on procurement from a private sector market entry/competition angle). Analysis will not attempt to measure or predict the final outcomes of policy reforms.

To support Thailand in addressing these areas, several recommendations are advanced. Among other recommendations, these include capacity building for the private sector, improving communications of reforms and e-Procurement developments, standardizing documents and protocols, leveraging digitization to improve access to information, adopting more competitive tendering methods and SME support measures, fully digitizing the e-procurement system, streamlining tendering requirements, and strengthening evaluation criteria.

บทสรุปผู้บริหาร

รายงานฉบับนี้ มีวัตถุประสงค์เพื่อวิเคราะห์และประเมินข้อจำกัดที่ส่งผลกระทบต่อความสามารถในการแข่งขันของภาคเอกชนในกระบวนการจัดซื้อจัดจ้างภาครัฐและการทำธุรกิจกับหน่วยงานราชการของไทย โดยอ้างอิงข้อมูลจากการสัมภาษณ์ความคิดเห็นและประสบการณ์จัดซื้อจัดจ้างภาครัฐของผู้มีส่วนได้ส่วนเสียหลักทั้งในภาครัฐ (ในฐานะผู้ซื้อ) และภาคเอกชน (ในฐานะผู้ขาย) ในด้านการเข้าถึงตลาดการจัดซื้อจัดจ้างภาครัฐในประเทศไทย โดยผู้เชี่ยวชาญด้านการจัดซื้อจัดจ้างได้ดำเนินการสัมภาษณ์ในพื้นที่กรุงเทพมหานคร ระหว่างเดือนพฤศจิกายน 2565 ถึง มกราคม 2566 ตลอดจนได้มีการทบทวนวรรณกรรมที่เกี่ยวข้องและข้อมูลที่มีอยู่ ภาคเอกชนที่เข้าร่วมตอบแบบสอบถามและให้สัมภาษณ์มาจากธุรกิจหลากหลายสาขา เช่น การก่อสร้าง ICT การดูแลสุขภาพ เป็นต้น

นอกจากนี้ ทีมธนาคารโลกยังได้เก็บรวบรวมข้อมูลจากสำนักงานกฎหมายที่ได้รับการคัดเลือกจากความเชี่ยวชาญด้านการจัดซื้อจัดจ้างภาครัฐของประเทศไทย และการให้คำปรึกษาแก่ซัพพลายเออร์ที่สนใจทำธุรกิจกับหน่วยงานของรัฐอีกด้วย รวมถึงการเก็บข้อมูลสัมภาษณ์จากหน่วยงานรัฐอีกหลายหน่วยงาน³

การศึกษาวิจัยจากแหล่งข้อมูลทุติยภูมิเป็นไปในทิศทางเดียวกันกับข้อมูลที่รวบรวมได้จากการสัมภาษณ์ รายละเอียดเกี่ยวกับวิธีการเก็บรวบรวมข้อมูลที่น่าสนใจในการศึกษาสามารถศึกษาเพิ่มเติมได้ในภาคผนวก 2 ของรายงาน

กรมบัญชีกลาง กระทรวงการคลัง ได้อนุเคราะห์ข้อมูลด้านการจัดซื้อจัดจ้างในส่วนของการประกวดราคา ทั้งนี้ ข้อค้นพบและข้อเสนอแนะเชิงนโยบายที่จัดทำขึ้นมุ่งเน้นไปที่การปฏิรูปด้านกฎระเบียบและการบริหารจัดการการจัดซื้อจัดจ้างภาครัฐตามข้อมูลที่ได้รับจากผู้ประกวดราคาและซัพพลายเออร์ในฐานะผู้ใช้งานปลายทางของระบบจัดซื้อจัดจ้างภาครัฐ

โดยมีสาระสำคัญมุ่งเน้นที่การเพิ่มประสิทธิภาพของการจัดซื้อจัดจ้างภาครัฐเพื่อส่งเสริมการภาคธุรกิจเข้าสู่ตลาดจัดซื้อจัดจ้างภาครัฐ การแข่งขันและความเท่าเทียมกันสำหรับซัพพลายเออร์ภาคเอกชน เมื่อการแข่งขันเพิ่มสูงขึ้น รัฐบาลจะได้ประโยชน์จากการจัดซื้อจัดจ้างที่ประหยัดมากขึ้นและได้สินค้าและบริการที่มีคุณภาพดีขึ้น (Value for Money, VfM)⁴

ตลาดการจัดซื้อจัดจ้างภาครัฐของไทยเป็นตลาดที่มีพลวัตและกำลังเติบโตขึ้นพร้อมโอกาสที่สำคัญสำหรับภาคธุรกิจเอกชนทั้งในและต่างประเทศ รัฐบาลได้ดำเนินการเพื่อทำให้กระบวนการจัดซื้อจัดจ้างมีความโปร่งใสและมีประสิทธิภาพมากขึ้น อีกทั้ง ตลาดการจัดซื้อจัดจ้างภาครัฐของไทยนั้นก็มีเสถียรภาพ มีขนาดที่ใหญ่เพียงพอ และสภาพแวดล้อมทางธุรกิจที่เป็นมิตร อย่างไรก็ตาม ยังมีพื้นที่ที่สามารถพัฒนาเพิ่มประสิทธิภาพในแง่ของการแข่งขัน และความโปร่งใส ซึ่งรัฐบาล

³ ประกอบด้วย กรมชลประทาน กรมทางหลวง กรมทางหลวงชนบท มหาวิทยาลัยเทคโนโลยีพระจอมเกล้าพระนครเหนือ สถาบันบัณฑิตพัฒนบริหารศาสตร์ สำนักงานคณะกรรมการการศึกษาระดับพื้นฐาน และศาลปกครอง โดยที่มงานธนาคารโลกได้พัฒนาแบบสอบถามเฉพาะสำหรับการสัมภาษณ์กลุ่มตัวอย่างของธุรกิจเอกชน ศาลปกครอง และสำนักงานกฎหมายในฐานะผู้มีส่วนได้ส่วนเสียภาคเอกชน และแบบสอบถามเฉพาะสำหรับการสัมภาษณ์กรมบัญชีกลาง หน่วยงานรัฐที่ดำเนินการจัดซื้อจัดจ้าง และศาลปกครองในฐานะภาครัฐ

⁴ เมื่อพิจารณาถึงขอบเขตของข้อตกลงและข้อดีเชิงเทคนิคแล้ว การวิเคราะห์และข้อเสนอแนะจะเน้นไปที่การจัดการการคลังภาครัฐ (Public Financial Management – PFM) ประสิทธิภาพในการใช้ทรัพยากรของรัฐ หรือการวิเคราะห์ประสิทธิภาพการใช้จ่ายงบประมาณโดยหน่วยงานที่ดำเนินการจัดซื้อจัดจ้าง (แต่จะเน้นไปที่การเข้าถึงตลาดการจัดซื้อจัดจ้างภาครัฐโดยภาคเอกชน/การแข่งขัน เป็นหลัก) ทั้งนี้ การศึกษาจะไม่มีการวัดหรือคาดการณ์ผลลัพธ์ของการปฏิรูปนโยบายจัดซื้อจัดจ้าง

จำเป็นต้องเดินหน้าทำงานอย่างต่อเนื่องต่อไปเพื่อจัดการกับความท้าทายเหล่านี้ และเพื่อให้มั่นใจว่าตลาดการจัดซื้อจัดจ้างภาครัฐของไทยจะประสบความสำเร็จในระยะยาว

การศึกษาและวิเคราะห์ข้อมูล การหารือกับผู้มีส่วนได้ส่วนเสีย และการศึกษาวิจัยจากแหล่งข้อมูลทุติยภูมิได้ระบุประเด็นปฏิรูปหลักของรายงานฉบับนี้ ตามวงจรการจัดซื้อจัดจ้างดังต่อไปนี้:

- การแข่งขันที่ยุติธรรมผ่านการเข้าถึงโอกาสที่เสมอภาค
- ระบบการจัดซื้อจัดจ้างภาครัฐด้วยระบบอิเล็กทรอนิกส์
- ข้อกำหนดในการประกวดราคา: ตั้งแต่หลักประกันซองไปจนถึงการยื่นประมูล การประเมินการประกวดราคาไปจนถึงหลักประกันสัญญา
- กระบวนการยอมรับและตรวจสอบในระหว่างการจัดการสัญญา
- การอุทธรณ์และการร้องเรียนในการประกวดราคา

เพื่อสนับสนุนประเทศไทยในการจัดการกับประเด็นข้างต้นเหล่านี้ ข้อเสนอแนะหลาย ๆ ข้อจะช่วยผลักดันให้เกิดการพัฒนาจากสิ่งที่เป็นอยู่ในปัจจุบันยิ่งขึ้น ได้แก่ การเสริมสร้างศักยภาพสำหรับภาคเอกชน การปรับปรุงช่องทางการสื่อสารการปฏิรูปและการพัฒนาระบบ e-Procurement การจัดทำมาตรฐานเอกสารและขั้นตอนการดำเนินงาน การใช้ประโยชน์การเข้าสู่ยุคดิจิทัลในการยกระดับการเข้าถึงข้อมูลระบบการจัดซื้อจัดจ้าง ใช้วิธีการประกวดราคาที่มีการแข่งขันมากขึ้นและจัดให้มีมาตรการสนับสนุนธุรกิจ SME ทำระบบการจัดซื้อจัดจ้างทางอิเล็กทรอนิกส์ให้เป็นระบบดิจิทัลอย่างสมบูรณ์ ปรับปรุงข้อกำหนดในการประกวดราคาให้กระชับ และเสริมสร้างเกณฑ์การประเมินการประกวดราคาให้เข้มแข็ง

สรุปข้อเสนอแนะเชิงนโยบาย

หัวข้อ	ข้อเสนอแนะเชิงนโยบาย	ระยะเวลาในการดำเนินงาน ⁵
การยกระดับการแข่งขัน ให้มีความเท่าเทียมผ่าน การสร้างโอกาสที่เสมอ ภาคแก่ผู้ประกอบการทุกราย	ใช้ช่องทางการอบรมที่จัดให้แก่ผู้ประกอบการภาคเอกชนทั่วไปในการสร้างการรับรู้และยกระดับการเข้าถึงข้อมูลต่างๆ	ระยะสั้น-กลาง
	พัฒนาการสื่อสารและสร้างความรู้ในเรื่องของการปฏิรูปต่างๆ	ระยะสั้น-กลาง
	พัฒนา ปรับใช้ และเผยแพร่มาตรฐานเรื่องระเบียบวิธีในการดำเนินงาน ร่างขอบเขตงาน แบบฟอร์มต่างๆ และรายการตรวจสอบ	ระยะสั้น-กลาง
	ตรวจสอบให้มั่นใจว่าแผนงานจัดซื้อจัดจ้างนั้นมีการเผยแพร่ล่วงหน้าเป็นระยะเวลามากพอที่ผู้ประกอบการสามารถรับรู้ถึงโอกาสในการเข้าร่วมการประกวดราคาได้อย่างเหมาะสม	ระยะสั้น-กลาง
	จัดทำแพลตฟอร์มอิเล็กทรอนิกส์และเอกสารที่เกี่ยวข้องกับการประกวดราคา รวมไปถึงข้อมูลต่างๆ ที่เปิดเผยในฉบับภาษาอังกฤษ	ระยะสั้น-กลาง
	พิจารณาลดการใช้วิธีการจัดซื้อจัดจ้างที่ไม่ได้ผ่านการแข่งขันหรือเป็นวิธีเฉพาะเจาะจงที่ใช้อยู่ในปัจจุบัน แล้วเปลี่ยนมาใช้วิธีการประกวดราคาทางอิเล็กทรอนิกส์ที่เอื้อต่อการแข่งขันมากกว่าแทน	ระยะยาว
	ตรวจสอบให้มั่นใจว่าข้อมูลการจัดซื้อจัดจ้างภาครัฐทั้งหมดมีการเผยแพร่สู่สาธารณะ และมีการอัปเดตข้อมูลต่างๆ ผ่านช่องทางออนไลน์อย่างต่อเนื่องเพื่อให้ทันต่อสถานการณ์ปัจจุบัน	ระยะยาว
	พิจารณาการดำเนินมาตรการส่งเสริมผู้ประกอบการวิสาหกิจขนาดกลางและขนาดย่อม โดยเฉพาะอย่างยิ่งในกิจการที่มีเจ้าของเป็นผู้หญิง ตัวอย่างมาตรการก็อย่างเช่น โครงการจัดซื้อพิเศษ รวมทั้งจัดทำโครงการส่งเสริม SME อื่นๆ ด้วย	ระยะกลาง-ยาว

⁵ มาตรการระยะสั้น-กลางหมายถึงมาตรการที่ควรดำเนินงานภายในระยะเวลา 6 เดือนถึง 1 ปี ส่วนมาตรการอื่นๆ ที่ถือเป็นมาตรการระยะยาวนั้นจะต้องใช้เวลาในดำเนินงานอย่างต่อเนื่องมากกว่าหนึ่งปีขึ้นไป ทั้งนี้ กรอบระยะเวลาดังกล่าวนั้นถือเป็นกรอบระยะเวลาที่เสนอแนะเบื้องต้นโดยอ้างอิงมาจากประสบการณ์การดำเนินงานในต่างประเทศ

หัวข้อ	ข้อเสนอแนะเชิงนโยบาย	ระยะเวลาในการดำเนินงาน ⁵
การจัดซื้อจัดจ้างผ่านทางระบบอิเล็กทรอนิกส์	เปิดให้ผู้ประกอบการยื่นหลักประกันของผ่านช่องทางอิเล็กทรอนิกส์ในระบบ e-GP ได้ รวมถึงเงินประกันสัญญาหรือผลงานด้วย พร้อมทั้งยกเลิกข้อบังคับที่กำหนดให้ผู้ประกอบการต้องยื่นเอกสารเหล่านี้ในรูปแบบกระดาษ	ระยะสั้น-กลาง
	เพิ่มระดับความปลอดภัยของข้อมูลโดยการเข้ารหัสข้อมูลบางอย่าง เช่น ราคาที่เสนอมา	ระยะสั้น-กลาง
	เปิดให้มีการพิจารณาเอกสารการประกวดราคาผ่านทางระบบอิเล็กทรอนิกส์	ระยะยาว
	อนุญาตให้ใช้ลายเซ็นดิจิทัลในการลงนามในสัญญาได้	ระยะยาว
	เปิดใช้คำสั่งการจ่ายเงินทางอิเล็กทรอนิกส์และใบแจ้งหนี้อิเล็กทรอนิกส์ในระบบ e-GP	ระยะยาว
ข้อกำหนดในการประกวดราคา	เพิ่มระยะเวลาสำหรับการเตรียมเอกสารและการยื่นซองประกวดราคา แต่ในขณะเดียวกันก็เปิดช่องให้หน่วยงานภาครัฐสามารถร่นระยะเวลาดังกล่าวในกรณีฉุกเฉินเร่งด่วนได้	ระยะสั้น-กลาง
	นำแนวทางการพิจารณาที่อ้างอิงกับความเสียหายมาใช้เพื่อทำให้มั่นใจว่าข้อกำหนดในเรื่องเอกสารที่ต้องยื่นนั้นสอดคล้องกับมูลค่าและความเสี่ยงของสินค้าหรือบริการที่ทำการประกวดราคา	ระยะสั้น-กลาง
	จัดทำกรอบแนวทางที่มีเกณฑ์ในการระบุข้อเสนอที่มีราคาต่ำเกินไปจนผิดปกติ พร้อมทั้งกำหนดวิธีการตอบสนองต่อข้อเสนอในรูปแบบดังกล่าวที่เข้มงวดมากขึ้น	ระยะสั้น-กลาง
	พิจารณาการใช้วิธีการวิเคราะห์มูลค่าแบบตลอดช่วงการใช้งาน (Life Cycle Costing หรือ LCC)	ระยะสั้น-กลาง
	ปรับข้อกำหนดทางการเงินในขั้นตอนการประกวดราคาให้มีความยืดหยุ่นมากขึ้น พร้อมทั้งพิจารณาความเหมาะสมของอัตราดอกเบี้ยหลักประกันผลงานที่ปัจจุบันอยู่ที่ร้อยละ 5 ใหม่	ระยะยาว

หัวข้อ	ข้อเสนอแนะเชิงนโยบาย	ระยะเวลาในการดำเนินงาน ⁵
ขั้นตอนการตรวจรับผลงานในช่วงการบริหารสัญญา	จับคู่และปรับปรุงขั้นตอนกระบวนการอนุมัติการแก้ไขสัญญาและกระบวนการจ่ายเงินให้สอดคล้องกัน พร้อมทั้งพัฒนาการสื่อสารในระหว่างกระบวนการด้วย	ระยะสั้น-กลาง
	กำหนดบทลงโทษและอัตราดอกเบี้ยเพื่อช่วยแก้ปัญหาเรื่องการเงินล่าช้า	ระยะสั้น-กลาง
	กำหนดให้มีผู้แทนสำรองในคณะกรรมการตรวจรับงานเพื่อที่จะมั่นใจได้ว่ากระบวนการตรวจสอบและการตรวจรับงานสามารถดำเนินไปได้อย่างต่อเนื่อง	ระยะสั้น-กลาง
การอุทธรณ์และการร้องเรียนเรื่องการประกวดราคา	ตรวจสอบให้มั่นใจว่าผู้พิจารณาการประกวดราคาในกลุ่มแรก (first-tier reviewers) ของหน่วยงานที่ทำการจัดซื้อจัดจ้างนั้นเป็นอิสระและเป็นกลางอย่างแท้จริง พร้อมทั้งทบทวนโครงสร้าง ขนาด และองค์ประกอบของคณะกรรมการพิจารณาอุทธรณ์เพื่อให้มั่นใจว่าคณะกรรมการดังกล่าวมีความเป็นกลาง และพัฒนาประสิทธิภาพของผู้พิจารณาการประกวดราคาในกลุ่มที่สอง (second-tier reviewers) ด้วย	ระยะสั้น-กลาง
	กำหนดคุณสมบัติของคณะกรรมการให้ชัดเจนโดยพิจารณาจากหน้าที่ความรับผิดชอบของคณะกรรมการแต่ละท่าน	ระยะสั้น-กลาง

หมายเหตุ: ตารางสรุปข้อเสนอแนะเชิงนโยบายนี้อ้างอิงจาก Annex 1 – Summary of Recommendations หน้า 39 - 41

Why public procurement matters

Public procurement – the process by which governments purchase goods, services and works from the private sector – amounted to \$11 trillion out of global GDP of \$85 trillion in 2018⁶. In other words, around 12 percent of global GDP is spent following procurement regulation⁷.

The size of public procurement as a share of GDP is comparable across low-income, middle-income and high-income countries. Middle-income countries procure 13.2 percent of GDP and high-income countries procure 14 percent of GDP.

Governments turn to the private sector to supply goods and services to build schools, purchase hospital supplies, secure computer services in public buildings, renew a fleet of city buses, or construct a new road. Public procurement is therefore a powerful lever for achieving economic, environmental, technological, and social goals. In recent years, the amount of procurement expenditure has been increasing, and with it, so has public demand for greater transparency and efficiency

The literature suggests that good public procurement frameworks should promote transparency, fairness, integrity, and efficiency in the management of public resources. These principles increase firms' confidence in the process and attract the best firms to participate in public procurement⁸. Efficiency in public procurement is about ensuring value for money. An open and transparent procurement process is pivotal for improving competition, value for money, and reducing risks to integrity. Opaque procurement practices that may result from administrative inefficiencies, the absence of budget constraints and accountability or corruption thrive when these principles are not observed. Malpractice could lead to substantial losses of taxpayer resources, as contracts would not be awarded to the most efficient suppliers. Case studies reveal that these excess project costs could be in the range of 25–50%⁹.

On many national markets, the public sector is the biggest buyer, so when used strategically, public procurement can act not only as a catalyst for economic growth but also contribute to policy objectives such as sustainability, social inclusion, among others.

In addition to promoting private sector development, specifically SMEs, other policy goals can also be pursued through public procurement. Governments have the opportunity to foster innovation by purchasing products and services that require investments in research and development, and/or having preferential rules¹⁰. Provisions to promote the development of innovative goods and services include set-asides, bid preferences, and waived fees and quotas¹¹. Same applies to sustainable procurement and the purchase of environmentally friendly goods and services. Equal employment, social inclusion by support women-led SMEs (WLSMEs) are also among the policy objectives that can be promoted through rules on the criteria

⁶ GDP (Current US\$) World Bank national accounts data, and OECD National Accounts data files.

⁷ <https://blogs.worldbank.org/developmenttalk/how-large-public-procurement>

⁸ Bovens, M., 2007, “Analysing and Assessing Accountability: A Conceptual Framework”, *European Law Journal*, July, 2007, Vol.13(4), p.447(22).

⁹ Ades, A., and R. Di Tella. 1997, “National Champions and Corruption: Some Unpleasant Interventionist Arithmetic”, *Economic Journal* 107: 1023–42.

¹⁰ Appelt, S. and Galindo-Rueda, F., 2016, “Measuring the link between public procurement and innovation”, OECD Publishing, Paris. https://www.oecd-ilibrary.org/science-and-technology/measuring-the-link-between-public-procurement-and-innovation_5jlvc7s1lw7h-en

¹¹ Rolfstam, M., 2012, “Good Rules or Bad Rules in Public Procurement of Innovation: But is it Really the (Right) Question?”, *Journal of Administrative Culture*, Issue 2. <https://www.cceol.com/search/article-detail?id=248649>

for the eligibility and qualification of contractors, criteria for the award of contracts, and contract awards contingent to certain conditions being met¹².

Sound public procurement legal frameworks and practices are an important policy tool to support poverty reduction and promote the achievement of sustainable development goals. The costs of inefficient public procurement are high and can include: (i) on the private sector side, smaller market access and limited competition for SMEs, thus restricting the potential of the national economy; (ii) on the public sector side, higher prices paid by public entities for goods and services, directly impacting public expenditures and, therefore taxpayers' resources.

Acknowledging its magnitude, the Government of Thailand has strived in the past decade to put in place a transparent, efficient, and competitive public procurement system.

¹² Handler, Heinz J., 2015, "Strategic Public Procurement: An Overview". Available at SSRN: <https://ssrn.com/abstract=2695546> or <http://dx.doi.org/10.2139/ssrn.2695546>.

Country context

Economic and policy context

The Government of Thailand has prepared its first 20-year National Strategy which aims to promote balanced growth and to move away from a low growth and high inequality equilibrium. In reaching these goals, the private sector in Thailand will play an enabling role in strengthening competitiveness and hence achieving one of the six strategic thrusts of the National Strategy. However, for the private sector to reach its full potential, a transparent and efficient business environment needs to be put in place, an environment that allows firms to access markets, including public markets, operate in a level playing field and grow.

As mentioned above, the public procurement market is significant in all countries, and Thailand is no exception. Overall, it represents more than 10% of the GDP, and 30% of the country's public expenditure. It is also one of the most dynamic and rapidly growing public markets in Southeast Asia. With a population of over 68 million people and a rapidly growing economy, the demand for goods and services in the public sector is high, providing a significant opportunity for local and international businesses to participate in the market.

The Thai government has been actively promoting public procurement as a means of boosting economic growth and promoting entrepreneurship. As a result, the government has put in place a number of measures to make the procurement process more transparent and efficient, including the introduction of e-procurement systems, notably the e-GP, the use of open tenders, and the adoption of international procurement standards. These measures have helped to increase efficiency of public markets and resulting in more favorable terms for both suppliers and the government.

Legal and regulatory context

The main legal text governing public markets is the *Public Procurement and Supplies Administration Act BE2560 (PPA)* which was published on 24 February 2017 in the Official Gazette. Several implementing regulations followed on 23 August 2017 and subsequently thereafter.

As a framework law, the PPA is supplemented by secondary implementing regulations. The PPA contains 132 sections/clauses while the main Ministerial Regulation (Ministry of Finance's Public Procurement and Supplies Administration Regulation B.E. 2560 dated 23 August 2017 includes 223 clauses.

The e-procurement platform (e-GP), established under the Regulation of the Office of the Prime Minister on Electronic Procurement, BE2549 (2006) has helped modernize the public procurement system, including in areas such as electronic bidding (e-bidding) and electronic market (e-market)¹³.

The structure of the Thai public procurement system is a mix between centralized and decentralized one. There is no centralized purchasing body at the Ministerial level. Thus, each government agency performs its procurement independently. Given the decentralized structure, any government agency can procure goods and services under the Public Procurement and Supplies Administrative Act issued by the Ministry of Finance's Comptroller General Department (CGD), provided it gets budgetary approval from the Bureau

¹³ Guidance documentation on how to operate the e-procurement system was published 10 April 2015

of the Budget or other authority entrusted to provide similar approval. This is clearly stated in article 11 of the Ministry of Finance's Public Procurement and Supplies Administration Regulation B.E. 2560 (2017).

According to Section 55 of the PPA, there are three main procurement methods in Thailand.

- 1) **Open competitive tendering through the general solicitation notification method** whereby a state agency invites generally qualified business operators for tendering proposals by the publication of a tender notice on the e-GP. According to Clause 29 and 30 of Regulations, this method can be conducted by 3 sub-methods:
 - Electronic market (supplies of non-complex nature to be listed in an e-catalogue)
 - Electronic bidding (for goods and services not included in the e-catalogue where the contract value exceeds 500,000 Baht);
 - Request for quotations (cases where the e-GP cannot be used and where the contract value exceeds 500,000 Baht but not exceeding 5,000,000 Baht)
- 2) **A simplified tendering with pre-selected tenderers through the simplified selection method** whereby a state agency invites at least **three** specifically qualified business operators for tendering proposals, except that there are less than three qualified operators for such specific work. No publication on the e-GP is needed, thus direct invitation applies.
- 3) **Direct contract via a specific method** where a state agency invites a particularly qualified business operator for the submission of a proposal or for price bargaining negotiations as prescribed in the ministerial regulation. No publication on the e-GP. The Ministerial Regulations (clause 78) lays the cases when this direct contracting method can be used.

The ministerial regulation provides a two-stage tendering method for complex procurement where the technical proposals are evaluated first. The price proposals will have to be requested once the technical specifications have been agreed upon with the bidders. This procedure typically requires pre-qualification. However, no practical guidance is provided in the ministerial regulations.

The default method is open competitive tendering which requires a wide publication and where any interested and qualified supplier may participate. This method should always be used above certain thresholds. The other methods may be used under certain conditions and specified justifications in accordance with PPL and ministerial regulations.

The reform developments achieved in recent years lay a good foundation for promoting efficiency, transparency and encouraging consistency, aligning closely to recognized international good practice. But despite these advancements, the Thai public procurement system is not without its challenges, especially ones impacting its efficiency and distorting private sector access to public tenders. Private suppliers interviewed noted that barriers remain, hampering their access to procurement opportunities and preventing a level playing field among suppliers. Obstacles include, among others, lack of equal access to opportunities (section 1); less than optimal e-services (section 2); cumbersome procurement procedures (section 3), and a complaint and bid protest system that could be further improved (section 4).

Leveling the playing field through equal access to opportunities

An uneven competitive procurement environment is usually a result of several factors. Competition distortion happens as a result of information asymmetry, when transaction costs and obstacles are high enough to hinder some firms' access to tender opportunities or merely because of bias towards certain suppliers when opportunities for collusion are present. Addressing the issues at the root of market failures is key to prohibiting them from occurring in the future and to ensuring a level playing field for all firms interested in doing business with the government. Access to information through a centralized electronic repository and outreach regarding opportunities for the private sector to participate in public procurement are key to incentivize firms, particularly SMEs in public tenders as they promote transparency and enable equal opportunities for all suppliers.

Context in Thailand:

Access to tender opportunities was a challenge raised by private sector respondents surveyed across the three sub-populations¹⁴. Contractors referred to high transaction costs, while bidders have expressed interest in participating in public procurement markets but stated that they were often unaware of the how-to. Similar concerns were raised by suppliers who have never participated in tenders, despite being registered.

Data collected also shows that the Government of Thailand can further incentivize SMEs to contract with the government, particularly women-led SMEs (WLSMEs).

There is a lack of awareness of direct SME support measures that facilitate access to public markets. Although the CGD offers support to suppliers on how to use the e-GP system and submit bids, firms stated that there is no "official training" provided. Firms themselves must contact agencies and inquire as needed. Moreover, some SMEs hire a professional intermediary with knowledge of the procurement system to support SMEs in navigating the tender process, which increases their transaction cost and may act as a deterring factor, especially as tender outcomes and returns on their pecuniary investments are not guaranteed. Also, the frequent amendments to the main legal framework, the evolving e-GP functionality and the extensive documentation required to meet the selection criteria and exclusion criteria also makes participation in public procurement processes a challenge for the private sector, especially SMEs: this has been highlighted across the board, by both economic operators and lawyers. Understanding of the e-GP platform, by suppliers is also limited when compared with contractors or bidders.

Another aspect that is also driving information asymmetry is a gap in procurement data that is published and the format in which it is published. Firstly, aggregated procurement data on contracts in a machine-readable format (including description, dates, category of spending, value, contracting authority, identification of supplier and subcontractors, contract amendments and final expenditure) is not fully available online. Currently, interviewed suppliers stated that the full signed contract cannot be accessed publicly. Only the standard contract and the main points in the signed contract can be accessed publicly. This is due to the fact that the regulation only mandates government agencies to publish 'essential' contract information and not the full signed contract. Moreover, all information and data are only available in Thai language.

A procurement system relying on the principles of transparency, fairness and efficiency ought to be inclusive. While the Thai government has made progress to use its modern regulatory framework to promote policy objectives, efforts towards more inclusion in procurement tenders could be undertaken.

¹⁴ See Annex 2 for methodology details and classifications of the sampling population.

In Thailand, there is a 10% price handicap preferential treatment to support SMEs as well as preferential treatment and incentives to promote innovation provided that SME suppliers are listed on the “Thai Innovation List of the Bureau of the Budget”. This is also stipulated in Chapter 5, Article 14 of the Ministerial Regulation B.E. 2560 (2017). Respondents have noted that there are no gender clauses in model TORs and model contracts, strategies to support women’s access to public tenders, requirements for procurement plans to include a gender dimension, or provisions that promote gender equality.

Another issue is the current overuse of non-competitive procedures which affects the credibility of the procurement system and may lead to higher price purchasing. Recent procurement data shows that more than 97% of contract awards in 2022 were done through direct contracting (accounting for 33% of total contract values) whereas contracts through open competitive method only amount to 2.31% of total contract awards (accounting for 67% of total contract values)¹⁵. Moreover, open tendering/e-bidding must be done on the e-GP, hence mandating increased transparency while the other two methods don’t need publication on the e-GP.

Short-to medium term recommendations¹⁶

Enhance awareness and access to information through regular private sector training programs. Systematizing SMEs’ capacity building through workshops and training have showed success in other countries. Creating decentralized entrepreneurial centers could be considered. These could provide free internet access, training and support in using the e-GP system, significantly improving companies’ chances of doing business with public entities.

Improve communication and awareness around reforms. Public officials need regular training and dissemination campaigns to become public procurement experts and to maximize the tools at their disposal. That said, this is not an issue limited to public officials. The CGD, in coordination with line ministries and procuring authorities should broadly communicate reforms, and ongoing developments to enhance the functionality of the e-GP platform¹⁷. Communication should be accompanied by learning material and capacity building opportunities, especially for what concerns the e-GP platform: in-person training may not be the most viable or efficient way to train everyone, so this option should be complemented by self-paced virtual trainings.

Develop, adopt and disseminate standardized protocols, TORs, forms, and checklists. While the representatives of central bodies, like the CGD have a clear and comprehensive understanding of the legal framework, the applicable procedures, and the use of the relevant electronic platforms in public procurement, this is often not true for public officials at the regional, municipal and local level implementing procurement processes, nor for the engineers and other technical experts involved in the preparation of tender documents, evaluation, supervision, inspection, and final certification processes. Lack of targeted dissemination of reforms to public officials can result in delays or procedural mistakes, which has been highlighted in conversations with the private sector.

To address concerns expressed by private sector respondents on the lack of professional procurement expertise, the CGD could consider providing guidelines, along with digitization, and in accordance with clause 10 of the Ministerial Regulations. These materials should be

¹⁵ Based on data shared by the CGD

¹⁶ For the purposes of this memorandum, short-to-medium term recommendations are those that can be implemented within 6 months to a year. Long-term opportunities for improvement to be implemented within 1 to 5 years

¹⁷ During the data collection mission in Bangkok, the team was informed that a number of improvements are under way to optimize the e-GP platform.

disseminated to the relevant public officials, in order to enhance predictability to suppliers while decreasing the number of substantial and unsubstantial errors, leading to a lower number in complaints along the procurement process. Among these standardized procedures to be developed are clear and public evaluation guidelines and checklists, to help the tender evaluation committee establish roles and responsibilities more quickly, strive to achieve better value for money, better identify abnormally low bids, and speed up the award procedure.

Ensure that the publication of procurement plan is done with enough lead time for suppliers to be made aware of procurement opportunities. The timely publication of procurement plans is a key component of a transparent public procurement system, as it allows private sector firms to anticipate which opportunities will be advertised and reorganize their business strategy accordingly. Ideally, annual procurement plans should be regulated by law (or other binding instruments) and published online. As an example of the content and timeline of annual procurement plans set by other countries, note that New Zealand establishes in Rule 21 of the Government Procurement Rules 2019 that an “*annual procurement plan (APP) is a list of planned contract opportunities over the next 12 months. An APP must contain all known or anticipated contract opportunities that the Rules apply to (...). An APP is for planning purposes and does not represent an invitation for bids or pre-solicitation. It is not a commitment by the agency to purchase the described goods, services or works. Each agency must review and update its APP at least once every six months. (...) Updated APPs are due by 1 March and 1 October each year.* An example of the template used by Procuring Entities in New Zealand can be retrieved [here](#). In the European Union, 9 countries are currently regulating and publishing their procurement plans, as measured by the Contracting with the Government indicator. One of them is Lithuania: annual procurement plans are regularly published on the Central Procurement Portal with a clear indication of the anticipated date of procurement¹⁸. Economic operators can search for procurement opportunities for services, goods, or works that are of interest to them and can start planning and preparing for their participation in the calls for tenders.

Make e-platforms and procurement-related documents and data available in English language. providing a dual-language (Thai/English) version of all procurement information and documentation, and translating the e-GP, e-Bidding and the “Thailand government spending” sites to English is a milestone towards increasing access for all stakeholders, including foreign ones. Hong Kong SAR, China, Malaysia, the Philippines and Vietnam are among regional peers that have already addressed this information asymmetry.

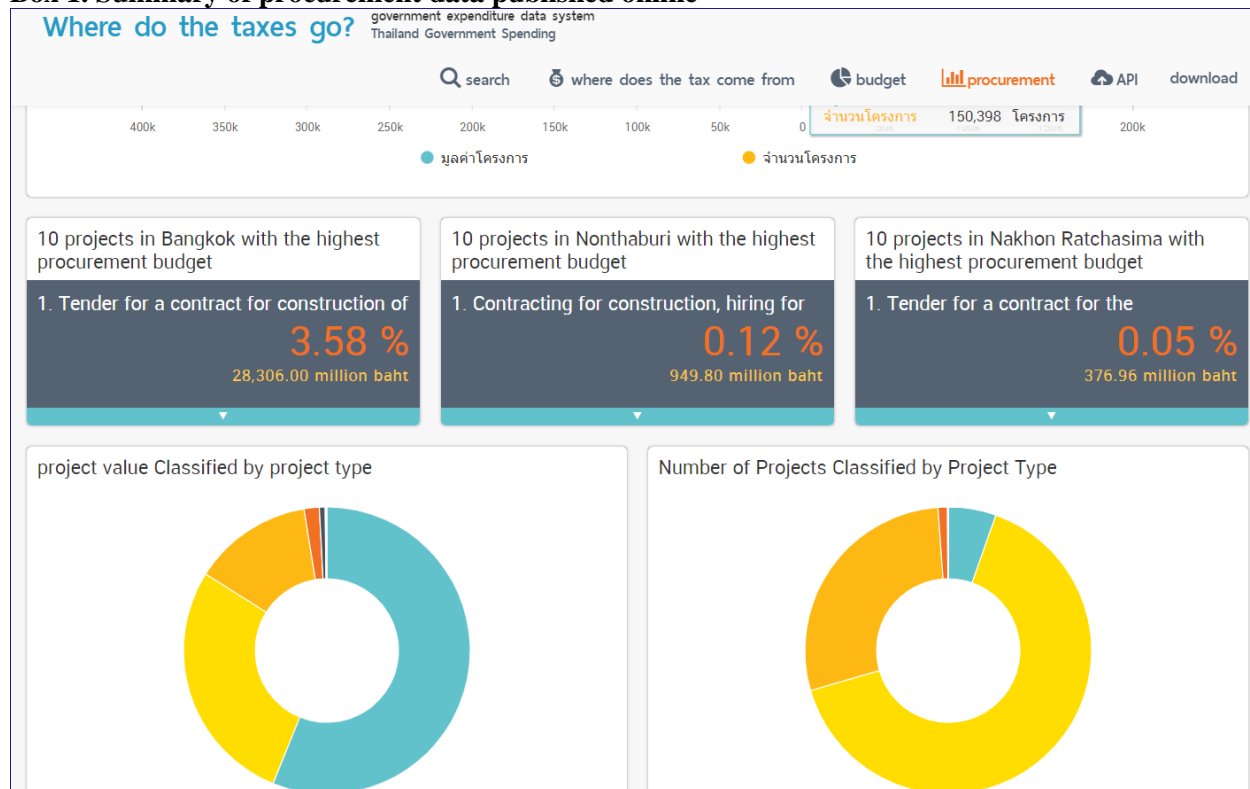
Long term recommendations

Consider reducing current use of non-competitive, direct contracting procurement in favor of more competitive e-bidding procedures. This will allow procuring entities to purchase goods and services at the most advantageous prices while benefitting a larger pool of suppliers with equal access to the public market.

Ensure full government procurement dataset is published and maintained up-to-date online, in order to instill private sector trust in the way tenders are conducted. These revisions can also support Thailand open data efforts in public procurement and public sector infrastructure, in line with the provisions of the Public Procurement and Supplies Administration Act (2017). Currently, a summary of the procurement data is available on the dashboard of the “[Thailand Government](#)

Spending” website (in the form of analytical data), but lacks granularity needed to align with good principles of transparency. Moreover, the challenge also is to obtain contracting data from the purchasing authorities for it to be published online in a timely manner.

Box 1. Summary of procurement data published online



Source: Thailand Government Spending site

A good practice example can be found in Mexico’s publication of key procurement data on Compranet, the information system for the federal government’s procurement procedures. The legal framework was amended in 2009 to mandate the use of Compranet for publishing information such as annual procurement plans, tender documents, minutes of clarification meetings and bid openings, contract awards history, and formal complaints. The government also developed a clear chain of responsibility and control mechanisms to empower civil society and the media to scrutinize public procurement¹⁹.

Consider including provisions in the Regulations to support SMEs, particularly WLSMEs through preferential purchasing programs. This could complement the general provisions of the Ministry of Finance’s Regulations of December 22, 2020 promoting procurement of SMEs. Also, consider support in partnership with the Office of SMEs’ Promotion or other SMEs business associations by developing a program for diversely-owned, managed, and led SMEs, particularly WLSMEs. The e-GP system can also be a building block to help in identifying and establishing a WLSMEs database, which will facilitate direct support to firms. Policies and incentives to promote SMEs in public procurement can take various forms. The European Union directives require for instance the division of large public contracts into smaller batches, allowing SMEs to participate in large tenders. They also grant preferential treatment to SMEs by limiting their turnover requirement

¹⁹ OECD, 2015, Compendium of Good Practices for Integrity in Public Procurement, OECD Publishing. <https://www.oecd.org/gov/public-procurement/compendium-for-good-practices-for-integrity-in-public-procurement.pdf>

to only twice the contract value. In India and Morocco for example, procuring entities are required to “set aside” around 20% of the total value of government contract to SMEs.

Box 2. Helping Women-Led Companies Access Public Markets

Given the magnitude of public procurement, many countries have begun to use it to achieve certain policy objectives, directing their spending towards businesses they wish to strategically support through preferential policies. This serves to achieve simultaneous goals of procuring necessary goods/services while doing so in a way that aligns with other government initiatives.

SMEs, regardless of gender, face numerous barriers to entry into public procurement markets (e.g. lack of information, access to finance, overly complex procedures, unreasonable technical/financial requirements, large contract sizes, etc). Such obstacles tend to have a disproportionate impact on WLSMEs. Several countries have taken initiatives to facilitate the participation of SMEs in public procurement and targeting specifically WLSMEs through several measures including preferential treatments. For example, Kenya, Namibia, South Korea, Dominican Republic, and the United States explicitly mandate a percentage of annual public procurement spending to be dedicated to WLSMEs. Other countries (such as Ghana) that have not incorporated gender-affirmative procurement are taking significant actions for adopting a broad policy for mainstreaming marginalized groups into public procurement.

The Dominican Republic has developed a preferential purchasing program to support WLSMEs and the program includes positive discrimination to empower women in the economy. Chile won 2019 UNPS award “Women-Led Companies Through Public Market” by the creation of the “Sello Empresa Mujer”, (Woman Company Seal); Chile Compra was able to increase share of WLSMEs to 25.3% in 2018 through implementation of diffident measures, such as Female Supplier Certification, signature up to UN's SheTrades program, and training/broadcasting to encourage more women to participate in the opportunities offered by the public marketplace.

Electronic Procurement

Governments take different business approaches to implementing e-GP programs. Economies in all regions are implementing reforms to conduct the procurement process online. However, a wide gap remains between economies that do not yet have an online portal dedicated to public procurement and other economies that have sophisticated e-procurement platforms that offer a range of services (and economies in between that offer limited information).

An e-government procurement (e-GP) platform is to provide equal access to information electronically as well as implement all of the procurement phases and mechanisms by means of electronic automation in a way that incorporates all of the key principles of public procurement for good governance. Digitization of the procurement process holds enormous potential for enhancing efficiency and transparency in public tendering globally.

Under an open, transparent public procurement policy, e-GP increases participation in public procurement. The greater the number of firms registering and participating in bids, the lower the number of failed bids due to no qualified bids.

Through the introduction of e-GP functionalities, processes are standardized, streamlined, and integrated, and associated processing times and administrative costs are consequently reduced. Electronic tendering enhances efficiency and reduces transaction costs, both on the private sector as well as on the procuring authorities while optimizing the contract management phase through the use of electronic platforms can positively impact payment delays. Increased competition and reduced costs for economic operators also lead to lower prices for the goods, works, and services procured by the government. This leads to increased competition and can generate savings on various packages to help ensure a government achieves VfM. A key selling point for e-GP is focused on significant savings both in operating costs (with the elimination of paper, advertising cost, use of electronic submission, electronic invoicing and payment and increased productivity of staff) along with spend reduction, typically, 10% -20% savings out of overall spend. Some countries promote even higher savings.

Doing Business 2020 data¹ shows Finland and the Republic of Korea as top performers in paying contractors on time. Both countries have effectively linked their e-procurement systems to their financial management systems, allowing fast online processing of payments.

The most sophisticated e-procurement systems manage to integrate all workflows related to the whole public procurement life cycle in one place.

In addition to the tendering process, e-GP should be used to assist in the measurement of the impact and outcomes of government procurement programs and socio-economic initiatives, a measurement that is not currently in place and that could help inform better design of procurement tenders in the future.

Methodologies and data capture should be incorporated in the system to collect information of various procurements at a transactional (and then aggregated level) to measure cost savings as applied to green procurement. The system should measure not simply the award price but incorporate life-cycle savings (cf. section below on life-cycle purchases), and follow-up to see if initial measurements were achieved. Collecting proper data would allow government to adjust policy initiatives and evaluation criteria to ensure impacts and outcomes can be measured.

Context in Thailand:

When it comes to electronic procurement, recent reforms and developments have been made to promote transparency and encourage consistency in the way tenders are undertaken, aligning closely to recognized international good practice. The e-Government Procurement (e-GP) system offers a central Thai system where all suppliers register to sell goods and services to the government, in line with good practices.

Despite the efforts made to digitalize the procurement process, areas for improvement exist in Thailand where the e-GP platform could be further enhanced to dematerialize functions that enable the bidding phase and contract management phase's key procedures.

The current e-GP platform is a one-way communication channel with suppliers (G2B). It is not used as a platform for 2-way communication. Respondents stated that clarifications and communication with purchasing authorities usually takes place by phone or during in-person visits, which may increase transaction costs on firms (as well as government agencies), and more importantly, opens the door for favoritism and collusive behaviors.

To comply with the Electronic Performance of Administrative Function Act B.E. 2565 effective from January 10, 2023 onwards, the CGD sets guidelines for submitting documents for registration by allowing suppliers to send their registration documents as PDF files via e-mail (gpusername@cgd.go.th) without having to send documents by post. While this is a positive step undertaken by the Thai Government for the registration of vendors, e-registration using the e-GP portal which would safeguard data privacy should be considered.

The bidder is required to submit both the original hard copy and the digital file for bid security and the performance guarantee: this is meant to ensure the certainty of the system and prevent forgery and the use of illegitimate guarantees that would put projects at risk. That said, this also puts an unnecessary burden on suppliers wishing to take part in procurement tenders, particularly SMEs. Standardization and interoperability between entities, in this case the procuring entity and financial institutions (banks) who issue performance guarantees, can help save time for the private sector and avoid mistakes that can arise when hard copies of documents are handled. Ensuring standardization of these instruments will reduce the risk of rejection, and thus less delays between award and contract signing.

A similar issue is seen during the bid evaluation process which is still not integrated in the e-GP platform. While all bidding documents are in the e-GP, the bid evaluation committee is still unable to vote through the e-GP system. E-GP is not currently designed to support electronic bid evaluations. Instead, bid evaluations are either done in person or via virtual meetings, which were recently approved as a means of bid evaluation in the Guidelines issued by the CGD²⁰. For the latter option, and according to the Guidelines, the person in charge of the electronic meeting must keep a copy of the invitation letter and attached documents accompanying the meeting as evidence, which can be stored in electronic form. Once the evaluation committee has a decision and the resolution is ready, communication is done via email and committee members have to send an email confirming their decision/score, which is not a secure data sharing method and may disincentivize suppliers from participation in public markets. Moreover, these

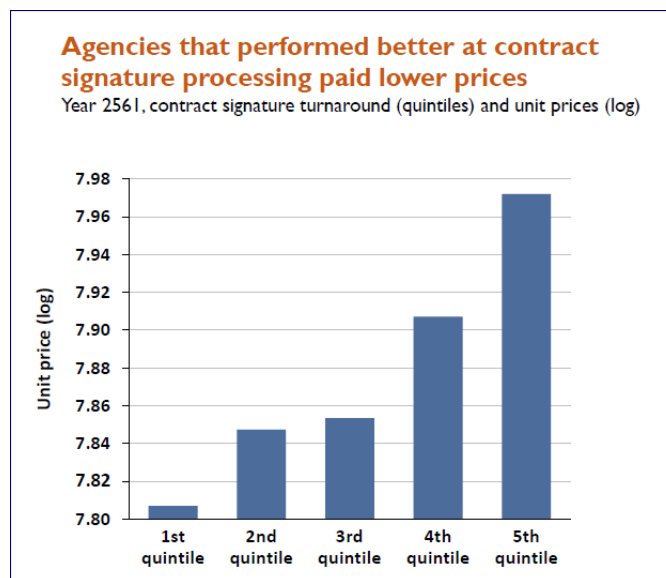
²⁰ Guidelines for organize meetings as part of the procurement process of government agencies through electronic platform on May 13th, B.E. 2564 (2021) - No. Gor Kor (Kor Kor) 0405.2/Wor 279, dated 13 May 1921.

emails are kept with the procuring entities, and committee members will need to input evaluation results in the system, which exacerbates administrative inefficiencies and adds cost on the government.

The E-contract management and implementation module is not implemented in practice. Currently the e-GP platform does not allow for electronic contract management and implementation monitoring once the contract has been awarded. Recently issued circular letters allowed for e-signature of contracts, which is a good step toward digitizing the contract management phase of the process, but is yet to be implemented in practice.

An analysis of CGD available data shows that the contract signing was the most time-consuming step of a procurement process and that there is a negative correlation between prompt contract signatures and prices paid on the purchase of goods, services and sectors (figure 1). The time spent to turnaround contract signature is therefore an indication of organizational efficiency, capacity and resources.

Figure 1. Procuring agencies that performed better at contract signature processing paid lower prices.



Source: World bank analysis using CGD 2018 data

The benefits of the e-procurement platform are therefore not maximized: this leads to delays in processing times, higher incidence of missing documents or non-substantial mistakes, and lower confidence in the effectiveness of the platform.

While further modernization and expansion of the e-procurement functionalities are planned and will be implemented in the near future, below are some recommendations that the Thai Government could consider implementing.

Short-to medium term recommendations:

Safeguard data privacy by ensuring encryption of data such as bid price. e-GP system must provide mechanisms for suppliers' bids to be encrypted prior to its submission to the system.

Allow electronic submission of bid security in the e-GP and performance/contract guarantees and elimination of the requirement to submit these in paper. Suppliers should only be asked to submit the bid security and the performance guarantee in digital format (no hard copy required),

and the procuring entity should be able to check their validity almost in real time, by connecting to the relevant financial institutions.

Long-term recommendations:

Allow e-Evaluation of bids. Some of the features to be considered are the following: The bid evaluation committee members must be able to provide the evaluation results for the opened bids against the evaluation criteria as well as evaluation results (e.g. pass/fail/score). They should also be able to justify their provided scores in e-GP. The system must calculate and display the overall score of the evaluated bids. Suppliers must be able to respond to clarification requests during the evaluation phase through e-GP and all communication must be documented in the system.

Allow digital signature of contracts. Currently in Thailand, the lowest responsive bidder and the Procuring Authority need to physically sign the contract, which requires a certain amount of coordination and is dependent from unforeseeable external factors. Along with digitization of all the supporting documents, introducing a digital signature for contracts would help to prevent delays connected to the coordination between the procuring entity and the lowest responsive bidder to find a time and mistakes. Also, as shown above, *procuring agencies that perform better at contract signature processing can pay lower prices on the goods and services procured.*

Implement electronic payment orders and e-invoice via the e-GP: The current invoicing process contains many inefficiencies and is still not digitalized. The e-GP system could be improved to allow contracting authorities to create a payment schedule, whereby each payment can be associated with a (group of) deliverables and allow interaction with the GFMS for registering the new financial commitments.

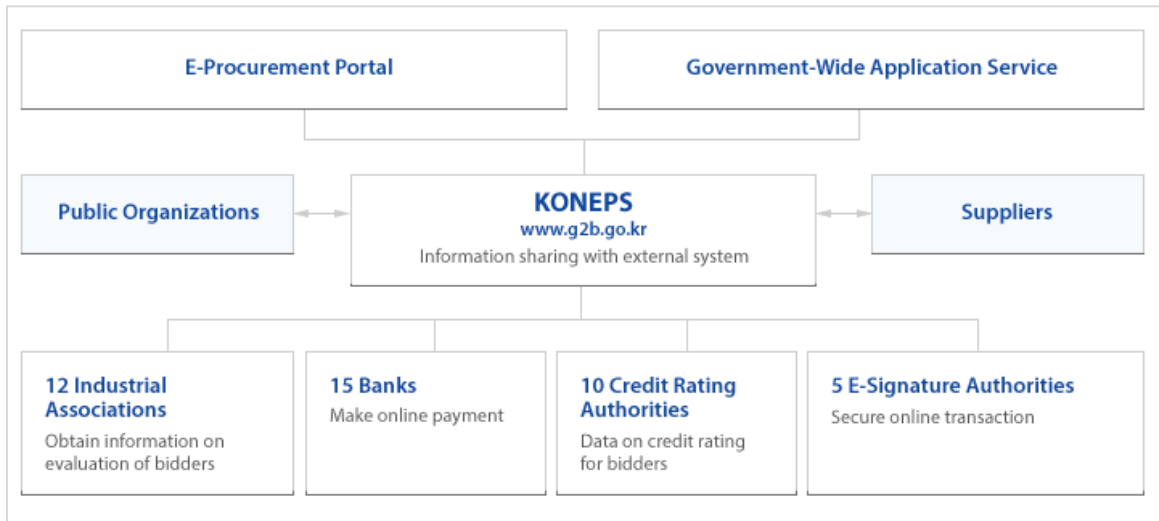
A good example of a well-integrated e-GP is Korea's e-procurement system, KONEPS²¹. The public procurement system in Korea is to a certain extent similar to the Thai one and is comprised of a combination of centralized and decentralized procurement requirements, with legal requirements contained in different sources depending on the type of entity. Local government entities have an autonomous role within the public administration and the use of the e-procurement platforms is governed by the Electronic Procurement Act, including enforcement decrees, which regulates the use of KONEPS and other e-procurement platforms.

This platform links about 215 external systems to share and retrieve any necessary information, and provide one-stop service, including the automatic collection of bidder's qualification data, inspection and delivery reports, e-invoicing and e-payment (Figure 2).

KONEPS allows the following actions in connection with payment to be performed electronically: contract information review, request for upfront payment, request for inspection, checking inspection results, submission of payment request, receipt of payment request and payment approval. Similarly, Finland reformed its government procurement system as part of a broader 'Digitalizing Public Services' work program. Automating the invoicing process through the e-procurement platform reduced the payment time to just 21 days. For the Republic of Korea, e-GP has translated to billions in saving for business and government. Additional savings also come from better record keeping and data management options not

previously available in non e-GP practices where all record keeping was a manual exercise and prone to many errors. e-GP facilitates most record keeping requirements without any additional work from the practitioner alleviating significant work hours and facilitating access to records as and when required.

Figure 2: KONEPS' e-procurement portal



Source: Public Procurement Service of the Republic of Korea, Major Functions of KONEPS <https://www.pps.go.kr/eng/jsp/koneps/major.eng>

When it comes to payment, the KONEPS' platform allows the following actions in connection with payment to be performed electronically: contract information review, request for upfront payment, request for inspection, checking inspection results, submission of payment request, receipt of payment request and payment approval. Similarly, Finland reformed its government procurement system as part of a broader 'Digitalizing Public Services' work program. Automating the invoicing process through the e-procurement platform reduced the payment time to just 21 days.

Other examples of leaders in digital governance of public markets come from the European Union such as Belgium, Latvia, Lithuania, Finland, Portugal, and Slovenia. In Latvia, the e-procurement system (EIS - <https://www.eis.gov.lv/EIS>) is integrated with other e-government technologies, such as the business registry and the tax registry, and the efficiencies generated by its use are closely monitored²².

Tendering requirements: From bid security to bid submission, bid evaluation to contract guarantees

Establishing streamlined tendering requirements is key to achieving optimal outcomes for the contracting authority while encouraging participation and competition in public procurement. This phase captures various requirements that, if proven to be burdensome for the private sector, can act as a deterrent for potential suppliers; it can also impact the contracting authority's ability to complete the bidding phase in an efficient manner and award the contract to the most qualified bidder.

Financial requirements such as bid security and performance guarantee rates should seek to strike a balance between protecting the contracting authority against default and ensuring that they do not hinder competition by excluding eligible suppliers with more limited resources, such as SME's²³. Because of their limited resources, SMEs are disproportionately impacted by the financial requirements associated with participating in a public tender and executing a government contract, including registration fees, tender document costs, and financial guarantees. As such, it is important to ensure that bid securities and contract guarantees are not prohibitively costly and are returned in a timely manner. Several governments have recognized the need for reducing this entry barrier by introducing partial or complete exemptions of the bid security for SMEs, as is the case in Egypt and Bolivia²⁴. Others, such as Australia and Singapore, do not have performance guarantee requirements in the form of financial instruments, offering a greater degree of flexibility for government suppliers²⁵.

Similarly, complicated and extensive administrative and documentary requirements with a rigid over-emphasis on compliance can impose costs and deter participation in public tenders, as they demand scarce resources in the form of time and expertise²⁶. In fact, such requirements are among the top challenges faced by suppliers entering the public procurement market²⁷. These include, for example, cumbersome bid registration requirements, duplicate or paper-based submissions, extensive documentary requirements for qualification or bid submission, and/or insufficient timeframes for bid preparation, all of which can increase the administrative costs associated with submitting a competitive bid for a government contract. The sheer amount of information and documents that must be submitted can overwhelm even the most experienced bidders and are particularly burdensome on SMEs. Research shows that in the United States, costs per employee due to regulation appear to be at least 36% higher in small firms than in medium and large firms²⁸. In addition to streamlining procurement procedures and documentary requirements, providing sufficient

²³ World Bank, 2017, Technical Report: Policies That Promote SME Participation in Public Procurement, IBRD, Washington DC.

<https://www.enterprise-development.org/wp-content/uploads/DCED-BEWG-SME-Procurement-Report.pdf>

²⁴ World Bank, 2017(a), Benchmarking Public Procurement, IBRD, Washington DC.

<http://documents.worldbank.org/curated/en/121001523554026106/Benchmarking-Public-Procurement-2017-Assessing-Public-Procurement-Regulatory-Systems-in-180-Economies.pdf>.

²⁵ Ibid.

²⁶ World Bank, 2022, A Global Stocktake of Development in Public Procurement, IBRD, Washington DC.

<https://thedocs.worldbank.org/en/doc/764a0f6f3e4dc13bc1f836a12436028d-0350012022/original/GPP-ST5-Jan19.pdf>

²⁷ Public Spend Forum, 2021, Barriers to Entry in Public Sector Markets.

<https://govshop.com/blog/public-sector-barriers-to-entry-survey/>

²⁸ Crain, N. and Crain, M., 2010, The Impact of Regulatory Costs on Small Firms, U.S. Small Business Administration.

<https://dair.nps.edu/handle/123456789/3664>

time for interested suppliers to be informed and prepare responsive and competitive bids is equally important to promote a level playing field.

The requirements outlined in the bid evaluation criteria offer a valuable opportunity for governments to improve the effectiveness of the procurement system, encourage sustainability through strategic procurement, and pursue desirable socioeconomic objectives²⁹. Bid evaluation criteria which heavily emphasize lowest price tend to restrict innovation and encourage short-term thinking³⁰. When other aspects of a bid submission are also considered in the evaluation, such as quality, technical merit, environmental or sustainability components, risk management, innovative components, and life-cycle costs, contracting authorities can determine the most economically advantageous tender (MEAT) and thereby make a well-rounded award decision that achieves best value for money. Crucially, setting the award criteria should ensure non-discrimination to fair competition and transparency³¹. A good example can be found in the Nordic countries of Denmark, Finland, and Sweden which have adopted different initiatives to promote a more circular economy through public procurement, including the use of circular criteria such as recyclability and reuse of materials³². In parallel, procurement institutions established focal points and/or committees responsible for the development of relevant sustainability criteria for different types of goods and services and tools to facilitate their application by contracting authorities³³. While the distribution of points assigned to each criterion in a price/quality evaluation method varies depending on the object of procurement, value of the contract, and national objectives, the process of determining evaluation criteria and their relative weights should always aim to achieve best value for money. Doing so requires considering relevant costs, benefits, risks, non-price attributes and/or lifecycle costs.

When award decisions rely exclusively or disproportionately on lowest price criterion, competition between bidders can drive them to submit abnormally low-priced bids to secure contracts. Such bids are considered abnormally low in comparison to both the contracting authority's estimate and market conditions. When contracts are awarded to bidders that offer abnormally low tenders, the contracting authority faces various risks, including incurring additional charges or price increases, receiving goods or services of lower quality than contractually agreed upon, or in the worst-case scenario, complete default of the contractor on their obligations. It is therefore particularly relevant in this context to establish clear rules on how to identify and respond to bids that offer the lowest price but in practice, are not viable, in order to protect the contract authority and public funds from the risk of poor or non-performance.

Context in Thailand:

Tendering requirements in Thailand are characterized by:

- *Lengthy timeframe for returning bid securities and contract guarantee, and high rate of contract guarantee (5% of the estimated value of the contract).* Data collected from both potential suppliers and contractors indicate that the financial securities associated with bidding and executing public

²⁹ World Bank, 2022

³⁰ European Federation of Engineering Consultancy Associations (EFCA), 2020, How To Derive MEAT Criteria, Brussels. https://www.efcanet.org/sites/default/files/2020-01/MEAT%20booklet_final.pdf

³¹ SIGMA, 2016, Public Procurement Tender Evaluation and Contract Award, Brief 9, OECD Publishing, Paris. <https://www.sigmaweb.org/publications/Public-Procurement-Policy-Brief-9-200117.pdf>

³² The point system is determined in each TOR relative to the objectives, but there are sustainability clauses incorporated in the standard contracts as well. One of the key factors that determine whether and how many points to allocate to circular economy criteria are sustainability initiatives that set green public procurement targets. One such target, for example, is the requirement by the city of Oslo to ensure that 50% of procurements of food and beverages are eco-labelled.

³³ Alhola, K., Salmenperä, H., Ryding, S., and Busch, N., 2017, Circular Procurement in the Nordic Countries, Nordic Council of Ministers, Denmark. <https://norden.diva-portal.org/smash/get/diva2:1092366/FULLTEXT01.pdf>

contracts are an obstacle for many, and specifically for SMEs. Bidders incur costs to obtain bid securities, and those amount to sunk costs when the bidder is unsuccessful. Experiencing weeks of delay in returning bid securities to unsuccessful bidders further strains finances for suppliers with already limited resources. Contractors also experienced delays in the return of contract guarantees despite the legal mandate that these be returned within 15 days of final acceptance of delivery³⁴. In practice, compliance with the 15-day limit is lenient, as different guarantee periods can be indicated in each tender's TOR, and the moment from which the 15-day period is calculated also varies by tender. Based on experience, 75% of contractors indicated waiting over 30 days for the contract guarantee to be returned, and 35% indicated having to wait longer periods of over 60 days³⁵. Such lengthy timeframes for returning contract guarantees can severely hinder a contractor's ability to keep their business afloat. Additionally, 60% of all respondents considered the 5% contract guarantee to be so high that it acted as a deterrent for participation, a perception shared by both potential suppliers and contractors³⁶.

- *Extensive administrative and documentary requirements for participation in a public tender and insufficient time allotted for the preparation of a competitive and responsive bid.* The minimum timeframe between advertisement of a tender notice and the deadline for submission is established in Clause 51 of the Ministerial Regulations. These are 5 business days for contracts valued at 0.5-5M Bahts, 10 business days for contracts 5-10M Bahts, 12 business days for contracts 10-15M Bahts, and 20 business days for contracts >50M Bahts. Such time limits are quite short in general and do not comply with international practices. In the EU, for example, the minimum timeframe for bid submission is 35 days in an open procedure (where the tender is open to all bidders), and 30 days in a call for competition procedure (where it is a two-stage tender and bids are submitted in the second stage). The timeframe allotted for the preparation and submission of tenders in Thailand was considered inadequate by 30% of respondents with experience in submitting a bid; of these, 45% responded that they “often” decided against submitting a bid for a public contract because the time allotted was considered too short³⁷. The issue is augmented for bidders in the Thai public procurement market considering the various steps, documents, and time required in the preparation of a competitive and responsive bid. These administrative and documentary requirements resulted in significant additional costs on bidders, who were often unable to absorb the resource demands with the limited time offered to them. The time allowed for bidders to prepare and submit their bids had an impact not only on deterring suppliers from participating (hence impacting competition), but also negatively impacted prices paid by procuring entities. Very short periods and very long procedures resulted in higher prices³⁸.
- *Emphasis on lowest price criteria in bid evaluation rather than best Vfm.* Section 65 of the Public Procurement and Supplies Administration Act B.E. 2560 and accompanying Ministerial Regulation provide for the consideration of both lowest price criterion and a combination of lowest price along with other quality criteria. The contracting authority determines which approach to adopt. Details of the criteria to be evaluated are laid out in the TOR of each tender, explaining whether and how scoring will be factored for both price and quality elements. While the legal framework's inclusion of quality criteria, including MEAT, in bid evaluations is in line with international best practice, in reality, there continues to be an emphasis on the use of lowest price. Bidders and contractors echoed the need for award criteria to place a greater emphasis on aspects beyond the lowest price,

³⁴ Section 170 of Ministry of Finance Regulations on Public Procurement B.E. 2560.

³⁵ See Annex 3, Table 3.1.

³⁶ See Annex 3, Table 3.2.

³⁷ See Annex 3, Table 3.3 and 3.4.

³⁸ The finding on the correlation between price paid and bid submission periods is based on an analysis of CGD procurement data by WB staff.

indicating that contracting authorities are mainly using the lowest price criterion approach and/or assigning a disproportionately high weight to price in the price-quality approach. The impact of this practice is further accentuated by the use of pre-tender cost estimates, which were often perceived to be too low.

- *Inadequate scrutiny of abnormally low bids for evaluation and award.* In Thailand, abnormally low bids are regulated by Circular of the Office of the Auditor General. The circular establishes a 15% threshold for identifying abnormally low bids. If a submitted bid is found to be lower than the reference price by more than 15%, the contracting authority is required to report the bid to the Office of the Auditor General. Contracting authorities shall also require bidders to explain prices that appear to be abnormally low. Crucially, even if a bid is determined to be abnormally low based on the established criteria, the bid evaluation committee can still proceed with the selection and award process, so long as the Office of the Auditor General is informed. The contracting authority can only reject bids if the explanation and/or evidence provided by the bidder to justify the price is not considered satisfactory. The disproportionate importance of price in bid evaluations has created a high risk of a race to the bottom, and some contractors and bidders maintain that abnormally low bids continue to be an issue. The observed impact includes compromising long-term quality and cost-saving for short-term cost-saving as well as setting unfeasible progress targets and final deadlines, both of which ultimately increase the administrative and financial costs incurred by the contracting authority.

Short- to medium-term recommendations

Increase the timeframe allotted for preparing and submitting bids while allowing for shortening it in the face of urgency. The minimum timeframe allotted for preparing bids – between the moment the tender notice is published and the deadline for bid submission – should increase to allow suppliers sufficient time to prepare competitive and responsive bids. The minimum timeframes should be defined on the basis of the procurement method chosen and give due consideration to the nature and complexity of the object of procurement. Same applies for the timeframe allotted for bid submission by passing CGD instructions to extend the window for bid submission, particularly for bids that require submission and upload on the e-GP of large files and documentation.

Ensure that public procurement processes and documents are not unnecessarily complicated and burdensome; adopt a risk-based approach to ensure documentary requirements correspond to the value and risk of the object of the procurement. Beyond reducing administrative costs through efficient adoption of digital solutions and improving e-procurement functionality, contracting authorities can resort to a range of policy features to streamline tendering and bid submission procedures. As a first step, burdensome bid information and documentary requirements that create time-consuming upfront administrative costs for registered suppliers should be identified and eliminated or limited for procurements of low-value contracts. Specific attention should be given to streamlining the number of documents (such as selection criteria requirements), certifications, or approvals required, the use of standardized and comprehensible language, and any steps that require duplication or repetition (for example, requiring multiple visits to different departments in the same agency). Successful completion of the documentary requirements for bid submission should not require seasoned past experience in the public procurement system.

Another approach could be to permit the self-identification of suppliers' selection criteria in the initial stages of the bidding process and require only selected bidders to provide supporting documents for verification in the final stages. Currently, Clause 15 of the Ministerial Regulations requires that bidders submit their qualification documents along with their bid proposals. Such

documents include registration certificates, lists of partners, directors, and shareholders, articles of association, commercial certificates, identification cards, tax certificates, and any other additional documents as deemed necessary by the contracting authority. Thailand could consider separating these requirements to reduce the burden on bidders by only requesting these qualification documents after a bid proposal is evaluated and selected.

In parallel, contracting authorities should develop a set of good quality model tender documents to improve standardization, in line with the recommendation above. Model documents should include templates for tender notices, tender documents, specifications, and general contract conditions, with consideration for type of procurement (goods, works, consulting services, non-consulting services) and value of procurement. These can be supplemented with standardized checklists that outline the steps, considerations and documents required to submit a responsive and competitive bid³⁹. For example, the checklist could include a list of all documents to be submitted, links or instructions as to where they can be obtained, the maximum file size accepted by the e-Procurement system, and any desired format or syntax considerations.

Define more stringent criteria around the identification of and response to abnormally low bids. Abnormally low bids should be identified, investigated, and, if found to be so, excluded at the evaluation stage. This includes the procedure and time required to obtain written justifications from any bidders that offer abnormally low bids, evaluate responses, and determine whether the reasons offered are valid without jeopardizing contract performance. Contracting authorities should have practical guidelines on identifying and responding to abnormally low bids, which can be done through a variety of approaches, preferably all together: (i) comparing the bid price with the engineer's cost estimate; (ii) comparing the bid price with the bids offered by other bidders that have submitted substantially responsive bids; and (iii) comparing the bid price with past prices paid for similar contracts. Once identified, the contracting authority should clarify with the bidder(s) their justifications for the low price. Justifications should focus on the rates identified as abnormally low and provide a rationale for how these rates were obtained. Contracting authorities should specify the format in which justifications are provided, for example, through a standardized form for cost comparison breakdown.

Examples of the type of information that contracting authorities may seek to justify abnormally low bids include: "(i) labor rates or cost; (ii) sources and quantities of materials; (iii) track record for delivering similar item(s) at a similar price; (iv) construction plant and equipment; (v) transportation distances; (vi) source and modalities of acquisition of the proposed construction equipment (e.g., hire, lease, purchase agreement, etc.); and (vii) other requirements for which the borrower requires clarification"⁴⁰. Contracting authorities should ensure that bidders are granted sufficient time to provide any requested clarifications, documents, or price analyses. Based on the volume and complexity of the information requested, a period of no less than 5 to 10 business days is generally considered to be reasonable⁴¹.

After analyzing the justifications, the guidelines should clarify what the options of the contracting authority are; namely: to accept the bid if the justification is deemed satisfactory or exclude the bid

³⁹ A good example can be found in Singapore's Public Procurement Supplier's Guide: https://www.gebiz.gov.sg/docs/Supplier_Guide_Detailed.pdf

⁴⁰ Asian Development Bank (ADB), 2018, Abnormally Low Bids: Guidance Note on Procurement, ADB, Manila. <https://www.adb.org/sites/default/files/abnormally-low-bids.pdf>

⁴¹ World Bank, 2016, Abnormally Low Bids and Proposals: guide to the identification and treatment of Abnormally Low Bids and Proposals, IBRD, Washington DC. <https://thedocs.worldbank.org/en/doc/780841478724671583-0290022017/original/ProcurementGuidanceidentificationandtreatmentofAbnormallyLowBidsandProposals.pdf>

from consideration if deemed unsatisfactory. Ultimately, the ‘investigation’ component of evaluating abnormally low bids should be considered part of the bid evaluation process, and the results and decisions regarding that investigation should be completed before the contract is awarded. Consequences for bidders who submitted abnormally low bids could include temporary or permanent blacklisting from public tendering opportunities to minimize and disincentivize future occurrences.

Consider lifecycle costing analysis: Life-cycle costing should be used whenever relevant, particularly when the costs of operation and/or maintenance over the specified life of the goods or works are estimated to be considerable in comparison with the initial cost and may vary among different bids. Life-cycle costing is evaluated on a net present cost basis. The life-cycle costs are added to the Bid price, for evaluation purposes only. Lifecycle-cost analysis can be particularly useful for comparing the total cost of bids, as well as the relative cost implications of different technological alternatives and acquisition alternatives that may be presented by bidders (e.g., purchase vs. leasing, replacement or renovation of a building, purchase/leasing of equipment or contracting out for a service).

In cases where lifecycle costing is to be applied in the evaluation of bids, the procuring entity should disclose the following information in the bidding documents: disclosure that life-cycle costing will be applied in the evaluation of bids, number of years of operation to be used in the life-cycle cost determination, the discount rate, in percent, to be used to calculate the net present cost of future costs over the life-cycle period; and the factors and methodology to be used for calculating the costs of operation, maintenance, and the residual value at the end of the operational period, including the information to be provided by the bidder in the bid with respect to life-cycle costs.

Life-cycle costing analysis takes into account various costs, including:

- Initial, adjusted purchase price
- Operating and maintenance costs – calculated on the basis of an operational period (and e.g., in the case of vehicles, km of operation per year) specified in the bidding documents, at a specified rate of fuel or other energy cost
- Fuel, energy (or other consumables) required for operation
- Labor costs for operation, including expert personnel that may be required in the case, e.g., of complex equipment
- Insurance
- Cost of maintenance and spare parts (using spare part prices guaranteed by the bidder for the years in the relevant period of time, or prices estimated by the procuring entity if bidder has not provided such guaranteed prices)
- Costs associated with “downtime” (i.e., when the equipment is not in service, e.g., due to repairs or maintenance)
- Reconditioning and upgrade costs – this refers to possible major repairs and refurbishment that may be required to maintain or extend the operational life of a major physical asset
- Depreciated value (resale/residual value)/disposal costs at the end of the specified operational period

Practical support offered by the sustained implementation of LCC would require the development or adoption of LCC tools and good practices such as those developed in some EU countries⁴². These tools provide a structured framework within which relevant costs of specific purchasing categories are pre-defined and can be assessed, hence allowing practitioners to more easily compare the LCC of various products.

⁴² Estevan, H., Schaefer, B., and Adell, A., 2018, Life Cycle Costing State of the Art Report, SPP Regions, EU Secretariat. https://iclei-europe.org/fileadmin/templates/iclei-europe/lib/resources/tools/push_resource_file.php?uid=WiTjlkpz

Long-term recommendation:

Allow for more flexible financial requirements in the bidding stage and reconsidering the 5% performance guarantee rate. In addition to fully digitizing the submission of bid and performance guarantees and ultimate elimination of the requirement to submit these instruments in hard copy, contracting authorities can introduce some regulatory measures that lower the cost incurred by unsuccessful bidders as a result of delays in the returning bid securities. For example, since SMEs are disproportionately constrained by the financial requirements associated with submitting a tender, contracting authorities could partially or completely waive bid security requirements for SMEs, as mentioned above. As mentioned above, Egypt, Rep., Bolivia, and Russia are among the countries that have exempted SMEs from all or part of the bid security⁴³. An alternative approach would be to focus on enabling compliance with the 15-day limit established in the legal framework for the return of both bid securities and contract guarantees.

Performance guarantee rates should not constitute a barrier to suppliers. The legal framework should be flexible with regards to the form of the performance guarantee, with options including a certified check, a certificate of deposit, a performance bond, a bank guarantee, an insurance guarantee, or a letter of credit. While there is no recognized good practice as to the value of the guarantee, “a recognized good practice is to require both a low percentage of the contract value as performance guarantee and to provide the supplier with options as to the different type of financial instruments required”⁴⁴. The data collection exercise revealed that while bidders do have the flexibility to choose the form of the contract guarantee, the 5% contract guarantee rate is too high and acts as a considerable deterrent for bidders and potential suppliers and should be revisited.

Good practice examples

Financial and Documentary requirements – Singapore is one of the few high-income economies that do not have bid guarantee or contract guarantee requirements in the form of financial instruments. When it comes to reducing transaction costs by simplifying documentary requirements, article 59 of the 2014 EU Directive on Public Procurement introduces the European Single Procurement Document (ESPD)⁴⁵. The ESPD is a supplier self-declaration tool that, based on a standard form, provides details on their fulfillment of certain exclusion and selection criteria. By completing the ESPD, suppliers confirm that they fulfill the relevant selection criteria as outlined in the document, are not in a situation that warrants their exclusion, and that they are able to present supporting documents upon request and without delay. For ease of reference, the document also identifies the public entities responsible for providing each required supporting document as well as the databases where relevant information can be accessed. While contracting authorities must accept the document when receiving bid submissions, they are required to ensure that up-to-date supporting documents are submitted by the winning bidder prior to award. By using the ESPD, only the selected bidders are required to submit the full set of documentary requirements, thereby reducing the administrative burden incurred by unsuccessful bidders. The European Commission estimates that this should reduce the administrative cost on companies by over 80%⁴⁶. Additionally, to ensure

⁴³ World Bank, 2017(a)

⁴⁴ Ibid.

⁴⁵ The ESPD tool can be accessed through the following link: <https://espd.eop.bg/espd-web/>

⁴⁶ World Bank, 2017.

sufficient time for bid preparation, a minimum timeframe of 35 days is established between the publication date and the submission date⁴⁷.

Best value for money - As an example of the best value for money criterion set by other economies, note that Latvia establishes in Article 51 of its Public Procurement Law that: “(1) The contracting authority shall award the procurement contract to the most economically advantageous tender. (2) The most economically advantageous tender shall be determined by: 1) using a price or cost approach, applying an efficiency approach (for example, evaluating life-cycle costs); 2) taking into account the price or costs and quality criteria related to the subject of the procurement contract, such as: (a) quality, including technical advantages, aesthetic and functional characteristics, accessibility, compliance with universal design, social and environmental requirements, innovative characteristics and conditions of sale, (b) the management structure of the procurement contract and the qualifications and experience of the staff involved, if the quality of the procurement contract can be significantly affected by the qualifications and experience of the staff involved; (c) aftersales services and technical assistance, delivery terms such as delivery date, delivery process and delivery period or delivery completion period.”⁴⁸

Abnormally low bids - In Portugal, a tender is considered abnormally low if the price offered is lower than the contracting authority’s budgeted price by $\geq 40\%$ for public works contracts and $\geq 50\%$ for other types of contracts⁴⁹. It also provides the contracting authority with the option of setting “anomaly thresholds” based on a percentage deviation from the average price of the tenders to be accepted. In all cases, this information is legally mandated to be included in the tender documents. Other countries, such as Italy – per Article 97 of Legislative Decree No. 50 Approving the Consolidated Procurement Code of 2016 – do not leave the percentage deviation at the discretion of the procuring entity. The regulatory framework stipulates that “where the award criterion is the lowest price, the congruity of tenders is assessed on the tenders presenting a downward equal to or exceeding a determined threshold of anomaly” and “in order not to make the reference parameters for the calculation of the threshold pre-determinable by tenderers, the responsible official or the jury proceed to the draw” of the method (among a predefined list of options in the same Article) that will be used to calculate the thresholds⁵⁰ (SIGMA, 2016a).

⁴⁷ Organization for Economic Cooperation and Development (OECD), 2018, SMEs in Public Procurement: Practices and Strategies for Shared Benefits, OECD Publishing, Paris.

<https://www.oecd.org/publications/smes-in-public-procurement-9789264307476-en.htm>

⁴⁸ Latvia Public Procurement Law of 2018, as amended in 2020.

<https://faolex.fao.org/docs/pdf/lat206624.pdf>

⁴⁹ Article 71 of the Portugal Public Contract Code No. 18 of 2008, as amended in 2012.

https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/Portugal_Ley18_2008.pdf

⁵⁰ SIGMA, 2016, Abnormally Low Tenders, Brief 35, OECD Publishing, Paris.

<https://www.sigmaxweb.org/publications/Public-Procurement-Policy-Brief-35-200117.pdf>

Acceptance and review process during contract management

Efficient and effective procedures and a quality legal framework pertaining to contract execution and management are key to ensuring that the successful outcome of a procurement in terms of achieving value for money for the contracting authority. When goods, services or works are delivered on time and within budget, it also enhances the attractiveness of the public procurement market and increases confidence with respect to the integrity and efficiency of the process.

Contract amendments can lead to serious delays during contract execution. While frequent amendments are an indication of poor planning, how well a contracting authority manages the process is an indication of efficiency. Accordingly, the legal framework should define the responsibilities and roles for managing contracts as well as the method for reviewing and approving contract amendments in a timely manner⁵¹. Approval mechanisms for contract amendments should not be so stringent that they prevent the progress of contract implementation and lead to over-runs and payment delays. Payment delays hinder the private sector's ability to participate and remain in the public procurement market. This is particularly true for SMEs who struggle with limited cash flow. It is also crucial in procurements where the payment structure is done in instalments, as a payment delay in one phase can lead to delays in the delivery of the next phase. Ensuring the timely and reliable processing of payments reduces the commercial risk faced by government suppliers and promotes trust in public markets. Research has shown that late payments have a significant and negative impact on firms. A Study using data on public procurement in the EU found that 38% of firms consider late payment a main obstacle⁵². Delays in payment are also associated with higher firm exit rates⁵³, higher likelihood of bankruptcy, and lower economic growth rates⁵⁴.

Context in Thailand:

The Act covers the whole procurement process, including the contract management phase, which is regulated in Chapters IX (Conclusion of Contracts) through XIII (Supplies Administration). Contract administration and the role of inspection committees are further regulated in detail in the Ministerial Regulations. Specifically, the rules governing changes to the terms or price elements of the contract, which are generally not permitted except for certain situations defined in Section 97 of the Act, require comparisons of price and quality. They also require various levels of administrative approval, including by the Office of the Attorney-General, the head of the State agency, and other qualified persons based on the scope of the contract and amendment. The result of such extensive approval mechanisms for contract amendments is evident in the data collection exercise. Contractors with experience in modifying a contract during execution reported an average approval waiting time of 31 days⁵⁵. Amendments are more commonly observed in the context of revising deadlines for contract execution and payment terms, as contractors

⁵¹ Methodology for Assessing Procurement Systems (MAPS), 2018, MAPS Methodology.
<https://www.mapsinitiative.org/methodology/>

⁵² Vincze, M., Mathis, J., Dumitrescu, A., Erbilgic, A., Coscia, E., and Megliola, M., 2010, Evaluation of SMEs' access to public procurement markets in the EU, EU Publications.

<https://ec.europa.eu/docsroom/documents/14808/attachments/1/translations/en/renditions/native>

⁵³ Connell, W., 2014, The Economic Impact of Late Payments, European Commission Economic Paper no. 35, European Commission, Brussels.

https://ec.europa.eu/economy_finance/publications/economic_paper/2014/pdf/ecp531_en.pdf

⁵⁴ Checherita-Westphal, C., Klemm, A., and Viefers, P., 2015, Governments' Payment Discipline: The Macroeconomic Impact of Public Payment Delays and Arrears." IMF Working Paper 2015/013.

<https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Governments-Payment-Discipline-The-Macroeconomic-Impact-of-Public-Payment-Delays-and-Arrears-42617>

⁵⁵ See Annex 3, Table 3.5.

confirmed having to adjust the original completion date for a government contract, and 66% described this as “often” being the case⁵⁶.

Another aspect of the contract management phase that deserves particular attention is that of the review and acceptance process for progress payments. The legal framework provides for the appointment of a supplies acceptance committee to administer the inspection and acceptance of the works or supplies at each stage of operation, commensurate with the targets set out for instalment payments. The committee is liable for the management and execution of the contract in accordance with the specifications, terms and conditions agreed upon. Additionally, for the inspection and acceptance of construction works, a supervisor shall be appointed for closer supervision of the gradual stages of the works, and who is responsible for providing feedback to the acceptance committee.

The acceptance process begins once the contractor submits the relevant deliverable(s) for approval, after which the supervisor inspects the delivered works and provides feedback to the committee. The committee must then review the feedback to ensure compliance with the agreed upon terms and specifications, sign a form indicating acceptance of the works or suppliers, and the case moves forward to the procurement and financial departments of the contracting authority, which are responsible for clearing the progress payments through issuance of a disbursement letter. The process of accepting the works or supplies and clearing the progress payments are done off-line; however, certain details regarding the submission and acceptance of deliverables, as well as payments, must still be uploaded to the e-Procurement system.

In the past two decades, the Government of Thailand undertook wide-ranging public financial management reforms to improve budget monitoring and budget disbursement. A real time financial management system for the public sector— the Government Financial Management Information System (GFMIS)— was fully implemented in all government agencies in March 2005. The GFMIS system of the CGD includes possibilities for: (i) budget planning and appropriation; (ii) budget monitoring and execution and electronic payments; (iii) national accounting; (iv) capital procurement; (v) auditing; (vi) organizational management; and (vii) administration of personnel and benefits. During the payment stage, the disbursement of funds to suppliers’ process has already been integrated in the GFMIS system of the CGD. Delays mostly take place at the stage of inspections and with the procurement departments of the contracting authority.

The main bottlenecks observed in this stage are in the lengthy process for obtaining relevant approvals at the inspection stage, and delays experienced in processing and receiving progress payments after the committee signs the acceptance form. Delays in obtaining relevant approvals from members of the acceptance committee, and subsequently from the procurement and finance departments, led to longer waiting times for contractors, who reported having to wait an average of 35 days to receive progress payments⁵⁷. While the legal framework does establish a 5-day time limit for disbursements to be processed⁵⁸, in practice, the limit is not always adhered to. Further, 80% of contractors stated that the time taken by the government to pay a progress billing affected their company’s cash flow⁵⁹. The financial pressure experienced by the private sector as a result of these delays are further accentuated when considering that 73% of contractors also explained that the government “always” refuses to pay a progress billing because of claims that the quality of goods, works or services delivered were poor⁶⁰. Without the establishment of time limits within which the acceptance committee must complete its inspections and

⁵⁶ See Annex 3, Table 3.6.

⁵⁷ See Annex 3, Table 3.7.

⁵⁸ According to clause 24 paragraph 2 of Regulation for Money Disbursement, Money Preservation and Fiscal Transfer, a government agency shall proceed disbursement without delay and at least must not exceed 5 days from supplies acceptance or the date which the government agency got report from a subsidiary.

⁵⁹ See Annex 3, Table 3.8.

⁶⁰ See Annex 3, Table 3.9.

deliver its decision, and without the option to easily track progress payments online, contractors are left waiting while they struggle with limited cash flow⁶¹.

Short- to medium-term recommendations

Map and refine the processes to approve contract amendments and progress payment and improve communication on progress. The procedures and documents required for processing contract amendments and progress payments can be streamlined to reduce administrative burdens on the contracting authority and transactional costs on the contractor. To identify target areas for improvement, the current process for approving contract amendments and progress payments can be mapped out in terms of the number of steps required by both parties to the contract - i.e. the relevant government entities or departments and the contractor. Where sources of delay are identified, bottlenecks can be reduced to ensure that the steps and procedures can realistically be completed within the legally established timeframe. One of the areas identified above is the process for approving progress payments. Once the committee signs off on the acceptance form, various approvals from the same [procurement] department must be obtained for the issuance of a disbursement letter. Consolidating those approvals to one designated case manager could reduce the time required to issue the disbursement letter. Further refinements could be made by clearly defining the scope and purpose of each stage of the approval process. For example, since the procurement department's involvement in the execution of the project is limited, and the acceptance committee's oversight responsibilities entail diligent review and familiarity with the project, clarification requests to the acceptance committee should not prevent the issuance of the disbursement letter.

The status of payment processing from the moment the works or supplies are delivered and until the funds are disbursed should be communicated to the contractor to reduce the pressures of uncertainty associated with payment delays. Doing so also reduces information barriers and improves transparency throughout the contract management phase. This can be integrated as part of the e-Procurement recommendations outlined above in the form of a tracking dashboard that displays dates and times for the completion of each step in the acceptance process: inspection by the supervisor, review by the acceptance committee, review by the procurement department, and clearance by the financial department. Automated email notices on completion of each step could also be integrated.

Impose penalties and interests to help remedy payment delays Incentivizing prompt payments to government suppliers can be achieved by imposing penalties in the event of a delay. One such approach which is widely adopted is to impose late payment interest at the prevalent interest rate for commercial borrowing. This interest rate can be determined at the time of contract signing, the time of the delay's occurrence, or based on an established cycle such as the beginning of each fiscal quarter. Alternatively, the interest rate could be determined in the contract itself or based on a flat rate to be determined by the legal framework. Imposing such penalties on the contracting authorities where delays occur can help to minimize their future occurrence by incentivizing compliance with the legally established time limit. The legal framework currently does not grant contractors the right to accrue interest on payments due in case of delay, and data collected from contractors further confirmed that such clauses are not incorporated into government contracts.

⁶¹ Worth noting that the Thai laws and regulations do not preclude penalties on delayed payments, the delays referred to here are those incurred during the review of the works/goods/services. These delays are separate from the payment delay (payment request can only be submitted after it is completed) but largely impact it. Essentially, payment delays (and potential penalties) are counted from the time of submitting the pay request/invoice, but these review/inspection delays happen before it can be submitted.

Since contractors worry that submitting claims for interest on delayed payments would risk their ability win contracts in the future, authorities could go one step further and disburse the interest along with the funds automatically and without the contractor submitting a claim. In doing so, contracting authorities are incentivized to process payments in a timely manner and contractors are compensated for delays.

Appoint back-up members to the acceptance committee to ensure continuity of inspections and approvals.

Since contractors can't submit invoices until the works are reviewed and accepted by the acceptance committee, it is important to avoid delays at this stage of the approval process. To do so, qualified officers should be appointed as substitute committee members to act on their behalf in conducting reviews of the works or supplies as needed. Appointing substitutes helps to ensure the continuity of the approval process in the absence of one or two members.

Various countries have implemented a variety of measures to carry out the contract management phase more efficiently. Brazil, Cambodia, Chile, Germany, Vietnam are among the economies that compensate contractors in case of payment delays. In fact, Brazil, Chile and a few other countries grant the penalties and interest rates automatically, without having the contractor demand it. In Chile, the legal framework establishes a 30-day limit for all public and private contracts, unless both parties agree otherwise in writing. Penalties for late payment include (1) 1% fixed recovery commission of the unpaid amount, and (2) a statutory interest rate for monetary obligations, which is published and updated by the Commission for the Financial Market. Interest begins to accrue as of the first day of payment delay and until the invoice amount is paid in full⁶².

Complaints and bid challenges

The existence of a fair and transparent complaints mechanism bestows confidence in the procurement process because it increases the likelihood that the procurement will be carried out in a more impartial and transparent manner; and confidence can be a powerful incentive for competition⁶³ While disgruntled bidders should have the right to file a complaint at any stage of the procurement process (both before and after the award is granted), this possibility is not always effectively built into the procurement process⁶⁴.

Effective structures for receiving challenges on procurement decisions entail an independent review body and process, timely resolution of challenges, legally established time limits for different stages of the review process, adequate remedies, and mechanisms for enforcement of decisions⁶⁵. Ensuring that aggrieved bidders have the chance to lodge complaints or challenges prior to contract signing allows them the opportunity to win the contract and promotes fairness in the procurement process. For the contracting authority, such structures can serve to reinforce accountability by allowing the public the opportunity to hold public officials accountable for their actions and decisions.

⁶² ESTABLECE PAGO A TREINTA DÍAS, LEY 21131(2019), as amended in January 2020.
<https://www.bcn.cl/leychile/navegar?idNorma=1127890>

⁶³ MAPS, 2018.

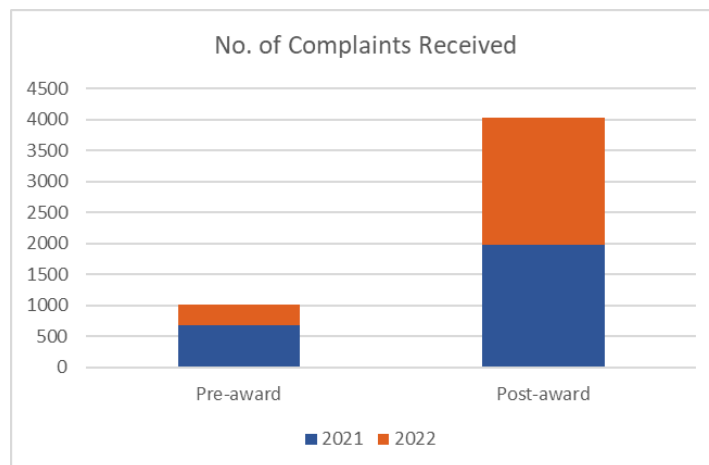
⁶⁴ World Bank, 2017(a).

⁶⁵ OECD, 2015.

Context in Thailand:

The legal framework provides for a standstill period of 7 days from the announcement of the award to allow bidders to challenge award decisions⁶⁶. However, a bidder is entitled to submit complaints throughout the tendering process (both pre- and post-award) where it is considered that the contracting authority has failed to implement procurement procedures in compliance with the established principles, rules and regulations. To submit a challenge, bidders must hand in a signed physical letter to the contracting authority detailing the basis for the challenge. Receipt of a challenge letter automatically triggers a pause in the tendering process while the contracting authority considers the challenge. The Act establishes time-limits for the process: 7 days for a disgruntled bidder to submit their challenge to the competition authority, 7 days for the contracting authority to review the challenge and determine whether it should proceed to the Appeals Committee, and 30 days for the Appeals Committee to make a decision regarding the challenge, with extensions of 15 days permitted twice (for a total of 30 days extension limit). There is no legal recourse for delays experienced during the challenge review process. Once a decision regarding the challenge is issued, results must be published online. Procurement proceedings may only resume after the Appeals Committee issues a notification allowing the resumption of procurement proceedings.

The Appeals Committee is responsible for considering and making decisions regarding procurement challenges and complaints. Membership consists of representatives from different agencies and with varying degrees of technical knowledge and leadership levels, including high-level public officials such as the Director-General of the Comptroller-General's Department. In total, the Committee has between 16-18 members, none of which are specifically required to have the qualifications to hear and respond to legal disputes and enforce decisions. Given the number of members, the fact that they are involved in different aspects of procurement, and their range of qualifications and functions, the existing structure for receiving and responding to complaints faces issues of both impartiality and efficiency.



Source: CGD Data

Between 2021 and 2022, the appeals committee received a total of 1,010 pre-award complaints and 4,023 post-award complaints and challenges, indicating a gradual increase in the use and awareness of the challenge process. However, feedback received from bidders indicated that while there is an increased awareness of processes and structures for formal procurement challenges, many do not even consider making use of it. This attitude seems to apply not only in public procurement, but for all petitions against authority decisions. Reluctance on part of bidders to lodge complaints or challenges are likely due to a

⁶⁶ Section 117 of the Public Procurement and Supplies Administration Act B.E. 2560

combination of factors, including a lack of trust in the fairness of the process, burdensome procedures to submit a complaint and obtain a timely decision, and inadequate remedies or enforcement of remedies.

Short- to medium-term recommendations

Ensure the independence and impartiality of first-tier reviewers within the contracting authority; Reconsider the structure, size, and composition of the appeals committee to preserve the impartiality and improve the efficiency of second-tier reviewers. The first layer of review takes place at the Contracting Authority level, so securing the impartiality of the reviewing body is crucial to the integrity of the complaints and challenges system⁶⁷. It is therefore recommended that the challenge is received by an individual or unit within the contracting authority but outside of, and preferably hierarchically superior to, the specific office that is undertaking the procurement.

The size and diverse composition of the Appeals Committee makes it inherently susceptible to delays and gridlock due to bureaucracy. Currently, the 74-day timeframe for receiving decisions from review bodies on procurement challenges is far from the upper-middle income average of 25 days⁶⁸. The involvement of members in different aspects of the procurement process also risks bias. Reducing the size of the committee and restructuring its membership to include core members with required overarching qualifications (both legal and procurement related) and additional specialized members could help streamline the review process. Given the complexity of procurement contracts, specialized members should be appointed based on their knowledge and expertise in the type of procurement conducted. For example, making decisions on challenges pertaining to procurements of works and large infrastructure projects are likely to require engineering and construction experience. Authorities with key interests in procurement, such as the State Audit Office and the Bureau of the Budget, would provide feedback to the committee rather than as part of the committee, to preserve impartiality of the deliberations.

Clearly define the qualifications of members of the committee based on the responsibilities bestowed upon them. Thailand's system for formal procurement complaints and challenges is based on an alternative dispute resolution mechanism through a specialized authority – the Appeals Committee – which is legally mandated by the Act. The function of the Appeals Committee is essentially quasi-judicial, and as such, the qualifications of [at least some of] its membership should be clearly defined to include the legal skills and training necessary to receive, review, and make well-informed decisions on complaints and challenges in a timely manner. Such qualifications could include judicial training, specialized legal certifications, and/or postgraduate law diplomas. While these qualifications may be considered in practice, it is important to codify in the legal framework to provide standardized guidance and a basis for compliance.

Denmark's Complaints Review Board is a quasi-judicial authority governed by the Danish Act on Complaints Board for Public Procurement. The Act is supplemented by an Executive Order which regulated the process for submitting complaints and the Board's procedure to review and respond. The composition of the board consists of a president, ten vice-presidents and a number of experts, all of whom are appointed for 4-year periods and are eligible for re-appointment. Vice-presidents consists of six High Court judges and four District Court judges), whereas experts are appointed based on their specialized area of knowledge within fields such as construction, transportation, utilities, public procurement, etc. The president assigns each complaint received by the Board to one of the vice-presidents, who is then appointed an expert to assist in the review process. Experts

⁶⁷ Gordon, D., 2006, Constructing a Bid Protest Process: Choices Every Procurement Challenge System Must Make- Public Contract Law Journal 35 (3).
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=892781

⁶⁸ World Bank, 2017(a)

independent as members of the Complaints Review Board and thus are not “subject to powers of direction or supervision of the authority or organization where they have their principal occupation or the authority or organization that has the right of nomination”⁶⁹. The board is also equipped with three lawyers to help prepare cases and draft decisions and two secretaries to assist with various administrative tasks.

Decisions are made based on a majority vote, with the president retaining the right to cast a deciding vote in case of a tie. To avoid undue delays, the Board first undertakes a prima facie case test to determine whether the complaint is well-founded and warrants any suspensive effect. The legal framework outlines the conditions that must be met for challenge to result in a suspensive effect, and this decision does not prejudice the final assessment, nor does it constitute a substantive decision. In terms of remedial actions that the Board may take, these include suspending the contracting authority’s tendering procedure or decisions made by the contracting authority, annulling unlawful decisions of the contracting authority or cancelling the procurement, declaring contracts ineffective and ordering their termination, imposing alternative sanctions on the contracting authority, and ordering the contracting authority to pay compensation⁷⁰.

⁶⁹ Naevnenes Hus Denmark, 2021, The Complaints Board for Public Procurement, Annual Report 2021. <https://naevneneshus.dk/media/10387/annual-report-2021.pdf>

⁷⁰ Ibid.

Annex 1 – Summary of Recommendations

Theme	Recommendation	Timeline ⁷¹
Leveling the playing field through equal access to opportunities	Enhance awareness and access to information through regular private sector training programs.	S-MT
	Improve communication and awareness around reforms	S-MT
	Develop, adopt and disseminate standardized protocols, TORs, forms, and checklists	S-MT
	Ensure that the publication of procurement plan is done with enough lead time for suppliers to be made aware of procurement opportunities.	S-MT
	Make e-platforms and procurement-related documents and data available in English language.	S-MT
	Consider reducing current use of non-competitive, direct contracting procurement in favor of more competitive e-bidding procedures.	LT
	Ensure full government procurement dataset is published and maintained up-to-date online	LT
	Consider including provisions in the Regulations to support SMEs, particularly WLSMEs through preferential purchasing programs; establish SME support programs	M-LT

⁷¹ Short-to Medium Term (S-MT) refers to a recommendation to be implemented within six months to one year, while others are long-term (LT) actions and require a multi-year concerted effort. The indicated timeframes are preliminary and based on the experience of other countries.

Theme	Recommendation	Timeline ⁷¹
Electronic Procurement	Allow electronic submission of bid security in the e-GP and performance/contract guarantees and elimination of the requirement to submit these in paper.	S-MT
	Safeguard data privacy by ensuring encryption of data such as bid price	S-MT
	Allow e-evaluation of bids	LT
	Enable digital signature of contracts	LT
	Implement electronic payment orders and e-invoice via the e-GP	LT
Tendering requirements	Increase the timeframe allotted for preparing and submitting bids while allowing for shortening it in the face of urgency	S-MT
	Adopt a risk-based approach to ensure documentary requirements correspond to the value and risk of the object of the procurement	S-MT
	Put in place guideline that define more stringent criteria around the identification of and response to abnormally low bids	S-MT
	Consider lifecycle costing analysis	S-MT
	Allow for more flexible financial requirements in the bidding stage and reconsidering the 5% performance guarantee rate.	LT

Theme	Recommendation	Timeline ⁷¹
Acceptance and review process during contract management	Map and refine the processes to approve contract amendments and progress payment and improve communication on progress.	S-MT
	Impose penalties and interests to help remedy payment delays	S-MT
	Appoint back-up members to the acceptance committee to ensure continuity of inspections and approvals.	S-MT
Complaints and bid challenges	Ensure the independence and impartiality of first-tier reviewers within the contracting authority; Reconsider the structure, size, and composition of the appeals committee to preserve the impartiality and improve the efficiency of second-tier reviewers.	S-MT
	Clearly define the qualifications of members of the committee based on the responsibilities bestowed upon them.	S-MT

Annex 2 - Methodology applied

Data collection was undertaken by a local procurement expert in Bangkok, Thailand, between November 2022 and January 2023. During this timeframe, responses were received from 45 private sector stakeholders (firms). The population of firms interviewed can be divided into three sub-populations:

Sub-population 1 consists of firms who have won government contracts and have a high chance of winning ("contractors").

Sub-population 2 consists of firms who may have won some contracts but have a low chance of winning ("bidders").

Sub-population 3 consists of firms who have never participated in a public tender since the effective date of the Public Procurement Act B.E. 2560 ("suppliers").

The population was further classified by procurement type (works, goods, services), and by firm type (SME and non-SME). Respondents whose experiences were based on procurements of services were not classified by entrepreneur type because the annual revenue of a large majority of service entrepreneurs is under 300 MB (upper threshold for medium-sized firms in service sector, see table 2.1).

Table 2.1. Thresholds for SME classification by procurement type.

Procurement Type	Small Entrepreneur		Medium Entrepreneur	
	revenue/year	Number of employees	revenue/year	Number of employees
Works	≤ 100 MB	≤ 50	100-500 MB	50-200
Goods/Services	≤ 50 MB	≤ 30	50-300 MB	30-100

Source: Ministerial Regulation on SME Definition, December 20, B.E. 2562 (2019).

Table 2.2. Sampling units classified by sub-population and procurement type

Private Sector	Works		Goods		Services		Total
	SME	Non-SME	SME	Non-SME	SME	Non-SME	
Sub-population 1	2	3	3	1	6	0	15
Sub-population 2	4	1	3	3	2	2	15
Sub-population 3	8		3		4		15

A second category of private sector stakeholders (law firms) were identified by the team based on their expertise in public procurement in Thailand. Finally, inputs were also received from public sector respondents in 7 key contracting authorities. A questionnaire was developed for each of the aforementioned sampling units, and which consisted of the following components:

Topic	Details
Entry and competition	<ul style="list-style-type: none"> • Participation restrictions for foreign firms • Open and competitive procurement as the default • Obligation to participate with a local firm to bid for foreign firms or to establish a subsidiary • Division of contracts in lots • Legal deadline to pay and payment delays • Minimum content for tender notices and tender documents • Framework agreements • Tools to promote SME participation • Women-owned SMEs participation

Topic	Details
Best value for money	<ul style="list-style-type: none"> • Criteria for identifying abnormally low bids • Specialized tendering methods for innovation procurement and mandate to incentivize their use • Tools to estimate contract value • Sustainability clauses in standard bidding documents and incentives to include sustainability in tenders • Minimum content for procurement plans • Life cycle cost provision • Total cost ownership provision • Most economically advantageous tender
Fairness of the procurement process	<ul style="list-style-type: none"> • Obligation to notify procurement procedure decisions to firms • Standstill period • Minimum deadline for advertising opportunities • Clarifications • Specialized procurement tribunals and right to challenge award decisions • Time limits to resolve appeals and legal recourse for delays in resolving appeals • Prohibition of dividing contracts
Transparency	<p>Publication of:</p> <ul style="list-style-type: none"> • Procurement plans • Tender notices • Tender documents • Award decisions • Contracts • Contract amendments • Subcontractors
Open access data and interactivity of e-procurement portal	<p>Is there a central electronic portal for public procurement that is in operation in country?</p> <ul style="list-style-type: none"> • Open data on suppliers • Open data on contracts • Open data on tenders
Transparency	<ul style="list-style-type: none"> • Accessing notices on procurement opportunities • Accessing bidding documents • Accessing award decisions (including their rationale) • Accessing contracts • Accessing contract amendments • Access to specifications, standards, or criteria for eco-labels and environmentally preferable goods and services

Topic	Details
Digitization of procurement procedures	<ul style="list-style-type: none"> • Registering as a vendor and applying for vendor eco-certifications or eco/labels • Asking the procuring entity for clarifications and notification of decisions (clarifications, awards, etc.) • Submitting tenders • Submitting bid security and performance guarantee with electronic validation • Bid opening and virtual workspace to manage the tender procedure • Contract signing • Submitting invoices to the procuring entity and receiving payments from the procuring entity • Module for framework agreement management and e-reverse auction module • E-catalogue of approved suppliers and green catalogues • E-contract management and implementation module
Time to award a public contract	<ul style="list-style-type: none"> • Open, works, above international threshold • Open, services, above international threshold • Open, goods, above international threshold • Restricted, works, below international thresholds • Restricted, services, below international thresholds • Restricted, goods, below international thresholds • Prequalification • Electronic auction • Framework agreement with two stages
Time to receive payment and late payment interest	<ul style="list-style-type: none"> • Time to receive payment from a government contract • Frequency of payment of late payment interest
Entry in government markets	<ul style="list-style-type: none"> • Obstacles to submit bids (administrative requirements)
Product and process innovation in firms	<ul style="list-style-type: none"> • Intensity of technology adoption (average of number of firms that have introduced new or improved products or services adjusted by intensity of technology adoption) • New original innovation (question: introduced novel innovation in markets)

Annex 3 - Summary of the meetings and workshop

List of Workshops

1. Kick off virtual workshop presentation: November 1st, 2022, online via zoom
2. Workshop with all stakeholders followed by deep dive sessions: March 3rd, 2023 at The Grand Hyatt Erawan Hotel
3. Wrap-up Workshop: March 9th, 2023, online via zoom

List of Additional Meetings with CGD

1. Kick-off meeting at CGD Office: September 28th, 2022 (9.30 – 10.00 AM)
2. Workshop planning meeting at CGD Office: October 11th, 2022 (9.30 – 10.00 AM)
3. Presentation of preliminary findings from the survey at CGD Office: January 18th, 2023 (9.30 – 10.00 AM)
4. Mission in Thailand (from January 25th to January 26th)
 - Consultation on the findings with CGD: January 25th, 2023 (10.00 AM – 12.00 PM)
 - E-GP system walkthrough with CGD: January 26th, 2023 (9.30 AM – 12.00 PM)
5. Presentation of the findings and discussion on topic selection for deep-dives analysis (online and in-person at CGD office): February 14th, 2023 (1.30 – 2.30 PM)

WORKSHOPS

1. Kick off virtual workshop presentation

WORKSHOP: IMPROVING EFFICIENCY IN PUBLIC PROCUREMENT

Tuesday, 1st November 2022. 9.00-10.30 hours (1 hr 30 mins) via Zoom

Zoom link: <https://worldbankgroup.zoom.us/j/91343037094?pwd=Sy9WY2JuTjJoaktzQlI5ZitzT1E1dz09>

Meeting ID: 913 4303 7094 **Passcode:** ?7rgZdMT.E

Simultaneous translation will be provided.

BACKGROUND

Public procurement is the largest single marketplace in developing and developed economies alike, accounting for around one-fifth of global GDP. Given its size, a transparent, fair, and competitive public procurement system can generate business opportunities, foster innovation, and drive economic growth. As competition grows, the government could benefit from procurement savings and better-quality goods and services (VfM). Workshop aims to kick off the World Bank’s technical assistance aimed at improving efficiency of public procurement in order to promote public market entry, competition and a level playing field for suppliers, including SMEs.

OBJECTIVES

A virtual workshop session to kickoff the project and introduce objectives of the work. More specifically about:

1. Methodology that will be used in the process of data collection and data analysis
2. Scope and detail of the questionnaires to collect data from stakeholders

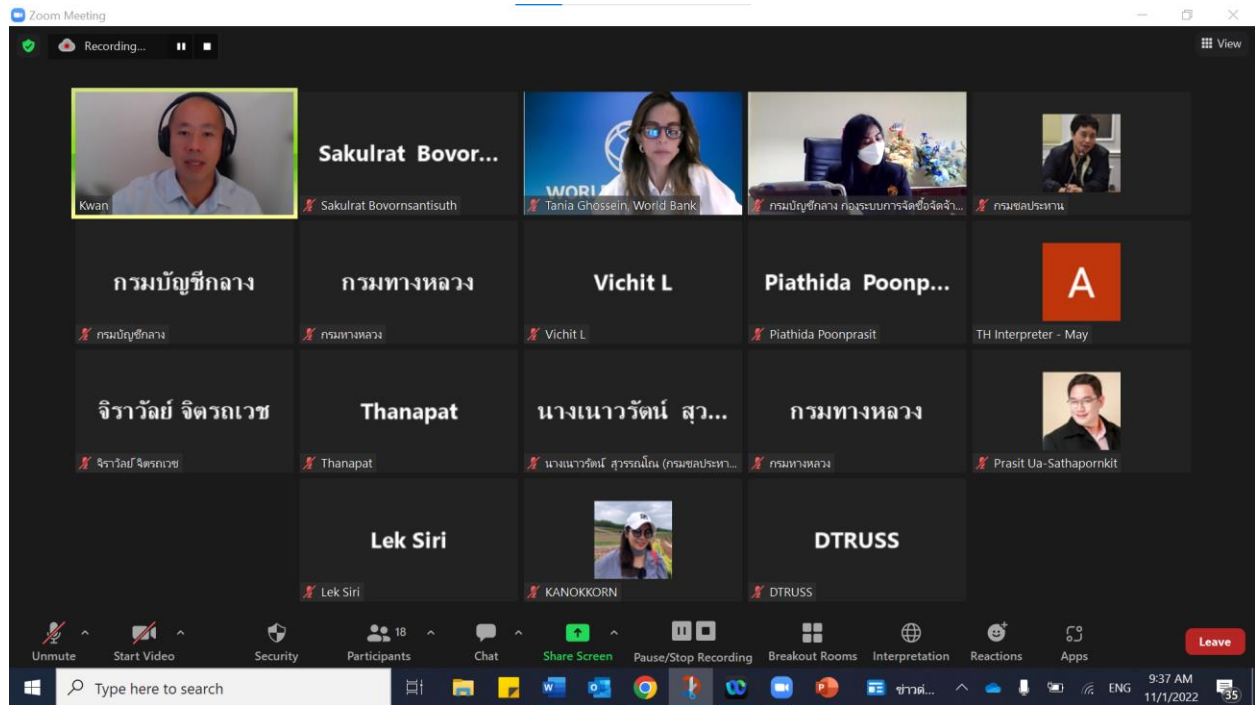
AGENDA

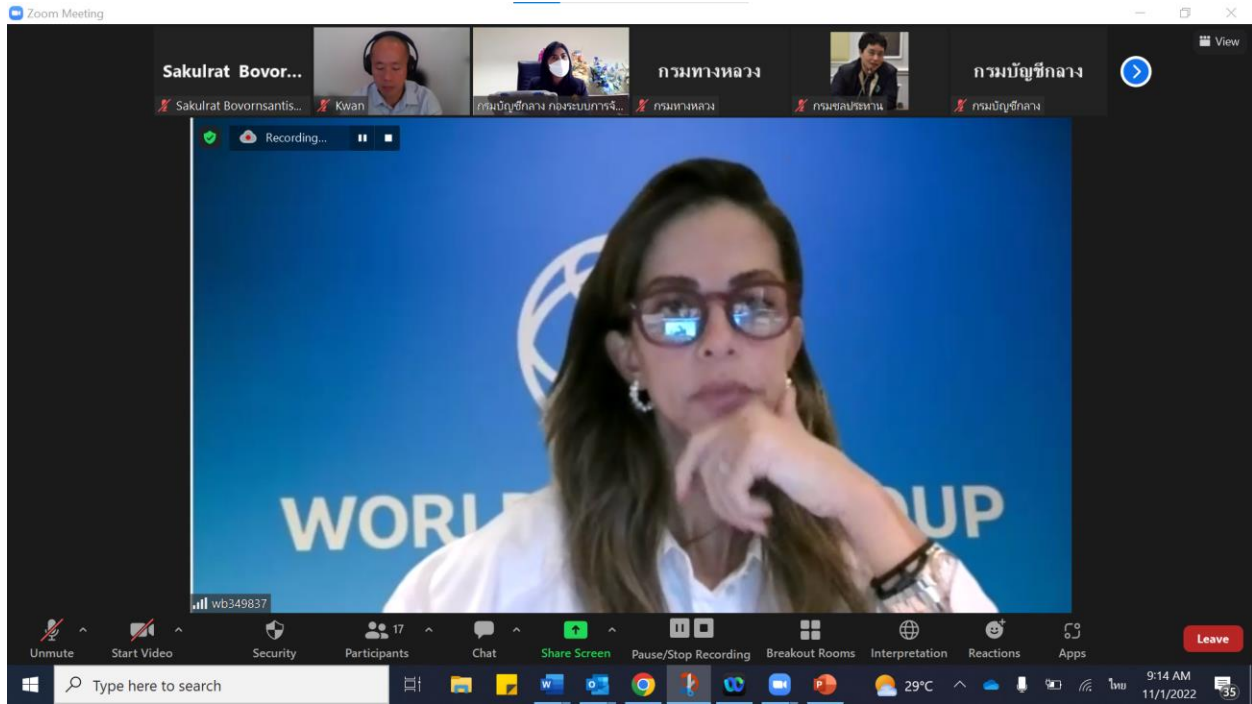
Time	Activities	
9.00 – 9.10	Opening remarks	The Comptroller General's Department and World Bank
9.10 – 9.30	Introduction	World Bank Group
9.30 – 10.00	Presentation on Research methodology and Survey questions & Global experience	Tania Ghossein World Bank Group
10.00 – 10.30	Q&A	All

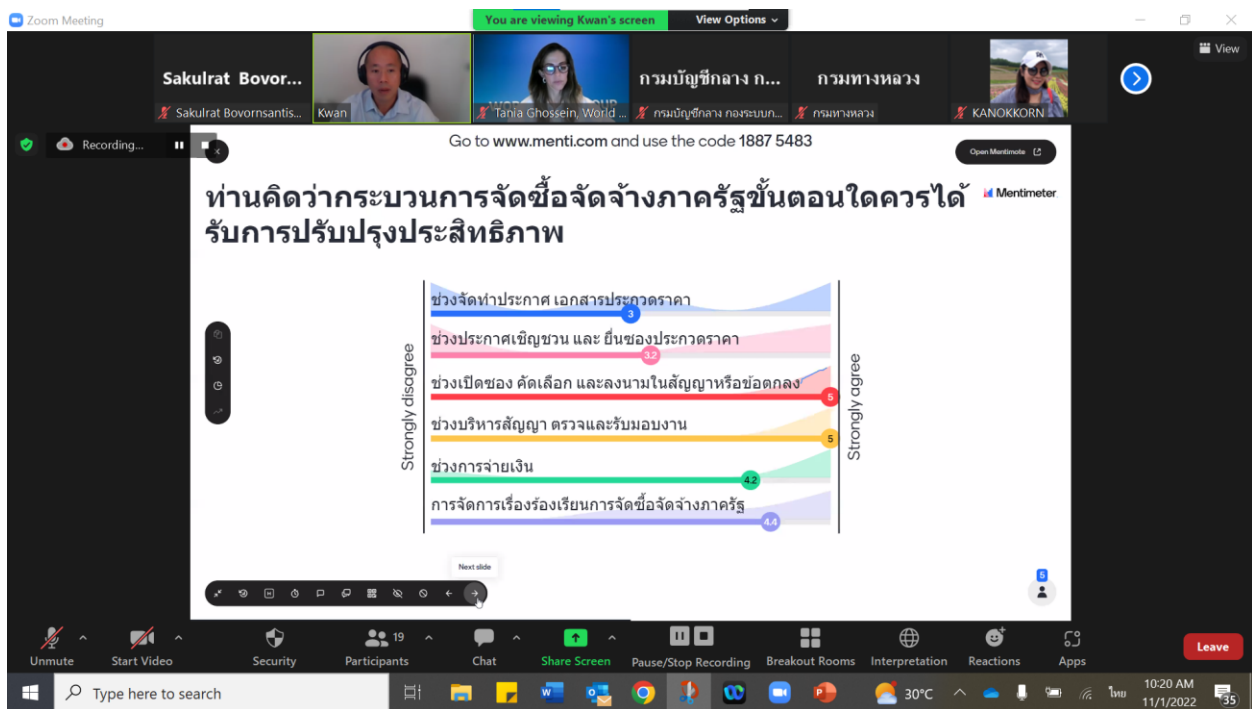
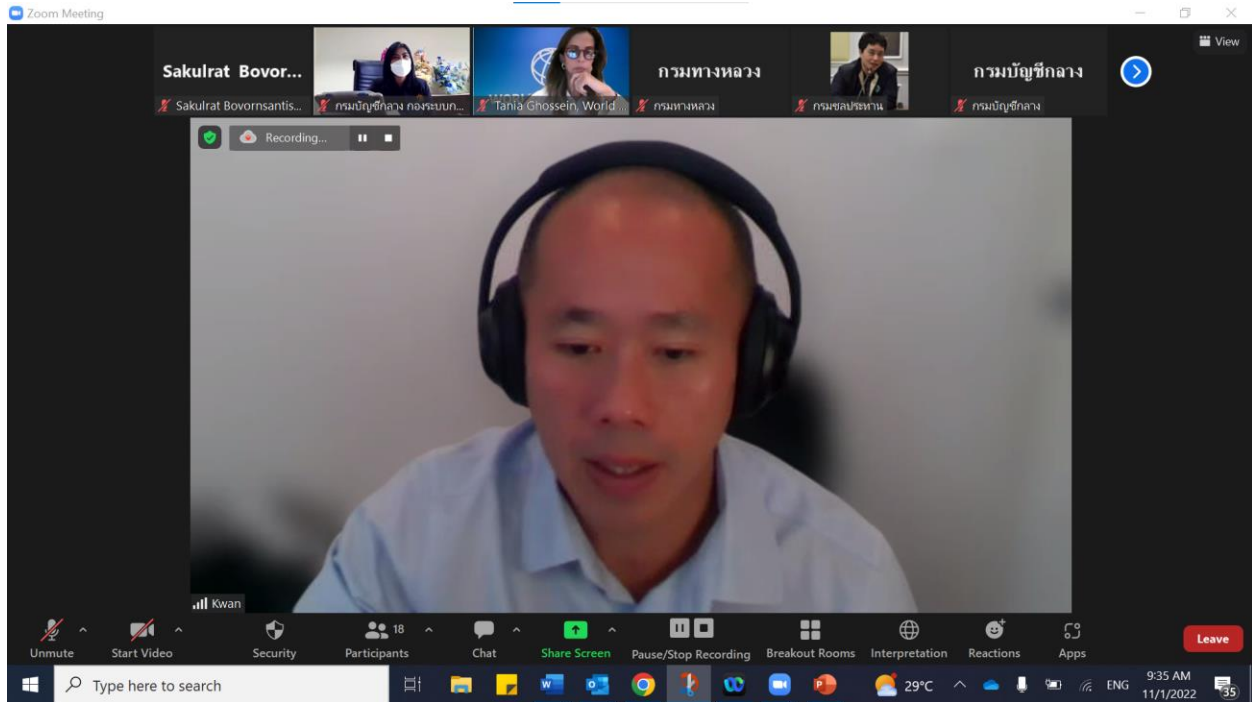
LIST OF PARTICIPANTS

1. The Comptroller General's Department
2. Department of Highways
3. Royal Irrigation Department
4. Chulalongkorn University
5. DTRUSS Group Co., Ltd.

PHOTOS







2. Workshop with all stakeholders followed by deep dive sessions

WORKSHOP: KEY IMPROVEMENT AREAS OF THAILAND'S PUBLIC PROCUREMENT SYSTEM

Friday, 3rd March 2023. 8.30-11.30 hours (3 hours).

In-person at The Residence 304 Room, Hotel Grand Hyatt Erawan Bangkok

Simultaneous translation will be provided.

BACKGROUND

Having a transparent, fair, and competitive public procurement system is one of the key factors that can enhance the country's business opportunities, foster innovation, and drive economic growth. The World Bank team works with the CGD to conduct a survey on Assessing Public Procurement Efficiency in Thailand and have identified several key improvement areas. This workshop aims to take a deep dive into the two most highlighted areas: 1) Leveling the playing field through equal access to opportunities, and 2) Tendering requirements. The World Bank will also share international experiences and best practices which suitable to Thai context.

OBJECTIVES

This virtual workshop is aimed to:

1. Highlight the identified key improvement areas from the survey result
2. Receive feedbacks and details recommendations from key stakeholders
3. Presenting international experiences and showcase best practice countries in the identified areas of public procurement.

AGENDA

Time	Activities	
8.30 – 8.45	Introduction	World Bank Group
8.45 – 9.00	Roundtable self-introduction	All
9.00 – 9.30	Presentation: Leveling the playing field through equal access to procurement opportunities	Tania Ghossein World Bank Group
9.30 – 10.00	Discussion session	All
10.00 – 10.30	Presentation: Tendering requirements	Tania Ghossein World Bank Group
10.30 – 11.00	Discussion session	All
11.00 – 11.30	Summary and the next steps	World Bank Group

LIST OF PARTICIPANTS

1. The Comptroller General's Department
2. Department of Highways
3. Department of Rural Roads
4. Royal Irrigation Department
5. Rajamangala University of Technology Krungthep
6. Office of the Public Sector Development Commission
7. Italian-Thai Development PLC.
8. M and S Business Co., Ltd
9. Zuellig Pharma Co., Ltd.
10. Talent 1969 (Thailand) Co., Ltd.
11. National Institute of Development Administration.

PHOTOS











3. Wrap-up Workshop

WORKSHOP: SUMMARY OF FINDINGS AND RECOMMENDATIONS TO IMPROVE THAILAND'S PUBLIC PROCUREMENT SYSTEM

Thursday, 9th March 2023. 8.30 - 9.30 hours (1 hr) via Zoom

Zoom link: <https://worldbankgroup.zoom.us/j/92081029058?pwd=SDZNUmxPUHQ4VFZSRWlwRG5NSXAwzd09>

Meeting ID: 920 8102 9058 **Passcode:** 9Jxa^n2D#Z

Simultaneous translation will be provided.

BACKGROUND

Having a transparent, fair, and competitive public procurement system is one of the key factors for creating business opportunities, foster innovation, and drive economic growth. Recently, the OPDC together with the World Bank Thailand have conducted a study to assess the situation of the public procurement system in Thailand. The study also includes deep-dives analysis on the issues that are important for development. These findings will be used as inputs for creating policy recommendations. Now, all studies have been completed and the results of the study are ready to be adopted and implemented by relevant agencies with the authorities to do so.

OBJECTIVES

1. To present the findings on how to improve Thailand's public procurement system
2. To hands over the study and recommendations to relevant government agencies to incorporate in their subsequent workplans

AGENDA

Time	Activities	
8.30 – 8.35	Opening remarks and Introduction	OPDC and The World Bank
8.35 – 9.05	Presentation on Research methodology and Survey questions & Global experience	Tania Ghossein World Bank Group
9.05 – 9.25	Q&A	All
9.25 – 9.30	Closing remarks	OPDC and The World Bank

LIST OF PARTICIPANTS

1. The Comptroller General's Department
2. Office of the Public Sector Development Commission

PHOTOS

Approach

Emphasis is on **efficiency of public procurement** in order to promote public market entry, competition and a level playing field for suppliers. As competition grows, the government could benefit from procurement savings and better-quality goods and services (VTM);


Balance between **de jure and de facto** measures within each theme covered;

Focus on areas that are **actionable**, that is, subject to change through policy reform;


Focus on issues where there is an established **"good practice"** when measuring regulatory and public service quality;

Given the scope of the agreement and technical merits, analysis **will not focus on PFM aspects**, efficiency of how public resources are spent, or a spend analysis by procuring entities (rather it will primarily focus on procurement from a private sector market entry/competition angle). Analysis will not attempt to measure or predict the final outcomes of policy reforms


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Sakulrat Bovor...
Sakulrat Bovornsantisuth



กรมบัญชีกลาง
กรมบัญชีกลาง





Piathida Poonp...
Piathida Poonprasit




พอดูดี สำนักงาน...
พอดูดี สำนักงาน ก.พ.ร.

Sakulrat Bovor...





กรมบัญชีกลาง



Piathida Poonp...

Sakulrat Bovornsantis...

Tania - World Bank

Areepan

กรมบัญชีกลาง

Wuthisorn Naruemyiarn

Piathida Poonprasit

Topics assessed

Pre-tendering phase e.g. pre-tendering consultation, minimum content for procurement plans, target programs to support innovative suppliers
Advertisement and Bid Submission e.g. process related to soliciting bids, and access to tender information, timeframe between the advertisement of the tender notice and the submission deadline
Framework agreements e.g. whether there's a designated procedure for the award of contracts based on a framework agreement, validity of framework agreements
Bid opening to Contract Signing e.g. period from between bid opening, public notice of award to contract signing, criteria for bid evaluation, debrief sessions
Contract management and payment delays e.g. renegotiation and variations in procurement contracts; performance guarantees, payment deadline, interest payments
Complaints and review of procurement process e.g. ability to file bid protests and complaints that arise in connection with tenders
Capacity of procurement officials e.g. trainings and certifications to build ability and capacity of procurement officials to efficiently and effectively undertake end-to-end procurement procedures
SMEs access to procurement markets e.g. policies and incentives aimed at that tend to support and promote the involvement and inclusion of SMEs in public procurement
E-procurement e.g. questions on the digitalization of public procurement procedures throughout the tender lifecycle, features available in the e-portal/s
Sustainable procurement e.g. whether TORs or model contracts include sustainability clauses; vendor eco-certifications/eco-labels

Sakulrat Bovor... Tania - World Bank Areepan กรมบัญชีกลาง Wuthisorn Naruemyarn Piathida Poop...

Sakulrat Bovornsantis... Tania - World Bank Areepan กรมบัญชีกลาง Wuthisorn Naruemyarn Piathida Poonprasit

Good practice benchmarks

- UNCITRAL Model Law
- MAPS Assessment
- SIGMA
- World Bank e-procurement toolkit
- Business Enabling Environment identified good practices
- Experiences from best practice countries (e.g. Korea for e-procurement, Latvia for bid criteria, Singapore for performance guarantee)

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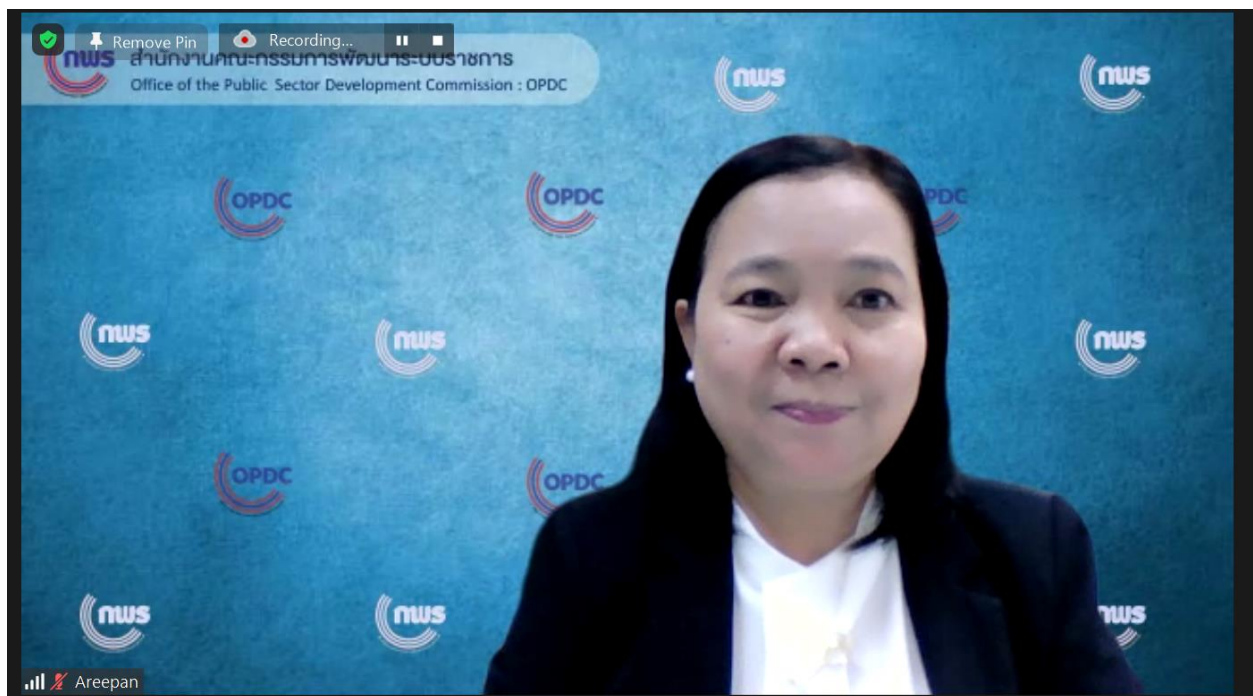
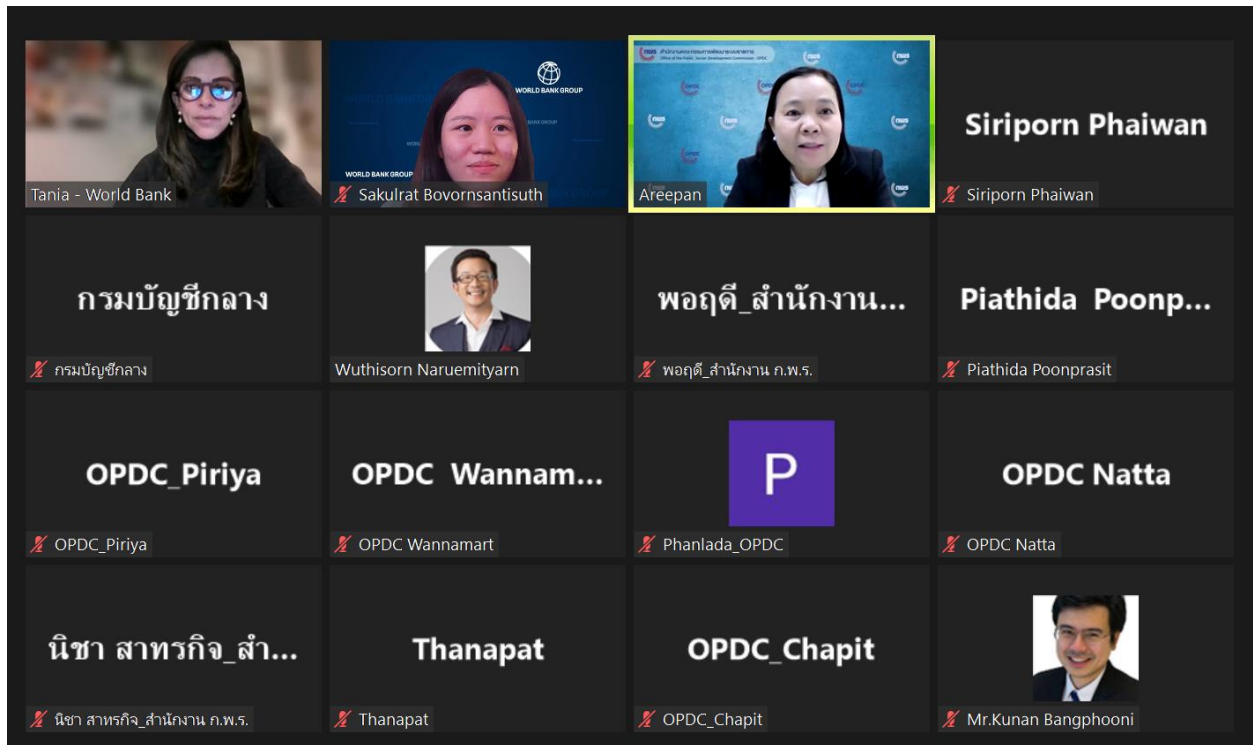
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Government ownership of reforms and progress to date

- Commendable progress in recent years to develop the legal and operational structures necessary to deliver good procurement: **Public Procurement and Management of Supplies Act B.E. 2560, and implementing regulations**
- Thailand obtained an observer status to the WTO's Government Procurement Agreement
- E-bidding: new electronic procurement platform digitizing many steps of the procurement lifecycle.
- New website created to promote more transparency: <https://govspending.data.go.th/> which gathers the procurement data from e-GP and presents in various forms on website and mobile phone.
- Enhanced complaint and bid protest mechanism (introduction of standstill period before the award of a contract, enhanced bidder complaints system).

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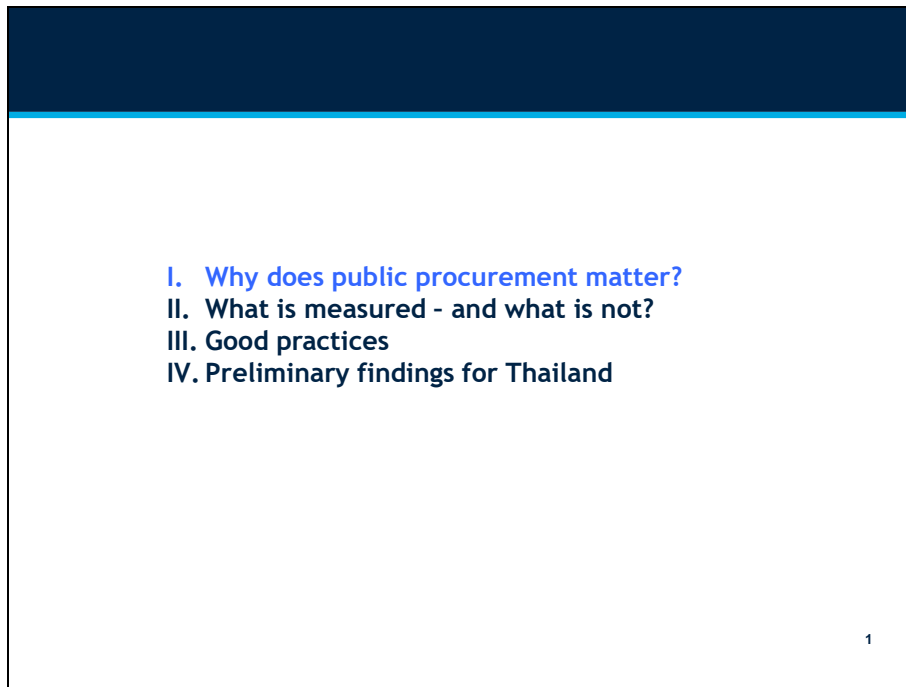


 **Public Procurement Efficiency in Thailand**

Wrap-up Workshop
8:30 AM, March 9th, 2023

Tania Ghossein
Senior Private Sector Specialist
Global Investment Climate Unit

 **THE WORLD BANK**
IBRD • IDA | WORLD BANK GROUP



I. Why does public procurement matter?
II. What is measured - and what is not?
III. Good practices
IV. Preliminary findings for Thailand

1

Background

Public procurement is the largest single marketplace in developing and developed economies alike, accounting for around one-fifth of global GDP.

In the past decade, public procurement has increased 10-fold and this growth trajectory is expected to continue

Costs of inefficient public procurement are high: (i) smaller market access and limited competition for private sector; (ii) higher prices paid by public entities for goods and services, directly impacting public expenditures and, therefore taxpayers' resources.

In Thailand, it represents more than **10% of the GDP, and 30% of the country's public expenditure.**



2

Background

World Bank engagement:

First phase of World Bank's technical assistance conducted in 2019 and identified some areas for improvement in the Thai procurement system.

In 2022, Government of Thailand requested World Bank's technical assistance aimed at improving efficiency of public procurement in order to promote public market entry, competition and a level playing field for suppliers, including SMEs.

Thai government: actively promoting public procurement as a means of boosting economic growth and promoting entrepreneurship

Number of measures to make the procurement process more transparent and efficient.

3

- I. Why does public procurement matter?
- II. What is measured - and what is not?
- III. Good practices
- IV. Preliminary findings for Thailand

4

Approach

Emphasis is on **efficiency of public procurement** in order to promote public market entry, competition and a level playing field for suppliers. As competition grows, the government could benefit from procurement savings and better-quality goods and services (VfM);

Balance between *de jure* and *de facto* measures within each theme covered;

Focus on areas that are **actionable**, that is, subject to change through policy reform;

Focus on issues where there is an established “**good practice**” when measuring regulatory and public service quality:

Given the scope of the agreement and technical merits, analysis **will not focus on PFM aspects**, efficiency of how public resources are spent, or a spend analysis by procuring entities (rather it will primarily focus on procurement from a private sector market entry/competition angle). Analysis will not attempt to measure or predict the final outcomes of policy reforms

5

Topics assessed

Pre-tendering phase e.g. pre-tendering consultation, minimum content for procurement plans, target programs to support innovative suppliers
Advertisement and Bid Submission e.g. process related to soliciting bids, and access to tender information, timeframe between the advertisement of the tender notice and the submission deadline
Framework agreements e.g. whether there's a designated procedure for the award of contracts based on a framework agreement, validity of framework agreements
Bid opening to Contract Signing e.g. period from between bid opening, public notice of award to contract signing, criteria for bid evaluation, debrief sessions
Contract management and payment delays e.g. renegotiation and variations in procurement contracts; performance guarantees, payment deadline, interest payments
Complaints and review of procurement process e.g. ability to file bid protests and complaints that arise in connection with tenders
Capacity of procurement officials e.g. trainings and certifications to build ability and capacity of procurement officials to efficiently and effectively undertake end-to-end procurement procedures
SMEs access to procurement markets e.g. policies and incentives aimed at that tend to support and promote the involvement and inclusion of SMEs in public procurement
E-procurement e.g. questions on the digitalization of public procurement procedures throughout the tender lifecycle, features available in the e-portal/s
Sustainable procurement e.g. whether TORs or model contracts include sustainability clauses; vendor eco-certifications/eco-labels

Process

- Data collection through expert consultations (e.g. lawyers, procurement officers, CGD, etc.) and supplier-level surveys (for de facto and perception data)
- A review of applicable legal/regulatory texts (and desk research) will corroborate the data gathered through expert consultations.
- Deep dive workshop on examples of good practice
- Presentation of findings in Thailand and reform memo recommendations to in-country stakeholders

7

Focus areas

Leveling the playing field through equal access to opportunities

E-Procurement

Tendering requirements

Acceptance and review process during contract management

Bid protests and complaints

8

- I. Why does public procurement matter?
- II. What is measured - and what is not?
- III. **Good practices**
- IV. Preliminary findings for Thailand

9

Good practice benchmarks

- UNCITRAL Model Law
- MAPS Assessment
- SIGMA
- World Bank e-procurement toolkit
- Business Enabling Environment identified good practices
- Experiences from best practice countries (e.g. Korea for e-procurement, Latvia for bid criteria, Singapore for performance guarantee)

10

Good practices

Access to Information

- Publication of **key procurement data** in machine-readable format.
- Publication of all current **laws, regulations** and policies at no cost.
- Publication of **tender notices, awards, complaints/appeals, decisions, contracts** and contract amendments.
- publication of updated and comprehensive **procurement plans**

SME Support Measures

- Use of **competitive tendering** methods.
- SME promotion tools such as **lots, set-asides**, sub-contracting requirements, flexible selection criteria (ex. turnover requirements).
- Use of **standardized forms**, protocols, TORs, and checklists.
- Shorter **payment** deadlines.
- Financial guarantees' **exemption**.
- Outreach programs (eg WSME's, tech, innovation)

Sustainable and Innovative Suppliers

- In-house **skills capacity building** and training.
- Development and implementation of **target programs** for **innovative and sustainable** suppliers.
- Adopting model documents and contracts that cover **sustainable procurement** criteria.
- Eco- and innovation labels

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Good practices

e-GP

- Comprehensive e-GP functionality, including tendering, clarifications, contract signing, and payments.
- Procedures are fully digitized and do not require hard-copy submissions.
- Interoperability of the e-GP system with other relevant government databases and systems (e.g. business registry, payment system, banks for guarantees, contract management system, etc.)



Training

- Regular and frequent training opportunities for suppliers to promote awareness of and access to procurement information, and specifically on using the e-Procurement platform.
- Routine evaluation and adjustment of training programs/curricula based on feedback, needs, and developments or reforms.

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Good practices

Financial Requirements

- Bid security and contract guarantee rates are not prohibitively costly.
- Establishment of and adherence to **time limits** for returning bid securities and contract guarantees.



SME Support Measures

- Waiver of **bid security** for SMEs.
- Acceptance of **various forms of bid security** and contract guarantees.
- **Helpdesk** for suppliers to ask questions and seek information on tendering protocol and policies.
- Flexible selection criteria.
- Separate **qualification documents** from bid proposals and conduct ex-poste verification.

Documentary Requirements

- **Streamlining** procurement procedures and documentary requirements.
- Adoption of **model tender documents**, including for tender notices, TORs, specifications, and contract conditions.
- Any documentary requirement must **only be submitted once**, without the need for duplication or paper-based submission.

13

Good practices

Bid Preparation and Submission Time

- **Time allotted** for bid preparation and submission is sufficient to prepare responsive and competitive bids.



Evaluation Criteria

- **Objective criteria** precisely specified in the tender documents.
- Criteria ensures principles of **equal treatment, non-discrimination**, and transparency are respected.
- Use of both **price and non-price** attributes or LCC to ensure VfM.
- Evaluation criteria and relative weights determined clearly in tender documents.

Abnormally Low Bids (ALBs)

- Clear rules on how to identify and appropriately respond to **ALBs** are established.
- **ALBs** are identified, investigated, and if determined to be so, excluded at the evaluation stage.
- Set a **5step workflow** to eliminate ALBs

14

- I. Why does public procurement matter?
- II. What is measured - and what is not?
- III. Good practices
- IV. Preliminary findings for Thailand

15

Government ownership of reforms and progress to date

- Commendable progress in recent years to develop the legal and operational structures necessary to deliver good procurement: ***Public Procurement and Management of Supplies Act B.E. 2560, and implementing regulations***
- Thailand obtained an observer status to the WTO's Government Procurement Agreement
- E-bidding: new electronic procurement platform digitizing many steps of the procurement lifecycle.
- New website created to promote more transparency: <https://govspending.data.go.th/> which gathers the procurement data from e-GP and presents in various forms on website and mobile phone.
- Enhanced complaint and bid protest mechanism (introduction of standstill period before the award of a contract, enhanced bidder complaints system).

16

Focus areas

- ✓ **Easy access to information**
- ✓ **Direct support measures for SMEs to facilitate access and incentivize participation**
- ✓ **Support measures for sustainable and innovative suppliers**
- ✓ **Awareness of e-Procurement opportunities, particularly for SMEs**
- ✓ **Availability of e-procurement functionality**
- ✓ **Frequent and regular e-Procurement training programs for suppliers**

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Focus areas (2)

- ✓ Financial requirements such as bid securities and contract guarantees
- ✓ Tendering support measures for SMEs
- ✓ Documentary requirements for bid submission and their cost
- ✓ Timeframes for bid preparation and submission
- ✓ Criteria for bid evaluation
- ✓ Abnormally low bids

18

Examples of constraints to be addressed



Procurement data gap



Non-competitive procurement procedures



Lack of awareness of SME support measures



No gender-responsive procurement tools



Lack of awareness of how-to, despite interest in participating



Language barrier



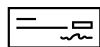
High transaction costs for SMEs



Lack of e-procurement

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Examples of constraints to be addressed



Lengthy timeframe for returning securities and guarantees



High contract guarantee rate



Insufficient time for bid preparation



Extensive administrative/documentary requirements



Emphasis on lowest price rather than best Vfm

20

Leveling the playing field for all suppliers

- Access to tender opportunities is a **challenge** raised by private sector respondents due to:
 - high transaction costs
 - often unaware of the how-to
 - no “official training” provided
 - frequent amendments to the regulatory framework
 - Lack of understanding of the e-GP platform
- There are currently **no specific incentives granted to SMEs** (particularly WLSMEs) such as waivers of bid security or performance guarantees, etc. Only exception are SMEs with “innovation” supply that can benefit from single source procurement and direct negotiation method.
- Widespread current use of **non-competitive procurement methods**, such as direct contracting.
- **Aggregate procurement data on contracts** in a machine-readable format (including description, dates, category of spending, value, contracting authority, identification of supplier and subcontractors, contract amendments and final expenditure): **not fully available online**.

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Digitization of the procurement system could be improved further

- Procurement (e-GP) system offers a **central Thai system where all suppliers register** to sell goods and services to the government, in line with good practices.
- Procurement information such as laws, tender opportunities **are posted online**.
- Suppliers can conduct **e-bidding**
- Communication between bidders and the procuring agencies still happens **off the e-GP platform**: either in person or via email.
- **Registration** happens via email, not through the e-GP jeopardizing data privacy
- **Bid security and performance guarantee submission**: offline
- **Evaluation of bids** still offline
- **Contract signing** is still not digitalized
- Many of the steps during **contract execution and management** phase still have to be done in person
- On the e-GP platform, **pre-review of the TOR** by potential tenderers tends to delay the process and could facilitate potential collusive intentions.

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Tendering requirements

- **Extensive administrative and documentary requirements** for participation in a public tender and insufficient time allotted for the preparation and submission of a competitive and responsive bid.
- No **risk-based approach for SMEs'** access to the public market: same requirements regardless of the sector and size of the procurement
- This leads to SMEs often having to hire a professional intermediary with knowledge of the procurement system, increasing transaction costs
- **High rates of contract guarantee** (5% of the estimated value of the contract).
- **Delays** in the return of contract guarantees despite legal mandated period of 15 days of final acceptance of delivery
- **Emphasis on lowest price criteria** in bid evaluation rather than best VfM
- **Inadequate scrutiny of abnormally low bids** for evaluation and award.

23

Acceptance and review process during contract management

- The PP Act covers the whole procurement process, including the contract management phase
- Contract administration and the role of inspection committees: regulated in the Ministerial Regulations
- Lengthy process for obtaining relevant approvals at the inspection stage
- Delays experienced in processing and receiving progress payments after the committee signs the acceptance form.
- Without time limits for acceptance committee to complete inspection and without possibility to track the process online, contractors are struggling with limited cash flow.
- No penalties for delayed acceptance or payments.

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Complaints and bids' challenges

- Standstill period of 7 days
- Bidders are entitled to submit complaints throughout the tendering process (both pre- and post-award)
- Legal time limits for the review process (PP Act): 7 days to file complaint, 7 days for the contracting authority to review, and if proceeding to the Appeals Committee, 30 days for the Appeals Committee to make a decision.
- Feedback from private sector: Reluctance to lodge complaints due to a combination of factors:
 - Review committee is likely to be the one in charge of the procurement, risk of bias
 - lack of trust in the fairness of the process,
 - burdensome procedures to submit a complaint
 - Lack of timely decisions (74-day timeframe for receiving decisions)
 - inadequate remedies or enforcement of remedies.

25

What direction can Thailand take

Below are only some of the measures that could be introduced to enhance public procurement efficiency in Thailand

Theme	Recommendation	Timeline ¹
Leveling the playing field through equal access to opportunities	Enhance awareness and access to information through regular private sector training programs.	S-MT
	Improve communication and awareness around reforms	S-MT
	Develop, adopt and disseminate standardized protocols, TORs, forms, and checklists	S-MT
	Ensure that the publication of procurement plan is done with enough lead time for suppliers to be made aware of procurement opportunities.	S-MT
	Make e-platforms and procurement-related documents and data available in English language.	S-MT
	Consider reducing current use of non-competitive, direct contracting procurement in favor of more competitive e-bidding procedures.	LT
	Ensure full government procurement dataset is published and maintained up-to-date online	LT
	Consider including provisions in the Regulations to support SMEs, particularly WLSMEs through preferential purchasing programs; establish SME support programs	M-LT

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What direction can Thailand take

Theme	Recommendation	Timeline ¹
Electronic Procurement	Allow electronic submission of bid security in the e-GP and performance/contract guarantees and elimination of the requirement to submit these in paper.	S-MT
	Safeguard data privacy by ensuring encryption of data such as bid price	S-MT
	Allow e-evaluation of bids	LT
	Enable digital signature of contracts	LT
	Implement electronic payment orders and e-invoice via the e-GP	LT

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What direction can Thailand take

Theme	Recommendation	Timeline ¹
Tendering requirements	Increase the timeframe allotted for preparing and submitting bids while allowing for shortening it in the face of urgency	S-MT
	Adopt a risk-based approach to ensure documentary requirements correspond to the value and risk of the object of the procurement	S-MT
	Put in place guideline that define more stringent criteria around the identification of and response to abnormally low bids	S-MT
	Consider lifecycle costing analysis	S-MT
	Allow for more flexible financial requirements in the bidding stage and reconsidering the 5% performance guarantee rate.	LT

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What direction can Thailand take

Theme	Recommendation	Timeline ¹
Acceptance and review process during contract management	Map and refine the processes to approve contract amendments and progress payment and improve communication on progress.	S-MT
	Impose penalties and interests to help remedy payment delays	S-MT
	Appoint back-up members to the acceptance committee to ensure continuity of inspections and approvals.	S-MT
Complaints and bid challenges	Ensure the independence and impartiality of first-tier reviewers within the contracting authority; Reconsider the structure, size, and composition of the appeals committee to preserve the impartiality and improve the efficiency of second-tier reviewers.	S-MT
	Clearly define the qualifications of members of the committee based on the responsibilities bestowed upon them.	S-MT

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Thank you

tghossein@worldbank.org

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Annex

Additional examples of countries that have aligned with recognized good practices

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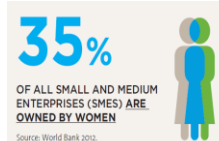
SME Measures

	Republic of Korea	India	Mexico
Instrument/ Policy	KONEPS, Prompt payment reform, Financial assistance, Advanced payments, SME marketing support, Training services, Contract thresholds, Reserved products, Multiple award schedule for SMEs	E-procurement, Prompt payment reform, SME consortia, Training & assistance, Lower transaction costs, Setting up grievance cell, Payment delay penalty, Set-asides, Reserved products, Bid price preferences	Streamlining processes, E-procurement, Transparency initiatives, Social witnesses, Prompt payment reform, SME online support, Training programs, Financial Assistance, Advanced payments, Public procurement fair, Reserved contracts, Award criteria
Impact	Share of PPS purchases from SMEs up to 73.9% 75% of KONEPS contracts won by SMEs.	Expected \$260 billion in public spending directed to SMEs from public sector by 2020.	6x increase in contracts awarded to SMEs since 2009 67% of contracts won by SMEs 80% of E-procurement contracts won by SMEs

Power of procurement: sourcing from women owned SMEs and supporting their growth

- SMEs and Women-Led Business (WLBs) play **critical roles** in economic growth and development
- Winning government contracts also have positive effects on firm-level dynamics. Yet, It is estimated that **only 1% of the \$10 trillion USD** that is spent annually on public procurement is awarded to women-owned businesses
- Adopting a **gender responsive approach** to procurement can help promote diversity and inclusion and push for gender equity.
- Some **challenges** are **intrinsic to WLBs** and women entrepreneurs:
 - lack of childcare, gender bias, etc.),
 - WLBs usually operate on a smaller scale hindering their capacity to meet requirements of large government contracts
 - Difficult to identify women-led businesses

Therefore, particular attention by policymakers and **tailored action** to directly support WLBs.



Sourcing from women-owned businesses in Kenya

Intervention

- Reform of the Kenyan Public Procurement and Disposal Regulations (PPDR) to mandate reserving of **30% of government procurement** of goods, services and civil works for enterprises owned by women, youth and disadvantaged groups.
- Establishment of the **Access to Government Procurement Opportunities (AGPO) program** to gather and report on procurement spending
- Building **capacity** of women-owned businesses to submit successful tenders for government contracts
- Development of a **bidder's manual** to increase women's access to public contracts
- Establishment of the Commonwealth **Business Women's Academy** to train women on procurement
- Strengthening of government **monitoring system** by training procurement officers
- Establishment of a **Women Enterprise Fund** in 2016 to provide accessible and affordable credit to support women start and expand businesses to boost wealth and employment

Impact

Between 2015 and 2019, volume of contracts awarded to women/disadvantaged groups more than double (from approximately US\$ 66.9 million to 140.2 million).



e-procurement Functionality and Components

Pre-Awarding Components



Post-Awarding Components

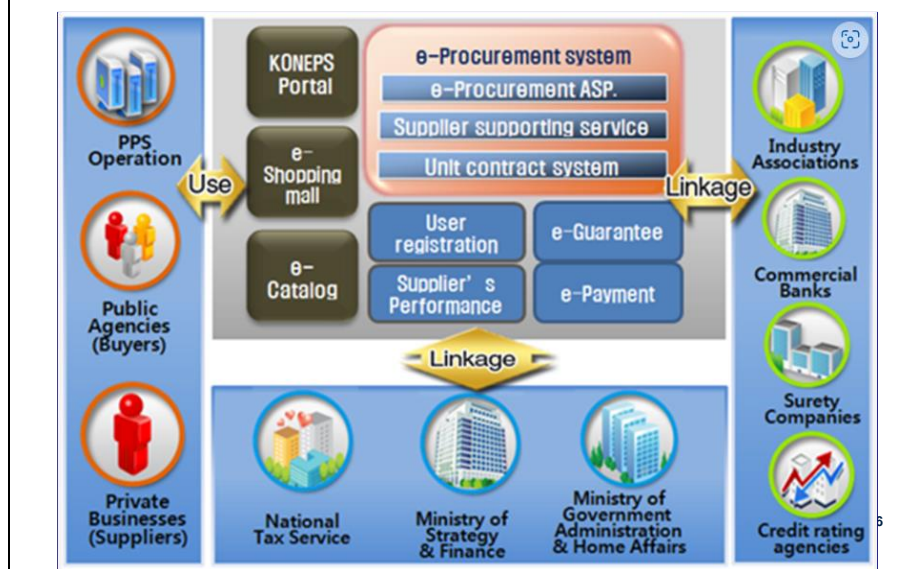


Supporting Components



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E-procurement: Korea's KONEPS e-procurement system



Korea's KONEPS e-procurement system

KONEPS : interconnected with over **300 diverse electronic systems**, both within and outside the government's reach.

Businesses: able to participate in biddings after a **one-time registration** with KONEPS: users save their documents and certificates on the system once

KONEPS: possibility **to extract documents** from other government IT Systems through data exchange interfaces, e.g. business registration and tax payment certificates, etc.

Connection with **19 surety companies** -> automated verification of 4 types of sureties, including bid bonds and performance bonds.

Interfaces with **12 private sector associations** + 9 credit ratings companies -> automatic collection of credit and past performance data (qualifications +evaluate bids).

Connection to **15 commercial banks** for e-payment

Results:

477 document forms used in public procurement including bid forms, contract forms, inspection requests and payment requests have all been converted to digital equivalents.

Savings of US\$ 8Billion in annual transaction cost, of which 7 Billion accrued to suppliers through reduced costs in obtaining certificates, proof documents, and registering or updating accounts in multiple systems.

For construction work tenders, bidders are no longer required to submit certificates on their experience, because data is electronically collected through data interchange with databases of construction industry³⁷ associations.

KONEPS Functionality vs. Thailand e-GP



E-bidding and contract signing

- Supplier companies can participate in all public biddings through **one-time registration** to the system with their qualification information including their license or permit.
- The **whole procedures of procurement are handled online**-bid opening, qualification examination, decision of successful bidders, contract signing and payment.



E-payment

- The whole procedures of procurement are handled online-bid opening, qualification examination, decision of successful bidders, contract signing and **payment**.



Public procurement data sharing and management

- The system is connected to the data of **227 credit rating institutions**, surety insurance companies and more, to reduce the burden on businesses having to visit and enable paperless information check on public institutions.



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Good practices in e-registration functionality

Registration:

- 1) Non-authenticated (supplier) users must be able to register their suppliers' details in the system.
- 2) Non-authenticated (supplier) users could be able to retrieve their suppliers' details from external sources (e.g. National Supplier Registry system).
- 3) System must validate the organization/user profile details prior to registering them.
- 4) Administrator users must be able to view the details of registered suppliers and contracting authorities' profiles.
- 5) Suppliers should be notified about their registration approval outcome.
- 6) Suppliers must be able to register other users of their entity.
- 7) Suppliers must be able to view/modify the profiles of their organization and respective users.

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Good practices in e-bid evaluation functionality

Bid opening and evaluation:

- 1) System must support a mechanism for the decryption of bids submitted (and encrypted) during the submission stage.
- 2) System must proceed with the bids decryption only if the decision of the Bid Opening Committee (BOC) users on which bids to open is unanimous.
- 3) System should validate submitted bids and notify the BOC and Bid Evaluation Committee (BEC) users in case the submitted bids are in unexpected format.
- 4) Upon opening, system should produce an opening report to detail the proceedings. Upon opening, certain details of the opened bids could be made publicly available.
- 5) BEC users associated with the Tender must be able to view the opened bids.
- 6) BEC users associated with the Tender must be able to provide the evaluation results for the opened bids against the evaluation criteria-Evaluation results can be pass/fail/score.
- 7) BEC users associated with the Tender could be able to justify their provided scores.
- 8) System must calculate and display the overall score of the evaluated bids.
- 9) During the evaluation process, bidders must be able to respond to clarification requests.

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Awareness of opportunities, access to information, and training

Mexico's **Compranet** is the central information system for the federal government's procurement procedures.

The legal framework mandates the **publication of key information** such as annual procurement plans, tender documents, minutes of clarification meetings and bid openings, contract awards history, and formal complaints.

The Federal Institute of Access to Information and Data Protection is an organization specifically responsible for **managing, promoting and disseminating information**; independent bodies **monitor enforcement** at the state level.



The government annually organized a **public procurement fair**, Expo Compras del Gobierno, to provide guidance and training on becoming government suppliers.



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Building private sector capacity: case of Italy

Strategy: aim to strengthen private sector cooperation with suppliers to increase participation in public tenders.

Setting up Supplier Training Desks (STDs) (“Sportelli in Rete” in Italian) within the offices of suppliers’ associations.



STDs provide training and assistance to local enterprises and in particular micro, small and medium enterprises (MSMEs) on the use of electronic procurement tools (thru business associations).

Impact:

More than 200 training desks are active and scattered around the country, providing continuous free training and assistance.

Tens of thousands of SMEs: allowed to make business during the last decade making it a very suitable procurement tool for SMEs who are the highest percentage of enterprises using it

Program quoted as a good practice, at a European level, in the “European Code of Best practices facilitating access by SMEs’ to public procurement contracts”

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Sustainability and innovation



To promote the implementation of circular procurement, Sweden’s National Agency for Public Procurement (Upphandlingsmyndigheten) offers a “**criteria wizard**”, which includes almost 900 suggestions for environmental criteria for all types of goods and services relevant for public procurement. The recommendations are classified by levels of details and ambition (basic level, advanced level and spearhead level).

The Agency also offers a **daily helpdesk service**, a tool for **life cycle costing (LCC)**, and has established a **national network (Thinktank) for innovation** procurement.

Bottom-up approach where municipalities set **ambitious goals** for sustainable development, establish networks for learning, and collaborate in setting criteria.

The initiative has resulted in a situation whereby the majority of public authorities make use of them in their daily work (100% of county councils and 85% of all municipalities).

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Financial requirements

Egypt Bolivia Russia	<ul style="list-style-type: none"> • Exemption of part or all of the bid security.
Korea	<ul style="list-style-type: none"> • Waived fees for various bidding procedures for SMEs. • SME Network Loan Programs allow SMEs to borrow from commercial banks up to 80% of the contract sum without security (the security being provided by the Public Procurement Service). At the end of the contract, the loan is repaid directly by the Public Procurement Service. • KONEPS facilitates SME payments within four working hours
China	<ul style="list-style-type: none"> • Interim Measure on Facilitating the Development of SMEs in Government Procurement encourages financial institutions to provide credits/guarantees for SMEs to pay deposits and perform the contract.
Australia Singapore	<ul style="list-style-type: none"> • No performance guarantee requirements (financial instruments); bid security declaration accepted.

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Documentary and bid requirements

• EU Directive on Public Procurement 2014 (article 59) introduces the European Single Procurement Document (ESPD)

- ESPD: **self-declaration** of businesses' financial status, abilities and suitability for a public procurement procedure.
- Available in all **EU languages** 
- From 2018, exclusively in **electronic form**
- Used as a **preliminary evidence** of fulfilment of the conditions required in public tendering across EU.
- Tenderers no longer have to provide full documentary evidence and different forms previously used in the EU procurement
- Only **selected bidders** are required to submit the full set of documentary requirements
- **Result:** reduction of administrative cost by 80%; significant simplification of access to cross-border tendering opportunities.

Germany and EU Directives:

Open procedure: Minimum timeframe for bid submission is **35 days in an open procedure** (open to all bidders), and **30 days in a call for competition procedure** (two-stage tender, only submit bids in the second stage)."

Austria: When restricted/negotiated procedure used, decision on which suppliers to invite and qualification criteria -> direct impact  on competition and access. 

Federal Law on Public Procurement (2006) for restricted or negotiated procedures without call for competition:

- nondiscriminatory selection of suppliers to be invited
- Contracting authority must change suppliers invited as often as possible.
- SMEs should be involved in the tender process, if possible.

Documentary and bid requirements

The government of New Zealand developed a set of **model tender documents** for routine government purchases, including:

- ✓ Government **model contracts**
- ✓ Model tender documents (RFx)
- ✓ **Conflict of interest templates**
- ✓ Procurement plan templates
- ✓ Evaluation, negotiation, due diligence templates
- ✓ Social service contract templates
- ✓ Construction procurement tools

The model contracts are aimed **at low-value, low-risk** common goods and services and must be used by all public agencies; it is up to each agency to determine what constitutes low-value, low-risk common goods and services.



Spain's Public procurement law (Royal Legislative Decree 3/2011) was amended to allow bidders to submit a **self-declaration form** to contracting authorities instead of several documents certifying the legal, social and fiscal situation of the SME.

The form is accepted in procurements of works **under 1 million Euros**, and of goods and services **under 90,000 Euros**.

Once the award decision has been made, the selected bidder must provide the relevant documentation; no contract can be concluded without this ex-poste verification.

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Evaluation criteria

*When **aspects other than price** are also considered in the evaluation, such as quality, technical merit, environmental or sustainability components, risk management, innovative components, and life-cycle costs, contracting authorities can determine the **most economically advantageous tender (MEAT)** and thereby make a well-rounded award decision that achieves best value for money*

Latvia's Public Procurement Law establishes that public contracts should be awarded based on the **Most Economically Advantageous Tender (MEAT)**. MEAT is to be determined based on:

- Price or cost approach including efficiency criteria, such as lifecycle costing (**LCC**)
- Considering both **price and quality** criteria **ex: technical advantages, functional/aesthetic characteristics, innovative aspects, social/environmental components, structure of the contract, quality and experience of staff, aftersales services, technical assistance, delivery process and timeframe, etc.**



Distribution of points assigned to each criterion in a price/quality evaluation method varies depending on the object of procurement, value of the contract, and national objectives, the process of determining evaluation criteria and their relative weights should always aim to achieve best value for money. Doing so requires considering relevant costs, benefits, risks, non-price attributes and/or lifecycle costs.

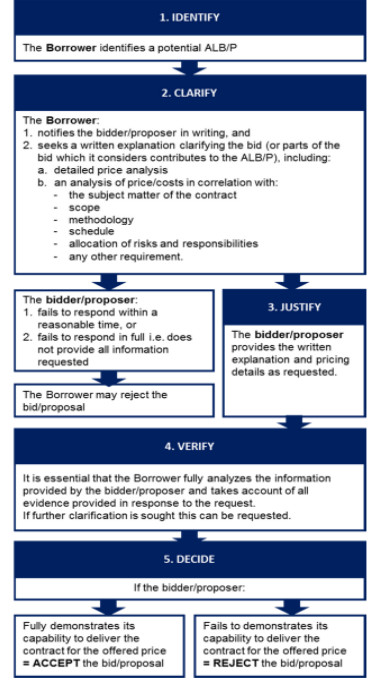
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Abnormally Low Bids

Abnormally low bids should be identified and excluded at the evaluation stage and if investigated and found to be so, should be excluded at the evaluation stage.

In **Portugal**, Abnormally low bids are determined based on:

- A. A set threshold relative to the contracting authority's budgeted price
 - ≥ 40% for public works contracts
 - and ≥ 50% for other types of contracts
- B. Anomaly thresholds based on a percentage deviation from the average price of the tenders to be accepted



Additional Meetings with CGD

Aside from the workshops, the World Bank team also working closely with CGD in planning and studying process. The collaboration between the World Bank team and CGD team was done to ensure that the study will focus on the right components and able to cultivate clear and insightful findings, which will lead to quality recommendations.

Since the kick-off of this project, the World Bank has organized six meetings with the CGD team, including 2 meetings that are part of the mission where Tania has a chance too visit the CGD office. These 6 meetings are as follows:

1. Kick-off meeting at CGD Office on September 28th, 2022 (09.30 AM – 10.00 AM)
2. Workshop planning meeting at CGD Office on October 11th, 2022 (09.30 AM – 10.00 AM)
3. Presentation of preliminary findings from the survey at CGD Office on January 18th, 2023 (09.30 AM – 10.00 AM)
4. Mission in Thailand (from January 25th to January 26th)
 - Consultation on the findings with CGD on January 25th, 2023 (10.00 AM – 12.00 PM)
 - E-GP system walkthrough with CGD on January 26th, 2023 (09.30 AM – 12.00 PM)
5. Presentation of the findings and discussion on topic selection for deep-dives analysis (online and in-person at CGD office): February 14th, 2023 (01.30 PM – 2.30 PM)