

**ASSESSMENT OF PARTNER PROCUREMENT CAPABILITY AND CAPACITY, AND
ASSOCIATED PROCUREMENT RISK**

**for proposed assistance to the Mekong River Commission
involving possible procurement via partner systems**

CONSULTANTS REPORT

March 2009

TABLE OF CONTENTS

Glossary

Executive Summary

Assessment Scope and Limitations

Context of the Assessment

Section 1 Legal Aspects and Transparency

Section 2 Procurement Cycle Management

Section 3 Organization and Functions

Section 4 Support and Control Systems

Section 5 Record Keeping

Section 6 Staffing

Section 7 Private Sector Viewpoint

Section 8 Assessment and Recommendations

Section 9 Recommendations for Improvements to the Assessment Terms of Reference

Section 10 Additional Information and/or Recommendations

Section 11 Consultants' Work and References

- Schedule of Meetings Held
- Documents Reviewed
- Tender and Contracts Reviewed

ANNEXES

ANNEX A Completed Procurement Assessment Form

ANNEX B Comparison Table - CPG and MRC's Procurement Systems and Procedures

Glossary

ADB	Asian Development Bank
AUD	Australian Dollar
AIT	Asian Institute of Technology (Bangkok)
AusAID	Australian Agency for International Development
CEO	Chief Executive Officer
CKP	Charles Kendall & Partners Ltd.
CPGs	Commonwealth Procurement Guidelines
DAC	Development Assistance Committee
EP	Environment Programme
FAS	Finance and Administration Section
FMS	Financial Management System
GPN	General Procurement Notice
HRD	Human Resources Development
HRMU	Human Resources Management Unit
ICBP	Integrated Capacity Building Programme
IFI	International Financial Institutions
ITB	Instructions to Bidders
JC	Joint Committee
MRC	Mekong River Commission
MRCS	Mekong River Commission Secretariat
NAP	Navigation Programme
SBD	Standard Bidding Documents
SENSA	Swedish Environmental Secretariat for Asia
Sida	Swedish International Development Cooperation Agency
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
WB	World Bank

Assessment of Mekong River Commission Capability and Capacity to Implement Procurement, and of Associated Risks

Executive Summary

This Report is the result of a mission by a 2 man team of procurement specialists from Charles Kendall & Partners to Vientiane, Lao PDR from 9-20 March 2009. The purpose of the mission was, at the request of AusAID, to carry out a partner procurement capability and capacity, and associated procurement risk assessment in respect of proposed assistance to the Mekong River Commission (MRC). The assignment was carried out within that two week period which included participatory fact finding, verification meetings and report writing. The facts were continuously verified with the MRC throughout and the preliminary findings and recommendations discussed with both MRC and the AusAID office in Vientiane before being finalised.

The Report consists of the main text together with 2 annexes. These contain (i) the AusAID procurement assessment diagnostics tool and (ii) a table which provides a comparison between the MRC rules and the Commonwealth Procurement Guidelines (CPG). The diagnostics tool presents the results of a series of interviews with MRC staff and the review of documents and files presented to the team. The comparison table provides the result of a desk review of the MRC Procurement Manual, Procurement Toolkit, supplemented by further questions and discussions carried out during the course of the interviews. The information contained in these two tables was verified by MRC and forms the basis of the assessment.

The introductory section of the Report establishes the context of the assessment. In the authors' opinion, this is crucial to a full understanding of MRC procurement, its assessment and the conclusions drawn. MRC is a relatively small international organisation which is not subject to national procurement and which regulates its own procurement. That procurement consists of relatively low value consultancy services, routine (office) supplies, some technical supplies and very few, or no, construction services. This calls for procurement procedures which are narrower, simpler and more flexible than those which make up the default procedures of donor organisations and international procurement systems. With the vast majority of contracts valued at below US\$40,000, the MRC procedures based on requests for quotations or proposals are more adapted to the MRC situation than competitive bidding. For larger or longer contracts, MRC does in any event apply international tendering and open and competitive procedures.

With these considerations very much in mind, the authors provide a positive assessment of MRC procurement. Despite the not insignificant number of deficiencies in the regulatory framework identified in the comparison table (focussed as it is mostly on large value procurement) and some practices which could be improved, as a whole MRC procurement is of an acceptable standard. This is based not only on the rules in place which, albeit defective as compared to the CPGs, provide a clear policy of competitive procurement but also on the efficient practices in place and the capacity and motivation of the people involved in the procurement function. MRC faces some staffing constraints (with staff having limited duration contracts) and there is a possibility that the co-hosting solution to the current rotating location of the MRC Secretariat might affect the coordination of the procurement function; on the whole, however, the system appears to work well and be fit for purpose, an assessment which is, it appears, also shared by some other development partners.

It is, nevertheless, not a perfect system and the comparison tool has thrown up a series of deficiencies. Some of these deficiencies may be less critical in the case of MRC and some may be remedied by means which avoid major policy changes. They are, however, deficiencies which in the authors' opinion must be addressed. To this end, the Report sets

out these deficiencies in some detail and seeks to suggest practical and workable solutions. These have been discussed with MRC itself which both understands the concerns and is committed to addressing them.

In addition to identifying specific actions to improve the regulatory framework, the Report also provides suggestions for activities which would improve the current practices and systems and which would assist in building the capacity of MRC staff both in terms of the procurement process but also in respect of contract management.

In summary, the Report's recommendations propose:

- the correction of deficiencies identified in the Procurement Manual to bring them in to line with the CPGs and international best practice, to be achieved in the short term by means available to MRC and acceptable to AusAID;
- the review and revision of the Procurement Toolkit to ensure a comprehensive and consistent set of procurement related standard documents and tools to supplement the Procurement Manual;
- improvements to the operational environment by way of guidelines, documentary tools and software;
- increased capacity development programmes for the benefit of both procurement and Programme staff to be provided internally, by AusAID and by external technical assistance providers.

Section 8 contains the detailed assessment and recommendations.

Assessment Scope and Limitations

AusAID has been a significant donor to the Mekong River Commission (MRC), notably in the last three years, and is presently planning further financial assistance of approximately AUD 18 million over the next four years. These funds are to be applied to three of the MRC Programmes:

- Integrated Capacity Building Program (ICBP);
- Climate Change Initiative; and
- Mekong Integrated Water Resource Management Project

To date, AusAID has relied on the rules and procedures of the MRC itself to guide the expenditure of AusAID funds. This reliance was based, in broad terms, on the general perception that MRC was able to conduct its procurement in a satisfactory manner. The purpose of this assignment is to review the procurement capability and capacity of the MRC and of the associated risks attached to the proposed programmes to verify that perception and to assess (i) whether the procurement required by the programmes is being carried out using the MRC's procurement systems and procedures and (ii) whether those systems and procedures are indeed acceptable to AusAID. The interest is to determine whether such reliance can continue as it is or whether additional requirements or assistance can be provided to improve any deficiencies, if any, that may be identified by this assignment. As such, the assignment falls squarely within the commitments made by all donors which have subscribed to the Accra Agenda for Action of the DAC Working Party on Aid Effectiveness, namely that, in respect of the expenditure of their funds, they will rely on the use of country procurement systems as the default method whenever that is feasible coupled with a commitment to strengthen deficient country systems and to support reform and capacity development initiatives.

The current assignment targets the MRC, a single entity, and not a country or national executing agency of any particular country. The scope of the assignment is thus limited, by definition, to the systems, rules and procedures that apply to that specific entity which, in this case as will be seen below, are not the rules and procedures which apply to other entities operating in the country in which MRC is established. The assessment does not, as a result, concern itself with national rules and procedures in the Lao PDR or in any of the other riparian States other than to the limited extent to which those national rules may impact on the contract and contract management.

The assignment was conducted largely in-house at the MRCS, based in Vientiane, Lao PDR. This is the operational arm of the MRC, although some of the Programme staff working on flood mitigation are based in Phnom Penh. The latter does not form part of this assessment.

It is worth mentioning at this point that, until now at least, the MRC Secretariat has been established on a 5 year rotating basis between Vientiane in Lao PDR and Phnom Penh in Cambodia. It appears that this rotation may be terminated at the end of the current 5 year period in Vientiane and could be replaced by what is known as "co-hosting". In practical terms, this means that many of the functions may be divided between Vientiane and Phnom Penh although the precise nature of the division is not yet known. It is believed that the Finance and Administration Section (FAS) would remain in Vientiane but that the more significant Programmes could be transferred to Phnom Penh. It is not clear yet what effect this would have on the procurement function of MRC but it may be assumed that, given the procurement coordination between FAS and the programme coordinators in each of the Programmes, the lines and ease of communication, responsibility and accountability will need to be addressed once the final shape of the proposed co-hosting is known. This current report cannot predict the situation that will arise following co-hosting and is limited to the staffing structure and interaction which is currently in place. Nevertheless, as input to the

ongoing discussions, the Consultants would encourage FAS to strive to maintain the core procurement function in one location, preferably Vientiane.

The consultant's team, comprising Peter Trepte (Team Leader) and Franz Pletsch, held an introductory meeting with AusAID and MRC on 9 March 2009 to discuss the scope of work and agree the working arrangements for the assessment. A timetable was agreed whereby meetings would be held between the team members and FAS staff each morning, followed by meetings between the team and other MRC staff, mainly the Programmes, and the team would then prepare a report of those meetings each afternoon to be reviewed by the team and MRC the following morning. A full account of these meetings is provided in section 11 of this Report. The team was able to meet with and discuss the relevant issues and concerns with the FAS, the Human Resources Division (HRD) and all the relevant Programmes based in Vientiane (Environment, Navigation and ICBP) and was able to review and refer to the appropriate documentation held by each. In carrying out the factual investigation and risk assessment, the team used the AusAID Procurement Diagnostics Assessment Tool and the completed table is attached as Annex A. Using this iterative process, the team and FAS were able to complete an agreed set of facts by the end of the first week which formed the basis of the team's analysis.

The TOR indicated that some information required under Section A of the Assessment Tool may be available from an assessment recently completed by AusAID or another donor. However, the information available from such recent assessments, namely the "Checklist Organisation Capacity Development", which formed part of an assessment carried out by the Dutch Government in 2004 and the Final Draft Report on "Aid Effectiveness for the Mekong River Commission", February 2009 issued by Oxford Policy Management on behalf of the Swedish Environmental Secretariat for Asia (SENSA) contained only very limited information or general statements on MRC's procurement systems and procedures. Opinions provided by development partners on the suitability of MRC's procurement systems and procedures varied considerably ranging from very strong to weak. But these opinions appear to be based on perception rather than detailed assessment.

In terms of constraints, the team's enquiries were limited to Vientiane although, as explained above, this did not cause a problem. Most of the relevant staff were present for at least some of the time. It is also worth pointing out at this stage, that the assessment was of both systems and people and that the people concerned are those presently working in Vientiane. The current term of the Chief FAS is about to expire and, although his replacement was due to arrive during the second week of the team's mission, MRC learned during the first week of the mission that the proposed replacement would not be coming as planned. As will be discussed further in the Report, people are critical to the proper functioning of the MRC procurement system which has some inherent weaknesses. These become inconsequential when the rules and procedures are applied by knowledgeable and experienced staff such as the current Chief of FAS. They may become more problematic or significant as the capacity to apply them diminishes. It is not known who will take over as Chief of FAS and it is not the place of the team to assess the suitability or not of any replacement. However, it is important to say that the successful implementation of the current Procurement Manual depends largely on the ability and experience of the head of FAS. In this context, it should also be borne in mind that there is a move towards 'riparianisation', i.e. towards replacing current international staff with staff from the riparian States. This need not adversely affect the implementation of the procurement rules but it does mean that the riparian staff need to have, next to finance, the right or sufficient qualifications and experience with regard to procurement.

The assessment of this Report with regard to the capacities of MRC to implement its procurement rules satisfactorily or not is based on an historical account of procurement spend, in terms of type, value and numbers of contracts. Estimates are available for projected future spend which suggests that there will not be a significant change over the

next 4 years, but possibly a steady increase. Precise details of the procurement to be carried out by MRC using AusAID funds are not yet finalised, since programmes are still in the process of being designed. If, contrary to our current understanding, there are to be significant changes to the value of procurement, but more particularly to the number of contracts, falling within the procurement rules, the capacity levels which form the basis of this Report would need to be revised.

In terms of time, the time available for discussions and review of procurement files was limited by the fact that the final draft report had to be submitted before the departure of the team from Vientiane. This limitation was managed to a large extent through the work programme agreed at the introductory meeting but further time for data and file collection and review would have been beneficial.

Context of the Assessment

As stated above, the assignment is focussed on the procurement of a single entity which does not fall within the structures of a specific country. This has significant implications for the applicable legal and regulatory framework for procurement and has important consequences for the assessment in terms of the scope and nature of the procurement itself. This means that the assessment is particularly specific and that the procurement rules need very much to be considered in their context. This is not a question of applying CPG equivalent or compatible rules to all procurement carried out in any given country; it involves considering which of the CPG guidelines are relevant to the types of contracts awarded by MRC and determining whether, in those instances, the rules and procedures applied are acceptable under CPG guidelines or consistent with them.

In putting the assessment into context it is important to provide an overview of the status of the MRC, the source and development of its procurement systems and procedures, the nature of the MRC procurement profile, organisation of the procurement function and the focus of AusAID's planned financial assistance over the next 4 years.

The Status of the MRC

The Mekong River Commission (MRC) was established by "The Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin" between the Governments of Cambodia, Lao PDR, Thailand and Viet Nam. Signed on 5 April 1995, it set a new mandate for the organization "*to cooperate in all fields of sustainable development, utilization, management and conservation of the water and related resources of the Mekong River Basin*". The two upper states of the Mekong River Basin, the People's Republic of China and the Union of Myanmar, are dialogue partners to the MRC.

The MRC consists of three permanent bodies: The Council, the Joint Committee (JC) and the Secretariat. The Council consists of one member from each country at ministerial or cabinet level. The Council makes policy decisions and provides other necessary guidance in order to implement the 1995 Agreement. The Council has overall governance of the Mekong River Commission. The Joint Committee (JC) consists of one member from each country at no less than Head of Department level. The Joint Committee is responsible for the implementation of the policies and decisions of the Council and supervises the activities of the MRCS. This body functions as a board of management. The MRCS is the operational arm of the MRC. It provides technical and administrative services to the JC and the Council, is under the direction of a Chief Executive Officer (CEO) who is appointed by the Council. Under the supervision of the Joint Committee, the CEO is responsible for the day-to-day operations of around 150 professional and general support staff. The National Mekong Committees coordinate MRC programmes at the national level and provide links between the

MRCS and the national ministries and line agencies. The principal implementing agencies of the MRC programmes and projects are the line agencies of the riparian countries in the Lower Mekong Basin. They are served by the respective National Mekong Committee Secretariats in each country. For further information, please visit MRC's website at <http://www.mrcmekong.org>.

The Legal and Regulatory Framework

Under the 1995 Agreement, it is for the Joint Committee to adopt its own Rules of Procedures to be approved by the Council and these were adopted in 1998. They contain the main principles and general provisions that define the authority and responsibility of the MRC Secretariat to facilitate the management of its functions. The preamble states that detailed implementation regulations are to be stipulated in the Mekong Manuals on Finance, Procurement, Programme and Project, Personnel and Administration.

Rule 16 of those Rules and Procedures, entitled 'Procurement of Goods and Services' sets out the main principles governing procurement and those principles are implemented through a more detailed Procurement Manual which was adopted along with other core manuals of the MRC in 2006 after extensive discussions and effort within the MRC. The manual is largely the work of in-house staff who worked on each of the manuals simultaneously with occasional assistance from external consultants.

What is important to bear in mind in respect of the development of the Procurement and other Manuals is that the drafting work began in the late 1990s and did not conclude until 2006. In practical terms and for our current purposes, the long gestation period of the current manuals, means that there is a reluctance to restart any extensive redrafting process of the Manuals even though there is a recognition that, in terms of the Procurement Manual at least, there is room for revision and improvement. Whilst, therefore, the obvious solution to any deficiencies identified during the course of this assessment might merely be to propose an amendment to the Procurement Manual where appropriate, this may not be the optimum solution since it may not be acceptable to the MRC and, perhaps more importantly, could take an excessively long time. Even if amendment to the Procurement Manual might be the ultimate goal, this should perhaps be seen as a longer term goal in the present context and shorter term solutions, ones that can be implemented within the time frame of the current AusAID funding plans, need to be envisaged.

In addition to the Procurement Manual, there is a Procurement Toolkit. This is a practical collection of guidelines and sample documents for such things as tender preparation, tender documents, contract documents, evaluation. It is not adopted formally under the Rules of Procedures or Manual and does not contain what might be termed mandatory standard bidding documents. It is something of a 'work in progress' containing documents which have been added incrementally. The emergence of the toolkit has been a practical response to immediate requirements and not necessarily part of a concerted attempt to create a suite of supporting documents specifically designed for the needs of the MRC. In practice, however, it is relied on heavily to supplement the Manual.

The procurement manual and procurement toolkit have thus been developed mostly in-house and in response to the immediate needs of the organization. They, therefore, address the type of procurement which is carried out by the MRC and provide templates and examples of the terms of reference, tender and contracts documents which are most frequently needed by the programmes for which the procurement is carried out.

The Structure of MRC

For ease of reference, the general structure of MRC will be described here since it affects various parts of the following Report. The procurement functions and the staffing of each of

the divisions will be considered in detail in the relevant parts of the Report. The purpose of this section is merely to provide an overview of the main departments concerned. We are interested in both administrative sections and Programmes.

Administrative Sections

The two administrative units of the MRCS which are of concern to us are the:

(i) Financial and Administration Section (FAS)

The role of the Finance and Administration section (FAS) is to provide the secretariat and operational programmes with modern and highly efficient financial, administrative, logistical, facilities management, information technology and communication support. The section is also responsible for interacting effectively on such matters with the National Mekong Committees, riparian national agencies, international agencies and donor communities.

The section consists of 4 units:

- **Administration unit:** functions include Logistics, Travel, Protocol, Premises, Safety and Security, Registry and Support services.
- **IT unit:** manages and develops the Hardware, Software and LAN infrastructure in MRC.
- **Finance unit:** whose role is to secure sound financial management in MRC and to provide high quality, accurate, available and timely financial information and services towards the Management, the Programmes and the Donors of MRC.
- **Procurement unit:** responsible for the procurement of goods, services (firms) and works. The unit is responsible for the preparation or review of tender documents, initiating procurement procedures, reviewing evaluation reports, drafting contracts, arranging for signature and ensuring that deliveries, payments, execution of bank guarantees and other financial contract instruments are done according to the contract modalities.

(ii) Human Resources Development Section (HRD)

The Human Resources Development Section aims to ensure the development of the right skills, competencies, and organizational culture in the MRC to support full implementation of the Strategic Plan. HRD comprises two units: the Human Resources Management Unit (HRMU) and the Human Resources Development Unit which houses the Integrated Capacity Building Programme.

HRMU is responsible, *inter alia*, for the personnel services in respect of the staff of the Secretariat and all recruitment of individual consultants and project staff covering co-coordinating recruitment, remuneration, benefits and allowances, employment contracts, special service agreements, and performance appraisal.

Programmes

There are 3 main Programmes which have been assessed as part of this assignment. One other Programme on flood mitigation is located in Phnom Penh and was not assessed.

(i) Environment Division (ED)

The Environment Programme is both a division and programme: the Division has one Programme: the Environment Programme. It is furthermore developing a MRC cross-

cutting initiative: the Climate Change and Adaptation Initiative envisaging a set-up of a climate Change and Adaptation Office in the division.

(ii) Navigation Programme (NAP)

The Navigation Programme aims are to improve inland water transportation and maritime navigation to increase international trade among the riparian countries and between the MRC countries and their Asian partners. At the grass-root level, the aim is to enhance communication with remote villages, both for transport of goods and people. An institutional monitoring system and a common navigation code will reduce the number of accidents and minimize the risk of pollution. A key responsibility for the programme is to find the optimal balance between economic development and sustainable ecology.

(iii) Integrated Capacity Building Programme (ICBP)

The overall objective of ICBP is to improve the capacity of the MRC to implement its mission and play a leading role in coordinating the development and use of the basin's water resources. There is a strong need to develop the technical, institutional and legal water resources management capacity and expertise at local, national and regional levels. The ICBP is guided by the principle that the level of competence in river basin management among the MRC staff and staff in the riparian governments is to be raised through a systematic, modular training approach.

MRC Procurement Profile

In general terms, the majority of procurement is carried out for (i) day to day office supplies and (ii) consultancy services. In some cases, there is also procurement for some technical equipment such as measurement and survey equipment which is needed in the context of survey services. This is a relatively small proportion of the goods bought, although it does include some large contracts. Hardly any construction services (works) are carried out by the MRC. There are some routine maintenance works and a need, sometimes, to build small riverside sheds to house, for example, survey equipment but works generally not form part, or any substantial part, of MRC procurement. Most of the limited construction takes place at the level of the national committees which are subject to their own national procurement laws.

In outline, MRC procurement in 2008 totalled US\$ 10.4 million and consisted of:

Procurement Spend	Value US\$	Number of Contracts
Goods	1.6 million	219
Consultancy Services (firms)	4.9 million	160
Works	0.4 million	22
Total	6.9 million	401

In looking at individual contract values (excluding contracts for individual consultants), the procurement profile becomes more focussed:

Average Contract Value (US\$)	Number of Contracts	Average Value (US\$)
Less than 20,000	359	2,327
Between 20,000 and 40,000	18	27,300

More than 40,000 | **24*** | **233,171**

* Of these 24, however, only 9 were large contracts, including one for US\$1.5 million for goods and related services and one for \$850,000 for services.

In the case of individual consultant contracts:

Average Contract Value (US\$)	Number of Contracts	Average Value (US\$)
Special Service Agreements (SSA)	217	13.000
Service Contracts (SC)	98	9.000
Total	315*	3.5 million

* of which, 106 are international recruitments and 209 are regional.

Procurement spend from 2000-2007 remained rather constant; there was an increase in 2008 which is expected to continue in 2009.

It will be appreciated that, compared to the range of contracts normally covered by the CPG, MRC procurement is rather modest and consists mainly of low value services and supplies contracts. This does not mean of course that MRC procurement cannot and should not benefit from efficient and effective procurement rules. It does mean, however, as stated in section 4 of the CPG, that value for money considerations imply less onerous procedures weighing the costs of the procedures against the benefits to be realised.

MRC Organization of Procurement

In terms of organisation, the MRC is broadly divided between administrative functions and the various Programmes which are responsible for the preparation of procurement plans, specification/TORs, evaluation and contract management. Currently, apart from the programme concerning flood mitigation, most are based in Vientiane. With technical staff based in the Programmes, it is sensible that the technical aspects of procurement (preparation of TORs and specifications) be carried out in the Programmes themselves. Similarly, given the size of MRC and its relatively limited funds, it also makes sense for the administrative functions to be carried out centrally by a small team of experts (financial and procurement) avoiding unnecessary duplication. This division of functions is a direct response to the needs of the organisation and explains some of the peculiarities of the procurement procedures discussed further below, e.g. separation of technical and administrative functions; retention of procurement files in more than one locations etc. In some national entities, this may well be seen as problematic or cumbersome. In the case of the MRC, however, it is an organisation of functions which corresponds to its needs and resources.

As indicated above, the move to co-hosting may have an impact on the organization and on the conclusions drawn from its current ability to manage the procurement tasks assigned.

The Focus of the Planned AusAID Financial Assistance

The programme to be financed by AusAID is on institutional strengthening, capacity building, navigation and better water resources management in the Mekong Basin. Whilst precise details of the procurement to be carried out using AusAID funds are not yet finalised and still in the process of being designed, it is expected that AusAID funding will be used primarily for

the procurement of a varied range of consulting services. It is likely also that arrangements for regional and national meetings of MRC member countries will be procured and that some limited goods procurement may also be carried out.

The possible scope of procurement was discussed with AusAID Vientiane and MRC Programme Units, including Chief Technical Advisors (CTA's), but only limited information was available with respect to details of resulting procurement activities. What seems clear is that the financial assistance will be in the order of AUD 18 million over 4 years. This translates into approximately US\$2.8m p.a., but maybe less in 2009 as the financial assistance will only commence mid-year. According to FAS, compared with the MRC budget of 2008 and its procurement spend, this would represent a sizeable but manageable increase considering that other donor contributions will decrease over the coming years. Concerning the number of contracts, we understand from our discussions with Programmes that the number of procurement activities during the whole period will not change significantly for Environment and Navigation. Less specific information was available from ICBP but it appears that an increase in activities is likely.

Based on the limited and unconfirmed information available, it appears that present staff resources within FAS and Programmes will be sufficient to cope with the procurement activities under the planned AusAID Programmes. However, as far as the procurement of individual consultants is concerned, it appears that the anticipated workload cannot readily be absorbed by HRMU. The capacity question is blurred somewhat by the waiver procedure. As described below, waivers are frequent in the case of individual consultants with the result that only a limited number of the individual recruitments are undertaken applying the full process, i.e. through advertising, even though for reasons of transparency, we would strongly recommend that all such recruitments under AusAID funding should be undertaken applying the full recruitment process as described by the Procurement Manual. The consequence of fewer waivers, however, would be to increase the workload of HRMU even before taking into account the additional individual services contracts envisaged.

It is clear that the issue of staff resources should be re-addressed after more details on the type and volume of future procurement activities are known. This would also include appraisal of the Programmes' capacity to manage the procurement process from their side.

Section 1 Legal Aspects and Transparency¹

A1 - GENERAL FEATURES

As an international organisation, MRC regulates its own affairs, including procurement. The primary procurement provisions are contained in the Rules of Procedures of the MRC Secretariat, adopted by the Joint Committee of the MRC. Rule 16 of those Rules and Procedures, entitled 'Procurement of Goods and Services' sets out the main principles governing procurement and indicating that the principles will be implemented through a more detailed Procurement Manual. This Procurement Manual was adopted in 2006 after extensive discussions and effort within the MRC. In addition to the Procurement Manual, there is a Procurement Toolkit. This is a practical collection of guidelines and sample documents for such things as tender preparation, tender documents, contract documents, evaluation. It is not adopted formally under the Rules of Procedures or Manual and does not contain what might be termed mandatory standard bidding documents. In practice, however, it is relied on heavily to supplement the Manual. Together, these form the legal and regulatory framework governing MRC procurement.

The scope and nature of the procurement carried out by MRC is considerably more limited than that which one would expect to encounter in a country or national Ministry. Its procurement is confined largely to the purchase of consultancy services, routine (office) supplies, some technical supplies and very few, or no, construction services. The procurement framework reflects this situation and, as such, it may be said to be *largely* consistent with the philosophy and procedures of the CPGs and with international standards. The value and types of contracts awarded by MRC mean that they are mostly contracts which would not attract significant coverage by international procurement systems. They are mostly well below the thresholds normally applied for international bidding. Even if a national context, the contracts are such that they would normally be subject only to simple Request for quotation (RFQ) procedures or single source contracting. And yet, the MRC procedures do require international tendering for contracts with a value above US\$40,000 and an open and competitive process for services contracts with a duration in excess of 3 months. For lower value contracts, direct contracting and RFQ procedures are also used and this is commensurate with value for money considerations.

Even with the simpler procedures envisaged under MRC, however, there are some deficiencies which need to be addressed, although given the context, some of these deficiencies may not be seen as critical since their effect is often negligible on the types (and value) of services and goods procured by MRC. Ideally, many of the deficiencies would best be corrected by amendments to the Procurement Manual but, as indicated above in the 'Context of the Assessment', this may not be practicable given the 8 year gestation period of the current Manual. The recommendations made in section 8 seek to take this into account.

The main deficiencies of the legal and regulatory framework may be summarised as follows: (i) no publication or other dissemination of the annual procurement plan; (ii) no confidentiality provisions; (iii) the absence of specific valuation rules for contracts; (iv) the absence of a prohibition on the splitting of contracts to avoid the application of the procurement rules; (v) inconsistencies between CPG and Manual on conditions for direct sourcing; (vi) the absence of transparency and non-discrimination conditions in respect of technical specifications; (vii) no explicit provisions on late submission of bids; (viii) no systematic (i.e. required) publication

¹ The numbering of Sections 1-7 corresponds to the numbering used in the procurement diagnostics assessment tool

of contract awards, even if it sometimes happens in practice; (ix) no debriefing provisions; and (x) no formal complaints/review mechanism.

Despite these deficiencies, the procurement systems and procedures are sufficiently clear and sufficient for purpose although they are not always comprehensive and consistent and they do contain some unnecessarily complicated provisions, notably that concerning the award criterion. These are practical issues which will affect the implementation of the legal and regulatory framework and they stem mostly from the documentation in the Procurement Toolkit. Whilst this is a valuable tool, the incremental nature of the collection means that the documents added are often very different; are not always consistent with each other; are incomplete; but also sometimes inconsistent with the Procurement Manual itself. The main concerns identified in this regard concern (i) the absence of complete contract management processes; (ii) weakness in the tender documentation and in some essential procurement issues, notably description of selection and qualification criteria; and (iii) weakness in the award criteria.

In all other cases, however, it is clear that MRC procurement is largely consistent and compliant with the Manual. The system is adhered to and well regarded; non-compliance is more a function of the inconsistencies between the documents in the Toolkit and between those documents and the Manual as well as general weaknesses in the drafting of the Manual.

There are no suspension or debarment rules, although the MRC Procurement Manual does include evaluation forms which must be completed for consultants. These appear to be completed consistently and negative comments will result in the removal of the consultant from the MRC Roster of consultants. This is not necessarily blacklisting since there are other means for bidders' names to be put forward and Programmes which ask for names from the Roster are simply not given the CVs of those who have received negative evaluations – they will be unaware of those whose CVs they have not been sent.

MRC does not apply any primary/secondary boycotts.

One potentially problematic area of the legal framework concerns the absence of any standard procedures for the settlement of contractual disputes. These are contractual issues, rather than procurement issues, but are not dealt with in the Procurement Manual and only partially in the Procurement Toolkit. In the case of the model contract documents that exist, these often generally provide for arbitration under the UNCITRAL arbitration rules where disputes cannot be amicably settled between the parties. However, with one exception seen in the review of files, the arbitration clause does not designate the appropriate arbitration institute nor make the necessary elections with regard to procedural law, number of arbitrators etc. As drafted, the clause is likely to cause delay and unnecessary expense in the event of a dispute.

One additional contractual issue concerns the applicable law. As indicated in section B3 Bidding Documents, below, there is no standard clause setting out the proper law of an MRC contract. In practice, it varies between the contract documents used. In the event of a dispute, this will at best cause severe delay in addressing the substantive issues of the dispute and may prove fatal to resolution.

A2 - BASIS OF TRANSPARENCY

MRC is generally required to follow international tendering procedures for larger value contracts and open and competitive recruitment procedure for individual consultant contracts of more than 3 months. Invitations to bid and, where appropriate invitation to pre-qualify, will be given wide publicity on the MRC's website, in the MRC member countries, through advertisements in regional leading newspapers of general circulation and other selected

international organization websites. In the case of the recruitment of individual consultants, candidates may be identified directly by Programmes or Roster through an announcement on the MRC website. The advertising of contracting opportunities for goods and services (firms) are adequate and complied with but the choice of advertising forum is sometimes left to the discretion of staff rather than being made explicit in the applicable rules. Moreover, waivers from the requirement to adopt open and competitive procedures appear to be a common practice and advertising opportunities for hiring of individual consultants has therefore not been the rule. This practice has prompted a Memorandum from the Chief of the FAS to reinforce the rules.

The conditions for the use of various procurement methods are established quite clearly. Given the value of the majority of the contracts identified in the Procurement Manual, competitive bidding is not, in practice, the default method of procurement and various types of RFQ procedures are foreseen depending on the value or duration of the contracts at issue. There is, however, a very high incidence of direct purchase/single source procurement permitted by waiver in the case of services. Whilst this might be partly explained by the fact that most procurement of goods is of a relatively small value and many service contracts for individual consultants are of a short duration, it is also clear the description of the situations and conditions giving rise to permitted waivers are very broadly drafted and do not provide guarantees that they will not be easily abused. Two of those conditions in particular, and notably the waiver based on conditions of urgency, do not appear to be consistent with the CPG exceptions.

In terms of participation, there are some specific provisions on pre-qualification but, otherwise, the Procurement Manual is entirely silent on the criteria to be taken into account for the selection of bidders. Various documents in the procurement toolkit refer to qualification criteria but they are inconsistent providing, as they do, examples of potentially useful documents. The sample evaluation grids apply acceptable qualification criteria but none of the sample tender documents reflect the criteria contained in the sample evaluation grids. There is, in addition, a mixture of examples of goods and services tender documents which are necessarily different and these are not subsequently reflected in the sample evaluation grids. Taken individually, many of the qualification requirements referred to could be considered fair and appropriate but the system for applying them is opaque and inconsistent. There is a significant danger that they will not be applied consistently.

The evaluation criteria for goods and equipment are stated to be the lowest bid conforming to specification. Nevertheless, the Manual then applies an additional mechanism of comparing similarly priced and scored bids in an apparent attempt to graft on a quality/cost equation even though the sole evaluation is stated to be the lowest price (other than in the case of professional services and works). This is both unclear and non-transparent. Negotiations after bid opening and award selection are frequent and explicitly foreseen in some cases by the Manual. The Manual, however, provides no procedures for negotiation and does not indicate in what circumstances they may be used.

The Procurement Manual does not contain an explicit rule for holding public bid openings. In principle, however, bidders may attend openings and in the past have participated in some bid opening sessions, which are normally held at MRC HQ. This is however not the rule.

There is no requirement for public notice of contract awards, but major contract awards are announced at the MRC website. In case of recruitment of individual consultants, those not selected are not necessarily informed of the outcome.

On questions of probity, there are no general provisions in the Procurement Manual on conflicts of interest, although there are some specific (and narrow) prohibitions in the section on the hiring of individual consultants and in some of the documents contained in the Toolkit. There are no rules on bribery set out in the Procurement Manual, although there are some

general provisions on proper conduct and integrity in the Personnel Manual which applies to MRC staff. Each of the model contract documents does, however, contain general provisions which may be used to refer to these cases.

Finally, the lines of authority and responsibility are clear and it appears that there is very little, if any, opportunity for discretionary interference by officers not directly involved in the procurement process. However, it is also clear that there is much pressure exerted by senior management, at least in the national committees, to make things happen quickly and regardless of planning issues. As a result, waivers are required and granted more often than is beneficial.

The transparency issues referred to generally here are considered in more detail in the following sections.

A3 - BASIS OF ACCOUNTABILITY OF PROCUREMENT OFFICIALS

Employees are expected to follow a published code of ethics, which is contained in the MRC Personnel Manual and which is available on the intranet. This incorporates into each contract of employment a clause which states that employees "*shall not engage in any activity which is incompatible with the proper discharge of their duties or which may adversely affect on the integrity, independence and impartiality which are required from the MRC Secretariat personnel*". We believe this to be sufficient in the context of MRC.

There is no formal administrative review/appeal mechanism at MRC. In practice, any complaint would be made to the CEO of the MRCS or to a country member of the Joint Committee but we have been informed that no such complaint has been made so far.

There is no judicial review foreseen but this is consistent with the general immunities of MRC as an international organization.

Section 2 Procurement Cycle Management

B1 PROCUREMENT PLANNING

MRC requires procurement plans to be submitted in January each year and this appears to be done. The annual procurement plan which is based on the annual work plan of each program is detailed enough for the purpose of general planning and considers the technical, financial, managerial and implementation constraints but could be more detailed. In respect of multiple inter-related procurement activities, Programme staff cited the need for training in the use of such planning and monitoring tools (software).

There is an understanding of the requirement and the benefits of appropriate packaging of similar items for efficient procurement and Programmes are, moreover, required to present lists of recurrent items on a quarterly basis to the administrative assistant in FAS who then carries out 'collective' procurement for the aggregated requirements.

Some delays in presenting procurement requisitions have been experienced and it appears that collective procurement has caused some difficulties because, despite advance planning, actual needs vary across the Programmes, with some requiring supplies before the procedure is complete. It appears that there have been no major delays with respect to meeting completion schedules for goods and works. An Excel Master File (electronic "procurement monitoring file") (including details normally required in a procurement implementation plan) is maintained which among other data includes information on date of purchase requisition, purchase order, method of procurement, advertising, bid invitation, bid opening etc.

Despite adequate planning, no General Procurement Notice is issued or required to inform potential bidders of what MRC is planning to procure during the year.

B2 PROCUREMENT CYCLE

The procurement manual only describes time durations for submission of tenders above US\$ 40,000 (four to six weeks, or longer periods if necessary) and for pre-qualification (30 days for submission of pre-qualification) and these are in line with international best practices. The time duration for lower value contracts appears reasonable.

A typical procurement cycle from bid advertisement to award is described in detail in the completed procurement diagnostics tool. In all cases, the needs are identified by technical staff in the Programmes who prepare the specifications of terms of reference. These are then sent to either FAS (goods and consulting firms) or HRMU (individual consultants) for processing. The latter prepare the tender documentation and conduct the procedure. The evaluation committee will include the technical staff from the Programmes. Contract administration is the responsibility of the Programmes. The internal processes and approval mechanisms are of an acceptable standard and there appears no need for a change in procedures. However, although all involved know the various steps and procedures to be followed it would be useful if apart from the procurement manual a flow chart of the respective procedures would be available to all concerned.

At the same time it appears that the use of waivers is common practice, in particular in the recruitment of individual consultants and this raises some concern. In addition, in the case of individual consultant contracts, there also appears to be an excessive and systematic use of the fee rate negotiation which is, however, foreseen in the Manual.

One other issue that may need to be addressed is the practice, where opportunities are advertised in MRC member countries, for national committees to 'screen' applications and

only send those “acceptable” to them to MRC. This seems, however, to be limited to the recruitment of riparian staff.

B3 BIDDING DOCUMENTS

MRC’s procurement toolkit includes *examples* of documents for goods and services (firms) as well as for the recruitment of individual consultants. However, these are examples than required SBDs and are not always applied rigorously. Documents have been added to the toolkit as and when the need for them has arisen and they have been taken from existing templates such as World Bank, ADB and other documents. They have not been revised in a comprehensive manner to ensure consistency with the MRC procurement manual or, indeed, with each other. Whilst the documents address the type of procurement which is carried out by the MRC and provide templates and examples of the terms of reference, tender and contracts documents which are most frequently needed by the programmes for which the procurement is carried out, they do not offer a comprehensive and reliable set of standard bidding documents. They need revision to ensure that they are complete and consistent with each other and the Manual. Additional documents may be needed.

The samples of technical specifications and TOR’s and other essential component of the bidding documents reviewed are of good quality, considering the limitation of the templates provided for in the toolkit.

There are no separate documents for international and national competitive bidding. The examples contained in the toolkit provide documents which are more appropriate for international bidding and some that are more appropriate to national bidding but this is not how they are organized. International tendering is the default method for contracts above a value of US\$40,000 but foreign firms or individual consultants are not prevented by the manual from participating in any of the contract award procedures.

There is a number of examples of Instructions to Bidders (ITBs) in the toolkit but these are generally not consistent. The manual itself is unclear in the case of the evaluation criteria to be applied and this is exacerbated by the documents in the toolkit. Whilst some of the documents are very clear, notably the ADB forms, most other examples are less clear and do not contain *all* the relevant information. Examination of the files suggests that little in the way of additional documentation is provided.

Bidders are required to provide bid securities and the samples reviewed show that this requirement is enforced. There is however, no register of bid securities (or performance guarantees) to show when they have been received and returned and they are not kept in a save place. This has meanwhile been addressed by FAS.

Other than in specific cases (e.g. the ADB documents) the qualification criteria are stated very broadly. At the same time, the evaluation grids contain rather detailed matrices for the evaluation of qualification criteria but it is not clear whether these are sent along with the ITB or merely used by the evaluation committee. Where they have not been sent (which the review indicates is often the case), the bidders will be unaware of the precise qualifications that are being used by the evaluation committee to arrive at their technical scores.

It is not entirely clear which conditions of contract apply. There are some examples in the toolkit but there are also other examples to be found in the examined files. On the whole, however, the contracts used appear to provide the necessary conditions for the various types and values of contract. There is one exception and this has to do with the applicable law and the dispute resolution clause. In some of the more recent contracts, it appears that the law of the Lao PDR is explicitly chosen. In other cases, it is stated that it is the law of the location of the performance of the contract that is applied (i.e. if a national is recruited in a different riparian country, then it is the law of that country that applies) although there was no such

contract on file. In other cases, the contracts appear to be silent and refer only to the 'applicable law'. If a dispute arose, this could cause serious difficulty and severe delay in resolution.

In the case of arbitration, a simple reference to UNCITRAL arbitration is made without, at the same time, making any necessary election of institution, procedural law, number of arbitrators etc. This leads to unnecessary delay.

There is nothing in the manual to prevent price adjustment but there are no samples of works contracts in the toolkit.

The examples in the toolkit include standard purchase orders and these are used systematically in the case of low value services.

B4 PRE-QUALIFICATION

Pre-qualification is specifically provided for in the procurement manual for construction work contracts, turnkey contracts and expensive and technically complex items. Otherwise, suppliers of goods and services are not pre-qualified. The terms of the manual are simple and straightforward and should be easy to apply. However, probably as a function of the low level of works contracts awarded, certainly any of any high value of complex nature, there are no examples of pre-qualification documents in the toolkit.

B5 ADVERTISEMENT

Contracts for goods, works and services (firms) to be awarded by competitive bidding are publicly advertised. However, advertising for individual consultants is not the rule, see A2, above. Sufficient time is allowed for submission of pre-qualification documents (30 days) and for the submission of bids (6 weeks).

B6 COMMUNICATIONS BETWEEN BIDDERS AND THE PROCURING ENTITY

Based on the samples reviewed, requests for clarifications are answered promptly and in written form; clarifications and modifications of the documents are communicated to all prospective bidders; bidders are afforded sufficient time to revise their bids following a modification of the documents; and the procuring entity maintains accurate records of all communications with the bidders.

Based on information received and the sample files reviewed there are no communications between the procuring entity and the bidders, other than appropriate requests for clarification.

B7 RECEIPT OF BIDS AND OPENING

Bids received prior to the deadline are securely stored. Public bid openings are not foreseen in the Procurement Manual, but firms are allowed to attend bid openings held at MRCS and to participate if they want to. Bids are opened at MRCS HQ, FAS immediately after the submission deadline. They are attended by the evaluation panel members.

For the recruitment of individual consultants, there is no bid opening procedure. CV's received will be sent to evaluation panel.

For goods, works and services (firms), bid opening procedures are the same and are generally satisfactory. Information is not read out, but recorded e.g. name of bidders, bid received in time, envelopes sealed, bid signed, price in case of goods, for services if

separate envelopes for technical and financial etc. Minutes are kept, but are not sent to bidders.

B8 BID EXAMINATION AND EVALUATION

The FAS proposes (with recommendations from the Programmes) and the CEO of the MRC approves membership of the evaluation committee which is generally composed of the chairman (Director of the respective Division/Section) the programme officer(s) from the requesting Division/Section and an *ex officio* member from FAS. The FAS member will not provide technical scores (except where they possess relevant technical expertise) but will otherwise participate in the evaluation.

For the recruitment of individual consultants, programme units recommend the panel and the CEO approves the panel, which normally consists of the programme coordinator and programme officer and can include the director of the division.

Evaluation Reports normally contain a statement to the effect that Technical Proposals have been reviewed and that documents submitted in general comply with instructions for bid submission. However there are no detailed checklists as part of the evaluation report listing the documentary requirements and whether they have been fulfilled, i.e. there is no detailed record of any "preliminary examination" of the bidders' responsiveness to the bidding documents.

Nevertheless, based on the samples reviewed, bid evaluations are carried out thoroughly and on the basis of the criteria specified in the bid invitation documents. The successful bidder's qualifications to perform the contract are determined solely on the basis of the criteria stated in the bid invitation documents and bid evaluations are completed within the original bid validity period. Bid evaluation reports contain all essential information subject to the comment made above that preliminary examinations are not detailed enough and not recorded on a checklist.

B9 - CONTRACT AWARD AND EFFECTIVENESS

Contracts are awarded to the lowest priced bid conforming to specifications. However, as set out in A2 'Evaluation' above, notwithstanding the lowest cost criterion, the Manual then applies an additional mechanism which appears to be an attempt to graft on a quality/cost equation even though the sole evaluation is stated to be the lowest price (other than in the case of professional services and works). This is both unclear and non-transparent as well as contradicting the Manual

Performance Securities are explicitly required for goods and services (firms) in the case of contracts whose value is between US\$20,000 and US\$40,000 only. In practice, it is used more widely. Sample forms are attached to one of the IFI sample documents contained in the toolkit but these would be inappropriate if applied 'across the board'. The Bidding Documents for Services also state the requirement for performance guarantees which is not in line with international best practice. There is no register of Performance Securities received, returned and they are kept in project files rather than in a safe place. This has meanwhile been addressed by FAS.

There is no process for the handling of complaints and appeals in the Procurement Manual, but contract documents make (potentially inadequate, as described above) provision for settlement of disputes by way of arbitration.

B10 CONTRACT ADMINISTRATION

MRC FAS is using an electronic master file (EXCEL) for monitoring the procurement process but voiced the need for a new monitoring system (an off the shelf software solution would be preferred). Programmes and FAS monitor delivery of goods and services. Inventory control of goods is handled by FAS. MRC also runs a financial management system (FMS) which is used to track contracts and payments.

Suppliers and contractors are generally paid according to the contract terms. Based on information provided, contract changes or variations are handled promptly in accordance with the contract conditions and the procuring entity would normally make a good faith attempt to resolve disagreements through informal negotiations and, if this fails, would handle resulting disputes in accordance with the contract conditions. In practice, it would seem that contractual remedies are rarely applied and that there have been few or no disputes. Due to lack of samples and time constraints these issues could not, however, be verified.

Programmes employ technically skilled programme officers and the preparation of specifications and TOR's and evaluation of offers/applications is carried out in a professional way. However, Programme officers lack experience (legal/contractual) in interpreting contracts and would benefit from training in contract management. The review of sample contract files showed that actions are properly recorded, although some Programmes keep separate files for record keeping and there is no specific record keeping policy for procurement and contract management.

Cost and time overruns appear to be infrequent, at least in the case of the Environment and ICBP Programmes. The Navigation Programme has some examples of time and cost overruns – generally there is a problem in managing contracts and a need for an understanding of enforcement. These issues revolve mainly around contract variations, schedule payments and payment delays. The problems arise from sometimes inadequate contracts, lack of capacity in managing contracts and in dealing with late payment issues, notably the enforcement of contracts (which is also linked to the inadequacy of the standard contract documents).

The procedures for final acceptance are of an acceptable standard and contracts appear to be extended or amended only in special circumstances.

It was not possible to verify whether contracts are generally administered in a fair and equitable manner; whether under-inspection, over-inspection and/or improper rejection of goods, materials or methods of carrying out the works are a common problem; or if disruptions of the supplier's, contractor's or consultant's orderly performance are common. However, apart from the fact that there are examples of cost and time overruns and disruptions of contractor's performance or non performance and subsequent contract terminations, no evidence was found in the samples reviewed, that such problems were not handled in line with the respective contracts.

It could not be established that any improper contract administrative practices are applied. It is recognised, however, that all programme units would benefit from training in contract management.

For the samples reviewed it could be established that final payments and contract final closure were efficiently handled.

Section 3 Organization and Functions

From a procurement perspective, there is a fundamental division within MRC between the technical input provided by the Programmes and the administrative functions carried out by the FAS or HRMU, as appropriate. Essentially, the Programmes define and describe the needs; FAS/HRMU conduct the procurement procedure; and the Programmes then administer the resulting contract.

Under this division, the Programmes have responsibility for the identification of needs, procurement planning, preparation of technical specifications/TOR's and sometimes are also involved in the preparation of bidding documents. Some of the Programmes outsource the preparation of the specifications/TORs and, sometimes, the bidding documents. The request is then transmitted to either FAS or HRMU (part of HRD), as appropriate:

- The Procurement Unit of the FAS has procurement responsibility for the procurement of goods and services (firms).
- HRMU has procurement responsibility for the contracting of individual consultants

Both of these units were formerly part of the FAS but HRMU has now been given overall responsibility for the recruitment of individual consultants. However, the responsibility for granting waivers from competitive tendering for contracts up to US\$ 20,000 is still in the hands of the Chief of the FAS. Above US\$ 20,000, waivers are approved by the CEO. HRMU has the power to approve waivers only for contracts with a value of up to US\$ 2,000.

Following the request by the Programmes, FAS/HRMU then has responsibility for calling for quotations, proposals (CVs) or tendering, depending on the value of the goods or services (or their duration) to be purchased. The bids/proposals will be processed by the FAS (or HRMU, as appropriate) and evaluated by a tender evaluation committee appointed by the CEO of the MRC on the basis of proposals from the Programme. The evaluation committee will always include technical staff from the Programme concerned. Evaluation reports and recommendations for award require the approval of the CEO. FAS (or HRMU, as appropriate) will prepare the contracts for signature. Programmes will have responsibility for contract administration but FAS assists with contract administration issues and is responsible for payment.

The Manual foresees the possibility of a Committee on Contracts and Purchases whose role would be to review the recommendations of the evaluation committees. It is understood that no such a Committee has been set up.

The key functions for the various parts of the procurement process are thus duly assigned and the procurement and supply management functions are clearly separated between FAS, HRMU and the Programmes. Mechanisms for verification and approvals are in place, including approvals by Directors of Divisions, FAS and CEO. Given the stable nature and value of MRC contracts, no regular up-dates for thresholds for contracting powers are foreseen. Information on procurement is regularly and adequately disseminated by FAS. All parties are guided by the various Manuals, including the Procurement Manual, together with the Procurement Toolkit.

Based on the findings described in section 6 below, the procurement functions appear duly staffed for current purposes.

FAS considers that the arrangements are reasonable and the procedures are clearly defined. Although the CEO is required to approve Evaluation Committees and to sign contracts, the procedure is not considered cumbersome but rather welcome as it adds a different viewpoint to the process. In the consultants view, the procedures are acceptable for an organization such as the MRC. However, programmes would benefit from orientation on systems and

procedures and training in contract management. MRC would benefit from a flow chart describing procedures step by step. This would also avoid the occurrence of differing interpretations of the provisions of the procurement manual.

Procurement agents are not used by MRC, but some donors organize their own procurement for programmes financed by them. Vehicles and office supplies can also be purchased from IAPSO.

Section 4 Support and Control Systems

Audited financial reports are prepared annually by independent external auditors and addressed to the Joint Committee (JC) and sent to donors. They have been prepared in the past by KPMG and PriceWaterhouseCoopers and the quality of the audit reports reviewed by the team appeared to be of a good standard. Audits are followed by a debriefing meeting with all senior staff and, according to information received, audit recommendations are implemented by way of management letter.

In addition, specific audits are sometimes requested by donors and are either managed by the donors or by MRC. Programmes are also subject to periodic reviews, either internally or by donors. Internal technical and administrative controls are adequate for such reviews.

Legal advice is provided to MRC through a framework contract with the Mekong Law Group. However, Programmes indicated the need for a more informal way of seeking advice, including in-house expertise.

Section 5 Record Keeping

As indicated previously, the division of functions within MRC also means that records are kept in different places. Both the Programmes and FAS/HRMU maintain complementary and sometimes duplicate records.

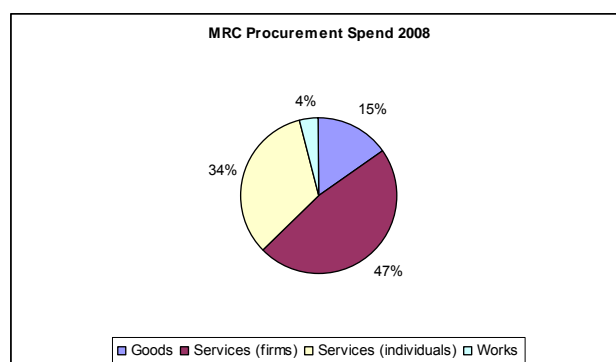
Record keeping in FAS and HRMU is of a good standard. Record keeping in Programme units is also of an acceptable standard and includes copies of Specifications/TOR's Tender Documents or RFP's, evaluation report, contract and contract administration including requests for payment. Staff know where to find the respective documents. However, not all documents are available as hard copies and not all are kept in one single file. All contracts and corresponding documents with suppliers, consultancy companies, individual consultants etc. must be maintained for the full duration of the contract, and for five years following the completion of the contract.

Contract administration records are maintained by the Programmes and those reviewed are also of an acceptable standard. As with records in general, for some programs not all correspondence is available in hard copy and documents are kept in various files.

Periodic reports are prepared on overall procurement activities by FAS and HRD, including detailed procurement statistics. A database (EXCEL) is used for current market prices for office supplies, which are purchased together for all units. Vehicles and Office Supplies can also be purchased through IAPSO.

Records provide the following breakdown of MRCs overall spend for 2008:

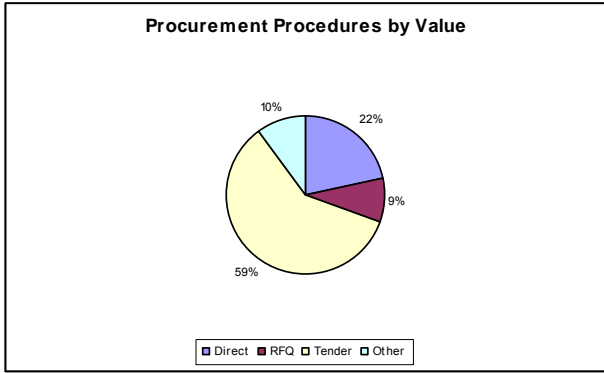
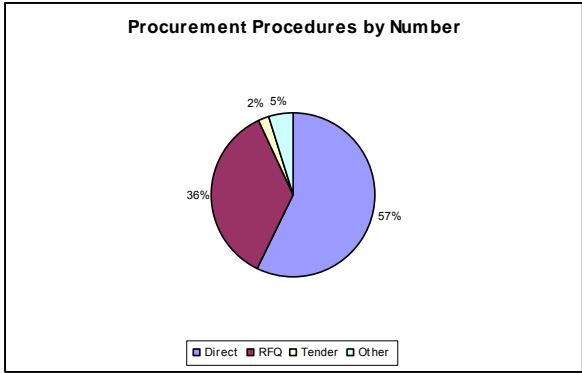
Procurement of:	Value (US\$)
Goods	1.6m
Services (firms)	4.9m
Services (individuals)	3.5m
Works	0.4m
Total	10.4m



A more detailed breakdown of procurement spend by number and value of individual contracts is contained in the introductory section setting out the context of the Report. This is important for a better understanding of the MRC spend profile and consequential needs in terms of procurement regulation.

In 2008, more than 90% was funded by donors. With respect to contracts being placed with international, or regional suppliers and service providers, figures are not readily available. Estimated figures for 2006 suggest that 65% of expenditures (including personnel costs) were spent in the region, while 35% took place outside the region.

In terms of the procurement procedures applied, it appears that 229 contracts were awarded by direct contracting; 144 using RFQ procedures; 9 by way of international tendering and 19 by other means, namely on the basis of memoranda of understanding with the NMCs. Nevertheless, the value represented by the contracts let by the different award procedures show a significantly different picture when compared to the number, i.e. even though international tendering only accounted for 2% of contracts in terms of numbers, it accounted for 59% of total procurement spend. This is illustrated in the following charts:



In respect of the recruitment of Individual Consultants, the total value in 2008 was approx. 3.5 million US\$. This covered 315 services contracts (individual consultants) of which 106 were international recruitments and 209, regional recruitments.

Section 6 Staffing

Staffing must be considered at the level of the FAS/HRMU as well as at Programme level.

- **FAS**

There are currently 37 staff of which Chief FAS, 4 heads of unit (3 riparian professional staff and 1 senior administrative assistant), one procurement officer and one procurement assistant and general support staff.

- **HRD (HRMU)**

There are currently 11 staff in the unit which concerns personnel issues including: 4 Riparian Professional Staff, 1 International Staff, 3 General Support Staff, 1 Consultant (service contract) at professional level and 2 local support staff (service contract). Of this total, 1 personnel officer and 2 assistants work in HRMU dealing with the procurement of individual consultants.

- **Programmes**

Staffing levels depend on the individual programme requirements:

The Environment Division has 16 staff at the moment: 11 riparian staff, 2 international staff, and 3 support staff as follows - Division Director, Programme Coordinator, Chief Technical Advisor, Senior Environmental Specialist, 5 Programme Officers, 1 riparian consultant, service contract, 3 Junior riparian professionals, 2 secretaries, and 1 administrative assistant;

The Navigation Programme has 6 members in the team - 4 permanent staff (1 riparian coordinator, 1 riparian programme officer, 1 international CTA and 1 general support assistant), 1 consultant (service contract for 7 months) and 1 Australian Volunteer (AYAD for 12 months);

The ICBP team of HRMU includes 1 Chief Technical Advisor, 2 Programme Officers, 1 Admin Assistant, 1 Gender Technical Associate and 1 Gender Project Assistant. ICBP is in the process of filling the other 2 posts under ICBP including: Riparian Programme Coordinator and JRP Project Assistant.

Job descriptions for each member of staff, including the qualifications each one is required to possess, are available on file.

The number of staff and skills (knowledge of MRC procedures) appear adequate for the present workload and arrangements but this assessment would need to be reviewed when further details are available on future procurement needs. Some of the procurement staff have experience in international tendering, but there is only a limited number of international tenders, e.g. only 9 in 2008. Procurement staff are highly motivated to carry out their job in line with the required systems and procedures and appear to be well managed. Programmes also seem satisfied with the work and assistance provided by the procurement staff. Procurements are managed in a pragmatic way i.e. decisions are made to get work done which, however, also leads to instances where “shortcuts” are used to ensure effectiveness: procedures are sometimes interpreted to support required actions and timelines despite planning considerations. There is a serious effort to follow the systems and procedures but this is somewhat compromised by the apparently excessive use of waivers in particular in the recruitment of individual consultants.

In general, however, staff lack a wider understanding of procurement concepts (outside the Manuals and, possibly, World Bank procedures) and Programmes lack specific procurement know-how in particular with regard to contract management and these should be addressed in terms of capacity building initiatives. MRC does not have formal initial career or training plan although there is an annual performance review which deals with training needs. Training resources have in the past been available through ICBP with additional possibilities for attendance at some courses at AIT in Bangkok and on WB training conducted in Lao PDR.

With respect to career advancement, MRC has a performance assessment system and rewards outstanding achievements, but it is essentially a non-career organization. Professional staff are recruited for a maximum of 6 years (2 x 3 years). This has implications for procurement:

- there is a relatively frequent change in staff with a consequential loss of knowledge and experience for MRC
- the lack of career structure means that there is little incentive to learn or improve on new skills
- there will be a constant need for recurring and continuous training in order to ensure that incoming staff continue to receive then training and acquire the skills necessary to maintain the current levels of capacity.

Section 7 Private Sector Viewpoint

There is only a limited number of local suppliers and consultant firms with regular business relations with MRC. Most of these local firms supply office equipment and supplies or IT-equipment and related training, or are involved in training activities or research and studies. Due to time constraints only meetings with 2 local companies could be arranged, including Enterprise and Development Consultants Co. Ltd. (EDC) and MICRO-INFO (MIC) a supplier of office equipment and supplies.

Both firms have regular contracts with MRC. The annual contract value in 2008 was US\$15,000 for EDC and approximately US\$60,000 for MIC. In 2009 EDC was awarded a contract for training under the Riparian Young Professionals Programme with a value of US\$10,000.

Both firms confirmed their continued interest to work with MRC. The general quality of tender and contract documents is considered to be good. MRC staff are perceived as competent and always willing to assist in case of clarifications. On the other hand, both firms were of the opinion that payment was slow. One of the firms stated that they are not always informed of the results of a tender. One would, in particular, welcome greater advance publication of MRC procurement opportunities, e.g. at the beginning of the year in a General Procurement Notice, based on the annual procurement plan. One of the firms also referred to the lack of opportunities for local firms to participate in tenders, but realises that this is largely due to their lack of experience. They would welcome opportunities to join with other more experienced international/regional firms in joint ventures and this is maybe something MRC should encourage to increase opportunities for local firms.

With respect to the viewpoint of donors/lenders, again due to the limited time available, the consultants relied on the results of a recent survey carried out the Sida (SENSA) in which development partners were asked to what extent MRC's systems and procedures provide a satisfactory basis for their agency to move towards more aligned modes of aid provision. One development partner provided a rating of "very strong", three a rating of "strong", and six a rating of "weak". Those rating MRC's systems relatively strongly cited the successful passing of formal review processes and generally sound financial management and procurement, and progress in implementing agreed organizational reforms. More details of the survey can be found in the Final Report on Aid Effectiveness for the Mekong River Commission: Improving harmonization and Alignment - Inception Report (Final), Stephen Jones, Oxford Policy Management, November 2008.

Towards the end of the assessment period, the consultants met with Toru Konishi, World Bank Senior Economist Rural Development and Natural Resources Unit East Asia and Pacific Region. He confirmed that the World Bank has worked with MRC using World Bank Procurement Guidelines and that, during the past 7 years, there had been no major problem and that tender documents submitted to the Bank for no objection were of a good quality. He also considers MRC's management of procurements to be of a good standard. However, procurement of services is one area that would, in his opinion, benefit from improvement.

The 2006 Audit by PriceWaterhouseCoopers of the USAID programme was similarly positive.

Section 8 Assessment and Recommendations

Assessment

This assessment of MRC procurement is positive. This is partly the result of the specific context of the MRC which palliates some of what might otherwise be seen as deficiencies in the regulatory framework that applies. The fact that MRC is an international organisation means that national procurement laws do not apply and that it is regulated by its own procedures. The scope and nature of its procurement comprising, as it does, mostly the purchase of relatively low value consultancy services, routine (office) supplies, some technical supplies and very few, or no, construction services implies the need for procedures which are narrower, simpler and more flexible than those which make up the default procedures of donor organisations and international procurement systems and which rely heavily on competitive bidding. Whilst international tendering is a procurement method foreseen by the MRC rules for contracts with a value in excess of US\$40,000 and open and competitive procedures for individual services contracts with a duration of more than 3 months, the mainstay of MRC procurement is based on RFQ and RFP type procedures which are adapted to the immediate procurement needs of the organisation.

This is only part of the reason for the positive assessment. It is also the result of the applicable legal and regulatory framework, the procurement systems in place and the people that apply the rules and procedures. The clear policy of MRCS, as set out in the Rules and Procedures adopted by the Joint Committee, is that competitive bidding shall be followed in the procurement of goods and services and this policy is implemented in accordance with the principles and procedures set forth in the Procurement Manual. The Manual, though not comprehensive, sets out generally acceptable parameters for procurement which apply to the various RFQ and RFP procedures as well as to international tendering. It addresses exceptional procedures which are conditional and subject to express waivers at the highest level. It covers the various stages of procurement from procurement planning to contract award and includes advertising requirements to ensure transparency. The Manual is complemented by a Procurement Toolkit which, though sometimes inconsistent and incomplete, does provide a series of examples of tender documents, evaluation tools and contract documents which do assist the parties involved in conducting procurement. In addition to the Manual and Toolkit, there are various internal administrative procedures in place which facilitate the coordination between the technical staff in the Programmes and the administrative staff in the Secretariat responsible for processing procurement leading to an appropriate division of labour which serves the MRC procurement function well. Finally, credit is due to the current staff of the MRC, notably in the FAS and HRMU as well as the programme coordinators, who are both motivated and capable of applying the rules and procedures intelligently and appropriately.

Even though the simpler procedures of the Manual are appropriate for MRC procurement, that does not mean that the Manual and the system it regulates can afford to ignore fundamental principles of procurement regulation which are widely accepted in the international community for both national and international procurement. Even procurement methods for low value procurement can be used in a way which achieves the desired goals of good procurement; the simplicity and flexibility of the methods should not conceal the fact that such procedures are also designed to achieve greater efficiency, transparency and probity. With that in mind, the assessment has also identified a number of deficiencies in the Manual and the procurement system which may well affect the effectiveness of MRC procurement. It is true that, given the context of MRC procurement, some of these deficiencies may not be seen as critical since their effect is often negligible on the types (and value) of services and goods procured by MRC. That is a decision, in this case, for AusAID but these deficiencies do need to be addressed. We set out a series of recommendations at the end of this section and many of these are directed at the specific deficiencies identified in

the Manual. Rather than repeat the individual deficiencies here, they will be identified later, together with the specific recommendations made to address them.

MRC is also subject to a series of potential risks which may affect the health of the procurement system and/or its operation. MRC is discussing a co-hosting of the Secretariat in Vientiane and Phnom Penh with a view to eliminating the implementation disruptions linked to the current practice of relocating the Secretariat every five years. If such a co-hosting is implemented, with an important number of programmes in both locations, then it is possible that this will disrupt the efficiency of the current procurement processes coordinated between FAS/HRMU and the Programmes unless appropriate measures are taken. The extent of the risk will depend on the ultimate division of functions. At a senior staff level, the successful implementation of the current procurement system clearly owes much to the Chief of FAS. Its continued success will similarly depend on maintaining consistent capacity and experience in the person of the Chief of FAS. The term of the current Chief of FAS is about to expire but the proposed replacement has declined the post in the last few days. It would be best if the term of the current Chief of FAS were extended until an appropriate replacement is found and in position. At the operational level, the maintenance of capacity and ability is hampered by the limited duration of staff appointments with a maximum posting of 2 x 3 years. This is a mechanism for losing knowledge and experience, fails to motivate staff who have no career path and necessitates a continuous capacity development programme for staff. From the perspective of the continuity and quality of the procurement function, it would be preferable to see longer term positions providing appropriate career paths.

Additional constraints which affect the assessment include uncertainty over future programmes. Whilst estimates have been given, it is not clear what effect these will have on the value, but more importantly the number of contracts which will awarded. Current staffing levels are considered adequate in light of the present workload. If then workload changes, then this part of the assessment may need to be revisited.

Recommendations

This assessment has considered not only the legal and regulatory framework but also the complementary systems in place and the people involved. The recommendations will seek to take a similarly holistic approach and address the deficiencies or issues identified in each of these areas. We do not only seek to address 'deficiencies' as such (these are mostly regulatory issues in any event) but to provide recommendations where there is room for improvement or where we have seen that additional systems or capacity building can be used to enhance the functions of MRC.

We would thus recommend the continued use of MRC systems and procedures, subject to the usual reporting, procurement and financial management requirements. We make this recommendation, however, on the basis that the following recommendations for improvement are addressed. These improvements target people, systems and the legal framework. Much of the action rests directly with the MRC and the pace of change will be largely dictated by MRC itself who has to take full ownership and make a firm commitment to change within acceptable timeframes. There also has to be the political will to see that efficient procurement is an important asset to the organisation.

The following actions are recommended:

(i) People

These recommendations are largely capacity development:

1. Arrange training for the procurement staff of FAS and HRMU on general procurement principles and techniques. This training should address some of the deficiencies of the Procurement Manual and Procurement Toolkit such as the issues of participation, qualification and evaluation criteria but also valuation methods; debriefing; award criteria; design of technical specifications, late submission of bids. This would be done by an external technical assistance provider. Staff could also consider joining existing training conducted by AusAID, for example.
2. Arrange regular introductory and advanced courses on procurement for procurement staff. This could be carried out under the ICBP.
3. Arrange regular orientation on procurement systems and procedures for the staff of Programmes. This would be an internal function of FAS.
4. Arrange training for Programmes on contract management and the use of contract monitoring tools. This would be by way of external technical assistance provider.

Finally, verify staff resources and capability once precise details of AusAID financial assistance and procurement requirements are known.

(ii) Systems

These recommendations focus on improvements to the operational environment:

1. Prepare a flow chart of the procurement process for dissemination and use by procurement and Programme staff.
2. Prepare an internal guideline on evaluation methods and reports.
3. Prepare an internal guideline for record keeping for procurement and contract administration (including a contract management plan).
4. Consider the provision of suitable software and capacity building allowing MRC Programmes to make the optimum use of IT systems for project and contract monitoring.
5. Provide for a complaints/review mechanism in respect of procurement procedures.

Finally, (i) provide information to AusAID on lines and ease of communication, responsibility and accountability once the final shape of the proposed co-hosting of MRCS is known and (ii) verify that recommended action has been taken on improvement of systems.

(iii) Legal and Procedural Framework

These recommendations are much more specific since they generally address specific provisions or the absence of specific provisions in the Manual or Toolkit. The means of addressing these deficiencies is clearly a matter for the MRC. Ideally, the obvious remedy would, where appropriate, be to amend the Manual or the Toolkit. Amending the Toolkit is relatively unproblematic since it is very much a work in progress. Amending the Manual may well prove to be more problematic and impracticable in the short to medium term. Given the very long gestation period of the current Manual and its approval process, it is appreciated that it may be difficult to amend the Manual in a timely manner. The long term recommendation remains, however, that this should be done. In the interim, alternative solutions must be found.

One mechanism which appears to have been used in the past is the issuance of an FAS Memorandum. This has been used, for example, to reinforce the requirement of the Manual to advertise individual consultancy contracts. The limitation of the Memorandum is obvious from its use: it was used to reinforce an existing obligation. It appears that, in the case of the MRC, the Secretariat can make changes to the manual without seeking higher approval provided that there is no policy change. To the extent, therefore, that the recommendations do not require a change in the overall policy, this may provide an interim solution. It is clear that the next version of the Manual will be a major revision and in practice this will require the revised manual to be submitted to the JC for approval. As such, alternative solutions are likely to offer more timely solutions. The inconvenience of amending the systems and procedures by way of discrete memoranda is that the applicable regulatory framework would be contained not in a single Manual but in a series of documents and could lead to confusion and a lack of transparency.

If the Memorandum cannot be used this widely, then another alternative will need to be found. In this case, the most appropriate solution would appear to be a funding requirement to be imposed by AusAID. This would necessarily apply to AusAID funded contracts and would generally apply only to contracts with a value in excess of US\$40,000. As such, it would probably leave the majority of the existing procedures intact. Further, AusAID could make an election as to which, if any, of these recommendations would require a funding condition. It is the assessment team's opinion that each of these deficiencies is significant and should be addressed.

These recommendations are:

1. Seek legal advice on the contract law applicable to MRC contracts and amend the contract documents in the Procurement Toolkit accordingly.
2. Draft a more specific UNCITRAL compatible arbitration clause to be used in MRC contracts and amend the contract documents in the Procurement Toolkit accordingly.
3. Impose a requirement to the effect that the annual procurement plan and/or a general procurement notice must be published.
4. Impose a requirement of consistency between advertisements for the same contract appearing in different media.
5. Impose a requirement requiring mandatory notice to be given to all potential suppliers (and contractors and consultants) of modifications to evaluation criteria or specifications.
6. Impose a requirement to the effect that bidders will be given, in the case of works, goods and consulting procedures for firms, the right to adequate debriefing of the reasons that (a) they have not been selected or (b) their bids were unsuccessful. Such a clause may possibly be included in the 'instructions to bidders' in the Toolkit.
7. Impose a requirement to the effect that contract awards will be published in every case where the contract value is US\$7,000 and higher.
8. Impose a requirement to the effect that all information pertaining to the bids and bidders shall remain confidential until after award and that business information shall always remain confidential. This might be included in MRC's Communication and Disclosure Policy which is currently under consideration.
9. Impose a condition concerning disclosure of information in respect of sub-contractors.

10. Impose a requirement to the effect that (i) the requirements in respect of performance securities should be the same for contracts with a value above US\$40,000 as they are for those with a value of between US\$20,000 and US\$40,000; (ii) performance securities should not be required for consultancy services contracts; and (iii) the inconsistencies between the sample performance securities contained in the Procurement Toolkit should be corrected.
11. MRC must be required to set up some form of complaints/review mechanism for procurement complaints. This may be internal and could also be developed from the existing provision in the Manual for a superior Committee on Contracts. If it cannot be done, then alternative mechanisms may need to be found using external reviewers, including AusAID itself. This might also consist in the mandatory appointment of an AusAID designated probity adviser and/or auditor.
12. Impose a requirement to the effect that contracts may not be split with a view avoiding the application of the procurement methods. This may be covered by way of Memorandum.
13. Review and redrafting of the sample documents in the Toolkit to ensure that they all consistently and comprehensively address the issues which have been identified as deficient, notably the issues of participation, qualification and evaluation criteria but also valuation methods; selection and qualification; debriefing; award criteria; design of technical specifications, late submission of bids.
14. Impose a requirement to the effect that the exceptions for direct purchase contained in section 1.6.1 (g) and (h) (and section 2.3.2 in relation to individual consultants) of the Procurement Manual² may not be applied and that the urgency exception of (h) be replaced by a clause stating that direct purchase may be used where, for reasons of extreme urgency brought about by events unforeseen by the agency, the property or services could not be obtained in time under open tendering procedures. Alternatively, AusAID might impose a 'no objection' requirement for any waiver in respect of contracts with a value above US\$40,000 (or for individual consultants contracts with a duration of more than 3 months) where urgency is at issue.
15. Impose a requirement to the effect that technical specifications may not require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer, or supplier, unless there is no other sufficiently precise or intelligible way of describing the requirement. In exceptional circumstances where this type of specification is absolutely necessary words such as 'or equivalent' must be included in the specification.
16. Impose a requirement to the effect that where MRC conducts market research and other activities in developing specifications for a particular procurement and allows a supplier that has been engaged to provide those services to participate in procurements related to those services, it must ensure that such a supplier will not have an unfair advantage over other potential suppliers.

² Direct Sourcing may be used under section 1.6.1 of the Procurement Manual, *inter alia*, (g) If items cannot be specified in detail to call for bids and where (h) The urgency of the requirement is such that a delay involved in tendering would be unacceptable and is not in the interest of the Secretariat. The conditions of (h) are reproduced in section 2.3.2 of the Procurement Manual in respect of the recruitment of individual consultants.

17. Provide some clarification by way of guidance or through an FAS Memorandum on how to apply the stated award criteria.
18. Impose a requirement identifying the minimum locations for advertising without leaving this to the judgment of officers.

Finally, verify that recommended action has taken place for improvement to the legal framework (Procurement Manual or other suitable means)

Technical Assistance

In order to implement the systems and people recommendations made out above, we would further recommend specific technical assistance, namely:

1. Support to improvements of MRC systems and procedures including:
 - Revision of the Procurement Manual and the Procurement Toolkit³
 - Preparation of guidelines for preparation of technical specifications, bid evaluation and record keeping, which will form part of the procurement toolkit
 - Assistance with the preparation of a flowchart of the MRC procurement process, which will form part of the toolkit
2. Procurement capacity building programme consisting of:
 - Training for the procurement staff of FAS and HRMU on general procurement principles and techniques
 - Training for Programmes on contract management and the use of contract monitoring tools.
3. Developing rules and procedures for a complaints/ review up to contract award stage, including:
 - Elaboration of structure, as agreed (e.g. internal committee, external review);
 - Consequential amendments to Procurement Manual to incorporate procedure
 - Preparation of rules of procedures
 - Creation of registry function within MRC
 - Creation of forms (preferably to be available on-line)
 - Training in dispute resolution matters, where possible

The recommended timeframe would be:

- 8 weeks for the revision of Manual and Toolkit and preparation of guidelines
- 8 weeks for training in procurement and contract management
- 5-6 weeks for assistance with developing and implementing rules and procedures for a complaints/ review.

There needs to be a flexible response given that the scheduling of support will depend upon the speed at which MRC drives the whole process. At the same time, however, considering the consistency and economy of the proposed technical assistance it would be useful to combine the interventions for a) and b) above i.e. to recruit 2 procurement specialists with experience in preparing manuals and SBD's and training for 8 weeks

³ Revision of both is an essential part of the coherence and consistency exercise (even if amendments to the Manual are adopted later).

each to revise documents (4 weeks each), followed by a further 4 weeks each to arrange for the required training, which could then also already focus on the new/revise documentation.

Considering that both FAS/HRMU and Programmes have to attend to their daily work, formal training for each of these “units” should be limited to morning sessions over 5 days.

The balance of the training should be on-the-job training i.e. working together with the respective units/programmes on actual procurements.

Training courses for FAS/HRMU should include the MRC procurement and personnel officer(s) and their assistants, administrative assistants of FAS responsible for inventory management and finance officer(s) from FAS.

The curriculum should include:

- Overview of international best practices in public procurement, especially in the areas of planning, contract scope and valuation, selection and qualification, technical specifications, formalities and award criteria
- Contract law
- Arbitration rules and procedures
- Use and management of bid and performance securities
- De-briefing and handling of complaints
- Record keeping

Both the Chief of FAS and Chief of HRD might opt to attend some specific sessions of the training.

For Programmes the National Programme Coordinators, Programme Officers and CTA’s should attend the training. Programmes may wish to nominate other staff to participate as well. Division Chief’s might wish to attend some specific training sessions.

The curriculum should include:

- Preparation of technical specifications, bid evaluation, record keeping
- Contract management (e.g. inspection, contract variation, scheduling payments, enforcement and late payments) and the use of contract monitoring tools

There should also be combined training sessions for FAS/HRMU and Programmes (5 days morning sessions) with focus on providing orientation on the new/revise documentation prepared by the consultants, including:

- MRC Procurement Guidelines and Processes
- MRC Procurement Manual and Toolkit

A summary of the proposed training programmes is provided below. Details should be discussed and agreed with MRC.

Week 1 - Training Course for FAS and HRMU

Proposed Participants: MRC procurement and personnel officer(s) and their assistants, administrative assistants of FAS responsible for inventory management and finance officer(s) from FAS. Both the Chief of FAS and Chief of HRD might opt to attend some specific sessions of the training. Estimated number of participants based on above approximately 10.

Training Session	Day 1	Day 2	Day 3	Day 4	Day 5
Morning	Overview of international best practices in public procurement	Principles of Contract Law Overview on Arbitration Rules and Procedures	Use and management of bid and performance securities Record keeping	De-briefing and handling of complaints	Other topics as requested by MRC
Afternoon	On-the-job training	On-the-job training	On-the-job training	On-the-job training	On-the-job training

Week 2 and Week 3 - Identical Training Courses for Programmes

Proposed Participants: National Programme Coordinators, Programme Officers and CTA's. Programmes may wish to nominate other staff to participate as well. Divisions Chief's might opt to attend some specific sessions of the training. Estimated number of participants week 2 and week 3 based on the above approximately 8-10 each week.

Training Session	Day 1	Day 2	Day 3	Day 4	Day 5
Morning	Preparation of technical specifications	Bid evaluation	Contract management (e.g. inspection, contract variation, scheduling payments, enforcement and late payments)	Contract Management continued	Use of contract monitoring tools
Afternoon	On-the-job training	On-the-job training	On-the-job training	On-the-job training	On-the-job training

Week 4 – Combined Training Course for FAS, HRMU and Programmes

Proposed Participants: MRC procurement and personnel officer(s) and their assistants, National Programme Coordinators, Programme Officers and CTA's. The Chief of FAS and Chief of HRD and Division Chief's. Estimated number of participants based on above approximately 20.

Training Session	Day 1	Day 2	Day 3	Day 4	Day 5
Morning	MRC Procurement Guidelines and Processes (Flowchart of the Procurement Process)	MRC Procurement Manual (proposed revisions)	MRC Toolkit: Guidelines	MRC Toolkit: Documents and Templates	MRC Toolkit: Documents and Templates
Afternoon	On-the-job training/discussions with units	On-the-job training/discussions with units	On-the-job training/discussions with units	On-the-job training/discussions with units	On-the-job training/discussions with units

The technical assistance for c) above i.e. for developing rules and procedures for a complaints review could be scheduled as a separate activity at a time convenient to MRC. The work would be carried out by one specialist with experience in procurement and dispute resolution and familiarity with procurement complaint systems, over a period of 3 months, including 2 visits to Vientiane and with some of the work done offsite.

All Technical assistance should commence before the start of the proposed AusAID financial assistance which is scheduled for July 2009.

Technical Assistance	April 2009	May 2009	Jun 2009	Jul 2009	Aug 2009	Sep 2009	Oct 2009	Nov 2009	Dec 2009
Improvements of MRC systems and procedures									
Procurement Capacity Building FAS/HRMU, Programmes									
Developing rules and procedures for a complaints review									

Whilst in country to carry out this work, the technical assistance provider could at the same time undertake to:

4. Verify action taken on recommended improvements to MRC procurement systems and procedures to ensure they match recommendations and/or to establish which provisions remain to be included as conditions in legal agreement between the GoA and MRC.
5. Verify if MRC has sufficient staff resources once details of AusAID financial assistance are finalised i.e. precise information is available on envisaged procurements.

We further recommend that AusAID should

6. Consider periodic re-assessment of staff resources and capability taking into account the fact that some other staff replacements will take place during the 4 year programme period, and undertake
7. An *ad hoc* procurement audit after around 12-18 months of program implementation. This would look at any procurement undertaken by MRC.

As a final comment, it is recommended that MRC continue to use the monitoring tools currently used in the MRC system. The MRC may wish to replace them with a more user friendly system and may do so, However at the present stage we see no pressing need to do this for MRC nor for the proposed AusAID programme.

Section 9 Recommendations for Improvements to the Assessment Terms of Reference

Timeframe

Unlike other similar assessments this assignment required the final draft report to be submitted before the Procurement Specialists departed Vientiane. This required a careful balance and time management for collecting and analyzing information and report preparation. In the end however, it meant that the time available for discussions and review of procurement files was limited by the fact that the final draft report had to be submitted before the departure of the team. Given late amendments to the factual findings, it also meant that some time was lost in redrafting during the mission.

Scope of Assessment

The fact that procurement responsibilities are split between FAS, HRD and Programmes was only known at the start of the assessment. For future assignments it would be useful if more detailed information on the organisation of procurement were made available as part of the TOR.

Commitment/availability of Counterparts

The consultants placed a high emphasis on a participatory approach. It was noted with thanks that MRC had appointed a counterpart before the assignment commenced. The nominated counterpart and staff of FAS, HRD and Programmes showed a firm commitment to the assessment and were available throughout the assignment, in spite of their day to day duties. The fact that most of the MRC staff understood this as a joint assessment and not an external audit was very much appreciated.

Assessment Tool and Comparison Table

Some of the questions in different sections of the tool and even within sections are repetitive or require similar information which could be combined e.g.: Advertising A.2.1 and B.5, Staffing F.1 and F.5, Record Keeping E.3 and E.5. This could be reviewed by AusAID to streamline the procurement diagnostics tool.

AusAID requires the assessment to be comprehensive in comparing the principles enshrined in each paragraph of Divisions 1 and 2 of the CPGs with the procuring entity's systems and procedures. In so doing, the assessment must state, CPG paragraph by CPG paragraph, whether the procuring entity's systems and procedures are inferior or superior to the principles of the CPG provisions. In cases of inferiority, the assessment must recommend what measures should be taken to ensure equivalence. The first comment is that the CPG requirements are also repetitive in some respects and overlap with the Assessment Tool leading to some inevitable repetition in the findings and, ultimately, the Report. Further, the CPG provisions often include explanatory text which is difficult or inappropriate to address directly line by line. The comments made in the Comparison Table address only the substantive requirements and, while an attempt has been made to enter such comments against the corresponding CPG requirements, this has not always been possible and large gaps are evident in the text. Similarly, the deficiencies and recommendations made in column 3 have been collated and summarised in order to remain readable and understandable. No attempt has been made to split them up in order to match particular lines of text in the CPG since the thrust of the conclusions would be lost.

Final Report Format

The format was found suitable for the purpose. Considering that the findings recorded in the procurement diagnostics tool are basically copied into the report there is a certain amount of repetition, unless the consultants decide to analyse, summarise and rewrite the information contained in the tool, which in turn however, requires additional time.

General issues regarding Procurement Assessments and Auditing

The consultants found the use of the procurement diagnostics tool very useful. At the same time, however, the necessary discussions and review of documents require extensive time. Whilst it is understood that maybe not all questions need to be answered, as much detail as possible is required to form a professional opinion. As a consequence however, less time is available for the review of actual procurements carried out. The latter however, has been found to be a very suitable way to determine capacity and capability of a procuring entity.

Section 10 *Additional Information and/or Recommendations*

The Inception Report on “Aid Effectiveness for the Mekong River Commission”, November 2008 issued by Oxford Policy Management does contain a questionnaire to be sent to all presently active Development Partners in Lao PDR. Among others it includes the question: “To what extent do MRC’s systems and procedures (financial management, procurement, progress reporting) provide a satisfactory basis for your agency to move towards more aligned modes of aid provision. What are the constraints on your agency using MRC systems (for procurement, financial management, financial and non-financial reporting)”.

The questionnaire was issued and the subsequent results form part of the Final Draft Report, Stephen Jones, Oxford Policy Management, February 2009. The report however, only contains a summary of development partners rating of MRCs procurement systems and procedures, without providing further details.

The Inception Report referred to above, which can be found on the MRCS website, also included reference to the fact that a comparison of MRC and Development Partners programming, administrative and financial systems will be carried out to identify similarities and differences. To this end, relevant MRC Manuals (Programme Management, Administration, Finance, Personnel, and Procurement) and all active MRC Funding Agreements will be reviewed. We understand however, that this was so far not done and may not be done. AusAID should follow-up with MRC from time to time to see if such assessment is still planned.

Section 11 Consultants' Work and References

The CKP Team comprised of Mr Peter Trepte and Mr Franz Pletsch who undertook the in-country mission, and John Povey, Director CKP, who provided backstopping support from CKP's head office.

The consultants initially met together with AusAID and MRCS for an introductory meeting. This was followed by a series of working meetings with staff of the MRCS, donors/lenders and representatives of the private sector. The consultants extend their thanks to those persons listed below, who organised the programme and gave valuable support during the visit.

Australian High Commission

Mr Simon Buckley, First Secretary (Development Cooperation), Manager - AusAID Mekong Regional Water and Infrastructure Unit

Mrs Amphavanh Sisouvanh AusAID Program Officer, Mekong Water and Infrastructure Unit, Development Cooperation Section

Mekong River Commission

Dirk Overweg	Chief Finance and Administration Section (FAS)
Kiettisack Senephansiri	Procurement and Contract Officer, FAS
Ornchanh Thepkaysone	Procurement and Contract Assistant, FAS
Nguyen Thuy Mai	Personnel Officer, Human Resources Development Section (HRD)
Phonesavat Thepthala	Administrative Assistant, FAS
Dr. Vithet Srinetr	Environment Programme Coordinator, Environment Division (ED)
Tran Mai Kien Ph.D	Climate Change Programme Officer, ED
Bérengère Prince	Technical Advisor International Cooperation and Communication Section
Hiek Phirun	Programme Coordinator Navigation Programme (NP)
Lieven Geerinck	Chief Technical Advisor (CTA) NP
Weena Aksornkew	Chief Human Resources Development Section (HRD)
Sengphachanh	
Sonethavixay	Programme Officer HRD (ICBP)
Noelle O'Brien	CTA, ICBP
Hanne Bach	CTA, Environment Division
Channa May	Finance Officer, FAS

Private Sector

Thiphaphone Phetmany	Managing Director, Enterprise and Development Consultants, Vientiane
Niravone Visonenavong	Director, Micro-Info, Vientiane

World Bank

Toru Konishi	World Bank Vientiane
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Schedule of Meetings Held (for organisation and title refer Section 11)

Date & Time	Venue	Attendees & Title	Consultant
Mon 9th March 2009			
08.00-08.40	Hotel	Simon Buckley Amphavanh Sisouvanh	Both
09.00-10.30	MRCS	Dirk Overweg Kiattisack Senephansiri Ornchanh Thepkaysone Nguyen Thuy Mai Simon Buckley Amphavanh Sisouvanh	Both
Tuesday 10th March 2009			
08.30 – 12.30	MRCS	Dirk Overweg (08.30-10.30) Kiattisack Senephansiri (08.30-12.30) Nguyen Thuy Mai (08.30-10.30)	Both
Wednesday 11th March 2009			
08.30 – 12.00	MRCS	Dirk Overweg (08.30-10.30) Kiattisack Senephansiri (08.30-12.00)	PT FP
14.30 – 16.00	MRCS	Dr. Vithet Srinetr Tran Mai Kien Ph.D	Both
Thursday 12th March 2009			
08.30 – 10.30	MRCS	Dirk Overweg (08.30-10.30) Kiattisack Senephansiri (08.30-09.30) Nguyen Thuy Mai (08.30-10.30)	PT FP FP
10.30 – 11.30	MRCS	Bérengrére Prince	Both
11.00 – 12.45	MRCS	Hiek Phirun Lieven Geerinck	
14.00 – 15.30	MRCS	Weena Aksornkew Sengphachanh Sonethavixay Noelle O'Brien, CTA ICBP	Both
Friday 13th March 2009			
08.30 – 09.30	MRCS	Dirk Overweg Kiattisack Senephansiri	FP
09.30 – 10.30	MRCS	Nguyen Thuy Mai	PT

Date & Time	Venue	Attendees & Title	Consultant
Monday 16th March 2009			
08.30 – 09.30	MRCS	Dirk Overweg Kiattisack Senephansiri Ornchanh Thepkaysone Simon Buckley Amphavanh Sisouvanh	Both
09.30 – 11.30	MRCS	Individual short consultation to clarify outstanding issues. Hanne Bach Channa May Phonesavat Thepthala Bérengrére Prince Lieven Geerinck Nguyen Thuy Mai	FP
02.00 – 02.30	MRCS	Niravone Visonenavong	FP
02.30 – 03.00	MRCS	Thiphaphone Phetmany	FP
Tuesday 17th March 2009			
14.45 – 15.00	MRCS	Noelle O'Brien	FP
15.00 – 15.30	MRCS	Dirk Overweg	
15.30 – 16.00	MRCS	Toru Konishi	FP
Wednesday 18th March 2009			
Thursday 19th March 2009			
02.00 – 05.00	MRCS	Dirk Overweg Kiattisack Senephansiri Ornchanh Thepkaysone Nguyen Thuy Mai Simon Buckley	Both

Note:

- PT - Peter Trepte
FP - Franz Pletsch

Documents reviewed

MRC Administration Manual with the procedures for the administrative processes
MRC Finance Manual with the procedures for the financial processes
MRC Procurement Manual with the procedures for the procurement of goods and services
MRC Procurement Tool Kit with tender documents and templates
MRC Procurement Plan 2009
Aid Effectiveness for the Mekong River Commission: Improving harmonization and alignment – Inception Report November 2008 and Final Draft Report, Stephen Jones, Oxford Policy Management, February 2009
MRC assessment by Dutch Embassy, 2004 – Checklist Organizational Capacity Assessment
Commonwealth Procurement Guidelines 2008
Guidelines - Assessment and Controls for Using Country Expenditure Systems, AusAID
KPMG and PWC MRC Audit Reports 2006, 2008.

Tenders and Contracts reviewed

No	Ref. no.	Description
01	Contract no. 041-2008	Consultant service for Dam Impact Forecasting (DIF) Model
02	Contract no. 046-2008	Consultancy and Technical Services for Condition Survey of Dangerous Areas for Navigation between Houei Sai and Luang Prabang
03	Contract no. 052-2008	Consultant service for Basin-wide modeling services Mekong River Commission
04	Contract no. 002-2009	Procurement and Installation of Aids to Navigation Systems on Selected Mekong River Stretches in the Lao PDR, Thailand and Cambodia
05	RFP 09-007	Procurement of consultancy services to develop a training manual and deliver a training of trainer (TOT) course for about 20 participants from four MRC Member
06	VET 2008-177	Special Service Agreement November 2008
07	VTE 2008-029	Riparian Consultant for Project on Reducing Vulnerability of Water Resources in Mekong Basin to Climate Change Impact
08	Programme File	Mekong River Commission Climate Change and Adaptation Initiative (CCI)
09	VTE 2008-001	Riparian Consultant for MRC Integrated Capacity Building Programme
10	HRD/HRMU	Recruitment of EP Programme Coordinator
11	HRD/HRMU	Recruitment of International Hydropower Policy and Strategy Consultant
12	ND	Condition Survey on the Mekong Bassac and Vam Nao Rivers Vietnam
13	ND	Consultancy Services for River Engineering and Waterway Design
14	2.1/14/08/AUL/C	Two Leadership Workshops (ICBP)
15	OEB	Advanced Office Management (ICBP)
16	P008-39	Renovation of IT Room

ANNEXES

ANNEX A: COMPLETED PROCUREMENT ASSESSMENT FORM

(submitted as separate electronic file)

ANNEX B COMPARISON TABLE - CPG AND MRC'S PROCUREMENT SYSTEMS AND PROCEDURES

(submitted as separate electronic file)

Assessment of Mekong River Commission Capability and Capacity to Implement Procurement, and of Associated Risks

A – Procurement Framework and Transparency	
A1 - GENERAL FEATURES	
<p>1. What is the framework of systems and procedures governing the procuring entity's procurement? Describe.</p>	<p>MRC is an international organisation and, as such, is not subject to any national procurement law. The 1995 Agreement establishing the MRC creates three main bodies, one of which is the Joint Committee which effectively acts as the executive body of the MRC. Under the 1995 Agreement, the Joint Committee is to adopt its own Rules of Procedures to be approved by the Council, the governing body of MRC.</p> <p>In 1998, the Joint Committee of the MRC adopted the Rules of Procedures of the MRC Secretariat which contain the main principles and general provisions that define the authority and responsibility of the MRC Secretariat to facilitate the management of its functions. The preamble states that detailed implementation regulations are to be stipulated in the Mekong Manuals on Finance, Procurement, Programme and Project, Personnel and Administration.</p> <p>Rule 16 of those Rules and Procedures, entitled 'Procurement of Goods and Services' sets out the main principles governing procurement and indicating that the principles will be implemented through a more detailed Procurement Manual. This was adopted along with other core manuals of the MRC in 2006 after extensive discussions and effort within the MRC and country representatives. The manual is largely the work of in-house staff who worked on each of the manuals simultaneously with occasional assistance from external consultants.</p> <p>In addition to the Procurement Manual, there is a Procurement Toolkit. This is a practical collection of guidelines and sample documents for such things as tender preparation, tender documents, contract documents, evaluation. It is not adopted formally under the Rules of Procedures or Manual and does not contain what might be termed mandatory standard bidding documents. In practice, however, it is relied on heavily to supplement the Manual.</p>

<p>2.* Does this framework comprise a set of systems and procedures that (a) is consistent with the principles of the Australian Commonwealth Procurement Guidelines (CPGs), with no deficiencies in comparison with the CPGs, and (b) is a satisfactory framework on which to base procurement implementation with the reasonable expectation of a sound, efficient, reliable outcome, with no deficiencies or shortcomings in comparison with international standards? Describe, identify clearly any areas of concern, and recommend measures to overcome any such concerns.</p>	<p>As an international organisation, MRC has specific tasks and duties; it is not a country or even a Ministry within a country. The scope and nature of the procurement it carries out is considerably more limited than that which one would expect to encounter in a country or national Ministry. Its procurement is confined largely to the purchase of consultancy services, routine (office) supplies, some technical supplies and very few, or no, construction services. The procurement framework reflects this situation. In this context, it may be said that the framework comprises a set of systems and procedures that are <i>largely</i> consistent with the philosophy and procedures of the CPGs and with international standards. Even then, however, there are some deficiencies which need to be addressed. Given the context of the procurement, however, some of these deficiencies may not be seen as critical since their effect is often negligible on the types (and value) of services and goods procured by MRC.</p> <p>Ideally, many of the deficiencies should ultimately be corrected by amendments to the Procurement Manual. This, it seems, may not be practicable given the 8 year gestation period of the Manual. Whilst that would remain the ultimate recommendation, the proposed solutions seek to take a more pragmatic approach. The main deficiencies identified, together with the proposed means of overcoming them, are:</p> <ul style="list-style-type: none"> • <i>no publication or other dissemination of the annual procurement plan;</i> <p>Impose a requirement to the effect that the annual procurement plan and/or General Procurement Notice must be published. Additionally, impose a requirement identifying the minimum locations for advertising without leaving this to the judgment of officers.</p> <ul style="list-style-type: none"> • <i>no confidentiality provisions;</i> <p>Impose a requirement to the effect that all information pertaining to the bids and bidders shall remain confidential until after award and that business information shall always remain confidential. This might be included in MRC's Communication and Disclosure Policy which is currently under consideration.</p> <ul style="list-style-type: none"> • <i>absence of specific valuation rules and of prohibition on splitting of contracts ;</i>

Impose a requirement to the effect that contracts may not be split with a view avoiding the application of the procurement methods; alternatively, the valuation rules may be imposed by way of CEO **memorandum**;

- *inconsistencies between CPG and Manual on conditions for direct sourcing;*

Impose a requirement to the effect that the exceptions for direct purchase contained in section 1.6.1 (g) and (h) (and section 2.3.2 in relation to individual consultants) may not be applied and that the urgency exception of (h) be replaced by a clause stating that direct purchase may be used where, for reasons of extreme urgency brought about by events unforeseen by the agency, the property or services could not be obtained in time under open tendering procedures. Alternatively, AusAID might impose a 'no objection' requirement for any waiver in respect of contracts with a value above \$40,000 (or for individual consultants contracts with a duration of more than 3 months) where urgency is at issue.

- *absence of conditions in respect of technical specifications;*

Impose a requirement to the effect that technical specifications may not require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer, or supplier, unless there is no other sufficiently precise or intelligible way of describing the requirement. In exceptional circumstances where this type of specification is absolutely necessary words such as 'or equivalent' must be included in the specification.

- *inadequate conflict of interest provisions;*

Impose a requirement to the effect that where MRC conducts market research and other activities in developing specifications for a particular procurement and allows a supplier that has been engaged to provide those services to participate in procurements related to those services, it must ensure that such a supplier will not have an unfair advantage over other potential suppliers.

- *no systematic (i.e. required) publication of contract awards, even if it sometimes happens in practice;*

Impose a requirement to the effect that contract awards will be published in every case where the initial announcement was also published (i.e. in the case of contract of a value above \$40,000);

	<ul style="list-style-type: none"> • <i>no debriefing provisions;</i> <p>Impose a requirement to the effect that bidders will be given, in the case of works, goods and consulting procedures for firms, the right to adequate debriefing of the reasons that (a) they have not been selected or (b) their bids were unsuccessful. This may possibly included in the 'instructions to bidders' in the Toolkit.</p> <ul style="list-style-type: none"> • <i>no formal complaints/review mechanism;</i> <p>MRC must be required to set up some form of complaints/review mechanism for procurement complaints. This may be internal and could also be developed from the existing provision in the Manual for a superior Committee on Contracts. If it cannot be done, then alternative mechanisms may need to be found using external reviewers, including AusAID itself. This might also consist in the mandatory appointment of an AusAID designated probity adviser and/or auditor.</p> <p>In addition, it is recommended that, MRC</p> <ul style="list-style-type: none"> • seek legal advice on the contract law applicable to MRC contracts and amend the contract documents in the Procurement Toolkit accordingly; • draft a more specific UNCITRAL compatible arbitration clause to be used in MRC contracts and amend the contract documents in the Procurement Toolkit accordingly.
<p>3.* Are the procurement systems and procedures used by the procuring entity clear, comprehensive and consistent? Do they cover all essential aspects with no unduly complicated, unnecessary, conflicting or outdated regulations and are rules found in various distinct sources or within a well coordinated framework? Do the procurements undertaken by the entity comply fully with its own systems, or are there any areas of non-compliance?</p>	<p>Given the context, the procurement systems and procedures are sufficiently clear and sufficient for purpose. They are not always, however, comprehensive and consistent and they do contain some unnecessarily complicated provisions, notably that concerning the award criterion. The inconsistencies stem mostly from the documentation in the Procurement Toolkit. Whilst this is a valuable tool, the documents it contains have been collected and added as and when needed. It was designed to address, incrementally, the needs of procurement officers as they arose. As a result, the documents are often very different; are not always consistent with each other; are incomplete; but also sometimes inconsistent with the Procurement Manual itself. This also means that, occasionally, MRC procurement is not consistent with the Manual or with the Toolkit since, in some cases, documents other than those which appear in the</p>

	<p>Toolkit are used. In all other cases, however, it is clear that MRC procurement is largely consistent and compliant with the Manual. The system is adhered to and well regarded; non-compliance is more a function of the inconsistencies between the documents in the Toolkit and between those and the Manual as well as general weaknesses in the drafting of the Manual.</p> <p>The main concerns identified in this regard, together with proposed means of addressing them, are:</p> <ul style="list-style-type: none"> • <i>absence of complete contract management processes;</i> <p>the elaboration and periodic delivery of a short contract management course for the Programmes to assist with such issues as change orders, price variations, inspection, payment terms etc.;</p> <ul style="list-style-type: none"> • <i>weakness in the tender documentation and in some essential procurement issues, notably description of selection and qualification criteria;</i> <p>a review and redrafting and completion, where appropriate, of the sample documents in the Toolkit to ensure that they all <i>consistently</i> and <i>comprehensively</i> address the issues which have been identified as deficient, notably the issues of participation, qualification and evaluation criteria but also valuation methods; selection and qualification; debriefing; award criteria; design of technical specifications, late submission of bids; In addition, the elaboration and delivery of a procurement training course designed with the needs of the MRC in mind (capacity building) which would include a set of training materials which could then act as internal guidelines;</p> <ul style="list-style-type: none"> • <i>weakness in the award criteria;</i> <p>clarification by way of general guidance or through an FAS memorandum on how to apply the stated award criteria;</p>
<p>4. Are there rules/procedures regarding bidder suspension and debarment? are these enforced?</p>	<p>There are no suspension or debarment rules, although the MRC Procurement Manual does include evaluation forms which must be completed for consultants. These appear to be completed consistently and negative comments will result in the removal of the consultant from the MRC Roster of consultants. This is not necessarily blacklisting since there are other means for bidders' names to be put forward and Programmes which ask for names from the Roster are simply</p>

	not given the CVs of those who have received negative evaluations – they will be unaware of those whose CVs they have not been sent.
5. Are there any primary/secondary boycotts? Specify, and clearly identify any that may be unacceptable to Australia. Does the entity enforce any such boycotts?	None in respect of the MRC as entity. Any national boycotts would require agreement of MRC before being applied. MRC would comply with donor exclusion of firms convicted for involvement in terrorist activities etc.
6. Are there procedures for the settlement of contractual disputes? Describe. Are these procedures followed, or are disputes settled in other ways?	<p>None are provided for in the Procurement Manual which does not, in any event, deal with contractual issues.</p> <p>In the case of the model contract documents that exist (i) the General Services Agreement (which is an example of an (the only) indefinite delivery contract used for legal services) provides for arbitration under the UNCITRAL arbitration rules unless the parties agree to another set of internationally recognised arbitration rules; (ii) the contract for general professional services exceeding \$20,000 provides for arbitration under UNCITRAL rules where amicable settlement by direct negotiation has failed; (iii) the contract for services not exceeding \$20,000 provides for arbitration under UNCITRAL rules where disputes cannot be amicably settled between the parties. However, with one exception seen in the review of files, the arbitration clause does not designate the appropriate arbitration institute nor make the necessary elections with regard to procedural law, number of arbitrators etc. As drafted, the clause is likely at least to cause significant delay and may be unworkable.</p>

A2 - BASIS OF TRANSPARENCY	
<p>1. Are requirements for advertisement of contracting opportunities adequate? Are they complied with?</p>	<p>The procurement manual 1.3.5 states that for purchases above 40,000 USD for goods or services (firms) the Procurement Unit will generally follow international tendering procedures. In these cases, the invitation to bid will be given wide publicity in MRC’s website, in the recipient countries, through advertisements in regional leading newspapers of general circulation and other selected international organization websites.</p> <p>The procurement manual 1.8 Prequalification of bidders states that Invitations to pre-qualify should be advertised in at least two widely circulated newspapers.</p> <p>The procurement manual 2. Hiring of Individual Consultants states that candidates may be identified directly by the divisions, section or programme, from the MRC roster <u>or through an announcement on the MRC website.</u></p> <p>Advertising of contracting opportunities for goods and services (firms) are adequate and complied with. However, FAS selects the media for advertisement for each particular tender based on what they consider most appropriate, i.e. whilst, in principle, all tenders are advertised on the MRC website there is no consistency in where they are advertised in recipient countries or regional newspapers, or international websites etc. Advertisements are also placed on DG Market and there is an RSS feed on the MRC website.</p> <p>The procurement manual provides for advertising of individual consultants positions <u>as an option, not a requirement</u> and there is no threshold above which advertising needs to be applied.</p> <p>So far, in many cases the hiring of individual consultants is done directly or from a roster. Issuing waivers to allow for direct recruitment is a common practice and advertising opportunities for hiring of individual consultants therefore are not the rule. In cases where advertising has been agreed, it is complied with and opportunities are mostly advertised on the MRC website or “devjobnet “ (where there is likely to be international interest (in the opinion of the Programme and Personnel).The Memorandum issued by the Chief of the FAS on 6th March 2009 reinforces the Manual provision that contracting of individual consultants for more than 3 months requires open and competitive recruitment, which implies that such positions should in future always be advertised.</p>

<p>2. Are requirements regarding public bid opening appropriate? Are they complied with?</p>	<p>The procurement manual does not contain an explicit rule for holding public bid openings. In principle, however, bidders may attend openings and in the past have participated in some bid opening sessions, which are normally held at MRC HQ. This is however not the rule.</p>
<p>3. Are negotiations after bid opening or award selection generally forbidden? If they are permitted (for example, in the procurement of consulting services) describe the procedures and any applicable rules governing negotiation, and provide an assessment of whether these are acceptable. Identify clearly any attendant risks. Are there incidences of unacceptable negotiations being conducted?</p>	<p>Post tender negotiations are not prohibited. Indeed, section 1.3.4 of the Procurement Manual (in respect of contracts whose value is between \$20,001 and \$40,000) explicitly foresees an optional negotiation stage for the procurement of goods and services. The Manual does not, however, provide any procedures for negotiation and does not indicate in what circumstances it may be used. In those circumstances, it is not possible to assess whether the envisaged negotiations are foreseeable but the existence of the possibility in the absence of any parameters clearly leaves the door open for abuse. Similar provisions are not specifically included in respect of other contract values but that does not mean that a negotiation stage is not also envisaged. The provisions are not consistent with each other and it is possible that the 'understanding' is that a negotiations stage is always optional.</p> <p>Some of the tender document examples contained in the procurement toolkit refer to the conduct of negotiations. Thus, the example taken from the ADB QBS standard form, along with the ADB Guidelines on QBS negotiations also contained in the toolkit, set out the relevant scope for negotiations under an ADB QCBS procedure. However, the Manual does not appear to allow for QBS and only provides for a lowest cost criterion or a combination of lowest price and best scores (a type of QCBS) in certain circumstances where there are 'alternative' bids.</p> <p>Other examples of the toolkit mention that negotiations may be carried out without stating what may be negotiated nor what procedure should apply; other examples do not mention negotiation at all.</p> <p>Negotiations are conducted systematically in the case of the selection of individual consultants and this concerns fee rates as well as other issues such as scope of ToR and other inputs.</p> <p>Where, therefore, toolkit documents mention negotiations, they are not always consistent with other documents or with the manual. The issue of negotiations is dealt with incompletely.</p>

<p>4. Do rules on negotiated procurement, if any, provide the basis for a fair and transparent process? Describe. Are any such negotiated procurements generally undertaken in a fair and transparent manner?</p>	<p>Direct purchase (or single quotation) is permitted (sections 1.6.1 and 2.3.2 of the Manual) in a limited number of cases. Some of the situations referred to reflect those of other national and international procurement instruments but, by comparison, appear to be incomplete. Some of the exceptions are very broadly drafted and do not provide guarantees that they will not be easily abused. No specific procedure is foreseen for the interaction with bidders (negotiation) and it is not possible to say whether this procedure is applied in a fair and transparent manner. Use of the conditions is, however, subject to waivers based on justifications.</p>
<p>5. Are conditions for use of various procurement methods clearly established and is there an explicit requirement that open competitive bidding is the preferred or default method? What is the incidence of incorrect procurement methods being used?</p>	<p>The policy of MRCS4 is that competitive bidding shall be followed in the procurement of goods and services, in accordance with the principles and procedures set forth in the established Mekong Procurement Manual. Given the value of the majority of the contracts identified in the Procurement Manual, competitive bidding is not the default method of procurement. Rather, various types of RFQ procedures are foreseen depending on the value of the contracts at issue. For contracts of a value above \$40,000, international tendering procedures will generally be used and the waiver on grounds of urgency is used rarely. Waivers are more easily given for lower value contracts. The conditions of the various procurement methods are established quite clearly. At the same time, there is a method which may be used for services procurement (section 1.3.5) which confuses the double envelope and two stage procedures. The procedure describes a two envelope method but the conditions for its use are those that ordinarily apply to a two stage procedure (in any event, most useful for works contracts and turnkey contracts, including complex IT services). We have no knowledge of the incidence of the use of incorrect procurement methods although it is clear that there is a very high incidence of direct purchase single source procurement. This however, could also be partly explained by the fact that most procurement of goods is of a relatively small value and many service contracts for individual consultants are of a short duration. In total, out of all 401 contracts for goods and services in 2008, 359 (almost 90%) were below US\$ 20,000.</p>
<p>6. Is there a requirement for public notice of contract awards? Is this complied with?</p>	<p>No such requirement, but major contract awards are announced at the MRC website.</p>

⁴ MRC Agreement, Rule 16 Procurement of Goods and Services

<p>7. Are requirements for bid and contract securities clear and appropriate? Are they required of all bidders?</p>	<p>The requirements for bank guarantees or performance bonds are mentioned only in the context of contracts whose value is between \$20,001 and \$40,000 but not in respect of other contracts. As with the issue of 'negotiations' above, this does not necessarily mean that they are not required in the case of other contracts – the methods are not described consistently. No other conditions of use are stated in respect of these guarantees or bonds. The review of tender files however, revealed that MRC also requires performance guarantees for service contracts from firms, which is not in line with international best practices. Original Guarantees were kept in the procurement files rather than being locked at a safe place.</p> <p>The procurement toolkit contains sample forms for bid bonds and performance guarantees and bonds consistent with those used by the IFIs.</p>
<p>8. Are qualification requirements for bidders, if any, fair and appropriate for the purpose of the contract?</p>	<p>There are some specific provisions on pre-qualification for works, turnkey and expensive and technically complex items which are designed to ensure that only technically and financially capable firms will participate. Pre-qualification should be based entirely upon the ability of the interested firm to perform the work taking into account (i) past performance, (ii) capability with respect to personnel, equipment and plant and (iii) financial position. No more details are provided as to what may be required nor as to the means of proving compliance.</p> <p>Where there is no pre-qualification, the Procurement Manual is entirely silent on the criteria to be taken into account for the selection of bidders other than to say, in the case of contracts whose value exceeds \$40,000 that the invitation will indicate the 'eligibility for participation by the bidders'.</p> <p>Various documents in the procurement toolkit refer to qualification criteria but they are inconsistent providing, as they do, examples of potentially useful documents. The sample evaluation grids apply acceptable qualification criteria but none of the sample tender documents reflect the criteria contained in the sample evaluation grids. There is, in addition, a mixture of examples of goods and services tender documents which are necessarily different and these are not subsequently reflected in the sample evaluation grids. Further, some of the samples, such as the Goods ITB document is taken from an IFI but without filling in the gaps which would be necessary for setting out appropriate qualification criteria. Some of examples reviewed on file did contain broad (and broadly acceptable) qualification criteria.</p> <p>Taken individually, many of the qualification requirements referred to could be</p>

	<p>considered fair and appropriate but the system for applying them is disparate and inconsistent. There is a significant danger that they will not be applied properly or consistently.</p>
<p>9. Do requirements for bid examination and evaluation provide the basis for a rational and fair process? Are they complied with?</p>	<p>The evaluation criteria for goods and equipment are stated to be the lowest bid conforming to specification. No other criteria are permitted. Other criteria appear to be permitted in the case of professional services and works, but these are not indicated either exhaustively or by way of illustration.</p> <p>Nevertheless and notwithstanding the lowest cost criterion, the Manual then applies an additional mechanism whereby any bid which comes within 15% of the value of the otherwise lowest bid may be considered as an 'alternative' bid. Where alternative bids exist, the successful bidder will be the one with the highest score (even though no scoring criteria are indicated) provided such a bid has at least 5 marks more than the lowest bid. This appears to be an attempt to graft on a quality/cost equation even though the sole evaluation is stated to be the lowest price (other than in the case of professional services and works).</p> <p>This is both unclear and non-transparent.</p>
<p>10. Are summaries of information about procurement published (e.g. number of bids received, number of contracts awarded, names of successful bidders)? If so, describe scope and frequency.</p>	<p>There are no provisions for publishing summaries of information about procurement contained in the Procurement Manual. No such information is found on the MRC website, which only contains a list of major contracts awarded.</p> <p>We also understand that in case of recruitment of individual consultants those not selected are not necessarily informed of the outcome: shortlisted candidates are told where they have not been successful but candidates are also informed in advance that if they are not shortlisted, they will not be informed.</p>
<p>11. Is there a conflict of interest policy in effect? (If so, describe its essential features).</p>	<p>There are no general provisions in the Procurement Manual although section 2.1 of Part 2 (hiring of individual consultants) provides that spouses of current MRC staff members may not be hired as consultants with MRC.</p> <p>Two of the three model contracts contain a single article prohibiting conflicts of interest. For example: (i) the General Services Agreement provides that upon the occurrence of potential conflict of interest or actual conflict of interest, [ABC] shall immediately notify MRCS of such potential conflict of interest or actual conflict of interest; (ii) the contract for general professional services exceeding \$20,000</p>

	<p>provides that the Contractor and its personnel shall not engage in any business or other activity that conflicts with performance of duties under this Contract.</p> <p>The sample documents in the procurement toolkit which are taken from standard IFI models also contain the relevant IFI conflicts of interest provisions.</p>
<p>12. Are there any rules on bribery, and are these enforced? Do bidding documents and contracts contain anti-bribery and anti-corruption conditions?</p>	<p>There is no rules on bribery set out in the Procurement Manual, although there are some general provisions on proper conduct and integrity in the Personnel Manual which applies to MRC staff.</p> <p>Each of the model contract documents does, however, contain general provisions which may be used to refer to these cases:</p> <p>(i) the General Services Agreement provides that each Party covenants and agrees that it is a fiduciary of the other Party and to be just and faithful in all its activities and dealings with the other Party and otherwise to perform all obligations implied as well as expressed in this Agreement for the benefit of the Parties; (ii) the contract for general professional services exceeding \$20,000 provides that the Contractor warrants that no Employer official has been or will be, directly or indirectly, offered or given any inducement or benefit in connection with this Contract or the award thereof.; (iii) the contract for services not exceeding \$20,000 provides that the Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity...</p> <p>The sample documents in the procurement toolkit which are taken from standard IFI models also contain the relevant IFI anti-corruption provisions.</p>
<p>13. What opportunities are there for discretionary decisions and/or other interference by officers, managers or others in the procurement process? Are such discretionary decisions and interference a feature of procurements conducted by the entity?</p>	<p>The lines of authority and responsibility are clear and it appears that there is very little, if any, opportunity for discretionary interference by officers not directly involved in the procurement process.</p> <p>However, it is also clear that there is much pressure exerted by senior management, at least in the national committees, to make things happen quickly and regardless of planning issues. As a result, waivers are required more often than is beneficial and the 'political' imperatives mean that they are often granted.</p>

A3 - BASIS OF ACCOUNTABILITY OF PROCUREMENT OFFICERS	
<p>1. Are entity employees expected to follow a published code of ethics? If so, describe its basic features and assess its adequacy.</p>	<p>This is contained in the Personnel Manual which is available on the intranet. The Personnel Manual contains a section on the obligations and responsibilities of staff which apply to their general functions and includes provisions on conduct, confidentiality, harassment in the workplace. There are no specific provisions in relation to integrity in the conduct of procurement. At the same time, the Personnel Manual incorporates into each contract of employment a clause which states that employees “<i>shall not engage in any activity which is incompatible with the proper discharge of their duties or which may adversely affect on the integrity, independence and impartiality which are required from the MRC Secretariat personnel</i>”. We believe this to be sufficient in the context of MRC.</p>
<p>2. Do bidders have adequate access to administrative and/or judicial review/appeal?</p>	<p>There is no formal administrative review/appeal mechanism at MRC. In practice, any complaint would be made to the CEO of the MRCS or to a country member of the Joint Committee but we have been informed that no such complaint has been made so far.</p> <p>There is no judicial review foreseen but this is consistent with the general immunities of MRC as an international organisation.</p>

B - Procurement Cycle Management	
B1 - PROCUREMENT PLANNING	
1. Are procurement plans prepared ahead of time?	MRC requires procurement plans to be submitted in January each year. Finance and Administration Section (FAS) confirmed that they are normally prepared in time.
2. Are these plans detailed enough and realistic?	The annual procurement plan is based on the annual work plan of each program. The procurement plan for 2009 was reviewed and is detailed enough for the purpose of general planning. However, no General Procurement Notice is issued or required to inform potential bidders of what MRC is planning to procure during the year. An electronic "procurement monitoring file" (including details normally required in a procurement implementation plan) is maintained which among other data includes information on date of purchase requisition, purchase order, method of procurement, advertising, bid invitation, bid opening etc.
3. Do procurement plans properly consider technical, financial, managerial and implementation constraints?	To the extent possible. One of the problems cited by programme units is the need for collective procurement across programmes which constrains programmes with respect to meeting implementation schedules.
4. Are appropriate methodologies used to plan multiple inter-related procurement activities on large programs (e.g. the critical path method)?	They are rare but it would depend on the program officers. Following our discussions with programme units most of them cited the need for training in the use of such planning and monitoring tools (software).
5. Are program components appropriately packaged for procurement purposes?	There is an understanding of the requirement and the benefits of appropriate packaging. However in the time available it could not be verified if this is always done.
6. Are procedures and methodologies for planning procurement of recurrent items (i.e. inventory control, forecasting of future requirements, classification, coding, accounting/financial management, spare parts management, and delivery systems) adequate?	Program units are required to present list of recurrent items on a quarterly basis to the administrative assistant in FAS who then carries out procurement for the aggregated requirements.

<p>7. Is the agreed procurement plan generally adhered to?</p>	<p>Some delays in presenting procurement requisitions are experienced. At the same time because of the requirement of collective procurement across various programmes, which is not always known at the time of preparing procurement plans, some delays are experienced.</p>
<p>8. Are completion schedules generally met for goods, works and consulting services contracts? If not, what is the major cause for slippage? Is sufficient time generally allowed for external reviews/clearances?</p>	<p>This will depend on the programs but, currently, it appears there are no major delays. There have been delays on services contracts in the past but this was due to MRC's delay in providing data. There was also a delay in a recent vehicle procurement but this was down to delays by IAPSO who carried out the procurement.</p>

B2 - PROCUREMENT CYCLE	
<p>1. Are the time durations applicable to different phases of the cycle reasonable; i.e. neither too long nor too short?</p>	<p>The procurement manual only describes time durations for submission of tenders above US\$ 40,000 (four to six weeks, or longer periods if necessary) and for pre-qualification (30 days for submission of pre-qualification) and these are in line with international best practices. No more information is provided for in the Manual in respect of other phases. In practice, the timelines appear reasonable: for example, we were told that evaluation, following submission, usually takes 2-3 weeks. There was nothing in the files reviewed which indicated any serious delay. Some of the procedures were concluded quite rapidly which is unsurprising given the small values involved.</p> <p>The procurement toolkit provides an example of a schedule of a one stage tender process.</p>
<p>2. Who, if anybody, has to intervene and approve different steps, and what is the value added by each intervention? Are there any opportunities for simplification of the process? Describe a typical procurement cycle from bid advertisement to award.</p>	<p>For goods or services provided by consulting firms</p> <p>3 quotations are required for procurements between US\$ 2,000 and 20,000, and 5 for procurements between 20,001 and 40,000; above US\$ 40,000 international tendering is required.</p> <p>Authority for granting waivers rests with the Chief of the FAS up to US\$ 20,000 and above with the CEO. The Procurement Officer can issue waivers up to a value of US\$ 2,000.</p> <p><u>The process followed for the procurement of goods and services from firms is as follows:</u></p> <p>Procurement needs are identified by the separate programme units. These identify their requirements and design the terms of reference or technical specification. Some programmes will recruit consultants to assist them with the preparation of terms of reference. In some of those cases, the consultants will also prepare tender documents, which will then only be reviewed by FAS for the purposes of ensuring clarity.</p> <p>The request for procurement (requisition) is passed to the procurement unit, consisting of 2 people, at the Finance and Administration Service (FAS) of the MRC.</p> <p>Once a requisition is made to FAS, the procurement unit will then review or prepare the tender documents using available templates from the toolkit and will</p>

place the advertisements, where required. The CEO of the MRC will approve the evaluation committee which is generally composed of the chairman (Director of the respective Division/Section) the programme officer(s) from the requesting Division/Section and an *ex officio* member from FAS. The FAS member will not provide technical scores (unless he also has relevant technical expertise) but will otherwise participate in the evaluation committee. The recommendation of the evaluation committee is sent via FAS for approval the CEO. FAS will issue the notice of contract award, draft the contract and send it to the parties for signature.

Negotiations are not usual but, where they take place, the CEO of the MRC will appoint a negotiation panel in which FAS takes part.

For individual consultant contracts

For short term services of less than one month and for services between one and 3 months with a value of less than US\$ 1.500 per month single sourcing may be applied, for services between one to 3 months or more than US\$ 1.500 per month comparison of at least 3 qualified candidates is required. These may be identified by the Division, Section or programmes or from the MRC roster or through an announcement on the MRC website.

Responsibility for granting waivers, where necessary, is still however in the hands of the Chief of the FAS up to US\$ 20.000 and, above that figure, rests with the CEO. The Personnel Officer can issue waivers up to a value of US\$ 2,000.

The process followed for the recruitment of individual consultants is as follows:

The request is made to the Human Resources Management Unit (HRMU) within the Human Resources Development Section (HRD), consisting of 1 personnel officer and 2 assistants. The unit was formerly part of the FAS but since September 2008 HRD has been given overall responsibility for the recruitment of individual consultants using Special Service Agreements (SSA's) and Service Contracts (SC's) as applicable.

HRMU will arrange for the advertising where that is the route opted for. Applications are received and distributed to the respective programme unit which then draws up a shortlist. The Programme Unit recommends the Evaluation Panel, which is approved by the CEO. It is made up of at least 2

people and will include the Program officer and head of HMRU. The Evaluation Panel evaluates and prepares an evaluation report, which has to be approved by the Director of the respective Division. The report with the respective recommendation for recruitment is sent to the HRMU for action. HRMU reviews the report and requests clarifications if any are necessary. HRMU will negotiate the terms of the contract, including fee rates where those are considered unacceptable. Where advertisement has not taken place, i.e. where the shortlist is made up of individuals put forward by the Programmes or taken from the roster or where a waiver is sought, it is the Programme that carries out the negotiations, with the help of HMRU where that is requested. HRMU prepares the contract and forward to CEO for approval and arranges for signature. HRMU informs successful consultant. The Programme Units manage the contract.

For both the procurement of goods/works and services (firms) and individual consultants the internal processes and approval mechanisms are of an acceptable standard and there appears no need for a change in procedures. However, although all involved know the various steps and procedures to be followed it would be useful if apart from the procurement manual a flow chart of the respective procedures would be available to all concerned.

At the same time it appears that the use of waivers is common practice in particular in the recruitment of individual consultants and this raises some concern.

In the case of individual consultant contracts, there also appears to be an excessive use of fee rate negotiation which seems to be rather systematic.

One other issue that might need reconsideration is that, in cases where opportunities are advertised in MRC member countries, national committees screen applications and only send those "acceptable" to them to MRC. We understand, however, that this applies only to the recruitment of riparian staff and not to individual consultants.

B3 - BIDDING DOCUMENTS	
1. Does the entity have standard bidding documents? Does it always use them?	MRC's procurement toolkit includes examples of SBD's for goods and services (firms). Some templates and contract forms are also available for the recruitment of individual consultants. These documents are used but are more in the form of examples than required SBDs. However, we have also seen evidence that some programme units have used other documents and they argue that, for their particular procurement, no suitable standard document is contained in the tool kit.
2. What is the general quality of documentation produced by the entity? Identify any improvements needed.	<p>The toolkit is a 'work in progress' containing documents which have been added incrementally. They are less standard form documents and more a collection of examples or templates. Documents have been added as and when the need for them has arisen and they have been taken from existing templates – usually those which have been considered to be the most appropriate for the tasks in hand. They are a mixture of World Bank, ADB and other documents. They have been somewhat amended to provide references to the MRC but they have not been revised in a comprehensive manner to ensure consistency with the MRC procurement manual or, indeed, with each other. The emergence of the toolkit has been a practical response to immediate requirements and not necessarily part of a concerted attempt to create a suite of supporting documents specifically designed for the needs of the MRC. Despite the existence of a form of general conditions of contract, it is not clear at this point what is the default applicable law of contract. Whilst some contracts will mention the applicable law, many do not and it is not known what law would apply in the event of dispute. It appears that no such disputes have arisen which may itself be the consequence of the failure to identify the applicable law.</p> <p>The procurement manual and procurement toolkit have thus been developed mostly in-house and in response to the immediate needs of the organization. They, therefore, address the type of procurement which is carried out by the MRC and provide templates and examples of the terms of reference, tender and contracts documents which are most frequently needed by the programmes for which the procurement is carried out.</p>
3. Assess the general quality of technical specifications, drawings, terms of reference and other essential components of the bidding documents. Do they possess sufficient clarity, neutrality and accuracy (including schedules of	The samples of technical specifications and TOR's and other essential component of the bidding documents reviewed are of good quality, considering the limitation of the templates provided for in the toolkit.

requirements)?	
4. Are there separate documents for international and national competitive bidding? If there are separate documents for national competitive bidding, are foreign firms permitted to participate in national tenders?	<p>There are no formal separate documents for international and national competitive bidding. The examples contained in the toolkit provide documents which are more appropriate for international bidding and some that are more appropriate to national bidding but this is not how they are organised.</p> <p>International advertising is the default method for contracts above a value of \$40,000 but foreign firms or individual consultants are not prevented by the manual from participating in any of the contract award procedures.</p>
5. Do the Instructions to Bidders (ITBs) contain all information necessary to prepare responsive bids and to enable bidders clearly to understand the evaluation criteria and their method of application?	<p>There is a number of examples of ITBs in the toolkit but these are generally not consistent. They are also not always the examples used in the completed files that were examined. The manual itself could be considered unclear in the case of the evaluation criteria to be applied and this is not remedied in the case of the documents in the toolkit. Of course, the example taken from the ADB is clear and appropriate for the contracts it is designed for.</p>
7. Do they contain other necessary information, such as eligibility requirements, basis of bid, language and currency of bids, common currency for purposes of evaluation, source and date of the exchange rate, etc.? Are sample forms and other appropriate sections of the documents provided?	<p>As above, some of the forms in the Toolkit, notably the ADB forms, are very clear. Most other examples are less clear and do not contain <i>all</i> the relevant information. It is not clear how much of the additional documentation is provided. Examination of the files suggests that little in the way of additional documentation is provided.</p>
8. Are bidders required to provide bid security in an appropriate amount as a condition of responsiveness of their bid? Is this requirement always enforced?	<p>Yes - and we have been informed that this is enforced. Some samples have been reviewed in tender files. There is however, no register of bid securities (or performance guarantees) to show when they have been received and returned and they are not kept in a safe place. This has meanwhile been addressed.</p>
9. Is pre- or post-qualification provided for?	<p>Pre-qualification is specifically provided for in the procurement manual for construction work contracts, turnkey contracts and expensive and technically complex items. Otherwise, suppliers of goods and services are not pre-qualified. The terms of the manual are simple and straightforward and should be easy to apply.</p> <p>However, probably as a function of the low level of works contracts awarded, certainly any of any high value of complex nature, there are no full examples of pre-qualification documents for works in the toolkit.</p> <p>Post-qualification is not provided for in the manual although the ADB example in the toolkit foresees a post-qualification procedure.</p>

<p>10. Are qualification criteria appropriate and clearly described?</p>	<p>Other than in specific cases (e.g. the ADB documents) the qualification criteria are stated very broadly. At the same time, the evaluation grids contain rather detailed matrices for the evaluation of qualification criteria but it is not clear whether these are sent along with the ITB or merely used by the evaluation committee. In considering the files, it seems that it is a mixture: sometimes they have been sent; other times (the majority, it would seem) not. Where they have not been sent, the bidders will be unaware of the precise qualifications that are being used by the evaluation committee to arrive at their technical scores.</p>
<p>11. Are conditions of contract generally equitable? Do they provide adequate coverage for most important commercial and legal issues (for the method of procurement, size, nature and type of contract used) and provide adequate protection to the procuring entity, without putting undue risk on bidders?</p>	<p>It is not entirely clear which conditions of contract apply. There are some examples in the toolkit but there are also other examples to be found in the examined files. On the whole, however, the contracts used appear to provide the necessary conditions for the various types and values of contract.</p> <p>There is one exception and this has to do with the applicable law and the dispute resolution clause. In some of the more recent contracts, it appears that the law of the Lao PDR is explicitly chosen. In other cases, it is stated that it is the law of the location of the performance of the contract that is applied (i.e. if a national is recruited in a different riparian country, then it is the law of that country that applies) although there was no such contract on file. In other cases, the contracts appear to be silent and refer only to the 'applicable law'. If a dispute arose, this could cause serious difficulty and severe delay in resolution.</p> <p>In the case of arbitration, a simple reference to UNCITRAL arbitration is made without, at the same time, making any necessary election of institution, procedural law, number of arbitrators etc. This is at least likely to cause delay.</p> <p>The lack of disputes may be the result of general satisfaction but it is also likely that such deficiencies would discourage any formal dispute procedure.</p>
<p>12. Can appropriate provisions for price adjustment be introduced, if needed, and is an adequate system available for indexing the prices of basic contractual inputs (labour, materials, equipment usage)?</p>	<p>There is nothing in the manual to prevent this but there are no samples of works contracts in the toolkit.</p>
<p>13. Are standard purchase orders used for simplified, low value forms of procurement?</p>	<p>The examples in the toolkit include standard purchase orders and these are used systematically in the case of low value services.</p>

B4 - PRE-QUALIFICATION	
1. Is pre-qualification carried out when appropriate? What types of contracts is it used for? Works? Goods? Consulting Services? Others?	Pre-qualification is foreseen by the manual only in the case of works.
2. Is the pre-qualification process fair and transparent? Are decisions made promptly? Are foreign firms allowed to apply?	The provisions of the manual are very brief and there is no example of a pre-qualification procedure in the toolkit. There is nothing to suggest that foreign firms are not allowed to apply.
3. Do pre-qualification documents clearly and completely describe the qualification requirements and all requisites for submitting responsive applications? Is financial information required and critically analysed to assess financial capabilities to perform contracts?	There are no complete documents contained in the toolkit.
4. Does the procuring entity verify prior to contract award if a successful bidder continues to meet pre-qualification requirements?	We have been informed that this is not done.

B5 - ADVERTISEMENT	
1. Are contracts to be awarded by competitive bidding publicly advertised? What is the track record of the procuring entity in this regard?	Yes, and there is a good track record for advertising goods and services (firms), although advertising for individual consultants is not the rule, see A.2. 1.
2. Is sufficient time allowed to obtain documents and prepare bids?	Yes. 30 days for submission of pre-qualification and 6 weeks for submission of bids.

B6 - COMMUNICATIONS BETWEEN BIDDERS AND THE PROCURING ENTITY	
1. Are requests for clarifications answered promptly and completely in a written form?	Based on samples reviewed - yes.
2. Are clarifications, minutes of the pre-bid conference, if any, and modifications of the documents promptly communicated to all prospective bidders?	Based on samples reviewed - yes.
3. Are bidders afforded sufficient time to revise their bids following a modification of the documents?	Based on samples reviewed - yes.
4. Does the procuring entity maintain accurate records of all communications with the bidders (before and after the deadline for submission)?	Based on samples reviewed - yes.
5. Are there any communications between the procuring entity and the bidders, other than appropriate requests for clarification of a bid made by the evaluating committee and responses from the bidders? Comment, if any other communications take place.	Based on information provided – no.

B7 - RECEIPT OF BIDS AND OPENING	
1. Are bids received prior to the deadline securely stored? Where? Who has access?	Yes, in FAS. Chief FAS and procurement officer have access. In HRD, Chief HRD and personnel officer have access.
2. Are public bid openings conducted?	Not foreseen in the Procurement Manual, but firms are allowed to attend bid opening held at MRCS and to participate if they want to. There is no "official/formal" opening in case of recruitment of individual consultants.
3. If so, are they conducted at a specified place closely following the deadline for submission? Generally how long after are they scheduled? Who is invited to attend?	Bids are opened at MRCS HQ, FAS immediately after the submission deadline. They are attended by the evaluation panel members. For recruitment of individual consultants, not applicable. CV's received will be sent to evaluation panel.
4. Are bid opening procedures generally satisfactory? What information is read out at the opening ceremony? Are minutes kept?	Bid opening procedures are generally satisfactory. Information is not read out, but recorded e.g. name of bidders, bid received in time, envelopes sealed, bid signed, price in case of goods, for services if separate envelopes for technical and financial etc. Minutes are kept, but Minutes are not sent to bidders.
5. Do bid opening procedures differ for goods, works or consulting contracts? If so, how? Are the differences appropriate and acceptable?	For goods, works and services (firms) the procedures are the same; for individual consultants, there is no formal opening, CV's are sent to evaluation panel members.

B8 - BID EXAMINATION AND EVALUATION	
1. Are evaluations conducted by qualified evaluating committees?	<p>The FAS proposes (with recommendations from the Programs) and the CEO of the MRC approves membership of the evaluation committee which is generally composed of the chairman (Director of the respective Division/Section) the programme officer(s) from the requesting Division/Section and an <i>ex officio</i> member from FAS. The FAS member will not provide technical scores (except where they possess relevant technical expertise) but will otherwise participate in the evaluation.</p> <p>For the recruitment of individual consultants, programme units recommend the panel and CEO approves the panel, which normally consists of the programme coordinator and programme officer and can include the director of the division.</p>
2. Is responsiveness determined solely on the basis of the documentary requirements described in the bid invitation documents?	<p>Evaluation Reports normally contain a statement to the effect that Technical Proposals have been reviewed and that documents submitted in general comply with instructions for bid submission. However there are no detailed checklists as part of the evaluation report listing the documentary requirements and whether they have been fulfilled, i.e. there is no detailed record of what is normally conducted as a “preliminary examination” of the bidders responsiveness to the bidding documents.</p> <p>For recruitment of individual consultants, not applicable.</p>
3. Are bid evaluations carried out thoroughly and on the basis of the criteria specified in the bid invitation documents?	<p>For technical and financial evaluation - based on the evidence provided, yes.</p> <p>Preliminary examination not detailed enough.</p>
4. Is the successful bidder's qualification to perform the contract determined solely on the basis of the criteria stated in the bid invitation documents?	<p>Based on the samples reviewed, yes.</p>
5. Are evaluations normally completed within the original bid validity period?	<p>Based on the information provided, yes.</p>

6. Are bid evaluation reports prepared containing all essential information (i.e. a clear and complete description of the evaluation process, including the reasons for rejecting any bid as non-responsive, how the stated evaluation criteria were applied, and how the successful bidder's qualifications were verified)?

For technical and financial evaluation - based on the samples reviewed, yes.
Preliminary examination not detailed enough.

B9 - CONTRACT AWARD AND EFFECTIVENESS	
<p>1. Are contracts required to be awarded to the lowest evaluated responsive bidder who has been determined to be qualified to perform the contract satisfactorily? Comment on the acceptability or otherwise of any alternative criteria employed.</p>	<p>Contracts are awarded to the lowest priced bid conforming to specifications. However, as set out in A1-9 above, notwithstanding the lowest cost criterion, the Manual then applies an additional mechanism whereby any bid which comes within 15% of the value of the otherwise lowest bid may be considered as an 'alternative' bid. Where they exist, the successful bidder will be the one with the highest score (even though no scoring criteria are indicated) provided such a bid has at least 5 marks more than the lowest bid. This appears to be an attempt to graft on a quality/cost equation even though the sole evaluation is stated to be the lowest price (other than in the case of professional services and works).</p>
<p>2. Is performance security required in an appropriate amount and in an appropriate format? Is this requirement enforced?</p>	<p>Performance Securities are explicitly required for goods and services (firms) in the case of contracts whose value is between \$20,000 and \$40,000 only. In practice, it is used more widely. Sample forms are attached to one of the IFI sample documents contained in the toolkit.</p> <p>The Bidding Documents for Services also state the requirement for performance guarantees which is not in line with international best practice.</p>
<p>3. Is there an effective process for timely handling of complaints or appeals, and is it adhered to?</p>	<p>No – but contract documents make provision for settlement of disputes – arbitration. However, the arbitration clause (UNCITRAL) is not detailed enough e.g. does not state the appointing authority, number of arbitrators, language, place of arbitration etc., which makes it difficult to initiate proceedings if required.</p>

B10 - CONTRACT ADMINISTRATION	
1. Are there manual or computerized procurement and/or contract monitoring systems in use? Review sample reports/outputs and describe.	Yes. MRC FAS is using an electronic master file (EXCEL) for monitoring the procurement process. FAS voiced the need for a new monitoring system (an off the shelf software solution would be preferred).
2. Are suppliers and contractors generally paid on time? What is the normal time lapse from invoice submission to final payment? Are securities obtained for all advance payments?	They are generally paid according to the contract terms. In practice, there are incentives for prompt payment: it is understood that donors allow funds to be drawn down based on payments to suppliers. Prompt payment thus leads to the prompt release of funds
3. Are there appropriate procedures to monitor delivery of goods and services to verify quantity, quality and timeliness? Are stores well kept and managed including inventory control of goods?	There is a system for contract monitoring, see B10.1 above. Stores N.A. Inventory control of goods is handled by FAS with the help of a computerised inventory system.
4. Are contract changes or variations handled promptly in accordance with the contract conditions and established practice (i.e. change/variation orders are given and/or confirmed in writing, unit rates in the contract are honoured, etc.)?	Based on the information provided, yes. But this could not be verified.
5. Does the procuring entity normally make a good faith attempt to resolve disagreements through informal negotiations?	Based on the information provided, yes, but this could not be verified although there seem to have been few or no complaints.
6. If this fails, are the resulting disputes handled in accordance with the contract conditions?	No dispute samples provided on which to base a conclusion. In theory, disputes would be handled in line with the contractual provisions i.e. following an attempt for amicable settlement, arbitration. However, as indicated elsewhere, the arbitration clauses are incomplete and may be unworkable.
7. Are supplier, contractor and consultant claims handled fairly based on a clear recognition of both parties' obligations under the contract?	Based on the information provided, yes, although there seem to have been few or no complaints and how they have been handled could not be verified.
8. Are works contracts supervised by independent Engineers? Does an employee of the Employer act as Engineer or Project Manager in some cases? If so, comment.	Environmental Program: N.A. No major works contracts Navigation Program: N.A. No major works ICBP: N.A. No works contracts

<p>9. Are contract managers/administrators skilled in resolving problems in a timely manner and dealing with unforeseen circumstances arising during the life of the contract? Do they adequately document all actions of contractual import taken by the procuring entity during implementation?</p>	<p>Environmental Program: According to information received the Division employs technically skilled programme officers. Preparation of specifications and TOR's and evaluation of offers/applications is carried out in a professional way. The review of sample contract files showed that actions are properly recorded. However, programme officers lack experience legal/contractual) in interpreting contracts and would benefit from training in contract management.</p> <p>Navigation Division: Same as above. Records for project implementation are kept in separate files.</p> <p>ICBP: Same as above. Records are kept in separate files.</p>
<p>10. Are contractual remedies utilized only when appropriate and in accordance with the contract conditions?</p>	<p>It seems that contractual remedies are rarely applied. This could however, not be verified, but it seems that there have been few or no disputes.</p>
<p>11. Are contracts generally completed on schedule and within the originally approved contract price? Or are cost and time overruns frequent? If so, for which particular kinds of contracts? Are fair final acceptance procedures used and are completion certificates issued in a timely fashion? How frequently are contracts extended or amended?</p>	<p>Environmental Program: According to information received, cost and time overruns are not frequent. For samples reviewed, the procedures for final acceptance are of an acceptable standard. Only in special circumstances are contracts extended or amended.</p> <p>Navigation Program: There are some examples of time and cost overruns – generally there is a problem in managing contracts and a need for legal advice. Amendments are done but are not frequent.</p> <p>ICBP: According to information received, cost and time overruns are not frequent. For samples reviewed, the procedures for final acceptance are of an acceptable standard. Only in special circumstances are contracts extended or amended.</p>
<p>12. Are contracts generally administered in a fair and equitable manner (e.g. the procuring entity grants extensions of time when delays are attributable to its untimely action, fair compensation is provided to offset additional costs caused by its mistakes, etc.)?</p>	<p>No evidence of unfairness was found in samples reviewed, but this could not be verified for the whole operation.</p> <p>Apart from the fact that there are examples of cost and time overruns and disruptions of contractor's performance or non performance and subsequent contract terminations, no evidence was found in the samples reviewed, that such problems were not handled in line with the respective contracts</p>
<p>13. Are under-inspection, over-inspection and/or improper rejection of goods,</p>	<p>As above.</p>

materials or methods of carrying out the works a common problem?	
14. Are disruptions of the supplier's, contractor's or consultant's orderly performance common, i.e., does the procuring entity supply all the goods, materials and labour and data it agreed to supply under the contract, and carry out all inspections in a timely fashion?	As above.
15. Can any improper contract administrative practices be attributable to a problem identified in the local procurement environment? Specify.	Could not be verified. It has been established however, that all programme units would benefit from training in contract management.
16. Are final payments and contract final closure efficiently handled?	Yes – for samples reviewed.

C. Organization and Functions	
<p>1. Describe the general organization of the procuring entity, insofar as it relates to the procurement function.</p>	<p>Programs have responsibility for identification of needs, procurement planning, preparation of technical specifications/TOR's and sometimes are also involved in the preparation of bidding documents.</p> <p>Procurement of goods and services (firms) is carried out by the Procurement Unit of the FAS, which next to the Chief of FAS, is staffed with one procurement officer and one procurement assistant.</p> <p>Contracting of individual consultants is carried out by the Human Resources Development Section (HRD) Human Resources Management Unit, staffed with one personnel officer and one assistant. Both of these units were formerly part of the FAS but HRD has now been given overall responsibility for the recruitment of individual consultants.</p> <p>Responsibility for granting waivers for procurements up to US\$ 20,000 is still however, in the hands of the Chief of the FAS. Above US\$ 20,000, waivers are approved by the CEO. Up to procurement with a value of US\$ 2,000, the personnel officer can approve waivers.</p> <p>Programmes have responsibility for contract administration. FAS assists with contract administration issues and is responsible for payment.</p>
<p>2. Are key functions assigned and duly staffed? – eg Planning - Preparation of Bidding Documents - Bidding Process Management (Advertising, Printing and Publication, Responses to Questions/Clarifications, Prebid Conference) - Bid Opening - Bid Evaluation - Contract Preparation - Contract Management - Quality Control and Inspection – Transport - Insurance - Custom Clearances and Expediting, etc.</p>	<p>Yes - and sufficient for the present workload but this will need to be reviewed when more details on value and number of future procurements are known.</p>
<p>3. Are there procedural manuals and clear instructions for staff to follow? Are these appropriate and adequate?</p>	<p>Yes – finance-, admin-, personnel- and procurement manuals. Procurement Manual needs refinement and alignment with procurement toolkit. Programmes would benefit from orientation on systems and procedures and training in contract management. MRC would benefit from a flow chart describing</p>

	procedures step by step. This would also avoid the occurrence of differing interpretations of the provisions of the procurement manual.
4. Is appropriate information on procurement adequately disseminated (i.e. are procurement staff aware of updated rules and thresholds, as well as other issues relevant to their assigned responsibilities)?	Yes – usually through Memos issued by FAS.
5. Are the procurement and supply management functions clearly separated?	Yes - between Programs and FAS and HRD.
6. Is contracting authority reasonably delegated (i.e. there are no unnecessary levels of approvals or cumbersome procedures)? Are the applicable procedures clearly defined?	In the view of FAS, the arrangements are reasonable and the procedures are clearly defined. Although the CEO is required to approve Evaluation Committees and to sign contracts the procedure is not considered cumbersome, but rather welcome as it adds a different viewpoint to the process. In the consultants view the procedures are acceptable for an organisation such as the MRC.
7. Are thresholds for contracting powers regularly updated?	There are no regular up-dates for thresholds for contracting powers.
8. Are procurement agents used? Under what circumstances? How are they selected? Describe their normal basis for payment and contract duration.	No, but some donors organise their own procurement for programmes financed by them and vehicles and office supplies can be purchased from IAPSO. Whilst there are potential benefits to using IAPSO, MRC should not of course assume that this will always produce a better result than procuring direct from manufacturers or other suppliers; it should therefore take alternative sources into account when considering possible use of IAPSO.

D. Support and Control Systems	
1. Are satisfactory auditing arrangements in place and suitably established? Describe.	Financial audits: yearly audit of MRC accounts by external auditor (KPMG) Specific audits requested by donors (either managed by donors or by MRC) Programme reviews, either internally or by donors
2. What is the general quality and scope of the auditing arrangements?	Audit reports reviewed are of good quality (KPMG, PWC), for scope see D1.
3. Are audits independent? Are their recommendations implemented?	Financial audit report is made by external auditors and addressed to Joint Committee (JC) and sent to donors. Debriefing meeting with all senior staff. According to information received, audit recommendations are implemented through follow-up of management letter.
4. Are internal technical and administrative controls clear for reviews, clearances and decision-making?	Based on information available, yes.
5. Does the entity have access to quality legal advice and input?	Framework contract with Mekong Law Group. However, Programmes indicated need for a more informal way of seeking advice, including in-house expertise.

E. Record Keeping and Statistics	
<p>1. For contracts to be awarded on the basis of competitive bidding, does the procuring entity maintain a complete record of the process? This would include, for example, copies of all public advertisements, pre-qualification documents (if used), the pre-qualification evaluation report documenting any decisions not to pre-qualify certain potential bidders, the bid invitation documents and any addenda, a record of any pre-bid meetings, the bid opening minutes, the final bid evaluation report (including a detailed record of the reasons used to accept or reject each bid), copies of bids, appeals against procedures or award recommendations, a signed copy of the final contract and any performance and advance payment securities issued, etc. Are cross-references to pertinent files adequate and clear?</p>	<p>Yes. Record keeping in FAS and HRD Personnel Unit is of a good standard. Record keeping in programme units includes copies of Specifications/TOR's Tender Documents/RFP's, evaluation report, contract and contract administration including requests for payment.</p> <p>Staff know where to find the respective documents. However, not all documents are available as hard copies and not all are kept in one single file.</p> <p>The MRC Administrative Manual Part Two: Records Management contains general principles for record keeping and states that each unit may develop its own subject filing system reflecting the nature of the activities. All contracts and corresponding documents with suppliers, consultancy companies, individual consultants etc. must be maintained for the full duration of the contract, and for five years following the completion of the contract. There is no specific record keeping policy for procurement activities.</p>
<p>2. Are adequate contract administration records maintained? (These would include contractual notices issued by the supplier, contractor, consultant or procuring entity; a detailed record of all change or variation orders issued affecting the scope, quantities, timing or price of the contract; records of invoices and payments; progress reports; certificates of inspection, acceptance and completion; records of claims and disputes and their outcome; etc.)</p>	<p>The samples of contract administration records reviewed are of an acceptable standard. However, for some programs not all correspondence is available in hard copy and documents are kept in various files.</p>
<p>3. For small contracts or purchase orders for goods procured using shopping procedures, is a database maintained showing the current market price for commonly needed items?</p>	<p>The procurement manual states that: The Inter-Agency Procurement Services Office (IAPSO) under the United Nations Development Programme (UNDP) issues periodical bulletins of prices after negotiations with manufacturers and/or suppliers of items such as vehicles, computers, office equipment, stationery, etc. For those items whose prices are fixed and valid, competitive bidding-and following the procurement procedures are not necessary. Upon receipt of a purchase request for such items, a purchase order can be prepared, obligated funds and signed by the Procurement and Contract Officer and forwarded to the Chief FAS for final approval.</p> <p>So far, MRC has been using IAPSO only for the procurement of vehicles. Whilst</p>

	<p>there are potential benefits to using IAPSO, MRC should not of course assume that this will always produce a better result than procuring direct from manufacturers or other suppliers; it should therefore take alternative sources into account when considering possible use of IAPSO.</p> <p>A database (EXCEL) is used for current market prices for office supplies, which are purchased together for all units.</p>
<p>4. Are periodic reports prepared on overall procurement activities? By and for whom?</p>	<p>Yes, by FAS and HRD, including detailed procurement statistics and this information is distributed to management.</p>
<p>5. Is a record of contract prices kept? What is its purpose and how is it used?</p>	<p>Yes, for office supplies. It is used to compare with price offers.</p>
<p>6. Contract values: 6.1 What is the estimated total value of contracts placed per annum for Goods? 6.2 What is the estimated total value of contracts placed per annum for Works? 6.3 What is the estimated total value of contracts placed per annum for Services?</p>	<p>Total value of Goods in 2008: 1.6 Mio (15%) Total value of services in 2008: 8.4 Mio (81%) Services by firms: 4.9 Mio (58% of all services) Individual consultants: 3.5 Mio (42% of all services) Total value of Works in 2008: 0.4 Mio (4%) Total approx. 10.4 million US\$</p> <p>In comparison: 2004 11 million US\$ This is annual spend 2005 13 million US\$ 2006 13 million US\$ 2007 14 million US\$ 2008 16 million US\$</p> <p>Projected: 2009 27 million US\$ this is projected (active and pledged) spend 2010 21 million US\$ 2011 8.5 million US\$ 2012 4.3 million US\$</p> <p>The figures are based on the financial plan updated in October 2008. The financial crisis, implementation of solution on co-hosting of secretariat and</p>

	uncertainty regarding the signing of new agreements may reduce the level of planned expenditures.									
<p>7. Contract numbers:</p> <p>7.1 What is the estimated total number of contracts placed per annum for Goods?</p> <p>7.2 What is the estimated total number of contracts placed per annum for Works?</p> <p>7.3 What is the estimated total number of contracts placed per annum for Services?</p>	<p>2008</p> <p>Goods: 219 Services (firms): 160 Works: 22 Total 401</p> <p>Average Contract 'Values (without individual consultants): (contained in statistics that have been given?)</p> <table border="0"> <tr> <td>- Contract less than USD 20,000 :</td> <td>359</td> <td>US\$ 2,327</td> </tr> <tr> <td>- Contract between USD 20,000 – 40,000 :</td> <td>18</td> <td>US\$ 27,300</td> </tr> <tr> <td>- Contract more than 40,000 :</td> <td>24</td> <td>US\$ 233,171</td> </tr> </table> <p>Total 401</p> <p>Services (individual consultants): 315 (International 106, Regional 209) Special Service Agreements (SSA) 217 – Service Contracts (SC) 98 Total Vacancy announcements Special Service Agreements (SSA) - 39 or 18% Average contract value SSA 13.000 US\$ Average contract value SC 9.000 US\$ Total Value 3,5 million US\$</p>	- Contract less than USD 20,000 :	359	US\$ 2,327	- Contract between USD 20,000 – 40,000 :	18	US\$ 27,300	- Contract more than 40,000 :	24	US\$ 233,171
- Contract less than USD 20,000 :	359	US\$ 2,327								
- Contract between USD 20,000 – 40,000 :	18	US\$ 27,300								
- Contract more than 40,000 :	24	US\$ 233,171								
<p>8. Sources of funding and breakdowns by source of supply and method of procurement:</p> <p>8.1 What approximate percentage of the total procurement spend is funded by the donor community?</p> <p>8.2 What approximate percentage of the total procurement spend results in contracts being placed with regional suppliers and service providers?</p> <p>8.3 What approximate percentage of the total procurement spend results in contracts being placed with international (ie outside the <procuring entity> region) suppliers and service providers?</p> <p>8.4 What approximate percentage of the number/value of all contracts issued is as a result of "local shopping"?</p> <p>8.5 What approximate percentage of the number/value of all contracts issued is as a result of simple quotation exercises?</p>	<p>2008</p> <p>8.1. More than 90% is funded by donors</p> <p>8.2 and 8.3 Not readily available. Figures 2006: 65% of expenditures (including personnel costs) were spent in the region, while 35% took place outside the region.</p> <p>Number of contracts 2008 (total value approx 6.9 million US\$)</p> <p>8.4 - 57 % direct purchase, negotiation or single quotation (total value of this procurement 1.5 million US\$)</p> <p>8.5 – 36% request for quotations (total value of this procurement 0,6 million US\$)</p>									

8.6 What approximate percentage of the number/value of all contracts issued is as a result of international (ie outside the <procuring entity>region) tendering?

8.5 – 2% (total value of this procurement 4.1 million USD)
Remaining 5% of all procurement as part of Memoranda of Understanding with Mekong National Committees (total value of this procurement 0,7 million US\$)
Individual Consultants (total value approx. 3.5 million US\$)
Services (individual consultants): 315 (International 106, Regional 209)
Total Vacancy announcements SSA 39 or 18%

F. Staffing	
<p>1. Is the procuring entity adequately staffed with trained and experienced procurement personnel?</p>	<p>Chief FAS Procurement & Contract Officer: in duty since December 2008 Procurement assistant, in duty since March 2005. Chief HRD Personnel officer, in duty since August 2005 Personnel assistants Adequate for the present workload. Programmes are staffed with technical staff – no specific procurement experience, lack of contract management experience.</p>
<p>2. What is the general grade/level for the following staff: 2.1 Procurement Manager (10+ years relevant experience)? 2.2 Senior Procurement Officer (5-10 years relevant experience)? 2.3 Junior Procurement Officer (0-5 years relevant experience)?</p>	<p>Procurement manager, Chief FAS: M13 level Senior procurement officer level M10-12 level Junior procurement officer level M6-M7 level</p>
<p>3. Is there a job description for each member of staff, including the qualifications each one is required to possess?</p>	<p>Yes</p>
<p>4. What are the salary ranges for the following grades of procurement staff: 4.1 Procurement Manager (10+ years relevant experience)? 4.2 Senior Procurement Officer (5-10 years relevant experience)? 4.3 Junior Procurement Officer (0-5 years relevant experience)?</p>	<p>N.A See above in respect of professional levels.</p>
<p>5. Do staff skills generally match requirements and numbers? Are there any staffing gaps?</p>	<p>Number of staff and skills (knowledge of MRC procedures) are adequate for present workload. However, staff lack a wider understanding of procurement concepts and Programmes lack specific procurement know-how in particular for contract management. Broader procurement issues are needed beyond the narrow rules that apply and staff also need to know how to deal with contracting issues such delivery, inspection, change orders, price variations and payment.</p>

	Staffing gaps: Incoming new chief FAS and Programme Coordinator ICBP. It also needs to be considered that professional staff can serve a maximum of 6 years i.e. means that there is a regular staff fluctuation. Whilst present staff might be skilled new incoming staff will have to go through a learning curve to familiarize with systems and procedures. From the perspective of the continuity and quality of the procurement function, it would be preferable to see longer term positions providing appropriate career paths.
6. Are procurement staff experienced in international procurement?	Yes but limited international tenders.
7. Is career advancement primarily based on job-related accomplishments and performance?	MRC has performance assessment system and rewards outstanding achievements, but is essentially a non-career organization. Professional staff are recruited for a maximum of 6 years (2 x 3 years).
8. Do adequate formal and on-the-job training programs exist for entry- and higher-level procurement staff that contribute to proper professional career development?	Do not have formal initial career or training plan but there is an annual performance review which deals with training needs.
9. Are there additional training resources in the country which are currently utilized, or that could be utilized, to complement donor-administered programs (e.g. universities and private institutions)?	See ICBP Attendance at some courses at AIT in Bangkok and on WB training in Lao PDR.
10. Do procurement staff have adequate program/contract management capabilities?	Procurement staff are skilled and able to <u>implement procurements in line with the MRC systems and procedures</u> and also have some experience with the application of donor systems and procedures. They would however, benefit from training to widen their knowledge and in particular also from orientation on the interpretation of procedures. Staff of programme units have a good knowledge of technical issues including preparation of technical specification, TORs, evaluation but limited knowledge of contract management.
11. Are procurement staff at all levels efficient, professional, honest and effective in carrying out their work?	Procurement staff are highly motivated to carry out their job in line with the required systems and procedures. To the extent that it was possible to make such an assessment in the time available, yes.
12. How good are the people at their job? How good is their work?	The work reviewed is of a good standard. However, staff would benefit from orientation on the interpretation of procedures, contract management and the

	wider concepts of public procurement.
13. Are the procurement staff held in high regard in the entity?	Programs seem satisfied with the work and assistance provided. FAS acknowledges some shortcomings in programme units with regard to procurement planning and contract management.
14. Is senior and top management of the entity capable, honest and effective in managing both the procurement activities and staff of the entity?	Procurements are managed in a pragmatic way i.e. decisions are made to get work done, which however also leads to instances where “shortcuts” are used to ensure effectiveness i.e. that procedures can be interpreted to support required action and timelines. Staff seem effectively managed.
15. Does the highest level of the entity encourage/support/enforce compliance with existing procurement regulations? Are violations investigated and procurement/other responsible officials held accountable?	There is a serious effort to follow the systems and procedures. At the same time the use of waivers is common in particular in the recruitment of individual consultants.

G. Private Sector Viewpoint	
<p>What is the view of the private sector generally of (a) the general efficiency and predictability of the procurement systems operated by the entity, (b) the transparency of the procurement process, (c) the quality of the entity's contract management, and (d) the general reputation of the agency as free of corruption or otherwise? Describe any specific examples cited by the private sector that support the assessments given in response to (a) to (d).</p>	<p>There is only a limited number of local suppliers and consultant firms with regular business relations with MRC. Most of these local firms supply office equipment and supplies or IT-equipment and related training, or are involved in training activities or research and studies. Due to time constraints only meetings with 2 local companies could be arranged, including Enterprise and Development Consultants Co. Ltd. (EDC) and MICRO-INFO (MIC) a supplier of office equipment and supplies.</p> <p>Both firms have regular contracts with MRC. The annual contract value 2008 was 15000 US\$ for EDC and approximately US\$ 60.000 for MIC. In 2009 EDC has been awarded with a contract for the training under the Riparian Young Professionals Programme with a value of US\$ 10.000</p> <p>Both firms confirmed their continued interest to work with MRC. The general quality of tender and contract documents is considered to be of a good. MRC staff are perceived as competent and always willing to assist in case of clarifications. On the other hand both firms were of the opinion that payment was slow. One of the firms stated that they are not always informed of the results of a tender. One would in particular welcome of MRC procurement opportunities would be published more in advance e.g. in the beginning of the year a General Procurement Notice, based on the annual procurement plan. One of the firms in particular also referred to the lack of opportunities for local firms to participate in tenders, but realises that this is largely due to their experience. They would welcome opportunities to join with other more experienced firms in joint ventures and this is maybe something MRC should encourage to increase opportunities for local firms.</p> <p>With respect to the viewpoint of donors/lenders again due to the limited time available the consultants relied on the results of a recent survey carried out the Sida (SENSA) in which development partners were asked to what extent MRC's systems and procedures provide a satisfactory basis for their agency to move towards more aligned modes of aid provision. One development partner provided a rating of "very strong", three a rating of "strong", and six a rating of "weak". Those rating MRC's systems relatively strongly cited the successful</p>

passing of formal review processes and generally sound financial management and procurement, and progress in implementing agreed organizational reforms.

More details of the survey can be found in the Final Report on Aid Effectiveness for the Mekong River Commission: Improving harmonization and Alignment - Inception Report (Final), Stephen Jones, Oxford Policy Management, November 2008.

Comparison CPG and MRCS Procurements Systems and Procedures

(comparing the principles enshrined in each paragraph of Divisions 1 and 2 of the CPGs with the procuring entity's systems and procedures)

CPG December 2008	MRC Procurement Systems and Procedures	Conclusions and Recommendations
DIVISION 1 Procurement Principles Applies to all procurement		
<p>4 Value for Money</p> <p>4.1 <i>Value for money</i> is the core principle underpinning Australian Government procurement. In a procurement process this principle requires a comparative analysis of <i>all</i> relevant costs and benefits of each proposal throughout the whole procurement cycle (whole-of-life costing).</p> <p>4.2 Value for money is enhanced in government procurement by:</p> <ol style="list-style-type: none"> a. <i>encouraging competition</i> by ensuring non-discrimination in procurement and using competitive procurement processes; b. promoting the use of resources in an <i>efficient, effective and ethical manner</i>⁵; and c. making decisions in an <i>accountable and</i> 	<p>The overarching principles are contained in Rule 16 of the Rules and Procedures of the Mekong River Commission Secretariat of 1998 under which the Procurement Manual was adopted. This provides, <i>inter alia</i>, that “the policy of MRCS is that competitive bidding shall be followed in the procurement of goods and services, in accordance with the principles and procedures set forth in the established Mekong Procurement Manual”.</p> <p>The Manual reiterates these principles in its ‘General Principles’ emphasising in various parts the need of the MRC to comply with the principles of efficiency, accountability, integrity, competition, and equal opportunity. Whilst the term ‘value for money’ is not used explicitly, the aim of the Manual is to apply these principles to “ensure that the Secretariat procures the most economical and advantageous goods and</p>	<p>Generally, the MRC systems and procedures would appear consistent with those of the CPG in seeking value for money even though that term is not used. The only obvious deficiency is in the case of the award criteria where life cycle costing is not taken into account. However, this is not critical in the case of the small value contracts at issue within MRC and is not a requirement for AusAID. It is nonetheless a useful tool for MRC..</p> <p>The practical implementation of the search for value for money, on the other hand, requires some attention. The absence of any clear set of qualification criteria (other than in the case of pre-qualification) coupled with inconsistent and, in some cases, incomplete model documents means that value for money will not always be achieved. It may be achieved where, by chance, the most appropriate documents are used but</p>

⁵ This requirement is consistent with section 44 of the FMA Act for FMA agencies, sections 22 and 23 of the CAC Act for Commonwealth authorities and relevant provisions of the *Corporations Act 2001* for Commonwealth companies.

CPG December 2008	MRC Procurement Systems and Procedures	Conclusions and Recommendations
<p data-bbox="247 282 464 305"><i>transparent manner.</i></p> <p data-bbox="138 331 699 634">4.3 In order to be in the best position to determine value for money when conducting a procurement process, request documentation needs to specify logical, clearly articulated, comprehensive and relevant conditions for participation and evaluation criteria which will enable the proper identification, assessment and comparison of the costs and benefits of all submissions on a fair and common basis over the whole procurement cycle.</p> <p data-bbox="138 660 699 1203">4.4 Cost is not the only determining factor in assessing value for money. Rather, a whole-of-life value for money assessment would include consideration of factors such as:</p> <ul style="list-style-type: none"> <li data-bbox="212 792 449 815">a. fitness for purpose; <li data-bbox="212 829 699 885">b. the performance history of each prospective supplier; <li data-bbox="212 899 594 922">c. the relative risk of each proposal; <li data-bbox="212 937 699 992">d. the flexibility to adapt to possible change over the lifecycle of the property or service; <li data-bbox="212 1006 699 1127">e. financial considerations including all relevant direct and indirect benefits and costs over the whole procurement cycle; and <li data-bbox="212 1141 699 1196">f. the evaluation of contract options (for example, contract extension options). 	<p data-bbox="737 282 1079 305">services as quickly as possible”.</p> <p data-bbox="737 331 1251 409">There is no mention of the need to take life cycle costing into account as part of a value for money assessment.</p> <p data-bbox="737 440 1304 631">In concrete terms, the request documentation for the various processes and types of contract is inconsistent. There is little in the Manual itself which sets out clearly and comprehensively the participation and evaluation criteria which might lead to the achievement of the articulated ‘value for money’ principles.</p> <p data-bbox="737 660 1304 1011">The procurement toolkit provides sample request documents which, rather than acting as standard bidding documents (SBDs), are merely examples of documents that have been or may be used. These are taken in many cases from the SBDs of other organisations such as the ADB and the World Bank. Some of these, notably those of the ADB and World Bank, are sophisticated documents which do indeed set out appropriately the required qualification and evaluation criteria. Other documents do not. Some documents set out the means of evaluating suitable criteria but those criteria are not always articulated in the request documentation.</p>	<p data-bbox="1335 282 1724 305">this is clearly not an inevitable result.</p> <p data-bbox="1335 331 1871 440">Whilst it would be appropriate to improve the MRC system to reflect increased attention on value for money, it is perhaps not necessary to do this by amending the Manual itself.</p> <p data-bbox="1335 469 1902 683">The recommendation would be to review the sample documents in the toolkit and to ensure that they all <i>consistently</i> and <i>comprehensively</i> (and, in the case of life cycle costing, only <i>where appropriate</i>) address the issues which will lead to a greater guarantee of value for money, i.e. by setting out the relevant and appropriate participation, qualification and evaluation criteria.</p> <p data-bbox="1335 712 1892 821">It might also be beneficial to produce an internal guideline, possibly as part of a new procurement capacity building exercise, on evaluation and, where useful for MRC, life cycle costing.</p>

CPG December 2008	MRC Procurement Systems and Procedures	Conclusions and Recommendations
DIVISION 1		
<p>5 Encouraging Competition</p> <p>5.1 Competition is a key element of the Australian Government's procurement policy framework. Effective competition requires non-discrimination in procurement and the use of competitive procurement processes.</p> <p>Non-discrimination</p> <p>5.2 The Australian Government procurement policy framework is non-discriminatory. All potential suppliers should have the same opportunities to compete for government business and must, subject to these CPGs, be treated equitably based on their legal, commercial, technical and financial abilities. Procurement methods must not discriminate against potential suppliers due to their degree of foreign affiliation or ownership, location or size. The property or services on offer must be considered on the basis of their suitability for their intended purpose and not on the basis of their origin.</p>	<p>Competition is also a key consideration of the MRC system and relies on the principle of equality of treatment.</p> <p>Non-discrimination</p> <p>There are no discriminatory provisions in the MRC system. For lower value contracts (the majority), opportunities are to be advertised locally and in the media of the 4 riparian States. This will inevitably lead to local interest but no foreign participant is excluded. For larger value contracts (above \$40,000) and even for lower value contracts where, in the opinion of the MRC, there is likely to be international interest, opportunities are to be published internationally.</p>	<p>In the context of the MRC, its provisions appear satisfactory. No recommendations for section 5 are made.</p> <p>No recommendation is made.</p>

⁶ An SME is an Australian or New Zealand firm with fewer than 200 full time equivalent employees.

<p>Small and Medium Enterprises (SMEs)</p> <p>5.3 To ensure that SMEs⁶ are able to engage in fair competition for government business, officials undertaking procurement should ensure that procurement methods do not unfairly discriminate against SMEs.</p> <p>5.4 Agencies should seek to ensure that procurement processes are readily communicated and accessible to SMEs and should not take action to deliberately exclude SMEs from participating.</p> <p>5.5 Agencies need to ensure that SMEs have appropriate opportunities to compete for business, considering as appropriate in the context of value for money:</p> <ul style="list-style-type: none"> a. the benefits of doing business with competitive Australian or New Zealand SMEs when specifying requirements and evaluating value for money; b. the capability and commitment to regional markets of SMEs in their local regions; and c. supplier-base and competitive benefits of access for new market entrants. <p>5.6 The Government is committed to FMA agencies sourcing at least 10 per cent of their purchases by value from SMEs.</p>	<p>SMEs</p> <p>There are no explicit provisions in this regard in the Manual and the requirement of paragraph 5.6 is exempted for AusAID funded contracts. In practice, most MRC contracts are of such a small value that SMEs will be the most likely candidates in any event.</p>	<p>No recommendation is made.</p>
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<p><i>Competitive Procurement Processes</i></p> <p>5.7 The procurement process itself is an important consideration in achieving value for money. Participation in a procurement process imposes costs on agencies and potential suppliers and these costs should be considered when determining a process commensurate with the scale, scope and relative risk of the proposed procurement.</p> <p>5.8 Specific procedures must be followed for covered procurements. These procedures, which further encourage competition and in many circumstances require an open approach to the market, are outlined in Division 2.</p>	<p>Competitive Procurement Processes</p> <p>The procurement procedures of the MRC are based on contract values. The lower value contracts attract single source and RFQ procedures (2 levels) and the larger value contracts require open bidding. Open bidding, however, is required at the relatively low level of \$40,000. The ideal for the MRC is that this should be 'international tendering procedures' (as set out in the Manual), although this will imply relatively high costs given the potentially low value of \$40,000. For individual consultant contracts with a duration of more than 3 months, open and competitive recruitment will be used.</p>	<p>No recommendation is made.</p>
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CPG December 2008	MRC Procurement Systems and Procedures	Conclusions and Recommendations
DIVISION 1		
<p>6 Efficient, Effective and Ethical Use of Resources</p> <p>6.1 Section 44 of the FMA Act requires Chief Executives to promote the efficient, effective and ethical use of the Commonwealth resources for which they are responsible. Chief Executives mainly discharge this responsibility for procurement by ensuring that their agencies have appropriate policies, procedures and guidelines in place to achieve value for money in procurement processes.</p> <p>6.2 The devolved environments under the FMA Act and CAC Act give agencies considerable scope to determine specific practices and procedures in order to achieve value for money in procurement. However, many procurement processes will be consistent with Figure 2 below.</p>	<p>Rule 16 of the Rules and Procedures impose similar efficiency and effectiveness requirements on the Secretariat and these are articulated in the Procurement Manual. The Personnel Manual provides provisions regarding ethical conduct.</p> <p>Overall procurement processes within the MRC are largely consistent with Figure 2:</p> <p>The procurement need is identified by the individual Programmes in consultation with the donors providing the funds. Once the need is identified, the scope of the services requirement and the available budget is determined. Any risks attaching to the project will be addressed at this stage. Specifications or terms of reference will be drafted by the Programme.</p> <p>The procurement request will then be sent to the procurement officer at FAS in the Secretariat (or, in the case of individual consultants, to HRMU) who</p>	<p>In the context of the MRC, its provisions appear satisfactory in respect of section 6. Some improvement could be made, however, to contract management which is currently the responsibility of the Programmes. It is and should be their responsibility but it is unclear whether all the services are properly equipped to carry out effective contract management.</p> <p>The recommendation for section 6 would be for the elaboration and periodic delivery of a short contract management course for the Programmes.</p>

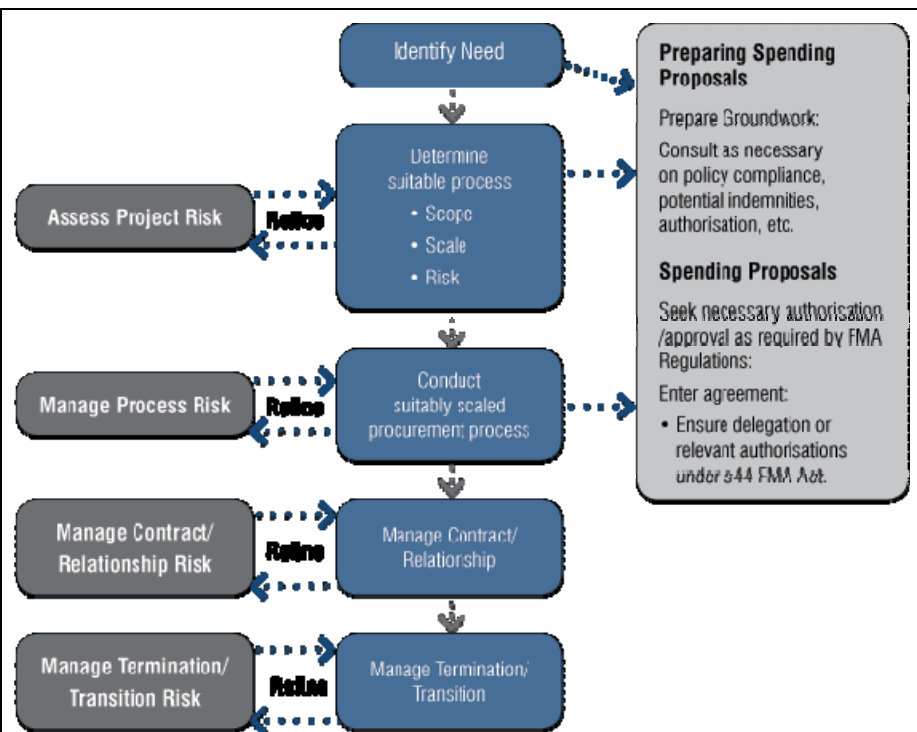


Figure 2
An efficient and effective procurement process incorporates rigorous risk management, enabling issues to be identified early in the process.

will then carry out the procurement according to the most appropriate method taking account of the nature and value of the proposed contract at issue. This may be a request for proposals or national or international advertising as required.

The bids will be processed by the FAS (or HMRU, as appropriate) and evaluated by a tender evaluation committee appointed by the CEO of the MRC on the basis of the recommendation of the Chief of FAS (or HMRU, as appropriate) acting on proposals from the Programme. The evaluation committee will always include technical staff from the Programme concerned. The Manual foresees the possibility of a Committee on Contracts and Purchases whose role would be to review the recommendations of the evaluation committees. It is understood that no such a Committee has been set up.

FAS (or HMRU, as appropriate) will prepare the contracts for signature.

Contract management is then delegated to the Programme which will also provide an evaluation of performance at the end of the contract.

CPG December 2008	MRC Procurement Systems and Procedures	Conclusions and Recommendations
DIVISION 1		
<p>Efficiency and Effectiveness</p> <p>6.3 <i>Efficiency</i> relates to the productivity of the resources used to conduct an activity in order to achieve the maximum value for the resources used. In relation to procurement, it includes the selection of a procurement process that is consistent with government policy and is the most appropriate to the procurement objective under the prevailing circumstances.</p> <p>6.4 Efficiency in procurement is enhanced by conducting transparent, fair and appropriately competitive processes of a scale commensurate with the size and risk profile of each particular project.</p> <p>6.5 <i>Effectiveness</i> relates to how well outcomes meet objectives. It concerns the immediate characteristics of an agency's outputs, especially in terms of price, quality and quantity, and the degree to which outputs contribute to specified outcomes.</p> <p>6.6 Effectiveness can be achieved by ensuring that the property or service being sought will make the maximum possible contribution to the relevant outcome. This entails correctly identifying the need, accurately drafting functional specifications, rigorously assessing responses and negotiating the final contract,</p>	<p>Efficiency and Effectiveness</p> <p>The Procurement Manual sets out the various procurement methods which are consistent with the needs and objectives of MRC, i.e. procedures which address primarily services procurement and supplies with very little works contracts.</p> <p>The various procurement methods are triggered by contract value (or duration, in the case of individual consultants) and these are commensurate with the size and risk profile of the different projects.</p> <p>The procurement and contracting process of MRC efficiently assigns the identification and management of a contract to the Programmes and the procurement tasks to the procurement officer at the FAS (or HMRU, as appropriate). As such, the Programmes are in the best position accurately to identify the needs and assess the risks and subsequently to manage the contract within their own services. The procurement expertise of the staff at FAS (or HMRU, as appropriate) ensures timely and efficient procurement.</p> <p>The only concern is the contract management expertise of the Programme staff. They are technical experts rather than administrative staff and it would appear that they do not always possess the necessary skills, experience and tools to carry out effective contract management.</p>	<p>No recommendation is made.</p>

<p>and then diligently managing the contract. Comprehensive monitoring and assessment at all stages of the procurement process further contributes to effectiveness.</p> <p>Risk Management Principles</p> <p>6.7 Risk is part of the environment within which agencies operate. Risk management involves the systematic identification, analysis, treatment and allocation of risks.</p> <p>6.8 Risk management should be built into an agency's procurement processes. The extent of risk management required will vary from following routine procurement processes, to a significant undertaking involving the highest level of planning, analysis and documentation. A variety of risks may arise during each stage of a procurement. Agencies should ensure that appropriate procedures are in place to identify and consider all relevant risks throughout the procurement cycle.</p> <p>6.9 As a general principle, risks should be borne by the party best placed to manage them – that is, agencies should generally not accept risks which another party is better placed to manage. Similarly, where an agency is best-placed to manage a particular risk, it should not seek to inappropriately transfer that risk to a supplier.</p> <p>6.10 Agencies need to carefully monitor the terms and conditions, including pricing, on which risk allocations are determined, to ensure that they reflect value for money.</p>	<p>Risk Management</p> <p>For the most part, risk management techniques do not play a large part in the procurement of MRC given the nature of the contracts awarded. They are, for the most part, consultancy services contracts of a relatively low value. Where they are highly technical and specialised, they will be well known to the Programme staff who make the necessary risk assessment as part of the identification of the tasks and preparation of terms of reference. In some cases, the drafting of the terms of reference is contracted out and this would provide further guarantees of risk management. MRC has few supplies contracts and even fewer works contracts where issues of risk allocation might more readily come to the fore.</p>	<p>No recommendation is made.</p>
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Limiting a Contractor's Liability to the Commonwealth	Limitation of Contractor Liability	
<p>6.11 The Commonwealth's policy on contingent liabilities is to only accept risk where the expected benefits outweigh the costs. This policy is set out in Finance Circular 2003/02 <i>Guidelines for Issuing and Managing Indemnities, Guarantees, Warranties and Letters of Comfort.</i></p>	<p>For the same reasons as those given above, the question of limiting contractor liability does not arise. On the other hand, where sample documents used are based on those of the IFIs (such as World Bank or ADB), the liability provisions of those entities are employed.</p>	<p>No recommendation is made.</p>
<p>6.12 Agencies must undertake a risk assessment to inform any decision about whether limiting a contractor's liability through a liability cap or indemnity would be appropriate, and if so, what limits may be suitable. This approach is consistent with the broader financial management framework that provides for agencies to consider all contingent liability matters in the context of sound risk and contract management practices.</p>	<p>No provision is made.</p>	<p>No recommendation is made.</p>
<p>6.13 An indemnity or a limitation on a contractor's liability transfers risk to the Commonwealth. As part of considering a limit on liability, FMA Act agencies need to comply with the requirements of the FMA Act and Regulations. As part of considering an indemnity, FMA Act agencies need to comply with the requirements of the FMA Act and Regulations and the guidance set out in Finance Circular 2003/02 <i>Guidelines for Issuing and Managing Indemnities, Guarantees, Warranties and Letters of Comfort.</i></p>	<p>No provision is made.</p>	<p>No recommendation is made.</p>
<p>6.14 In addition, when considering a limit on a supplier's liability, agencies should note that arrangements to limit liability can carry direct or</p>	<p>No provision is made.</p>	<p>No recommendation is made.</p>

<p>indirect costs which must be considered within the determination of value for money. Similarly, if a risk assessment determines it would be appropriate to require a supplier to accept unlimited liability, value for money impacts need to be considered.</p>		
<p>6.15 If an agency decides to limit a contractor's liability, through a liability cap or indemnity, based on an assessment of the risks and value for money considerations, it should develop and implement a risk management plan.</p>	<p>No provision is made.</p>	<p>No recommendation is made.</p>
<p>6.16 For more complex procurements, request documentation should include a draft contract with clear liability provisions. Potential suppliers should be required to indicate compliance with the entire contract, including liability provisions, and separately identify any clauses of non-compliance or partial compliance, clearly providing details and costs for any alternative clauses. Request documentation may allow for any additional direct or indirect costs borne by the Commonwealth to be reflected in a commensurate adjustment to the terms of the contract where negotiations to limit a supplier's liability occur after the nomination of a preferred supplier.</p>	<p>The IFI SBDs contained in the Toolkit include such provisions.</p>	<p>No recommendation is made.</p>
<p>Ethics</p> <p>6.17 <i>Ethics</i> are the moral boundaries or values within which officials work. Ethical behaviour encompasses the concepts of honesty, integrity, probity, diligence, fairness, trust, respect and consistency. Ethical behaviour identifies and avoids conflicts of interests, and does not make</p>	<p>MRC does not provide such an explanation of Ethics but there is nothing to suggest that it disagrees.</p>	<p>No recommendation is made.</p>

<p>improper use of an individual's position.</p> <p>6.18 A procurement conducted in an ethical manner will enable purchasers and potential suppliers to deal with each other with mutual trust and respect. Adopting an ethical, transparent approach enables business to be conducted fairly, reasonably and with integrity. A specific aspect of ethical behaviour relevant to procurement is an overarching obligation to treat potential suppliers as equitably as possible.</p> <p>6.19 Agencies need to ensure that officials involved in procurement, particularly those dealing directly with suppliers and potential suppliers:</p> <ol style="list-style-type: none"> a. recognise and deal with any conflicts of interest, including perceived conflicts of interest; b. deal with suppliers and potential suppliers even-handedly; c. consider seeking advice where probity issues arise; d. do not compromise the Australian Government's standing by accepting inappropriate gifts or hospitality; e. are scrupulous in their use of public property; and f. comply with all duties and obligations including the agency's CEIs in relation to gifts or hospitality, the information privacy principles of the <i>Privacy Act 1988</i>, the security provisions of the <i>Crimes Act 1914</i> and, where applicable, the Australian Public Service's Code of Conduct as set out in the 	<p>MRC does not provide such an explanation of the consequences of ethical procurement but there is nothing to suggest that it disagrees. MRC is obliged to treat bidders equally but there is no mention of 'equitable' treatment.</p> <p>Ethical issues are not dealt with directly by the Procurement Manual although some of its provisions and those of the documents contained in the Toolkit impose ethical requirements. For example, as with the CPGs, official must deal with suppliers equally and avoid the dangers of conflicts of interest.</p> <p>Procedures and practices relating to hospitality and gifts and to the seeking of probity advice are not mentioned.</p> <p>MRC staff are, however, subject to the ethical provisions applied in the Personnel Manual. The Personnel Manual contains a section on the obligations and responsibilities of staff which apply to their general functions and includes provisions on conduct, confidentiality, harassment in the workplace. There are no specific provisions in relation to integrity in the conduct of procurement. At the same time, the Personnel Manual incorporates into each contract of employment a clause which states that employees "<i>shall not engage in any activity which is incompatible with the proper discharge of their duties or which may adversely affect on the integrity, independence and impartiality which are required from the MRC Secretariat personnel</i>".</p> <p>The IFI SBDs included in the Toolkit contain such provisions.</p>	<p>No recommendation is made.</p>
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<p><i>Public Service Act 1999.</i></p> <p>6.20 Agencies should include contract provisions requiring contractors to comply with materially relevant laws and should, as far as practicable, require suppliers to apply such a requirement to sub-contractors. Contractors must also be able to make available details of all sub-contractors engaged in respect of the procurement contract.</p> <p>6.21 Agencies must not enter into contracts with suppliers who have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and have not paid the claim. Agencies should seek to confirm a tenderer has no such unsettled judgements by seeking a declaration on the matter from all tenderers.</p> <p>6.22 Agencies must not seek to benefit from supplier practices that may be dishonest, unethical or unsafe.</p>	<p>No explicit provision is made.</p> <p>No explicit provision is made.</p>	<p>This would be taken up in the recommendations seeking improvement and revision of the Toolkit.</p> <p>This would be taken up in the recommendations seeking to improve the selection and qualification criteria.</p> <p>This would be taken up in the recommendations seeking to improve the selection and qualification criteria.</p>
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CPG December 2008	MRC Procurement Systems and Procedures	Conclusions and Recommendations
DIVISION 1		
<h2 data-bbox="138 467 947 527">7 Accountability and Transparency</h2> <p data-bbox="138 565 993 621">7.1 Accountability and transparency are primary considerations throughout the procurement process.</p> <p data-bbox="138 646 1020 857">7.2 Accountability and transparency encourage the efficient, effective and ethical use of Commonwealth resources. An agency and its officials have the responsibility of ensuring that any procurement process is open and transparent and that decisions are justified. Agencies need to have procedures in place to ensure that procurement processes are conducted soundly and that procurement related actions are documented, defensible and substantiated in accordance with legislation and government policy.</p> <p data-bbox="138 881 1031 995">7.3 A well planned, conducted and documented procurement, which accords with government policy, is well placed to withstand external scrutiny. Adherence to the CPGs and full documentation of the process can be relied upon to provide substantiation of decisions.</p> <p data-bbox="138 1019 1020 1169">7.4 <i>Accountability</i> means that officials are responsible for the actions and decisions that they take in relation to procurement and for the resulting outcomes. Officials are answerable for such activity through established lines of accountability including the agency's Chief Executive and senior management, the Government and the Parliament, as shown in Figure 3.</p>	<p data-bbox="1050 565 1457 914">Accountability and transparency are also features of the MRC rules. However, MRC does not provide explanations such as those contained in paragraphs 7.2-7.6 although there is nothing to suggest that it disagrees. Procedures are in place and are documented so that they may be reviewed and defended in accordance with the applicable provisions of the Rules and Procedures and Manual. Records are kept so that decisions may be substantiated.</p> <p data-bbox="1050 946 1451 1133">Lines of accountability run through to the CEO, Joint Committee and ultimately the Council. As an international organisation, the line of accountability clearly does not extend to any national Government or Parliament.</p>	<p data-bbox="1482 565 1938 727">The more general accountability and transparency requirements of section 7 are adequately addressed by the MRC system. However, there are a number of significant deficiencies, as described in the previous column.</p>

DIVISION 1

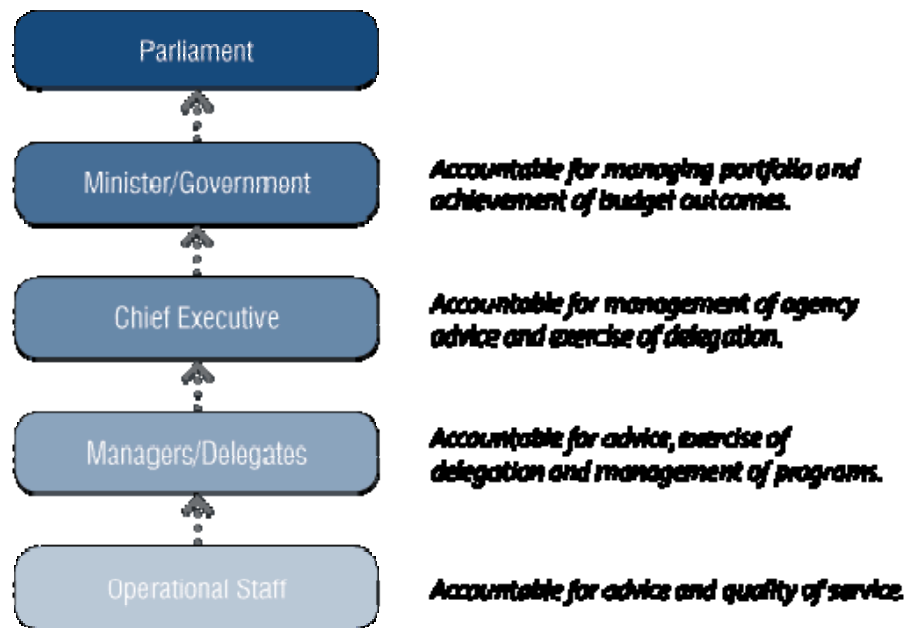


Figure 3
 Accountability in procurement extends from officials in agencies through the Minister and Government to the Parliament.

MRC does not have an equivalent figure.

No recommendation is made.

CPG December 2008	MRC Procurement Systems and Procedures	Conclusions and Recommendations
DIVISION 1		
<p>7.5 <i>Transparency</i> provides assurance that procurement processes undertaken by agencies are appropriate and that policy and legislative obligations are being met. Transparency involves agencies taking steps to support appropriate scrutiny of their procurement activity.</p> <p>7.6 The fundamental elements of accountability and transparency are policy and legislative obligations, documentation and disclosure. These are outlined below.</p> <p><i>Policy and Legislative Obligations</i></p> <p>7.7 Officials undertaking procurement are accountable for complying with relevant general government policies and legislative requirements. This includes the procurement-specific policies and legislative requirements set out in the CPGs, the FMA Act and FMA Regulations, and other policies and legislation that interact with procurement.</p> <p><i>Documentation</i></p> <p>7.8 Documentation is critical to accountability and transparency. It provides a record of procurement activities and how they have been conducted, and facilitates scrutiny of these activities.</p> <p>7.9 Agencies must maintain appropriate documentation for each procurement. The appropriate mix and level of documentation depends on the nature and risk profile of the</p>	<p>Policy and Legislative Obligations</p> <p>The procurement officer of the FAS is accountable to the chief FAS and CEO for his procurement decisions under the Manual. The officer in charge of the procurement of individual consultants is similarly responsible to the head of the HRMU.</p> <p>Documentation</p> <p>Both the programme coordinators of each of the Programmes and the FAS or HRMU (for individual consultants) maintain complete records of each procurement which provide sufficient information regarding the reasons for the procurement, the process that was followed and all decisions taken in respect of the procurement. Though all the relevant records are not kept in a single file, they are catalogued and may be retrieved with ease. Indeed,</p>	<p>No recommendation is made.</p> <p>No recommendation is made.</p>

<p>procurement being undertaken. Agencies need to ensure there is sufficient documentation to provide an understanding of the reasons for the procurement, the process that was followed and all relevant decisions, including approvals and authorisations, and the basis of those decisions.</p> <p>7.10 Documentation relating to a procurement must be retained for a period of three years or for a longer period if required by legislation or other reason for a specific procurement. In addition, the <i>Archives Act 1983</i> sets out requirements in relation to Commonwealth records, including dealings with, and access to, such records.</p> <p>7.11 The FMA Regulations set out specific requirements for the preparation of documentation when making commitments to spend public money.</p> <p>7.12 Agencies should ensure there is a written contract with the supplier in a procurement process. Where a written contract does not exist, agencies should ensure that sufficient written documentation or a written contract is formulated as soon as practicable. For low value, routine purchases a purchase order would be considered sufficient documentation.</p> <p>7.13 Documentation requirements vary throughout the procurement cycle. Documentation that may be appropriate for each stage includes, but is not limited to, that shown in Table 1. It is an agency's responsibility to ensure that adequate and appropriate documentation is kept for each stage of a procurement.</p>	<p>the Administrative Manual requires filing systems to be kept in such a way that files may be retrieved quickly.</p> <p>All Programme files and financial files must be kept for a minimum of five years or indefinitely.</p> <p>There is always a written contract, even for low value contracts.</p>	<p>No recommendation is made.</p> <p>No recommendation is made.</p>
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CPG December 2008		MRC Procurement Systems and Procedures	Conclusions and Recommendations
DIVISION 1			
Stage	Example of Documentation Requirements	In respect of the identified documentation, MRC maintains the following documents:	No recommendation is made, except that contract award notices must, in line with the requirements for AusAID funded contracts, be published for every case where the contract value is US\$ 7,000 and higher.
Identify Need	<ul style="list-style-type: none"> • annual procurement plan • budget papers • business case • risk assessment • legal advice • procurement method decision • evaluation plan, including selection criteria • procurement budget • time limits and timetable 	<ul style="list-style-type: none"> • annual procurement plan • procurement method decision • evaluation plan, including selection criteria • procurement budget • time limits and timetable • approach to the market • request documentation (including draft contract) • tenders received and acknowledgements • evaluation report and recommended decision • decisions (including relevant approvals/or authorisations) and their basis 	
Determine Suitable Process	<ul style="list-style-type: none"> • approach to the market • probity plan • request documentation (including draft contract) • due diligence process • tenders received and acknowledgements 	<ul style="list-style-type: none"> • contract negotiations and contract • advice to unsuccessful tenderers • reporting of contract (if ≥\$40,000) • performance indicators • milestones • performance reports • correspondence between the parties • variations of the contract 	
Conduct Procurement Process	<ul style="list-style-type: none"> • value for money assessment • evaluation report and recommended decision • probity report • decisions (including relevant approvals/or authorisations) and their basis • contract negotiations and contract • advice to unsuccessful tenderers 	<ul style="list-style-type: none"> • decisions regarding variation, records of the receipt of orders • evaluations of property and/or services • payment information <p>As an international organisation, there are no 'budget papers' in the sense of Parliamentary appropriations but the technical Programmes will have budgeted for the various contracts with the relevant donors and procurement plans and requests will be based on these budgets. Similarly, the business case and risk</p>	

	<ul style="list-style-type: none"> reporting of contract (if ≥\$10,000) 	<p>assessment are part of the project formulation conducted by the Programmes. MRC maintains a legal framework arrangement with a local law firm and any legal advice would be recorded in the appropriate files.</p>	
<p>Manage Contract/Relationship</p>	<ul style="list-style-type: none"> contract management plan performance indicators milestones performance reports correspondence between the parties variations of the contract decisions regarding variation, records of the receipt of orders evaluations of property and/or services payment information 	<p>There is no explicit value for money assessment, although the records kept, including the tender documents and evaluation grids, will indicate the criteria applied to reach a value for money decision.</p> <p>What the MRC system does not provide for are the probity plan and report and any specific due diligence process. It is not clear how necessary these are, however, given the nature and value of contracts at issue and the inherent probity control of the split functions between technical and procurement expertise.</p> <p>In addition, there is no contract management plan as such and, as indicated above, it is not clear whether the technical staff are sufficiently equipped to carry out effective contract management.</p>	<p>The absence of complete contract management processes leads to a recommendation for the elaboration and periodic delivery of a short contract and project management course (capacity building) for the Programmes which would include a set of training materials which could then act as guidelines. These would include the contract management plan which is missing here.</p>

Table 1 Examples of documentation requirements at different stages of the procurement process.

CPG December 2008	MRC Procurement Systems and Procedures	Conclusions and Recommendations
DIVISION 1		
<p>Disclosure</p> <p>Definition</p> <p>7.14 <i>Disclosure</i> is the mechanism by which agencies make their procurement activities visible and transparent. The broad aim of disclosure is to provide confidence in the processes that an agency intends to undertake, or has undertaken, and reassurance that the Chief Executive is promoting the efficient, effective and ethical use of resources. For further guidance on procurement disclosure requirements, agencies should refer to <i>Guidance on Procurement Publishing</i></p>	<p>MRC does not provide such an explanation of Disclosure but there is nothing to suggest that it disagrees.</p>	<p>No recommendation is made.</p>

⁷ www.tenders.gov.au.

⁸ *Electronic* for the purposes of these CPGs means any information provided on AusTender, and includes documentation provided to a supplier or potential supplier by email, facsimile or otherwise transmitted to the recipient by another electronic means.

⁹ FMA Regulations define a Commonwealth contract as 'an agreement for the procurement of goods and services under which the Commonwealth is obliged, or may become obliged, to make a payment of public money'.

¹⁰ FMA Regulations define an agency agreement as 'an agreement for the procurement of goods and services under which an Agency is obliged, or may become obliged, to make a payment of public money to another Agency'. This will often take the form of a memorandum of understanding.

¹¹ See *Guidance on Procurement Publishing Obligations* available from www.finance.gov.au.

¹² See *Procurement Guidance – Standard Contract Clauses to Provide ANAO Access to Contractors' Information* available from www.finance.gov.au.

<p><i>Obligations.</i></p> <p>Annual Procurement Plans</p> <p>7.15 Agencies must publish on AusTender, by 1 July each year, an Annual Procurement Plan (APP) to draw suppliers' early attention to potential procurement opportunities.</p> <p>7.16 The APP is to contain a short strategic procurement outlook for the agency supported by details of any planned procurement. The detail should include the subject matter of any planned procurement and the estimated date of the publication of the approach to the market.</p> <p>Notification</p> <p>7.17 Agencies must publish all open approaches to the market on AusTender.⁷ Relevant documentation providing information on the approach to market must also be available, to the extent practicable, for download from AusTender.</p> <p>7.18 If an agency advertises an open approach to the market through other avenues, such as print media, the details selected for inclusion in the notification must be the same as those contained in AusTender. Advertising an open approach to the market through other avenues does not diminish the requirement to publish the approach on AusTender.</p> <p>7.19 Where an agency is required to publish any other notification, request documentation, or any other document on AusTender, the information in any other form (for example, a</p>	<p>Annual Procurement Plans</p> <p>Annual procurement plans are prepared and are detailed enough for the purpose of general planning. However, the plan is not published or otherwise issued to potential bidders.</p> <p>Notification</p> <p>Where the contract values exceed the relevant threshold (\$40,000), the advertisement is published on the internet via the MRC website as well as on dgMarket and, occasionally, the UNDP's 'DevJobs' website.</p> <p>There are no specific provisions requiring consistency between advertisements place in print and electronic media but, on the other hand, there is nothing to suggest in the MRC provisions that they would or could be different. The content of any advertisement is stated categorically in the Manual.</p>	<p>A recommendation is made to impose a requirement to the effect that the annual procurement plan must be published</p> <p>A recommendation is made to impose a requirement of consistency between the advertisements appearing in different media.</p>
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<p>printed version) of the document must be the same as that published on AusTender.</p> <p>7.20 For select tenders, agencies must issue all invitations to tender electronically⁸ and, to the extent practicable, make tender documentation available electronically to all potential suppliers that are invited. Electronic invitations may also be supplemented by other documented forms of invitation.</p> <p>Process</p> <p>7.21 Agencies need to promptly provide, on request, to any potential supplier, documentation that includes all information necessary to permit potential suppliers to prepare and lodge submissions. Agencies must, to the extent practicable, use AusTender to make request documents available.</p> <p>7.22 Where an agency rejects a potential supplier's submission, the agency must promptly advise them, and on request provide a written explanation for that rejection.</p> <p>7.23 Following the award of a contract, agencies must promptly inform all tenderers of the tender decision and on request provide an unsuccessful tenderer with the reasons its submission was not successful. On request, debriefings should also be provided to successful tenderers.</p> <p>Reporting</p> <p>7.24 Agencies must report on AusTender all Commonwealth contracts⁹ and agency</p>	<p>Process</p> <p>Documentation is provided satisfactorily. However, there are no provisions relating to debriefing either following rejection of bids or following award.</p> <p>Reporting</p> <p>Whilst some contract awards are published, there is no requirement in the Manual for contract awards to be published, even where the contract award procedure has</p>	<p>A recommendation is made to impose a requirement to the effect that bidders will be given adequate debriefing of the reasons that (a) they have not been selected or (b) their bids were unsuccessful.</p> <p>A recommendation is made to impose a requirement to the effect that contract awards will be published in</p>
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<p>agreements¹⁰, including standing offer arrangements and amendments to these arrangements, which meet the <i>contract reporting criteria</i> in <i>Guidance on Procurement Publishing Obligations</i>.¹¹</p> <p>7.25 The <i>contract reporting criteria</i> have reporting thresholds of:</p> <ul style="list-style-type: none"> a. \$10,000 for FMA agencies; and b. for relevant CAC Act bodies, above: <ul style="list-style-type: none"> i. \$400,000 for procurements other than procurement of construction services; or ii. \$9 million for procurements of construction services. <p>Other Obligations</p> <p>7.26 To enhance transparency, agencies must make available on request, the names of any sub-contractor engaged by a contractor in respect of a Commonwealth contract for procurement.</p> <ul style="list-style-type: none"> a. Agencies must require contractors to agree to the public disclosure of the names of any sub-contractors engaged to perform services in relation to a Commonwealth contract for procurement. b. Contractors must be required to inform relevant sub-contractors that the sub-contractor's participation in fulfilling a Commonwealth contract for procurement may be publicly disclosed. <p>7.27 Various other reporting and disclosure obligations apply, including:</p> <ul style="list-style-type: none"> a. disclosure of procurement information for 	<p>been subject to wide publication, i.e. for contracts with a value exceeding \$40,000 or for consulting contracts exceeding 3 months.</p> <p>Other Obligations</p> <p>No provisions are contained in the Manual which require disclosure of information concerning sub-contractors. In the case of consulting firms, where 'sub-consultants' could well be used, the bidders would need to supply the CVs of such consultants.</p> <p>MRC would be bound by any Freedom of Information legislation in its countries of operation other than where such disclosure would fall within the scope of its exemption and immunities as an international organization.</p>	<p>every case where the contract value is US\$ 7,000 and higher. and for the appointment of every individual consultant where the contract duration is greater than 3 months).</p> <p>This appears to be a mandatory requirement of AusAID and thus a recommendation is made to impose a condition concerning disclosure of information concerning sub-contractors.</p>
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<p>agency annual reporting purposes;</p> <p>b. disclosure to the Parliament and its committees, as appropriate, in line with the <i>Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters</i>;</p> <p>c. disclosure of information consistent with the <i>Freedom of Information Act 1982</i>; and</p> <p>d. disclosure of discoverable information that is relevant to a case before a court.</p> <p>Treatment of Confidential Information</p> <p>7.28 When conducting a procurement and awarding a contract, agencies should take appropriate steps to protect the Commonwealth's confidential information. This includes observing legal obligations such as under the <i>Privacy Act 1988</i> and statutory secrecy provisions.</p> <p>7.29 Agencies should therefore ensure that where it is necessary for potential suppliers to have access to confidential information for the purpose of preparing a submission that appropriate steps are taken to ensure that potential suppliers maintain the confidentiality of that information.</p> <p>7.30 Agencies should ensure that potential suppliers' submissions are treated as confidential prior to the award of a contract and that unsuccessful submissions are kept confidential after the award of the contract to a supplier. Once a contract has been awarded the terms of the contract and successful supplier's submission</p>	<p>Treatment of Confidential Information</p> <p>The only reference to confidentiality in the Manual occurs in relation to the proceedings of the evaluation committee in respect of contracts with a value of between \$20,001 and \$40,000. The reactive drafting style of the Manual (i.e. that issues were dealt with as and when they arose in the drafting stages rather than based on an overall vision) probably means that this is not limited to such contracts. However, confidentiality of the minutes is only a small part of the confidentiality requirement.</p>	<p>A recommendation is made to impose a requirement to the effect that all information pertaining to the bids and bidders shall remain confidential until after award and that business information shall always remain confidential.</p>
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<p>are not confidential unless the agency has determined that specific information is to be kept confidential in accordance with the <i>Guidance on Confidentiality in Procurement</i>.</p> <p>7.31 The need to maintain the confidentiality of information should always be balanced against the public accountability requirements of the Australian Government. It is therefore important for officials to plan for and facilitate appropriate disclosure of procurement information. In particular, officials should:</p> <ul style="list-style-type: none">a. include provisions in request documentation and contracts that alert prospective suppliers to the public accountability requirements of the Australian Government, including disclosure to the Parliament and its committees;b. where relevant, include a provision in contracts to enable the Australian National Audit Office to access contractors' records and premises to carry out appropriate audits (model access clauses have been developed for agencies to tailor and, where appropriate, incorporate into relevant contracts)¹²;c. consider, on a case by case basis, any request by a potential supplier for material to be treated confidentially after the award of a contract, only entering into commitments to maintain confidentiality where these are appropriate; andd. be aware of the requirement for the disclosure of information consistent with the <i>Freedom of Information Act 1982</i>.		
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<p>7.32 Where confidential information is required to be disclosed, for example following a request from a Parliamentary committee, reasonable notice in writing must be given to the party from whom the information originated.</p> <p>Dealing with Complaints</p> <p>7.33 Procurement processes need to be based on clearly articulated and defensible evaluation criteria consistent with the procurement policy framework. Agencies' actions in undertaking procurement processes must be robust and defensible.</p> <p>7.34 In the event that a complaint is received agencies should aim to manage this process internally, where possible, through communication and conciliation with the tenderer or supplier. Agencies must apply fair, equitable and non-discriminatory complaint handling procedures. The procedures should take account of the following:</p> <ol style="list-style-type: none"> a. the process needs to be systematic and well understood by the parties involved; b. senior management and officials independent of the process should be involved as appropriate; c. complaints should be dealt with in writing; d. each party must have sufficient time to appropriately respond to developments (no less than 10 days, unless urgent); e. if a matter has been referred to an external body for review, agencies may be required to provide all relevant documents to that body 	<p>Dealing with Complaints</p> <p>The records that are kept will be sufficient to justify (or not) the actions taken in the event of a complaint.</p> <p>However, the Manual does not provide for any formal complaints/review mechanism by MRC at all. Given its status, MRC procedures are not likely to be subject to any external independent or judicial review which makes it even more important to provide for such a complaints mechanism.</p>	<p>A recommendation is made that the MRC should be required to set up some form of complaints/review mechanism possibly by way of the Contracts Committee. In the absence of such a mechanism, there will need to be the imposition of a funding condition that guarantees the fairness of the procedure from the point of view of the bidders. This may take the form of systematic <i>ex ante</i> or <i>ex post</i> 'no objections' from AusAID or provide for the intervention of AusAID as independent review body with the power to withdraw funding. Alternatively, the funding condition might consist in the mandatory appointment of an AusAID designated probity adviser and/or auditor.</p>
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<p>as required by law; and</p> <p>f. agencies must ensure that the initiation of a complaint process does not prejudice a supplier's or a potential supplier's participation in future procurement processes.</p> <p>7.35 External options are available if independent review of a complaint is necessary. The primary external complaint mechanism is the civil legal system, which can be used to settle matters through a judicial process. The Commonwealth Ombudsman also has powers to investigate procurement complaints. The Ombudsman cannot override agency decisions, but aims to resolve matters by negotiation and persuasion and, if necessary, by making formal recommendations to senior levels of government.</p>		
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CPG December 2008	MRC Procurement Systems and Procedures	Conclusions and Recommendations
DIVISION 2 Mandatory Procurement Procedures For covered procurements		
<h2 data-bbox="138 440 705 565">8 Mandatory Procurement Procedures</h2> <p data-bbox="138 594 716 896">8.1 This Division of the CPGs outlines the Australian Government's Mandatory Procurement Procedures. Agencies must comply with the Mandatory Procurement Procedures where the estimated value of the property or services subject to a procurement indicates that it may be a covered procurement. <i>Covered procurements</i> are procurements, other than those which are exempt in accordance with Appendix A, which exceed the</p>	<p data-bbox="737 594 1283 667">The Procurement Manual sets out a series of mandatory procurement procedures which are adapted to the scope and nature of the contracts awarded.</p>	<p data-bbox="1335 594 1902 724">The more general requirements of section 8 on mandatory procurement procedures are adequately addressed by the MRC system. However, there are a number of significant deficiencies, as described in the previous column.</p>

¹³ For the purposes of these CPGs a *commodity market* is a recognised exchange dealing in generic, largely unprocessed, goods that can be processed and resold.

¹⁴ The requirement of this paragraph in no way diminishes the operation of paragraph 7.17.

¹⁵ Commercial property or services are of a type that are offered for sale to, and routinely purchased by, non-Government buyers for non-Government purposes, including any modifications common in the commercial marketplace and any minor modifications not common in the commercial marketplace.

¹⁶ Public interest grounds generally arise in response to unforeseen events or new information which materially affect the objectives or reasons underlying the original procurement requirement as specified in the request document. See *Guidance on the Mandatory Procurement Procedures*.

<p>procurement thresholds specified below.</p> <p>8.2 These Mandatory Procurement Procedures enhance the delivery of value for money through consistent and transparent procedures. In particular, the procedures set out in this Division complement the principles set out in Division 1 of these CPGs and are not to be interpreted or applied in a manner that diminishes or negates those principles.</p> <p>8.3 These Mandatory Procurement Procedures also incorporate the Government's policy with respect to discharging specific international obligations in government procurement.</p>		
<p>Procurement Thresholds</p> <p>8.4 A procurement, except a procurement which is specifically exempt in accordance with Appendix A, is a covered procurement if the estimated value of the property or services being procured is above the relevant procurement threshold:</p> <ul style="list-style-type: none"> a. for procurements by FMA agencies, other than procurements of construction services, the procurement threshold is \$80,000; b. for procurements by relevant CAC Act bodies, other than procurements of construction services, the procurement threshold is \$400,000; or c. for procurements of construction services, the procurement threshold is \$9 million. 	<p>Procurement Thresholds</p> <p>The procurement thresholds of the MRC begin to apply to contracts of a value of \$2,001 where an RFQ procedure applies. For contracts of a value of between \$20,001 and \$40,000 an RFQ procedure requiring 5 quotations (rather than 3) applies and international tendering procedures are applied for contracts of a value exceeding \$40,000.</p> <p>Open and competitive recruitment is required for all individual consultants where the contract duration exceeds 3 months.</p>	<p>No recommendation is made.</p>
<p>Valuing Procurement</p> <p>8.5 Procurements need to be valued to determine</p>	<p>Valuing Procurement</p> <p>The Procurement Manual does not contain detailed</p>	<p>A recommendation is made for the elaboration and</p>

<p>whether they are covered procurements. The procurement value is the maximum anticipated value of a contract, including options, extensions, renewals or other mechanisms that may be executed over the life of a contract.</p> <p>8.6 The estimated value of the property or services being procured must include:</p> <ol style="list-style-type: none"> a. all forms of remuneration, including any premiums, fees, commissions, interest and other revenue streams that may be provided for in the proposed contract; b. the total maximum value of the property or services being procured, including the value of any options in the proposed contract; and c. any taxes or charges (including Goods and Services Tax). <p>8.7 For procurement by lease or rental, or procurement that does not specify a total price, the basis for estimating the value of the property or services being procured is:</p> <ol style="list-style-type: none"> a. for a fixed-term contract where the term is 12 months or less, the total estimated value for the contract's duration; b. for a fixed-term contract where the term exceeds 12 months, the total estimated value, including the estimated residual value which will be payable at the end of the contract; or c. for a contract for an indefinite period or where there is doubt as to whether the contract is to be a fixed-term contract, the estimated monthly instalment multiplied by 48. <p>8.8 Where a procurement is to be conducted in multiple parts with contracts awarded either at the same time or over a period of time, with one</p>	<p>valuation rules for the determination of contract values for the purposes of the thresholds. However, these are generally not needed for MRC procurement which is limited to supplies but mainly services contracts:</p> <ul style="list-style-type: none"> • for services contracts to firms, the contract value will be set for the whole project which is funded and is determined by the sums allocated in the programme's budget; • for individual consultants, the remuneration and the procurement methods are based on the duration of the service and so there is no need for valuation methods which apply to indefinite delivery contracts. <p>It may nevertheless be beneficial for MRC to take on board issues of contract valuation both for planning purposes and to address those rare occasions where more sophisticated valuation tools may be needed.</p> <p>In addition, it is important that MRC officers understand, since it is not currently stated in the Manual, that procurement must not be divided into separate parts for the purpose of avoiding the procurement threshold.</p>	<p>delivery of a procurement training course designed with the needs of the MRC in mind (capacity building) which would include a set of training materials which could then act as guidelines. These would include things such as valuation methods; election and qualification; debriefing; award criteria; design of technical specifications, late submission of bids etc. all of which have been identified as weaknesses in the current MRC system.</p> <p>A further recommendation is made to impose a requirement to the effect that contracts may not be split with a view avoiding the application of the procurement methods</p>
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<p>or more suppliers, the estimated value of the property or services being procured must include the estimated total maximum value of all of the contracts.</p> <p>8.9 Where the total maximum value of a contract over its entire duration cannot be estimated and the procurement does not fall within an exemption listed in Appendix A, the procurement must be treated as being valued over the threshold.</p> <p>8.10 A procurement must not be divided into separate parts for the purpose of avoiding a procurement threshold.</p>		
<p><i>Approaching the Market</i></p> <p>8.11 An approach to the market is when an agency issues a notice inviting potential suppliers to participate in a procurement.</p> <p>8.12 Open approaches to the market include requests for tender, requests for expressions of interest and requests for application for inclusion on a multi-use list, all of which are published on AusTender.</p> <p>8.13 Select approaches to the market include invitations to tender in a select process in accordance with the requirements for select tendering.</p>	<p>Approaching the Market</p> <p>The Manual provides the full range of appropriate approach tools.</p>	<p>No recommendation is made.</p>
<p><i>Open Tendering</i></p> <p>8.14 An open tender process involves publishing a request for tender and receiving all submissions</p>	<p>Open Tendering</p> <p>This is included in the Manual.</p>	<p>No recommendation is made.</p>

<p>delivered by the deadline.</p> <p>Multi-Use Lists</p> <p>8.15 A multi-use list is a list, intended for use in more than one procurement, of pre-qualified potential suppliers that have satisfied the conditions for participation for inclusion on the list.</p> <p>8.16 Inclusion on a multi-use list may be used either as an essential criterion or condition for participation in an open tender process or as the basis for selecting participants in a select tender process consistent with the procedures set out in the following section.</p> <p>8.17 To establish a multi-use list, an agency must publish on AusTender a request for application for inclusion on a multi-use list which includes:</p> <ul style="list-style-type: none"> a. a description of the property or services, or categories of property or services, for which the list may be used; b. the conditions for participation to be satisfied by potential suppliers and the methods that will be used to determine a potential supplier's compliance with the conditions for participation; c. the name and address of the agency and other information necessary to contact the agency and obtain all relevant documents relating to the list; and d. any time limit for submissions seeking inclusion in the list. <p>8.18 The request for application for inclusion on a multi-use list must either be published</p>	<p>Multi-Use Lists</p> <p>Whilst MRC does maintain a 'Roster' of consultants this is more of a list of registered interested bidders. Inclusion on the list is not based on qualification for the list. When searching for consultants, programme officers will consult the roster for CVs. On the other hand, the CVs of registered consultants who have had negative performance evaluations will not be forwarded.</p>	<p>No recommendation is made.</p>
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<p>continuously or re-published annually on AusTender.</p> <p>8.19 Agencies must include all potential suppliers that satisfy the conditions for participation on a multi-use list as soon as practicable. (Conditions for participation are discussed later in this Division.)</p> <p>Select Tendering</p> <p>8.20 A select tender process involves issuing an invitation to tender to those potential suppliers selected in accordance with the procedures outlined below.</p> <p>8.21 When using a select tender process agencies are required to ensure that the process is non-discriminatory.</p> <p>8.22 Three methods are permitted for conducting a select tender process. In the first two, an initial open approach to the market must be, or have been, undertaken to identify potential suppliers eligible and interested in participating in the select tender process. Agencies may conduct a select tender process from:</p> <ol style="list-style-type: none"> a. a multi-use list; b. a list of potential suppliers that have responded to a request for expressions of interest; or c. a list of all potential suppliers that have been granted a specific licence or comply with a legal requirement, where the licence or compliance with the legal requirement is essential to the conduct of the procurement. 	<p>Select Tendering</p> <p>The second is the method used in the majority of MRC procurements given the value and nature of the contracts awarded (consulting services). In general, the selection criteria do appear to be announced in advance but there is some doubt as to whether this practice is consistent and comprehensively done. Since it is the primary procurement method, it is critical that this process should be conducted as well as possible.</p> <p>In the event of works contracts, the Manual also provides for a formal pre-qualification.</p> <p>Supplies above the relevant threshold are procured by open procedure.</p>	<p>No recommendation is made.</p>
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<p>Selecting From a Multi-Use List</p> <p>8.23 An agency may invite potential suppliers selected from a multi-use list to participate in a procurement, providing that the property or services sought are consistent with those described in the notice of multi-use list.</p> <p>8.24 In such cases, the agency may invite all or some of the listed potential suppliers to submit tenders, provided that the largest number of potential suppliers is selected that is consistent with an efficient procurement process.</p> <p>Selecting From an Expression of Interest</p> <p>8.25 An agency may publish a request for expressions of interest and use the list of potential suppliers who lodge a compliant submission as the basis for inviting potential suppliers to submit tenders.</p> <p>8.26 A request for expressions of interest may include requests for information and/or proposals to be considered in selecting potential suppliers to be invited to make submissions. Providing that relevant requirements and evaluation criteria have been specified in the request for expressions of interest or the associated request documentation, an agency may:</p> <ol style="list-style-type: none"> a. assess the extent to which a submission meets the technical and performance specifications of the procurement; and b. limit the number of potential suppliers that it 	<p>Selecting From a Multi-Use List</p> <p>This is not a feature of the MRC system.</p> <p>Selecting From an Expression of Interest</p> <p>This is not a feature of the MRC system.</p>	<p>No recommendation is made.</p> <p>No recommendation is made.</p>
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<p>invites to tender, based on its rating of submissions, provided that the largest number of potential suppliers is selected that is consistent with an efficient procurement process.</p> <p>8.27 In all other cases, the agency must invite all potential suppliers that have responded to the request for expressions of interest and that meet the conditions for participation to submit a tender.</p> <p>Selecting on the Basis of a Licence or Specific Legal Requirement</p> <p>8.28 Agencies may conduct a select tender from a list of all potential suppliers that have been granted a licence or that have been determined by the appropriate agency, authority or organisation to comply with specific legal requirements that exist independent of the procurement process, provided that:</p> <ul style="list-style-type: none"> a. the requirement for a licence or compliance with specific legal requirements is essential to the conduct of the procurement; and b. the complete list of such potential suppliers is maintained by the appropriate agency, authority, or organisation and is available to the procuring agency. <p>8.29 Under such circumstances, the agency must invite all potential suppliers on the list to submit tenders.</p> <p>Direct Sourcing</p> <p>8.30 Direct sourcing refers to a procurement</p>	<p>Selecting on the Basis of a Licence or Specific Legal Requirement</p> <p>This is not a feature of the MRC system.</p> <p>Direct Sourcing</p> <p>The Manual allows for direct sourcing in the following circumstances:</p>	<p>No recommendation is made.</p>
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<p>process, in which an agency may invite a potential supplier or suppliers of its choice to make submissions under the conditions in paragraph 8.33.</p> <p>8.31 Direct sourcing must not be used for the purposes of avoiding competition or to discriminate against any domestic or foreign supplier. In all such circumstances, the general procurement policy framework still applies, including the requirement to achieve value for money.</p> <p>8.32 A direct sourcing process is not required to meet the requirements for request documentation, the time limits stated in this Division of the CPGs or the requirements of paragraph 8.70 of these CPGs.</p> <p>Conditions for Direct Sourcing</p> <p>8.33 An agency may only conduct procurement through direct sourcing in the following circumstances:</p> <p>a. where, in response to an approach to the market:</p> <p>i. no submissions were received (this includes where no submissions were received which represented value for money);</p> <p>ii. no submissions were received that conform to the minimum content and format of submission as stated in the request documentation;</p> <p>iii. no potential suppliers satisfied the conditions for participation, and the agency does not substantially modify</p>	<p>a) When buying small or off-the-shelf items valued at less than 1,000 USD;</p> <p>- <i>this would be acceptable since it falls below any CPG threshold for procurement procedures</i></p> <p>b) When standardisation is important and equipment to be procured is for expanding the existing equipment, which must be purchased from the original supplier;</p> <p>- <i>this would comply with the exceptions contained in 8.33 d and or e.</i></p> <p>c) Spare parts to repair existing equipment from an authorised dealer of such equipment and spare parts</p> <p>- <i>this would comply with the exceptions contained in 8.33 d and or e.</i></p> <p>d) When the equipment or services is proprietary in nature and is obtainable only from one source</p> <p>- <i>this would comply with the exception contained in 8.33 d(ii).</i></p> <p>e) When critical items are to be procured from specialist suppliers</p> <p>- <i>this is very broadly drafted but could be subsumed with the exception contained in 8.33 d(iii)</i></p> <p>f) When the civil works/construction to be undertaken are a natural extension of an earlier or ongoing job and if it can be proven that the engagement of the same contractor/consultant will be more economical and will ensure compatibility of results in terms of the quality of work</p>	
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<p>the essential requirements of the procurement;</p> <p>b. where, for reasons of extreme urgency brought about by events unforeseen by the agency, the property or services could not be obtained in time under open tendering procedures; or</p> <p>c. for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy, or receivership and which are not routine purchases from regular suppliers; or</p> <p>d. where the property or services can only be supplied by a particular business and there is no reasonable alternative or substitute for the following reason:</p> <ul style="list-style-type: none"> i. the requirement is for works of art; or ii. to protect patents, copyrights, or other exclusive rights, or proprietary information; iii. due to an absence of competition for technical reasons; or <p>e. for additional deliveries of property or services by the original supplier or authorised representative that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services, or installations, where a change of supplier would compel the agency to procure property or services that do not meet requirements of compatibility</p>	<p>- <i>this would largely comply with the exception contained in 8.33i.</i></p> <p>g) If items cannot be specified in detail to call for bids</p> <p>- <i>this does not appear to be consistent with any of the CPG exceptions, although it is comparable to exceptions found in other systems, notably the EU. It is unlikely to arise in practice given the nature and scope of MRC procurement.</i></p> <p>h) The urgency of the requirement is such that a delay involved in tendering would be unacceptable and is not in the interest of the Secretariat.</p> <p>- <i>whilst urgency is a common exception in all procurement systems, the MRC exemption is very broadly drafted. As such, it is not equivalent to the CPG exception which, under 8.33 b, allows it where, for reasons of <u>extreme urgency brought about by events unforeseen by the agency</u>, the property or services <u>could not be obtained in time under open tendering procedures (emphasis added)</u>. Given the apparently excessive use of waivers on grounds of urgency, this particular exception of the Manual needs to be addressed.</i></p> <p>These exceptions may only be applied on the basis of a waiver granted by the CEO or head of FAS. As such, the appropriate requests and justifications will be adequately recorded.</p>	<p>A recommendation is made to impose a requirement to the effect that the exceptions for direct purchase contained in section 1.6.1 (g) and (h) (and 2.3.2 in respect of individual consultants) may not be applied and that the urgency exception of (h) be replaced by a clause stating that direct purchase may be used where, for reasons of <u>extreme urgency brought about by events unforeseen by the agency</u>, the property or services <u>could not be obtained in time</u> under open tendering procedures. Alternatively, AusAID might impose a 'no objection' requirement for any waiver in respect of contracts with a value above \$40,000 where urgency is at issue.</p>
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<p>with existing equipment or services; or</p> <ul style="list-style-type: none"> f. for purchases on a commodity market¹³; or g. where an agency procures a prototype or a first property or service that is intended for limited trial or that is developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development; or h. in the case of a contract awarded to the winner of a design contest provided that: <ul style="list-style-type: none"> i. the contest has been organised in a manner that is consistent with this Division; and ii. the contest is judged by an independent jury with a view to a design contract being awarded to the winner; or i. for new construction services consisting of the repetition of similar construction services that conform to a basic project for which an initial contract was awarded following an open or select tender process, and where the initial approach to the market indicated that direct sourcing might be used for those subsequent construction services. <p>8.34 In accordance with the general accountability requirements set out in these CPGs, for each contract awarded through direct sourcing, agencies must prepare and appropriately file within the agency's central filing system, a written report that includes:</p> <ul style="list-style-type: none"> a. the value and kind of property or services procured; and b. a statement indicating the circumstances 		
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and conditions that justify the use of a procedure other than an open or select tender process.

Panels

- 8.35 A panel may be established by an agency by entering into contracts or deeds of standing offer (panel arrangements) for the provision of identified property or services. A panel is defined as an arrangement under which a number of suppliers, usually selected through a single procurement process, may each supply property or services to an agency (or agencies where it is intended that a number of agencies will access the panel arrangements). The respective panel arrangements must contain minimum requirements, usually including an indicative or set price or rate as appropriate for the property or services to be procured in the period of the panel arrangement.
- 8.36 A panel can be established by either open tender or select tender.
- 8.37 An agency can only approach another agency to procure property or services from an existing panel if the original request documentation and the existing agreement with the suppliers states this possibility.

Cooperative Agency Procurement

- 8.38 Cooperative Agency Procurement refers to procurement involving more than one agency as the buyer. Agencies can procure cooperatively by approaching the market together (known as clustering) or by joining the

Panels

This is not a feature of the MRC system.

Cooperative Agency Procurement

This is not a feature of the MRC system. Nevertheless, within MRC, there is a practice of cooperative purchasing where the common purchase needs of the various programmes are aggregated and procurement is conducted centrally by the FAS.

No recommendation is made.

No recommendation is made.

<p>contractual arrangement or standing offer arrangement of another agency.</p> <p>8.39 The ability of agencies to join contractual arrangements of other agencies depends on the original request documentation issued by the agency holding the contract as well as on the terms and conditions of the contract itself. Potential use by other agencies needs to have been specified in the request documentation at the start of the procurement process and be within the terms of an existing contract that an agency intends to join.</p> <p>8.40 Agencies joining an existing contractual or standing offer arrangement must ensure that:</p> <ol style="list-style-type: none"> a. value for money is achieved; b. the property or services being procured are the same as provided for within the contract or standing offer; and c. the scope of the contract or standing offer is not being altered. <p>Request Documentation</p> <p>8.41 Request documentation refers to documentation provided to potential suppliers to enable them to understand and assess the requirements of the procuring agency and to prepare submissions in response to an approach to the market. Request documentation must include the information necessary to permit potential suppliers to prepare and lodge responsive submissions.</p> <p>8.42 Accordingly, request documentation must include a complete description of:</p>	<p>Request Documentation</p> <p>In very broad terms, the Manual indicates that the requirements and conditions of tendering will all be sent to the potential bidders. In addition, many of the examples of the documents contained in the toolkit also contain detailed conditions of tendering and contracting. In practice, however:</p> <ol style="list-style-type: none"> (i) the scope of works will be thorough and clear and is prepared by the technical programme; (ii) where the programme outsources the definition of the terms of reference or specifications, this task may also include the preparation of adequate bidding documents; (iii) the provisions of the Manual are not sufficiently 	<p>A recommendation is made for the elaboration and delivery of a procurement training course designed with the needs of the MRC in mind (capacity building) which would include a set of training materials which could then act as guidelines. These would include the deficiencies identified here. The recommendation made below to review and redraft the sample documents in the Toolkit to ensure that they all <i>consistently</i> and <i>comprehensively</i> address the issues which have been identified as deficient, will also cover these deficiencies.</p>
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<p>a. the procurement, including the nature, scope and, where known, the quantity of the property or services to be procured and any requirements to be fulfilled, including any technical specifications, conformity certification, plans, drawings, or instructional materials;</p> <p>b. any conditions for participation, including any financial guarantees, information and documents that potential suppliers are required to submit;</p> <p>c. any minimum content and format requirements;</p> <p>d. all evaluation criteria to be considered in assessing submissions; and</p> <p>e. any other terms or conditions relevant to the evaluation of submissions.</p> <p>8.43 However, agencies are not obligated to release confidential information, information sensitive to essential security or information which may impede competition.</p> <p>8.44 Where practicable, request documentation for an open or select approach to the market must be distributed through AusTender. Where distribution through AusTender is not practicable, the agency must promptly provide the request documentation, on request from any potential supplier.¹⁴</p> <p>8.45 Agencies need to ensure that potential suppliers are dealt with fairly and in a non-discriminatory manner when providing information leading to, or following, an approach to the market. Agencies must promptly reply to any reasonable request for</p>	<p>detailed in respect of the selection and qualification criteria to be applied in each of the procurement methods;</p> <p>(iv) the examples given in the toolkit are not always consistent with each, are not always complete and sometimes do not include the necessary information; moreover, the files reviewed also include documents which do not derive from the toolkit and which do not either contain the relevant information.</p>	
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<p>relevant information about a procurement from a potential supplier and need to take particular care when responding to such enquiries to avoid a potential supplier, or group of potential suppliers, gaining an unfair advantage in a competitive procurement process.</p> <p>Specifications</p> <p>8.46 Specifications describe the features of the property or services to be procured.</p> <p>8.47 An agency must not use specifications or prescribe any conformity assessment procedure in order to create an unnecessary obstacle to trade.</p> <p>8.48 In prescribing specifications for property or services, an agency must:</p> <ol style="list-style-type: none"> a. where possible, set out the specifications in terms of performance and functional requirements; and b. base technical specifications on international standards, where they exist and apply to the relevant procurement, except where the use of international standards would fail to meet the agency's requirements or would impose greater burdens than the use of recognised Australian standards. <p>8.49 A specification must not require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer, or supplier, unless there is no other sufficiently precise or intelligible way of describing the requirement. In exceptional</p>	<p>Specifications</p> <p>These are carefully drafted by the technical programmes. However, the Manual does not contain any of the provisions required by the CPG in terms of paragraph 8.49 and 8.50.</p>	<p>A recommendation is made to impose a requirement to the effect that technical specifications may not require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer, or supplier, unless there is no other sufficiently precise or intelligible way of describing the requirement. In exceptional circumstances where this type of specification is absolutely necessary words such as 'or equivalent' must be included in the specification. Further, that where MRC conducts market research and other activities in developing specifications for a particular procurement and allows a supplier that has been engaged to provide those services to participate in procurements related to those services, it must ensure that such a supplier will not have an unfair advantage over other potential suppliers.</p>
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<p>circumstances where this type of specification is absolutely necessary words such as 'or equivalent' must be included in the specification.</p> <p>8.50 An agency may conduct market research and other activities in developing specifications for a particular procurement and allow a supplier that has been engaged to provide those services to participate in procurements related to those services. Agencies need to ensure that such a supplier will not have an unfair advantage over other potential suppliers.</p> <p>Modification of Criteria or Specifications</p> <p>8.51 Where, during the course of a procurement, an agency modifies the evaluation criteria or specifications set out in an approach to the market or in request documentation, or amends or reissues an approach to the market or request documentation, it must transmit all modifications or amended or reissued documents:</p> <ul style="list-style-type: none"> a. to all the potential suppliers that are participating at the time the information is amended, if known, and in all other cases, in the same manner as the original information; and b. in adequate time to allow potential suppliers to modify and re-lodge their initial submissions. <p>Conditions for Participation</p> <p>8.52 Agencies may specify <i>conditions for participation</i> which are requirements with which</p>	<p>Modifications</p> <p>There is no specific provision but this appears to be done as a matter of course.</p> <p>Conditions for Participation</p> <p>As above, these are not clearly stated either in the Manual or (consistently and comprehensively) in the Toolkit.</p>	<p>Mandatory notice to all potential suppliers (and contractors and consultants) of modifications to evaluation criteria or specifications should be made.</p>
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<p>potential suppliers must be able to demonstrate compliance in order to participate in a procurement or, if applicable, class of procurement. Conditions for participation must be limited to those that will ensure that a potential supplier has the legal, commercial, technical and financial abilities to fulfil the requirements of the procurement.</p> <p>8.53 Conditions for participation may require relevant prior experience where essential to meet the requirements of the procurement but must not specify, as a requirement, that potential suppliers have previous experience with the agency, with the Australian Government or in a particular location.</p> <p>8.54 In assessing whether a potential supplier satisfies the conditions for participation, an agency must:</p> <ol style="list-style-type: none"> a. evaluate financial, commercial, and technical abilities on the basis of the potential supplier's business activities, wherever they have occurred; and b. base its determination solely on the conditions for participation that the agency has specified in either the approach to the market or the tender documentation. <p>8.55 An agency may exclude a potential supplier on grounds such as bankruptcy, insolvency, false declarations, or significant deficiencies in performance of any substantive requirement or obligation under a prior contract.</p> <p>Minimum Time Limits</p>	<p>Minimum Time Limits</p> <p>Though not set out particularly clearly, for all open international tendering, the Manual requires bidders to be</p>	<p>A recommendation is made to review and redraft the sample documents in the Toolkit to ensure that they all <i>consistently</i> and <i>comprehensively</i> address the issues which have been identified as deficient, notably the issues of participation, qualification and evaluation criteria. In addition, it would also be beneficial to produce an internal guideline, possibly as part of a new procurement capacity building exercise, on the relevant issues.</p>
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<p>8.56 All potential suppliers participating in a procurement must be required to lodge submissions in accordance with a common deadline.</p> <p>8.57 Agencies need to provide sufficient time for potential suppliers to prepare and lodge a submission in response to an approach to the market. Time limits discussed in this section represent minimum periods and should not be treated as default time limits for potential suppliers to lodge submissions.</p> <p>8.58 The time limit for potential suppliers to lodge a submission must be at least 25 days from the date and time that an agency publishes a notice of an open approach to the market or invites potential suppliers to participate in a select tender process, except under the following circumstances where an agency may establish a time limit that is less than 25 days but no less than 10 days:</p> <ol style="list-style-type: none"> a. where the agency has published details of the procurement in an Annual Procurement Plan on AusTender, at least 30 days and not more than 12 months in advance, and these details include a description of the procurement, the estimated timing of the approach to the market and the procedure to obtain request documentation; b. where the agency procures commercial property or services¹⁵; c. in the case of second or subsequent approaches to the market for procurements of a recurring nature; or 	<p>given at least 4 to 6 weeks (and longer if necessary) to prepare and submit sealed bids. Given the value of the majority of the contracts, this is sufficient and well within the CPG parameters.</p> <p>In addition, where pre-qualification applies, bidders are given a minimum of 30 days within which to submit their applications.</p>	<p>No recommendation is made.</p>
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<p>d. where a genuine state of urgency renders the normal time limit impracticable.</p> <p>8.59 Where an agency has not electronically issued a notice of approach to the market, the 25 day period referred to in the preceding paragraph must be extended to 30 days.</p> <p>8.60 The time limits stated above apply to each approach to the market. That is, a single approach to the market must comply with the time limits; or in the case of a multi-stage procurement process (such as inviting expressions of interest followed by a select tender process) each approach to the market must comply with the time limits stated above.</p> <p>8.61 Where an agency intends to specify conditions for participation that require potential suppliers to undertake a separate registration or pre-qualification procedure, the agency must state the time limit for responding to the registration or pre-qualification in the approach to the market. Any such conditions for participation must be published in sufficient time to enable all potential suppliers to complete the registration and qualification procedures within the time limit for the procurement.</p> <p>8.62 Where an agency extends the time limit for qualification or submission, or where negotiations are terminated and potential suppliers are permitted to lodge new submissions, the new time limit must apply equitably.</p>		
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<p>Late Submissions</p> <p>8.63 Late submissions must not be accepted unless the submission is late as a consequence of agency mishandling. An agency must not penalise any potential supplier whose submission is received after the specified deadline if the delay is due solely to mishandling by the agency.</p> <p>8.64 Agency mishandling does not include mishandling by a courier or mail service provider engaged by a potential supplier to deliver a submission. It is the responsibility of the potential supplier to ensure that the submission is dispatched in sufficient time for it to be received by the agency by the deadline.</p> <p>8.65 Late submissions should be returned unopened to the tenderer to:</p> <ol style="list-style-type: none"> a. ensure that they are not accidentally evaluated or compared with submissions which were submitted by the due time and date; b. demonstrate to other tenderers that the process for receiving submissions is fair and impartial; and c. eliminate scope for any suggestion that the submission was rejected for any reason other than because it was late. <p>8.66 It may be necessary to open a late submission where there is no return address or any indication of which tender process the submission is for. Where a submission has been opened under such circumstances the</p>	<p>Late Submissions</p> <p>There is no provision in the Manual concerning late submissions although many of the Toolkit examples which contain instructions to bidders do contain such statements.</p>	<p>It is recommended that this forms part of the review/redrafting and capacity exercises recommended above.</p>
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<p>tenderer should be advised the submission was rejected due to lateness and was opened only to either obtain a return address or establish which tender process it was for.</p> <p>Receipt and Opening of Submissions</p> <p>8.67 Procedures to receive and open all submissions must guarantee fairness and impartiality and must ensure submissions are treated in confidence.</p> <p>8.68 Where an agency provides potential suppliers with opportunities to correct unintentional errors of form between the opening of submissions and any decision, the agency must provide the same opportunity to all participating potential suppliers.</p> <p>8.69 Further consideration can only be given to submissions which meet minimum content and format requirements.</p> <p>Awarding of Contracts</p> <p>8.70 Unless an agency determines that it is not in the public interest¹⁶ to award a contract, it must award a contract to the supplier that the agency has determined:</p> <ol style="list-style-type: none"> satisfies the conditions for participation; is fully capable of undertaking the contract; and whose submission is determined to provide the best value for money, in accordance with the essential requirements and evaluation criteria specified in the approach to the market and request documentation. 	<p>Receipt and Opening of Submissions</p> <p>These are fair and impartial even though there is no obligation to hold a public opening. Any bidder may be present at the bid opening.</p> <p>Awarding of Contracts</p> <p>The evaluation criteria for goods and equipment are stated to be the lowest bid conforming to specification. Other criteria appear to be permitted in the case of professional services and works, but these are not indicated either exhaustively or by way of illustration.</p> <p>Nevertheless and notwithstanding the lowest cost criterion, the Manual then applies an additional mechanism whereby any bid which comes within 15% of the value of the otherwise lowest bid may be considered as an 'alternative' bid. Where alternative bids exist, the successful bidder will be the one with the highest score (even though no scoring criteria are indicated) provided such a bid has at least 5 marks more than the lowest bid. This appears to be an attempt to graft on a quality/cost equation even though the sole evaluation is stated to be the lowest price</p>	<p>No recommendation is made.</p> <p>A recommendation is made that some clarification should be provided by way of guidance or through an FAS memorandum on how to apply the stated award criteria.</p>
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<p>8.71 An agency may not cancel a procurement, or terminate or modify an awarded contract, so as to circumvent the requirements of the Mandatory Procurement Procedures.</p> <p>Notification of Decisions</p> <p>8.72 Where a potential supplier makes a submission in response to an approach to the market, the agency must promptly advise the potential supplier of its final decision regarding the submission.</p> <p>8.73 On request, an agency must provide an unsuccessful potential supplier with the reasons that its submission was not successful.</p> <p>8.74 Where an agency rejects an expression of interest or an application for inclusion on a multi-use list, or ceases to recognise a potential supplier as having satisfied the conditions for participation in either, the agency must promptly inform the potential supplier and, on request, promptly provide the potential supplier with a written explanation of the reasons for its decision.</p>	<p>(other than in the case of professional services and works).</p> <p>This may also be an attempt to achieve value for money but it is both unclear and non-transparent.</p> <p>Notification of Decisions</p> <p>Mandatory debriefing is not a feature of the MRC system.</p>	<p>A recommendation has already been made to impose a requirement to the effect that bidders will be given adequate debriefing of the reasons that (a) they have not been selected or (b) their bids were unsuccessful.</p>
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