

Review Report on the Public Procurement System

Prepared by Good Governance Committee

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1. Background

Public procurement is a crucial pillar of service delivery for any government. According to the Transparency International (TI), countries spend 15 to 30 percent of the GDP on public procurement. In the case of Bhutan, out of the total budget of Nu.213 billion for the 11th FYP, Nu.92 billion is for capital expenditure. Taking capital expenditure as the budget for procurement and GDP as Nu. 104.38 billion (2014), Bhutan may be spending around 17.6 percent of GDP on procurement annually (source ACC report 2014). This however, excludes national level budget allocation for mega projects such as Hydropower and widening of Northern east-west highway for double lane traffic, which otherwise may push the procurement spending well beyond the 30% limit of many countries. In some of the Dzongkhags, expenditures on procurement constitute around 40-45% of their annual budgets. Because of the sheer volume and size of the spending it represents, a well governed public procurement is imperative for fostering public sector efficiency and establishing citizens' trust.

Recognizing the significance of ensuring good governance and integrity in public procurement, the public procurement system in Bhutan has undergone significant developments in the recent times. The Public Procurement Policy Division (PPPD) was established under the Department of National Properties, Ministry of Finance in 2008, followed by revised Procurement Rules and Regulations and formulation of SBDs representing a significant milestone in strengthening of the procurement institutional framework and management capacity. With the establishment of the PPPD, a number of regulatory and oversight functions have been elevated to a higher strategic level. Today, all works, goods and services procured by the public agencies are governed by the Procurement Rules and Regulations (PRR) 2009 (revised in 2014). The provisions in the PRR are aimed at:

- Ensuring the transparency of Government procurement through the application of standard procurement procedures;
- Achieving uniformity of the procurement procedures of Government Agencies;
- Achieving economy and efficiency in the procurement of goods, works and services; and
- Ensuring fair and equal access to the suppliers, consultants and contractors for award of contracts for supply of goods, services or works.

Despite such positive developments, the public procurements continue to face the challenge of inferior quality of works/goods/services and inefficient utilization of public resources. Procurement of

inferior quality of works/goods/services often results in burdening exchequer with heavy cost of repair and maintenance at a later stage. These issues are corroborated with the findings of reports generated by oversight agencies like the Anti-corruption Commission and the Royal Audit Authority. Given its major stake on the country's economy and development, the issue was deliberated at length as part of the Annual Anticorruption Commission Report 2014 during the 15th Session of National Council. While the House acknowledged the ongoing efforts of the concerned ministries/agencies to improve the procurement management practices based on the recommendations coming from various quarters, it was resolved that the National Council reviewed it from a much broader perspective taking into account of the challenges/issues faced by all relevant stakeholders. The initiative was found to be in sync with an oversight role the Parliament is expected to play on the public procurement management. The task to carry out a comprehensive review on the public procurement system was assigned to the Good Governance Committee by the House during its 34th plenary session convened on 1st December 2015.

2. Objective

The overall objective of the study was to enhance the quality of works, goods, and services procured, and minimize wastage of limited public resources.

In specific, the study aimed to:

- i) Diagnose factors affecting quality of public procurement;
- ii) Diagnose factors leading to inefficient utilization of public fund; and
- iii) Identify measures to improve quality and save cost on public procurement.

3. Methodology

For the purpose of this study, the Committee conducted both desk review, and face-to-face meetings with the stakeholder agencies. The documents referred to include Public Finance Act 2007, Procurement Rules and Regulations 2009, Standard Bidding Documents, and international practices on public procurement. In order to ensure that opinions/feedbacks are heard from every stakeholder, consultative meetings were held with the agencies *viz*: Public Procurement Policy Division, Bhutan Standards Bureau, Ministry of Works and Human Settlement, Ministry of Health, Ministry of Education, Bhutan Telecom Ltd., Bhutan Power Corporation, Royal Bhutan Police, Construction Association of Bhutan, and Construction Development Board.

4. Findings

The information gathered through literature review and series of stakeholder consultative meetings confirmed that the initiatives taken by the Royal Government in the recent years have undoubtedly strengthened the public procurement system. Nonetheless, there is a general consensus among the stakeholders that there is still a room for improvement particularly in the areas of cost efficiency and

quality of works, goods and services procured by the government. Notwithstanding the need to improve the quality of services procured, the issue of poor quality is more pronouncedly experienced with that of goods and works. Therefore, the findings of this report are elaborated under two categories: factors affecting quality of works, and factors affecting cost efficiency of the public procurement.

4.1 Factors affecting quality of works

Some of the major factors affecting quality of works include the following:

4.1.1 Tender awarded to the lowest quoted price

Awarding of tenders to the lowest quoted price is one of the main causes of poor quality of works. As per the PRR 2009, the tender committee is required to award the tender to the “lowest evaluated” bid. The lowest evaluated bid is defined as “the bid which offers the best value for money, evaluated on the basis of various objective criteria set out in the bidding document. It does not necessarily mean the “lowest quoted price””. However on the contrary, tenders are awarded to the bidder with the lowest quoted price.

Such gap between the intent and actual awarding of contract has arisen because of fundamental flaws with the bid evaluation system. Essentially there are two stages of evaluating the bids: first, the bidders are evaluated on their technical capacities; and then if qualified, their financial bids are evaluated. The Software called “E-tool” is employed to generate scoring for the technical capacities of the bidders. Whoever scores minimum of 65% is deemed qualified to be evaluated for financial bid. While the use of E-tool is claimed to have enhanced the efficiency of the bidding processes, and more so, by keeping threshold score of 65% it has provided level playing field for all contractors under large and medium categories to participate in the bid, the technical capacity scorings are not added to the final scoring. This has resulted in the selection of a bidder based on the lowest quoted price and not on the level of technical capacity. Such approach has often led to tenders being awarded to a bidder other than the one who has a better experience and technical capacity. As a result most contracts have landed up compromising on the quality and timely completion of works.

For all purposes, the study looked into factors influencing contractors to quote the price as low as possible despite knowing the works cannot be executed at a huge financial loss. It was inferred that the following two could be the potential factors:

Over supply of contractors: Currently, there are 3739 licensed contractors with more than 3000 under small category, 349 under medium category, and 184 under large category. When these many numbers of contractors have to rely on public projects outsourced by the government as the main source of works, it is understandable that fierce competition happen through an offer of most competitive prices.

Lack of professionalism: Lack of adequate skills to do a contract business could also be a reason for quoting unreasonably low price. Before submitting the bid, a contractor is expected to carry out a thorough assessment of the work required to be executed including a visit to the site and accordingly work out the budget estimate. To a great extent, quoting unreasonably low price is an indication that such expected due diligence is not exercised by the concerned contractor thus, reflecting poorly on his/her level of professionalism. It can also be assumed that when a contract is won at an unreasonably low price, the said project has to be executed at a huge loss, which will eventually have an impact on the long term sustainability of the business. This is another indication of lack of professionalism of a concerned contractor.

4.1.2 Shortcomings with the existing quality control mechanism

The quality control system can be looked at from two fronts: an internal quality control system that pertains to quality monitoring system of the procuring agencies; and external quality control system that pertains to the role of external regulatory body like the Bhutan Standards Bureau. In the case of existing public procurement system, quality control system is weak on both fronts as elaborated in the following:

Weak quality control system within the procuring agencies: The PRR 2009 has very meticulously laid down a clear processes starting from preparation of the bid document to evaluation of bid to the final award of the contract. However, the moment the works are awarded, the quality monitoring responsibility is left to the respective procuring agencies. In other words, the current PRR is more stringent on processes at input level and rather lax on the outcome front. For example, apart from a broad mention of the quality control in the General Conditions of Contract (GCC) guidelines, the PRR is silent on the subject. While to a certain extent, the provisions in the GCC spell out inspection of quality of the works during execution, there is no clear delineation of responsibility and accountability mechanism to ensure quality assurance. This has led to different agencies having their own system of monitoring the quality of works with the system still weak in some agencies.

Some of the reasons cited for weak internal quality control system are: lack of adequate human resources, and lack of effective accountability mechanism. The latter reason is better explained through an anecdotal case of a contractor who was allowed to continue with the execution of works even after the liquidity damage period was over. While this could have partly been due to setting of unrealistic timeframe for the project, even otherwise, the procuring agency had no authority whatsoever to debar the defaulting contractor.

Weak role of the Bhutan Standards Bureau: The primary mandate of the BSB is to develop, promote and oversee implementation of national standards to ensure quality of works, goods and services. Its role on quality assurance is further reinforced in Section 33 of the GCC, which stipulates that the Project Manager at the end of the contract must issue a performance score on quality based on the guidelines issued by the then Standard and Quality Control Authority (SQCA). However, it was

observed that other than focusing on setting national standards, and testing and certification services, the BSB has not played an active role in overseeing the implementation of national standards to ensure quality of works, goods and services. Therefore, there is a clear gap between the mandate assigned to the BSB and its actual involvement in overall quality assurance.

4.1.3 Issues related to the E-tool management system

E-tool is used to evaluate the technical capacities of the bidders prior to evaluating their financial bids. The tool provides equal opportunity to all licensed contractors to participate in the bid. However, there are few issues that need further improvement of the system.

The evaluation score generated by E-tool is based on the data entered in the system. Currently, the entry of such data is privy to the designated E-tool focal person of the procuring agency, which makes credibility of the information updated in the system questionable.

The E-tool also fails to capture crucial information such as the exact number of works a contractor has at hand, status of those non-registered construction equipment, etc., which has a direct influence on the fair selection of a bidder.

4.1.4 Unrealistic project timeframe

Another issue concerning the quality of works is setting of unrealistic project timelines by the procuring agencies. The procuring agencies' project timelines are determined by the financial year of the government. In the haste of completing the works before that particular financial year ends, seasonality aspect of the project timeline is often disregarded. In addition, Section 44.4 of Standard Bidding Document stipulates that rain and snowfall will not be considered as forced majeure. However, works such as blacktopping of the road, and concreting of structures are technically not suppose to be carried out during monsoon and winter respectively as that will adversely affect the quality.

This dichotomy of a need to ensure quality and timely completion of works on one hand, and on the other hand, unavoidable eventualities like the snowfall and rainfall not being considered as forced majeure, has arisen mainly due to lack of due diligence exercised by both the procuring agencies and the contractors. For instance, at the time of preparing a project plan, the procuring agencies are expected to factor in some of the predictable eventualities like the rain and snowfall in the project duration; likewise, the contractors are expected to negotiate with the procuring agencies if the timeline set is observed to be unrealistic before signing a contract. However, in most instances the issue of unrealistic timeframe arise due to failure on either of or both the parties in doing what are required of them.

4.2 Factors leading to inefficient utilization of fund

In keeping with the PRR's main objective of ensuring economy and efficiency in public procurement, this section of the report looks at factors resulting in inefficient utilization of public resources. Among others, delay in timely execution and completion of projects, and mandatory requirement of all goods and services to be procured through standard tendering processes are two main factors that have so far led to inefficient utilization of public resources. The following paragraphs provide details on each of these factors:

4.2.1 Delay in timely execution and completion of projects

Timely execution and completion works, goods and services is crucial not only for effective delivery of public services but also for an efficient utilization of public resources. Delayed completion of works usually culminates to increased cost of project due to inflation. Two of the main factors affecting timely execution of works are as explained in the following.

Delay in award of contract: Such delays are caused by the bidders contesting the decisions of the Tender Committee. The number of complaints lodged against the Tender Committee's decisions has apparently increased after the Letter of Intent (LoI) notification was introduced in July 2015.

Section 33 of the SBD Works requires procuring agencies to notify the concerned bidder whose bid has been selected with copy of the information shared with all other bidders who submitted the bid. The issuance of LoI seems to have promoted transparency amongst the bidders on the final outcome of the bid evaluation. However, information shared in the LoI is found to be incomplete without the disclosure of details like the bid evaluation report. In the absence of critical information like the bid evaluation report, which is the main basis for selecting a bidder, it gives ground for other bidders to be suspicious about the decision of the Tender Committee and therefore, challenge them. Because the complaint lodged against the Tender Committee's decision has to go through the due process of the grievance redressal mechanism, it usually takes longer duration. As a result, that particular contract cannot be awarded until the issue has been resolved, therefore causing the delay.

Delay in payment of bills by the procuring agencies: Delay in payment of bills by the procuring agency is another reason affecting timely completion of the works. In order to ensure that the project is completed within the set timeframe, Section 27 of General Conditions of Contract (GGC) requires a contractor to submit a detailed workplan to the project manager for approval prior to execution of a project. At the same time, as per the SBD, the procuring agencies are required to release the payment within 30 days after putting up the bill to the Finance section irrespective of running bills and final bill.

However, there seem to be cases where timely payments are not made by the procuring agencies. It is claimed that the delay in payment is caused by the concerned official(s) who take weeks or sometimes months to verify the bills before forwarding them to the Finance Section. While in most cases, delay

occurs due to sheer volume of bills the site supervisors have to verify, in some cases, it is believed to be done intentionally to solicit undue favours from the contractors. This is a serious concern as it not only tantamount to corruption but also adversely affect the smooth execution of the works. When payments are not made in time, the contractors who do not have excess fund are unable to purchase the required materials and make timely payment to the labourers. Such situation hampers the progress of the work, which has a direct bearing on the timely completion of the project.

4.2.2 Procurement of all goods and services through tendering processes

Procurement of any public goods, works and service are to be executed in conformity with the PRR 2009 and SBDs. Years of implementing these guidelines has shown that procurement of certain public goods and services can be best done through direct purchase from the market as there is a better deal both in terms of quality and cost efficiency.

In order to establish this argument, the Committee studied the price difference between direct purchase and the one routed through tendering process on the recent procurement of flight tickets for the delegation travelling to Geneva. It was found that the price of the flight ticket purchased through tendering process for business class is higher by Nu.70,946 per person, and for the economy class by Nu. 15,510 per person.

This shows that there is definitely a scope for the government to rethink on procurement of certain goods and services to ensure efficient utilization of limited financial resources.

5. Recommendation

Based on the above findings the Committee recommends the following:

5.1 Ensure effective quality control mechanism

As highlighted in the earlier section of the report, there is a lack of effective quality control mechanism both on internal as well as external fronts. Despite specification laid down in the Standard Bidding Document requiring a contractor to develop quality assurance plan and the project manager from the procuring agency side to conduct regular quality supervision, it is observed that this provision is not enforced uniformly across procuring agencies. Likewise, the BSB has not taken up any proactive role as an external independent body in ensuring quality of works, goods, and services procured despite being mandated by the Bhutan Standards Act 2010.

The lack of stringent quality monitoring may have also incentivised the contractors to continue with business as usual by quoting the price as low as possible, which affects both quality as well as timely completion of works. The Construction Association of Bhutan (CAB) was established since 2002 to foster the growth of the member contractors to achieve excellence and become world class providers of all services in the construction sector. Given its mandate, CAB has great potential to support and promote professionalism among its member-contractors. CAB can also monitor and control the

quality of works executed by the contractors. However, due to lack of adequate financial resources and long term direction of the Association, it has not been to play a major role in these two areas.

Therefore, there is a need for the government to:

- i) Strengthen the quality control roles of both the procuring agencies and the BSB;
- ii) Institute a multi-stakeholder advisory committee to oversee the quality of public procurement;
- iii) Promote community participation in monitoring the quality of works; and
- iv) Work in close partnership with CAB to unleash its potential of developing professionalism of contractors and monitoring quality.

5.2 Collaborative learning on best practices

During the course of consultative meetings, it was found that despite all public procuring agencies being governed by the same PRR, quality control practices vary from agency to agency. There are good examples prevailing in some agencies that the others can learn from. For example, the Bhutan Power Corporation (BPC) has instituted an effective quality control mechanism that has saved them from much of the problems related to quality of works. This is ensured through a systemic approach of matching human resources with the workload, and by fixing direct accountability on those site supervisors whose works have compromised on the quality. Similarly, the Royal Bhutan Police and the Ministry of Health seem to have a good quality inspection system to ensure quality of goods procured.

Given these good practices prevailing in various procuring agencies, there is a huge potential for the agencies to learn from each other. In order to facilitate learning from each other's best practices, there is a need to create a collaborative learning platform.

5.3 Regular interactive session for stakeholders to discuss on procurement related issues

The stakeholders are well aware of the inferior quality of works, goods and services procured; and admit that concerted efforts are needed to be made to improve the overall quality of public procurements. Out of host of issues raised by the stakeholders that affect quality of the public procurement, much of them can be addressed through minor adjustments and fine-tuning of the existing procurement guidelines. While such actions could have easily been taken up by the PPPD as the custodian of the procurement guidelines, as of now it has not happened as desired. This is partly due to lack of adequate human resource capacity in the PPPD, but more so it is due to absence of systematic channel of communication between the PPPD and rest of the stakeholders. It would be critical to have a regular interaction amongst the stakeholders *viz*: PPPD, BSB, CDB, GNHC, RAA, ACC, procuring agencies, contractors, and suppliers to listen to each other's challenges, provide feedback on each other's performances, and collectively find ways to improve the system.

Therefore, it is recommended that a regular multi-stakeholder forum be convened to discuss issues related to public procurement and undertake appropriate measures to address the problems.

5.4 Enhance transparency in procurement processes

Lack of transparency with the management of the E-tool system, and bid evaluation reports not being shared openly with the bidders have raised questions amongst contractors on the credibility of the procurement system. The issue of credibility pertains to potential manipulation of the information fed into the E-tool system, and collusion between the concerned official of the procuring agency and the contractor/supplier that result in unfair award of a contract.

Although the ongoing “E-government procurement” initiative is expected to greatly enhance the transparency of procurement processes once it comes into operation, there are already comprehensive guidelines in place that can ensure fair selection of bidders if implemented strictly. As opposed to the existing practice of not openly sharing the bid evaluation report, essentially there is no solid reason why it should not be. In fact there is more merit in sharing such details openly as it will promote an automatic check and balance amongst the contractors/suppliers who know best about each other’s capability and if any discrepancy is observed, there is higher possibility of the aggrieved party reporting the case to the concerned authority. This in turn will keep a check on the alleged malpractices that are apparently taking place in the tendering processes.

Therefore, it is recommended that transparency of E-tool management be strengthened and the evaluation reports be shared with all the bidders while dispensing the Letter of Intent.

5.5 Review procurement of certain goods and services through tendering process

The price difference worked out for the air fares as an example in Section 4.2.2 of this report suggests that purchase of certain goods and services directly from the market can be more cost efficient. In view of achieving economy and efficiency in the procurement of goods, works and services, it is recommended that the mandatory requirement of all goods and services to be procured through tendering process be reviewed.

5.6 Public Procurement Act

The existing public procurement system is governed by the provisions of the PRR 2009, which bears no legal teeth if contested before the court of law. Given the ever growing size of public expenditure on procurement of works, goods and services, it may be necessary to have legislation in place to ensure a robust public procurement system that will withstand all forms of unwarranted manipulation in the future. In addition, the powers and functions of various stakeholders need to be clearly defined in the law that will further ensure quality of works, goods and services procured.

Therefore, there is a need to have a separate Public Procurement Act.