

PROJECT PROCUREMENT RISK ASSESSMENT REPORT

EXECUTIVE SUMMARY

The overall project procurement risk is assessed to be “Moderate”. A few weaknesses and associated risks are identified as: (i) transfer of project management office (PMO) staff who have experience in handling procurement activities of Asian Development Bank (ADB) assisted projects in the past, (ii) prolonged approval processes in the Department of Water Supply and Sewerage (DWSS), and (iii) drop out and retention of consultants due to long approval process. Risks identified will be mitigated by (i) providing orientation and training to new staff on procurement procedures in ADB assisted projects, (ii) granting approval authority to Project Director, and (iii) shortening consultant approval process.

I. INTRODUCTION

1. Country procurement assessment was prepared with key objective to improve procurement performance, reduce procurement time, increase administrative efficiency, improve procurement harmonization in the country with financing from different donors, enhance use of e-Government Procurement System for transparency and efficiency, and improve project delivery while maintaining sound fiduciary oversight. The assessment was carried out based on the Asian Development Bank (ADB) Guide for Assessing Procurement Risk and covers the following four pillars (i) Legislative and Regulatory framework, (ii) Institutional Framework and Management Capacity, (iii) Procurement Operations and Market Practices, and (iv) Integrity and Transparency of the Public Procurement System.

2. The risk associated with procurement in Nepal's urban and water sector is considered as moderate¹ in three out of four pillars, with Integrity Transparency of the Public Procurement System having substantial risk. However, the overall procurement risk of this sector is "moderate".

3. For the Urban Water Supply and Sanitation (Sector) Project (UWSSP), procurement primarily consists of civil works using international competitive bidding (ICB) and national competitive bidding (NCB) for water supply and sanitation systems, storm water drains, decentralized wastewater treatment, and consultant recruitment. DWSS will implement the project through one central project management office (PMO) and two regional PMOs (RPMOs), which will conduct all procurement activities for procurement of goods and works, and recruitment of consultants. There will be two RPMOs overseeing the subprojects in the eastern and western regions, while PMO will oversee subprojects in the central region. The eastern RPMO is established in the Itahari² and western region PMO is established in Nepalganj.³ The PMO will be responsible for overall project planning, management, implementation, monitoring and reporting of the project. The Ministry of Water Supply is the executing agency.

II. PROJECT PROCUREMENT RISK ASSESSMENT

A. Overview

1. Organization and Staff Capacity

4. Procurement activities are carried out by a procurement unit of PMO assisted by three regional design, supervision and management consultant teams, and project management and quality assurance consultants. The PMO has experience with ADB's Guidelines on Procurement and Use of Consultants (2015, as amended from time to time) and procedures through three earlier ADB funded Small Towns Water Supply and Sanitation Sector Projects. The procurement unit in PMO has adequate staff and is adequately equipped with personal computers, photocopiers, printers, and internet connections. ADB's standard bidding documents, pursuant to ADB's Procurement Guidelines (2015, as amended from time to time), will be used for both NCB and ICB as a procurement process manual is unavailable to that follows the national procurement law.

¹ ADB. 2016. *Nepal: Country/Sector Procurement Assessment Report*. Manila.

² Itahari is a sub-metropolitan city Sunsari District of Province No. 1 of Nepal.

³ Nepalganj is a sub-metropolitan city in Banke District of Province No. 5 of Nepal.

2. Information Management

5. ADB requires that bid evaluation reports and signed contracts be retained for at least 2 years after projects are completed. The procurement risk assessment of the project indicates that all bid evaluation reports and signed contracts are kept in safe custody for 5 years after project completion for future inspection, audit, and institutional memory. Additionally, a copy of the original invitation for bid, bidding document, winning bid or proposal, and contract administration papers are retained in a single contract file.

3. Procurement Practices

6. The PMO has experience in procuring works and goods under donor-funded projects including ADB. The PMO has considerable experience in procurement in ADB funded project including the first, second, and the ongoing third Small Towns Water Supply and Sanitation Projects and is familiar with ADB bidding processes, preparation of bidding documents following standard bidding documents; posting of invitation for bids in a widely circulated national newspaper and other media; public opening of submitted bids; evaluation of bid by bid evaluation committee; and contract award. Procurement of works for the construction water supply and sanitation facilities, storm drains, and decentralized wastewater treatment facilities, and for goods including equipment and vehicles will be undertaken. Major packages to be procured under the project include 11 ICB and 15 NCB packages with a combined value of about \$75.4 million and \$49.1 million, respectively.

7. Consultant recruitment will follow ADB Procurement Policy (2017, as amended from time to time) and Procurement Regulations for ADB Borrowers (2017, as amended from time to time). An estimated 2,001 person-months of national consulting services are required to (i) facilitate design, supervision, and management of subprojects; (ii) support project management and quality assurance; (iii) strengthen institutional capacity; and (iv) facilitate gender development and poverty alleviation. Four teams of consultants will be recruited through firms using the quality- and cost-based method of selection with a quality-cost ratio of 90:10 to ensure engagement of highly qualified and experienced team of consultants. A pool of individual consultants will also be engaged to support project implementation.

4. Effectiveness

8. The PMO will monitor and manage procurement processes and contract administration assisted by Project Management and Quality Assurance Consultant experts. The RPMOs will assist the PMO in monitoring and keeping track of their payment obligations as defined by conditions of contracts. Moreover, complaints and dispute handling mechanisms are in place for ongoing third small town water supply and sanitation project (third small towns project) which will also be followed in the proposed UWSSP. Three tiers of committees are in place to handle the grievances. In the first-tier users committee, consultant and contractor handle the grievances. While in the second-tier, municipality is involved; and in the third-tier the grievances are settled by the PMO.

5. Accountability Mechanism

9. The bid evaluation committee (BEC) has the responsibility of supervising and ensuring that the procurement procedure outlined in the bid documents is followed. The BEC members attend the bid opening process. The Public Procurement Monitoring Office has a mandate for

process control and oversight. Due to the nature of the procurement packages, prior review will be undertaken for all ICB and only the first package for NCB will be prior reviewed.

B. Strength

10. The PMO has a permanent procurement unit for the ongoing third small towns project, which use standard bidding documents, and BECs established to evaluate bids and provide bid protest opportunity to bidders as prescribed by the Public Procurement Act, 2007. The same procurement unit in PMO will also be responsible for UWSSP. Documents related to the procurement process and contract administration are retained in safe custody for an adequate period. PMO is aware of procuring goods, works, and consulting services following ADB procedures. Payments to contractors or suppliers are made on a monthly basis. Complaint handling mechanisms are in place.

C. Weakness

11. PMO has substantial experience in handling the procurement following the ADB's Guidelines on Procurement and Use of Consultants (2015, as amended from time to time). A project specific procurement guideline is prepared to enhance the procurement efficiency. As PMO staff may be transferred to other government offices in every 2 years as per the government rules, new staff needs detailed procurement orientation to not delay procurement processes. PMO should ensure the proper mechanism in place for effective orientation of new staff. Similarly, PMO is facing drop out and retention problems of consultants due to prolonged recruitment process.

D. Procurement Risk Assessment and Management Plan

12. Procurement risk assessment and management plan are prepared is provided in Appendix 2.

III. PROJECT-SPECIFIC PROCUREMENT THRESHOLDS

13. The ICB procedures will be used for any civil works contract estimated to cost \$5 million or higher, and any goods contract valued at \$2 million or higher. Domestic preference may apply to ICB packages for works and goods. The NCB procedures will be used for any civil works contract estimated to cost less than \$5 million and any goods contract estimated to cost less than \$2 million. Shopping will be used for procurement of works and goods worth less than \$100,000. Community participation may be used for very small contracts to be carried out by the local community for small works such as fencing, preparation of drying beds for sludge.

IV. PROCUREMENT PLAN

14. Procurement plan is prepared in consultation with executing and implementing agencies and available in the Project Administration Manual.

V. CONCLUSION

15. In the completed questionnaire (Appendix 1), a few questions were associated with "Moderate" and "Substantial" risk for which the strategy for managing those risks were addressed in the Procurement Risk Assessment and Management Plan (Appendix 2). With these mitigation measures, the project may manage procurement process satisfactorily.

PROJECT PROCUREMENT RISK ASSESSMENT QUESTIONNAIRE

Department of Water Supply and Sewerage – Project Management Office

Question	Response	Risk
A. Organizational and Staff Capacity		
Procurement Department/Unit		
A.1 Does the agency or government have a procurement committee that is independent from the head of the agency?	Yes, the procurement committee is formed as provisioned in Public Procurement Act (PPA) 2007 and Public Procurement Regulation (PPR) 2007	Low
A.2 Does the agency have a procurement department/unit, including a permanent office that performs the function of a secretariat of the procurement committee?	Yes, a procurement unit exists in each public entity as mandated by PPR. It works as secretariat of procurement committee.	Low
A.3 If yes, what type of procurement does it undertake?	Procurement of goods, works, and services	Low
A.4 How many years' experience does the head of the procurement department/unit have in a direct procurement role?	More than 10 years	Low
A.5 How many staff in the procurement department/unit are: (i) full time (ii) part time (iii) seconded	(i) Full time staffs 5 which include chief (undersecretary), and accounting, legal, engineer, and inventory staff (ii) None (iii) None	Low
A.6 Do the procurement staff have a high level of English language proficiency (verbal and written)?	Yes. In some cases, it is medium proficiency but manageable	Low
A.7 Are the number and qualifications of the staff sufficient to undertake the additional procurement that will be required under the proposed project?	Yes	Low
A.8 Does the unit have adequate facilities, such as PCs, internet connection, photocopy facilities, printers etc. to undertake the planned procurement?	Yes	Low
A.9 Does the agency have, or have ready access to, a procurement training program?	Yes. A procurement training manual is available. However, changes in staff may require additional training.	Moderate

Question	Response	Risk
A.10 At what level does the department/unit report (to the head of agency, deputy etc.)?	Procurement unit reports to project director, Project Management Office (PMO). And project director reports to director general, Department of Water Supply and Sewerage.	Low
A.11 Do the procurement positions in the agency have job descriptions, which outline specific roles, minimum technical requirements and career routes?	Yes, position wise job descriptions are provided.	Low
A.12 Is there a procurement process manual for goods and works?	Yes, procurement procedures are detailed in PPA and PPR	Low
A.13 If there is a manual, is it up to date and does it cover foreign-assisted projects?	Yes, and it follows Asian Development Bank (ADB) procurement manual.	Low
A.14 Is there a procurement process manual for consulting services?	Yes	Low
A.15 If there is a manual, is it up to date and does it cover foreign-assisted projects?	Yes	Low
Project Implementation Unit		
A.16 Is there a fully (or almost fully) staffed Project Implementation Unit (PIU) for this project currently in place?	PMO of ongoing third small towns project will also be responsible for the proposed project. Currently PMO is almost fully staffed, however vacancies may occur due to staff transfers	Moderate
A.17 Are the number and qualifications of the staff sufficient to undertake the additional procurement that will be required under the proposed project?	Yes, if all positions remain filled.	Moderate
A.18 Does the unit have adequate facilities, such as PCs, internet connection, photocopy facilities, printers etc. to undertake the planned procurement?	Yes	Low
A.19 Are there standard documents in use, such as Standard Procurement Documents/Forms, and have they been approved for use on ADB funded projects?	Yes. ADB guidelines and standard documents will be used, as practiced in earlier and ongoing ADB funded projects	Low
A.20 Does the agency follow the national procurement law, procurement processes, and guidelines?	Both government and ADB guidelines and manuals are followed	Low
A.21 Do Terms of Reference (TORs) for consulting services follow a standard format such as background, tasks, inputs, objectives and outputs?	Yes	Low
A.22 Who drafts the procurement specifications?	Procurement unit with the assistance from consultants.	Low

Question		Response	Risk
A.23	Who approves the procurement specifications?	Project director	Low
A.24	Who in the PIU has experience in drafting bidding documents?	Deputy project directors and senior engineers	Moderate
A.25	Are records of the sale of bidding documents immediately available?	Yes	Low
A.26	Who identifies the need for consulting services requirements?	Project processing team jointly with DWSS based on experience and lessons from earlier projects	Low
A.27	Who drafts the TOR	Procurement unit of PMO	Low
A.28	Who prepares the request for proposals (RFPs)	Procurement unit of PMO	Low
B. Information Management			
B.1	Is there a referencing system for procurement files?	Yes	Low
B.2	Are there adequate resources allocated to record keeping infrastructure, which includes the record keeping system, space, equipment and personnel to administer the procurement records management functions within the agency?	Yes	Low
B.3	Does the agency adhere to a document retention policy (i.e. for what period are records kept)?	Yes. 10 years.	Low
B.4	Are copies of bids or proposals retained with the evaluation?	Yes	Low
B.5	Are copies of the original advertisements retained with the pre-contract papers?	Yes	Low
B.6	Is there a single contract file with a copy of the contract and all subsequent contractual correspondence?	Yes	Low
B.7	Are copies of invoices included with the contract papers?	No. Invoices file is separate but they are linked by referencing system	Low
B.8	Is the agency's record keeping function supported by information technology?	Yes	Low
C. Procurement Practices			
Goods and Works			
C.1	Has the agency undertaken procurement of goods or works related to foreign assistance recently (last 12 months or last 36 months)? If yes, indicate the names of the development partner/s and project/s.	Yes. PMO has been undertaking procurement of goods and works since last 17 years of ADB supported project. It has also undertaken the procurement goods and works supported by OPEC Fund for International Development and Melinda and Gates foundation.	Low

Question	Response	Risk
C.2 If the answer is yes, what were the major challenges faced by the agency?	High number of submissions and long approval processes for timely procurement of goods and works.	Moderate
C.3 Is there a systematic process to identify procurement requirements (for a period of 1 year or more)?	Yes, the master procurement plan is prepared for full duration of the project and accordingly an annual plan or program is prepared.	Low
C.4 Is there a minimum period for the preparation of bids and if yes, how long?	One week	Low
C.5 Are all queries from bidders replied to in writing?	Yes	Low
C.6 Does the bidding document state the date and time of bid opening?	Yes	Low
C.7 Are bids opened in public?	Yes	Low
C.8 Can late bids be accepted?	No.	Low
C.9 Can bids (except late bids) be rejected at bid opening?	No	Low
C.10 Are minutes of the bid opening taken?	Yes	Low
C.11 Are bidders provided a copy of the minutes?	Yes. By email.	Low
C.12 Are the minutes provided free of charge?	Yes	Low
C.13 Who undertakes the evaluation of bids (individual(s), permanent committee, ad-hoc committee)?	Bid evaluation committee	Low
C.14 What are the qualifications of the evaluators with respect to procurement and the goods and/or works under evaluation?	Differ as per the procurement types. Evaluators are senior government officials (engineers, accountants, legal, officers, etc.)	Low
C.15 Is the decision of the evaluators final or is the evaluation subject to additional approvals?	Approval is needed from project director or director general based on established procurement scale and thresholds.	Low
C.16 Using the three 'worst-case' examples in the last year, how long from the issuance of the invitation for bids can the contract be awarded?	The average procurement time for national competitive bidding is 3 months and for international competitive bidding is 4 months. However, in the ongoing small towns project delays in contract award due to prolonged internal government approval process were observed.	Substantial
C.17 Are there processes in place for the collection and clearance of cargo through ports of entry?	No.	Moderate
C.18 Are there established goods receiving procedures?	Yes. Receipt of goods. Third party verification (inspector) for pipes and vehicle	Low
C.19 Are all goods that are received recorded as assets or inventory in a register?	Yes. Recorded as expendable and non-expendable in separate files	Low

Question	Response	Risk
C.20 Is the agency/procurement department familiar with letters of credit?	Yes	Low
C.21 Does the procurement department register and track warranty and latent defects liability periods?	Yes	Low
Consulting Services		
C.22 Has the agency undertaken foreign- assisted procurement of consulting services recently (last 12 months, or last 36 months)? (If yes, please indicate the names of the development partner/s and the Project/s.)	Yes. Three earlier ADB funded small town projects.	Low
C.23 If the above answer is yes, what were the major challenges?	Dropout, and replacement of experts	Moderate
C.24 Are assignments and invitations for expressions of interest (EOIs) advertised?	Yes	Low
C.25 Is a consultants' selection committee formed with appropriate individuals, and what is its composition (if any)?	Yes. Senior experienced engineers	Low
C.26 What criteria are used to evaluate EOIs?	General experience, technical and management competence, and financial capacity (as per ADB guidelines)	Low
C.27 Historically, what is the most common method used (quality and cost based selection, quality based selection, etc.) to select consultants?	Quality and cost based selection	Low
C.28 Do firms have to pay for the RFP document?	No	Low
C.29 Does the proposal evaluation criteria follow a pre-determined structure and is it detailed in the RFP?	Yes	Low
C.30 Are pre-proposal visits and meetings arranged?	Pre-proposal meeting are held, but visits are usually not arranged	Low
C.31 Are minutes prepared and circulated after pre-proposal meetings?	Yes	Low
C.32 To whom are the minutes distributed?	All shortlisted firms that are issued RFP	Low
C.33 Are all queries from consultants answered/addressed in writing?	Yes	Low
C.34 Are the technical and financial proposals required to be in separate envelopes and remain sealed until the technical evaluation is completed?	Yes	Low
C.35 Are proposal securities required?	No	Low

Question	Response	Risk
C.36 Are technical proposals opened in public?	Yes	Low
C.37 Are minutes of the technical opening distributed?	Yes	Low
C.38 <i>Not used</i>		
C.39 Who determines the final technical ranking and how?	Consultant selection committee based on agreed evaluation criteria	Low
C.40 Are the technical scores sent to all firms?	No, but technical scores are read out during financial opening.	Moderate
C.41 Are the financial proposal opened in public?	Yes	Low
C.42 Are minutes of the financial opening distributed?	Yes	Low
C.43 How is the financial evaluation completed?	As per RFP provisions and ADB's financial proposal evaluation guidance note.	Low
C.44 Are face to face contract negotiations held?	Yes	Low
C.45 How long after financial evaluation is negotiation held with the selected firm?	Normally, 7 days after receiving no objection from ADB on combined evaluation.	Low
C.46 What is the usual basis for negotiation?	Consistency in TOR, technical and financial proposals (as per RFP).	Low
C.47 Are minutes of negotiation taken and signed?	Yes	Low
C.48 How long after negotiation is the contract signed, on average?	3 weeks	Low
C.49 Is there an evaluation system for measuring the outputs of consultants?	Yes	Low
Payments		
C.50 Are advance payments made?	Yes, there is a provision for advance payment	Low
C.51 What is the standard period for payment included in contracts?	28 days after submission of invoice and timesheet	Moderate
C.52 On average, how long is it between receiving a firm's invoice and making payment?	14 weeks	Moderate
C.53 When late payment is made, are the beneficiaries paid interest?	No. No late cases in consultancy. But, yes, in contract of works.	Low
D. Effectiveness		
D.1 Is contractual performance systematically monitored and reported?	Yes. Performance is monitored and reported. (field monitoring and management meetings).	Low
D.2 Does the agency monitor and track its contractual payment obligations?	Yes	Low
D.3 Is a complaints resolution mechanism described in national procurement documents?	Yes	Low

Question	Response	Risk
D.4 Is there a formal non-judicial mechanism for dealing with complaints?	Yes. Amicable settlement - Whenever is required upper level review committee is formed to settle the disputes.	Low
D.5 Are procurement decisions and disputes supported by written narratives such as minutes of evaluation, minutes of negotiation, notices of default/withheld payment?	Yes	Low
E. Accountability Measures		
E.1 Is there a standard statement of ethics and are those involved in procurement required to formally commit to it?	Yes. Government has code of ethics and staff are accountable to their job description which also includes ethics	Moderate
E.2 Are those involved with procurement required to declare any potential conflict of interest and remove themselves from the procurement process?	Yes, the PPA has provision for those involved in procurement to notify higher authorities and opt out of the proceedings if close relatives are participating in procurement.	Moderate
E.3 Is the commencement of procurement dependent on external approvals (formal or de-facto) that are outside of the budgeting process?	No	Low
E.4 Who approves procurement transactions, and do they have procurement experience and qualifications?	DWSS account section and Project Director. Procurement transactions approval are based on the cost threshold specified in PPA or PPR for various levels of officials.	Moderate
E.5 Which of the following actions require approvals outside the procurement unit or the evaluation committee, as the case may be, and who grants the approval?	Approvals are based on the cost threshold specified in PPA or PPR for various levels of officials.	--
a) Bidding document, invitation to pre-qualify or RFP	Generally, Project Director. However, cost estimates of works and goods above NRs30 million and cost estimates for consultancy services above NRs 1 million need to be approved by Director General.	Moderate
b) Advertisement of an invitation for bids, pre-qualification or call for EOIs	Project Director	Low
c) Evaluation reports	Project Director	Low
d) Notice of award	Project Director	Low
e) Invitation to consultants to negotiate	Project Director	Low
f) Contracts	Project Director and Director General	Low
E.6 Is the same official responsible for: (i) authorizing procurement transactions, procurement	(i) Authorizing procurement transactions, procurement invitations, documents, evaluations: Project Director; Authorizing	Moderate

Question	Response	Risk
invitations, documents, evaluations and contracts; (ii) authorizing payments; (iii) recording procurement transactions and events; and (iv) the custody of assets?	contracts: Project Director and Director General (ii) Authorizing payments: Project Director and account section (iii) Recording procurement transactions and events: account section (iv) Custody of assets: Store section	
E.7 Is there a written auditable trail of procurement decisions attributable to individuals and committees?	Yes: payment No: procurement decision	Moderate

PROCUREMENT RISK ASSESSMENT AND RISK MANAGEMENT PLAN

Risk Description	Risk Assessment	Mitigation Measures or Risk Management Plan
A. Organizational and Staff Capacity Risk	Moderate	
Transfer of key PMO staff who have experience of handling procurement activities in ADB assisted projects	Moderate	Provide orientation and training to new staff on procurement procedures in ADB assisted projects
B. Information Management Risk	Low	
C. Procurement Practices Risk	Moderate	
Delayed approval processes may hamper timely procurement of goods and works, and recruitment of consultants.	Substantial	Follow service level standards prepared for all stages of procurement thus minimizing duration of each transaction
Delays in contract award due to prolonged internal government approval processes.	Substantial	Grant approval authority of all types of activities to Project Director
D. Effectiveness Risk	Low	
E. Accountability Measures Risk	Moderate	
Overall	Moderate	

ADB = Asian Development Bank, PMO = project management unit.