

PROJECT PROCUREMENT RISK ASSESSMENT REPORT

EXECUTIVE SUMMARY

A. Overall Assessment of project procurement risk

The procurement classification for the Secondary Towns Urban Development Project (STUDP) investment is assessed as moderate (category B). Detailed completed questionnaire for the Water and Sanitation Division (WSD), Department of Engineering Services (DES), Ministry of Works and Human Settlement (MOWHS), the executing agency, is presented in Annex 1. No changes to the Asian Development Bank's (ADB) Bhutan country procurement thresholds and prior review limits are proposed.

B. Summary of Identified Weaknesses and Risks

Although the DES has prior experience in three ADB projects, the project management unit (PMU) will be placed under the WSD, DES for STUDP. The WSD, DES has limited prior experience as an employer of procurement and implementation of externally aided projects. There is limited management capacity and human resource constraints. This division has no prior experience in ADB procurement, although support is available from the DES.

The training and capacity building of government sector staff appears inadequate to meet the needs of externally financed projects.

For foreign contractors and consultants some difficulties are expected for them to participate due to barriers to entry (registration, labor, etc.). Any joint venture between foreign firm(s) and Bhutanese companies or foreign firms (independently) wishing to participate in projects in Bhutan need to be registered with the Construction Development Board (CDB). Joint ventures between Bhutanese firm(s) and foreign firms will be issued contract specific CDB certificate and they can participate in the specified work only. However, this is not a substantial risk for STUDP as all works procurement will be undertaken through national competitive bidding (NCB) procedures.

Underbidding is practiced widely by local contractors, leading to time overruns and disputes.

Vocational training institute graduates of Bhutan have to be mandatorily employed by contractors as per the requirements of the Royal Government of Bhutan. However, skill levels and willingness of such graduates to work for contractors is inadequate.

Banks need collateral +3% bank commissions for loans. High interest of 14% for overdraft increases cost of finance for bidders.

Skilled labor numbers are insufficient within the country and are sourced from neighboring countries, which is a complicated process. The Ministry of Labor rules require labor to be sourced only through authorized labor contractors with labor being subject to health and security clearance. Bhutanese law prohibits the employment of foreigners without permits from the Chief Labor Administrator. The Ministry of Labor and Human Resources is empowered to set maximum numbers of foreigners who may work in Bhutan and may limit the number of foreigners working in any field or industry.

WSD does not have prior experience in administering contracts, which may result in delays in implementation of works.

PMU may take long time (at least 15 days to 1 month) to make payment of invoices.

C. Summary of Mitigation and Management Measures to be Adopted

Provide intensive training on ADB procurement to PMU in DES and project implementation units (PIUs) and to local contractors (preferably in association with CDB and the Construction Association of Bhutan [CAB]) to enhance procurement capacity. Special efforts to be made for retention of trained staff.

Project team has worked closely with WSD and PMU in drafting procurement specifications and contract conditions in the initial set of bid documents. The project entails small value contracts which will be procured using the single stage, one envelope (1S1E) procedure and the master bidding document for procurement of works has been cleared by ADB. This itself eliminates the risk associated with procurement of large value or complex infrastructure. The project will support small water supply, sewerage, drainage, and road works using construction methods quite commonly used in the local context. ADB's continued strong involvement during subsequent phases of procurement, including support from consultants will further help to mitigate the risk.

Procurement is carried out centrally at the MOWHS level. The implementing agencies, which have lesser capacity will not carry out any procurement of works, goods or services, which will be conducted solely at the PMU level. The project managers at the PIUs, who form a part of the centralized tender evaluation committee, are assigned from MOWHS or engineering cadre to the towns.

- (i) Administer specifically ADB's training module on consultant procurement and management to all CSC members and WSD, DES procurement unit staff;
- (ii) Consultant evaluation system and case studies on consultant performance evaluation to be part of procurement training;
- (iii) Due to the heavy monsoon the working period is limited annually to 8 months. Consequently, specifications should consider advance preparedness and maximizing precast construction elements, where possible;
- (iv) It is outside of the project's scope to deal with sector and country level risks and weaknesses;
- (v) Streamlined procedures will be adopted under STUDP to enable faster payments such as clearly specifying maximum time for clearing of claims at each level within DES; and
- (vi) Further, it has been observed in the UIP that the payment to the local counterpart firm is being delayed by several months due to delays in release of payment from the international firm. To avoid this, national competitive selection is being used, which is suitable for the level and complexity of works under the project. Additional contractual clauses will be employed which can separate payments to national and international entities in the case of joint ventures.

I. INTRODUCTION

1. Project procurement capacity assessment for the Secondary Towns Urban Development Project (STUDP) was prepared in accordance with Asian Development Bank's (ADB) *Guide on Assessing Procurement Risks and Determining Project Procurement Classification*.¹ The assessment was undertaken from June–September 2017 during ADB's project preparation. Meetings and discussions were carried out with Public Procurement Policy Division (PPPD), Construction Development Board (CDB), Construction Association of Bhutan (CAB), Department of Engineering Services (DES), Ministry of Works and Human Settlements (MOWHS).² Preparation activities included reviewing documents, review of reports and information from internet (notably those of PPPD, CDB, CAB, MOWHS), ADB's Bhutan portfolio experience, field visits to project sites in Trashigang, Samdrup Jongkhar and Sarpang and discussions with ADB staff, project preparatory technical assistance (PPTA) consultants and project stakeholders. Information has been extensively excerpted from "Bhutan Public Financial Management Performance Report–Based on Public Expenditure and Financial Accountability 2016 Framework," September 2016, prepared by the International Bank for Reconstruction and Development, The World Bank.

2. Key institutions related to STUDP procurement in Bhutan are:
- (i) Public Procurement Policy Division, Ministry of Finance, Royal Government of Bhutan (Website <http://www.pppd.gov.bt>);
 - (ii) Construction Development Board, Government of Bhutan. (Website www.cdb.gov.bt);
 - (iii) Construction Association of Bhutan (Website www.cab.org.bt); and
 - (iv) Department of Engineering Services, Ministry of Works and Human Settlements (DES, MOWHS) (www.mowhs.gov.bt).

A. Description of the Investment Project

3. The project will support the development of water supply and sewerage infrastructure in three secondary towns of Bhutan (Sarpang, Trashigang and Samdrup Jongkhar). The specific infrastructures to be developed include:

- (i) Shechamthang local area plan (development of roads, drainage and water supply in the core area only);
- (ii) Sarpang water supply;
- (iii) Rehabilitation of Samdrup Jongkhar water supply system, including installation of distribution network;
- (iv) Dewathang water supply augmentation;
- (v) Samdrup Jongkhar sewerage;
- (vi) Trashigang water distribution network improvement; and
- (vii) Rangjung intake and rehabilitation of water treatment plant.

¹ ADB. 2014. *Guide on Assessing Procurement Risks and Determining Project Procurement Classification*.

² This also included discussions with the Water and Sanitation Division of the Department of Engineering Services, where the project management unit (PMU) will be housed.

II. PROJECT PROCUREMENT RISK ASSESSMENT

A. Overview

1. Legislative and Regulatory Framework

4. Good governance is one of the four pillars of Bhutan's overarching development paradigm, gross national happiness. The procurement guidelines issued by Ministry of Finance (MOF), Bhutan have the backing of the country's laws and are applicable to all government institutions inclusive of ministries, departments, state owned enterprises, Dzongkhags and autonomous bodies for the procurement of works, goods and services. These guidelines have been drafted with the assistance of the World Bank and are available on the PPPD website as downloadable documents in English language.

5. The Financial Rules and Regulations of 2001 is a set of over-arching documents governing public financial management in Bhutan and consists of a main document, the Financial Management Manual and six technical documents, the Finance and Accounting Manual; the Budget Manual; the Aid and Debt Management Manual; the Property Management Manual; the Procurement Manual; and the Revenue Manual. Further guidance is contained in the Revised Procurement Rules and Regulations (PRR) 2009.³

6. The ministries and departments have Administration and Finance Divisions; the Dzongkhags and autonomous bodies have Administration and Finance Sections to manage their financial affairs. Finance personnel (budget officials, accounts officials, revenue and customs officials, procurement officials and internal auditors) are placed in all the budgetary bodies across the country (footnote 3).

7. PPPD was established under the Ministry of Finance in August 2008 which issued a revised PRR in April 2009. With the establishment of the PPPD, a number of regulatory and oversight functions have been elevated to a higher strategic level, leading towards a well-regulated and closely monitored procurement system. With the assistance of the World Bank, a detailed organizational structure and staffing for PPPD was developed for strengthening Institutional Capacity of the PPPD. The purpose of PPPD was to facilitate a public procurement system which is open, transparent, effective and efficient plus providing value for money.

8. MOF and the PPPD are consistently guided by procurement rules and regulations. Public Procurement Strategic Framework (Phase 1: 2011–2015) has been recently formulated which outlines the reform strategies of the Royal Government of Bhutan. Further to the PRR, PPPD has issued the Standard Bidding Documents (SBD). Use of the SBD is required by the PRR, and reason for amendment must be recorded (PRR rule 5.1.1.2).

9. Public procurement functions are decentralized. The line ministries, departments and state-owned enterprises are responsible for procurement within their organizations. Delegation of power with financial thresholds is pre-determined in PRR except for state owned enterprises which can determine their own thresholds.

10. Staff undertaking procurement are required to have adequate qualifications and knowledge or training on procurement; the PPPD has reported inadequate capacity in many

³ World Bank. 2016. *Bhutan Public Financial Management Performance Report—Based on Public Expenditure and Financial Accountability 2016 Framework*. Washington, D.C. (Country Background Information).

procuring entities. The PPPD continues with procuring entities capacity needs assessment and training.

2. Organization and Staff Capacity

11. The executing agency for the STUDP is Water and Sanitation Division (WSD) under the DES, MOWHS. A full-time project manager leads the project management unit (PMU). The project manager reports directly to the Chief Engineer, Water and Sanitation Division, who reports to Director, DES. The three project implementation units (PIUs) will be headed by the respective project managers and would be based in Trashigang, Samdrup Jongkhar and Sarpang, whereas PMU would be based within WSD-DES, MOWHS located at Thimphu. The PIU project managers are engineering cadre staff of the MOWHS who are assigned as municipal engineers to the respective towns. Both the PMU and PIUs will be supported by a project management and supervision consultant (PMSC). The PMU and PIU project managers would be supported by construction, procurement, accounts and administration staff. The project organization structure is shown in Figure 1.

12. **Ministry of Works and Human Settlements (MOWHS).** The MOWHS was established in 2003 after the bifurcation of the Ministry of Communications into Ministry of Communications and Information and the Ministry of Works and Human Settlement. The ministry has four departments: Departments of Roads, Department of Engineering Services, Department of Human Settlement, and the Directorate Services. The ministry is headed by the Secretary.

13. The main functions of the ministry are:

- (i) formulating policies and developing plans related to physical infrastructures in the country;
- (ii) developing and implementing acts/regulations/standards related to physical infrastructure;
- (iii) engaging in and coordinating capacity building of technical human resources in the country;
- (iv) setting policies to promote appropriate construction industry;
- (v) promoting research and development that would serve to maintain a synergy between technology, environment and traditional values; and
- (vi) developing plans and policies for proper human settlement through growth centers.

14. The DES reviews construction plans, issues permits, and performs inspections to ensure engineering projects are built safely and in compliance with approved codes in force and regulations helping to create a vibrant, livable, and safe-built community. The department develops expertise in a specified area and meets the specific requirements of other functional ministries, departments, agencies who are not required to fritter away their resources, in areas or performing functions which are not their core area of operation. It is headed by a Director.

15. The WSD is one among the four divisions of the DES, which contributes to the mandates of the Department of Engineering Services. The key objective of WSD is to provide safe and affordable water, adopt measures to combat the impacts of climate change on drinking water, protect environment and health by establishing sustainable waste water and solid waste management systems in every Bhutanese town. The division has a total of 14 employees and is headed by a Chief Engineer, who reports to Director, DES. The core mandates of the division are:

- (i) Ensure, in collaboration with Municipal bodies, access to potable and adequate water and sanitation facilities in consolidated and cost-effective manner through

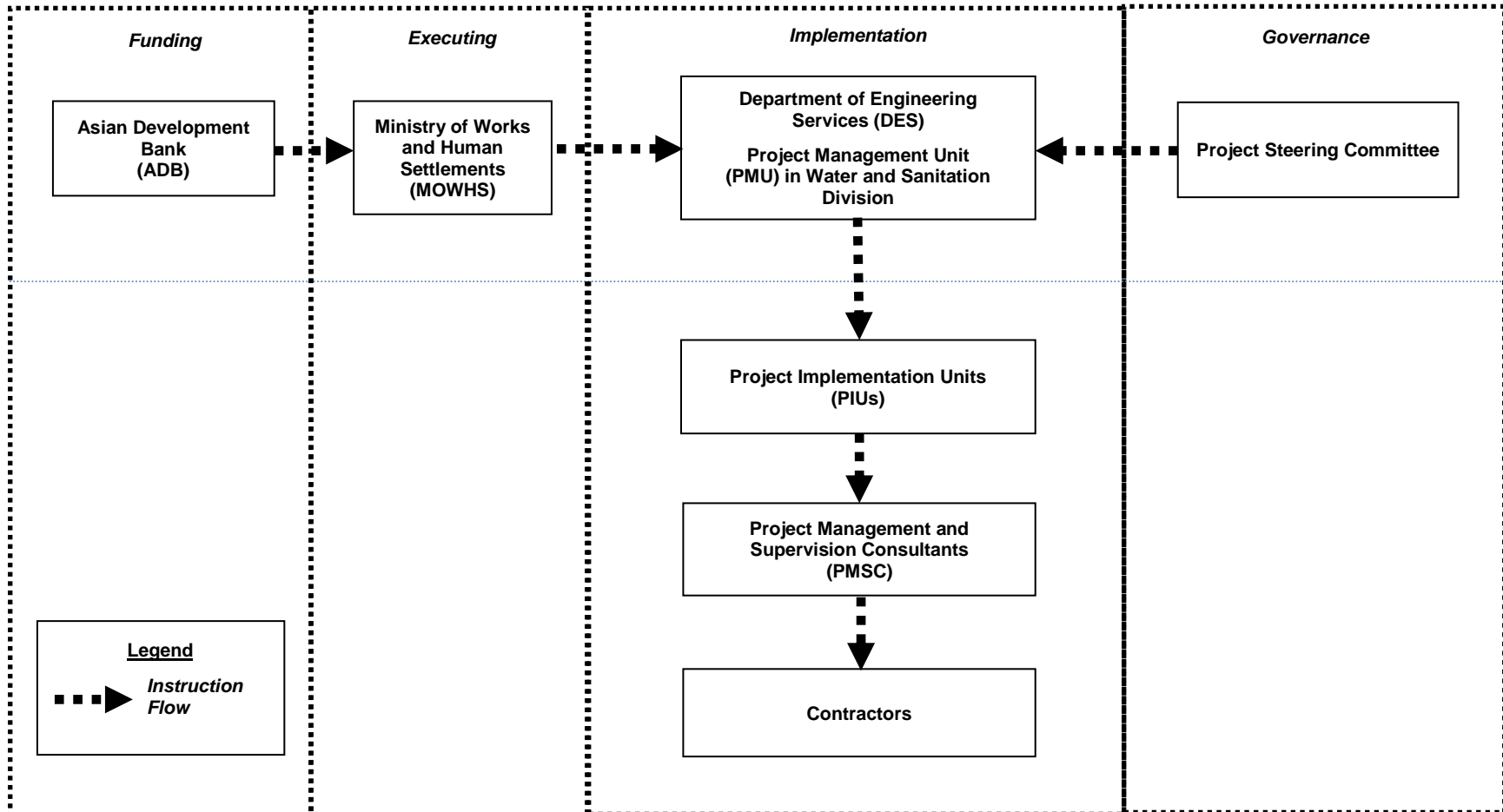
- provision of sustainable eco-efficient water supply and sanitation infrastructure in Thromdes (municipalities);
- (ii) Ensure equitable, efficient and functional water and sanitation systems in collaboration with Municipal bodies;
 - (iii) Develop institutional and management capacity at local levels for the sustainable delivery of improved water and sanitation services; and
 - (iv) Provide professional services to the Municipal Corporations/Dzongkhags (Districts)/external funded projects for the development of water supply and sanitation infrastructures.

16. The Procurement Section for the Ministry is under the Directorate Services (one of the four departments of the MOWHS). The Directorate services is responsible for tendering. Evaluation and awards are done by committees concerned, based on the threshold of the value of the works. Tender Opening Committees (TOC) and a Tender Evaluation Committees (TEC) plus any supporting Tender Committees are set up based on the threshold of the value of works to be procured. Tender Committees, TOC and TEC members are drawn from within MOWHS (described below). The members of TOC/TEC are appointed by the Tender Committee. Procurement documents for works procured locally are based on the template and contract conditions specified by the standardized guidelines issued by PPPD.

17. Based on the value of the contract, there are two levels of tender committees in Ministry. For works estimates less than Nu50 million, the Departmental Level Tender Committee (DLTC) is responsible for ensuring that the procedures of the Procurement Rules and Regulations are being complied with. Members comprise of Head of the Department (Chairperson), member from Directorate Services, head of the relevant division and engineer responsible for technical documents. However, additional members may be appointed based on the complexity of the works. The PIU project managers (who are assigned by MOWHS as Municipal engineers of their respective towns) also form a part of this committee. The TOC is chaired by the Director, Directorate Services and other members are nominated from the Department, if the work is within the threshold of the DLTC. The size of the tender opening committee varies depending on the nature of the works. The tender evaluation committee is appointed from amongst the various divisions of the department, who are not members of either the opening committee or the DLTC and shall comprise of members not less than three.

18. For works more than Nu50 million, Ministerial Level Tender Committee (MLTC) is formed with the Secretary as the Chairperson and heads of the four departments as members. The tender opening committee is headed by the Director, Directorate Services and comprised of officials from various Departments. The TEC is nominated by the MLTC from the ministry and comprises of members, who are not members of the opening or MLTC and its size is not less than three members.

Figure 1: STUDP Organization Structure



19. While DES has been responsible for procurement of works, goods and consultancy services for several externally funded projects, the WSD has not had any such experience (Annex 1). The WSD's main mandate is the preparation of designs, drawings and bill of quantities for water and sanitation infrastructure to be procured in human settlements across the country. These works are then procured and implemented by the dzongkhag (district) or municipal administrations. Gradually, the WSD's mandate is now expanding to include tendering and execution of works. The WSD has recently procured two small water supply works in Tsirang district in March 2017, using national procedures.⁴ The largest civil works contract procured by WSD to date was Nu44.87 million (approximately \$690,307) (Annex 3 provides detailed information about project procurement entities -MOWHS, PPPD, CAB and CDB).

20. Annex 1 summarizes the procurement carried out (as Employer) by WSD during past 4 years from which it can be seen that WSD has limited experience in procurement of works or consultancy services, with no experience with procurement conducted under projects aided by foreign funded agencies (e.g., MDBs). Table 1 shows that DES has substantial experience in procuring works and consultancy services for ADB projects. Following inferences can be drawn from analysis of information in Table 1:

- (i) Works contracts procured by WSD are small (< \$1.0 million), contract durations being 15 months, none of which are for externally aided projects. Works were procured through the national procurement procedures. Works contracts procured by DES are large (> \$1.0 million), with average contract duration of 18 months. The WSD does not handle large works contracts, although DES has substantial experience in this;
- (ii) WSD has no experience in procurement of consultancy services (firms) for externally aided projects, although DES has adequate prior experience. However, WSD has recently hired an international water supply specialist for support with detailed engineering designs for STUDP, which has been a steep learning curve and it is anticipated that the remaining individual consultant positions will be much faster to recruit;
- (iii) Both works and consultant procurement (undertaken by WSD) followed Bhutan's PPR and were based on standard procurement documents of PPPD; and
- (iv) It remains to be seen if any major contractual issues will arise during the implementation (cost, time overruns, disputes) of the contracts.

21. A key concern is that WSD has limited prior experience as an employer implementing externally aided projects. Given the limited experience the WSD has in the procurement of works, suitable mitigation measures have to be undertaken under the project. The project entails eight small value contracts, all will be procured using the 1S1E procedure. The scope of works is relatively simple, the capacity for the execution of which exists in Bhutan.⁵ This itself eliminates the risk associated with procurement of large value or complex infrastructure.⁶ Project team has worked closely with WSD PMU in drafting procurement specifications and contract conditions in the initial set of bid documents and is also providing support to the PMU to help increase their procurement capacity. Although WSD has undertaken procurement of several projects as employer, it has no prior experience with ADB procurement and will require training to familiarize themselves with the ADB procurement process. Training programs in ADB procurement processes are planned to be conducted with the PMU and PIU officials. In addition, DES (which

⁴ These procurements were done jointly with the Dzongkhag administration.

⁵ The master bidding document for procurement of works has been cleared by ADB.

⁶ The project will support small water supply. Sewerage, drainage and road works using construction methods quite commonly used in the local context.

has substantial prior experience with ADB procurement procedures) has provided assurance to support the WSD with procurement activities. ADB's continued strong involvement during subsequent phases of procurement, including support from consultants will further help to mitigate the risk associated with lack of experience.

22. The multilayered tendering committee structure for public procurement in Bhutan, the institutionalization of Project Steering Committee overseen by the regular or timely auditing of the project by the Royal Audit Authority and the backstopping support that DES has assured to provide to WSD will help to strengthen procurement practices mitigate risks associated with procurement under STUDP.

Table 1: Procurement Experience of Executing Agency

| Sl.no | Project Name | Month and Year awarded | Month and Year Completed | Project Value (Nu million) | Problems and Issues (if any) |
|--|---|------------------------|--|--------------------------------------|------------------------------|
| Procurement carried out as Employer by WSD during past 4 years | | | | | |
| Works | | | | | |
| 1 | Providing and laying of water distribution network for Damphu town, Tsirang (Implementation done by Tsirang Dzongkhag Administration) | March 2017 | June 2018 (expected) | 44.87 | |
| 2 | Rehabilitation of existing water supply system in Damphu town, Tsirang (Implementation done by Tsirang Dzongkhag Administration) | March 2017 | June 2018 (expected) | 15.78 | |
| Procurement carried out as Employer by DES for ADB funded projects during past 4 years | | | | | |
| 1 | Construction of 46.8 m PSC Girder Bridge at Phunetsholing thromde, Bhutan | July 2017 | February 2019 | 75,128,624 | |
| 2 | Road improvements in Thimphu Thromde (4 lots, ICB) | March 2017 | October 2018 | 214,429,445.87 | |
| 3 | 12MLD sequential batch reactor-based Waste water treatment plant in Thimphu thromde | October 2017 | April 2024 (including 5 year O&M period) | 13,621,021.26 (USD)+ Nu76,909,091.00 | |
| 4 | Procurement of water treatment works in Samdrup Jongkhar | April 2016 | October 2017 | | |

| Sl.no | Project Name | Month and Year awarded | Month and Year Completed | Project Value (Nu million) (USD) | Problems and Issues (if any) |
|---|--|------------------------|--------------------------|----------------------------------|--|
| 5 | Construction of road and drainage, water supply and sewer networks for Changbangdu LAP | January 2013 | July 2014 | 3,030,996.69 (USD) | |
| 6 | Construction of 4 pits/sludge drying beds and black topping of access road | May 2014 | October 2014 | 46,751.61 (USD) | |
| 7 | Procurement of desludging machine | March 2014 | March 2015 | 29,713.84 (USD) | |
| 8 | Procurement of truck mounted suction machine | August 2014 | March 2015 | 29,693.69 (USD) | |
| Consultancy contracts procured by WSD (as employer) in the last 4 years | | | | | |
| 1 | Preparation of water and wastewater masterplan for Denchi, Pemagatshel | Feb 2015 | August 2015 | 186 | |
| 2 | Preparation of water and wastewater masterplan for Paro | March 2015 | June 2016 | 2.25 | |
| 3 | Preparation of water and wastewater masterplan for Tsirang | April 2015 | May 2016 | 2.00 | |
| 4 | Preparation of water and wastewater master plan for Phuentsholing | August 2015 | February 2017 | 4.04 | The Consultant was also required to design the schemes proposed in the masterplan. Contract terminated after completion of the masterplan due to delay in completion of the designs. |
| 5 | Preparation of water and wastewater master plan for Bumthang | Dec 2015 | October 2016 | 3.90 | |
| Consultancy contracts procured by DES (as employer) in the last 4 years | | | | | |
| 1 | Hygiene awareness and consultation participation | August 2017 | February 2018 | 159,577 | |

ADB = Asian Development Bank, DES = Department of Engineering Services, ICB = international competitive bidding, LAP = local area plan, m = meter, MLD = million liters per day, O&M = operation and maintenance, PSC = procurement steering committee, WSD = Water and Sanitation Division.

23. Organization and functions of other key institutions related to procurement domain in Bhutan (i.e., PPPD, CAB, CDB) are presented in Annex 3. Brief highlights of their roles are discussed here. CDB functions as an overseer as well as a promoter of the construction industry. One of the key functions of the Construction Development Board (CDB) is the registration, classification and monitoring of contractors, consultants and engineers/architects. CDB acts as a bridge between the private and public sectors.

24. Contractors Association of Bhutan (CAB) was established for the development and promotion of Bhutanese construction industry. CAB's stated mission is to develop and promote the Bhutanese construction industry and to represent the Bhutanese construction industry at regional, national and international level. The role of the CAB is to provide a forum for the construction industry in Bhutan and address problems and policy issues at all levels for the development and promotion of Bhutan construction industry.

25. Role of PPPD has been discussed in the earlier sub-section of this report.

B. Competitiveness and Participation of Private Sector in Public Procurement

26. The private sector needs to be equally efficient, competent, honest and vigilant if public procurement is to function effectively. Relevant extracts from the private sector assessment carried out by ADB as part of CPS 2014–2018 are presented in next paragraphs.

27. **Critical Constraints to Private Sector Development.** To accelerate private sector development and allow the private sector to play a pivotal role in the economy, Bhutan needs to create an enabling environment for private investment. Bhutan's overall rank in the World Bank's annual 'ease of doing business' assessment deteriorated from 126th of 183 countries in 2009 to 148th of 185 countries in 2012. While it moved up slightly to 141th of 189 countries in 2013, its ranking remains the lowest in South Asia. Key impediments to private sector development include: (i) limited access to finance; (ii) inadequate infrastructure, particularly in transport; and (iii) limited access to workers with necessary skills and a mismatch between the demand and supply of skills in the labor market.

28. **Lack of access to finance.** A 2013 diagnostic report on Bhutan's critical development constraints noted that access to and the cost of finance continue to be key obstacles to private investment, especially for micro, small, and medium-sized enterprises. Firms in Bhutan tend to perceive access to finance as a major constraint. Of the small and medium-sized firms assessed, 30% reported that access to finance was a major obstacle.

29. **Inadequately skilled labor force.** Labor costs are higher in Bhutan than in neighboring countries. An inadequately skilled labor force is cited as a major constraint by businesses in Bhutan. The issue in Bhutan is less about overall education levels than the fact that the education and skills that would-be workers do not match those demanded by the labor market. Firms in Bhutan often try to meet their labor requirements by recruiting foreign workers, mostly from India and Nepal. Firms indicated that difficulty in accessing foreign workers was a major obstacle to their operations. They considered the required use of third-party agents licensed by the government to hire unskilled foreign workers to be costly and cumbersome.

30. It should be emphasized, however, that Bhutan also has outstanding advantages over other countries in South Asia for prospective private sector business. These include its political stability, good governance, low levels of corruption and crime, access to electricity, abundant

natural resources, preferential access to India's large market, and access to skilled and unskilled labor in India.

1. Information Management.

31. At present a nationwide comprehensive procurement monitoring system for all types of contract does not exist in Bhutan. The Ministry of Finance has awarded the contract to a consulting firm to design an e-Government Procurement system that shall cover all these aspects. Procurement of works covers almost 50% of the Government Procurement. The CDB maintains an online evaluation, monitoring and reporting system and a ciNet system through which data is maintained for Construction works contracts. Most procuring agencies through their own initiative maintain such data on procurement of goods, works and services. While a centralized data system would provide for monitoring the efficiency and effectiveness of the procurement system, currently data maintained by procuring agencies have been serving this purpose. Realizing the difficulties in doing so, an e-GP is being initiated by the Ministry of Finance.⁷

32. As required by the revised Procurement Rules and Regulations (PRR), information on procurement opportunities are made available on the procuring agency's website. Information on procurement opportunities, amendments to the bidding documents and any other information can be seen on any government agency website. In addition, the notification on award of contracts is displayed on the notice board of the procuring agency concerned. Documents and any other information can be seen on any government agency website. In addition, the notification on award of contracts is displayed on the notice board of the procuring agency concerned.

2. Procurement Manual and Guidelines

33. The PRR procedures of the Ministry of Finance, is the de facto manual that provides the guidelines and procures to be followed for public procurement. These guidelines apply to all government agencies apart from corporations (except municipal corporations) and Financial Institutions fully or partly owned by the Royal Government of Bhutan, trust funds and welfare funds which may adopt separate rules and regulations for the management of their procurement. MOWHS does not fall under the latter classification and therefore follows the PRR.

34. These guidelines (which are applicable to MOWHS) specify the thresholds for the institution of the various tender committees as follows:

- (i) Departmental Tender Committee to be composed of: (a) Head of the Department (Chairperson); (b) Head of the relevant Division; (c) Head of AFD; (d) Head of Finance Section in AFD/AFS; and (e) Engineer or Engineering consultant responsible for technical documents in the case of works. This also includes the PIU project managers (with title Municipals engineer) who are assigned staff of the MOWHS. In the case of goods, the appropriate officer responsible for custody/use of the goods and technical expert or consultant. The threshold for review is: (a) up to Nu0.10 million in the case of goods; and (b) up to Nu0.20 million in the case of works. For higher thresholds, Ministerial Tender Committee has to be set up; and
- (ii) Ministerial Tender Committee to be composed of: (a) Secretary of the Ministry (Chairperson); (b) Head of Department concerned; (c) Head of the AFD; (d) Head of Finance in the AFD; and (e) in the case of works, the engineer or engineering consultant responsible for preparing the technical documents. In the case of

⁷ World Bank. 2016. *Bhutan Public Financial Management Performance Report—Based on Public Expenditure and Financial Accountability 2016 Framework*. Washington, D.C.

goods, the appropriate officer responsible for custody/use of the goods and technical expert. The threshold for review is: (a) up to Nu20 million in the case of goods; and (b) up to Nu50 million in the case of works. Cases of procurements in which the estimated values are higher than the thresholds mentioned above shall be referred to the Inter-Ministerial Tender Committee by the head of the Ministry. This will not be the case for the STUDP.

35. As per the PRR guidelines, in the case of a foreign-funded project, if the foreign funding agency mandates the use of procurement guidelines of such funding agency, such funding agency guidelines shall prevail over PRR guidelines to the extent applicable. In the event of a conflict between PRR guidelines and that of the funding agency, the funding agency guidelines shall take precedence over PRR guidelines. Hence, ADB procurement guidelines will prevail for STUDP and country systems will not be used.

36. NCB annex 3 of ADB's Procurement Plan template has the following conditions related to foreign bidders which would be applicable to STUDP: "Foreign suppliers and contractors from ADB member countries shall be allowed to apply for pre-qualification and to bid, without national registration, licensing and other government authorizations, leaving compliance with these requirements until after notice of award and before signing of contract. Where registration is required prior to award of contract, bidders: (i) shall be allowed a reasonable time to complete the registration process; and (ii) shall not be denied registration for reasons unrelated to their capability and resources to successfully perform the contract, which shall be verified through post-qualification."

3. Procurement Practices

37. There is no separate procurement cadre or procurement core group in Bhutan government. However, procurement functions are streamlined within the various government departments. Most staff carrying out procurement functions are from engineering and accounting cadres, and are not trained specifically in procurement. Contract administration is perceived to be a bit weak. This has resulted in cost and time overruns. MOWHS has a Procurement Section under the Directorate Services. The Directorate services is responsible for tendering and opening of tenders. Evaluation and awards are done by committees concerned. Each procuring entity is required to establish a procurement unit or designate a unit with responsibility for procurement and contract management. Each procuring entity must also form an evaluation committee. It is expected that there would be one Tender Evaluation Committee in WSD for the STUDP.⁸

38. Open competition is defined as the default method for procurement in the PRR 2009 (in July 2015) Clause No. 4.2.2.1. A threshold value above which open competition is the default method is defined in the PRR, which is above Nu1 million in the case of procurement of works, and above Nu0.2 million in case of goods and services.

39. As per the data collected through e-tool database maintained by Construction Development Board covering 1,430 contracts in year 2016, all followed open competition. There is a lack of management information system for goods and services. Bhutan Public Financial Management Performance Report (cited earlier), reviewed a small sample from the Ministry of Education for goods and services and Thimphu Thromde for construction works. Out of 26 contracts the Ministry of Education had tendered out in 2014–2015, 13 were done through limited

⁸ Tender Evaluation committee will be appointed/formed as and when needed, based on the instructions from the MLTC/DLTC, comprising members from the relevant departments/divisions.

bidding, which accounted for 13% of the total procurement value. In the case of Thimphu Thromde, out of 24 contracts, six were tendered out through limited bidding and one through limited enquiry/shopping. Limited bidding is a competitive method but for a shorter bidding period of 14 days. Based on these findings, except those which are below the threshold value defined in the PRR, all tenders are done through open competition.

40. Contract duration is kept short by implementing agencies, resulting in huge time overrun of contracts. Project preparation is inadequate, Bhutan implementing agencies performance up to contract award is good, but contract management is poor; the project planning period have been typically short with limited emphasis on project planning and details that leads to problems during implementation. Also, the management of contractors by the implementing agencies is poor due to lack of technical expertise. Underbidding is a serious problem in Bhutan. Mostly open bidding is the norm and direct contract awards are minimal. Most problems are caused by the employer rather than the contractor.

C. Summary of Procurement Assessment carried out by ADB⁹

41. **Portfolio performance.** Bhutan has managed to maintain a relatively good record in portfolio performance, despite some signs of deterioration. The contract award ratio improved from 55% in 2011 to 59% in 2013, exceeding the respective ADB-wide averages of 26% and 20%, respectively. In contrast, the disbursement ratio decreased slightly from 28% in 2011 to 26% in 2013, although these rates were better than the overall ADB averages of 20% in 2011 and 19% in 2013. As of 31 December 2013, none of the 15 ongoing projects in Bhutan were rated problem projects, and only two were rated potential problem projects.

42. ADB country operations and programs in Bhutan were rated successful by both a country assistance performance evaluation conducted in 2010 and the CPS final review validation report in 2013. The CPS final review and its validation report both stressed the need for more emphasis on project readiness and strengthening of the capacity of counterpart agencies in procurement, safeguards, and financial management.

43. **Public financial management, public procurement, and anticorruption.** Bhutan's public financial management system is more robust than those of many comparable countries, but capacity in financial management is weak at the local level. Procurement vulnerabilities reside in the inability of the institutions and staff involved to fully apply enhanced rules and regulations, and a lack of government capacity to effectively implement increasingly complex procurement packages in some key sectors. Some vulnerability to corruption remains because of weakness in internal accountability measures.

1. e-Procurement

44. The Central Public Procurement Portal of Government of Bhutan facilitates all the Central Government Organizations to publish their Tender Enquiries, Corrigendum and Award of Contract details. The system also enables the users to migrate to total electronic procurement mode. The primary objective of this portal is to provide a single point access to the information on procurements made across various central government organizations. As of now, E-procurement is not mandatory for state owned enterprises. Even for Central Government Organizations, only tenders are advertised on the Central Public Procurement Portal. Submission of bids, evaluation and all downstream activities are done in physical mode.

⁹ ADB. 2014. *Country Partnership Strategy: Bhutan, 2014–2018*. Manila.

45. The procurement of works account for majority of procurement in Bhutan and the e-tool allows for comprehensive web-based advertisement and contract management system. The site is www.cdb.gov.bt. The Ministry of Finance has awarded a contract to a consulting firm to design an e-Government procurement system in three phases. The first phase contract is signed, and outputs expected to be delivered in 2017.

2. Effectiveness

46. Improvements in procurement include the publication of contract awards on the notice boards of procuring entities: the risk of any mis-procurement is reduced by this public exposure. The procurement complaints process, that was new and untried in FY2009/10, is now fully operational.¹⁰

47. The PRR, Standard Bidding Documents and related guidelines and manuals are available on the PPPD website and are accessible to the public. These standard documents were also printed and distributed to all Ministries, Dzongkhags and Gewogs, in 2012.

48. The Bhutan Annual Audit Report 2014 does not mention any concerns on reliability of any of the information published in the media or on the websites of the procuring agencies (footnote 10).

49. Transparency International's Corruption Perceptions Index 2016 places Bhutan at rank 27 of the 176 countries assessed with a score of 65/100. This is the highest rating amongst developing countries in Asia.

50. The Public Financial Management Performance Report (PFMPR, footnote 10) has assessed Bhutan's procurement performance which is summarized in Table 2. Previous PFMPR was in 2010, changes in rating from 2010 to 2016 show substantial improvement in scores. WSD's procurement effectiveness could be inferred to be similar since WSD is mandated to follow country's procurement system.

Table 2: Public Financial Management Assessment Report Procurement Indicators Assessment Rating

| Procurement Indicator/Dimension | Score in 2010 PFMPR* | Score in 2016 PFMPR* | Brief Justification for the score |
|---|----------------------|----------------------|---|
| Procurement monitoring | Not available | C | Records are maintained on works contracts showing what is procured, its cost, and who is awarded the contracts. These cover the majority of all procurement. |
| Procurement methods | D | B | 70% or more of total value of contracts are awarded through competitive methods. |
| Public access to procurement information. | D | B | Public has access to information on procurement rules and procedures, bidding opportunities and contract awards and data on resolution of procurement complaints. |

¹⁰ From Executive Summary of "BHUTAN- Public Financial Management Performance Report- Based on Public Expenditure and Financial Accountability 2016 Framework, September 2016. International Bank for Reconstruction and Development/The World Bank.

| Procurement Indicator/Dimension | Score in 2010 PFMPR* | Score in 2016 PFMPR* | Brief Justification for the score |
|---|-----------------------------|-----------------------------|---|
| Procurement complaints management. | C | A | The complaints system meets all six criteria. |
| Overall score for Procurement Indicator | C | B | |

* A is the best in class, D is the lowest rating. Details of scores and scoring method are in page 92 and 156 of PFMPR report available for download at website: <http://documents.worldbank.org/curated/en/535311479288163001>.

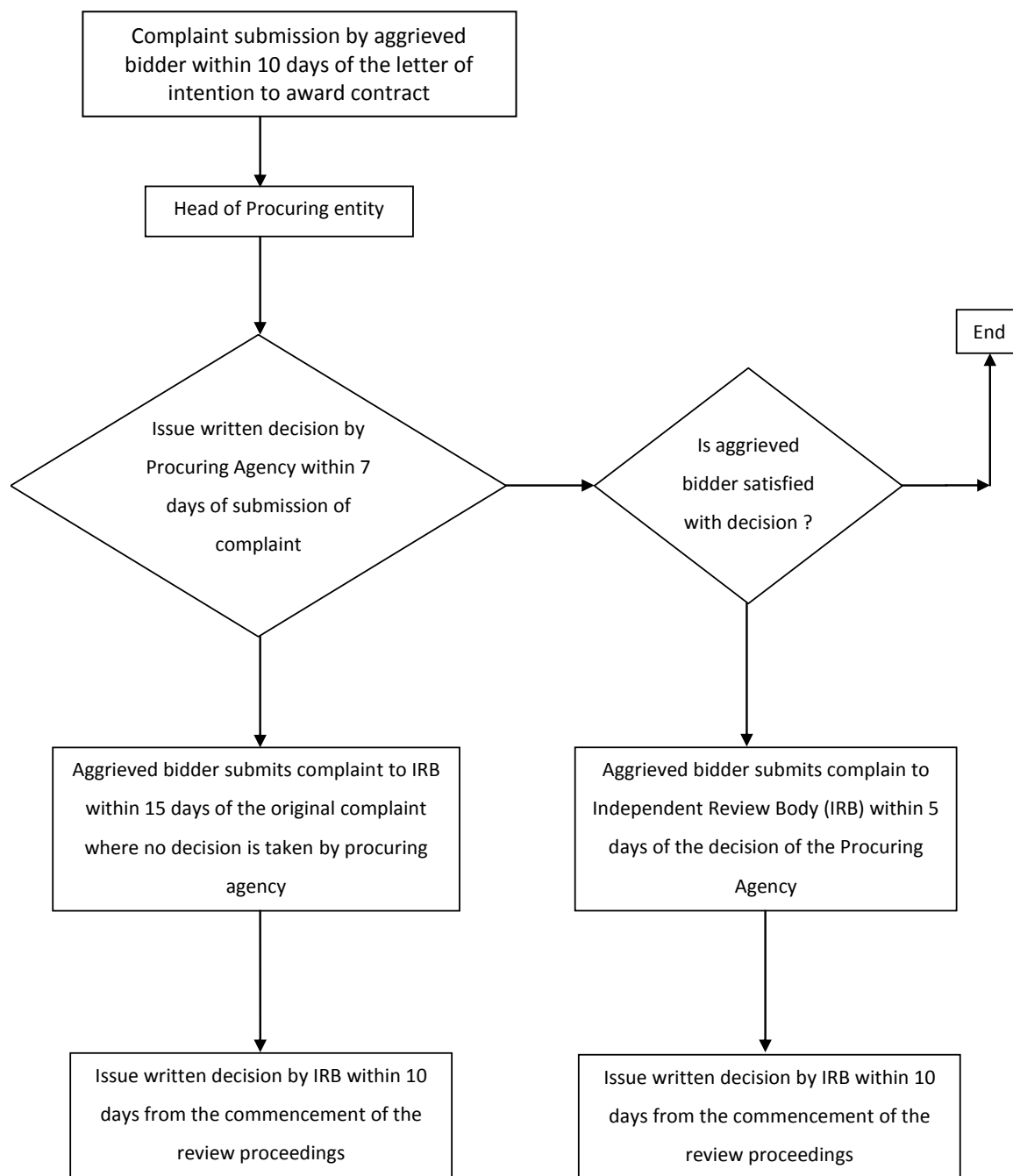
3. Accountability Measures

51. At national level an independent review body (IRB) totally independent of any procuring entity was established in February 2015 by Royal Government of Bhutan. Any supplier, contractor or service provider who has or is likely to suffer, loss or injury resulting from an alleged breach of the PRR by a procuring entity is entitled to seek review of procuring entity's decision by submitting a written application to IRB. The applicant has to first seek review of the procuring entity. If either procuring entity has not delivered a decision within the timeline specified in PRR (10 working days) or the complainant is not satisfied with procuring entity's decision, complainant can approach IRB. The IRB is expected to provide its decision within 10 working days. The scope of review is limited to procurement decisions up to the award stage of procurement process and/or where the contract has not been concluded. After contract award, any complaints about corruption during contract implementation would have to be addressed to Anti-Corruption Commission of Bhutan or to courts.

52. MOF has formulated Rules and Procedures of IRB, February 2015, which is available on its website.¹¹ The process for complaint handling (including membership of IRB, standstill period in which pending procurement awards are put on hold until the investigations are completed and a resolution has been made regarding the complaint, who does the investigation, is it independent from the procuring entity, etc.) are fully described in the Rules and Procedures of IRB. Figure 2 shows flowchart of IRB complaints handling process.

¹¹ [http://www.egp.gov.bt/Independent%20Review %20Body %20-%20Rules%20and%20 Procedures.pdf](http://www.egp.gov.bt/Independent%20Review%20Body%20-%20Rules%20and%20Procedures.pdf).

Figure 2: Flowchart of IRB complaints handling process



53. Clause 64 of Rules and Procedures for IRB requires that after resolving a complaint, IRB Secretariat is required to publish on the website of the PPPD, such as summary of decisions made. The IRB was introduced recently and is functional. The decisions of the IRB are published on the PPPD website.

54. Clause 16 (l) of Rules and Procedures of the IRB ensures that no members of the IRB have conflict of interest pertaining to issues to be discussed and refrain from participation in the

specific meetings, if any, and requires that members sign a confidentiality and Declaration of interest form in every meeting and requires that members sign a confidentiality and Declaration of interest form in every meeting.

55. Clause 8.1.3 of the PRR allows a supplier, contractor or service provider, in the event of a perceived breach of a duty imposed upon a Procuring Agency in respect of a specific procurement procedure, to submit a written complaint to the head of the procuring agency responsible for such procedure promptly and in any event within 10 days of the letter of intent to award the contract. Bidders have to pay a nominal complaints registration fee of Nu5,000. The intention of having registration fee is not to discourage Bidders to complain but to prevent (least to certain extent) baseless complaints. While developing the Rules and Procedures for Independent Review Body, the Bhutan Chamber of Commerce and Industry and CAB representing the interest of bidding community were actively involved as the main stakeholders at each stage of discussion.

56. The Rules and Procedures of IRB clearly define the processes for submission and resolution of complaints. The Rules and procedures also provide for the IRB to exercise the authority to suspend the procurement process; issue decisions within the timeframe specified in the rules/regulations; and issue decisions that are binding on all parties (without precluding subsequent access to an external higher authority). IRB clearly define the processes for submission and resolution of complaints that are clearly defined and publicly available.

57. At the country level, the Anti-Corruption Commission and Royal Audit Authority have statutory backing and are perceived to be powerful and fair.

D. Strengths

58. The strengths of WSD, DES (MOWHS) and Bhutan related to procurement are summarized as follows:

- (i) Corruption is almost nonexistent, contractor and employer sign an Integrity Pact for every contract to avoid all forms of corruption or deceptive practice by following a system that is fair, transparent and free from any influence/ unprejudiced dealings in the bidding process and contract administration. The Integrity Pact is part of the Bhutan Standard Bidding Document (SBD);
- (ii) WSD follows established public procurement procedures wherein MLTC/DLTC provide final decisions (based on procurement threshold value). The STUDP PMU and PIU comprise of staff who have experience as Employer, although not for externally funded projects;
- (iii) Procurement functions are decentralized and follow the PRR, 2009. Procurement methods have been clearly defined in SBDs for Goods, Works, and Consultant Services are published online on MOWHS's website and available for use;
- (iv) Grievance redress is by IRB;
- (v) Procurement process based on excellent legislative and regulatory framework of RGOB;
- (vi) Good institutional framework; and
- (vii) For contracts, contract administration and dispute resolution are well defined and practiced.

E. Weaknesses

59. The weaknesses of WSD, DES (MOWHS) related to procurement are summarized as follows:

- (i) Every procuring agency seemingly interprets the PRR differently based on its own needs and convenience and there is no uniformity in the implementation of the PRR;
- (ii) WSD, DES has limited prior experience as an Employer of procurement and implementation of externally aided projects. There is limited management capacity and human resource constraints;
- (iii) Clear separation of engineering, procurement and regulatory functions does not exist, although this does not seem to be a problem thus far;
- (iv) The training and capacity building of government sector staff appears inadequate to meet the needs of externally financed projects;
- (v) Some difficulties are perceived by foreign contractors and consultants to participate due to barriers to entry (registration, labor etc.). Any joint ventures between foreign firm(s) and Bhutanese companies or foreign firms (independently) wishing to participate in projects in Bhutan need to be registered with CDB. Joint ventures between Bhutanese firm(s) and foreign firms will be issued contract specific CDB certificate and they can participate in the specified work only;
- (vi) Underbidding is practiced widely by local contractors, leading to time overruns and disputes;
- (vii) Vocational training institute graduates must be mandatorily employed by contractors as per the requirements of the Royal Government of Bhutan. However, skill levels and willingness of such graduates to work for contractors is low;
- (viii) Banks seek collateral +3% bank commissions for loans from contractors. High bank interest of 14% for overdraft increased cost of finance to contractors; and
- (ix) Skilled labor is inadequate within the country and is sourced from neighboring countries, which is a complicated process. The Ministry of Labor has rules which require labor to be sourced only through authorized labor contractors with labor being subject to health and security clearance. Bhutanese law prohibits the employment of foreigners without permits from the Chief Labor Administrator. The Ministry of Labor and Human Resources is empowered to set maximum numbers of foreigners who may work in Bhutan and may limit the number of foreigners working in any field or industry. The Ministry of Home and Cultural Affairs, Department of Immigration, also oversees and coordinates all foreign workers.

F. Procurement Risk Assessment and Management Plan (P-RAMP)

60. The project procurement risks, their assessed impact, likelihood of occurrence and recommended mitigation measures are summarized as follows:

Table 3: Project Procurement Risk Analysis and Management Plan

| SL. No /Ref | Risk | Impact | Likelihood | Mitigation Measures/Risk Management Plan |
|---|---|--------|------------|---|
| I. Project Procurement Risk Analysis | | | | |
| A.9. | WSD, DES does not have a regular procurement training program | H | Likely | <ul style="list-style-type: none"> - Procurement training of PMU/PIU staff on ADB procurement processes to be carried out. - Retention of trained staff. - ADB Regional TRTA will be used to provide training resources |
| C.1 | <p>Has WSD, DES 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.</p> <p><i>WSD has no prior experience in ADB or externally funded procurement of goods and services. However, DES- the parent department has implemented 4 ADB projects which reduces the risk (2 ongoing)</i></p> | S | Likely | <ul style="list-style-type: none"> - PPTA/project consultants/ ADB's involvement in drafting procurement specifications and contract conditions in the initial set of bid documents and consultant procurement was ensured. - ADB may provide intensive procurement handholding support during project preparation and first year of Loan. |
| C.11 | Bidders not provided a copy of the bid opening minutes | S | Unlikely | <ul style="list-style-type: none"> - STUDP would follow ADB procurement guidelines. Hence WSD will provide copy of bid opening minutes. |
| C.22 | <p>WSD has not undertaken foreign-assisted procurement of consulting services previously.</p> <p>Although DES- (parent department of WSD) has extensive experience undertaking foreign funded projects.</p> | S | Likely | <ul style="list-style-type: none"> - Provide intense support of PPTA/project consultants/ADB during the first package of consultant selection. - Administer specifically ADB's training module on consultant procurement and management to all CSC members, including PMU and PIU staff. |
| C.52 | On average, it takes 1-2 months between receiving a firm's invoice and making payment. Sometimes, national firms which have payments routed through the main international firm face problems with delayed payments. However, the efficiency of the process under the administration of the new PMU remains to be seen | S | Likely | <ul style="list-style-type: none"> -Claims take 1-2 months to be cleared at DES level. Streamlined procedures will be adopted under STUDP- clearly specifying maximum time for clearing of claims at each level within DES. -Further, it has been observed in the UIP that the payment to the local counterpart firm is being delayed by several months due to delays in release of payment from the international firm. To avoid this, national competitive selection is |

| SL. No /Ref | Risk | Impact | Likelihood | Mitigation Measures/Risk Management Plan |
|-------------|------|--------|------------|--|
| | | | | being used, which is suitable for the level and complexity of works under the project. Further, additional contractual clauses will be employed which can separate payments to national and international entities in the case of joint ventures |

H - high, S – substantial.

III. PROJECT SPECIFIC PROCUREMENT THRESHOLDS

61. Procurement classification for the project investment is assessed as Moderate (Category B). The completed Project Procurement Classification checklist is provided in Annex 1.1.

62. Based on the procurement capacity assessment carried out it is recommended that prior review limits and procurement thresholds for STUDP remain same as shown in the ADB's Procurement Plan template for Bhutan. Project specific procurement thresholds are not warranted. Civil works contracts above \$3 million will be through international competitive bidding (ICB) and those costing less than \$3 million will be under national competitive bidding (NCB) procedures acceptable to ADB. Single-stage one-envelope bidding with post-qualification will be adopted for all NCB and ICB contracts under the project. ADB review of bid documents and evaluation shall be prior for first NCB only and all advance contracting packages. Domestic preference is not applicable. For the procurement of goods and related services, ICB will be used for contracts of at least \$3 million and NCB for contracts of less than \$3 million. For contracts valued at less than \$100,000 ADB's shopping procedures will be followed. Works by government-owned entities (for activities which cannot be done by competitive contracting) shall be done by Force Account method. Procurement under the investment project will conform to ADB's Procurement Guidelines (2015), as amended from time to time. No changes are suggested to the NCB Annex of Bhutan Procurement Plan template; the NCB Annex is included in Annex 2.2.

IV. PROCUREMENT PLANS

63. An 18-month indicative procurement plan showing threshold and review procedures, goods, works, and consulting service contract packages and national competitive bidding guidelines is provided in Annex 4.

64. All advance contracting and retroactive financing will be undertaken in conformity with ADB's Procurement Guidelines (2015, as amended from time to time) and ADB's Guidelines on the Use of Consultants (2013, as amended from time to time). Procurement of civil works, goods and remaining consultancy packages will be carried out in accordance with ADB's Procurement Policy, 2017 and ADB's Procurement Regulations for ADB Borrowers, 2017.¹² The issuance of invitations to bid under advance contracting and retroactive financing will be subject to ADB approval. MOWHS have been advised that approval of advance contracting and retroactive financing does not commit ADB to finance the project.

¹² The implementing and executing agencies have expressed a strong preference to use the new 2017 Procurement Guidelines.

65. **Advance contracting** is required. Table 4 lists the works and services packages to be financed by the project through advance contracting. PMU and PIU setting up expenses (office equipment, vehicles and personnel) would also be part of advance contracting and retroactive financing. Recruitment for the PMSC is in progress, Submission 1 was sent by WSD to ADB on 14 March 2018. Bid evaluation report for Trashigang water supply project was received by ADB in April 2018. The intention is to award 30% of loan amount after completing all procurement steps concurrent with loan effectiveness.

66. **Retroactive financing.** A maximum amount of eligible expenditures up to \$2 million, the equivalent of 20% of the total ADB loan and grant, incurred before loan effectiveness, could be made, but not more than 12 months before the signing of the loan agreement.

Table 4: STUDP Advance Contracting Packages

| Package | Description | Type | Amount (\$ million) |
|---------------------|---|-----------------|--------------------------------|
| Works | | | |
| SM/UR/001 | Development of Shechamthang LAP Infrastructure: Roads, Drainage and Water Supply Project | NCB Works | 2.531 |
| SM/UWS/002 | Sarpang Water Supply Development Project | NCB Works | 1.127 |
| TM/WS/002 | Trashigang Water Distribution Network Improvement Project | NCB Works | 0.560 |
| Consulting Services | | | |
| CS-01 | Project Management and Supervision Consultant | QCBS (80:20) | 0.513 |

LAP = local area plan, NCB = national competitive bidding, QCBS = quality-cost based selection.

V. CONCLUSIONS

67. Based on the procurement capacity assessment of WSD, DES, MOWHS and other agencies likely to be involved with the STUDP, the following measures for improvement of procurement capacity are recommended:

- (i) The annual working period is limited to 8 months due to heavy monsoon. For such works, specifications should consider advance preparedness and maximizing use of precast elements;
- (ii) The performance of current loans being administered by DES, suggest poor contract management abilities as evident from poor disbursements and slow progress of works necessitating contract extensions in majority of the contracts. There is a need to improve capacity in contract management through directed training;
- (iii) There is a need to upscale the capacity of experienced small Bhutanese contractors to enable them to carry out better quality works. ADB could consider technical assistance to build Bhutan contractors capacity;
- (iv) Provide training, preferably in association with CDB and CAB, specifically on ADB procurement processes and capacity building to procurement unit, PIU and PMU of STUDP and local contractors by allocating earmarked training budget STUDP or through technical assistance budget. Such capacity is limited at present. More effort should be devoted to capacity building in contract management, disbursements and procurement;

- (v) Skill development of contractors needed in areas of preparation of bids and to reduce underpricing of bids; and
- (vi) Existing procedure for sourcing skilled workers from outside Bhutan needs to be simplified and time taken to get workers into Bhutan expedited by adjusting the Royal Government of Bhutan's labor policy.

68. Overall, it can be stated that the procurement policy framework of Bhutan is robust and grounded in sound and fair principles. The project arrangements with appropriate mitigation measures as recommended in P-RAMP are satisfactory.

PROCUREMENT CAPACITY ASSESSMENT OF WSD, DES AND MOWHS

| | | | | |
|---------------------|----------|-----------------|--------------|---------|
| Risk Ratings | High (H) | Substantial (S) | Moderate (A) | Low (L) |
|---------------------|----------|-----------------|--------------|---------|

I. Specific Assessment and Ratings

| 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. There is a three-tier system to provide accountability-Tender Opening, Tender Evaluation and Tender Award Committees. The final decision is made by the Ministerial Level Tender Committee (MLTC). These are all independent of the head of the agency. | L |
| 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? | No. The various committees undertake these functions for each project/ procurement activity. Tender Opening Committee (TOC) and Tender Evaluation Committee (TEC) support Tender Committee. Tender Committees and TEC are established by selecting suitable members from the departments in the Ministry. The members of TOC/TEC are appointed by Tender Committees. There is no separate procurement unit and the final award decision is made by the Ministerial Level Tender Committee (MLTC) | L |
| A.3 If yes, what type of procurement does it undertake? | Not applicable. DES is responsible for procurement of public infrastructure through its various divisions including WSD. | L |
| A.4 How many years' experience does the head of the procurement department/unit have in a direct procurement role? | Five years of Experience | A |
| A.5 How many staff in the procurement department/unit are: i. full time ii. part time iii. seconded | Total of 14 staff in Water and Sanitation Division(WSD) under Department of Engineering Services (DES). However, only 2 staff are involved in procurement. | A |
| A.6 Do the procurement staff have a high level of English language proficiency (verbal and written)? | Yes (no specific procurement staff as procurement will not be done by separate Procurement unit but by engineers of the WSD) | L |
| A.7 Are the number and qualifications of the staff sufficient to undertake the additional procurement that will be required under the proposed project? | Existing staff are capable to do the job. However, there is shortage of staff in the WSD as few staff are currently on leave to pursue their studies. For a small project like STUDP existing staff will be able to manage the procurement if supported by adequate training | A |

| QUESTION | RESPONSE | RISK |
|--|---|----------|
| | and capacity development. Existing staff would need training in ADB procurement processes. | |
| A.8 Does the unit have adequate facilities, such as PCs, internet connection, photocopy facilities, printers etc. to undertake the planned procurement? | Yes, WSD is fully equipped. | L |
| A.9 Does the agency have, or have ready access to, a procurement training program? | No Provision needs to be made in the project. | H |
| A.10 At what level does the department/unit report (to the head of agency, deputy etc.)? | The head of WSD reports to Director, DES, who reports to the Secretary MOWHS | L |
| A.11 Do the procurement positions in the agency have job descriptions, which outline specific roles, minimum technical requirements and career routes? | No specific procurement jobs exist. Engineers within DES have procurement oversight and procurement decisions are taken by various committees set up as required. | A |
| A.12 Is there a procurement process manual for goods and works? | Yes | L |
| A.13 If there is a manual, is it up to date and does it cover foreign-assisted projects? | Manuals up to date but do not cover foreign-assisted projects. | A |
| A.14 Is there a procurement process manual for consulting services? | Yes | L |
| A.15 If there is a manual, is it up to date and does it cover foreign-assisted projects? | Manuals up to date but do not cover foreign-assisted projects. | A |
| PROJECT MANAGEMENT UNIT | | |
| A.16 Is there a fully (or almost fully) staffed PMU for this project currently in place? | Yes. | A |
| 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- It will be ensured. | L |
| A.18 Does the unit have adequate facilities, such as PCs, internet connection, photocopy facilities, printers etc. to undertake the planned procurement? | Yes. Additional resources will be provided through the loan. | L |
| 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? | Standard procurement documents and forms are available, but are not used for ADB funded projects. ADB SBDs and consultancy forms will be used for STUDP. | L |

| QUESTION | RESPONSE | RISK |
|---|--|------|
| A.20 Does the agency follow the national procurement law, procurement processes, guidelines? | Yes | L |
| A.21 Do ToRs for consulting services follow a standard format such as background, tasks, inputs, objectives and outputs? | Yes | L |
| A.22 Who drafts the procurement specifications? | Water and Sanitation Division engineers | L |
| A.23 Who approves the procurement specifications? | These are approved by Project Manager, PMU and Chief Engineer (head) of Water and Sanitation Department. | L |
| A.24 Who in the PMU has experience in drafting bidding documents? | Project Manager, Project coordinator and Head of WSD. | A |
| A.25 Are records of the sale of bidding documents immediately available? | Yes | L |
| A.26 Who identifies the need for consulting services requirements? | PMU in WSD in conjunction with ADB | A |
| A.27 Who drafts the Terms of Reference (ToR) | PMU in WSD with support from consultants | L |
| A.28 Who prepares the request for proposals (RFPs) | PMU in WSD with support from consultants | L |
| B. INFORMATION MANAGEMENT | | |
| B.1 Is there a referencing system for procurement files? | Yes | L |
| 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 | L |
| B.3 Does the agency adhere to a document retention policy (i.e. for what period are records kept)? | Yes. For 10 years | L |
| B.4 Are copies of bids or proposals retained with the evaluation? | Yes | L |
| B.5 Are copies of the original advertisements retained with the pre-contract papers? | Yes | L |
| B.6 Is there a single contract file with a copy of the contract and all subsequent contractual correspondence? | Yes | L |
| B.7 Are copies of invoices included with the contract papers? | Yes | L |

| QUESTION | RESPONSE | RISK |
|---|--|----------|
| B.8 Is the agency's record keeping function supported by IT? | Yes | A |
| 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. | WSD has only procured two works contracts (using national processes) and five consultancy packages in the last 4 years. However, DES, the parent department has substantial experience in undertaking ADB/ WB procurement including for following: <ul style="list-style-type: none"> - Urban Infrastructure Project: ADB - Thimphu Road Improvement Project, ADB - Bhutan Urban Development Project II- World Bank In addition, the DOR under DES is undertaking several ADB assisted projects | S |
| C.2 If the answer is yes, what were the major challenges faced by the agency? | No major challenges- agency has substantial experience in procurement. | L |
| C.3 Is there a systematic process to identify procurement requirements (for a period of one year or more)? | Yes. | L |
| C.4 Is there a minimum period for the preparation of bids and if yes, how long? | Yes. Three Months | A |
| C.5 Are all queries from bidders replied to in writing? | Yes | L |
| C.6 Does the bidding document state the date and time of bid opening? | Yes | L |
| C.7 Are bids opened in public? | Yes | L |
| C.8 Can late bids be accepted? | No | L |
| C.9 Can bids (except late bids) be rejected at bid opening? | No. If any, the bids are rejected after evaluation, which is approved by Tender Committee. | L |
| C.10 Are minutes of the bid opening taken? | Yes | L |
| C.11 Are bidders provided a copy of the minutes? | No | S |
| C.12 Are the minutes provided free of charge? | Not applicable | * |
| C.13 Who undertakes the evaluation of bids (individual(s), permanent committee, ad-hoc committee)? | The evaluation committee will be formed by Tender Committee | L |
| C.14 What are the qualifications of the evaluators with respect to procurement and the goods and/or works under evaluation? | Evaluation committee members are staff of MOWHS (from various departments) which handle public procurement. | L |

| QUESTION | RESPONSE | RISK |
|--|---|------|
| C.15 Is the decision of the evaluators final or is the evaluation subject to additional approvals? | The decision of the evaluators is not final. They are subject to approval from the Departmental Level Tender Committee/Ministerial Level Tender Committee (MLTC) of MOWHS. | L |
| 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? | Seven Months | A |
| C.17 Are there processes in place for the collection and clearance of cargo through ports of entry? | Yes | L |
| C.18 Are there established goods receiving procedures? | Yes | L |
| C.19 Are all goods that are received recorded as assets or inventory in a register? | Yes | L |
| C.20 Is the agency/procurement department familiar with letters of credit? | Yes | A |
| C.21 Does the procurement department register and track warranty and latent defects liability periods? | Yes | L |
| 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. PMU under DES (for UIP) has engaged a consultancy firm for hygiene promotion awareness to PWC in August 2017. Prior to that PMU under DES has engaged loan consulting firms for two ADB funded projects- Urban Infrastructure Development Project and Urban Infrastructure Project. However, WSD has no prior experience in undertaking foreign assisted procurement of consulting services. | S |
| C.23 If the above answer is yes, what were the major challenges? | The recruitment of hygiene promotion consultancy firm took nine months, even though it was through QBS procedures. | A |
| C.24 Are assignments and invitations for expressions of interest (EOIs) advertised? | Yes | L |
| C.25 Is a consultants' selection committee formed with appropriate individuals, and what is its composition (if any)? | Yes, There are different levels of committee based on the threshold value and complexity of assignment. | L |
| C.26 What criteria is used to evaluate EOIs? | Similar work experience of the firm Overall work experience of the firm Qualification and experience of key personnel. Management and technical experience | L |

| QUESTION | RESPONSE | RISK |
|--|---|-------------|
| C.27 Historically, what is the most common method used (QCBS, QBS, etc.) to select consultants? | QCBS | L |
| C.28 Do firms have to pay for the RFP document? | Soft copy is free of cost. Minimum amount is charged for the hard copy. | L |
| C.29 Does the proposal evaluation criteria follow a pre-determined structure and is it detailed in the RFP? | Yes | L |
| C.30 Are pre-proposal visits and meetings arranged? | Yes | L |
| C.31 Are minutes prepared and circulated after pre-proposal meetings? | Yes | L |
| C.32 To whom are the minutes distributed? | To all the firms who attend the pre-proposal meeting and to those who have expressed interest for the assignment and request minutes. | L |
| C.33 Are all queries from consultants answered/addressed in writing? | Yes | L |
| C.34 Are the technical and financial proposals required to be in separate envelopes and remain sealed until the technical evaluation is completed? | Yes | L |
| C.35 Are proposal securities required? | No | L |
| C.36 Are technical proposals opened in public? | Yes | L |
| C.37 Are minutes of the technical opening distributed? | Yes (but not to bidders) | L |
| C.39 Who determines the final technical ranking and how? | The Tender Evaluation Committee based on the evaluation criteria. | A |
| C.40 Are the technical scores sent to all firms? | Yes | L |
| C.41 Are the financial proposal opened in public? | Yes | L |
| C.42 Are minutes of the financial opening distributed? | Yes (but not to bidders) | L |
| C.43 How is the financial evaluation completed? | Financial evaluation will be completed based on the format provided in the Bid Data Sheet in the RFP. | L |
| C.44 Are face to face contract negotiations held? | Yes, if necessary. | L |
| C.45 How long after financial evaluation is negotiation held with the selected firm? | Within 15 days to a month at the earliest | A |

| QUESTION | RESPONSE | RISK |
|--|---|----------|
| C.46 What is the usual basis for negotiation? | Negotiations are usually done to negotiate the proposed cost, person months for key personnel and equipment. | A |
| C.47 Are minutes of negotiation taken and signed? | Yes | L |
| C.48 How long after negotiation is the contract signed, on average? | Within 15 days to a month at the earliest | A |
| C.49 Is there an evaluation system for measuring the outputs of consultants? | Project performance management system will be set up to monitor all parameters of loan performance inclusion outputs of consultants. | A |
| Payments | | |
| C.50 Are advance payments made? | Yes, 10% of contract price. | L |
| C.51 What is the standard period for payment included in contracts? | Payments are based on the completion of milestones or work done on ground which is reflected in the contract. | L |
| C.52 On average, how long is it between receiving a firm's invoice and making payment? | If milestones are achieved and everything is in order, most payments are made within a month or two's time. Sometimes, national firms which have payments routed through the main international firm face problems with delayed payments. However, the efficiency of the process under the administration of the new PMU remains to be seen | S |
| C.53 When late payment is made, are the beneficiaries paid interest? | Not paid so far. | A |
| D. EFFECTIVENESS | | |
| D.1 Is contractual performance systematically monitored and reported? | Yes | L |
| D.2 Does the agency monitor and track its contractual payment obligations? | Yes | L |
| D.3 Is a complaints resolution mechanism described in national procurement documents? | Yes, at national level an Independent Review Panel (IRP) has been set up by Government of Bhutan. Anyone affected by the decision and feeling aggrieved can approach IRP. | L |
| D.4 Is there a formal non-judicial mechanism for dealing with complaints? | Yes, as above in response to D3 | L |
| 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 | L |
| E. ACCOUNTABILITY MEASURES | | |
| E.1 Is there a standard statement of ethics and are those involved in | Yes. | L |

| QUESTION | RESPONSE | RISK |
|--|---|----------|
| procurement required to formally commit to it? | Contractor and employer sign an Integrity Pact for every contract to avoid all forms of corruption or deceptive practice by following a system that is fair, transparent and free from any influence/unprejudiced dealings in the bidding process and contract administration. The Integrity Pact is part of the Bhutan Standard Bidding Document (SBD) | |
| E.2 Are those involved with procurement required to declare any potential conflict of interest and remove themselves from the procurement process? | Yes | L |
| E.3 Is the commencement of procurement dependent on external approvals (formal or de-facto) that are outside of the budgeting process? | No | L |
| E.4 Who approves procurement transactions, and do they have procurement experience and qualifications? | Ministerial Level Tender Committee- who has this oversight function for the entire agency. | L |
| 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? | | |
| a) Bidding document, invitation to pre-qualify or RFP | None | L |
| b) Advertisement of an invitation for bids, pre-qualification or call for EOIs | None | L |
| c) Evaluation reports | DLTC/MLTC | L |
| d) Notice of award | DLTC/MLTC | L |
| e) Invitation to consultants to negotiate | DLTC/MLTC | L |
| f) Contracts | None | L |
| E.6 Is the same official responsible for: (i) authorizing procurement transactions, procurement invitations, documents, evaluations and contracts; (ii) authorizing payments; (iii) recording procurement transactions and events; and (iv) the custody of assets? | Yes. However, there the final procurement decision is made by MLTC/DLTC thus mitigating this risk. | A |
| E.7 Is there a written auditable trail of procurement decisions attributable to individuals and committees? | Yes | L |

II. General Ratings

| Criterion | Risk |
|--------------------------------------|-------------|
| A. Organizational and Staff Capacity | A |
| B. Information Management | L |
| C. Procurement Practices | A |
| D. Effectiveness | L |
| E. Accountability Measures | L |
| OVERALL RISK RATING | A |

NCB ANNEX

National Competitive Bidding

1. General

The procedures to be followed for national competitive bidding shall be the open tendering/bidding method set forth in the [Procurement Rules and Regulations 2009](#) issued by the Ministry of Finance of the Royal Government of Bhutan with the clarifications and modifications described in the following paragraphs.

2. Domestic Preference

No preference of any kind shall be given to domestic bidders or for works of domestically manufactured goods. Clause 1.1.2.2 of the [Procurement Rules and Regulations 2009](#) shall not apply.

3. Registration

Foreign suppliers and contractors from ADB member countries shall be allowed to apply for pre-qualification and to bid, without national registration, licensing and other government authorizations, leaving compliance with these requirements until after notice of award and before signing of contract.

Where registration is required prior to award of contract, bidders: (i) shall be allowed a reasonable time to complete the registration process; and (ii) shall not be denied registration for reasons unrelated to their capability and resources to successfully perform the contract, which shall be verified through post-qualification.

4. Exclusion of Bidders / National Sanctions List

Exclusion of bidders for reasons cited in paragraph 2.1.4.1 of the BPM, including inclusion on national sanctions lists may be applied only with prior approval of ADB. Rejection of bids on account of "past poor performance" of bidders shall also be subject to ADB's prior approval.

5. Qualifications

Post qualification shall be used unless prequalification is explicitly provided for in the loan agreement/procurement plan.

If prequalification is undertaken, the prequalification criteria shall be based on ADB's User's Guide to Prequalification of Bidders.

From the date of advertisement, a minimum period of 28 days shall be allowed for the preparation and submission of prequalification applications.

6. Eligibility of Bidders

The eligibility of bidders shall be as defined under Eligibility provisions of ADB's Procurement Guidelines ("Guidelines") (March 2013, as amended from time to time), accordingly, no bidder or potential bidder should be declared ineligible for reasons other than those stated the Guidelines.

7. Procurement Thresholds and Procurement Methods

In cases of conflict between the thresholds as prescribed in Clause 4.1 of the BPM and the Procurement Plan, the lower threshold shall prevail. The procurement methods specified on the Procurement Plan shall be followed.

8. Procurement Process

One envelope open bidding process shall be used unless two stage process is explicitly provided for in the loan agreement/procurement plan.

9. Advertising

Bidding of contracts estimated at \$500,000 or more for goods and related services or \$1,000,000 or more for civil works shall be advertised on ADB's website via the posting of the Procurement Plan.

10. Bidding Documents

Procuring entities shall use standard bidding documents acceptable to ADB for the Procurement of Goods, Works and related Services.

11. Packaging

Slicing or splitting of contracts within a package shall not be used to change the contract sizes and the corresponding methods of procurement indicated in the loan agreement/procurement plan.

12. Bid Security and Performance Security

Where required, bid security (earnest money), retention money (or security deposit) and performance security (or performance guarantee) shall be in the form of a demand draft, certified check, letter of credit, or bank guarantee from a reputable bank.

The terms and conditions of bid security as well as retention money and performance security shall be clearly specified in the forms provided and/or conditions of contract in terms of periods of validity and grounds for forfeiture, or release of the bank guarantees, or refund of the cash security deposits.

13. Rejection of All Bids and Re-bidding

Bids shall not be rejected and new bids solicited without the ADB's prior concurrence.

14. Low Bids and Unbalanced Bids

Bids shall not be rejected solely because the bid price seriously lower or unbalanced. The bidder whose bid is determined to be the lowest evaluated substantially responsive bid may be required by the Executing Agency/Implementing Agency (EA/IA) to provide a higher performance security to a level sufficient to protect the EA/IA against financial loss in the event of default of the successful bidder under the Contract.

15. Disclosure of Decision on Contract Awards

At the same time that notification on award of contract is given to the successful bidder, the results of bid evaluation shall be published in a local newspaper, or a well-known freely accessible website identifying the bid and lot numbers and providing information on (i) name of each Bidder who submitted a Bid, (ii) bid prices as read out at bid opening; (iii) name of bidders whose bids were rejected and the reasons for their rejection, and (iv) name of the winning Bidder, and the price it offered, as well as duration and summary scope of the contract awarded. The executing agency/implementing agency/contracting authority shall respond in writing to unsuccessful bidders who seek explanations on the grounds on which their bids are not selected.

INFORMATION ABOUT PROJECT PROCUREMENT ENTITIES

A. Ministry of Works and Human Settlements

1. The Ministry of Works and Human Settlement was established in **2003**. Today, the ministry has three departments which implement projects, *Departments of Roads, Department of Engineering Services and Department of Human Settlement*.

2. **The Ministry carries out the following functions:**

- (i) Formulate policies and develop plans related to physical infrastructure in the country;
- (ii) Develop and implement Acts/regulations/standards related to physical infrastructure;
- (iii) Engage in and coordinate capacity building of technical human resources in the country;
- (iv) Set policies to promote appropriate construction industry;
- (v) Promote research and development that would serve to maintain a synergy between technology, environment and traditional values; and
- (vi) Develop plans and policies for proper human settlement through growth centers

3. The Department of Engineering Services reviews construction plans, issues permits, and performs inspections to ensure engineering projects are built safely and in compliance with approved codes in force and regulations helping to create a vibrant, livable, and safe-built community. The department develops expertise in a specified area and meets the specific requirements of other functional ministries, departments, agencies who are not required to fritter away their resources, in areas or performing functions which are not their core area of operation. It is like outsourcing a specific activity but within the fold of the Government. The Department has more than 70 regular engineering and architectural professionals with 14 of them working in the Water and Sanitation Division.

B. Mission of MOWHS

4. To provide safe, reliable and sustainable infrastructure for human settlement and transportation towards balanced regional development embodying the Bhutanese values.

Office and Structure.

5. MOWHS is located in Thimphu with four thromdes (designated municipalities) under its jurisdictions-Samdrup Jongkhar, Thimphu, Phuentsholing and Gelephu. Overall, there are 10 departments (including the municipalities) under the Ministry.

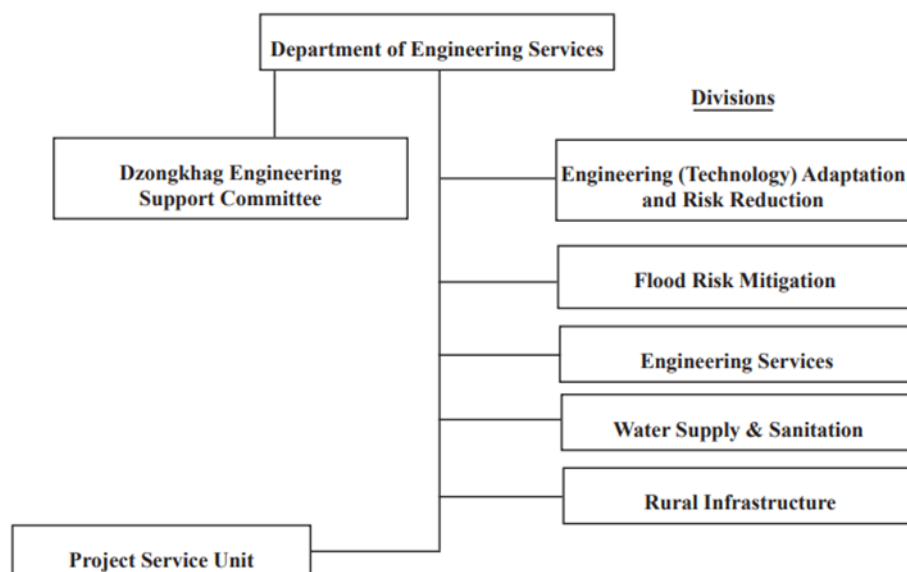
Figure 1: Organogram of MOWHS



6. MOWHS has undertaken several ADB funded projects through DOR and DES and PMUs and is aware of ADB's works procurement procedure.

Figure 2: Organogram of Department of Engineering Services

>>>continued from page 4

Organogram of Department Engineering Services

Source: DHS

C. Construction Development Board (CDB), Government of Bhutan¹

7. Construction Development Board (CDB) functions as an overseer as well as a promoter of the construction industry. One of the key functions of the CDB is the registration, classification and monitoring of contractors, consultants and engineers/architects. CDB acts as a bridge between the private and public sectors. Started by the Royal Government of Bhutan and functioning under the umbrella of Ministry of Works and Human Settlement, CDB has the responsibility to play the role of a coordinator, enabler and facilitator, address the pertinent issues and problems faced by the industry and create an atmosphere for a more vibrant development in the Bhutan construction industry.

8. The CDB undertakes following activities to achieve its broad objectives:

- (i) Provide "industry support" by assisting the private sector within the construction industry to develop and expand its market and to implement fair competition through policy reforms to ensure economy, efficiency and transparency in the industry;
- (ii) Promote "technology development" by encouraging and facilitating the effective use of best practices, appropriate techniques of the construction and quality supplies and materials;
- (iii) Launch "awareness initiatives" to apprise both the Contractors and Implementing Agencies of Rules and Regulations, Procurement Procedures, Safety and Health standards and Current requirements and services provided by CDB; and
- (iv) Undertake "manpower development" by identifying necessary construction skills and assisting, where appropriate, coordinating the creation and improvement of

¹ Information from CDB website www.cdb.gov.bt/.

skills training and certification programs for the personnel involved who are active in the construction activities of the industry.

9. Only contractors who are registered with the CDB can bid for government sponsored construction works. Registering with the CDB is a form of prequalification. CDB registration certificate is valid for two years and has to be re-validated every two years. Organogram of CDB is presented in Figure 3.

10. To be registered, contractors have to pay a fee and apply with evidence of finance, tax registration, equipment and manpower. Fees payable during first enlistment and subsequent renewals by contractors is shown below.

Figure 3: CDB Organogram

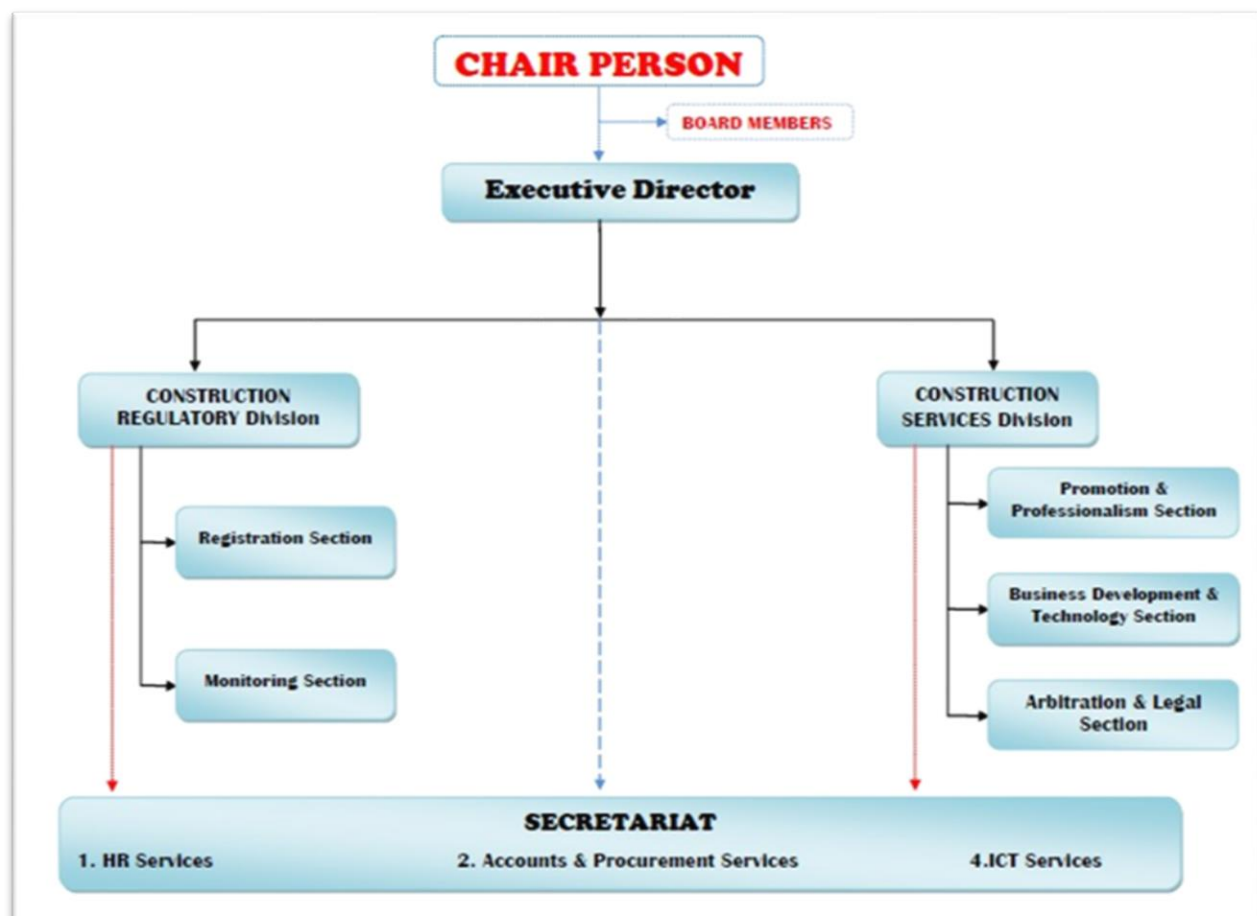


Table 1: Fees Payable

| Contractor size | First Time (Bhutan Ngultrum) | Renewal (Bhutan Ngultrum) |
|-----------------|------------------------------|---------------------------|
| Small | 5000 | 2500 |
| Medium | 10000 | 5000 |
| Large | 15000 | 7500 |

11. CDB has the following number of various entities registered which are listed on its website as of 1 December 2016. A separate list shows 59 contractors whose registration is revoked due to various reasons.

- (i) Arbitrators - 28
- (ii) Contractors, large - 190 (including few from India, China, Japan, Thailand). Total registered contractors (including large, medium and small) 2852
- (iii) Consultants - 59 (all Bhutanese entities)
- (iv) Architects - 125
- (v) Specialized Trades – 179

12. PPTA Procurement Specialist met In-Charge Director General of CDB on 15 September 2016. The discussion summary is presented;

- (i) Bhutan schedule of Rates does not have many work items. Implementing agencies write their own specifications which are inadequate creating problems during implementation;
- (ii) Planning, design and specifications provided by employers is incomplete;
- (iii) Contracting is mostly small scale, individual owned, family business in Bhutan; Underbidding is a weakness of contractors. Many a times, they end up being unable to execute work as per specifications and in time;
- (iv) Contractors are registered by CDB in 3 size classes; small (<Nu4 million), medium (4-15 million Nu) and Large (>Nu15 million). Numbers are estimated cost of single contracts;
- (v) SBD 2009 (revised in 2015) issued by Ministry of Finance is mandatory- 2014 FIDIC based.
- (vi) Largest works contracts (roads, bridges) implemented by national contractors are of \$10 million;
- (vii) Details of contractor, consultant, architect, engineer registration requirements are available on CDB website, www.cdb.bt;
- (viii) Draft Construction Industry Development Rules-2016 have been prepared; and
- (ix) Requirement of having separate international firm as PMC and National firm as DSC has caused problems previously and in one instance has led to arbitration.

D. Construction Association of Bhutan²

13. Contractors Association of Bhutan was established in January 2000 for the development and promotion of Bhutanese construction industry. By July 2002, the Association had a full-fledged Secretariat established in the capital, Thimphu. In 2002 the General Body of CAB approved change of name from Contractors Association of Bhutan to Construction Association of Bhutan (CAB) for meaningful representation and wider coverage of the related industrial entities under the construction sector. CAB's stated mission is to "develop and promote the Bhutanese construction industry and to represent the Bhutanese construction industry at national, regional and international level"

14. The broad functions of the CAB are:

- (i) Address specific problems and policy issues related to construction industry at National, Regional and International Level;

² Relevant information from CAB website www.cab.org.bt

- (ii) Interact with concerned agencies both within and outside the country for development and promotion of construction industry;
- (iii) Promote awareness amongst the construction industry on national developmental plans and programs;
- (iv) Initiate and implement developmental and promotional plans and programs for construction entities;
- (v) Represent and Advocate for development and promotion of construction industry both within and outside the country;
- (vi) Gear the construction industry towards strengthening of the association as a strong representative forum for construction industry's benefit, both within and outside the Kingdom; and
- (v) Act as a bridge between the Bhutan Chamber of Commerce and Industry (BCCI) and the Government on behalf of the contractors.

15. PPTA Procurement Specialist met General Secretary of CAB on 15 September 2016. From the CAB's website and personal discussions, the following is inferred:

- (i) CAB wishes to be vibrant, employment generating, responsible, deliver its corporate social responsibility and develop capacity of its members to do business better;
- (ii) CAB expects government owned entities should compete with private sector contractors on equal terms;
- (iii) Capacity development by government of contractors should focus on quality and training;
- (iv) There is a mismatch of manpower required and available within Bhutan. Technical training institute graduates are reluctant to do skilled work, look for white collar jobs, so their training is wasted;
- (v) For loans from banks, contractors need collateral assets +3% bank commission. Interest rate is a high 14% per annum for overdraft, makes bank finance costly;
- (vi) Not getting right people to work in construction industry. Getting foreign workers is complex, involves legal procedures and takes time;
- (vii) Underbidding for contracts is true and needs to be controlled;
- (viii) SDB evaluation tool developed and implemented by CDB undermines contractor development. It is biased towards financial capacity, assessment is points based; and
- (ix) Joint venture with foreign contractors possible, need of registration with CDB for every contract.

DRAFT PROCUREMENT PLAN OF STUDP

Basic Data

| | |
|---|---|
| Project Name: Secondary Towns Urban Development Project | |
| Project Number: 42229-016 | Approval Number: xxxx |
| Country: Bhutan | Executing Agency: Department of Engineering Services |
| Project Procurement Classification: B | Implementing Agencies: Samdrup Jongkhar, Sarpang, Trashigang |
| Procurement Risk: Moderate | |
| Project Financing Amount: \$12 million ADB Financing: \$10 million Non-ADB Financing: NA | Project Closing Date: 31 July 2023 |
| Date of First Procurement Plan: 17 November 2017 | Date of this Procurement Plan: 24 April 2018 |

1. Methods, Thresholds, Review and 18-Month Procurement Plan

a. Procurement and Consulting Methods and Thresholds

1. Except as the Asian Development Bank (ADB) may otherwise agree, the following process thresholds shall apply to procurement of goods and works.

| Procurement of Goods and Works | | |
|---|-----------------------------------|--|
| Method | Threshold | Comments |
| International Competitive Bidding for Goods | \$1,000,000 and Above | |
| National Competitive Bidding for Goods | Between \$100,000 and \$ 999,999 | Usage will follow the NCB (Box A1). Prior review applies to procurement of the first NCB contract by the program preparation and management unit. If the first contract is procured satisfactorily, post review used thereafter. |
| Shopping for Goods | Below \$100,000 | Prior review applies to procurement of the first shopping contract by the Program preparation and management unit. If the first contract is procured satisfactorily, post review used thereafter. |
| International Competitive Bidding for Works | \$3,000,000 and above | This is based on approved RRP and Procurement Plan |
| National Competitive Bidding for Works | Between \$100,000 and \$2,999,999 | Usage will follow the NCB (Box A1). Prior review applies to procurement of the first NCB contract by the program preparation and management unit. If the first contract is procured satisfactorily, post review used thereafter. |

| Procurement of Goods and Works | | |
|--|--|---|
| Method | Threshold | Comments |
| Shopping for Works | Below \$100,000 | Prior review applies to procurement of the first shopping contract by the Program preparation and management unit. If the first contract is procured satisfactorily, post review used thereafter. |
| Consulting Services | | |
| Method | Comments | |
| Consultant's Qualification Selection for Consulting Firm | | |
| Quality- and Cost-Based Selection for Consulting Firm | Quality- and cost-based selection based on 90:10 quality–cost weighting. Applied in accordance with Guidelines on the Use of Consultants (2013, as amended from time to time). | |
| Individual Consultants Selection for Individual Consultant | Applied in accordance with Section 2.34, Guidelines on the Use of Consultants | |

b. Goods and Works Contracts Estimated to Cost \$1 Million or More

2. The following table lists goods and works contracts for which the procurement activity is either ongoing or expected to be completed within the next 18 months.

| Package Number | General Description | Estimated Value (US\$) millions | Procurement Method | Review (Prior/ Post) | Bidding Procedure | Advertisement Date (Qr/Yr) | Comments Small Works |
|---|--|---------------------------------|--------------------|----------------------|-------------------|----------------------------|--|
| 1. Sarpang Municipality | | | | | | | |
| SM/UR/001 | Development of Shechamthang LAP Infrastructure: Roads, Drainage and Water Supply Project | 2.531 | NCB | Prior | 1S1E | Q1 2018 | Prequalification of Bidders: N Domestic Preference Applicable: N Bidding Document: Small Works |
| SM/UWS/002 | Sarpang Water Supply Development Project | 1.127 | NCB | Prior | 1S1E | Q4 2017 | Prequalification of Bidders: N Domestic Preference Applicable: N Bidding Document: Small Works |
| 2. Samdrup Jongkhar Municipality | | | | | | | |
| SJM/WS/001 | Rehabilitation of Samdrup Jongkhar Water Supply System Improvement Project | 1.158 | NCB | Prior | 1S1E | Q4 2018 | Prequalification of Bidders: N Domestic Preference Applicable: N Bidding Document: Small Works |

c. Consulting Services Contracts Estimated to Cost \$100,000 or More

3. The following table lists consulting services contracts for which the recruitment activity is either ongoing or expected to commence within the next 18 months.

| Package number | General Description | Estimated Value (US\$) millions | Recruitment Method | Review (Prior/Post) | Advertisement Date (Qr/Yr) | Type of Proposal | Comments |
|----------------|--|---------------------------------|--------------------|---------------------|----------------------------|------------------|---|
| CS1 | Project Management and Supervision consultant (PMSC) | 0.518 | QCBS | Prior | Q4 2017 | STP | National Competitive Selection. Quality-cost ratio of 90:10 |
| CS2 | Recruitment of Construction Supervision Coordinator | 0.235 | ICS | Prior | Q2 2018 | NA | Assignment: National Consultant |
| CS3 | NGO for Community Mobilization | 0.160 | CQS | Prior | Q1 2019 | STP | Assignment: National Consultant |

d. Goods and Works Contracts Estimated to Cost Less than \$1 million and Consulting Services Contracts Less than \$100,000 (Smaller Value Contracts)

4. The following table lists smaller-value goods, works and consulting services contracts for which the activity is either ongoing or expected to commence within the next 18 months.

i. Goods and Works

| Package Number | General Description | Estimated Value (US\$) millions | Recruitment Method | Review (Prior/Post) | Type of Proposal | Advertisement Date (Qr/Yr) | Comments |
|----------------|---|---------------------------------|--------------------|---------------------|------------------|----------------------------|--|
| SJM/SST/003 | Samdrup Jongkhar sanitation and sewerage project | 0.973 | NCB | Prior | 1S1E | Q1 2019 | Prequalification of Bidders: N Domestic Preference Applicable: N Bidding Document: Small Works |
| TW/WS/002 | Trashigang water distribution network improvement project | 0.560 | NCB | Prior | 1S1E | Q4 2017 | Prequalification of Bidders: N Domestic Preference Applicable: N Bidding Document: Small Works |

ii. Consulting Services

| Package Number | General Description | Estimated Value (US\$) millions | Recruitment Method | Review (Prior/Post) | Advertisement Date (Qr/Yr) | Type of Proposal | Comments |
|----------------|---|---------------------------------|--------------------|---------------------|----------------------------|------------------|-------------------------------------|
| CS6 | Recruitment Stormwater Management/ Drainage Design Engineer | 0.048 | ICS | NA | Q1 2019 | NA | Assignment International Consultant |
| CS7 | Recruitment Institutional Specialist | 0.024 | ICS | NA | Q3 2018 | NA | Assignment International Consultant |
| CS8 | Urban infrastructure trainer | 0.052 | ICS | NA | Q4 2018 | NA | Assignment International Consultant |

2. Indicative List of Packages Required Under the Project

5. The following table provides an indicative list of goods, works and consulting services contracts over the life of the project, other than those mentioned in previous sections (i.e., those expected beyond the current period).

| Goods and Works | | | | | | | |
|---------------------|--|------------------------------|-------------------------------|--------------------|---------------------|-------------------|--|
| Package Number | General Description | Estimated Value (cumulative) | Estimated Number of Contracts | Procurement Method | Review (Prior/Post) | Bidding Procedure | Comments |
| SJM/WS/002 | Dewathang Water Supply Augmentation Project | 1.230 | 1 | NCB | Prior | 1S1E | To be advertised Q2 2019 Prequalification of Bidders: N Domestic Preference Applicable: N Bidding Document: Small Works |
| TW/WS/003 | Rangjung intake and WTP rehabilitation project | 0.765 | 1 | NCB | Prior | 1S1E | To be advertised Q1 2020. Prequalification of Bidders: N Domestic Preference Applicable: N Bidding Document: Small Works |
| Consulting Services | | | | | | | |

| Package Number | General Description | Estimated Value (cumulative) | Estimated Number of Contracts | Recruitment Method | Review (Prior/Post) | Type of Proposal | Comments |
|----------------|--|------------------------------|-------------------------------|--------------------|---------------------|------------------|--------------------------|
| CS5 | Recruitment Wastewater Systems Design Engineer | 0.064 | 1 | ICS | NA | NA | To be advertised Q2 2019 |

3. List of Awarded and On-going, and Completed Contracts

6. The following tables list the awarded and on-going contracts, and completed contracts.

a. Awarded and On-going Contracts

| Goods and Works | | | | | | | |
|-----------------|---------------------|-----------------|------------------------|--------------------|-----------------------------------|---|-----------------------|
| Package Number | General Description | Estimated Value | Awarded Contract Value | Procurement Method | Advertisement Date (quarter/year) | Date of ADB Approval of Contract Award ^a | Comments ^b |
| | | | | | | | |
| | | | | | | | |

^a Date of ADB Approval of Contract Award is the date of No-Objection letter to the executing agency or implementing agency.

^b Indicate the Contractor's name and the contract signing date.

| Consulting Services | | | | | | | |
|---------------------|---------------------|-----------------|------------------------|--------------------|-----------------------------------|---|-----------------------|
| Package Number | General Description | Estimated Value | Awarded Contract Value | Recruitment Method | Advertisement Date (quarter/year) | Date of ADB Approval of Contract Award ^a | Comments ^b |
| | | | | | | | |
| | | | | | | | |

^a Date of ADB Approval of Contract Award is the date of No-Objection letter to the executing agency or implementing agency.

^b Indicate the Consulting Firm's name and the contract signing date.

i. Completed Contracts

| Goods and Works | | | | | | | | |
|-----------------|---------------------|-----------------|----------------|--------------------|-----------------------------------|---|---------------------------------|----------|
| Package Number | General Description | Estimated Value | Contract Value | Procurement Method | Advertisement Date (quarter/year) | Date of ADB Approval of Contract Award ^a | Date of Completion ^b | Comments |
| | | | | | | | | |
| | | | | | | | | |

^a Date of ADB Approval of Contract Award is the date of No-Objection letter to the executing agency or implementing agency.

^b The Date of Completion is the physical completion date of the contract.

| Consulting Services | | | | | | | | |
|---------------------|---------------------|-----------------|----------------|--------------------|-----------------------------------|---|---------------------------------|----------|
| Package Number | General Description | Estimated Value | Contract Value | Recruitment Method | Advertisement Date (quarter/year) | Date of ADB Approval of Contract Award ^a | Date of Completion ^b | Comments |
| | | | | | | | | |
| | | | | | | | | |

^a Date of ADB Approval of Contract Award is the date of No-Objection letter to the executing agency or implementing agency.

^b The Date of Completion is the physical completion date of the contract.

4. Non-ADB Financing

7. The following table lists goods, works and consulting services contracts over the life of the project, financed by Non-ADB sources.

| Goods and Works | | | | |
|---------------------|------------------------------|-------------------------------|--------------------|----------|
| General Description | Estimated Value (cumulative) | Estimated Number of Contracts | Procurement Method | Comments |
| | | | | |
| | | | | |
| | | | | |

| Consulting Services | | | | |
|---------------------|------------------------------|-------------------------------|--------------------|----------|
| General Description | Estimated Value (cumulative) | Estimated Number of Contracts | Recruitment Method | Comments |
| | | | | |
| | | | | |
| | | | | |

5. National Competitive Bidding

a. General

8. The procedures to be followed for national competitive bidding shall be the open tendering/bidding method set forth in the Procurement Rules and Regulations 2009 and subsequent amendments issued by the Ministry of Finance of the Kingdom of Bhutan with the clarifications and modifications described in the following paragraphs.

b. Domestic Preference

9. No preference of any kind shall be given to domestic bidders or for works of domestically manufactured goods. Clause 1.1.2.2 of the Procurement Rules and Regulations 2009 shall not apply.

c. Registration

10. Foreign suppliers and contractors from ADB member countries shall be allowed to apply for pre-qualification and to bid, without national registration, licensing and other government

authorizations, leaving compliance with these requirements until after notice of award and before signing of contract.

11. Where registration is required prior to award of contract, bidders: (i) shall be allowed a reasonable time to complete the registration process; and (ii) shall not be denied registration for reasons unrelated to their capability and resources to successfully perform the contract, which shall be verified through post-qualification.

d. Exclusion of Bidders or National Sanctions List

12. Exclusion of bidders for reasons cited in paragraph 2.1.4.1 of the BPM, including inclusion on national sanctions lists may be applied only with prior approval of ADB. Rejection of bids on account of "past poor performance" of bidders shall also be subject to ADB's prior approval.

e. Qualifications

13. Post qualification shall be used unless prequalification is explicitly provided for in the loan agreement/procurement plan.

14. If prequalification is undertaken, the prequalification criteria shall be based on ADB's User's Guide to Prequalification of Bidders.

15. From the date of advertisement, a minimum period of 28 days shall be allowed for the preparation and submission of prequalification applications.

f. Eligibility of Bidders

16. The eligibility of bidders shall be as defined under Eligibility provisions of ADB's Procurement Guidelines ("Guidelines") (April 2015, as amended from time to time), accordingly, no bidder or potential bidder should be declared ineligible for reasons other than those stated the Guidelines.

g. Procurement Thresholds and Procurement Methods

17. In cases of conflict between the thresholds as prescribed in Clause 4.1 of the BPM and the Procurement Plan, the lower threshold shall prevail. The procurement methods specified on the Procurement Plan shall be followed.

h. Procurement Process

18. One envelope open bidding process shall be used unless two stage process is explicitly provided for in the loan agreement/procurement plan.

i. Advertising

19. Bidding of contracts estimated at \$500,000 or more for goods and related services or \$1,000,000 or more for civil works shall be advertised on ADB's website via the posting of the Procurement Plan.

j. Bidding Documents

20. Procuring entities shall use standard bidding documents acceptable to ADB for the Procurement of Goods, Works and related Services.

k. Packaging

21. Slicing or splitting of contracts within a package shall not be used to change the contract sizes and the corresponding methods of procurement indicated in the loan agreement/procurement plan.

l. Bid Security and Performance Security

22. Where required, bid security (earnest money), retention money (or security deposit) and performance security (or performance guarantee) shall be in the form of a demand draft, certified check, letter of credit, or bank guarantee from a reputable bank.

23. The terms and conditions of bid security as well as retention money and performance security shall be clearly specified in the forms provided and/or conditions of contract in terms of periods of validity and grounds for forfeiture, or release of the bank guarantees, or refund of the cash security deposits.

m. Rejection of All Bids and Re-bidding

24. Bids shall not be rejected, and new bids solicited without the ADB's prior concurrence.

n. Low Bids and Unbalanced Bids

25. Bids shall not be rejected solely because the bid price seriously lower or unbalanced. The bidder whose bid is determined to be the lowest evaluated substantially responsive bid may be required by the executing agency or implementing agency to provide a higher performance security to a level sufficient to protect the executing agency or implementing agency against financial loss in the event of default of the successful bidder under the Contract.

o. Disclosure of Decision on Contract Awards

26. At the same time that notification on award of contract is given to the successful bidder, the results of bid evaluation shall be published in a local newspaper, or a well-known freely accessible website identifying the bid and lot numbers and providing information on (i) name of each Bidder who submitted a Bid, (ii) bid prices as read out at bid opening; (iii) name of bidders whose bids were rejected and the reasons for their rejection, and (iv) name of the winning Bidder, and the price it offered, as well as duration and summary scope of the contract awarded. The executing agency/implementing agency/contracting authority shall respond in writing to unsuccessful bidders who seek explanations on the grounds on which their bids are not selected.

6. Consultant's Terms of Reference

27. Terms of reference of Project Management and Supervision consultants is attached as Appendix 3 of the Project Administration Manual.