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PROCUREMENT FOR LOCAL DEVELOPMENT

A GUIDE TO BEST PRACTICE IN LOCAL GOVERNMENT PROCUREMENT IN LEAST DEVELOPED COUNTRIES

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Foreword

UNCDF supports capital investments across the Least Developed Countries to improve local service delivery through developing the capacity for better local governance and finance. As discussed in this publication, good procurement practices are critical to developing that capacity.

Every day, billions of dollars are being invested in public infrastructure, goods and services all over the world by governments, the private sector and individuals, and all have the same objective – value for money. However, good procurement practices are not only about money, but also about efficiency, effectiveness, transparency and accountability which are all good governance indicators. Unfortunately, procurement is prone to errors and to deliberate abuse of the process for personal gain by officials or by contractors and suppliers. In this context, it is clear that good governance in procurement can bring immediate benefits in terms of money savings and/or improved quality of the goods, works or services procured.

This guide explains the underlying principles of public procurement and sets those principles in the context of local development programs and the work of local governments. Building on international best practices and key lessons from UNCDF's local development programs worldwide, it explains procurement procedures and provides assistance on how to conduct procurement so as to achieve the best value for money from local development investments, while at the same time assisting the local administration to develop capacity for good governance.

I hope that this publication will provide useful knowledge for policymakers and development practitioners, and that it will contribute to enrich the discussion on how to best reform and implement procurement systems across the developing world.

Marc Bichler

Executive Secretary

UN Capital Development Fund

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Glossary of Procurement Terminology

Like many other subjects, procurement has its own terminology and sometimes uses words in ways which are different from their meaning in everyday English. This glossary is not a complete guide to procurement terminology but is intended to help the reader understand the terms used in the Best Practice Guide, including particular uses adopted to suit the context.

Term	Meaning as Used in This Guide
Award of Contract	The final decision to select a contractor from amongst the bidders. In most systems, the bid plus notification of the award automatically creates a contract – before the actual signing.
Bid	A binding offer to implement works or to supply goods or services in return for a stated price.
Bid Document	The document distributed to bidders, who study the document, complete the bid forms and return it, usually in a sealed envelope. The main parts of a bid document are usually the Instructions to Bidders, the description of the "product," the Form of Contract and the conditions of the contract.
Bid Price	The total price bid by a bidder. Note that in large or complex contracts the bid price quoted on the Form of Bid may be less important than the Evaluated Price which is the price determined by the Evaluation Committee as a fair basis of comparison with the other bids.
Bid Manipulation	Any kind of action intended to pre-determine the outcome of competitive bidding, for example by collusion between the bidders, or by passing confidential information from the purchaser to one of the bidders.
Bid Security	A financial guarantee provided by the bidder to the purchaser. If the bidder is awarded the contract and refused to sign, or if the bidder withdraws its bid before the end of the bid validity period the bid security is forfeited. The bid security is normally set at a small percentage (2%–5%) of the bid price and is normally in the form of a bank draft, certified cheque or irrevocable letter of credit.
Collusion	Dishonest cooperation between bidders, or between a bidder and officials of the purchaser. The World Bank defines: "collusive practice" as "an arrangement between two or more parties designed to achieve an improper purpose, including to improper influence the actions of another party."
Community Contracting	Term used to describe a variety of modes of involving the beneficiary community in procurement or implementation. In this Guide, "Community Contracting" is used specifically to mean Direct Contracting of a community-based organization to implement works.
Competitive Bidding	General term for any system in which a number of different firms have the opportunity to submit competing bids for a contract, with the best value-for-money bid selected by the purchaser.

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Term	Meaning as Used in This Guide
Conditions of Contract	The document that states the obligations of the parties to the contract, supervision arrangements, the criteria for release of payments, provisions for dealing with any problems that arise during implementation, arrangements for settling disputes, etc. Usually a standard conditions of contract document is used with modifications or special conditions relevant to the particular contract.
Contract	A legally enforceable agreement between two or more parties. Note that for a contract to be legally enforceable, the parties themselves must be natural or legal persons. Entities such as "local development committees" are probably not legal persons and the "contracts" they sign are probably not enforceable.
Contract Documents	The set of documents that together make the contract. These usually include a Form of Contract, Conditions of Contract, technical drawings and specifications, etc. The Conditions of Contract usually state the order of priority, in case there is any inconsistency between the different documents.
Contract Price	The total price stated in the contract document – normally the total of the bills of quantities. In a lump-sum contract, it will usually be the same as the final price paid to the contractor. In a re-measured contract, the final price will be different from the contract price shown in the contract document.
Default	Failure (by either party) to comply with obligations under the contract.
Direct Works	Implementation of works by a department of national or local government (as opposed to through a private sector or community contractor). Labour intensive works in which the workers are hired, managed and paid directly by government officials should be considered as a type of Direct Works.
Employer	The usual term in a contract document for the client or "purchaser" i.e. in procurement for local development, the local authority.
Evaluated (Bid) Price	A price determined by the Bid Evaluation Committee as a fair basis of comparison with the other bids. The evaluated price may be different from the bid price because of arithmetic corrections or because of other factors.
Force Account	Same as Direct Works.
Form of Bid	A short form in the bid document in which the bidder formally offers to undertake the works in return for the bid price.
Form of Contract	A short form with a summary of the contract and the signatures of the two parties.
Goods	Essentially any type of material object that is not works.
International Competitive Bidding	Competitive bidding with the bids advertised internationally. The language of the contract is usually in English or another international language and the bids are in dollars or other freely convertible currency. Most procurement systems require ICB for larger contracts.
Liquidated Damages	Damages payable by the contractor, normally in the form of deductions from payments, as compensation to the purchaser for late completion of the works. Typically, liquidated damages might be charged at 0.1% per day up to a maximum of 10% (equivalent to 100 days delay).
Lump-Sum Contract	A contract in which the price is expressed as a single amount for the whole of the works, goods or services. The contractor completes the quantity of work shown in the contract document and is paid for that amount without re-measurement. The unit prices in the bills of quantities are only used in case of a variation order – an instruction by the employer to increase or decrease the quantity of work.

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Term	Meaning as Used in This Guide
National Competitive Bidding	Competitive bidding in which the bids are only advertised within the country. The contract may be in the local language and bids in the local currency. Note that under the rules of the international development banks, overseas firms must be allowed to bid for NCB contracts if they wish to do so.
Price Bracketing	Rejection of bids that fall outside a band centred on the cost estimate: For example, 10% above or below the estimate. Price bracketing is not permitted under the rules of the international development but is quite common in national procurement regulations, supposedly to prevent unrealistically low bids from being accepted.
Performance-Based Contract	A contract in which the contractor is paid to deliver a certain quantity of output of a defined quality, but has considerable freedom to decide the means and the inputs required. Performance-based contracts are sometimes used to construct and maintain roads, with the contractor being paid for each month that the road meets a certain quality specification (width, ride quality, etc.).
Performance Security	A financial guarantee given to the purchaser by the contractor, usually in the form of a bank draft, irrevocable letter of credit or certified cheque. The performance security is forfeited in case of default by the contractor.
Post Review	A review of the procurement process, based on documentary records and sometimes an inspection of the works, after the procurement has been completed. Part of the World Bank standard system for monitoring procurement in the projects it supports.
Post-Qualification	Checking that the lowest evaluated bidder is qualified to implement the contract (i.e. that the bidder meets criteria such as legal status, experience, financial stability, etc.). Post review should be carried out using strictly objective criteria that are included in the bid documents. Therefore, the bidder can know whether it is qualified or not before submitting a bid.
Pre-Qualification	Checking the qualifications of interested bidders and forming a "short list" of pre-qualified contractors who are then invited to bid. Pre-qualification is used on large contracts to reduce the costs of checking many bids some of which may be from ineligible bidders. It is also used to form lists of pre-qualified contractors who are eligible to bid for small contracts.
Prior Review	Review and issue of No Objection to the procurement process before decisions are finalized, particularly before bid documents are issued and before the contract is awarded. The World Bank and some other donors require the right of prior review for large or potentially sensitive procurements.
Procurement	The complete process of obtaining something, usually a capital item (works or goods) or a high-value service. Procurement includes developing specifications, market research, price search through bidding or negotiation, purchase and taking delivery.
Procurement Review Committee	A committee whose principal role is to review procurement decisions to verify that the procurement process has been correctly followed. The procurement review committee does not carry out procurement directly. In a local government, procurement review may be a function of a committee of elected councillors (while procurement is done by officials).

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Term	Meaning as Used in This Guide
Project Engineer	In some contract administration systems there is a Project Engineer who is employed by the purchaser, but who is obliged to act impartially between the purchaser and the contractor in some cases. The Project Engineer has independent powers to make decisions and to certify payments in some cases. An official who reports to the Project Manager and who has no independent decision-making powers is not a Project Engineer in this sense. It is not normal to have a "Project Engineer" in local development procurement, but it is important to know that some standard contract conditions and specifications refer to this position – the references should be deleted and replaced with "Project Manager" or whatever term is appropriate.
Qualification	Checking the eligibility of bidders to be awarded a contract. Qualification should be based on objective, pass/fail criteria which are published.
Re-measured contract	A contract in which the final amount paid to the contractor is determined by measuring the actual quantities of work completed and multiplying by the unit prices in the bills of quantities. Therefore, the contract price stated in the contract document is an estimate only. Large civil engineering contracts are normally re-measured as it is impossible to determine all quantities accurately in advance. Looked at another way, re-measurement transfers some of the risk from the contractor to the employer.
Rent-Seeking	Attempting to obtain a financial benefit without producing anything of economic value in return. Rent-seeking can include both legal and illegal behaviour but the term is particularly applied to cases where officials seek to abuse their positions for personal advantage.
Request for Proposals	Invitation to bid for a contract to provide professional services, or the bid document itself. A request for proposals may be advertised openly but more often it is sent to firms on a shortlist based on expressions of interest submitted in response to an open advertisement.
Request for Quotations	Invitation to bid for a works or goods contract, sent to selected contractors or suppliers (rather than advertised openly). Also known as "shopping."
Retention	A deduction, commonly 10% of each payment to the contractor, withheld by the purchaser. Retention functions as a type of performance guarantee and also allows a "margin of error" in calculation of interim payments. In major contracts, retention is normally transferred into a special account held by the purchaser. Usually half the retention is released on completion of the works, while the other half is retained until the end of the guarantee period.
Services	Any "product" that is not a physical thing, i.e. that is not works or goods. Services may be divided into professional services in which the main component of cost is the fees of professional staff, and physical services such as transport, repair and maintenance, solid waste collection, etc.
Technical Specification	A document that defines the required quality of goods or works. For goods this is usually the key document defining what is required (for example, the engine power and other features of a vehicle). For works contracts, the technical specification describes the quality of each type of construction work shown on the drawings, together with methods that will be used to test and measure it – for example: the required strength and other properties of concrete. Technical specifications are often standard documents used internationally. However, these standard specifications are not always appropriate for small contracts, mainly because they assume the existence of sophisticated laboratory facilities for testing.

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Term	Meaning as Used in This Guide
Technical Supervisor	In a works contract, the engineer or other technically qualified person supervises the works on behalf of the project manager. Unlike a "Project Engineer" a Technical Supervisor does not have independent decision-making powers – his or her reports are recommendations to the Project Manager. A suitably qualified person may play the same role in contracts for supply of goods or services.
Tender	Means the same as "Bid." In this guide, "bid" is used throughout.
Tender Documents	See Bid Documents.
Terms of Reference	The document that defines the inputs, methods of working and expected outputs in a contract to provide professional services. The ToR has the same function as the technical specification in a contract for supply of goods or the drawings and specifications in a works contract.
Threshold	A limit (estimated) value above which a particular procurement method must be used. For example, if the threshold for open competitive bidding is $10,000, contracts up to that value may be procured by shopping but open competitive bidding must be used for higher-value contracts.
Variations	Instructions by the employer to increase or decrease the quantity of works, goods or services, agreed in the contract. Variations are usually priced according to the unit prices submitted by the bidder.
Works	Any contract in which the principal component of the costs is construction or repair work on-site and resulting in an output that is fixed in on place – buildings, roads, canals, etc. A contract to supply and install a generator would be considered as "goods" if the value of the generator (delivered to the site) is higher than the cost of the work required to install it (construction of foundations, housing, etc.).

FOUNDATIONS

Chapter 1: Introduction

About this Chapter

Procurement is about good governance and value for money. This chapter describes the reasons why good procurement practice is important in local development programs. It goes on to describe and outline the contents of the Guide and how it should be used.

Why Does Good Procurement Practice Matter?

Good procurement practice results in reduced costs and improved value for money.

UNCDF local development programs in least developed countries support investments to improve the welfare of local communities and develop capacity for better local governance together in a single process. Procurement, the process by which the local administration buys works, goods and services – is a major part of the Public Expenditure Management (PEM) cycle.[1] Procurement is time-consuming and can require complex procedures. There are risks of errors and of deliberate abuse of the process for personal gain by officials or by contractors and suppliers. Problems in procurement can lead to delays, poor quality or lack of value-for-money and can undermine the trust of the local community. Good procurement practice includes many of the themes of good governance, including efficiency, effectiveness, transparency and accountability. Good governance in procurement brings immediate benefits in terms of money savings or improved quality of the goods, works or services procured. In turn, establishing and demonstrating the benefits of good procurement practice results in improved administrative capacity and better understanding of the essential building blocks of good governance. Therefore, good procurement practice is a core concern for local development programs supported by UNCDF in the Asia-Pacific region and worldwide (see box).

Why A Best Practice Guide?

Local officials and local development program staff commonly regard procurement as a problem area. The rules governing procurement are seen as complex and obscure. Even where staff, officials, contractors and suppliers are familiar with the steps of the procurement process they may not understand the purpose of some important steps. Procurement is supposed to ensure best value for money, but officials often complain that procurement rules cause delays, increase costs and lower quality of output than could be achieved "if we were allowed to just get on with it." Furthermore, procurement rules are often seen as an

1 See "Delivering the Goods: Building Local Government Capacity to Achieve the Millennium Development Goals, A Practitioners' Guide," UNCDF, 2005.

obstacle to program objectives such as building capacity at the community level, generating local employment or creating opportunities for vulnerable or disadvantaged sectors of the population. Some of these complaints result from a misunderstanding of the purpose of procurement rules or from a failure to correctly follow procedures, but real problems arise from the use of procurement rules that are not appropriate to the situation.

Procurement rules exist for a reason – most generally, to ensure best value in return for expenditure of public money. When program staff, officials, and contractors understand how a rule increases value for money, they are less likely to see the rule as complicated or burdensome. Where following a rule does not produce the intended result, there may be a need to review the rule and, if necessary, change it to suit the local situation. Procurement can never be made "simple" but it does not have to be more complicated than the other parts of the PEM cycle, such as planning, financial management, and so on. Complex procedures may be needed for large, high-value investments but most investment expenditures of local administrations in least developed countries are quite small.

This guide seeks to explain the underlying principles of public procurement and to set those principles in the context of local development programs. It explains the reasons for specific procurement procedures and gives advice on the situations in which parts of these procedures may or may not be appropriate. It sets out some basic elements of best practice in procurement with different options that may be appropriate to local circumstances. It gives advice on how to conduct procurement so as to achieve the best value for money from local development investments (where value is defined in terms of the program objectives) while assisting the local administration to develop capacity for good governance.

How is Local Development Procurement Different?

Most countries have laws or regulations governing public procurement. These laws or regulations differ from country to country but most share many features in common, based on what may be termed a "standard model" of good procurement practice. International agencies such as The World Bank provide assistance to governments to improve public procurement regulations, with the objective of strengthening procurement practice nationally and harmonizing procedures between countries.

Table 1: Size and Type of Contracts in UNCDF Supported LD Programs[2]

Country	# SNA	Average development budget	Average Contract Size	% Works	% Goods	% Services
Cambodia	1,621	$ 9,000	$ 9,000	100%	0%	0%
Lao PDR	27	$80,000	$13,450	100%	0%	0%
Bangladesh	388	$ 7,000	$ 2,000	80%	10%	10%
Timor-Leste	8	$207,500	$14,000	100%	0%	0%
Overall	2,044	$10,335	$ 7,750	96%	2%	2%

2 The table is based on country information which can be found in Annex II of this document

Local administrations typically operate under national procurement regulations or a modified version of them. Local development programs supported by UNCDF may apply these regulations or may follow program-specific rules, often based on models provided by international donor agencies. Both national and agency procurement rules tend to be designed in the first instance to govern large, complex procurements conducted by centralized institutions. A high level of administrative and technical capacity is necessary for these types of procurement and so is assumed to exist in the procuring agency and in the contractors and suppliers. Typically, procurement regulations deal only briefly with specific procedures appropriate to smaller, simpler investments.

Local administrations in least developed countries typically have only small capital budgets available for investments for development (table 1). These budgets are usually allocated to simple, straightforward investments such as provision of roads, schools, water supplies and sanitation, or to technical services such as agriculture extension or vocational training. Small local firms often have the technical capacity to implement investments but lack administrative capacity and are not familiar with formal bidding procedures. These firms may be deterred from bidding by the complexity of the system, they may be unable to meet stringent registration and qualification requirements, or they may find the cost of submitting a bid is too high. In turn, the local administration may lack the capacity or financial or technical resources needed to fully implement the procurement rules. The result can be a failure of the procurement process because of procedural errors or because of a lack of bid submissions from local firms.

Central government officials often respond to a perceived lack of capacity for procurement at the local level by shifting procurement responsibilities to a higher level. It may be more appropriate to ask whether the procurement regulations are the source of the problem. Centralizing procurement reduces the ownership and accountability of the local administration for the outcome of the investment. It may also have the effect of restricting competition to large, city-based firms which will often have a higher cost base than local firms, and will not necessarily improve the quality of outputs. In addition, community participation, economic stimulus and employment generation benefits may be lost by centralizing procurement.

National procurement regulations are usually written with the needs of central government Ministries and their sub-divisions, including local departments and offices, in mind. The local officials of a Ministry act on behalf of the Ministry and ultimately on behalf of the national government, so administrations are not just offices of the central government – they are corporations with their own budgets and are usually accountable to some form of local assembly. Therefore, centralized agencies do not have the right to take procurement decisions on behalf of local administrations, although they may act as agents of the local administration in some circumstances.

This Guide assumes as a starting point that the rigor and complexity of a procurement process should be in proportion to the size and complexity of the investment. If a local administration has the capacity to plan or financially manage an investment, it has adequate capacity to conduct procurement according to appropriate procedures. Decentralization of procurement using appropriate procedures results in improved value for money and better outcomes for local governance.

What is in this Guide?

This Guide concerns procurement for local development – taken to mean procurement conducted by local governments in developing countries. Local development procurement will mainly, though not exclusively, concern investment projects designed to improve the welfare of the local community. For the purpose of this Guide, the term "local government" is taken to include both formal local governments with (typically) a Council or Assembly, an Executive and an administrative staff; and ad hoc or program-specific local development committees. However, much of the advice in this Guide is relevant to any type of public procurement of relatively low-value items under simple contract arrangements.

The advice in this Guide is relevant to both urban and rural local governments. However big-city or regional governments may need to undertake procurement of a scale or complexity that goes beyond the scope of this Guide.

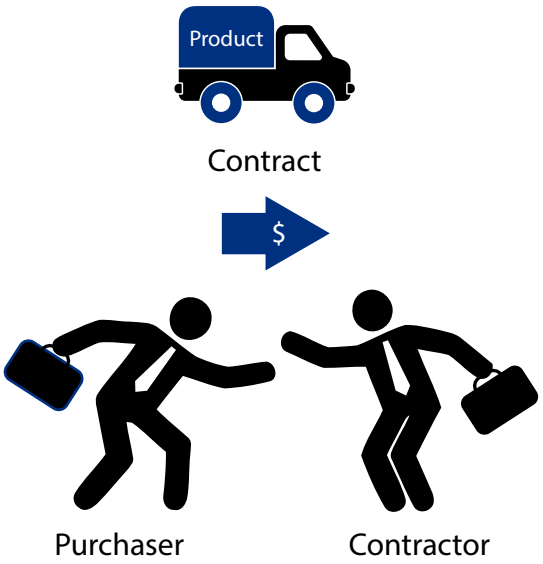
The Guide is divided into main sections which are further sub-divided into chapters, each dealing with a specific topic. The main sections of the Guide are:

- FOUNDATIONS: This present section introduces the Guide, discusses the general principles underlying public procurement and describes the "standard model" of implementing these principles, which is reflected in the national procurement guidelines of most countries. It examines some of the drawbacks of the standard model from the viewpoint of procurement for local development. It proposes a modified approach to local procurement, designed to improve efficiency and ensure improved outcomes through either enhanced competition between local firms, or through the active participation of the local community, while maintaining high standards of transparency and accountability. The section concludes with an overview of the public procurement process and of common methods of procurement;
- BUILDING BLOCKS: This section makes recommendations for the administration of local development procurement and for basic issues that must be determined before the procurement process can begin;
- PUTTING THE BLOCKS TOGETHER: This section deals with the procurement process step by step, covering advertising, receiving and evaluating bids, award of contract and contract administration procedures;
- ADDING DETAILS: This section deals in more detail with strategies for reducing financial risk to the local government in the procurement process, for resolving disputes and for dealing with grievances;
- ALTERNATIVE DESIGNS: This section discusses Community Contracting and Direct Works (force account) implementation as alternatives to competitive bidding.
- FINAL CONSIDERATIONS: This section includes chapters on private sector capacity building initiatives and monitoring and evaluation of procurement, and concludes with a brief overview of essentials and non-essentials in local development procurement.

The Guide includes a Glossary of procurement terminology including a brief description of the purpose of the aspect of procurement described by each term.

This Guide does not cover every aspect of the procurement process in detail. It concentrates on areas that are commonly problematic in local development procurement and is intended to assist in the preparation and revision of procurement regulations, not to substitute for them. The Guide is not a "UNCDF procurement guideline," nor are its recommendations mandatory for UNCDF supported or financed programs. Rather, the Guide is intended to pass

on the experience gained from UNCDF involvement in local procurement in least developed countries and to assist officials and advisers engaged in designing procurement procedures for local administrations in least developed countries, in UNCDF programs or externally, to identify the most appropriate procedures according to the local circumstances.



Note on Terminology

In procurement, similar principles can relate to many different circumstances. To keep it simple, in this Guide the following general terms are used to refer to any type of procurement:

Buyer: *The person or agency holding the budget and conducting the procurement. Where the context permits, the term "local government" is used instead.*

Contractor: *The person or agency constructing work or supplying goods or services to the buyer.*

Product: *The works, goods or services.*

Contract: *The agreement between the buyer and the contractor.*

Chapter 2: Right Item, Right Time, Right Price? Principles of Public Procurement

About this Chapter

The objective of public procurement is often described as "Right Item, Right Time, Right Price." This chapter describes a "standard model" of good procurement practice and discusses how this model may not always be fully appropriate for the needs of procurement for local development. The last part of the chapter presents a set of principles that should be adhered to procurement for local development.

Value for Money

The purpose of procurement, just like the purpose of anybody who wants to buy something, is to obtain the best possible value for money. However, "value for money" may be narrowly or broadly defined:

- At the narrowest, it may mean simply obtaining a commodity for the lowest available price (for example, buying gasoline);
- More broadly, value may take into account not only the price but also the quality of the product, the length of service that can be expected, the after-sales service and other aspects of the conditions of sale (for example, buying a car);
- For a public administration, "value" may sometimes be defined even more broadly to include the impact of the buying decision on social or economic policies such as developing the local economy, stimulating employment, favoring women or disadvantaged groups, etc. (private buyers may do this as well: For example, some people may prefer to buy goods produced in their native country or under "fair trade" or environmentally friendly conditions, even though they are more expensive.

Search Costs

Identifying the right item at the right time, for the right price, requires time and effort. If a person wanting to buy gasoline can see two gasoline stations offering different prices, she will probably choose the cheaper one. However, if she can see only one station, she may not go to the trouble of searching the neighborhood to find out if that one is the cheapest. A person buying a car will usually spend time to research the quality of the model, the reputation of the seller and to compare prices from different sellers, which he would not do when buying a small item. Economists call the time, effort and other expenditures needed to identify the best value for money "search costs."

The costs of administering a public procurement process are similar to search costs for a private buyer. It is not worthwhile to implement a complex, expensive process to identify the best value for money for procurement of a small item. For this reason, procurement processes for large items are usually more complex than procurement processes for small items.

Participating in a procurement process imposes costs on the bidder. This may include direct costs such as purchasing bid documents as well as the costs of staff time, travel, communications, copying and so on for preparing the bid. A losing bidder has to pay these costs from his own pocket. However he can only stay in business and continue to compete for public contracts if the profits from the contracts he wins are high enough to cover his bidding costs for both the winning bids and the losing ones. Therefore, higher bidding costs mean less competition and higher bid prices. This is a very important point – in the end, ALL the costs of the public procurement process–those paid by the purchasing agency (e.g. the local government) and those paid by the bidder–are costs to the public purse.

Risk, Principals and Agents

Any kind of purchase involves the buyer taking a risk. The types of risk taken by buyers include:

- The item purchased is not the best value for money that could be obtained elsewhere in the market;
- The seller provides goods that do not meet the agreed specification; or
- The agreement between buyer and seller is not clear, so that the buyer receives goods that do not match his/her needs.

Procurement procedures are designed to manage these risks: By ensuring that the search of potential contractors or suppliers is thorough enough to identify the best value for money; by ensuring that there is a clear contract that specifies in detail what the works, goods or services to be procured and the conditions of the sale; and by including guarantees (for example, a performance security) for the buyer if the supplier fails to respect the conditions of the contract.

In public procurement, there is an additional risk: That the officials conducting the procurement process will act in their own interests instead of the interests of the public agency they work for. When a private person buys something with his own money, he has nothing to gain by accepting a commission from the seller, the seller simply adds the commission (plus something for himself) to the real price. When the buyer is an "agent" acting on behalf of someone else "the principal" the agent may accept a commission in return for paying a higher price using the principal's money. That is why public procurement is usually conducted according to strict rules which allow very little discretion to the officials responsible for procurement, and which include strong provisions for oversight and transparency. More flexibility for the officials might sometimes allow them to achieve a better result for the purchasing agency – but would also increase the risk that they will try to get a better result for themselves.

One advantage of conducting procurement locally is that the officials responsible are likely to be users of the investment output themselves, for example, the contract may be to construct a school where their own children will study. Therefore, their private interests are more similar to the public interest than would be the case for officials from a distant city.

The Standard Model of Good Procurement Practice

The principles underlying the procurement regulations of many countries and of international agencies such as the major development banks (The World Bank, African Development Bank, Asian Development Bank, etc.) and the European Commission; and in the model procurement law promoted by the United Nations Commission on International Trade Law (UNCITRAL) may be termed a "standard model" of good procurement practice. The details vary between countries and between agencies but the important features of this model are:

- The overriding objective of procurement is to obtain the best available value for money, considered in terms of the quality of the item procured and the effective cost to the purchasing agency, but not considering the effect of procurement decisions on social or economic policy objectives;
- Best value for money is assumed to be achieved through open competition. In turn, more competition is assumed to arise from wider advertising of bids and removal of regulatory barriers to entry;
- Corruption and other abuses of the procurement processes are deterred by a high level of transparency and by adherence to process;
- All bidders, including those based locally or nationally and international firms, receive equitable treatment;
- To the greatest extent possible, bids are compared and evaluated based on price. Where possible, non-price criteria are valued and used to adjust the bid price (only for the purpose of bid evaluation; see box). Criteria that cannot be converted into a money value (for example, the qualifications of a consultant) are handled as objectively as possible.

Within this standard model, International Competitive Bidding (ICB) is considered as the default method of procurement. It is recognized that due to the costs of international advertising and the low attractiveness to firms of submitting bids for small contracts in foreign countries, ICB is not appropriate for procurement of low-value items. Therefore, procurement rules permit the use of "national competitive bidding" (NCB), "shopping" or other methods requiring a lesser level of advertising of bids. Conceptually, the various methods of procurement are seen as a hierarchy with more competitive methods at the top and less competitive methods at the bottom. There is a scale of threshold values specifying the maximum value of procurement for which any method may be used (for example, in Country A the threshold for ICB is USD 1 million so NCB may be used for contracts with lower values). However, to the extent that the cost-efficiency of the procurement

Comparing Prices

In a large procurement the tender evaluation committee may consider a wide range of aspects including (for example):

- Expected life of the asset;
- Value of after-sales service;
- Timing of payments.

For the purposes of the bid evaluation, the evaluation committee takes into account the financial impact on the buyer of each of these aspects and calculates an "adjusted price" for each bidder.

The contract is awarded to the bidder with the lowest adjusted price, which may not be the same as the bidder with the lowest "bottom line" price.

Of course the actual contract price is the winner's bid price before adjustment.

process is a concern, it is typically only cost-savings to the buyer through limiting advertising and through reducing the number of bids to be evaluated, that are considered. It is common to find that the requirements for preparing and submitting a bid for a small contract, and so the costs imposed on the bidder, are the same for a small contract as for a large one.

In the standard model, monitoring and evaluation of procurement tends to focus on verifying that the process has been correctly adhered to. The standard procurement literature contains very little about approaches to evaluation that would test the assumptions underlying the model; for instance, evaluation studies designed to confirm that more competitive procurement systems lead to higher value-for-money outcomes.

The standard model of procurement has very little to say about appropriate roles and responsibilities for implementing the procurement process. This is an important aspect in all public procurement, but is especially important in procurement for local development where the respective roles of technical officials, elected local politicians, national officials and the beneficiary community may all have to be considered.

The most common criticism of this "standard model" is that it does not permit national governments to use public procurement to advance social, economic or environmental goals by favoring domestic contractors and suppliers or particular groups within the community. Many countries operate procurement systems giving preference to domestic over foreign firms, while some also give preferences to small firms or to social or ethnic groups who are perceived as economically disadvantaged (see box). Conversely, developed countries, including the United States and the European Commission, explicitly favor open competition because of the increased access this will give developed-country firms to developing-country markets, in addition to the expected value-for-money gains. So far, developing countries have successfully resisted incorporation of the "standard model" of public procurement practice into World Trade Organization rules.[3]

Preferences

Malaysia gives preferences in public procurement to businesses owned by the ethnic Malay majority, who lag behind the Indian and Chinese communities in levels of economic development.

In **South Africa,** the aim of the Preferential Procurement Policy Framework is to:

a. Advance the development of SMEs and historically disadvantaged individuals;
b. Promote women and physically disabled people;
c. Create new jobs;
d. Promote local enterprises in specific provinces, in a particular region, in a specific local authority, or in rural areas; and
e. Support local products.

From the viewpoint of procurement of small and medium-sized contracts for local development, the standard model and the procurement regulations based upon it have a number of additional drawbacks.

Most importantly, "lower level" procurement systems for small-value items, based on the standard model, tend to prescribe procedures that require less open competition than "higher level" systems but do not reduce the cost or complexity of submitting a bid. Small and medium-sized local firms may be able to implement the contract more efficiently (and

3 EU FTA Manual Briefing 7 – Action Aid, Christian Aid, and Oxfam International.

therefore at a lower price) than large firms based at national level. However, the local firms may be debarred by qualification requirements or may be deterred from bidding by the cost or the complexity of the bidding process. In this case, "higher" procurement processes may result in less, not more, competition and higher, not lower, costs.

For small contracts, the total cost of the bidding process, including advertising and administration costs, production and reproduction of documents, staff costs, the costs to bidders of preparing bids, providing bid securities, etc. may become quite significant compared to the actual cost of the contract and the size of any saving through competitive bidding. It is appropriate to pay much more attention to the cost-efficiency of the bidding process, than is normally done under the standard model. It is common to find that even for "lower" procurement processes with limited competition, the regulations in force require the use of large, complex bid documents (see box);

How Simple is Simple? The following standard bidding documents for works are available from the World Bank website*

- Procurement of works (381 pages)
- Procurement of small works "under USD 10 million" (130 pages)
- Procurement of simple works "say under USD 1 million" (78 pages)

The "simple works" version has remained as a trial document only since 2000.

Of course, the pages do not include the drawings, specifications and bills of quantities which would have to be added to complete the bid document.

Most local administrations in developing countries can only dream of letting contracts of USD 1 million or more. Unfortunately, local contractors are often expected to struggle with the demands of completing tender documents based on these or similar models.

*www.worldbank.org

In procuring small contracts for local development, the financial risk to the buyer is usually no more than the amount of any advance payment. Delays in implementation, including default by the contractor, do not result in large additional costs and the economic impacts are relatively minor. Therefore, some features of the procurement and contracting process designed to control the risk to the buyer (for example, bid securities, performance bonds, etc.) may increase the complexity of the process while adding little of practical value.

It is advocated here that for procurement of smaller items, the emphasis should be on limiting the cost and complexity of the procurement process, not on reducing competition. Best value for money should be sought through open competition between those firms that have the technical capacity to fulfill the contract.

Further, in the local development context it can be very difficult to separate "value for money" from the impact of investments on local employment, equity between social groups or empowering local communities. This is even more true if, as advocated here, procurement itself should be seen as contributing to the development of good governance and not simply a necessary function for the implementation of a planned investment. Local communities who benefit from investments are often involved in the planning and design stages and may be expected to take ownership responsibilities for the resulting assets: These communities may wish to take on the task of implementation themselves or to see locally based firms undertake the work. Local administrations in many countries have been used to implementing works directly ("Direct Works" or "Force Account") and may be reluctant to accept the advantages of contracting work to the private sector.

Principles of Procurement for Local Development

Based on the considerations above, this Best Practice Guide proposes a set of principles as a foundation for developing procurement guidelines for local administrations in least developed countries. These principles are compatible with the standard model of procurement described above but place greater emphasis on the demands of procurement of small or medium value items in a context of limited administrative capacity. Procurement based on these principles should achieve the value-for-money objective while also enhancing local governance, local economic development and the capacity of local communities.

Principle 1: Appropriate Roles and Responsibilities

Roles and responsibilities in procurement should be clearly defined. In general, three types of responsibility may be recognized:

- **Technical responsibilities,** including conducting the procurement process and making recommendations to the decision-making authority;
- **Decision-making responsibility,** for example, the person who signs the contract on behalf of the buyer;
- **Oversight responsibility,** meaning ensuring that the procurement rules are respected and that the decision is rational and in accordance with the rules, but not advising or determining the outcome of a procurement process directly.

These three types of responsibility should be separate, one person or agency should not undertake more than one type of responsibility.

Local administrations should be responsible for procurement of items funded under their own budgets. In general, the decision-making authority should be the chief executive officer of the local administration, based on advice from technical officials.

Elected local politicians may play an oversight role but they should not have decision-making or technical responsibilities for procurement.

Higher level (for example, national Ministry) officials may play either oversight or technical roles but the same officials should not play both types of role at the same time.

Local citizens should have the maximum opportunity to be informed about procurement and to be heard in case they wish to raise their concerns. In some cases, community groups may perform specific oversight responsibilities.

Obviously contractors, suppliers or community groups who hope to implement a contract should not take part in procurement decisions. Even in the case where Direct Works implementation is appropriate, the officials responsible for the decision should be separated from those who will implement the works (e.g. the Public Works Department should not be involved in the decision to allocate work to itself).

Principle 2: Value for Money

Value for money remains the defining objective of public procurement. Value for money means:

- Defining the objectives of the local government as clearly and precisely as possible (this may include such things as generating local employment as well as the physical output of the investment); and
- Implementing the investment by the lowest-cost means that achieves those objectives.

Where value for money is sought through competitive bidding, the procurement process should be designed to encourage and facilitate bids from local firms that have sufficient technical capacity to fulfill the contract.

Community implementation should be considered in cases where the beneficiary community has sufficient technical capacity and is able to implement for a lower cost than private sector contractors;

Direct implementation (force account) may be considered where this will result in better value-for-money and where there is no conflict with the other principles outlined here.

Principle 3: Transparency

Transparency in public procurement may be considered to have three main components:

- So far as is consistent with efficiency and commercial confidentiality, all key information concerning the procurement process should be available to all stakeholders and to ordinary citizens;
- There should be a full written record of all stages of the procurement process that can be checked by an auditor;
- All decisions should be based on objective criteria. Selection criteria (the criteria for selecting the winning bid) should be made known to bidders before they submit their bids.

Principle 4: Equity

All bidders should receive equal treatment except in the case where the procurement rules allow specific preferences (for example, for locally based firms). Equitable treatment includes equal sharing of information with all bidders as well as fair evaluation of bids.

Principle 5: Efficient Risk Management

Wherever possible, the risk to the local government should be reduced using means that do not limit competition or increase the cost or difficulty of participating in bidding. For example:

- By ensuring that irresponsible behavior is not rewarded. For example, contract conditions and contract administration procedures punish poor performance by the contractor, bidders have an incentive not to submit unrealistically low bid prices or seek to win more contracts than they have the capacity to implement;
- A contractor who defaults should bear the whole cost to the public purse of his default. At the simplest, this may just mean that no advance payments are made, so that if the contractor defaults the buyer will not lose money.

Principle 6: Efficient Process

When comparing between alternative procurement procedures, the cost of the more expensive procedure should not exceed the cost of the cheaper procedure by more than the increase in value for money that can reasonably be expected. The cost of a procurement procedure should be considered to include the costs imposed on bidders as well as the costs paid by the buyer directly.

Principle 7: Compatibility with National Laws and Donor Requirements

Local procurement procedures, whether written into regulations for local public administrations or into program-specific guidelines, should be designed to conform to

national laws and regulations and with the requirements of international donors wherever possible. Where local regulations differ from national or international standards, the difference should be for a clear reason and this should be documented.

From Principles to Practice

The following sections of this Guide provide advice on how to develop procurement guidelines based on the principles outlined above. It is important to remember that needs vary according to circumstances. Factors that may vary include:

- The size, administrative capacity and mandate of the local administration;
- The types of procurement undertaken;
- The capacity and competitiveness of the local private sector;
- Physical barriers such as high transport costs, which may limit competition between firms;
- National government policies, laws and regulations;
- Local customs and traditions.

Because of variations in these factors, a procurement procedure that results in improved value for money in one country or at one time may have the opposite effect in another place or at another time. Procurement regulations should be reviewed periodically. For this reason, monitoring and evaluation of procurement should not be limited to determining whether the rules currently in force are correctly implemented, but should also ask whether any adjustment to the rules could result in improved value for money.

Chapter 3: The Procurement Process

About this Chapter

Procurement is normally thought of as a process with a number of different steps. This chapter describes some different options at each step. This chapter does not make specific recommendations for procurement for local development: those are presented in later chapters.

Procurement can be described as a step-by-step process. The number of steps and the terminology for each step can vary. To keep the steps as general as possible (so that they can be applied to any type of procurement) we can describe the steps as:

- Step 1 Planning
- Step 2 Preparation
- Step 3 Search
- Step 4 Evaluation
- Step 5 Decision
- Step 6 Delivery and Payment

As illustrated in the figure below, these basic steps can be applied to any kind of procurement, from building a highway bridge to shopping for groceries.

Step	Building a highway bridge	Recruiting a consulting firm	Buying groceries
1. Planning	Annual Procurement Plan	Annual Procurement Plan	Plan a shopping trip 
2. Preparation	Bid Document with technical design, specifications and bills of quantities; cost estimate	Draft terms of reference and the Request for Bid documents	Prepare a shopping list 

Continues...

Continued

Step	Building a highway bridge	Recruiting a consulting firm	Buying groceries
3. Search	Advertise and distribute bid documents	Request Expressions of Interest; then invite selected firms to submit proposals	Identify different shops that sell the required items 
4. Comparison	Receive bids and decide which represents the lowest cost for meeting the technical specifications	Decide which firm can provide the highest quality service, usually considering cost as an additional factor	Compare prices and quality 
5. Decision	Executive decision to award the contract to the best bidder	Executive decision to award the contract to the best bidder	
6. Execution	Contractor constructs the bridge and project owner pays the contractor	Firm provides the services and project owner pays the firm	

Planning

Public procurement is usually undertaken according to a Procurement Plan. This will be based on the annual plan and budget of the organization, which will usually include a number of activities that require a procurement process. Soon after the budget is prepared, the officials responsible for procurement identify what items require procurement and what type of procurement is needed, and the dates when procurement actions must begin in order for the procurement to be completed by the time the service, goods or works are needed.

Preparation

In this phase detailed decisions are made about the product that will be procured and the procurement method, including the conditions of contract that will apply. All these details are included in the Bid Document which has to provide bidders with all the information that they need to calculate an appropriate bid price. The bid document will include:

- A detailed description of the product (services, goods or works);
- Instructions to the bidder on how to prepare and submit a bid. This will include information on who is permitted to submit a bid (for example, the procurement may be limited to qualified bidders) and information on the process that will be used to evaluate the bids and award the contract.

- Information on the conditions of the contract proposed by the buyer, including any guarantees or insurance required from the contractor, when and how payments will be calculated and made, and any penalties that will apply if the contractor is unable to adhere to the conditions of the contract.

Search (Advertising)

The "search" step varies according to the size and type of procurement. For a small, simple procurement, "search" may involve simply inviting one or more suppliers to quote prices. For competitive procurement, search includes advertising and distribution of bid documents. This may be done in one stage (open bidding, with any firm permitted to submit a bid) or there may be a two stage process. At the first stage, firms are invited to express their interest in bidding and to submit some preliminary information. A short-list of pre-qualified firms is then prepared based on this information. The pre-qualified firms are then invited to prepare and submit detailed bids. Sometimes, the government or agency may have a permanent list of pre-qualified contractors or suppliers specialized in a particular activity (for instance, consulting services, or construction works) and the firms on the appropriate list are invited to submit bids.

Evaluation

Evaluation is undertaken to determine which of the bids represents the best value for money for the buyer.

Factors that can be taken into account during evaluation include:

1. The bid price;
2. The quality of the works, goods or services offered by the bidder. There may be explicit differences between the quality offered by different bidders (for example, different vehicle models). For works and services, the evaluation may take into account past performance by the same contractor.
3. The timing: When the goods will be delivered or when the works or services will be complete.
4. Quality of after-sales service: For example, guarantees and service offered for goods.
5. Other factors that may affect the cost to the buyer, for example, the timing of payments to the contractor. If most of the payments are early in the contract period, this represents a bigger cost to the buyer than if the payments are mostly late in the contract period.
6. Other factors that the buyer may want to consider; for example, preferences for local firms.

For small procurements, particularly for goods and works, evaluation is usually made much simpler by ensuring that all the bidders are offering the same quality and under the same contract conditions. Bidders that cannot meet the technical specifications or comply with the contract conditions are disqualified. Evaluation is then just a matter of choosing the lowest priced bid.

For professional services, the quality of the service will depend on the staff the contractor will employ. Although there are many different systems of evaluation in use, in most cases the capacity of these staff will be the most important factor in the evaluation. Selection is

based largely on the quality of the bid, within a budget constraint or with price taken into consideration as a secondary factor.

Decision (Award of Contract)

Bid evaluation is a technical task. Although it is often not distinguished clearly from the final decision to award a contract, these should be understood as two separate steps. Bid evaluation can be undertaken by any technically qualified staff or advisers. The final decision to award a contract is usually taken by the senior officer of the buyer institution, who will be accountable for any error. In some cases the decision may be made or approved by a legislative body such as a council.

The authority responsible for awarding the contract should review the evaluation documents to ensure that (1) due process has been followed and (2) the decision reached is rational and in accordance with the procurement rules. The authority then issues the Notification of Award of Contract.

In most procurement systems, notification of award of the contract to the winning bidder automatically creates an enforceable contract between the buyer and the bidder. That is, the bidder does not have the choice to withdraw his or her bid at this stage.

It is common for a further process of negotiation to take place between the buyer and the contractor or supplier, after the winning bidder has been identified and before the contract is signed. These negotiations may cover details of how the contract will be implemented and the timing. In most contracting systems in which price is a factor in the selection of the contractor, no further negotiation on price is permitted at this stage. However, the contract may allow the buyer to vary the quantity of works, goods or services, according to the unit prices submitted by the bidder. Such a change in quantities, known as a "variation" is not negotiation: It is a decision that is made by the buyer alone.

Delivery (Contract Administration)

Once the contract is signed, the contractor or supplier is responsible to deliver the works, goods or services in accordance with the contract. Usually, it is the end product that is specified in the contract, so how the end product is delivered is a matter for the contractor. The buyer employs staff or an independent engineer to monitor the work of the contractor and to determine when payments are due. The supervisors or engineers do not interfere in the work of the contractor, so long as the contractor is acting in compliance with the contract.

The contract conditions may allow the buyer to increase or decrease the quantity of works, goods or services. This will result in an adjustment to the contract price, calculated according to the unit prices in the bills of quantities. Such a change is known as a "variation order." The contract may also allow the buyer or the engineer to instruct the contractor to carry out certain types of work for which the bills of quantities do not include a price. The contract will describe the procedure for setting a price for such work. The contract normally sets limits on the size or nature of variation orders that are permitted.

In the simplest contracts, the contractor carries out a pre-defined quantity of work and is paid a pre-defined lump sum amount. A variation order has the effect of changing the pre-defined lump sum. However, in more complex contracts it may be necessary to measure

the amount of work carried out by the contractor after the work is complete. Examples of "re-measured" contracts include:

- Large engineering projects, for example a highway construction where the exact quantity of each different type of work needed may not be known in advance;
- Consultancy contracts where the number of staff days finally worked may be different from the number estimated in the contract.

Payment

In most systems the decision to release payment to the contractor is ultimately made by the chief executive of the purchasing agency, who is accountable for the decision. The chief executive will make the decision based on recommendations from the Technical Supervisor. In some systems, where the supervisor acts as "Engineer" (meaning a qualified person or firm that is employed by the buyer but has some independent authority) a certificate issued by the Engineer may be contractually binding upon the buyer.

In a very simple contract there may be just one payment. However, in a large contract or a contract that requires a long time to complete this will cause financial difficulties for the contractor. Therefore, payment may be made in stages throughout the contract. Any payment that is made in advance (before the related work is carried out) increases the risk to the buyer. Where advance payments are permitted they are usually covered by some form of security or guarantee.

In large engineering contracts, it is normal that all payments until the final payment are provisional (known as "interim payments"). By making the payment, the buyer has not acknowledged that a particular part of the work has been satisfactorily completed. Any payment made in error can be corrected by adjustments to later payments.

Chapter 4: Overview of Procurement Methods

About this Chapter

Procurement procedures have many variations but a few general methods are recognized in most systems. This chapter describes the categories and types of procurement recognized by the major international development banks (The World Bank, Asian Development Bank and African Development Bank have very similar global procurement guidelines). This chapter does not make specific recommendations for procurement for local development as they are presented in later chapters.

Works, Goods and Services

Things to be procured: "The product" is generally classified as either works, goods or services. Different procurement methods are applied for each category although many of the principles remain the same.

The distinction between works, goods and services is usually fairly straightforward although some procurements can involve a mixture of types. In simple terms:

- Works (or "construction") means making or repairing any kind of physical structure or object that, once completed, has a fixed location;
- Goods means any kind of physical object that can be moved;
- Services means any kind of contracted activity that does not result directly in a physical asset.
- More complex definitions are provided in the box below.[4]

Standard definitions of Works, Goods and Services

WORKS: All work associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigations and similar services provided pursuant to the procurement contract, if the value of those services does not exceed that of the construction itself;

GOODS: Objects of every kind and description including raw materials, products and equipment and objects in solid, liquid or gaseous form, and electricity, as well as services incidental to the supply of the goods if the value of those incidental services does not exceed that of the goods themselves;

SERVICES: Any object of procurement other than goods or construction.

Adapted from: UNCITRAL Model Law on Procurement of Goods, Construction and Services.

4 The UNCITRAL model procurement law uses the term "construction" rather than "works." However, as "works" is the term used by the major development banks I have retained it here.

Services may be further divided into professional services (i.e. those that mainly involve employing professional staff to conduct studies, provide technical advice, provide training, write reports, etc.) and physical services (for example, transportation, solid waste collection and disposal; building maintenance, etc.).

Hierarchy of Procurement Methods

The procurement guidelines of the major development banks and similar sets of rules generally prescribe International Competitive Bidding (ICB) as the normal or "default" method of procurement. Variations of ICB processes are applied to procurement of works, goods and services. Typically, procurement rules then go on to describe circumstances in which ICB may not be appropriate and a different, "lower" method of procurement can be applied. The key criterion in determining which bidding method applies is usually a "threshold value." For example, if the "threshold value" for ICB is USD 500,000; then any contract with a value expected to be more than USD 500,000 must be procured by ICB (subject to any secondary criteria that apply).

Where ICB is not needed or required, one or more "lower" or "less competitive" methods of procurement are usually prescribed. Unfortunately, from the point of view of local governments (where ICB is rarely, if ever, relevant) the focus is usually on reduced levels of competition instead of on maintaining competition while rationalizing the cost and complexity of the process.

In research conducted for preparation of this Guide, only one national procurement regulation (South Africa) has been found to recognize explicitly that reduced cost and complexity results in greater competition.

The number of different procedures defined, and the terms used, vary from country to country, but broadly, the procurement methods defined in typical procurement regulations are:

- International Competitive Bidding, ICB;
- National (or Domestic) Competitive Bidding, NCB;
- Shopping (sometimes called Request for Quotations, RFQ); and
- Direct Contracting.

The key features of ICB are that bids are advertised internationally and overseas bidders are provided with adequate time and information to allow them to compete with locally based bidders (see box). For this reason, bid documents are usually in English or another "international" language. The time allowed for preparation and submission of bids is long, to allow bidders to obtain the information they will need about resources and costs in the local market. Bid prices are often expressed in U.S. dollars or another freely traded currency.

Under **ICB**, bids must be submitted by a specified date and time. Bids are opened together at a specified time and place, usually immediately after the deadline for bid submission.

The objective of **International** Competitive Bidding (ICB), as described in these Guidelines, is to provide all eligible prospective bidders with timely and adequate notification of a Borrower's requirements and an equal opportunity to bid for the required goods and works.

Source: World Bank Procurement Guidelines. Asian Development Bank and African Development Bank guidelines contain almost identical language.

NCB is used for contracts that are not large enough to attract interest from overseas firms. Under international development bank rules, overseas bidders are permitted to bid, but there is no obligation to advertise internationally. Instead, advertisement is usually through national newspapers. Bidding documents may be in the national language and the national currency may be used for bid prices. As with ICB, any bidder with the relevant qualifications has the opportunity to respond to the advertisement and to submit a bid. Bid submission and evaluation procedures are similar to those used for ICB.

Under **Shopping** procedures, bids are not advertised openly. Instead, a limited number of bidders are pre-selected by the buyer and are directly invited to submit bids. In some cases, quotations submitted by e-mail or fax may be permitted, but in other cases a bid submission procedure similar to that for ICB or NCB is followed.

Direct Contracting means pre-selection of a single contractor without any competition. This is permitted in specific circumstances which may not be related to the value of the contract. World Bank Guidelines prescribe the following criteria for permitting Direct Contracting:

a. Extension of an existing contract for goods or works where no advantage could be obtained by further competition and the prices on the extended contract are reasonable;
b. Purchase of additional equipment or spare parts from the original supplier, to ensure compatibility;
c. Where the required equipment is proprietary and obtainable only from one source;
d. Where the Contractor responsible for a process design requires the purchase of critical items from a particular Supplier as a condition of a performance guarantee; or
e. In emergency, for example in response to natural disasters.

Procurement of works and goods by these methods follows generally similar procedures. In principle, the buyer defines as exactly as possible the quality and quantity of the "product;" together with other relevant criteria that all bidders must comply with under the contract. Bidders then offer the "product" (supply of goods or construction of works) at a quoted price. After careful examination of the bids, the buyer selects the bid offering the best value for money, which can be considered as the lowest effective price for the "product" after all material differences between the bids have been considered.

Pre-Qualification and Post-Qualification

Within the framework of procurement by competitive bidding outlined above, it is normal to reject bids submitted by bidders who cannot demonstrate an adequate level of qualification to undertake the contract, defined by relevant and transparent criteria. Qualification – the process of determining which bidders meet the criteria – may be conducted for all interested bidders early in the process. This is known as "pre-qualification" and results in a short-list of qualified bidders who are then invited to submit bids.

For large contracts, pre-qualification may be carried out for each individual contract. In systems where there are a large number of similar small or medium-sized contracts, it is common to invite contractors to apply for inclusion in a list of pre-qualified contractors. Typically,

The rules of the major development banks only permit the use of "pre-qualified contractor lists" if application for these lists is open at any time.

this list will be updated annually. Then, contractors on the list are permitted to apply for individual contracts.

Alternatively, bidders may be informed of the qualification criteria and be given the chance to determine for themselves whether they meet the criteria. Bidders are usually required to submit documentary evidence of their qualifications together with their bids. All bids are considered and the best value-for-money bid is provisionally selected. The qualifications of the "preferred bidder" are then checked carefully. If the preferred bidder is found not to meet the qualification criteria, that bidder is eliminated and the bidder offering the next best value-for-money becomes the preferred bidder. This system is known as post-qualification.

Pre/post-qualification systems have advantages and disadvantages which are summarized in Table 2.

Table 2: Relative Advantages of Pre/Post-Qualification Systems

	Pre-Qualification	Post-Qualification
Equity	All bidders treated equally Difficult to use the system to favour a particular preferred bidder.	All bidders have the opportunity to submit bids.
Transparency	Particularly where a pre-qualified "contractor list" is employed, may operate as a barrier to competition or an opportunity for rent-seeking. May not be an effective means of eliminating under-qualified bidders.	Depends on having clear and objective rules. If rules allow for discretion, post-qualification can become an opportunity for bid manipulation or rent-seeking.
Efficiency	Requires checks of all potential bidders so is time-consuming and cumbersome.	Normally only need to check qualifications of one bidder.

Performance-Based Contracts

In performance-based contracts, and in related types such as Design and Construct or "turn-key" contracts, the buyer does not provide a detailed technical specification of the physical "product." Instead, the buyer specifies the performance required from the product. Systems of this type have traditionally been used for large, complex projects such as power stations. Of more relevance to the needs of local development projects, in recent years performance-based contracts have sometimes been used for rural roads and similar projects. Under these contracts, the contractor is paid not for constructing a road to a particular design, but for providing a road of a specified quality (using, for example, measures such as width of carriageway and smoothness of running surface) and maintaining the road in the specified condition over a period of years. Full "performance-based" contracts can be difficult to implement successfully, partly because of the financial burden upon the contractor, but mixed models including a payment for construction plus annual payments for maintenance can be used. These models provide the contractor with an incentive to achieve a high quality of construction work as this will reduce the subsequent maintenance costs.

Non-Competitive Procurement

Direct Works or Force Account

Under Direct Works or force account procurement, the works are implemented not by a private sector contractor but by a department of the buyer – for example, the public works department of the local government. This traditional approach to implementing public works is now generally regarded as inefficient and non-transparent. However, it has the advantages of eliminating procurement costs, of permitting long-term planning and may achieve economies of scale, particularly for routine maintenance works on roads and buildings. World Bank guidelines permit the use of force account works where:

- Quantities of work involved cannot be defined in advance;
- Works are small and scattered or in remote locations for which qualified construction firms are unlikely to bid at reasonable prices;
- Work is required to be carried out without disrupting on-going operations;
- Risks of unavoidable work interruption are better borne by the buyer than by a contractor; and
- There are emergencies needing prompt attention.

Community Contracting

Community Contracting describes a number of different approaches to implementing works projects at the community level. These range from what is effectively direct implementation by local authorities using community labor, either on a voluntary or a paid basis, to systems where independent community-based organizations act as contractors on a similar basis to a private sector contractor, and to systems where the contract is negotiated with a locally based contractor who expects to make a profit from the project. However all these methods generally take place outside the framework of competitive procurement procedures and are permitted by special provisions in the procurement rules.

Procurement of Professional Services

Although the procurement rules of the international development banks place procurement of professional services within the same framework (ICB, NCB, etc.) as procurement of goods and works, there are important differences in the detail of procurement procedures used. In most cases, the selection of consultants to provide professional services places much less emphasis on price competition and more emphasis on comparison of the merits of alternative proposals prepared by the bidders.

Different procurement rules are used for consultancy services provided by firms and those provided by individual consultants. For firms, a variety of different methods may be used. The methods described in the World Bank Guideline for Selection of Consultants are summarized below, but broadly similar methods are used by other international donors and by country procurement systems.

Quality and Cost-Based Selection (QCBS)

QCBS is the default method of selecting consulting firms under World Bank and other international development bank rules. In this method, the first step is to place an advertisement known as a Request for Expressions of Interest. At this stage, firms submit

details of their qualifications to undertake the contract. The Expressions of Interest are evaluated and a shortlist of qualified firms is prepared (i.e. this step is similar to pre-qualification for a works contract).

The bid document, known as a Request for Proposals, is sent to the shortlisted bidders. The bidder submits their bid in two envelopes: The first contains a Technical Proposal, the second a Financial Proposal. The Technical Proposal is opened and evaluated while the Financial Proposal remains sealed. The Technical Proposal is scored against a set of criteria which are pre-defined and should be as objective as possible. There is a minimum qualifying score. The only financial proposals that are opened are those that have been submitted by a firm found to have achieved the minimum qualifying score. A "financial score" is then calculated and is combined with the technical score using a weighting system. Usually, the maximum possible financial score will comprise no more than 20% of the maximum possible combined score. The contract is then awarded to the firm with the highest combined score. Because the financial proposal is a factor in the selection, no further negotiation of price is permitted.

Least-Cost Selection

Cost-Based Selection involves selecting a consulting firm on the basis of price competition. This is only done where the services to be provided can be clearly defined and all qualified bidders can be expected to provide a similar quality of service. Audit services are often procured through cost-based selection.

Selection Based on Consultant Qualifications

Selection Based on Consultant Qualifications follows a similar general procedure to QCBS but is used for smaller contracts. In this procedure, only one firm is shortlisted based on the initial expressions of interest. The shortlisted firm then submits technical and financial proposals which are evaluated in the same way as for QCBS. If the technical proposal is found to be satisfactory, negotiations are conducted to finalize the financial details of the contract.

Fixed-Budget Selection

Fixed-budget selection is used less than the methods described above but has some points of interest for local governments with limited funds and limited capacity to develop detailed TORs. The general steps are similar to those for QCBS and SBCQ, but firms are invited to submit proposals within a fixed budget. Therefore, the quality of the technical proposal, and not the price, is the basis for comparison.

Individual Consultant Selection

Selection of individual consultants is similar to recruitment of staff. Selection may be made simply by comparing qualifications based on CVs, or additional methods such as interviews or requiring consultants to submit outline proposals may be used.

Under World Bank procedures, advertising is not required for selection in short-term individual consultants. At least three CVs must be obtained from suitable candidates; a contract is then negotiated with the best qualified candidate. World Bank rules are fairly strict about the distinction between individual consultants and firms, for example, Individual consultants may not be required to hire staff to assist them.

PART 2

BUILDING BLOCKS

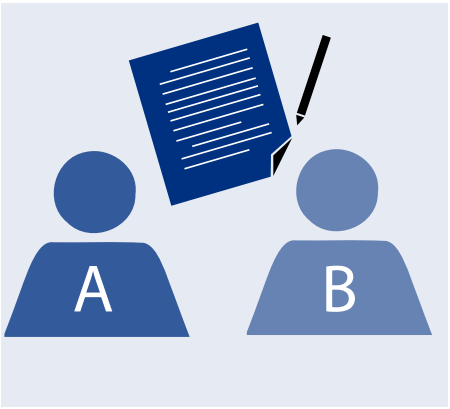
Chapter 5: Roles and Responsibilities in Procurement

About this Chapter

Appropriate allocation of roles and responsibilities is the key to good governance. This chapter describes the key tasks in procurement, with particular reference to procurement for local development by sub-national administrations.

Party A and Party B

A contract is always made between two natural or legal persons. A legal person is an institution that has an independent, autonomous legal status and can be held accountable for its actions. In most countries, agencies such as government Ministries are not legal persons – they are part of the Government. Therefore, contracts are made between "The Government" and a contractor, not between "The Ministry" and a contractor, even though the Minister or a senior official signs on behalf of the government and the Ministry may be fully responsible for administering the procurement process and the contract.



Local governments are usually legal persons – they have an autonomous budget and a separate legal status from the national government. They can be held accountable for their actions, including being sued in a court of law. Therefore, a local government makes a contract on its own behalf and not on behalf of the Government.

In countries where there is no elected local government, local development programs are often implemented through informal "local development committees." These committees conduct procurement and sign contracts. It is not always clear whether local development committees are really legal persons. If there was a legal dispute about this type of contract, it is not clear who would be liable under the law.

Similarly, "contracts" are sometimes made with contractors who are not legal persons. In some cases, a national or local government agency acts as "contractor" and may sign a contract that has the same format as a contract with a private sector firm. However, it is doubtful whether such a contract has any legal meaning – it is basically an agreement covering a budget and activity plan, but cannot be legally enforced.

Where an informal community group acts as contractor, it is common for the group leader to sign the contract on behalf of the group. As explained in Chapter 17, the role of a "community contractor" is usually rather different from that of a private sector contractor. Fortunately, it is not common for community contracts to lead to legal disputes. For larger contracts, it is more important to be sure that the "buyer" and the "contractor" are really legal persons that are able to undertake the obligations stated in the contract.

The Role of the Local Council

Where a local government has an elected council (or assembly), an executive and an administration, the council should not normally be directly responsible for procurement of contract administration. The proper roles of the council are to:

- Approve the development plan and appropriate funds for the project in the budget;
- Set the rules for procurement (consistent with national law and regulations); and
- Oversee the procurement process and the contract implementation to ensure that the rules are correctly implemented.

In some cases, the council may have the right to approve procurement decisions in advance, usually for contracts above a certain size. This right may be exercised through committees of the council (for example the finance committee, or a special procurement review committee) or by the full council. In any case, the role of the council in approving procurement decisions should be limited to verifying that correct procedures have been followed and that the contract award is in line with the budget appropriation for the contract.

An exception to this is in very small local councils (for example, Commune Councils in Cambodia or Union Parishads in Bangladesh) that do not have a separate executive and administration. In this type of council, the Council Chair acts as chief executive and the councilors often carry out some of the roles of administrative officials. In this type of council, it is common for procurement decisions to be taken by a committee composed of councilors, sometimes supported by technical or administrative officials. Because the council cannot both implement procurement and oversee it, this system may need closer external supervision or strong community oversight arrangements.

In all cases, the executive should report to the council on execution of the budget, including procurement processes and contract implementation.

The Local Executive

The local executive means the authority with decision-making powers in implementation of the local budget. The chief executive may be the Chair of the Council, an elected Mayor, or an appointed official (for example, the Governor in a Cambodian District). However, day-to-day decision-making is usually the responsibility of a full-time official rather than an elected politician.

Cambodia and Bangladesh both have local councils supported by only one administrative officer.

In Cambodia, the Commune Procurement Committee consists of the Commune Chief as chair and three other councilors;

For LGSP in Bangladesh, the Union Parishad Tender Evaluation Committee is a mixture of citizen representatives and officials appointed from the higher (Upazila) level of sub-national government.

The Executive authority is ultimately responsible for all financial decisions of the administration and can be held accountable for these decisions. Key decisions that may require executive approval in procurement include:

- Approval of the procurement plan, including the decision as to which procurement method to use.
- Approval of bid documents.
- Issue of the decision on award of contract.
- Signing the contract.
- Authorizing payments to the contractor.

Technical and Administrative Officials

Technical and administrative officials carry out procurement tasks on behalf of the executive.

In some cases, the executive may delegate decision-making powers to officials, depending on their level of seniority and capacity. For example, heads of departments may be authorized to take procurement decisions up to a certain value.

Technical officials carry out specialized technical tasks. This will usually include preparation of designs, technical specifications and other parts of the bid document.

Bid evaluation should be seen as primarily a technical task. The bid evaluation committee (which may include specialists in procurement practice, in finance and in the technical area relevant to the project) evaluate the bid documents and make a recommendation to the executive. This should be seen as a separate function from decision-making (by the executive) and procurement review (which may be done by the council or by a higher administrative authority).

The administration may employ consultants to assist with technical tasks including bid evaluation. However, the role of these consultants is to advise: Final decisions are always made by the executive or by an officer with authority delegated from the executive.

It is common for local governments and other agencies to employ consultants as technical supervisors to monitor the work of the contractor in implementing the contract. Alternatively, technical staff of the local administration may play this role. In either case, the executive keeps most of the decision-making powers including the power to approve payments to the contractor.

The "Engineer"

In some contracting systems, for example, those using the FIDIC[5] standard conditions of contract, contract supervision is the duty of a third party known as the Project Engineer. The Project Engineer is usually a consulting company rather than an individual. The Engineer is employed by the buyer but has a duty to act impartially, and has much more extensive powers than would normally be assigned to a Technical Supervisor (who may of course be a qualified engineer). These powers usually include the power to approve working methods and materials, to make variation orders and to issue payment certificates.

5 Fédération Internationale Des Ingénieurs-Conseils, or International Federation of Consulting Engineers.

The Project Engineer is usually represented on the construction site by an "Engineer's Representative" or "Resident Engineer." Some, but not all, of the powers of the Project Engineer are delegated to the Resident Engineer.

It is important to understand the difference between a contract supervised by an independent Project Engineer and one that is supervised directly by the buyer through its representatives. This has nothing to do with the qualifications of the supervision staff, it concerns the way the contract is administered.

In small, simple contracts for local development, there is usually no need to have an independent Project Engineer with decision-making powers. It is customary to have either an official or a consultant acting directly on behalf of the executive. In this system, decisions are taken by the executive authority, not by the technical staff.

Check standard contract documents before using them. Some standard documents give the "Engineer" decision-making powers that the Executive may want to keep for itself.

The Local Community

Members of the local community may be involved in both procurement and implementation for development projects that provide them with benefits. The local community has a direct interest in the outcome of the procurement – especially in ensuring the highest possible standard of the product, but also in ensuring that public money is spent well (so that more projects can be implemented and more benefits obtained).

The role played by the local community will depend on the type and size of the project. However, it is good practice to form a local Project Oversight Committee who should form the link between the buyer and the community. The Project Oversight Committee typically plays some or all of the following roles:

- Assistance with preliminary surveys and studies;
- Review of the technical design to make sure it meets the needs of the local community;
- Liaison with the local community, for example regarding land acquisition for construction projects;
- Monitoring of the procurement process;
- Assisting the Technical Supervisor to monitor the work of the contractor;
- Reviewing the Technical Supervisors' reports before payments are made.

Where implementation is by the community, the role of the local oversight committee may become merged with that of direct project implementation. However, in some systems (for example, in Timor-Leste) there is a Local Oversight Committee whose members must not be directly involved in implementation.

In some cases, local councilors may participate with the local oversight committee or even lead the committee.

Oversight by Higher Authority

In an autonomous local government with its own budget, and with an elected council (or assembly) and a full time executive and administration, the executive should be able to take procurement decisions without waiting for approval from a higher level of government. The executive should be accountable to ensure that procedures are correctly followed and oversight should be exercised by the council. However, it is common for higher authorities to play an oversight role. This may be because:

- National law requires contract awards above a certain level to be reviewed, sometimes by a national procurement authority;
- Donors require the opportunity to review procurement decisions before they are put into effect (known as *prior review*);
- Where there is no formal local government and the buyer is an administration that is subordinate to a higher level of government or is a local development committee. In these cases, the buyer may not have the right to make procurement decisions independently.

When oversight by a higher authority is required, it should be exercised in a way that does not impact on the efficiency of the procurement process. Sometimes, this may be through a "no objection" procedure in which a formal notification of approval is not required, provided that a certain number of days are allowed for review and objection, before the contract is awarded.

The purpose of oversight of procurement is to ensure that correct procurement procedures are followed. The higher authority should not have the right to change the procurement decision itself, only to refer it back to the local authority.

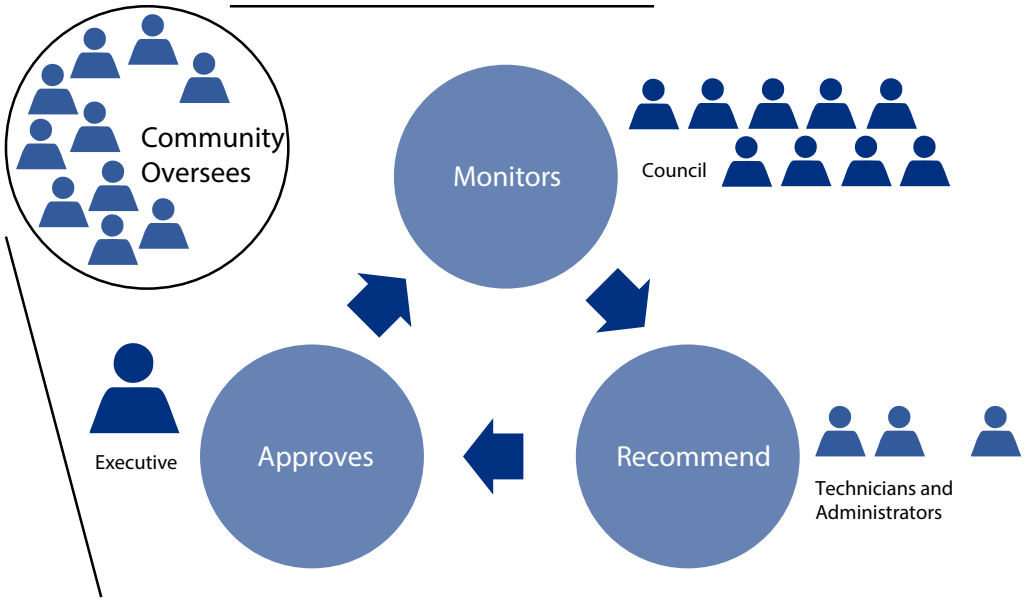


Diagram : Roles and Responsibilities in Local Procurement

Chapter 6: The Procurement Plan

About this Chapter

Good procurement starts with a good plan. This chapter describes a simple procurement plan format suitable for use by local governments for small local development projects.

What is the Procurement Plan for?

Procurement processes often take a long time. Even for a simple construction contract, construction of a new school building, the time needed from approval of the budget to signing a contract may be more than six months. A period of time will subsequently be needed for construction before the building is ready for use. Therefore, if the building is needed for a particular date, for example, the start of the next school year, procurement may need to start nine months to one year before that date. One use of the procurement plan is to ensure that procurement begins in time so that the product – goods, works or services – is available when needed.

The second use of the procurement plan is to propose the procurement methods that will be used. Normally, this will be based on rules (for example, open bidding to be used for contracts over USD 10,000) but these rules can be complicated or can allow for some flexibility. Through the procurement plan, the procurement officer proposes a method to use. The chief executive (or the official who has approving power) reviews the plan and signs it to indicate approval of the method proposed. In some cases, donor agencies may require the right to review and approve procurement plans (The World Bank routinely does this as part of its project supervision arrangements).

The third use of the procurement plan is as a tool for monitoring and ensuring that procurement processes are on track.

Preparing the Procurement Plan

The procurement plan should be prepared immediately after the annual plan and budget is approved. The procedure for preparing the procurement plan should be:

1. From the plan and budget, identify each item that needs procurement (that is, every item of goods, works or services;

Example: East-West Sub-District plans to build a primary school in East Village.

2. Write down the approximate cost (the budget or initial cost estimate) of the item;

> **Example:** The budget for the construction is USD 25,000.

3. When all the items are identified, examine whether there are items of a similar nature that can be grouped together in a single package for procurement. For example, if there is a plan to buy computers for two different departments of the local administration, the computers should be procured together in one package. There are often quite strict rules to prevent items of a similar type that could be procured as one package, being split into separate packages.
4. Next, for each package, identify the procurement method that will be used. This will normally be determined by the type of item, and the total value of the package.

> **Example:** The plan also includes a school in West Village, with a budget of USD 40,000. So the two schools are combined in a package with a total value of USD 65,000. Procurement rules require that works contracts valued over USD 10,000 are procured by open competitive bidding.

5. Finally, write in the estimated date for the start of procurement, considered as the time when the bid advertisement will be published or the bid documents will be issued; the estimated date for signing the contract and the estimated date for completion (delivery of the goods or completion of the works or services). These dates will normally be calculated backwards:
   - The **completion date** is the date when the goods, works or services are needed. In the example of a school building, this might be the start of the school year.
   - The **contract signing date** is calculated by counting back from the completion date, the number of months needed for the construction;
   - The **advertising date** is calculated by counting back from the contract signing date, the number of months needed for the competitive bidding procedure.

> **Example:** The school buildings are needed for the start of the 2011 school year in August 2011. The construction period is estimated as six months so the contract signing must be no later than February 2011. The time required to complete the open competitive bidding process is two months, so advertising must be no later than December 2010.

The completed procurement plan will look like the example below.

Procurement Plan for EastWest Sub-District, Financial Year 2010 – 2011							
Package	**Item**	**Budget**	**Procurement Method**	**Key Dates**			**Comment**
				Advertising	Contract	Completion	
1	Primary schools package		Competitive Bidding	1/12/2010	1/2/2011	1/81/11	Needed for start of school year
1.1	Primary schools in East Village	$25,000					
1.2	Primary schools in West Village	$40,000					
	TOTAL PACKAGE	$65,000					
2	Computers		Request for Quotations	1/11/2010	15/12/10	31/12/10	
2.1	1 computer for Finance Dept	$1,500					
2.2	1 computer for Admin Dept	$1,500					
2.3	1 printer for Admin Dept	$500					
	TOTAL PACKAGE	$3,500					
3	Consultant to write training materials for gender training for staff	$10,000	Selection based on Consultant's Qualifications	30/9/10	31/12/10	31/3/11	

NOTE: The example above shows the very minimum information needed on a procurement plan. Depending on the rules in force, other information might be needed. For example, if a donor requires that certain contracts are subject to prior review, there might be a column to indicate prior review contracts on the plan.

Splitting of Packages

Procurement officials often try to avoid competitive bidding processes if they can. For this reason, they may try to split up procurement of similar types of works (or goods or services) into small packages so that the value of each package is below the threshold value for competitive bidding.

Procurement guidelines, particularly those of the major international development banks, often have strict rules against this practice. The reason is that more competition should result in lower costs.

However, there can be cases where packaging works combined into a higher-value contract has the effect of reducing, not increasing competition. This can happen if the local firms have the qualifications needed to bid for small contracts but not for large ones. Local firms may be able to undertake the work for a lower cost than a large firm from a distant city. Rules on this matter should be applied in a flexible and intelligent manner, with the objective of ensuring that packages are suitable to the capacity of local contractors and suppliers wherever possible.

Example: The cost of a school with two buildings is USD 25,000. The threshold for open competitive bidding is USD 15,000. The buyer seeks to split the construction into two contracts worth around USD 12,500 each, with the sole objective of avoiding competitive bidding.

Chapter 7: Right Item? Starting with a Clear Description of the Product

About this Chapter

Both "buyer" and "seller" need a full understanding of what the buyer needs. This chapter provides advice on drawings, specifications, bills of quantities and terms of reference that describe the "product" the "buyer" wants to buy.

General

Good procurement practice starts with a clear description of the product. This description is the basis of the bid document and later, the contract. The format of this description will vary according to what is being procured:

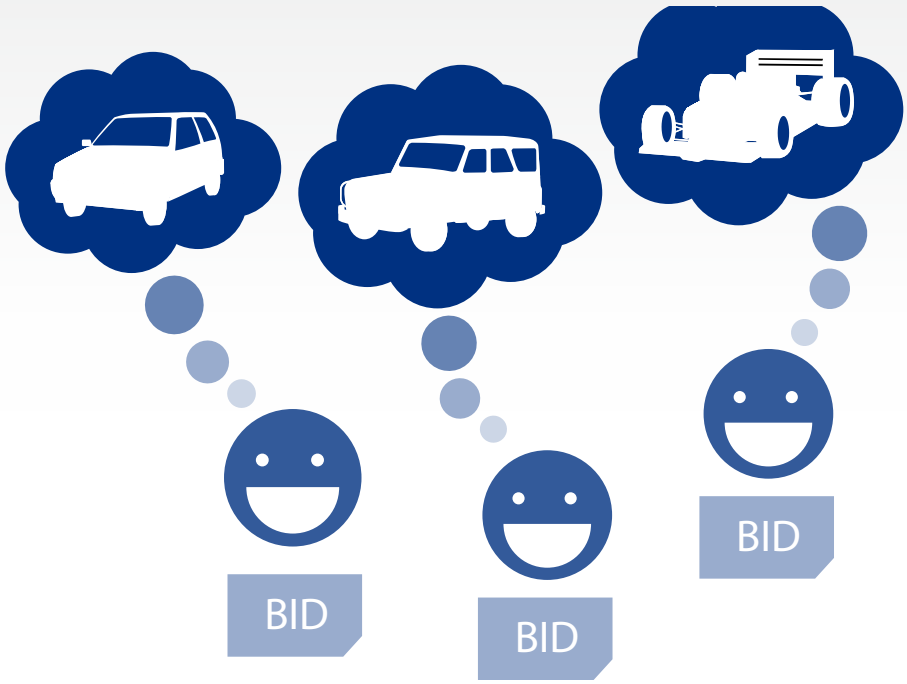
- For **works**, the description will usually include drawings, technical specifications and bills of quantities;
- For **goods**, there will usually be a technical specification and (if needed) bills of quantities;
- **Professional services** are usually described by a Terms of Reference document.

Obviously, it is important to have a clear "project design" or a description of the product so that the buyer and the project beneficiaries are clear about what they will get and can check that it is what they need.

However, a clear "description of the product" is also extremely important during the procurement stage, because:

1. It allows an accurate estimate of the cost to be made, for budget purposes and to be compared with actual bid prices submitted to make sure that they are reasonable;
2. It avoids any misunderstanding between the buyer and the contractor or supplier, during the implementation of the contract;
3. Most importantly, from a procurement point of view, it allows the bidders to determine an appropriate bid price. So far as possible, all the bidders should be bidding to provide the same "product." This makes the process of bid evaluation simpler, fairer and more transparent.

The "description of the product" in the bid documents will form the basis for approving payment to the contractor or supplier – therefore it is vital that the description is not only



clear and accurate, but that it is expressed in a way that permits a clear determination to be made of whether "product" supplied actually conforms to the specification.

It is quite common, particularly in large or complex projects, for the "description of the product" to be changed after the bids have been evaluated and a winning bidder has been selected. This may be done through negotiation between the project owner and the contractor, or under contract provisions that allow the project owner to vary the size or nature of the product. Procurement rules usually place limits on the type or size of changes that can be made. Such changes do not violate good procurement practice, provided that:

1. The "description of the product" in the bid documents forms a fair basis for comparison of the bids; i.e. the best price or best bid identified on the basis of the tender documents is still the best price or best bid for the final product; and
2. The price of the final product can be calculated directly from the prices in the bid document.

Works

For a works contract, the "description of the product" normally consists of three parts:

1. **Technical drawings**, showing what the contractor has to construct;
2. **Technical specifications**, which define the quality of the work to be constructed. Technical specifications will usually include descriptions of any tests that will be used to determine whether the works have been constructed to the correct quality, and descriptions of the methods used to measure the quantity of each type of works.

3. **Bills of quantities**, which divide the works up into different items and show how much of each item is needed. The bills of quantities include columns for the bidder to enter unit prices (the price for one of any item) and total prices.

Drawings, technical specifications and bills of quantities are not separate, independent documents. They have to be read together to gain a complete understanding of what the contractor is required to do. Therefore, it is extremely important that they are consistent with each other.

Use of Standard Drawings and Specifications

It is common to use standard design drawings for small works projects, such as those commonly implemented by local governments. For some types of project, for example, school buildings or health clinics, it may be possible to use exactly the same drawings for many different projects in different locations. For other types, roads or irrigation systems, every project will be different, but some details, for example for small bridges, can be standardized, while standard formats can be used for drawings of earthworks even though the dimensions will change depending on the project. Standard drawings of this type are sometimes called "templates."

Preparation of new engineering drawings takes a long time and is expensive, so there are obviously cost-savings if the same drawings can be used recurrently. There are also procurement advantages, because both the buyer and the bidders become familiar with the standard drawings. The process of cost estimation and tender pricing is much easier and the chances of mistakes in the tender prices are less.

Cambodia: The Seila Templates

The "Seila Templates" was a package of standard designs developed for the first local development fund program supported by the "Seila" programme in Cambodia in 1997. The "Templates" included drawings, technical specifications and standards for estimating costs. The Templates were produced as a computer package and also as a book (the Seila Technical Manual). By 2010 (when the system was due to be phased out and replaced by a revised package), about 20,000 culverts and small bridges had been constructed using Seila Templates designs, as well as many irrigation structures, school buildings and wells.

It is very common to use standard technical specifications. Many countries have sets of standard specifications that can be applied to almost any kind of works contract and some of these, for example, the specifications of the ASTM (formerly the American Society for Testing Materials) or AASHTO (American Association of Highway Transport Officials) are in common use in many different countries. Use of standard technical specifications has the same advantages as use of standard "template" designs discussed above. Often, the bid document does not include the actual specification: Instead, it states which specification (for example, ASTM) applies.

However, some caution should be used in referring to standard specifications for small works contracts. Standard specifications are prepared for use in large civil engineering projects. In such projects, there will be equipment for measuring the works, and for carrying out quality control tests that may not be available in a small contract. If the specification says that a particular laboratory test will be used to determine quality of work, but there is no laboratory to carry out the test, then the specification is useless. This is an extremely common error in preparation of contracts for small works (see box).

The design drawings and the bills of quantities must be consistent with the technical specifications. If a standard specification is to be used, the drawings and bills of quantities should be prepared to match the specification. It is not appropriate to just add "Specification XXX will apply" as an afterthought when the drawings and bills of quantities are complete.

In a large construction project, quality control of concrete is carried out by making sample cubes of each batch of concrete, curing the cubes for up to 28 days and then testing the breaking strength of the cubes. The quality of concrete is then specified according to the strength that must be achieved, for example, "20MPa concrete." It is not normal to make test cubes when mixing small amounts of concrete on-site, as this would be too expensive. With no cubes to test, and no laboratory, the specification has no meaning. Instead, the quality of concrete should be specified according to the quantities of the materials used to make it: for example, one part cement to two parts sand to four parts gravel (1:2:4 mix).

Preparing Bills of Quantities

Most works contracts require the contractor to carry out a number of different types of work. Usually, the bills of quantities will divide the work up into different types, which are priced separately. It is not absolutely necessary to do this, the tender document could just require the bidder to quote a single lump-sum price for constructing the whole works. However, sub-dividing the works has a number of advantages:

- It makes it easier to estimate the cost. Often, there will be a standard guide price for each item;
- For the same reason, it makes it easier for bidders to calculate their bid prices;
- It makes it easier to compare bid prices. For example, if one bid is much lower than the others, examination of the priced bills of quantities may show that the bidder has made a mistake in pricing one item or has made an arithmetic mistake in calculating the total bid price;
- It makes it possible to vary the quantities of work after the bidding is completed and the contract is signed.

There are many different ways to divide up the work required for a project, into the items that will appear on the bills of quantities. It is possible to include a very high level of detail or to be very general. For example, road earthworks may be priced according to the cubic metres of earth to be moved and compacted, or (for very simple projects) the bills of quantities may just ask for a price per kilometre. However, there are two very important rules that should be observed:

1. The bills of quantities must divide the work up in a way that is consistent with the specification used; and
2. Wherever possible, the quantities shown should be quantities that can be measured after the work is completed. For example, a cubic metre of excavated earth becomes more than a cubic metre when the earth is loose in a truck, and may be more or less than a cubic metre after the earth has been compacted in an embankment. The Bills of Quantities should show "solid volume:" The volume of the embankment when it is completed. Concrete work should be measured in cubic metres of completed concrete, not in bags of cement and other materials.

Goods

Specifications for the purchase of goods should clearly state the type of goods required including relevant measures of performance, durability, etc. The specification may also state the length of any guarantee period and any arrangements for after-sales service that are required.

Most procurement rules do not permit the use of brand names in specifications, or state that, if a brand name is the only convenient way of describing the quality of goods that are needed, the bidder must be allowed to propose an alternative brand of the same quality (see box).

Use of Brand Names

If it is necessary to quote a brand name or catalogue number of a particular manufacturer to clarify an otherwise incomplete specification, the words "or equivalent" shall be added after such reference. The specification shall permit the acceptance of offers for goods which have similar characteristics and which provide performance at least substantially equivalent to those specified.

Source: Guidelines for Procurement Under IBRD Loans and IDA Credits, World Bank, 2006.

Services

Because the "product" required from a services contract is not a physical thing that can be measured and tested, it is more difficult to specify the quality and quantity of the service that is required than it is to do this for works or goods. This section deals mainly with Terms of Reference for professional services, but many of the same principles would apply to a tender for physical services (for example, solid waste collection).

Inputs or Outputs?

Because it may be difficult to define a "service product" as clearly as the quality and quantity of works or goods can be described, service contracts are often based wholly or partially on the inputs to be provided by the contractor – for example, the qualifications of key personnel and the number of days the personnel will work. In practice, most consultancy contracts specify both the number of staff days to be worked and the expected outputs in terms of reports, etc. However, in some contracts, payment will be made based on a careful count of the days worked, while in others, delivery of the product will be treated as the key basis for release of payment.

What are the Key Inputs / Outputs Required?

When the bidder (who may be an individual consultant, a firm or a non-profit organization) reads the Terms of Reference he or she should be able to clearly understand what inputs the contractor will be obliged to provide and what product the contractor will be obliged to deliver. This will include not only staff qualifications and staff time needed, but overhead costs including transport, office facilities and accommodation in the field, etc.

Terms of Reference for consultant services often provide more flexibility for the bidders to propose their own means of delivering the service, than do specifications for works or goods (see box).

An Alternative Approach – Let the Bidder Propose the Inputs.

An alternative approach, which may work well for local governments with limited capacity to prepare a detailed Terms of Reference, is to describe the general nature of the service required and allow the bidder to propose details.

At the least, this may involve allowing bidders to specify the quantity and type of overhead costs to be covered by the contract – one consultant may need office space, while another may have local office space already. The ToR may also allow the consultant some flexibility in the number, qualifications and days worked of the staff to be deployed under the contract.

At the extreme, the bidder may be required to propose the details of the service, including the exact nature of the outputs to be provided, usually within a fixed budget. The winning bid is then the one that provides the best service within the budget available to the project owner.

Outline Contents of a Terms of Reference

The structure and contents of a Terms of Reference usually follow a scheme similar to that shown in the following Table 3.

Table 3: General Contents of a Terms of Reference

Part	Contents	Purpose
Background	Description of the buyer and of the background to the project including any relevant previous studies, etc.	Who the buyer is; who the beneficiaries of the service are and what relevant work has already been done.
Objectives	What the buyer expects to achieve as a result of the consultancy.	The reason why the service is needed.
Scope of Services	Description of the methodology to be used by the consultant; activities to be carried out by the consultant; staff to be deployed by the consultant and number of days worked for each staff member.	The inputs that the service contractor will need to provide; in enough detail to calculate the costs.
Expected Outputs	Physical results of the consultancy: Most often this will be one or more reports.	What the service contractor is expected to deliver.
Qualifications of the Consultant	May include: Required background, previous experience or evidence of specific expertise of the consulting company; qualifications and experience required for each member of the consultant's staff who will work on the project.	Whether the bidder is qualified to bid; and what staff the bidder will need to employ.
Services to be provided by the Buyer.	Details of any support that will be provided by the buyer; this may include background documents and data; logistical support including transport, communications and office facilities; and any participation of the buyer's staff in delivering the services.	What overhead costs the bidder will need to include in its price.

Chapter 8: Bid Documents

About this Chapter

The bid document must contain all the information the bidder needs to decide on a bid price. This chapter describes what should be included in bid documents, with particular reference to the needs of local governments implementing small development projects.

Function of Bid Documents

The bid document – really a package of documents – contains all the information that bidders need in order to:

- Fully understand the expected output of the contract;
- Know whether they are qualified to bid;
- Know what they have to do to submit a bid; and
- Understand the conditions of the contract, including the expected timing of payments.

The most important function of the bid document is to provide bidders with sufficient information so that they can calculate an appropriate bid price.

Bid documents also perform an important transparency function. All the important details about the bidding process and selection criteria should be made clear in the documents. Therefore, officials cannot change the rules or apply rules differently in order to favour or disfavour particular bidders during the process.

Bid documents should be both comprehensive, covering all relevant information, and clear, so that bidders and procurement officials can understand them. It is not easy to achieve both clarity and comprehensiveness. Bid documents for large projects can be very long – sometimes hundreds of pages in several volumes. This can create difficulties of understanding. It also results in a high cost of the bidding process (for both the buyer and the bidders). For simple projects for local development, where the capacity of local contractors to read and understand complex documents will be limited, it is better to have a short document that everybody can understand, than a long document that nobody can understand.

Bid documents should be in the language used by local contractors and officials. It is surprising how often governments and donors think it is appropriate to ask local contractors to sign contracts in a language they cannot understand, and that the local courts cannot understand either.

Contents of Bid Documents

Bid documents can be thought of as consisting of three basic parts:

1. Information on the bidding and bid evaluation process;

2. Information on the expected "product;" i.e. technical drawings, specifications, bills of quantities, or terms of reference;
3. Information on the conditions of the proposed contract.

Works Contracts

A typical bid document for a works contract consists of the following parts:

1. **Instructions to Bidders:** This is a section explaining to the bidder the procedures for completing and submitting the bid. It will usually include some background information about the project and a summary description of the works. It will always include information on the time and place for bid submission, whether bid security is required, the length of time for which the bid remains valid, and so on. Usually, it will include information on any arrangements for communications between the buyer and the bidders during the bid preparation period.
2. **Qualification and Evaluation Criteria:** This section will set out the criteria for qualification and for evaluation of the bids. If the bidder has already passed a pre-qualification process, the qualification criteria may not be needed. Where post-qualification is used, the bidder can examine the qualification criteria, determine whether it is able to meet these criteria, and prepare the documents or other information required to demonstrate its qualifications. The bidder can also examine the evaluation criteria and prepare its bid to have the best chance of winning.
3. **Bidding Forms:** These are the set of forms that the bidder has to complete. For a very simple contract, there may be just a single form that the bidder has to complete and return. For a more complex contract, the bidder may have to complete separate forms showing some or all of the following:
    a. Evidence that the bidder meets the **qualification criteria**;
    b. Details of **key personnel and equipment** that the bidder will employ to complete the works;
    c. A **schedule for completing the works**, usually in a bar chart ("Gantt Chart") format showing the order in which the different parts of the works will be constructed and how long each part will take;
    d. **Bills of quantities**, in which the bidder enters unit prices and item prices;
    e. A **Form of Bid**; which is the formal document committing the bidder to undertake the contract for the bid price, if selected;
    f. A format for **bid security**, if required.
4. **Technical Drawings.**
5. **Technical Specifications.**
6. **Form of Contract:** This is the contract agreement that will be signed between the buyer and the winning bidder. It is left blank at the bidding stage. However, in some short contract formats, the Form of Contract is combined with the Form of Bid in a single form.
7. **Conditions of Contract:** These set out in detail all the conditions that apply to implementation of the contract including the obligations of the buyer, the obligations of the contractor and provisions for resolving problems or disputes between the parties. Usually, the Conditions of Contract will be a standard format and may be amended by a further document called "Particular (or Special) Conditions of Contract."

8. **Performance Security Forms**, if required: Performance security is not paid until the winning bidder is selected, so at the bidding stage this form will be left blank.

Use of Standard Bid Documents

Bid documents are usually based on standard models. Often these standard models are designed so that all the non-standard information (the information that describes the particular contract) is grouped together in a few pages. An experienced bid reviewer who already knows the standard parts of the document only has to look at these few pages to understand what is needed. The format of these particular or "non-standard" information sections is often:

1. A **Table of Bidding Data**; which provides particular information referred to by the general clauses in a standard Instructions to Bidders document;
2. The "description of the product;" i.e. the **technical drawings, specifications and bills of quantities**; and
3. A **Table of Contract Data**; which provides particular information referred to by the general clauses in a standard Conditions of Contract document.

What the Bidder Needs to do

A bid is a firm commitment by the bidder. After the bid deadline, the bidder cannot change or withdraw the bid without suffering a penalty (for example, loss of the bid security). By submitting the bid, the bidder affirms that it has read and fully understood the bid document. In some cases, the bidder may also be required to affirm that it has carried out additional information gathering activities of its own, such as to have inspected the site. Therefore, the first task of the bidder is to carefully read and understand the bid documents.

The bidder will then calculate a bid price, usually by entering unit prices in the Bills of Quantities and using these to calculate the total bid price. The bidder then completes the other bid forms in the bid document.

The bidder may be required to complete more than one copy of the bid documents. In this case, one copy will be marked as the "Original" the others as "Copy." The bidder may be required to submit either the original or officially authenticated documents as evidence of qualifications (though this Guide recommends that only photocopy documents should be required).

Bid Documents for Procurement of Goods

Bid documents for procurement of goods generally have a similar structure to those for works contracts. However, they can usually be much simpler and shorter.

For procurement of relatively small items from local suppliers, the bid document should consist of:

1. Instructions to Bidders;
2. Technical Specifications (describing the goods required);
3. Conditions of Contract;
4. Price and Delivery Schedule (similar to Priced Bills of Quantities but including additional information about the required place and date of delivery for each item);

5. Form of Bid;
6. Form of Contract Agreement.

Request for Proposals for Consultant Services

The bid document for professional services is usually called a Request for Proposal. The Request for Proposal document is based on similar principles to bid documents for works and goods but has some differences reflecting the way in which the required "product" is defined (through a Terms of Reference) and the need for detailed technical proposals which will usually be the principal basis for a comparison of bids. The typical contents of a Request for Proposals document are:

1. Letter of Invitation
2. Instructions to Consultants
3. Terms of Reference
4. Conditions of Contract
5. Form of Contract
6. Technical Proposal Forms
7. Financial Proposal Forms

Desirable Features of Bid Documents for Local Development

Bid documents for small works contracts for local development, let by local governments, should follow the general format described above. It is highly desirable to have a standard bid document developed especially for the needs of local governments. The document need not be excessively long – the length may vary in proportion to the size of the projects that the local government typically undertakes. Therefore, a very simple format of ten pages or less may be appropriate for village or commune-level councils, while a longer format of twenty to fifty pages may be appropriate for the needs of a District level council with higher administrative capacity and more strategic responsibilities (see table).

Country	Type of local authority	Typical contract size	Length of standard bid document
Bangladesh	Union Parishad	USD 2,000	< 10 pages
Cambodia	Commune Council	USD 9,000	10 – 25 pages
Laos	District Development Committee	USD 13,450	10 – 25 pages
Timor-Leste	Pilot District Assembly	USD 14,000	25 – 100 pages

As well as keeping the standard documents short, simple and accessible (which includes being in the local language), there are a number of additional strategies that can be considered to reduce the cost and complexity of submitting bid documents:

1. Is it necessary to distribute and submit all the standard documents each time? If these are standardized, why not just distribute them in handbook format to the local contractors? Then, only information particular to the contract needs to be distributed and returned in the bid documents.

2. Is it necessary for bidders to submit more than one copy of the bid?
3. Submission of original or certified documents. This is often quite unnecessary, and can be abused to create rent-seeking opportunities (bidders have to pay to get a stamp on their documents). In a post-qualification system, it should be quite sufficient for bidders to submit photocopies of documents, together with a signed undertaking to show the original documents, if and when, required.
4. Is bid security really necessary? This subject is addressed further in Chapter 15.

Chapter 9: Selection Criteria

About this Chapter

Selection criteria are the rules for choosing the winning bidder. This chapter describes the principles of selection criteria and provides advice on appropriate selection criteria for use in local development procurement. It also discusses when pre-qualification should be used.

Pass-Fail Criteria and Comparison Criteria

Selection criteria must be decided before the bid is advertised. The bid document must state clearly what the selection criteria are. Selection criteria should be objective – two different evaluators, using the same criteria independently, should come to the same decision. There are two kinds of criteria – pass/fail and comparison.

Bid price is usually a comparison criteria, though in some cases (for example, Fixed Budget Selection for consultants) it may be a pass/fail criteria.

Pass/fail criteria are mainly used either for **qualification** or to determine whether bids are **responsive. Comparison criteria** are used to identify the best bid from amongst the responsive bids submitted by qualified bidders. Comparison criteria may include the bid price and other (non-price) considerations.

Normally, the qualification criteria (pass/fail) are not used again to compare between bids. There is an exception to this rule in the comparison of technical proposals from consultants – the technical score is used to compare proposals, amongst those proposals that achieve a pre-defined minimum score (see box).

1. The Request for Proposals states that the consultant must have at least a Master's degree. If the bidder does not have a master's degree, the bid fails and the bidder is eliminated. So this is a pass/fail criterion.
2. The Request for Proposals states that a score will be awarded for the number of years of relevant experience the bidder has. So, a bidder with 15 years' experience gets a higher score than a bidder with 10 years' experience. This is a comparison criterion.

The standard procedure for evaluating requests for proposals for consultant services is:

1. Calculate a technical score;
2. Eliminate the bids that have less than the minimum acceptable score (say, 75%);
3. Combine the technical score with a score for the financial proposal (price) to identify the best overall proposal.

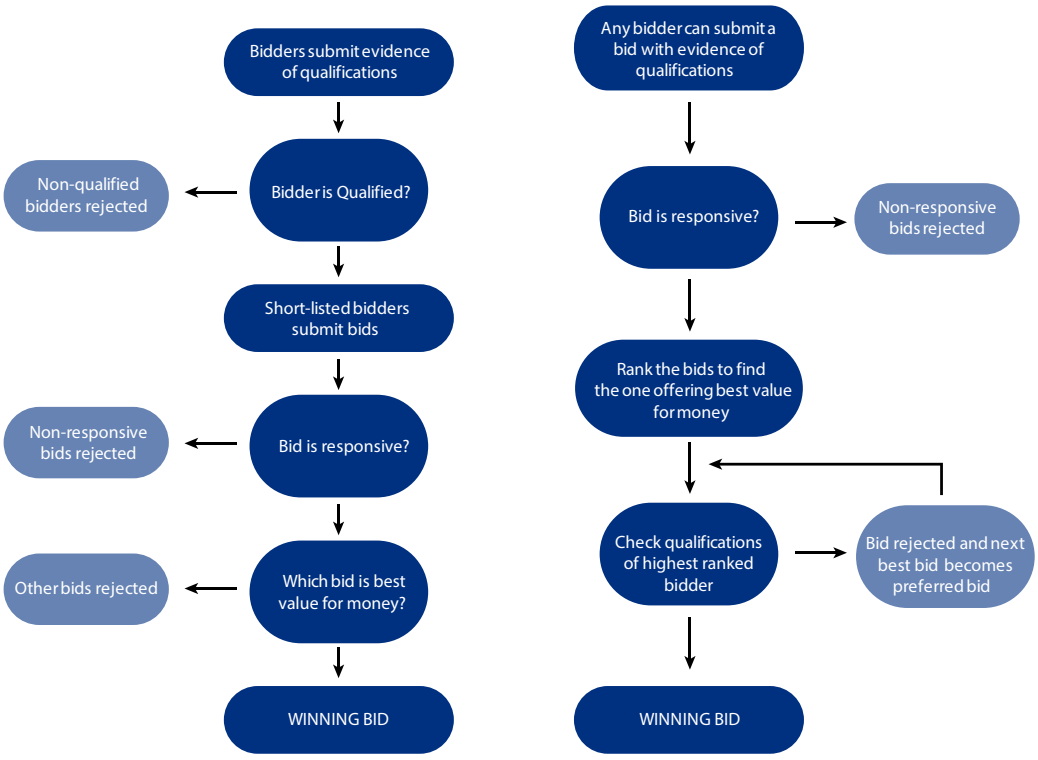
Qualification Criteria

Qualification criteria vary. The basic principle is that only criteria that are relevant to the bidder's ability to undertake the contract may be applied. Criteria will usually include the following.

1. **Is the bidder legally entitled to undertake the contract?** In most countries, bidders for public contracts are obliged to show that they are properly registered businesses and have paid any taxes that are due. These requirements can cause complications for very small or community-based contractors and regulations should allow such "informal contractors" to participate where appropriate. The bidder may be asked to submit evidence such as copies of registration certificates, tax returns, etc.
2. **Is the bidder barred from bidding because of a previous event?** Contractors that default on their obligations (either by refusing to accept a contract they have bid for, or by failing to fulfill the contract) or that are found to engage in corrupt practices (for example, offering bribes to procurement officials) may be barred from bidding either for a fixed period or permanently. In some cases, bidders may be barred because of other circumstances, for example, if the bidder is involved in an ongoing legal dispute. Bidders may be asked to sign declarations that they are not barred from bidding.
3. **Does the bidder have the technical capacity to undertake the contract?** Evidence of technical capacity may be required. In some countries, the government maintains lists of contractors who are considered to have capacity to undertake certain types of work, and contracts up to a certain value. It is common to ask contractors to provide evidence of previous experience with similar types of contracts – for example, three contracts of a similar nature during the previous five years. Bidders may also be asked to provide evidence of the qualifications of key staff members who will work on the project, and to provide evidence that they have access to the equipment needed for the contract. Only details of key staff and equipment should be requested. It does not matter whether the staff proposed are permanent staff of the bidder or not, provided that there is a clear commitment that they will be available for the contract. Similarly, it does not matter whether the equipment is owned by the bidder or whether the bidder will rent it.
4. **Does the bidder have enough financial stability to undertake the contract?** The contractor will need sufficient working capital to undertake the contract. Normally, he/she will have to buy materials, pay workers, etc. before receiving any payment from the buyer. If the contractor becomes insolvent during implementation of the contract this may cause financial loss to the buyer. It is normal to require a contractor to provide evidence of financial stability, but this can be difficult for small firms – and difficult for local governments to verify. The bid documents may require the contractor to provide evidence of an adequate bank balance, but this is not necessarily sufficient evidence in itself. If a firm is able to show evidence of having successfully completed a number of contracts of similar size in the past, this may be taken as evidence of financial stability.

Pre or Post-Qualification?

Bidders' qualifications may be checked at the beginning of the procurement process (pre-qualification or short-listing) or at the end of the process (post-qualification). The relative merits of pre and post-qualification systems are discussed in Chapter 4 above.



It is recommended that post-qualification systems should generally be preferred for local development contracts for works or supply of goods. The reasons for preferring post-qualification are that:

1. It allows more firms to compete. Pre-qualification may have the effect of restricting the number of firms that can compete for contracts, even if the qualification criteria are applied fairly; and
2. It is more efficient. The buyer only has to check the qualifications of one contractor (the winning bidder).

Responsiveness Criteria

Bids are categorized as "**responsive**" or "**non-responsive**" according to whether they are fully and correctly completed and represent a clear commitment by the bidder to undertake the contract on the terms proposed by the buyer. Bids that do not make this commitment clear (for example, if the form of the bid is not properly signed) are rejected. The full list of responsive criteria varies but for small contracts the criteria might include:

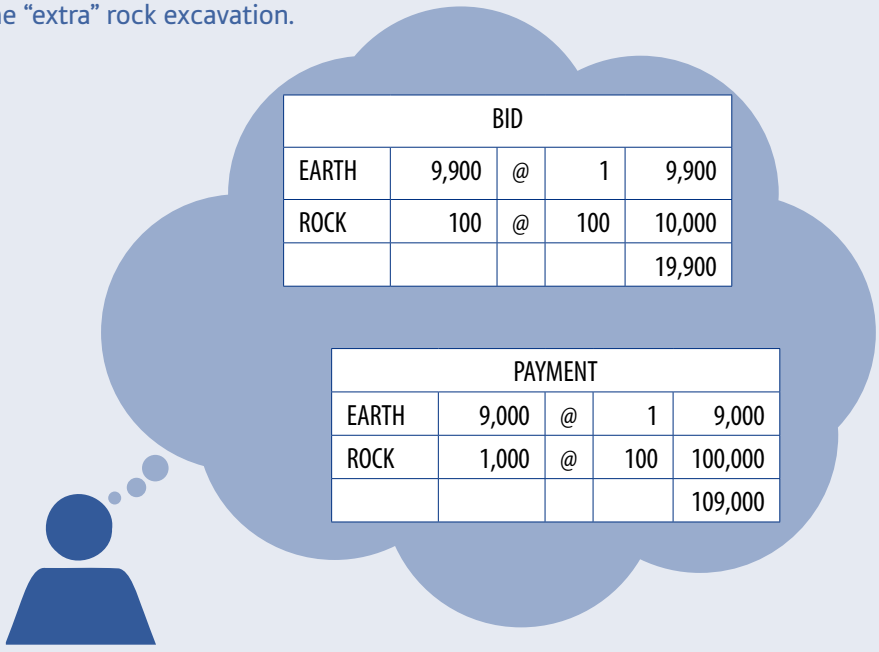
- All parts of the bid document are properly completed and signed;
- The bidder does not propose any changes to the proposed design, specifications or conditions of the contract;
- Any required supporting documents are included.

Comparison Criteria

The main criterion for comparison of bids (from amongst the responsive bids submitted by qualified bidders) should be the bid price.

In large or complex contracts, the lowest bid price does not necessarily represent the best value for money. Therefore, bid evaluation requires careful financial analysis, taking into consideration such matters as the expected timing of payments. If the contract is a re-measured contract, variations in the quantities could result in large changes in the final cost (see box).

Example: The contract for a road construction includes a price per cubic metre for excavating rock. The amount of rock excavation that will be needed is not known exactly so an estimate is included in the bill of quantities. The contractor will be paid for the actual quantity, re-measured at the end of the contract. A contractor with local knowledge spots that the estimated amount of rock excavation is much too low. He bids a low price for earthworks but a very high price for rock excavation. Therefore his bid price is lower than that of the other contractors, but he will make a large profit from the "extra" rock excavation.



BID				
EARTH	9,900	@	1	9,900
ROCK	100	@	100	10,000
				19,900

PAYMENT				
EARTH	9,000	@	1	9,000
ROCK	1,000	@	100	100,000
				109,000

Most contracts for local development are let on a lump-sum basis: The final price is the same as the winning bid price. The time needed for implementation is usually short. Therefore, the best value-for-money normally just means the lowest bid price.

The buyer may wish to take other factors into consideration in the evaluation of bids – for example, to favour locally based contractors or to ensure that local labour is employed in the contract. It is possible to devise "point scoring" schemes to take such matters into account and then to somehow combine the "non-price criteria" points with a score based on the price. However this is usually the least desirable means of incorporating these concerns. Better approaches include:

- Deal with matters such as local labour employment by making them conditions of the contract, e.g. the contractor will be obliged to employ a certain amount of local labour. All bidders then have to take this into account in their bids; or
- Apply an adjustment to the bid price to express a "preference" for firms meeting certain criteria. The winning bid is selected based on the lowest price after this adjustment is applied. Note that the adjustment is only for the purpose of bid evaluation. The final contract price will be the actual bid price submitted by the winning bidder (see box).

Example: East West Sub-District has a policy to encourage women entrepreneurs. Therefore, it decides to apply a price preference of 5% to bids submitted by firms owned by women. The lowest bid received for the school construction is from Mr. A whose bid price is $US 62,000. The lowest price submitted by a woman entrepreneur is from Mrs. B whose price is $US 64,000.

After applying the preference, the adjusted bid price for Mrs. B is

$64,000 – ($64,000 x 5%) = $64,000–$3,200 = $60,800.

Therefore, Mrs. B is awarded the contract. The contract price is her original bid price, i.e. $64,000.

Can a Bid be too Low?

The procurement guidelines of the major international development banks imply that, provided the bidder is judged to be qualified and its bid is judged to be responsive, after any necessary adjustments have been applied to the bid price, the lowest bid should be accepted.

> The Borrower shall award the contract, within the period of the validity of bids, to the bidder who meets the appropriate standards of capability and resources and whose bid has been determined (i) to be substantially responsive to the bidding documents and (ii) to offer the lowest evaluated cost.
>
> Source: Guidelines for Procurement Under IBRD Loans and IDA Credits, World Bank, 2006.

This appears to be common sense: All the bidders are offering the same thing, so the one with the lowest price represents the best value-for-money. Remember that the bidder is not under any obligation to "compete fairly" or to make a profit from the contract: If a bidder offers to build a school, say, for USD 1, and does so in accordance with the drawings, specifications and contract conditions, this is nobody's business but his/her own.

Nevertheless, it is very common to find procurement rules in force that allow, or require, bids below a certain "minimum price" to be rejected. The justification advanced for this is usually that if the price is too low, the contractor will be forced to cut corners in order to complete the contract and so quality will suffer. Two possible cases are that:

1. The bidder deliberately bids an unreasonably low price, expecting that he/she will be able to reduce the quality or quantity of works, from that described in the bid document, and so will still make a profit.
2. The bidder has simply made a mistake and under-estimated the cost of implementing the contract.

The bidder in "case 1" can only gain if construction supervision is weak. With good supervision, the contractor can only be paid if it constructs according to the design, specifications and conditions of the contract. Therefore, if the bidder expects strong supervision, it will not adopt this strategy.

The key expertise of a private sector construction contractor is, or should be, estimation: The contractor should be "more expert" at determining the appropriate price for a contract, than the consultant or official who calculates the price estimate on which the "minimum price" is based. So a price that is different from the estimate is not necessarily "wrong."

A minimum price can be used to facilitate bid manipulation, particularly when the minimum price is concealed from the bidders (see box). Alternatively, if the minimum price is published, the effect may be that all the bidders bid the minimum price so it is impossible to pick a "winner." For these reasons, arbitrary minimum prices, sometimes referred to as "bracketing," should never be applied and are prohibited by the rules of the major development banks.

How to manipulate a bid using a minimum price

Engineer A is responsible for estimating the cost of a bridge construction in North-South sub-district. Any bid that is lower than 90% of the estimated cost will automatically be rejected. Engineer A calculates that a fair estimate would be USD 50,000. However, he adjusts his estimate upwards to USD 60,000 so the minimum price will be USD 54,000. Engineer A sends this information by text message to his cousin, Contractor B.

Contractor B submits a bid with price USD 54,000. The other bidders do not know the estimated price. Any bidder who bids below USD 54,000 will find its bid is rejected as "too low." Therefore, Contractor A is automatically the winner, with an "extra profit" of USD 4,000.

Despite these considerations, it is the view of this Guide that it is sometimes justified to reject a bid because it is too low. In the circumstances of limited capacity of bidders to estimate costs, and limited capacity of buyers to enforce contract conditions, excessively low contract prices can lead to poor results. Rejection of a bid as too low should be treated as an exceptional circumstance and should be done according to a careful process that eliminates the possibility of bid manipulation. The recommended process is:

1. Estimated costs should be public. There is no reason to keep the estimated cost secret from the bidders – and in most countries, at least some of the bidders will always have a way to find out. It is better if everybody has the same information.
2. Bids should not be identified as too low based only on a comparison with the estimated price. If all the bidders bid far below the estimate, it is probably the estimate that is wrong. Therefore, bids should only be identified as too low if it is (1) a certain percentage, say 10%, below the estimate, and (2) a certain percentage, say 5%, below the next lowest bid.
3. When a bid is identified as potentially too low, the bidder should be offered the opportunity to withdraw the bid without further penalty.
4. If the bidder chooses not to withdraw the bid, the bidder should be asked to provide a detailed calculation to show that its bid price is justified. This calculation should be checked by an independent engineer (not the engineer who made the original estimate).

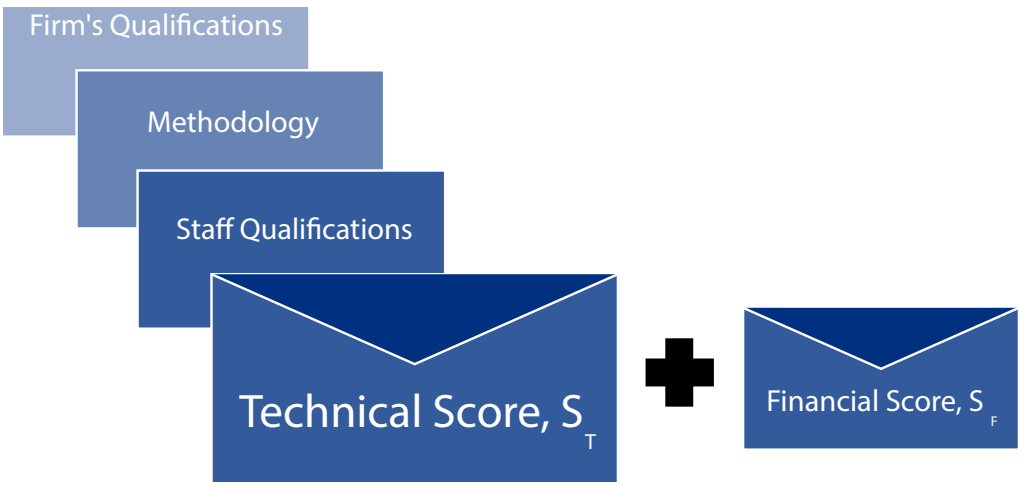
5. If, after checking the calculation, the engineer confirms that the bid price is unreasonably low, the bid evaluation committee should make a full report with all the documents placed on file. They can then recommend awarding the contract to the next lowest bidder.
6. It should not be permitted to reject more than one bidder in this way. If the bid evaluation committee is convinced, after following the procedure, that more than one bid is too low to be accepted, the bidding process should be considered as having failed and the contract should be re-advertised.

An alternative approach is to award the contract to the bidder submitting the lowest bid price, on condition that the bidder provides additional bid security to cover the loss to the buyer in case of default.

Selection Criteria for Services

Comparison of Technical Proposals

The evaluation criteria for bids to provide professional services are usually conducted using a "two-envelope" system. The first envelope contains a technical proposal which is evaluated according to a pre-determined scoring system. Bidders who fail to achieve a minimum "technical score" (often 75% of the maximum) are eliminated. For the remaining bidders, the second envelope, containing the financial proposal, is opened. A "financial score" is calculated and is combined with the "technical score" according to a weighting system to determine the total score. The bid obtaining the highest total score is the preferred bid.



The criteria for scoring technical proposals commonly consist of some combination of:

- A score for the methodology proposed by the consultant (for example, 25%);
- A score for the previous experience of the consulting company (for example, 15%)
- A score for the qualifications of the staff proposed for the assignment (for example, 50%)
- A score for local knowledge of the consulting company (say 10%).

The score for the qualifications of the consultant's staff is usually calculated for each proposed staff member individually, then a weighted average score is calculated: For example, 40% for the team leader, 40% for the other experts; 20% for the supporting staff.

The key principle is that the scoring should be done in as objective a manner as possible. However, this is very difficult to achieve. If possible, the evaluation should be conducted by officials or advisers who are themselves experts in the field related to the assignment, but this is unlikely to be possible for a local government.

The usual method of calculating a "financial score" is to award maximum points to the lowest priced bid, then, for each of the other bids, divide the lowest bid by the actual bid price to calculate a score.

Example: Calculation of financial and overall scores for Firm A if the weighting is 80% for technical proposal and 20% for price (Combined Score = 80% x ST + 20% x SF). Suppose that Firm A has scored 90% on its technical proposal (S_T = 90%). Its proposed price P_A = USD 24,000 and the lowest submitted price P_{MIN} = USD 20,000.

The Financial Score for Firm A is calculated as S_F = $20,000/$24,000 = 83.3%

The combined score for Firm A is 80% x 90% + 20% x 83.3% = 88.7%

Fixed Cost Selection

The scoring process can be quite a complicated procedure for a local government to apply. In practice, the effect is normally to award the contract to the firm with the best technical proposal.

An alternative approach which may prove more suitable to the needs of local governments is to use fixed-cost selection. This can be done as follows:

1. Expressions of interest are sought and a short-list prepared in the normal way.
2. Short-listed firms are invited to submit proposals based on an outline TOR and a budget ceiling. The TOR should be clear about the expected results but need not provide details about the expected inputs – number or qualifications of staff, etc.
3. The short-listed firms prepare their best technical proposal, within the confines of the known budget ceiling.
4. The short-listed firms submit their proposals in the normal way (using the two-envelope system). The buyer evaluates the written proposals and arrives at a preliminary ranking of the proposals by any suitable method.
5. The short-listed firms are then invited to make a short presentation about their proposals and to answer questions from the evaluation committee.
6. The evaluation committee agrees a ranking for the proposals and prepares a short report. It is not necessary to support the ranking by a detailed scoring of proposals.
7. The financial proposal of the highest ranked firm is opened. Provided that it is within the (known) budget ceiling, that firm is selected to implement the contract.

Chapter 10: Contract Conditions

About this Chapter

When everything goes well in contract implementation, the contract conditions are rarely looked at. In contrast, when there is a problem the contract conditions are the key to the solution. This chapter describes key features of conditions of contract documents and recommends essentials for short, simple contract formats for small contracts.

Contract conditions define obligations of the parties to the contract, how payments are determined, powers of the employer to vary the contract, circumstances in which the contract can be terminated, etc. The contract conditions are included in the bid document because the contract conditions will affect the contractor's costs and the level of risk the contractor undertakes.

Contracts are usually based on standard models. In any country, the agency responsible for governing public procurement may issue standard conditions of contract or it may use an international model, such as those issued by the International Federation of Consulting Engineers (FIDIC). These contract documents are carefully written so as to provide clear guidance in all circumstances that are likely to arise during implementation of the contract, and to share risks fairly between the buyer and the contractor. Because of the need to cover all likely (or possible) circumstances in detail, the contract documents are often quite long and complex, and difficult for an ordinary person to understand fully. It is not uncommon for contracts to be signed between buyers and contractors, neither of whom has even a minimal understanding of the meaning of the impressive-looking document they have signed.

The contracts let by local governments for local development projects are usually small and simple. The duration of the contract is short and payment is usually a lump-sum paid in one or more pre-defined stages. Contract administration arrangements are usually quite simple. Therefore, much of the material found in a standard conditions of contract document may not be needed. On the other hand, it is essential that the contract conditions provide clarity about all important matters in a language that can be understood by both the buyer and the contractor.

Table 4 sets out the key contents of a basic "conditions of contract" document, itemizes the issues dealt with under each heading and provides recommendations for how an appropriate contract document for small, simple works contracted by a local government should deal with each issue.

Table 4: Contents of the Basic Conditions of a Contract Document

Main Heading	Issue	Recommendation
Basics	Language of the contract	Local language
	Applicable law	Local law
	What documents constitute the contract?	Contract Agreement, Conditions of Contract (with any related schedules); Drawings and Specifications, Priced Bills of Quantities.
	Who exercises the authority of the Employer?	Chief executive officer of the local government should be designated Project Manager
	Dispute resolution	See Chapter 16
	Right to sub-contract	Contractor to remain fully responsible for all their obligations under the contract, where sub-contracting is permitted.
Contractor's obligations Employer's Obligations Project Management	Construct the works	Should reference drawings, specifications and bills of quantities
	Complete work on time	Insert or reference an Intended Completion Date
	Ensure safety and security on-site and adequate protection of the environment	Short clause making clear contractor's responsibility for these issues including compliance with local laws
	Remove waste, plant and surplus materials and leave the site in good order	
	Provide insurance	If required – see Chapter 15
	Provide performance security	If required – see Chapter 15
	Be responsible for all risks other than those specifically defined as employer's risks	Clause making clear contractor's responsibility for safety and security may be sufficient
	Be liable for defects within a stated Defects Liability Period	Usually six months or one year after completion
	Provide possession of the site	Provide access to the site (usually sufficient)
	Provide clear and timely instructions where needed	May need to specify who has the right to issue instructions and whether verbal instructions have force
	Accept risks that are an unavoidable consequence of undertaking the works	May not need to state explicitly
	Make payments in a timely manner	Employer to pay Contract Price in accordance with Payment Schedule
	Program of Work	Contractor to provide a work plan. This should also name the contractor's Works Manager.

Continues...

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Main Heading	Issue	Recommendation
	Extent of variations permitted	Either (1) no variations permitted except by mutual agreement; or (2) set a limit (say 20% of contract price) on variations that can be instructed.
	Site records and documentation	In the simplest contracts, maintain a site notebook in which progress, events and instructions are recorded.
	Conditions for granting an extension of time	Extension to be granted at discretion of project manager
	Liquidated damages for late completion	Reduce payment by 0.1% of contract price per day delay up to a maximum of 100 days (i.e. maximum 10% deduction)
Quality Control	Right of the Project Manager to conduct inspections and tests	Project manager has absolute right to inspect and order or conduct tests
	Responsibility for paying for tests	Contractor to pay for tests if work is found to be defective.
	Correction of defects	Project Manager (or representative) to issue instructions to correct defects; these instructions to be complied with within a fixed number of days.
Measurement and payment	Basis: Lump-sum or re-measured?	Normally contracts will be lump-sum.
	Payment of unforeseen costs	May be needed in some circumstances but contract should be worded very carefully – local governments may not have flexibility to pay.
	Who carries out measurements?	Normally the contractor measures and project manager checks, but depending on supervision arrangements, it may be necessary for Technical Supervisor (representing the Project Manager) to measure directly.
	Processing of payments	Contractor to issue invoice; Technical Supervisor to verify and issue report (which may be commented on by community); then Project Manager to issue certificate for payment. Contract should state number of days for processing.
	Advance Payments	Best if no advance payments are made. Any advance payment should always be covered by a security or bank guarantee.
	Interim payments	Interim payments not to imply acceptance of work. Interim payments to become due on achievement of pre-defined key stages of construction.
	Retention	10% to be retained from each payment. Half of this may be released on completion and half retained during the defects liability period.

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Main Heading	Issue	Recommendation
	Final Payment	Final acceptance of the works at the end of the defects liability period – retention money is released at this stage. Normally no other payment will be due.
	Interest on late payments	Contractor should be entitled to interest on payments late more than a certain number of days.
Termination of the Contract	Frustration	If contract cannot be completed (e.g. due to war or natural disaster) contractor to be entitled for payment for work carried out.
	Default by the Contractor	If contractor fails to start work, delays work by more than a certain number of days without agreement, or otherwise breaches the contract, Project Manager is entitled to terminate the contract. No payment to contractor until the project has been completed by other means.
	Default by the Employer	If employer fails to provide site access; otherwise makes it impossible for contractor to continue, or fails to make payments, contractor is entitled to terminate the contract.
	Payment on termination	No fault or employers' fault – contractor entitled to payment for work done Contractor's fault – buyer should complete the project by other means and deduct the cost from the contract price, to determine what (if any) payment is due to the contractor

PART 3

PUTTING THE BLOCKS TOGETHER

Chapter 11: Advertising

About this Chapter

Advertising is the basis for competition. This chapter provides recommendations for advertising, dissemination of bid documents and for procedures during the time allowed for bid preparation.

Advertising is essential in any competitive bidding process. Advertising procedures should ensure that all potential bidders are able to learn about the opportunity with sufficient time to respond.

Advertising by newspaper is the most widespread method. In most countries, there are newspapers that contracting firms will monitor in order to learn of bidding opportunities.

However, remote rural areas may not have a suitable newspaper that is read by local contractors. Also, the cost of placing a newspaper advertisement can be high, particularly in relation to the cost of a small contract.

Sometimes bids are advertised only by placing notices on the notice-board of the local government. This is acceptable if:

1. The size of the contracts is very small, so that only local contractors would be interested in bidding; and
2. The local contractors are well informed of the location where advertisements will be placed.

Cambodia – The pre-qualification process (contractors apply for a pre-qualified contractor list) is advertised nationally. Each contract is then advertised on noticeboards at Communal and Provincial headquarters.

Other potential methods of advertising include television, radio and the Internet. Access to the Internet is increasingly widespread even in remote rural areas. Local construction contractors are not usually the first group (in any country) to make use of the Internet, but they can easily do so if they perceive that there is a potential benefit to themselves.

What Should be Advertised?

Normally, the advertisement will either be an invitation to pre-qualify (where pre-qualification is used) or it will advertise distribution of the bidding documents and the time and place for submission of bids.

- The advertisement should include, as a minimum:
- The name and address of the buyer;
- The general nature of the project and the time allowed for implementation;
- The procurement method to be used;
- General rules on eligibility to bid (so that non-eligible firms do not waste their time applying);

- How to obtain more information including pre-qualification or bidding documents, including place, hours of business and the department or staff member responsible;
- Cost of bidding documents, if any;
- Time and place for submission of bids;
- Amount of bid security, if required.

It is also recommended to include the **estimated cost** of the contract in the advertisement.

Distribution of Bid Documents

Pre-Inspection

Potential bidders should be permitted to inspect bidding documents without fee or obligation, at the premises of the buyer during office hours.

It is common practice to sell tender documents to potential bidders for a price that is intended to cover the cost of reproduction of the documents. Some observations about this practice are:

- It is common to find that the sale price of the bid documents is much higher than the real cost of printing or photocopying;
- In many cases, the cost of printing the documents is paid from project funds;
- It is not always clear how the funds obtained by selling the documents are actually used;
- The interest of the buyer is to encourage as many bidders as possible to obtain documents and submit bids. There is no long-term benefit from charging genuine bidders for the documents (these bidders will need to cover this cost from profits earned in public sector contracting, so in the end the cost of the bidding documents is a cost to public funds). The only real benefit is to deter people who are not interested in bidding, from taking away copies of the documents.

Therefore, the best option is to cover the cost of reproducing bid documents from project funds. If this cannot be done, the following rules should apply:

1. The cost of the documents should be strictly the printing costs, and no more; and
2. The money received for bid documents should be returned to general funds or specific project funds;
3. The money received should be carefully recorded in accounts which should be subject to audit.
4. When bid documents are distributed to invited bidders only (for example, after short-listing), there is no good reason for requiring the bidders to pay for the documents.

Electronic Distribution of Bidding Documents

Bid documents can be distributed in electronic format either by downloading from a website, by e-mailing to a list of contractors, or by allowing interested bidders to copy electronic files at the premises of the buyer. In this case, the cost of printing the documents is borne by the bidder.

The potential risk of electronic distribution is that bidders will make unauthorized alterations to the bidding documents. However, this is not a very serious risk, particularly if the documents are issued in a format (such as Printed Document Format, .pdf, files) that cannot easily be edited. It is always possible to tamper with an electronic file, but it is equally possible to

tamper with a paper document. All bidding documents should be checked for completeness as part of the preliminary examination of bids. Therefore, electronic distribution of bid documents should be seriously considered, particularly in areas where it may be difficult or costly for bidders to travel to collect documents from the buyer's premises.

Electronic distribution of bid documents is only appropriate if the local contractors use computers and the Internet. It is common to find (in developed countries as well as developing ones) that small construction contractors are not very computer literate. However, they are businesspeople and can learn – they will soon find their way to the local Internet cafe if they see that it gives them an opportunity to do business.

Time Allowed for Preparation of Tenders

Bidders should be allowed a reasonable period of time for preparation of bids. For the very simplest projects this should be no less than two weeks. More typically, three weeks to one month should be allowed for preparation of bids for works contracts.

During the bid preparation period, all communications between the buyer and bidders should be carefully regulated. Any information that is given to one bidder must be copied to all the others. Therefore:

- Keep a register of bidders who have obtained bidding documents, including contact details;
- Keep a log of all enquiries, whether by telephone or in person, from bidders;
- If any bidder is provided with information that is not clearly stated in the bid documents, this information should be copied to all other bidders who have provided contact details;
- The same register of contact details can be used to communicate any changes, either to the project design or to the bidding process, that are made during the bid preparation period.

Site Inspections

For works contracts, it is common to conduct pre-bid meetings and site inspections to assist bidders to gain additional information. Attendance at such meetings should not be mandatory – bidders should be free to make their own arrangements to inspect the site if they prefer. However such occasions can be a good opportunity to ensure that bidders have a full understanding of the requirements of the contract. Contracts should be let on the basis that bidders are presumed to have inspected the site and to have informed themselves about such matters as the condition of the site, access roads, water supplies, sources of materials, etc. – if the winning bidder has not done so, it takes the risk itself.

Chapter 12: Receiving and Evaluating Bids

About this Chapter

This chapter discusses the process of bid opening and bid evaluation. It also provides recommendations on associated matters such as bid validity period and bid security.

The process of receiving and evaluating bids must be carefully documented. Normally, a series of registers are prepared to record the following:

- Bids received (may be combined with record of bid opening);
- Attendance at the bid opening;
- Details of bids opened, including the name of the bidder and the bid price;
- Findings of the initial examination of bids;
- Record of bid evaluation;
- Record of post-qualification (if any).

Attendance, proceedings and key agreements of each meeting of the bid evaluation committee should be carefully recorded. A separate record should be made for each meeting and signed by each member at the next meeting of the committee. Simply writing "bid evaluation report" at the end of the process is not sufficient.

Bid Submission

Bidders are normally required to submit bids in sealed envelopes to the premises of the buyer, before a stated deadline. If an original and a copy bid are required, these are usually placed together in a single outer envelope. The envelope should identify which contract the bid relates to and should show the name and address of the bidder. Two systems are in common use:

- Bidders place bids through a slot into a "bid box" which remains sealed until the time of bid opening; or
- Bidders submit bids to an official who registers the bid and provides a receipt to the bidder.

The systems may be combined – the official may register the bid and then place it in a bid box in view of the bidder.

Whichever system is used, it is important to ensure the security of the bids until they are opened. There should be no possibility of one bidder gaining an unfair advantage by learning of the contents of the other bids in advance.

Bidders are permitted to amend or withdraw their bids up to the deadline for submission. The normal procedure for this is for the bidder to submit a notice, amending or withdrawing

the bid, in a sealed envelope. The amendment or withdrawal notice will be opened at the same time as the bids.

Any bid received after the deadline for submission should be rejected and returned unopened, without exception.

Validity of Bids

There is usually a stated period during which the bid remains valid. If the contract award is not completed within the validity period of the bids, the winning bidder may refuse to accept the contract without suffering any penalty.

When there is a delay in bid evaluation, so that the period of bid validity may be exceeded, the buyer may request the bidders to extend the validity of their bids. A bidder does not have to agree to extend the validity of the bid, but if he/she does not agree to do so, their bid will be eliminated.

There is no reason why evaluation of bids for small local development contracts has to take a long time. A bid validity period of one month should be sufficient.

Bid Security

Bidders may be asked to provide bid security, usually a cash deposit or bank guarantee that is returned after the contract is awarded. If the winning bidder fails to sign the contract, the bid security is withheld. The amount of the bid security is normally expressed as a percentage of the bid price, usually no more than 2%.

Provision of bid security in the form of a bank guarantee may be difficult for local contractors bidding for small works contracts. Conversely, providing bid security in cash creates the risk of theft or loss of the security. In areas where general security is poor, it may be inadvisable to ask bidders to come to the bid opening carrying large sums of money. For these reasons, it is recommended that bid security should not be required for small contracts for local development.

As an alternative to requiring bid security, buyers may either:

- Maintain a register of defaulting bidders who would be barred from participation in future bidding – this may be a stronger incentive to honor commitments than the loss of the bid security; or
- Require bidders to sign a "Bid Securing Declaration" committing that, if the bidder defaults on the bid commitment, he/she will either pay a penalty or accept being barred from bidding for future contracts.

Bid Opening

Bid Opening is normally done in public, immediately after the deadline for submission. Therefore, the time for the bid opening should be the same as the time for submission of bids, or as soon afterwards as possible, if it is necessary to move the bid documents from the place of submission to the place of opening.

Bidders' representatives are invited to be present to witness the bid opening but this is not normally mandatory (the bid should be opened and evaluated even if the bidder does not attend).

Withdrawal notices, if any, are opened first, and the corresponding bids are not opened.

As each bid is opened, the name of the bidder, the bid price and the amount of the bid security (if any) are read out and are normally written on a display board. At this stage, the bidder's representatives have an opportunity to challenge any incorrect information, or to object if a submitted bid is not opened.

No further information about the bids should be made public until the evaluation has been completed (most formal bidding rules require that no information is released until the contract is awarded).

Originals and Copies

Where the process requires the bidder to submit original and copy bid documents, these should be checked against each other to ensure that they are the same. After that, the original should be stored in a secure location and only the copy used in evaluation. However, the recommendation of this Guide is that for small contracts, bidders should be required to submit a single bid document only.

Examination of Bids

After the bid opening, the evaluation committee is assigned to examine and evaluate the bids and to make a recommendation for award of the contract.

The evaluation committee should meet and examine the bid documents to ensure that they are complete and correctly submitted, with all required supporting documents. The evaluation committee should also check that the bid represents a valid offer to construct the works (or to provide the goods or services) described in the tender document, under the proposed conditions of the contract. Any bid that proposes something other than what is required by the tender document should be considered non-responsive and be rejected.

Bids should not be rejected because of minor clerical errors, misspellings or other matters that do not affect the clarity or legal status of the bid.

In limited circumstances, it may be appropriate for the bid evaluation committee to contact a bidder to request clarification of a bid. However, communication between the committee and the bidders is highly undesirable and in general, bids that are not fully clear should be rejected as non-responsive. Any communication between the evaluation committee and a bidder should be carefully recorded.

The evaluation committee should carefully check the arithmetic on the bills of quantities to ensure that in all cases, the quantity multiplied by the unit price equals the item price, the total of item prices on each bill equals the stated bill total, and that the totals of all bills are correctly summed to obtain the contract price.

A Zombie Clause?

Most standard rules for a bid evaluation contain some such statement as **"where there is a difference between the price stated in words and the price stated in figures, the price stated in words shall govern."** This statement has no application in normal bid evaluation practice. The correct bid price is the arithmetic total of the bills of quantities. As the bills of quantities are completed using only figures, it is obvious that correcting the calculation will result in a difference between the corrected price (in figures) and the price written in words on the Form of Bid.

Where mistakes are found, it is normal to correct these, taking the unit price written in by the bidder to be correct, unless there is an obvious error such as a misplaced decimal point. It is normally obligatory for the bidder to accept the revised bid price resulting from mathematical corrections.

Evaluation of Bids

Criteria for evaluation of bids are discussed above in Chapter 9. The responsibility of the evaluation committee is to apply the evaluation criteria fairly and impartially.

In the great majority of small, simple contracts for local development, no further adjustment to the bid price is needed after mathematical verifications are carried out. Therefore, the lowest bidder automatically becomes the lowest evaluated bidder.

Post-Qualification

Where post-qualification is applied, the final stage of the bid evaluation committee's work is to check the qualifications of the highest ranked (preferred) bidder – i.e. the one who has submitted the lowest evaluated bid. This will normally be done by examining documents submitted with the bid document. However where copy documents are submitted, it may be necessary to require the bidder to show original documents at this stage.

Post-qualification should be a fully objective process of checking whether the bidder meets clearly stated requirements – it should not permit flexibility, discretion or exercise of judgment of any kind on the part of the evaluation committee.

Evaluation Report

On completion of its work, the evaluation committee prepares a report which is signed by all members. All records of the evaluation together with minutes of the meetings are attached to the report which is submitted to the Project Manager – normally the chief executive officer of the local administration.

What if the Bidding Fails?

A bidding process may fail to identify a winning bidder in any of the following cases:

1. The number of bids submitted (or considered to be responsive) is less than a minimum number set in the bidding rules (commonly, three responsive bids are required in order for an award to be made);
2. All of the bids are eliminated as non-responsive, or the bidders are found not to meet the post-qualification criteria;
3. The lowest bid price submitted is higher than the available budget.

Although it is common to require three valid bids in order to make an award, not all procurement systems have this rule. For example, in the World Bank's guidelines it is the opportunity given to different firms to compete for the contract that is important, not the actual number of bids submitted (see box).

If no responsive bids were submitted, the bidding should normally be advertised again. Before re-advertising, the buyer should check to see whether there is a particular reason

why the contract is unattractive to bidders. If necessary, changes should be made in order to attract more bidders. If the bids were eliminated because of errors in bid submission, the Instructions to Bidders should be reviewed and if appropriate, a briefing meeting held to explain to bidders how to prepare a bid.

Procurement rules generally state that the buyer may not reject all bids simply because the lowest bid price is too high. However, in practice the buyer cannot sign a contract for a higher cost than the available budget, unless additional funds are obtained through a reallocation of available funds. Advice on this matter from the World Bank procurement rules appears in the box below.

In summary, the following procedures are recommended in the event that the bidding fails:

1. Procurement rules should permit the award of the contract to the lowest responsive bidder even if only one or two bids are submitted, provided that the bidding was advertised properly and there were other potential firms that could have bid but failed to do so;
2. If the bidding fails because no bids are submitted, or because all bids are eliminated as non-responsive, the bidding should be re-advertised after carefully checking the reasons why the first bidding failed and making any appropriate changes;
3. In the case that the lowest responsive bid is much higher than the estimate, or is higher than the budget, the evaluation committee should take the following steps:
    a. With the help of the engineer who prepared the estimate, carefully examine the lowest bid to determine why the bid price is much higher than the estimate,
    b. If it is decided that the bid price is "fair" but is outside the budget, the appropriate action is to reduce the scope of work or other costs to the contractor, so as to bring the total price within the budget. This may be done by reducing the quantities of work (in which case no negotiation is needed) or by negotiating on other matters with the bidder;
    c. If it is decided that the bid price is not "fair," the committee should recommend re-advertising the bidding. The bids may be advertised more widely than on the first occasion, or other steps can be taken to encourage more bidders to submit (genuine) bids.

> "Lack of competition shall not be determined solely on the basis of the number of bidders. Even when only one bid is submitted, the bidding process may be considered valid, if the bid was satisfactorily advertised and prices are reasonable in comparison to market values."
>
> Source: World Bank Procurement Guidelines.

> All bids shall not be rejected and new bids invited on the same bidding and contract documents solely for the purpose of obtaining lower prices. If the lowest evaluated responsive bid exceeds the Borrower's pre-bid cost estimates by a substantial margin, the Borrower shall investigate causes for the excessive cost and consider requesting new bids as described in the previous paragraphs. Alternatively, the Borrower may negotiate with the lowest evaluated bidder to try to obtain a satisfactory contract through a reduction in the scope and/or a reallocation of risk and responsibility which can be reflected in a reduction of the contract price. However, substantial reduction in the scope or modification to the contract documents may require rebidding.
>
> Source: World Bank Procurement Guidelines.

In remote areas it may be difficult to attract bids for small contracts. The cost of preparing a bid may be high because the bidder needs to travel to the area, and the potential profit may be small because of the high costs of transporting materials and equipment. Three possible strategies to overcome these difficulties are:

1. Consider whether the local community can implement the contract using the Community Contracting approach;
2. Consider encouraging contractors to bid to undertake the work using labour-intensive methods (so that they do not have to transport machinery to the area);
3. Consider whether the contract could be "packaged" with other contracts (possibly including contracts let by neighbouring local governments) so that the total volume of work for the winning contractor is large enough to make bidding attractive.

Chapter 13: Award of Contract

About this Chapter

This chapter deals with procedures for notifying the winning bidder, signing the contract and publishing the decision.

Review of Recommendation

The report of the evaluation committee has the status of a recommendation. However the recommendation should not be overturned except where there has been an error in the procurement process. Therefore, the report of the evaluation committee should be reviewed to ensure that due process has been followed. A review may be undertaken by some or all of the following:

- The chief executive officer, who will make the final decision to award the contract;
- The Procurement Review Committee, which may be composed of elected councilors or assembly members;
- A higher level of authority, in cases where this is required; or
- A donor agency exercising "Prior review" rights.

In any case, the outcome of the review should be either to approve awarding of the contract, or to require the process to be repeated in whole or in part. The procurement review in itself should never result in a changed recommendation for awarding of the contract.

In general, a system that allows officials at an appropriate level to make decisions, but ensures that the decisions are properly documented and that the officials can be held to account for any errors or abuses later is preferable to a system with a lot of controls (many levels of approval) but weak accountability. Wherever possible, final approval of procurement decisions should be decided within the local authority, not by a higher level government official.

Letter of Acceptance and Contract Signing

Notification of the award of contract should take place within the period of validity of the bids. If for any reason this cannot be done, bidders should be requested in writing to extend the period of validity. However, bidders may refuse to extend the period without penalty.

The traditional method of awarding a contract is for the buyer to send the winning bidder a Letter of Acceptance. A standard Letter of Acceptance format is often included in the bid document. The Letter of Acceptance, together with the bidders Form of Bid, is deemed to constitute a legally binding contract. The two parties then agree to meet to sign the contract document.

A Letter of Acceptance may be seen as an unnecessary additional complication in small contracting. It may be sufficient to just contact the winning bidder by any suitable means

and invite him or her to come to sign the contract. Alternatively, the Form of Bid and the Form of Contract can be combined in a single document called the Contract Agreement. The bidder signs two copies of this agreement and returns then with its bid. The buyer signs both copies of the agreement submitted by the winning bidder, and returns one copy to the bidder to indicate acceptance of the bid. This procedure is used by the FIDIC Short Form of Contract for Works.

It is common practice – but not good practice – to conduct "negotiations" between the buyer and the winning bidder before signing the contract. For contracts for goods or works, there is nothing to negotiate about, the winning bidder's acceptance of the contract is obligatory and the contract should be signed exactly as it appears in the tender documents. If necessary, the parties can agree to amend the contract, or the buyer can issue an instruction to increase or decrease the quantities, after signing.

For consultancy contracts, it is normal to conduct negotiations between the buyer and the contractor before signing the contract, with the reservation that, if the bid price has been a factor in bid evaluation, there should be no further negotiation on fees. In this case, the buyer sends the contractor a **Letter of Intent** inviting the contractor to join negotiations.

Publication of the Award and Debriefing

Once the contract award has been finalized it should be made public. This is often done using the same medium as was used for advertising. For small local governments, publication of the award may be done via the notice-board, provided that bidders are informed that this is where the information will appear.

Cambodia – in procurement for the Commune-Sangkat Fund, bid opening, bid evaluation and announcement of the award of contract are all completed in a single morning. The bidders leave the room during bid evaluation and are invited to re-enter to hear the announcement of the results.

Losing bidders have a right to know the reason for rejection of their bids. This information may be provided to any bidder who so requests, in writing, or at a "debriefing" meeting.

Chapter 14: Contract Administration

About this Chapter

Good contract administration ensures the quality of the "product." The expectation that the contract will be well managed creates the confidence for bidders to bid competitive prices. The same expectation is the essential basis for the procurement process: If the contract will not be implemented as written, the basis for transparent competitive procurement is undermined. This chapter gives advice on administration of small, simple works contracts and contracts for the supply of goods and services.

Contract Administration: The Key to Everything Else

Contract administration is the process of turning the intentions stated in the contract document into reality. Obviously, if the contract is not implemented as written, the buyer will not get the correct "product" or will suffer a financial loss. However, the implications of weak contract administration are greater than this. The procurement process is built on the expectation that the contract will be implemented as it is written and in a way that is fair to both parties. Without this expectation, the integrity of the process is destroyed. There cannot be fair competition if different bidders have different ideas about what they will be expected to do once they have won the contract. If bidders are concerned that contract supervision will not be conducted fairly, for example, if they believe they may be obliged to carry out additional work that is not described in the contract document, they will ensure that their bid price is high enough to cover any unexpected costs. This situation may also create an additional incentive for bidders to work together – to collude – instead of competing.

Procurement processes sometimes incorporate complicated and clumsy rules to try to prevent the following types of behaviour by contractors:

- Bidding to win more contracts than the firm has the capacity to implement, in the belief that the buyer will be flexible about the time allowed for completion;
- Bidding unrealistically low prices, in the belief that the firm will be able to get away with reducing the quantities or quality of output in order to make a profit;
- Giving commitments regarding the staff or equipment that will be employed on the contract, that they do not intend to honour.

If the contract conditions are written to punish this type of behavior, and if they are properly enforced, contracting firms have an incentive to "police themselves." There is no reason for a contracting firm to indulge in abusive behavior unless it expects to get away with it.

In a similar way, all contracting firms, large or small, high or low capacity, in rich or in developing countries, are likely to take an opportunity to increase their profits by reducing quantities, substituting lower quality materials, employing inferior workmanship, etc., if they are allowed to do so. It is never possible for the Technical Supervisor to monitor everything the contractor does. However, it is more important for the supervision to be strict, within common sense, than it is for the supervision to be excessively intense. Correcting defects is always more expensive than avoiding them in the first instance, so a contractor that expects the supervisor to insist on good quality work, will take care to provide good quality work.

The Contract Documents

The conditions of contract should make it clear what documents are considered to constitute the contract and the order of priority (in case any inconsistency is found between the different documents).

The contract documents include the drawings, specifications and bills of quantities needed by the contractor to construct the works and needed by the Technical Supervisor to monitor the works.

The contract may require the buyer to issue "for construction" drawings to the contractor. However this is not normally done in small contracts. Instead, working copies of the contract documents should be made for the contractor's Works Manager and for the buyer's Technical Supervisor. Copies of the drawings should also be provided to the technical monitoring group (see below). It is quite acceptable to make the contractor responsible for the cost of reproducing these documents, provided that this is clearly stated in the tender document.

The original, signed contract documents should be safely stored by the buyer and the contractor. The original documents should never be used for work on-site.

Roles in Contract Administration

The contract is made between a buyer, such as a local government, and a contractor. Unless the local government is very small, the chief executive officer will not personally act as Technical Supervisor. The contractor is generally a firm, but even if the contractor is an individual he or she may not be directly involved in implementation. Therefore, the first priority of good contract administration is to establish who has authority to represent the buyer and the contractor, and to what extent of delegated powers.

The Project Manager

In some contract administration arrangements, (for example those described in the FIDIC standard contract conditions), the buyer employs a Project Engineer to supervise the contract. The Engineer has extensive powers to decide on many aspects of the contract implementation and also has an obligation to be impartial between the buyer and the contractor.

It is not usual to employ a "Project Engineer" with this role in local development projects. Normally the major decision-making powers of the buyer are exercised by a senior officer of the local administration, most often the chief executive officer, who acts as project manager. Contract documents should be checked carefully to ensure that they do not appear to assign more powers to technical staff, such as site supervisors, than is intended.

Normally, the Project Manager will delegate certain powers to technical supervision staff. The names of the technical supervisors and the extent of powers assigned to them should be notified in writing to the contractor.

Technical Supervisor

The Technical Supervisor is an official or a consultant (who may be a qualified engineer) who is employed by the buyer to assist in monitoring of the works and to carry out certain tasks delegated by the Project Manager. The Technical Supervisor does not have any independent powers and is not expected to be impartial between the buyer and the contractor. The Technical Supervisor does not normally have the power to give final approval of works or to certify payments. Instead, these powers are exercised by the Project Manager based on reports and recommendations submitted to him or her by the Technical Supervisor.

Contractor and Works Manager

The contractor should be obliged to name an individual as Works Manager (or Contractor's Representative). If the contractor is an individual, he or she may name himself or herself as the Works Manager. However, the Works Manager should be on-site or within easy contact at all times when work is going on. The Works Manager is named in writing, for example on the Contractors Work Programme (see below). Normally, the contract conditions will give the Project Manager the right to object to the Works Manager if he/she is not adequately qualified, or to insist on the contractor replacing the Works Manager if he/she does not perform well.

Community Monitoring Group

In local development projects, it is good practice to have a committee of local residents who are beneficiaries of the project, playing an active role in contract supervision. This committee may be known as the Project Management Committee (Cambodia), the Local Oversight Committee (Timor-Leste), the Scheme Supervision Committee (Bangladesh) or by a similar name.

As well as providing beneficiary participation in implementation of the contract, the community monitoring group can play a very useful technical role, particularly in rural areas where it is difficult for the Technical Supervisor to monitor the work continuously. The Technical Supervisor should teach the community monitoring group some basic technical supervisory tasks. Most importantly, the community monitoring group should be able to identify when there might be a problem and call the Technical Supervisor to come and inspect.

Adjudicators and Arbitrators

The conditions of contract may name individuals who will be called upon to assist in resolving any dispute that arises between the buyer and the contractor during implementation of the contract. These individuals are referred to as adjudicators or arbitrators (the difference is explained in Chapter 16).

Communications and Records

Good communications between the buyer and the contractor, and good record keeping, are essential to effective contract administration.

Communications will include:

- Formal written communications including instructions signed by the Project Manager;
- Formal meetings with recorded minutes;
- Informal communications on-site between the Technical Supervisor and the Works Manager.

The contract conditions should make clear what matters can be dealt with by verbal communications (sometimes supported by a written note at the level of supervisor/Works Manager) and what matters require a formal written communication.

Site Meetings

Formal site meetings should be held at key stages of the contract, including at the start of work. Either the project manager or the contractor should have the power to call a formal meeting at any stage. Note however, that meetings such as the "start of work meeting" should not be abused as a means of obliging the contractor to pay for lavish entertainments for the buyer's staff.

Site Notebook and Photographs

For simple contracts, one very effective way of maintaining a record of communications is to keep a site notebook. The site notebook is provided by the contractor but becomes the property of the buyer. It is kept at the site by the Works Manager but must be available for inspection and for making entries by the Technical Supervisor and by the community monitoring group. The site notebook can be used to record progress of the works, any problems encountered, and instructions issued by the Technical Supervisor.

The Technical Supervisor and/or the Works Manager should also keep photographic records of the works. One option is to oblige the contractor to provide a digital camera to be kept at site by the Works Manager. The Works Manager takes photographs of each stage and provides them in electronic format. Either the Technical Supervisor should also have a digital camera, or he/she should have the right to use the Works Manager's camera.

Contractor's Work Program

Before the work on-site starts, the contractor should provide a works program (or update it, if it was provided with the bid documents). The works program should show the work divided up into stages and show the time for completion of each stage of the works. The works program should also include the name of the Works Manager and any other key staff positions mentioned in the bid document. The works program should show when key items of equipment (mentioned in the bid documents) will be deployed on-site.

If the contract provides for interim payments to be made at key stages of the works, the time for completion of these stages should be shown on the work program. If the contract provides for interim payments to be made after a certain percentage of work is complete, the contractor should propose, on his work program, the stage of works that represent the required percentage (e.g. a payment is due on 50% completion. The contractor should state what works it considers to represent 50% of the total value, and the Technical Supervisor should check and confirm this proposal).

The contractor's work program should be presented before the site works begin. The Technical Supervisor should check the work program and pass it to the Project Manager

with any comments that are needed. The Project Manager should either sign approval of the work program, or request changes as needed. After the work program is approved, the Works Manager and the Technical Supervisor should regularly review progress, referring to the program. If it becomes clear that a revised program is needed, the contractor should submit this to the Project Manager for approval.

The Project Manager may also require the work program to show key stages at which the works must be inspected and approved by the Technical Supervisor, before proceeding to the next stage. For example, steel reinforcement should always be inspected before concrete is poured, as it is not possible to check the reinforcement after concreting.

Extension of Time

The contractor should be obliged to construct the works within the time allowed in the contract. This length of time should be reasonable. If the contractor fails to complete the work within the time allowed it should pay a penalty, known as "liquidated damages" deducted from payments.

If genuine unforeseen events occur that make it impossible for the contractor to complete the work on time, the Contractor should apply for an Extension of Time, stating the reason. The request for an Extension of Time should be accompanied by a proposed revised work program. The Project Manager should request comments from the Technical Supervisor and the community monitoring group before approving the request.

Events that the contractor could reasonably have foreseen should not be grounds for approving an extension of time. For example, rain in the dry season may be grounds for an extension, but rain in the wet season is not – the contractor knew that it would rain at this time of year, and should have allowed for it in his work program.

Monitoring, Measurement and Quality Control

The basic procedures for site monitoring include:

- Keeping daily records of progress and of any problems (for example, inclement weather) that are encountered. This task may be assigned to the community monitoring group using the site notebook;
- Regular inspections by the Technical Supervisor;
- Regular review of progress against the contractor's work-plan, undertaken jointly by the Technical Supervisor and the Works Manager, with the leader of the community monitoring group also present;
- Intermittent progress reports submitted by the Technical Supervisor. These are required at each stage of payment, but in any case should be submitted at least one time per month.

Measurement

Normally, the contract will be a lump-sum contract. Payments will become due at pre-defined stages. Either the contract will specify a certain stage of work to be completed before a payment becomes due, or it will specify a percentage of work to be completed. In the second case, the buyer and the contractor should agree what part of the work is equivalent to the percentage, using the contractor's work program as a basis. Therefore, measurement of the works is fairly straightforward and consists of:

- Ensuring that the works are constructed at the correct location shown on the drawings; and
- Ensuring that the dimensions of each part of the works is the same as shown on the drawings;
- In the case of a project such as a road or a canal, measuring the length that has been completed.

Quality Control

Quality control can be more problematic than measurement, particularly as there are unlikely to be any laboratory facilities or testing equipment. As noted in Chapter 7, it is common to find that the technical specification requires "concrete of cube strength 25MPa" or "earthworks compacted to 95% Modified Proctor" even though there is no way of verifying whether these have been achieved or not.

Some basic pieces of site testing equipment can be useful, these include Dynamic Cone Penetrometers for earthworks and impact hammers ("Schmidt hammers") for testing concrete. If the Buyer does not possess these, one approach is to require the contractor to make them available. However, it should be understood that these and similar site tests do not correspond exactly to the laboratory tests normally referred to in standard specifications. The Technical Supervisor and the Works Manager should reach a common understanding, based on the specification but making use of whatever test equipment is available, of what is considered acceptable quality for each type of construction.

Check-lists can be a useful aid to site monitoring and quality control. Check-lists can be prepared for each type of construction. In some cases, the community monitoring group may be able to use the check-lists, otherwise the Technical Supervisor uses them to ensure that all necessary checks of quality have been carried out and to keep a dated, written record.

Figure 1: DCP Test

Progress Reports

It is recommended that the Technical Supervisor should be individually responsible and accountable for the content of technical progress reports. The community monitoring group should have the opportunity to review and comment on the report only after the Technical Supervisor has signed it. This provision is intended to make it more difficult for Technical Supervisors to seek to approve sub-standard work in return for favors from the contractor.

At a minimum, the Technical Supervisor's progress report should record, on a specific date:

- The parts of the work that have been completed;
- Whether the quality of workmanship meets the standard required by the contract;
- Whether the quality of materials meets the standard required by the contract;
- Whether the location and dimensions of the completed work are in accordance with the contract drawings;
- Comments on any problems or issues that could affect timely and successful completion of the works.

The progress report should also include a calculation of the value of works completed to date. This should be based on the priced bills of quantities and include estimates of the quantity of each item already completed, the unit cost and the item values, which are totaled to arrive at the total completed value.

After he/she has prepared a progress report, the Technical Supervisor should meet with the community monitoring group to present, explain and discuss the report. The community monitoring group should then have the opportunity to add their comments to the report. Finally, the report is submitted to the Project Manager.

Payments

Payments may be classified as:

- Advance Payments;
- Interim Payments;
- Final Payment;
- Release of Retention (this is not strictly regarded as a payment).

Advance payments should be avoided if possible. If advance payments are necessary (that is, if the local contractors do not have sufficient financial capacity to start to construct unless they receive an advance), the advance should always be backed by a financial security (for example a bank bond) provided to the buyer by the contractor. Where advances are made, the normal procedure is to deduct part of the advance from each of the following payments.

Interim payments are made either at regular intervals, such as monthly, or (more common on small contracts) when specified stages of work are completed. Normally, the release of an interim payment by the buyer does not indicate final acceptance of the work to which the payment relates. Errors in interim payments can be corrected by deductions from, or additions to later payments.

As an alternative to an advance payment, an interim payment can be made after the contractor has mobilized to the site and begun to deliver materials. The payment should not exceed the costs the contractor actually incurs in mobilizing, and the value of the materials

stored on-site. The contractor should be prohibited from removing any materials from the site, in respect of which an interim payment has been applied for.

The normal procedure for approval of payments is:

1. The contractor submits an invoice to the Project Manager;
2. The Project Manager requests a Progress Report from the Technical Supervisor;
3. The Technical Supervisor prepares a Progress Report, which is then submitted to the Community Monitoring Group for review and comment;
4. The Project Manager reviews the Progress Report and, if it indicates that the payment is due, issues a Payment Certificate. Where necessary, the Project Manager may request the finance staff to review the invoice and make any necessary adjustments;
5. The Payment Certificate should be made for:
    a. The value of work completed;
    b. Minus the amount of previous interim payments;
    c. Minus a deduction in respect of the advance payment or for liquidated damages (where applicable);
    d. Minus the specified retention (often 10%).

Payment Certificate: Example

Item	Amount	Comment
Total Value of Contract	USD 25,000	
Value of Completed Work	USD 25,000	100% complete
Amount of Previous Payments*	USD 12,500	of which USD 1,250 retained
Deductions**	-	
Gross Amount Due	USD 12,500	
Retention (10%)	USD 1,250	
Net Amount Due	USD 11,250	

* This would be the gross amount before retention.

**e.g. for advance payment, liquidated damages, etc.

Handling of Retention

The conventional way of handling retention money is shown in the example above. The retention is treated as a part of the payment and is normally deposited into a special account, i.e. it has already left the buyer's main account.

It is common to release half of the retention to the contractor on practical completion of the works and the other half at the end of the defects liability period (see below).

The full retention may be released to the contractor on practical completion, in return for a security such as a certified cheque, bank bond of irrevocable letter of credit for the same amount.

Simple System for Small Contracts

For small contracts, this conventional way of calculating payments and dealing with retention may be excessively complex. Instead of calculating the value of work completed and then deducting retention, it may be better to have a schedule showing the actual planned amount of each payment at each stage of construction. In this case, there is no formal "retention" but instead there is a final payment due at the end of the guarantee period (see below).

Completion Certificate and Guarantee Period

When the contractor considers the works are complete he/she will apply to the Project Manager for a Completion Certificate (sometimes called Practical Completion or Substantial Completion). After receiving a progress report and perhaps conducting a site inspection at a higher level than the Technical Supervisor, the Project Manager issues the certificate. If there are minor outstanding tasks, these should be listed on the certificate as works to be carried out during the defects liability period.

The Buyer normally takes possession of the works at this stage and the performance security, if any, is returned to the contractor.

Guarantee (Defects Liability) Period

The contractor remains responsible to correct any defects arising from faults in the contractor's workmanship or materials (though not faults arising from design errors, accidental damage or normal wear and tear) for a specified time after the Completion Certificate is issued. Typically this might be six months or one year. The Guarantee Period is normally called the "Defects Liability Period" in large-scale contracting.

At the end of the Guarantee Period, a further inspection is conducted and a Final Certificate is issued, signaling the final acceptance by the Buyer of the work of the contractor.

Maintenance Period

As an alternative to a Defects Liability Period, a Maintenance Period may be specified in the contract. In this case, the contractor remains responsible to maintain the works, including repairs to normal wear and tear, during the maintenance period. The maintenance period may be quite short. Alternatively, the contractor may be responsible to maintain the works (for example, a road) for a number of years after completion. This would be a "construct and maintain" contract and would require additional stage payments during the maintenance period.

Acceptance of Goods

Procedures for order and acceptance of goods are usually quite straightforward. After (or together with) the notification of the award of contract, the buyer usually issues a Purchase Order. The buyer may vary the quantities of the items ordered, subject to any limits stated in the bid documents. The supplier is normally required to sign and return one copy of the Purchase Order.

Pre-Shipment Inspection

For some types of goods it may be necessary to organize inspection of the goods at the supplier's premises. This is normally done only for high-value goods. The inspection is usually carried out by an independent inspection firm nominated by the bidder and accepted by the buyer, and the cost of the inspection is paid by the buyer. This should not normally be necessary for the types of goods that local governments are likely to buy. However, in the case of purchase of second-hand or re-conditioned vehicles or equipment it is sensible to carry out an inspection including starting, running and checking that all functions are operable before the goods leave the supplier's premises.

Delivery Receipt and Preliminary Inspection

On delivery of the goods, the officer responsible for receiving the goods should carry out a preliminary inspection of the packages and make a written note of the number of packages delivered and the condition of the packages. If there are any defects, or any obvious discrepancy with the delivery note, the officer should write this on the delivery note before signing and returning one copy to the supplier. The goods should then be placed into secure storage until a full inspection can be carried out. It is very important to ensure that nobody starts to use the goods until they have been fully inspected and accepted.

If the buyer is required to collect the goods from the supplier's premises, the preliminary inspection should be carried out at the premises.

Whether preliminary inspection is carried out at the supplier's premises or the buyer's premises, it should not constitute final acceptance of the goods. Final acceptance should be a decision of the Project Manager (normally the chief executive officer of the local government) based on a full technical inspection and report.

Inspection Within Three Days

A full inspection of the goods should be carried out as soon as possible – usually within three days of delivery. The inspection should include checking that the goods match the specification in the bidding documents; checking that the quantities delivered match the quantities ordered; checking that the goods are in good physical condition and, in the case of vehicles, machinery or electronic equipment, testing the full functioning of the equipment.

Acceptance Report

The officer responsible for the inspection should make a report to the project manager. In the case of goods intended for use by the community, the community monitoring group should also inspect the goods and should have the opportunity to read and add their comments to the report of the inspection officer.

Payment Against Invoice: Supporting Documents

The inspection officer should send the report to the Project Manager together with the invoice and any relevant supporting documentation. On acceptance of the report by the Project Manager:

- The goods are released for use; and
- The Project Manager issues a Payment Certificate.

Action in Case of Delay or Unsuitable Goods

In that the event there is a delay in delivery of the goods, beyond the time allowed in the contract, the Project Manager should be immediately notified. The Project Manager should then request the supplier to explain in writing the reason for the delay. Depending on the conditions stated in the bidding documents, in case of an unacceptable delay, the Project Manager may choose to cancel the purchase order (contract) and issue a new purchase order to the second lowest bidder.

If inspection of the goods results in any defect being identified, the defect should be reported to the Project Manager who should immediately notify the supplier. The supplier should be required to rectify the defect, including removing any defective goods from the buyer's premises and replacing them with goods of acceptable quality within a stated number of days. If a supplier does not respond satisfactorily to a request to replace defective goods, the Project Manager may decide to cancel the contract.

It is extremely important that any goods found to be defective are kept secure by the buyer until they are removed by the supplier, or until the time allowed to the supplier for removal of the goods has expired.

Supervision of Consultancy Services

Contracts for consultancy services should be supervised by the Project Manager with the assistance of a staff member or consultant acting as Technical Supervisor. The Technical Supervisor should be qualified to judge the quality of the contractor's work.

In the case of services provided directly to the community, for example, agriculture training, the Community Monitoring Group should participate in monitoring the work of the contractor. For consultancy tasks such as surveys it may be useful to form a community group to ensure good liaison with the community as well as to assist the community to understand what the contractor is doing and why.

Where the output of the consultancy is a report, it is not normally necessary to closely monitor the work of the contractor. However, the Technical Supervisor should follow the progress of the contract, including paying visits to sites where survey work is being conducted. The Technical Supervisor should be careful that monitoring activities do not disrupt the work of the contractor.

If the output of the consultancy is training or similar services delivered, it is normal to require the contractor to present a report on his/her activities as a basis for release of payment. However, in this case, the buyer should ensure that a careful independent record is kept of the activities. If the services are provided direct to the community, this may be a task for the Community Monitoring Group. For example, the Community Monitoring Group may be asked to keep a record including:

- Who provided the service (which staff of the service provider);
- What service was provided;
- Where the service was provided;
- The date and time;
- Who received the service? For example, if the service is a training, who participated?
- Any problems or issues.

The contract for consultancy services will usually include a payment schedule specifying the amount of each payment and results to be achieved as a condition for the release of the payment.

It is more common for consultancy contracts to include a provision for advance payments than is the case for works contracts. However, wherever possible it is better to avoid making advance payments and to only pay the contractor for the actual work carried out.

Procedures for approval of consultancy contracts are similar to those for works contracts. The process should start with an invoice from the contractor. The Project Manager should request the Technical Supervisor for a progress report. The payment certificate is issued on receipt and verification of a satisfactory progress report.

It is not normal to deduct retention from consultancy contracts. There is not normally any "defects liability period." Instead, the contractor is entitled to receive the full amount due on acceptance by the buyer of the contractor's final report.

PART 4

ADDING DETAILS

Chapter 15: Getting our Money Back: Security, Guarantees and Reducing Buyer's Risk.

About this Chapter

All procurement causes some risk to the buyer. Risk can be reduced but this usually means higher costs. This chapter summarizes strategies that may be used to reduce procurement risks. The chapter provides recommendations as to which of these strategies are most useful to local governments implementing projects for local development.

This chapter discusses a number of conventional strategies used by buyers to protect their interests against default by contractors. Many of these strategies either increase the complexity of procurement and contract administration and/or increase the cost to the contractor, which are passed on to the buyer. Some of these strategies are more suitable than others for use by local governments where there may be capacity limitations and where contracts are of a largely simple and minor nature.

The best strategies for risk-reduction are those that create an incentive for bidders and contractors to "police themselves," to avoid indulging in behavior, either at the procurement or implementation stages, that may damage the interests of the buyer.

Types of risk

A buyer suffers a direct financial loss if he/she does not receive a "product" that has been paid for. This can happen if payments are made in advance for goods that are not delivered or for works or services that are not completed, or if the completed "product" is not fit for its intended purpose.

The buyer may also suffer indirect financial losses as a result of the non-availability of the works, goods or services that should have been completed. For example, a local government engages a contractor to construct an office building. The completion date in the contract is the date when the office building will be needed. The contractor fails to complete the building on time, so the local government has to rent alternative office space. It will normally be very difficult for local governments to obtain compensation from contractors for losses of this kind. However, large losses of this kind are not common in local development projects.

The third major type of risk is a financial loss to the buyer due to unintended consequences of implementation of the contract, for example, damage to an existing building caused by construction works. The damaged building may belong to the buyer, or the buyer might have to pay compensation to the owner.

Results then Payment

Perhaps the most important strategy for reducing the risk of direct losses is to pay only for work completed or products delivered. This protects the buyer and also creates a performance incentive for the contractor. For this reason, it is not normally desirable to provide advance payments to contractors or suppliers.

The disadvantage of refusing advance payments is that local contractors, who may have very little working capital, may find it difficult to undertake works or to supply goods on the basis that they will be paid later. The contractors or suppliers will very likely need credit arrangements, either with their own suppliers or with a bank, to allow them to do this. The contractors or suppliers are likely to pay interest on their credit. Local contractors may find that they cannot undertake the contract on the terms offered, or they may find that they cannot compete with large firms with stronger finances.

This problem should be considered at the preparation stage and if possible, payments should be structured to minimize the financial burden on the contractor without exposing the buyer to risk. Buyers may wish to have discussions with groups of local contractors to better understand their financial capacity and limitations.

The financial capacity of local contractors and suppliers and the financial services that they have access to should be studied and taken into consideration in designing a procurement system.

Advance Payment Guarantees

One approach is to provide an advance payment in return for a guarantee, which may be in the form of a bank draft, certified cheque or irrevocable letter of credit. The effect of this is that the bank guarantees to pay the buyer if the contractor defaults. The bank will then try to recover the money from the contractor. The "advance payment" guarantee may be included in the performance security or may be provided separately.

The usefulness of advance payment guarantees will depend on the size of the contract and the capacity of banks or other financial institutions to provide services of this type at a reasonable cost. It is also worth noting that small local contractors, who would benefit the most from advanced payments, may find it more difficult or more expensive to provide guarantees, as opposed to larger contractors.

Where a local government or a local development program envisages that there will be a large number of contracts where this problem will arise, it may consider negotiating directly with local financial institutions (for example, banks or microfinance institutions) and explore the conditions under which they are able to provide guarantees to local contractors.

Bid Security

A bid security is a financial guarantee that a bidder will accept the contract if offered it. It should not be confused with a performance security (see below). If the bidder refuses to accept the contract, or commits another major abuse of the bidding process, the buyer retains the bid security. This compensates the buyer for any loss or inconvenience caused by the bidder's default and creates an incentive for good behaviour by the bidders.

Bid securities are normally provided in the form of bank drafts, letters of credit or guaranteed cheques. The amount of the security is normally required to be a percentage of the bid price – usually around 2%. Bid security should never be more than 5% of the bid price.

Bid securities are sometimes accepted in cash form. This creates the risk that money will be lost or mishandled by the buyer's staff. It also creates a risk of theft, either from the premises where the bidding takes place or from contractors carrying out the bidding, who will be known to be carrying large amounts of cash.

The bid security should remain valid for a fixed period that is longer than the period of validity of the bids. Bid security is normally returned to losing bidders once the award of contract is announced. The bid security is returned to the winning bidder when the contract is signed and when the performance security (if required) is provided.

For small contracts with simple procurement procedures, the real loss suffered by the buyer when the winning bidder refuses to accept the contract is very small. It is more important to ensure that bidders have an incentive to behave well, than it is to protect the buyer against this loss. There are other ways to create this incentive, such as blacklisting firms that abuse the procurement process. Bid security increases both cost and complexity for very little real gain. This Guide recommends that bid security should not be required for contracts of value less than USD 100,000.

Performance Security

Performance security is a guarantee that the contractor will implement the contract in accordance with the technical specifications, conditions of contract and other provisions of the contract document. If the contract is cancelled because of default by the contractor, the buyer is entitled to retain the performance security. The performance security may be combined with an advance payment guarantee.

Performance security is normally provided in the form of a bank draft, certified cheque or irrevocable letter of credit, with a validity period that is substantially longer than the intended implementation period of the contract.

The amount of performance security is typically 10% to 15% of the value of the contract, but it may be more if needed to cover the amount of an advance payment.

The performance security is normally returned to the contractor on completion of the works and hand-over to the buyer.

Performance security may present the same difficulties as bid securities and advance payment guarantees discussed above. For small, simple contracts and where no advance payment is made, the loss to the buyer arising from default by the contractor is likely to be small. On the other hand, enforcing the terms of the performance security may prove difficult or may cause the buyer to become involved in expensive legal disputes. Therefore, it is recommended that performance securities should not be required for small contracts without advance payments (up to say USD 100,000 contract value).

Retention

Retention, which is discussed in Chapter 14 above, is a percentage withheld from each payment until final completion of a works contract. In principle, the value of the works already carried out will always be more than the amount of payments, minus retention,

released to the contractor. Therefore, if the contractor defaults, the buyer should be able to engage another contractor to complete the works within the total amount of the original contract value.

The principle of retention should be incorporated in all works contracts. However, for simplicity in the management of small contracts, it is often easier to make payments on a fixed schedule, where the value of payments is always less than value of work carried out, rather than to use a formal retention system. For example, the payment schedule shows that when 50% of the value of the work is completed, 40% of the lump-sum contract price becomes due as an interim payment.

Insurance

Contracts conventionally require the contractor to provide insurance for risks for which the contractor is liable, during the period of the contract. Types of insurance that the contractor may be asked to provide include:

- Health and accident insurance for the contractor's workforce;
- Insurance of the works against accidental damage;
- Insurance against claims by third parties for loss, damage or injury caused by carrying out the works.

Insurance of this type is highly desirable, though may be dispensed with for small contracts and in circumstances where it is not practical for local contractors to provide insurance.

Insurance is highly desirable – but is there an insurance company willing to insure the local contractors? Do the local contractors know how to buy insurance? Consider these questions before including insurance as a condition of the contract..

Liquidated Damages

Liquidated damages are a provision conventionally written into works contracts giving the buyer the automatic right to compensation for delays in contract implementation. Typically, liquidated damages are charged at 0.1% of the contract price, for each day of delay that is not approved under an extension of time. There is normally a maximum amount of liquidated damages, for example 10% of the contract price, which would be equivalent to a delay of 100 days. Normally, a delay beyond the point at which liquidated damages reach a maximum would become grounds for termination of the contract.

Liquidated damages should be included in works contracts and should be deducted from payments in accordance with the condition of contract. Failure to charge liquidated damages removes the incentive for contractors to perform. In particular, if it is expected that liquidated damages will not be charged, there will be an incentive for bidders to bid for more contracts than they have the capacity to implement at one time.

It is important that liquidated damages are used in a way that is fair to the contractor. Important points are that:

- The amount of time allowed for completion under the contract is fair and reasonable; and
- Extensions of time should be granted where there is a genuine reason (see Chapter 14).

A Clean Break

The contract conditions should provide the buyer with clear powers to terminate the contract in case of default by the contractor. The circumstances in which the buyer may terminate the contract should include:

- Failure to mobilize the site and start construction within a specified period after contract signing;
- Delays extending beyond a certain level;
- Unacceptable quality of work;
- Failure by the contractor to remedy defects when instructed to do so;
- Other major breaches of the conditions of the contract;
- Evidence that the contractor has engaged in corrupt or collusive behavior, either in order to win the contract or during implementation of the contract (for example, paying or attempting to pay a bribe to the Technical Supervisor).

The contract conditions should specify what happens in the event that the buyer terminates the contract due to a default by the contractor. The conditions should ensure that the right of the buyer to have the contract completed within the amount of the contract price takes precedence over the right of the contractor to be paid for any work already carried out.

Standard conditions of contract often state that in the event of termination of the contract due to default by the contractor, the buyer has the right to take over equipment, materials and other property of the contractor on the site and to use this property to complete implementation of the contract.

In practice, it will be very difficult for a local government to enforce such a condition in relation to a small contract. If the default occurs because the contractor has become insolvent, the buyer's rights to the equipment may conflict with those of other creditors or with equipment rental firms. However, if there is equipment on the site, for example, scaffolding and temporary props, that is essential to the safety of the works, the contractor should be prevented from removing this equipment from the site.

It is recommended that the conditions of contract should provide that in case of termination due to a default by the contractor, no further payment will be made to the contractor until the works have been completed by another means. The buyer should then deduct the cost of completing the works from the outstanding part of the contract price. Only if there is money remaining after the works have been completed should any further payment be made to the defaulting contractor.

Non-Financial Penalties: Black-Listing

Buyers can seek to impose non-financial penalties on firms that abuse the procurement process or breach the terms of a contract. Most commonly, these penalties are in the form of banning the firm, either for a fixed-term or permanently, from participating in bidding for future contracts.

A ban imposed on a firm that depends for a large part of its business on contracting for the local government may be much more effective than the loss of a security, as well as being easier to impose and more difficult for the firm to contest in court. However, where the local

government is small or the likelihood that the firm will seek further business with the local government is low, the threat of a ban may not be effective.

A ban may be a more effective deterrent if it affects not only future business with the buyer but with all other local governments. Such a system requires local governments to cooperate to exchange information and to impose the sanctions in a uniform way. An association of local governments is one possible means of achieving this. An alternative is for a list of banned contractors to be managed by a higher level of government (regional government or a national Ministry) or by a program coordinating body.

Normally, a ban should be imposed on a firm that abuses the procurement process or defaults on a contract, even if a financial penalty is also extracted.

A possible half-way compromise between the cost and complexity of security instruments on the one hand and financial penalties and bans on the other, is to require bidders to sign a declaration, promising to pay a penalty in the event of default (see box).

Possible weaknesses of this approach are that (1) it is not clear in what way the act of signing the declaration modifies the commitments and liabilities the bidder automatically assumes by submitting the bid (the contractor has already made these commitments just by submitting a bid and by signing the contract; (2) the option of substituting a financial penalty for a ban may prove a weak sanction, permitting the firm to pick its own punishment according to the circumstances; and (3) the discretion to substitute a financial penalty for a ban could open the possibility of improper inducements being offered.

Cambodia: The Government's Standard Operating Procedures applied to procurement financed by the World Bank or Asian Development Bank loans permits a "Bid and Performance Securing Declaration" to be required instead of an actual bid security. The Bid and Performance Securing Declaration is essentially an acknowledgement by the bidder of its liability to sanctions in case of default. Sanctions consist of a ban from all government procurement for a period of three years, but may be set aside on payment of an administrative penalty of 2% of the contract price, at the discretion of the Project Owner.

Chapter 16: Dispute Resolution and Grievance Procedures

About this Chapter

Contracts can lead to disputes. Disputes can be settled in court but this is difficult and expensive. This chapter describes the provisions commonly included in contract conditions to resolve disputes between the buyer and the contractor. It also discusses grievance procedures that can be used by any stakeholder who wishes to raise concerns about the conduct of the procurement process or implementation of the contract.

In principle, a contract is an agreement between the parties that can be enforced in a court of civil law. Almost all countries in the world have a court system that can, in theory, consider a dispute between the parties to a contract and make a decision that has the force of law. An entity, such as a sub-department of government, that is not a legal person and that cannot sue or be sued, should not enter into a contract.

In practice, it is difficult and expensive to enforce a contract through a court hearing. In many of the countries where UNCDF supports local development programs, the court system itself may be weak or ineffective. For these reasons, most contracts contain provisions for resolution of disputes between the parties without recourse to law courts. These provisions may be voluntary (i.e. the parties attempt to reach an agreement without giving up the right to take the matter to court if they are not satisfied) or they may be binding (under the conditions of the contract, the parties give up their right to take the matter to court and agree instead to accept the outcome of the dispute resolution procedure). The different types of procedure for dispute resolution are outlined below.

Amicable Resolution

The first provision in dispute resolution procedures is normally that the parties undertake to reach a resolution of any dispute through negotiation and amicable agreement, without the involvement of a third party.

Conciliation

Conciliation, which is referred to as an explicit step in some standard contract conditions, is in effect a process of amicable resolution assisted by a facilitator. The job of the facilitator, who is normally an independent expert, is to assist the two parties to reach an agreement. The facilitator does not make a ruling on the merits of the dispute.

Adjudication and Arbitration

Adjudication and Arbitration are more formal processes provided for in contract conditions, for the resolution of disputes.

Some standard contract conditions (for example, the World Bank's Conditions of Contract for Small Works) require that an adjudicator is nominated before the contract is signed. Normally, the adjudicator is selected by the buyer and named in the bidding documents. The contractor may have the right to challenge the choice of adjudicator before signing the contract.

In the event of a dispute that cannot be resolved amicably, the adjudicator is called upon to make a decision. The adjudicator normally has considerable flexibility in deciding how to go about his or her task: this may include separate discussions with the parties, examination of documents, site visits and/or contested hearings with both parties present. Having considered all the evidence, the adjudicator makes a ruling on the matter in dispute.

Contract provisions normally provide that the parties cannot call the adjudicator to act as a witness in further hearings. However, submissions to the adjudicator may be referred to in future arbitration or court action.

The adjudicator is normally paid at a pre-determined fee rate, with half the fees paid by the buyer and half by the contractor, no matter what the outcome of the dispute.

Adjudication is not final and binding. Either party may submit a "Notice of Dissatisfaction." This normally causes the dispute to be submitted to arbitration.

Unlike adjudication, arbitration results in a binding decision that can be enforced in a court of law. The legal force of arbitration arises from each side voluntarily agreeing to submit the dispute to arbitration and to respect the outcome. Therefore, arbitration itself can become a somewhat complex and expensive process, sometimes with lawyers supporting the arguments of each side.

Contract conditions may name an institution that will be responsible for arbitration. Alternatively, the conditions may describe a process to be followed by the two parties to identify a suitable arbitrator.

Suitable Arrangements for Small Contracts

For small contracts, it is not normally necessary to name an adjudicator or arbitrator in advance. However, the contract conditions should provide for a process for naming an adjudicator or arbitrator, if needed.

The first and, perhaps most important step is to ensure that the adjudicator or arbitrator is acceptable to and has the trust of both parties.

In the context of small contracts, the distinction between adjudication and arbitration may not be so important. It may be difficult to arrange an arbitration process that is sufficiently formal and sufficiently impartial for the result to have the full force of law. Therefore, it is recommended that the process defined in the conditions of contract should be an adjudication process, with either party having the right to challenge the result in court.

Solomon Islands: The procurement regulation for Provincial Governments includes the following process for the selection of a three-person panel for arbitration of disputes.

Each party can propose three names of respected local citizens. These citizens must not be Ministers of the Provincial Government or State employees, and must not be related to or financially connected with the contractor. They must not have had any involvement with the contract or the dispute so far. The two parties compare their lists of names to choose three members for the Arbitration Panel. If:

- All three names are the same on both lists, these citizens form the Arbitration Panel;
- Two names are the same, these two citizens are asked to choose a third member for the panel;
- Only one name is the same, each party chooses one from the list proposed by the other party;
- No names are the same, each party chooses one from the list proposed by the other party, and these two members select a third member to join them.

Grievance Procedures

Monitoring of procurement and contract implementation by citizens and civil society groups should be considered as part of the framework of transparency and accountability in procurement for local development. Citizens are the direct beneficiaries of local development projects and have an incentive to ensure that the process results in good value for money. Therefore, the procurement system should include a mechanism by which stakeholders including ordinary citizens can raise their concerns.

Bidders, contractors, and other stakeholders in the procurement process, may wish to air complaints about the process that are not within the framework of contractual disputes that can be submitted to arbitration.

Ideally, complaints about the procurement process should be submitted and openly investigated. However, the officials managing the process are likely to have considerable discretionary powers to affect the interests of stakeholders who may wish to submit complaints. Therefore, the procurement process should include:

- Arrangements for complaints to be submitted in confidence. This may be done through a locked "complaints box" or similar mechanism. However, the limitations of this type of process must be recognized, it is very difficult indeed to fully investigate complaints and to be fair to any official or bidder who is accused of wrongdoing, if the complaint is anonymous and/or the investigation is conducted in confidence; and
- Assignment of responsibility for investigating complaints, independently of the local administration officials. One option is for the procurement review committee of the Council or Assembly to take on this role.

PART 5

OTHER WAYS OF DOING IT: ALTERNATIVES TO COMPETITIVE BIDDING

Chapter 17: Doing it Together – Community Contracting

About this Chapter

Project beneficiaries sometimes comment that they could implement the project better or more cheaply than the contractor. This chapter describes the various methods of implementation that are known as "Community Contracting." It discusses the advantages and disadvantages of this implementation method. It proposes criteria for determining when Community Contracting is appropriate. It outlines simple procedures for implementing Community Contracting.

What is Community Contracting?

Community Contracting is a term used to refer to a wide variety of modalities of community involvement in scheme implementation. While community participation, usually led by some form of civil society organization or elected committee, is a constant, the term "contracting" is often used more vaguely and may mean that the community group acts as a contractor, that it engages local contractors to implement works, or even in such situations where nothing recognizable as a "contract" is involved. Typical examples include:

- A centralized project implementation unit devolves substantial (though not usually full) powers to implement the scheme to a local community group. The role of the community group may include hiring contractors through a competitive process or direct employment of local labour (The ILO Employment Intensive Investment Program in Nepal operates along these lines);
- A civil society organization, for example, a farmer group for an irrigation scheme, implements works under a contract agreement with a local government (procurement rules in Bhutan provide specifically for this type of arrangement);
- A local government engages a locally-based small contractor through an informal competitive process, with or without oversight from a community-based committee;
- A local committee which is itself part of the structure of local government, acts as implementer under agreement with a higher level of local government (The Ward Development Committees in Bangladesh fit this description);
- A local government implements labour-intensive works by hiring labour from within the beneficiary community. This last example may be strictly regarded as closer to "Direct Works" (see Chapter 18) but is often called "Community Contracting" (for example, in ADB supported initiatives in Timor-Leste).

Community Contracting is sometimes confused with decentralization. In fact, decentralization concerns the transfer of State powers and functions to formally constituted local governments. Community Contracting may assist in building social capital at the community level but it is not decentralization. Community Contracting may be used in association with

either centralized or decentralized planning and budgeting systems. It is not unknown for centralized project implementation units to bypass local government and implement through weak, *ad hoc* community-level committees with little capacity for independent action, precisely in order to maintain a high degree of centralized control.

In this Guide the focus is on local governments (or local development committees that shadow the development functions of local governments) as the buyer. Therefore, "Community Contracting" is seen as a mode of local government procurement. Substantial community participation is the norm for local development projects. The key characteristics of "Community Contracting" are taken to be that:

- The scheme is implemented under a contract agreed between the local government as buyer and an organization or committee ("the community contractor") representing the community that will benefit from the scheme;
- The community contractor is not a profit-making commercial entity;
- The community contractor is not selected by competitive procurement, as it is assumed that there cannot be more than one organization or committee that can claim to represent the beneficiary community, for the same scheme; and
- Members of the beneficiary community are directly involved in implementing (not just in monitoring) the scheme.

The community contractor may be an elected committee, a formally constituted civil society organization (for example a farmers cooperative) or even a lower tier of local government (for example a village development committee). Under the community contract, it receives funds from the buyer and implements through some mixture of voluntary labour contributions, paid labour, sub-contracting to local tradesmen and petty contractors and purchase of materials. In most cases, the community contractor will be required to account for the use of project funds (this is an important difference from a normal commercial contract). Simple competitive procedures, usually comparison of quotations, may be used in sub-contracting and purchasing.

Advantages of Community Contracting

Various benefits are commonly cited for Community Contracting. These include:

1. Project funds "stay within the community:" They are used to hire local labour or to make small purchases from local suppliers and sub-contractors.
2. The local capacity and social capital developed through the experience of implementing the scheme;
3. Community groups are frequently able to implement for a lower cost than private sector contractors;
4. Community groups are able to mobilize community contributions (in cash or in-kind) and integrate them into the overall implementation modality, in a way that is very difficult to achieve with a conventional local government – private sector contract;
5. The sense of ownership of the scheme output, resulting from close community involvement in implementation, leads to more successful operation and maintenance arrangements;
6. The close involvement of the scheme beneficiaries in implementation reduces corruption and waste and ensures a high quality of implementation.

This list is based on sound reasoning, but it is much easier to find project documents, manuals, etc. stating that these benefits are expected, than it is to find reports of comparative studies demonstrating that they have actually been achieved. Counter-arguments can be made: The "ownership" generated through Community Contracting does not necessarily result in sustainable operation and maintenance; it is not self-evidently useful for village leaders to learn the skills of a construction contractor, or for farmers to learn to lay bricks if these skills are irrelevant to their livelihoods and exist already in the local private sector.

Community Contracting can be done well or badly. The advantages cited above are based on the deep involvement of the beneficiary community. However, in some cases the major consideration in deciding to use "Community Contracting" is to avoid a formal competitive bidding process. This is especially likely to happen when the procurement rules are cumbersome or tend to exclude local contractors from competition. If Community Contracting is chosen for this reason the true level of community involvement may be small. At worst, "Community Contracting" can be used as a cover for awarding a contract to a favoured local contractor without any competitive process.

Building Social Capital

In one of the earliest local development pilot projects implemented in Cambodia in 1997, a village development committee undertook construction of a wooden bridge across a river separating the two halves of the village. Led by a local man with construction skills, the villagers raised significant resources of their own and completed the bridge. The bridge, about 60m in length, was opened with a large celebration including a blessing from Buddhist monks, music, and dancing. However, success stories like this are hard to replicate as there is no magic recipe for "ownership."

Community Contracting often requires the buyer to provide additional support to make up for a lack of financial, administrative or technical capacity on the part of the contractor.

In Bangladesh's LGSP-LIC Joint Programme, almost all schemes funded by block grants to Union Parishads are implemented by Ward Development Committees. The WDC consists of community representatives with the elected Ward Member of the UP as chair. The WDC implement labour-intensive schemes directly by hiring local labour. For other schemes, they sub-contract to local contractors and suppliers using a simple competitive procedure.

- The community contractor will usually require advance payment. He/she will not have the financial resources or access to credit of a commercial contractor. If the community contractor fails to complete the contract, the local government will suffer a financial loss;
- The costs of providing sufficient technical support to the community contractor may be greater than the cost-savings: Even though the contract cost is less than for a private sector contractor, the total cost of implementation may be higher.

When is Community Contracting Appropriate?

For Community Contracting to be appropriate, the following basic conditions should be met:

1. The scheme is a type that delivers direct benefits to an identifiable "local community." The definition of a "local community" can vary but it should mean a smaller group than the whole population of the local government area. For example, a scheme to

construct an office for the local government is not a suitable scheme for Community Contracting.

2. The skills needed to implement the scheme are available within the community or from locally based tradesmen and petty contractors, and all materials and equipment needed can be obtained from within the community or purchased from local suppliers;
3. There is an existing committee or community-based organization that is independent of the local government and can be considered as representing the scheme beneficiaries, or it is feasible to form such a committee or organization;
4. Community Contracting is compatible with the procurement regulations.

What is a Community?

The Bhutan Procurement Rules and Regulations 2009 define a local community (for Community Contracting purposes) as "an association of local residents which shall include a chairman, treasurer, secretary, and has a memorandum of understanding which has the consensus of the entire community and endorsed by the [local government assembly]."

A wide range of scheme types may fit these criteria. However, it may be useful to think of Community Contracting arrangements as falling on a spectrum representing increasing community ownership, capacity and responsibilities undertaken by the community contractor.

Where the output of the scheme has a "public goods" nature (see box) the natural "owner" of a road scheme is the local government rather than the community. In this case, the "community contractor" may essentially be a labour group with members drawn from the local community. The capacity of the group is likely to be low. The main activity under the contract will be providing unskilled labour. If materials or equipment are needed, these may be procured separately.

Public Goods and Community Goods

Economists consider goods to be **"public goods"** if there is no restriction on access to the good (anybody can use it) and if use by one person does not reduce the benefit obtained by another person.

Roads are public goods. An irrigation canal is not a true public good because only farmers who have land near the canal can benefit from it. We can call goods of this type **"community goods."**

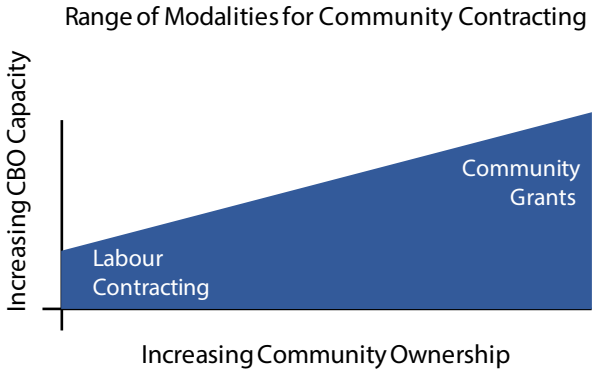
Attempts to make community groups responsible to maintain public goods usually fail because of the **"free rider"** problem – there are always some people who benefit but do not pay. The local government may establish a road maintenance committee with community members, but this will need support from public funds to be successful.

For schemes producing "community goods" the community contractor may also be the final owner of the scheme output. This may be an existing community-based organization (CBO) formed for the purpose that is supported by the scheme, for example, a farmer irrigation group. The CBO may have significant administrative and technical capacity, and its involvement may include identification of the scheme and submitting a proposal to the local government, organizing all aspects of implementation and paying part of the cost from community contributions or other sources. In this case, Community Contracting is similar to a "community grant" from the local government to the CBO.

These two models, "labour contract" and "community grant," are summarized in Table 5. Of course, these are extremes cases: Most cases of Community Contracting will fall somewhere in between the two.

Table 5: Types of Community Contracting Arrangement.

Type of arrangement	Labour Contract	Community Grant
Suitable scheme types	Local public goods (village roads); any type of community infrastructure	Community goods (irrigation works, water supplies, etc.) that have clearly defined group of beneficiaries
Type of community contractor	Labour group (pre-existing or formed for the scheme)	Existing CBO (for example, farmer cooperative)
Involvement of community contractor in scheme identification and planning	Labour group not directly involved in planning	CBO prepares scheme proposal and submits to local government for funding
Activities included in the contract	Mainly unskilled labour for earthworks and similar tasks	Potentially any type of small scale construction work
Non-labour items	Materials and tools supplied separately	Community contractor may undertake competitive procurement to buy materials, hire sub-contractors, etc.
Type of community contractor	Labour group (pre-existing or formed for the scheme)	Existing CBO (for example, farmer cooperative)
Community contribution to cost	No community contribution	CBO contributes part of the cost of the scheme
Community responsibility for operation and maintenance	Maintenance may be responsibility of local government	CBO takes responsibility for operation and maintenance of the outputs
Involvement of community contractor in scheme identification and planning	Labour group not directly involved in planning	CBO prepares scheme proposal and submits to local government for funding



It is usual to place an upper limit on the value of community contracts. This limit should not be so low as to prevent community groups from undertaking schemes which otherwise they would have the capacity to implement successfully. Inevitably, the value limit will lead to situations where there is a temptation to split up schemes in order to remain below the threshold for Community Contracting. This problem should be addressed through clear, sensible rules for what should be regarded as a single "scheme." (It also helps if the rules for competitive tendering are well-designed and appropriate to the needs of the local government.)

Upper limit value for Community Contracting in UNCDF Program Countries			
Country	**Upper Limit (Local)**	**In USD**	**Comment**
Bangladesh	200,000 Taka	$ 2,900	All schemes implemented through Ward Development Committees
Bhutan	Nu 500,000	$ 11,100	
Cambodia	2 million riel	$ 500	Limited use for maintenance activities
Laos		$ 60,000	Regulation only – not done in practice
Nepal	3,500,000 rupees	$ 48,300	Consumers' Committee modality to be given priority
Solomon Islands	SBD 50,000	$ 6,450	
Timor-Leste	$ 10,000	$ 10,000	

There are circumstances where it is not practical to implement a scheme through conventional contracting because there are no private sector contractors, with sufficient capacity, able and willing to undertake the works – usually because the contract is small and the location is remote. In these circumstances, Community Contracting can appear as an attractive alternative. However, it is recommended here that Community Contracting should not be used if the basic criteria described above are not met. For a scheme that does not primarily provide benefits to an identifiable local community, for example, small works on a strategic feeder road in a remote location, but where the traffic using the road originates from a wide area, and where conventional contracting is not possible, some form of Direct Works modality may be more appropriate (see Chapter 18).

Legal Status of Community Contracting

In most countries, the laws or regulations on public procurement make some provision for Community Contracting. Usually, this is in the form of a general relaxation of normal procurement rules for small schemes in which the local community acts as implementer. In some countries (particularly Nepal) this is the preferred means of implementing small works schemes under local governments. Table 6 summarizes the key laws or regulations in each of the UNCDF Asia-Pacific Region local development program countries.

Table 6: Legal Framework for Community Contracting in UNCDF Asia-Pacific Program Countries

Country	Legal Framework for Community Contracting
Bangladesh	Public Procurement Regulations 2008 allow sub-national governments to implement through community-based committees – this is considered as a type of "Direct Contracting."
Bhutan	Procurement Rules and Regulations 2009 allow the Gewog to award contracts to the local community.
Cambodia	Public Procurement Sub-Decree 2006 allows "Community Contracting" as a special procurement modality.
Laos	Procurement Manual 2004 sets out circumstances in which local communities can participate in procurement.

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Country	Legal Framework for Community Contracting
Nepal	Local Body Financial Administration Rules (2007) make the "Consumer's Committee" the priority means of implementing local works schemes.
Solomon Islands	Community Contracting guideline included in Provincial Procurement and Contract Administration Manual.
Timor-Leste	Ministry of State Administration has approved a guideline for community contracting.

Process for Community Contracting

Scheme Identification

Strong community participation in all stages beginning with scheme identification is beneficial to successful Community Contracting. Schemes that are most suitable for Community Contracting should begin with proposals from the community group, or at least from within the beneficiary community.

Although the decision to use the Community Contracting modality will not be finalized until the scheme design and cost estimate have been completed, the possibility of Community Contracting as a modality should be identified at an early stage. Then, the capacity of an existing community group to act as community contractor can be considered during scheme design, or where necessary a new group can be formed.

Formation of the Community Group

Where possible, the community contractor should be an existing group that represents the interests of the scheme beneficiaries. Where no such group exists it may be necessary to form one.

Depending on local procurement laws, it may not be possible for an informal group of citizens (i.e. one that is not registered as a company or an NGO) to sign a contract and receive payments from the local government. One possible way to avoid this problem is that a named individual, usually the chairperson of the group, is named on the contract agreement as acting on behalf of the group. Community Contracting should not be restricted to formally constituted and registered groups, but it is necessary to ensure that the group has a meaningful existence including a membership structure and a board of elected officials who conduct and keep records of regular meetings.

Where it is necessary to form a group to act as community contractor, this should be done as early in the process as possible. Wherever possible, the group should not be formed for the sole purpose of implementing a single contract of limited duration, but should have a more general purpose related to the operation and maintenance of the scheme output.

Implementation Sub-Committee

The community group should nominate individuals who will undertake tasks related to the contract. These tasks will include technical direction of the work, financial management and record-keeping. These tasks may be undertaken by the permanent board members of the group or by a specially appointed sub-committee.

Community Oversight Committee

A "community oversight committee" may be formed in addition to the implementation sub-committee. The function of the oversight committee is to monitor the contract and the use of funds on behalf of the community. The members of the oversight committee should not play a direct role in implementation and should not include officials or directors of the community contractor group.

Separation of Roles

In Bangladesh's LGSP-LIC Joint Programme, the "Ward Development Committee, chaired by the elected ward representative to the Union Parishad, acts in effect as a community contractor. A second standing committee of respected citizens, the Scheme Supervision Committee, plays a supervisory role.

The community oversight committee should consist of respected members of the local community. They should be responsible to monitor that all members of the community receive fair and equitable treatment from the community contractor (for example, fair employment opportunities): Their role should not be limited to certifying the completed construction works. Usually, a community oversight committee should be formed separately for each scheme.

Scheme Design

Once the community group has been formed it should be involved as closely as possible in the scheme design.

Scheme design should be understood as including not only the technical design of works but also matters such as community contributions to the costs and arrangements for operation and maintenance. Negative social and environmental impacts should be carefully considered and measures to mitigate these included in the design through discussion with the community.

Community Contributions

The willingness of the community to make a significant contribution to the scheme costs is one of the recommended criteria for use of Community Contracting. A community contribution not only demonstrates the ownership and commitment of the community to the scheme; it ensures that the actual amount paid by the local government is less than the cost of a conventional contract to implement the same works.

However, community contributions can be problematic, particularly where they are required as a fixed percentage of costs in order to comply with a regulation. The problems that can arise include:

- The commitment to provide community contributions is made without adequate discussion and agreement with the community;
- The size of contributions, particularly labour contributions, is exaggerated or simply invented in order to give the appearance of compliance with the rules;
- Management of contributions is inequitable, for example, by labour contributions being exacted from weaker members of the community on a non-voluntary basis;
- Management of financial contributions can be non-transparent;
- Where community contributions are promised to a commercial contractor, but not actually fulfilled before the contract is signed, there can be heavy pressure on the

contractor to forgo the contributions (or to carry out the "community contribution tasks" itself) in order to obtain payment for the contract.

It is recommended here that community contributions should only be required in implementation arrangements that closely match the "community grants" modality described above, with the understanding that:

- The scheme output is a community good with a clearly defined group of beneficiaries, who will be responsible for operation and maintenance; and
- The implementer is a community-based organization that will take responsibility for operation and maintenance of the scheme output.

Community contributions should not be required from community members who are not direct beneficiaries of the scheme. It is sometimes argued that requiring contributions from the whole community increases accountability as all citizens gain an interest in knowing that their money is well spent. This increase in accountability is an important attribute of a local taxation system. However, local contributions are not taxes and should not be operated as a kind of shadow taxation system. Only genuine beneficiaries of the scheme should be asked to contribute and contributions should be voluntary. Contributions, whether in cash or in-kind, should be documented, with written receipts provided. Contributions should be fair and equitable.

Community contributions in cash should be collected before any contractor or sub-contractor, who will be paid using the cash, is engaged. Community contributions in-kind should be physically separated from the work that any contractor or sub-contractor has to do in order to be paid (see box).

One fairly common approach to local contributions is to collect and retain them to establish a "maintenance fund." The value of this is doubtful, a one-time collection does not establish a sustainable arrangement for maintenance funding, and in effect the community members, who are very likely net borrowers from micro-finance institutions or the informal money-market, are being asked to advance funds against a possibly distant future event. If local contributions are required, it is preferable that they have a direct and visible role in implementation of the scheme.

Local Contributions and Contracts Don't Mix Well

In the early stages of the Commune/Sangkat Fund in Cambodia, the local contribution was set at 10% of the project cost, with at least 3% to be in cash and the remainder in labour or materials.

It was found that cost estimates would routinely show a labour task (very often this was spreading gravel on a road) that was to be done by the local community. This task would be valued at 7% of the total cost. Waiting for the local labour contribution would cause delays to completion, so the contractor would bring a machine to spread the gravel. This rapidly became accepted as the normal system – it is unlikely that the local community was ever asked to contribute their labour in most cases, and bidders would include the cost of the gravel spreading in their bid price. The net effect of this system was a reduction in transparency with no benefit to cost or "community ownership." The local contribution was later reduced to only a small contribution in cash.

Negotiation of the Community Contract

When the scheme design is complete, the local government or other funding agency negotiates the details of the contract with the community group. The value of the contract should be estimated by the technical designer, based wherever possible on standard rates.

In Bangladesh, the Local Government Engineering Department (LGED) estimates the cost of schemes for the Union Parishads. LGED uses a computer program with standard rates for common tasks (such as earthworks). The program adds a percentage for taxes and for the contractor's profit. When community implementation is used, the cost of the scheme (the contract value) is calculated as the engineer's estimate minus 14% for taxes and profit (which will not be needed).

Matters covered by the contract agreement should include:

- Obligations of the contractor: In addition to constructing the works, these will include maintenance of written records, fair and equitable management of community labour, etc.;
- Obligations of the local government: In addition to paying the contractor, these will normally include providing technical assistance. In some cases, the local government may provide materials, equipment or the services of commercial contractors in addition to paying for work undertaken by the community contractor;
- The payment schedule, including the amount of any advance payment and arrangements for accounting for it;
- Conditions for release of payments, which may include submission of financial records as well as completion of pre-defined stages of work;
- A work program;
- A maintenance plan for the completed scheme output, if this is the responsibility of the community contractor.

Implementation

During implementation of the community contract, the role of the "Technical Supervisor" will normally be different from that in a contract with a commercial contractor. The Technical Supervisor will be required to advise the community contractor on technical aspects of implementation of the contract and may need to assist in directing works on-site.

The community contractor will need to keep more extensive records than would be required of a commercial contractor. These records would normally include simple accounts of all funds received and disbursed, and records of labour payments including the name, age and gender of all workers.

Where the community contractor needs to sub-contract works to local tradesmen or petty contractors, this should normally be done through a simple competitive process involving comparison of quotations. Any materials needed should be procured in the same way. The contract document state minimum requirements for procurement oblige the community contractor to keep simple but clear records of any procurement processes.

Role of the Community Oversight Committee

The principle role of the community oversight committee is to monitor implementation of the contract on behalf of the community. This role may include:

- Ensuring that community contributions are managed in an equitable manner;
- Ensuring that labour is recruited and paid in an equitable manner, particularly ensuring opportunities to vulnerable groups to benefit from employment opportunities;
- Participating in checking the quantity and quality of completed work.

Financial Management and Reporting

Normally, the community contractor will be required to account for funds disbursed and to return any surplus to the local government. This is not absolutely necessary, particularly where there is a substantial community contribution to the cost, it may be possible to treat the payment as a lump-sum grant.

Where the community contractor is required to account for funds, the local government should provide basic training to the community contractor's financial officer. This should include a simple format for bookkeeping.

Records kept by the community contractor, including labour employment records, should be subject to audit.

Chapter 18: Doing it Ourselves – Direct Works

About this Chapter

Direct implementation of works by local government is unfashionable but it has worked well in the past. This chapter discusses the risks and merits of Direct Works. It provides recommendations on circumstances in which use of Direct Works may be justified and on safeguards that may be employed.

Direct Works or "Force Account" means implementation of works by a department of national or local government, often called a Public Works Department, whose staff are civil servants on the local government payroll. This was the traditional approach to tasks such as maintenance of the local road network in many countries in the past and, when properly funded and effectively managed, often resulted in a reliable and good-quality service.

When local governments implement labour-intensive schemes by employing workers directly this is sometimes called "Community Contracting" but it is more accurate to call this modality Direct Works.

Modern thinking is normally to discourage direct implementation of works in favor of contracting out works to the private sector through competitive tendering, or where appropriate, Community Contracting. The reasons for this are that:

- Direct Works is seen as inefficient – private sector contractors are able to manage personnel and equipment more efficiently and so implement works more cheaply;
- The existence of a Direct Works department creates pressure for works to be programmed and funded through the department, to give the department a reason to exist and to create rent-seeking opportunities for the staff of the department. This results in supply-driven pressures on the planning and budgeting processes of the local government.
- Direct Works results are non-transparent. Cost control is difficult and abuses, for example, misuse of fuel, supplies and materials or of major equipment items, are easy to commit and difficult to detect;

Cambodia – In the mid-1990s, the UNDP-supported decentralization program supplied well drilling equipment to the Provincial Department of Rural Development. About two years later, the UNDP advisers attempted to establish the location of this equipment and the uses it had been put to. The only well known to have been drilled proved to be a test well in the car-park of the UNDP office. When funding for a well drilling program became available it was decided that works would be contracted out. It was strongly suspected that the drill was now in use by one of the contractors bidding for the work. Having considered the matter, the UNDP advisors decided that this represented the most economically efficient allocation of the resource (the drilling rig) and so did not pursue the matter.

- Local governments tend to experience particular difficulty in managing fleets of expensive equipment, with high and sometimes unexpected repair costs and large periodic capital costs for replacement.

Furthermore, in many of the countries where UNCDF supports local development programs, local governments have public works departments that have ceased to function effectively – inoperable equipment, absentee staff and non-existent (or invisible) operating budgets. In the past, donors wishing to support implementation of works projects were often met with proposals to reactivate these departments by funding equipment and spare parts purchases as well as the materials and supplies needed for the job in hand. There was no long-term plan for long term sustainability, so on completion of the project, the department went back to its former state until the next donor arrived. This common story did much to establish the primacy of the contracting-out model.

However, there may be circumstances in which Direct Works may be either the most cost-effective solution or the only solution available (see box).

The use of force account may be justified where:

a. Quantities of work involved cannot be defined in advance;
b. Works are small and scattered or in remote locations for which qualified construction firms are unlikely to bid at reasonable prices;
c. Work is required to be carried out without disrupting on-going operations;
d. Risks of unavoidable work interruption are better borne by the Borrower than by a Contractor; and
e. There are emergencies needing prompt attention.

Source: World Bank, Guidelines for Procurement Under IDA Loans and IBRD Credits.

A distinction should be made between a proposal to make use of an existing capacity of a functioning Direct Works department, and a proposal for capital investments to create such a capacity or to restore a capacity that has degenerated. It will rarely be appropriate to support a proposal for investment in major capital equipment for a Direct Works department.

However, if the Direct Works department has serviceable equipment and capable staff, the financial cost of Direct Works may well be much less than the cost of the same works contracted out to the private sector. Very likely, the local government does not have the discretion to lay-off or re-deploy the staff even if it wished to do so. In these circumstances, it is difficult to argue that the Direct Works option should not be considered.

Before selecting the Direct Works option, the following questions should be considered:

- Does the Direct Works department have the capacity to undertake the work?
- What are the factors that make the proposed work unattractive to the private sector? Could the work be packaged in a way that would make it more attractive to bidders (for example, by authorizing multi-year contracts for road maintenance)?
- Are suitable arrangements for cost-control in place?
- Is there a clear separation between the planning and budgeting functions of the local government, on the one hand, and spending departments, including the Direct Works department, on the other?

Planning of Maintenance Works

New investments for local development are usually identified through a participatory planning process. However, routine maintenance, which is the task most often implemented through Direct Works, cannot be planned by participatory planning. Efficient programming of routine maintenance is a technical task and the technical capacity for this task may be located in the Direct Works department. This can create a conflict of interest. If possible, the function of maintenance planning (programming of works) should be separated from the implementing function.

Cost Control

Budgets for Direct Works should be prepared using the most objective means available. If possible, the budget should be prepared independently of the Direct Works department. Cost control during implementation should be monitored independently of the Direct Works department, for example by finance department officials.

Labour Intensive Direct Works

Direct Works may be implemented through, or combined with, labour-intensive work methods designed in part to generate employment in the local community. This approach can include the employment of "length-persons" who are charged with keeping an allocated length of road in good condition in return for a monthly fee as well as larger schemes with extensive earthworks or similar tasks carried out by labour.

In principle, labour intensive works may be carried out:

- By competitive tendering – where employment of local labour, including the number of workers, employment conditions, equal opportunities for women and men and so on are included in the contract conditions;
- By Community Contracting (see Chapter 17);
- Or by Direct Works.

However, for small routine maintenance works contracting out may be difficult. This is particularly likely if the procurement or budget rules do not allow the local government to make a multi-year contract. Community Contracting may not be a good option if the works are a public good without strong community or local characteristics, for example, a feeder road with a significant amount of through traffic. Therefore, for tasks such as labour-intensive routine maintenance of feeder roads, direct employment of labour by the local government may be the best option.

Labour intensive Direct Works arrangements are potentially vulnerable to abuse – particularly misuse of funds. To reduce this risk, the technician or department responsible for estimating the cost and for technical supervision should not also be responsible for hiring and paying the workers. Audit arrangements should carefully check that the total amount paid to the workers is the same as the amount shown in the accounts (for example, by taking a random sample of workers from the payroll record and interviewing them to find out how much work they did and how much they were paid).

Chapter 19: We Know Who We Want: Direct Contracting

Direct Contracting involves selecting a contractor or a supplier without any type of competitive bidding process. Community Contracting can be considered a special type of Direct Contracting. Most procurement systems permit Direct Contracting under certain circumstances. Typically, it may be that:

1. The value of the contract is too small to justify the cost of a competitive procurement process;
2. There is an emergency and no time available for a competitive process;
3. There is only one contractor who has the capacity to undertake the works, or only one supplier that can supply the goods that are needed. This can include the case where the contract is for supply of spare parts to existing branded equipment;
4. The contract is a continuation of a previous contract, so the first contractor has a clear advantage over other potential bidders.

Some procurement systems also permit Direct Contracting in the case where competitive procurement has been tried and has failed. This is somewhat problematic however, as:

- In the case that no bids were submitted: If there is a contractor willing to negotiate a contract, why did the contractor not submit a bid?
- In the case that bidding failed because the system requires a minimum of three bids: It would be better to accept the lowest (or only) bid submitted after checking that the process had been properly implemented (see Chapter 13);
- In the case that the bidding failed because the lowest bid price was above the budget, what is the basis for negotiation? If the negotiation involves reducing the scope of work or other changes to reduce the contractor's costs, the bidding should be re-advertised after the changes have been made.

Direct Contracting should follow all the same procedures as competitive bidding, except that there is no advertising and that a single contractor is invited to submit a bid. The contractor should not be required to pay for the bid document. The bid preparation period should be reduced but should still be adequate for the contractor to properly prepare a bid. The bid evaluation committee should first check that the contractor's bid is responsive. The committee should then compare the bid with the estimated cost. If the bid is equal to or less than the estimated cost, the committee should recommend accepting the bid as it is. If the bid price is higher than the estimated cost, the committee should invite the contractor to negotiate in an attempt to reduce the cost in-line with the estimate, or alternatively, to identify why in the contractor's opinion, the estimate is too low. The evaluation committee can then make a recommendation for award of the contract.

PART 6

FINAL CONSIDERATIONS

Chapter 20: A Better Marketplace: Developing Private Sector Capacity

About this Chapter

Local governments often face the difficulty of low capacity in the local contracting sector. This chapter discusses strategies for building capacity of private sector contractors to participate in bidding for local development contracts.

One of the major difficulties faced by local governments in implementing development projects is a lack of capacity within the local small and medium scale contracting sector. Lack of technical capacity (skilled staff and appropriate equipment) can be a problem, but many of the projects promoted by local governments are no more technically demanding than the private projects. For example, home building would provide an ideal work opportunity for a local construction contractor. However, local contractors often lack a formal education, have a limited understanding of procurement and contract administration procedures, and of compliance with health, safety and environmental regulations that may be required in order to undertake public sector work. The resulting problems for the local government can include:

- A high proportion of bids are found to be ineligible because of errors in bid preparation (see box);
- Bidders submit unrealistically low bid prices or otherwise take on obligations that they will be unable to fulfill;
- Competition is restricted to a few higher capacity firms, resulting in high prices;
- Local contractors are shut out in favour of large, city-based firms;
- The quality of completed work is low because of errors or misunderstandings by the contractor.

In 2007, in a meeting of the tender evaluation committee to consider a large number of tenders for road repair and maintenance works for the District Councils in Central Province, Zambia, more than half of all bids submitted were rejected because of errors or omissions in bid preparation.

Benefits of Capacity Development

Through capacity development of the local private sector, the local government may hope to achieve better value for money and lower risk in procurement as well as wider benefits for the local economy and employment generation.

Better value for money will occur from increased competition as more contracting firms will have the capacity to submit bids for local development contracts. Lower risks will occur from the improved understanding by local firms of the bidding documents, procurement process and contract administration procedures, and therefore, higher quality of bids submitted.

The local economy will benefit as more work is contracted to local firms and more employment is generated locally. Capacity development may enable local firms to compete for work in neighboring areas, and may result in increased efficiency and effectiveness of the local construction sector.

In addition to addressing the need to build on the capacity of local firms to participate in bidding and to understand and comply with contract requirements, the local government may seek to achieve wider benefits through the inclusion of good employment practices, and increasing awareness in health and safety, and environmental protection in the capacity development curriculum.

Stronger technical capacity (for example, construction skills) of the local contracting firms can also be beneficial to the local government. However, this is likely to be beyond the scope of a general local development program. Where a program seeks to promote a specific technology, such as labour based works or the introduction of clean energy technology, technical training may be combined with capacity development for procurement and contract administration.

A large local government, in a province or a city, may undertake a capacity development program for local contractors by itself. Where the local governments are small (for example, Union Parishads in Bangladesh or Communes in Cambodia) they will not have the capacity to do this individually. However, the capacity development initiative may be organized at program level for participating local governments or possibly through a local government association.

Risks of Private Sector Capacity Building Initiatives.

Capacity development programs for local contractors can have the undesirable effect of creating an "insider group" of firms who have preferential access to local government procurement. This can occur simply because participating firms gain knowledge that is not available to their competitors, because they are able to build relationships with local government officials, or because the design of the capacity building program has the explicit effect of creating "qualified contractors." In extreme cases, where participation represents a major investment by the participating firms (for example, in programs where firms are required to obtain specialist equipment suitable for labour-based works) it may be necessary to guarantee that the firms will obtain contracts as a result, thus negating the principle of open competitive bidding for works.

To avoid these risks, it is recommended that participation in capacity development programs should never be a criterion for qualification of contractors in itself (though the capacity development programs may be designed to assist firms to meet qualification criteria).

It is also important that the participating firms realize that the knowledge and skills gained in the process is something of a tangible value. If participation is seen as a chore or an expense undertaken solely in order to gain specific contracts from the local government, it will not be successful. For this reason, the capacity development program should be designed in careful consultation with the firms themselves and where suitable, with a body representing the firms such as a contractors' association or chamber of commerce.

Types of Capacity Development Activity

Contractor Forum

At the most basic level, the local government should periodically host a forum for representatives of the local construction industry (and for other types of supplier who do business with the local government). This forum is an opportunity for the local government to provide basic information about the types of contracts that will be proposed and where bids will be advertised, the general bidding procedures and contract administration arrangements and so on. Local officials can exchange ideas with contractors and listen to their concerns. A forum of this type can be the starting point for design of a more formal capacity development programs.

Making Documents Available

The next step that local governments can take is to ensure that all standard documents used in the procurement process are widely available for local firms. These documents should include the procurement guidelines in the local language, standard bidding documents including conditions of contract, and any standard designs ("templates") and technical specifications that are in use. Where standard unit prices are used in cost estimation, these should also be available to contractors.

Distribution of standard documents may be accompanied by simple trainings, conducted by local government staff or advisers, explaining the contents and use of the documents to the local contractors.

Formal Capacity Development Schemes

The next step would be the design of a more formal curriculum of contractor capacity development.

The capacity development scheme may be implemented by officials of the local government, by program staff, or by a specialist institution engaged for the purpose. Partnering with an organization such as a contractors' association or chamber of commerce may be attractive. However, the nature and credentials of such organizations should be carefully verified to ensure that this does not lead to inequitable treatment of some contractors (for example, exclusion of contractors who are not members of the association).

Capacity development may be conducted through either classroom training or through "mentoring" in which an expert adviser is tasked to work with the local contractors and assist them in improving their skills in specific areas, for instance, in the preparation of bids.

Mentoring may be expensive and there is a concern that it cannot be provided to an indefinitely large group of firms, whereby a small group of firms can then gain an unfair level of assistance. However, it may be possible to organize a training program around classroom lessons but to provide participants with direct access to the tutor for specific advice, when needed. Care should be taken that contacts between the tutor and contractors do not lead to an improper exchange of information about the bidding process.

Capacity Development Subjects

Depending on local needs, the contractors' capacity development curriculum could include some or all of the following:

1. **The Procurement Process:** Including basic principles and objectives, the procurement rules applying to the local government, methods of advertising, rules for qualification of bidders, understanding of the bidding documents, bid preparation and submission and the evaluation process;
2. **Estimation:** Improving the capacity of contractors to calculate all the costs of implementing the works described in the bidding documents and to determine an appropriate bid price;
3. **Contract Administration:** Understanding the contract conditions, maintaining site records, communications with the buyer, the Technical Supervisor and the community; measurements, billing procedures, and so on;
4. **Financial Management:** Improving the capacity of contractors to control their own costs, keeping basic financial records, predicting and managing cash-flows and minimizing credit costs;
5. **Access to Financial Services and Insurance:** How to make use of financial services that may be useful to local contractors including banks, microfinance institutions; how to obtain financial securities that may be required as a condition of bidding; how to obtain insurance, etc.;
6. **Dispute Resolution:** Explanation of appropriate procedures for resolving disputes that may arise over contract implementation;
7. **Health, Safety and Environmental Protection:** Understanding and compliance with laws or specific contract conditions relating to protection of employees' welfare and the environment;
8. **Internet Use:** How to use the Internet, including searching for information of use to local contracting firms, making contact with suppliers; searching for bidding opportunities, etc.;
9. **Grievance Procedures and Anti-Corruption:** Awareness of proper and improper behavior of local officials and actions a firm can take in case of improper behavior.

Chapter 21: Monitoring and Evaluation of Procurement

About this Chapter

Good M&E is the difference between knowing what is supposed to work and knowing what actually works. This chapter recommends simple strategies for monitoring and evaluation of local government procurement.

Value of Monitoring and Evaluation

As described in the earlier chapters of this Guide, procurement procedures are designed to achieve specific objectives (value for money, transparency, etc.) for the local government, for national policy and for funding agencies. Monitoring and evaluation are the tools that are used to determine whether these objectives are being achieved, and if not, what changes are necessary.

Who Monitors? Who Evaluates?

Monitoring and evaluation may involve:

- Internal monitoring by the local administration;
- Oversight monitoring by the local council (the Council or Assembly)
- Monitoring of compliance, and of procurement outcomes, by the national government body responsible for overseeing procurement;
- Independent evaluations of process and outcomes.

In addition, some donor agencies conduct their own procurement monitoring and review activities.

Process Monitoring and Outcome Monitoring

Procurement Monitoring may include both process monitoring and outcome monitoring. Process monitoring means verifying that due process has been followed at each stage of the procurement process. Outcome monitoring involves attempting to determine whether the objectives of the procurement process (value for money, open competition, etc.) have been achieved.

Far more effort is expended on monitoring of the procurement process than on outcome monitoring.[6] Under the "standard model" of procurement, described in Chapter 2, it is taken

6 For example, the OECD Methodology For Assessment Of National Procurement Systems focuses mainly on evaluating compliance with recommended processes. Similarly, the World Bank Country Procurement Assessment Reports (CPAR) are mainly evaluations of the quality of regulations and processes.

as given that if the recommended process is followed, the best available value for money will be obtained. However, everyday experience, particularly at the level of local government in developing countries, indicates that this is not necessarily the case.

Therefore, a complete framework for monitoring and evaluation of procurement should include indicators of procurement outcomes. Do the prices obtained reflect value for money? Do bidding patterns indicate genuine competition for contracts? Do the procurement regulations have the effect of excluding some firms that have the technical capacity to undertake contracts? Is the total cost of the procurement process (including the cost to bidders) reasonable in light of the benefits obtained?

Unlike process monitoring, outcome monitoring requires a counterfactual, an assumption about what would have taken place if the procurement process had been carried out differently. This can be problematic. However, there are a number of indicators of outcomes that can be evaluated, either systematically (i.e. for all procurement actions) or through a survey of a random sample of procurement actions. These indicators may include:

- Number of bids submitted for each contract;
- Number of bids submitted and contracts awarded by category of bidder; for example locally-based firms, small, medium and large-sized firms; firms with female owners, etc;
- Average value of the winning bid price expressed as a percentage of the estimated cost – this may be taken as a measure of the level of competition and the effectiveness of the procurement process in securing value for money; likewise
- Comparison of unit prices in winning bids with unit prices for the same items in other sectors of the market; for example, centralized versus local procurement; unit prices paid by private individuals or firms compared with prices in public procurement, etc.;
- Percentage of contracts completed on time, without significant disputes and without cost overruns;
- Quality of completed works.

The Annual Procurement Report

The main instrument of internal monitoring should be an annual Procurement Report which should be prepared by the officials of the local administration and should be submitted to the Council or Assembly. The report should be examined by the committee responsible for oversight of procurement (the Procurement Review Committee or the Finance Committee) and then recommended for acceptance or for further action by the full Council or Assembly.

The Procurement Report may also be copied to any higher level of government that has responsibility for oversight of procurement.

The Annual Procurement Report is a report against the Procurement Plan.

For each procurement action shown on the Procurement Plan, the Procurement Report should show:

- Actual dates of advertising, contract award and completion;
- Final estimated cost (before bidding) and winning contract amount (i.e. the amount on the winning contract corresponding to the same quantities included in the estimate) and final contract value;
- Number of bids submitted;
- Number of bids ruled ineligible, with a summary of the reasons;

- Winning bidder;
- Length of time for completion of contract, compared to time allowed in the contract;
- Any default by the contractor or other issues in contract implementation.

Procurement Database

Procurement monitoring at the local government level can usually be done manually or using simple spreadsheets to record and report data. However, at the program level it may be more convenient to monitor procurement through a database of procurement actions. The database may be designed solely for procurement monitoring or it may support a broader Management Information System (MIS).

The database should include a unique identification of contractors (for example, using a company registration number system) so that participation of the same firm bidding in different local governments can be identified. The database should have enough information about the outputs of each contract to allow price comparisons to be made between contracts, between local governments and from year to year.

If possible, the database should be web-based, allowing officials in each local government to enter data to a data store maintained on a central server.

Where a database of this type is used, much of the Annual Procurement Report can be generated automatically from the database (see box).

Cambodia: Procurement Information in the Project Information Database

The Project Information Database (PID) is a database of investments funded through the budgets of the Commune/Sangkat Councils. Since 2009, the PID has been web-based. The PID has been used for generating Expenditure Statements for donor agencies including The World Bank and IFAD, and the requirements of these donors have been instrumental in ensuring a high quality of data and management of the database. Procurement information includes:

- Names and identities of all contractors registered in each Province;
- Information on outputs, quantities and estimated unit costs of each contract, using a standardized system;
- Dates of advertising, bid opening, signature and completion;
- Information on all bids submitted including identity of bidder, amount and whether the bid was rejected as non-responsive, with the reason;
- Winning bids;
- Unit prices of winning bids;
- Final quantities in signed contract;
- Progress in implementation;
- Payments.

Oversight Monitoring

Compliance monitoring by oversight bodies and donor agencies may include external reviews of selected procurement processes. For example, The World Bank typically requires the right to examine the procurement documents and provide a No Objection Letter (NOL)

at key stages of certain procurement processes, known as Prior Review. Prior Review may be necessary for procurements that are high value, considered potentially difficult or alternatively, the Bank may require Prior Review of the first procurement in each category in a given project or in a particular year. The Bank also conducts Post Reviews (i.e. after-completion) of a random sample of procurements that it has funded.

Evaluation Studies

Periodic studies should be conducted to evaluate the quality of the procurement process and outcomes, either at the level of a single local government or (more likely) at the program level.

The evaluation studies should select a random sample of contracts from the Procurement Database. In addition to verifying the information in the database, the studies should include an engineering assessment of the quantity, quality and (if possible) value of work actually completed. Comparisons should be made with similar types of work implemented using alternative modalities. Interviews with stakeholders including contractors, officials and project beneficiaries should be used to gain a deeper understanding of the process and to develop recommendations for improvements.

The evaluation study should attempt to determine the full cost of the procurement process, including an estimate of actual and implicit costs incurred by both the buyer and the bidders.

The evaluation studies may also include an assessment of the impact on the local economy and on employment generation of award of contracts to local firms and to small and medium-sized enterprises.

Scorecard for Procurement Evaluation

Chapter 2 of this Guide presented a set of "Principles for Procurement for Local Development." This section presents a "scorecard" which can be used to evaluate procurement against this set of principles. The scorecard has between two and five indicators for each principle while both process and outcome indicators are included.

For each indicator, a "score" and a "confidence level" are evaluated. The "score" represents how well, in the opinion of the evaluator, the existing procurement practices conform to the principle, as measured by a number of sub-criteria in each case. Scores awarded are zero (does not conform), one (partially conforms) or two (fully conforms). The "confidence" measure similarly can take values zero (no information available, in which case the "score" should be left blank; one (information not sufficient to make a fully confident assessment) or two (adequate information available).

There are a total of 25 indicators. Each indicator is given equal weight in calculating a "category score" against each principle, and in calculating an "overall score." As there are different numbers of indicators for each principle, the effect is that (if all indicators are evaluated) each principle has weights in the overall score as follows:

1. Appropriate Roles and Responsibilities (5 indicators): 20%;
2. Value for Money (6 indicators): 24%;
3. Transparency (4 indicators): 16%;
4. Equity (2 indicators): 8%;
5. Efficient Risk Management (2 indicators): 8%;

6. Efficient Process (4 indicators): 16%;
7. Compatibility with National Laws and Donor Requirements (2 indicators): 8%.

Where there is not sufficient information to enter a score against an indicator (confidence = 0) or where the indicator is not relevant (for example, indicators relating to competitive bidding, if only Community Contracting is used) that indicator should be left blank and should be ignored in calculating the category and overall scores – i.e. the percentage score is calculated by dividing the actual total by (2 x the number of indicators for which scores have been awarded).

The scorecard is presented on the following page, with example data for contracts agreed by Commune and Sangkat Councils in Cambodia in financial year 2009.

SCORECARD FOR EVALUATON OF PROCUREMENT FOR LOCAL DEVELOPMENT EXAMPLE: COMMUNE/SANGKAT PROCUREMENT IN CAMBODIA, 2009

Principle	Criterion	Score	Confidence	Comment
Appropriate roles and responsibilities	Head of administration accountable for procurement decisions	2	2	Commune Chief accountable
	Elected politicians not involved directly in procurement decisions	0	2	Commune Councillors directly involved
	Higher-level officials do not mix technical and oversight roles	2	2	TSO plays both technical and oversight role
	Local citizens have access to information and able to perform oversight role	1	2	Limited citizen involvement
	Contractors / implementing agencies not involved in procurement decisions	2	2	Implementing agents are commercial contractors with no procurement role
Category % Score		70%	100%	
Value for Money	Scheme objectives well defined	1	2	Project objectives not well articulated
	Scheme designs appropriate to objectives	1	1	Design work sometimes weak
	Objective, consistent methodology for estimating scheme costs	2	2	"Template" designs, standard price lists and standard estimation system
	Contract costs consistently similar to or lower than estimates	2	2	Average bid discount of 17%
	Unit costs consistently similar to or lower than comparable costs obtained by centralised procuring entities	2	1	Unit costs thought to be low compared to those on other projects
	Quality of outputs conforms to contract specifications	0	2	Evidence of poor quality outputs
Category % Score		67%	83%	

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SCORECARD FOR EVALUATON OF PROCUREMENT FOR LOCAL DEVELOPMENT EXAMPLE: COMMUNE/SANGKAT PROCUREMENT IN CAMBODIA, 2009				
Transparency	Most contracts either advertised openly OR awarded to autonomous community-based organizations	2	2	Pre-qualification advertised in national newspapers, bidding advertised locally
	Consistent with efficiency and commercial confidentiality, all key information available to all stakeholders	1	2	Information available in principle but in practice only limited disclosure
	Full written record of procurement process	2	2	Good documentation including detailed contracts database
	All decisions based on objective criteria	2	2	Lowest price selection
Category % Score		88%	100%	
Equity	At least 50% of bids submitted by local small and medium-sized firms	2	2	75% of bids submitted by contractors based in Province
	At least 50% of contracts won by local small and medium-sized firms.	2	2	74% of bids won by contractors based in Province
Category % Score		100%	100%	
Efficient risk management	Contract sanctions for poor performance properly enforced	1	2	Contract provisions not fully enforced
	Less than 5% of payments made in respect of never-completed contracts	2	2	Less than 1% of payments for abandoned contracts
Category % Score		75%	100%	
Efficient Process	Use of short, simple documents in local language	2	2	Simple, effective open tendering process appropriate for small contracts
	At least 80% of procurement plan completed by end of year.	2	2	94% of communes signed contracts by end of year
	At least 80% of contracts awarded after first round of bidding	2	1	6% of contracts directly negotiated after bidding failed
	At least 80% of contracts completed within time allowed and with no cost overrun	0	2	Only 20% of contracts completed on time and 40% less than 1 month late
Category % Score		75%	100%	
Compatibility with national laws and donor requirements	Procurement process compatible with national law	1	2	C/S Fund procurement governed by secondary legislation
	Procurement process supported by multilateral donors	2	2	World Bank assisted in design of procurement process
Category % Score		75%	100%	
Overall % Score		76%	94%	

ANNEXES

ANNEX I: Essentials and Non-Essentials in Local Procurement.

Feature	Always	Sometimes	Not normally	Never
Advertising	P			
Pre-qualification			P	
Fee for Bid documents			P	
Pre-Bid Conference / Site Inspection		P		
Bid security			P	
Hard limits on minimum acceptable cost				P
Local Preferences		P		
Non-price criteria in bid evaluation			P	
Post Qualification	P			
Negotiations on price with winning bidder				P
Performance Security			P	
Advance Payments			P	
Retention		P		

ANNEX II: Characterization of Procurement in Some UNCDF Local Development Program Countries

In preparation of this Guide, a procurement survey was conducted in UNCDF Local Development program countries in the Asia-Pacific region. The survey covered all aspects of procurement practice and the information obtained has been incorporated into the narrative and examples presented in the text of the Guide.

A limited number of parameters have been extracted from the survey returns to develop a summary characterization of procurement in four program countries: Bangladesh, Cambodia, Laos and Timor-Leste. The same system could be applied to develop a "snapshot" characterization of local procurement in any country.

Country Local Development Procurement Systems			
Country	**Type of Local Authority**	**Type of Development Fund**	**UNCDF Involvement**
Bangladesh	Union Parishad	LGSP Block Grants	Support to Learning and Innovation Component of LGSP
Cambodia	Commune Council	Commune/Sangkat Fund	Policy support for planning and fiscal decentralization
Laos	District Development Committee	Donor-supported parallel fund piloting fiscal transfers.	Support to District Development Fund
Timor-Leste	District Assembly (pilot)	Local Development Fund (but fully funded by government)	Technical Assistance

To characterize the procurement system in these programs, indicators have been selected in four areas: Size and Type of schemes implemented; Roles and Responsibilities; Procurement Methods and Selection Criteria (applicable to competitive procurement). Four indicators have been selected for each area and are presented on a "radar" or "spider web" type chart.

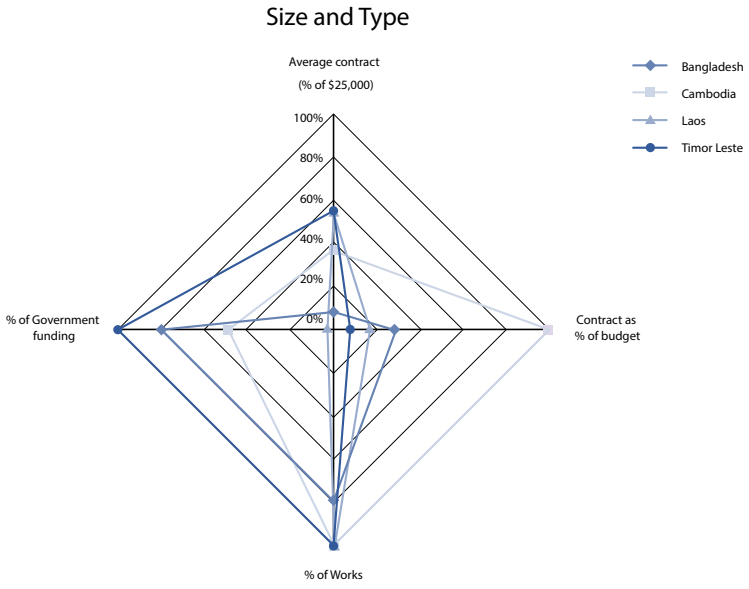
Size and Type of Schemes

The four indicators chosen to characterize the size and type of schemes implemented are:

- Average size of scheme. To fit this to the graph format, this is expressed as a percentage of USD 25,000 – arbitrarily selected as larger than the average scheme size in any of the four programmes;

- Average scheme size as percentage of investment budget. This is an indicator of planning and budgeting outcomes: 100% would indicate that each local authority routinely applies its full resources to a single, relatively large, scheme, while a low percentage indicates that the budget is divided between many small schemes.
- Percentage of Works. Small infrastructure projects dominate the mix of investment types in all the program countries.
- Percentage of Government Funding. The fourth indicator shows the proportion of funding supported by transfers from national government (with the remainder consisting of donor funds and local resources).

Size, Type and Funding of Local Development Investments				
Indicator	**Bangladesh**	**Cambodia**	**Laos**	**Timor-Leste**
Average contract (% of USD25,000)	8%	36%	54%	56%
Contract as % of budget	29%	100%	17%	7%
% of works	80%	100%	100%	100%
% of Government funding	80%	49%	3%	100%



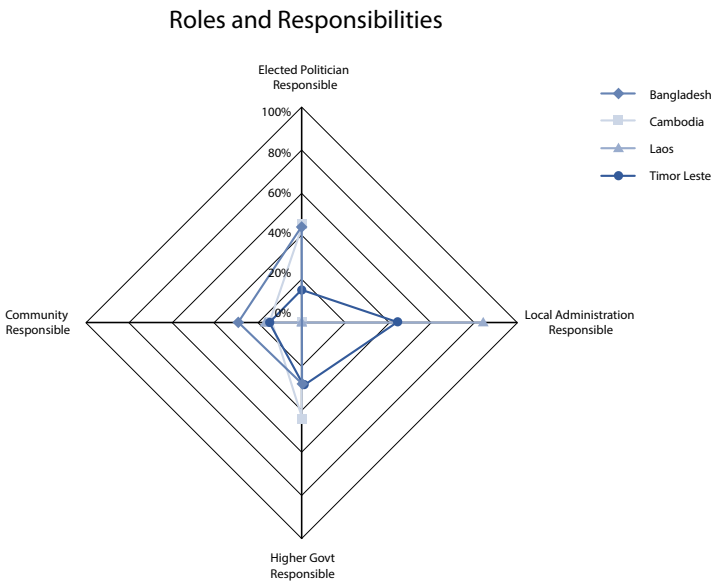
In all four countries, the investments are predominantly for small-scale infrastructure. However, Cambodia is unusual in that Commune and Sangkat Councils typically allocate their funds to a single project each year, while in the other countries the budgets are divided between a larger number, generally five to ten smaller schemes. Bangladesh and Timor-Leste have a high percentage of central government funding, while in Laos the program mainly disburses donor funds.

Roles and Responsibilities in Local Procurement

The "roles and responsibilities" area is intended to show the relative level of decision-making influence allocated to the elected local assembly, to local officials (accountable

to the assembly), to higher level government officials and to community representatives, respectively. This was calculated from the responses to eight questions in the survey, relating to responsibilities for cost estimation, bid evaluation, contract approval, the right (or otherwise) of higher government officials to reject the contract award decision; signature on the contract, responsibility for technical supervision and the role of community representatives in supervising works and approving payments. The summary indicator was calculated simply by awarding a point for each responsibility allocated at each level and dividing by the maximum possible number of points.

Roles and Responsibilities in Local Procurement				
Indicator	**Bangladesh**	**Cambodia**	**Laos**	**Timor-Leste**
Elected Politician Responsible	43%	43%	0%	14%
Local Administration Responsible	0%	0%	83%	43%
Higher Government Responsible	29%	43%	0%	29%
Community Responsible	29%	14%	17%	14%

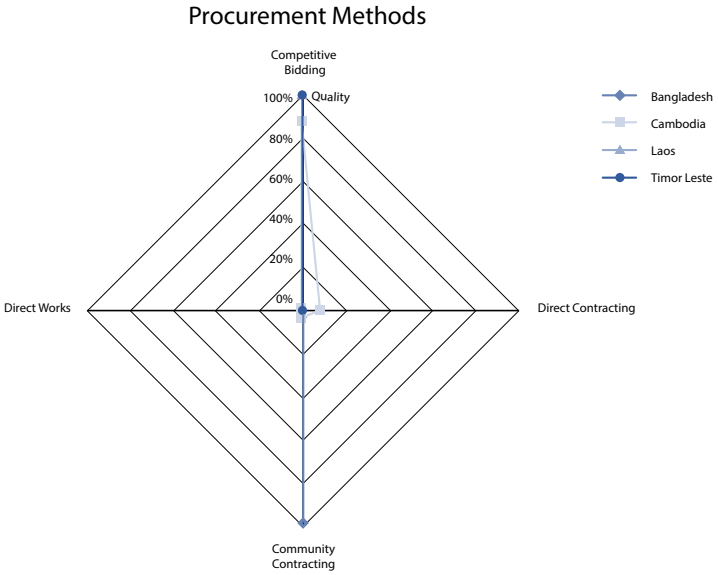


The level of responsibility assigned to local officials is much higher in Laos than in the other programs, possibly reflecting that Laos is at a relatively early stage of developing representative institutions of local government. The Bangladesh LGSP-LIC Joint Programme assigns a higher level of responsibilities to community representatives than do the other programs.

Procurement Methods

The "procurement methods" chart shows the proportion of schemes implemented by competitive bidding, by Direct Works, by Direct Contracting and by Community Contracting methods, respectively. The proportions were calculated as the number of schemes in each category as a percentage of the total number of schemes reported.

Procurement Methods				
Indicator	**Bangladesh**	**Cambodia**	**Laos**	**Timor-Leste**
Competitive Bidding	0%	88%	100%	94%
Direct Contracting	0%	9%	0%	0%
Community Contracting	100%	3%	0%	6%
Direct Works	0%	0%	0%	0%



Competitive bidding is used for the overwhelming majority of schemes in Cambodia, Laos and Timor-Leste, while Community Contracting is used (although with some competitive procurement of sub-contractors) for all schemes in the Bangladesh LGSP-LIC Joint Programme. The only country using Direct Contracting (usually because competitive bidding has failed) is Cambodia.

Selection Criteria

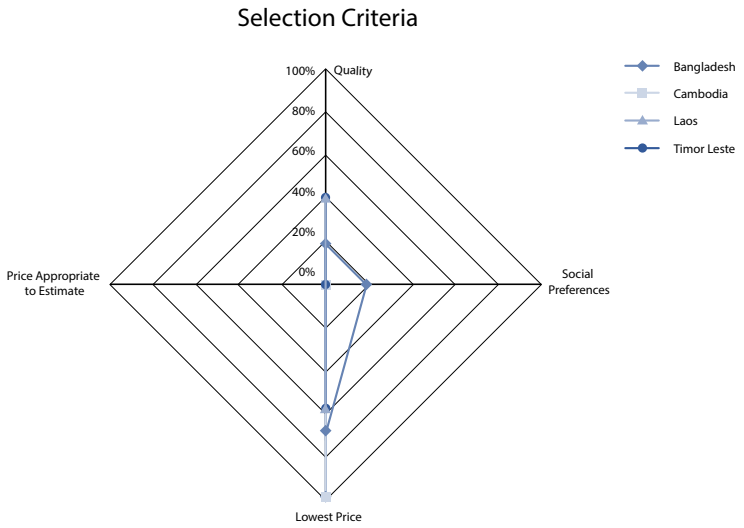
Four types of selection criteria are considered:

- Quality of the technical proposal. For this, a score between 0 and 4 was inserted depending on the number of "quality criteria" used out of four suggested in the survey form;
- The appropriateness of the bid price when compared to a price estimate (i.e. use of "bracketing" or similar systems imposing a mandatory or flexible minimum price below which bids are rejected). A score of 4 was inserted if price was evaluated using this method, otherwise zero;
- Lowest price (irrespective of comparison with the estimate). A score of 4 was inserted if price was evaluated using this method, otherwise zero; and

- Social Preferences (any type of preference e.g. for locally based contractors). For this, a score between 0 and 4 was inserted depending on the number of "social preference criteria" used out of four suggested in the survey form.

The scores were converted to percentages by totalling and dividing by 16.

Selection Criteria				
Indicator	**Bangladesh**	**Cambodia**	**Laos**	**Timor-Leste**
Quality	17%	0%	43%	43%
Social Preferences	17%	0%	0%	0%
Lowest Price	67%	100%	57%	57%
Price Appropriate to Estimate	0%	0%	0%	0%



Laos, Timor-Leste and Bangladesh all make some use of quality criteria in selection while in Cambodia the system used is based on accepting the lowest bid price offered by a (re-qualified) bidder. Bangladesh makes some use of social preferences. None of the programmes officially use price bracketing systems.

ANNEX III: Model Bid Document for Small Works

INTRODUCTION

This model bidding document is based on a format developed with UNCDF assistance for use in Timor-Leste but incorporates features from formats used in Cambodia and the Solomon Islands. The bidding document is suitable for small construction contracts, with a suggested maximum value of USD 50,000. The format could be further simplified for use in very small contracts of less than about USD 5,000.

This document is not intended as a "standard contract document" that should be used without modification. Rather, it is provided as a model which can be used to develop a standard document appropriate to the circumstances of a particular local development program. Therefore, the document should be examined carefully and amended where necessary. Some explanatory footnotes (marked "DELETE BEFORE USING" should be deleted).

In the model document the following terms are used:

- Municipality, meaning the local government (this should be amended to the appropriate term);
- Employer, i.e. the Municipality as purchaser;
- Project Manager, usually the chief executive or senior financial officer of the Municipality;
- Technical Supervisor, meaning an official or consultant working on behalf of the Project Manager.

The Invitation to Bid includes the estimated value of the contract.

There is provision for a charge to be made for bid documents. However, it is strongly recommended that bid documents should be distributed free of charge wherever possible, either electronically or in hard copy.

No bid security is required. Performance security is only required to the amount of any advance payment

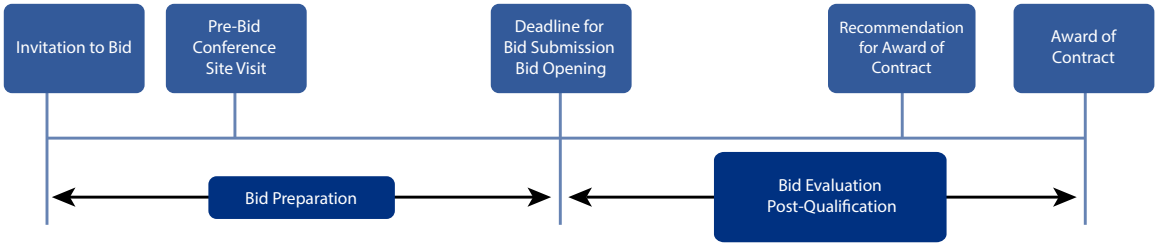
A post-qualification system is used. The bidder is required to examine the qualification requirements and to sign a statement that it meets these requirements. Photocopy documents (without authentication) are acceptable as supporting evidence in the bid document. Post-qualification (after identification of the lowest evaluated bid) consists of checking the validity of these documents and any other checks necessary to verify that the preferred bidder meets the qualification requirements.

A single document called the "Contract Agreement" is used in place of a Form of Bid, Letter of Acceptance and Form of Contract. The bidder commits itself to the contract by completing and signing the section titled "bid." The employer completes and signs the section titled "Acceptance" on the form submitted by the selected bidder. The contract becomes effective when the contractor receives the signed Contract Agreement from the employer.

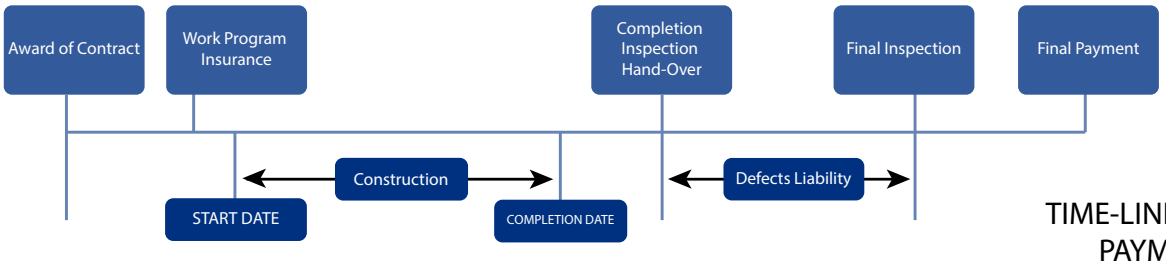
Payments are made according to a Schedule based on completion of stages of the work. Any advance payment can be included in the Schedule of Payments. The final payment is made at the end of the Defects Liability Period. Therefore, there is no "retention" as such, but as periodic payments are always less than the total value of work completed, the effect is the same.

The following page shows illustrative timelines for bidding, contract administration and processing of payments.

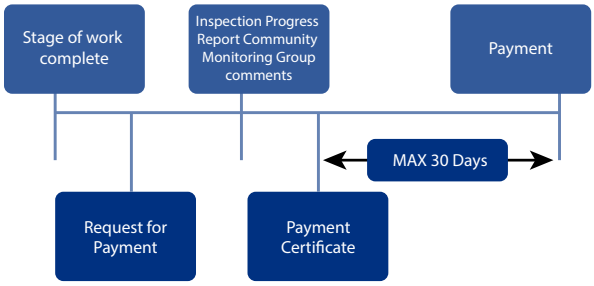
TIME-LINE FOR BIDDING



TIME-LINE FOR CONTRACT ADMINISTRATION



TIME-LINE FOR PAYMENTS



(Insert Name of Municipality) **Municipality**

BIDDING DOCUMENT FOR SMALL WORKS

CONTRACT No. .....

for

(.....Insert description of Works.....)

Day, Month, Year

CONTENTS

INVITATION TO BID
FOR
SMALL WORKS CONTRACT

MUNICIPALITY OF ...

The Municipality named above has appropriated funds under its Municipal Budget for implementation of the following small works:

(Insert description of works and location).

The estimated cost of the works is $ *(insert estimated cost).* The time allowed for completion of the Works will be *(insert time allowed)* weeks.

Contracting firms with appropriate experience and valid business registration are hereby invited to bid

Bidding documents may be inspected at the address below during business hours. Prospective bidders may obtain bidding documents on payment of $.....

Alternatively bidding documents may be obtained in electronic format free of charge by application to *(insert e-mail address)* or from the following website: *(insert website address if applicable).*

The deadline for submission of bids is *(insert deadline for submission).*

The address for Purchase of Bidding Documents is:

Name of Officer Responsible:

..... [Name of *project manager*]

(Insert job title of project manager)

INSTRUCTIONS TO BIDDERS

1. Scope of Work:

1.1 The Municipality named in the Bid Data (referred to below as "the Employer") invites bids for the construction of works as described in the specifications, drawings and bill of quantities, in accordance with the Conditions of Contract and Contract Data.

1.2 The successful contractor will be expected to complete the works within the time allowed for completion specified in the Bid Data.

2. Eligibility to Bid:

2.1 Bidders must have a valid Business Registration Certificate and Tax Identification Number.

2.2 Bidders shall not be eligible to bid if they:

a. Are insolvent, bankrupt or in receivership;
b. Are subject to a court order suspending their activity;
c. Have unfulfilled tax or other financial obligations to the State;
d. Have been disqualified from bidding by national government of *(Insert name of country)* or any Municipality due to corrupt or fraudulent processes or default on a contract.

2.3 A firm which has been engaged by the employer to provide consulting services for the preparation or supervision of the Works, and any of its affiliates, shall not be eligible to bid.

2.4 A firm which is owned by a public employee, by a member of the Municipal Assembly or by a close relative of a public employee whose place of work is in the territory of the Municipality shall not be eligible to bid.

3. Qualifications Required

3.1 Bidders are required to show evidence of the following qualifications:

a. Current Business Registration Certificate;
b. Tax Statement for the quarter specified in the Bid Data;
c. Having completed construction works up to the average value stated in the Bid Data in each of the past three years;
d. Having completed at least one project, as main contractor, of the type and value specified in the Bid Data, for which the client is willing to give the bidder a positive reference;
e. Access to liquid working capital up to the value stated in the Bid Data.

4. One Bid per Bidder: Each bidder shall submit only one bid, either individually, or as a partner in a joint venture. All bids submitted in violation of this rule shall be rejected.

5. Liability for Contract Execution: Partners in a joint venture shall be jointly and severally liable for the execution of the Contract.

6. Contents of Bidding Documents: The set of bidding documents comprises the documents listed below:

a. Invitation to Bid
b. Bid Data
c. Contract Agreement
d. Contract Data
e. Conditions of Contract
f. Qualification Documentation
g. Bid Documentation
h. Bills of Quantities
i. Specifications
j. Drawings

7. Bidder to Inform Itself

7.1 By making submitting a bid the Bidder asserts that it has carefully examined the Proposal Documents listed in Section 6 above. The Bidder further asserts that it has taken all reasonable steps to inform itself of all relevant factors that could affect the cost of constructing the Works.

7.2 The time and date of the Pre-Bid Meeting, if any, is stated in the Bid Data. The Bidder is encouraged to attend the Pre-Bid Meeting to increase its comprehension of Contract requirements and to avail of pertinent explanations and clarifications

7.3 The time and date of the Site visit, if any, is stated in the Bid Data. If no Site Visit is arranged by the Employer, the bidder is strongly encouraged to visit and examine the Site of the Works and its surroundings.

7.4 Attendance at Pre-Bid Meeting and site visits are at the bidder's discretion and will not be taken into account in evaluation of bids.

8. Documents Comprising the Bid: The Bid shall comprise the following documents which are to be completed and returned in accordance with the instructions below:

a. Contract Agreement (as per sample attached)
b. Qualification Documentation
c. Bid Documentation
d. Priced Bill of Quantities

9. Contract Agreement: The "Bid" section of the Contract Agreement is to be completed and signed by the bidder's authorised representative. If the Contract Agreement is not correctly completed and signed the bid will be rejected.

10. Qualification Documentation

10.1 The Bidder must submit as evidence of qualifications the documents specified in the Bid Data.

10.2 Documents may be submitted as photocopy without authentication provided that the bidder undertakes to submit matching originals within three working days if requested to do so.

10.3 If photocopy documents are submitted the bidder's authorised representative must sign the declaration provided in the Qualification Documentation.

11. Bid Documentation: The Bidder shall complete the Bid Documentation including all information required therein, including:

a. Total Value of Construction Work completed in each of the last three years;
b. Details of at least one completed contract of a similar nature to the present proposal, of at least the value stated in the Bid Data, and for which the client is willing to provide a positive reference;
c. Details of on-going contracts;
d. Information about any litigation in which the Bidder is currently engaged;
e. Bank account details and bank reference;
f. Details of persons proposed for any Key Personnel listed in the Bid Data;
g. Details of any items of Key Equipment listed in the Bid Data
h. Details of any Sub-Contractors proposed by the Bidder
i. Programme of Works.

12. Priced Bills of Quantities

12.1 The Contract shall be for the whole works as described in the Specification, Drawings and Bills of Quantities. The Contract shall be a lump sum fixed price contract.

12.2 Prices shall be quoted entirely in *(insert currency).* The bidder shall fill in the rates and prices for all items of the Works described in the Drawings and Specifications listed in the Bill of Quantities.

12.3 All duties, taxes and other levies payable by the Contractor under the Contract, calculated at the rates applicable as of the date ten (10) calendar days prior to the deadline for the submission of bids, shall be included in the rates, prices, and total price bid submitted by the Contractor.

12.4 The rates and prices quoted by the bidder shall be fixed for the duration of the Contract and shall not be subject to any adjustment on any account.

13. Validity of Bids :

13.1 The bid shall remain valid for the period stated in the Bid Data counted from the date of bid opening stated in the Bid Data.

13.2 The Municipality may request bidders to extend the period of bid validity for a specified additional period. The Municipality's request and the bidders' responses shall be made in writing or by electronic mail.

13.3 A bidder may refuse the request for extension of bid validity in which case he may withdraw his bid without any penalty. A bidder agreeing to the request will not be required or permitted to otherwise modify its bid.

14. Language of the Bid: All documents relating to the bid and contract shall be in permitted languages stated in the Bid Data

15. Preparation and Sealing of Bids

15.1 The Bidder shall prepare one original of the bid documents described in Clause 8 above. The Form of Bid shall be signed by a person or persons duly authorized to sign on behalf of the Bidder. All the pages of the Bid document where entries or amendments or corrections have been made shall be initialed by the person or persons signing the Form of Bid.

15.2 The Bidder shall seal the Bid Document in one outer envelope. The envelope shall be addressed to the Municipality at the address provided in the Bid Data and with:

a. The words "BID DOCUMENT FOR CONTRACT NUMBER..." and the contract number stated in the bid data;

b. The name of the bidder.

16. Withdrawals and Modifications

16.1 The Bidder may withdraw or modify the bid at any time up till the deadline for submission of bids. Withdrawals and modifications should be submitted in sealed envelopes addressed to the Municipality and marked with the name of the bidder. A notice of withdrawal must be signed by the same person or persons who signed the Form of Bid. Modifications should be in the same format as the original bid. Envelopes should be marked "WITHDRAWAL [or MODIFICATION as appropriate] OF BID FOR CONTRACT NUMBER" and the contract number stated in the Bid Data.

16.2 No Bid shall be modified after the deadline for submission of Bids specified in the Bid Data. Withdrawal of a Bid between the deadline for submission of Bids and the expiration of the validity of the Bid as stated in the Bid data will result in the bidder being disqualified from bidding for further contracts with the Municipality and with other Municipalities of *(insert name of country)* for a period of two years.

17. Place and Deadline for Submission of Bids: Bids shall be delivered to the Municipality at the place stated in the Bid data no later than the deadline for submission of bids stated in the Bid Data. Any bids received after the deadline will be returned unopened to the Bidder.

18. Opening of Bids: The Municipality will open the Bids, including modifications and withdrawals, in the presence of the bidders' representatives who choose to attend, at the time, date, and in the place specified in the Bid Data. The bidders' names, the Bid prices and bid modifications and withdrawals will be announced at the bid opening.

19. Process to be Confidential: Information relating to the examination, clarification, evaluation and comparison of bids and recommendation for the contract award shall not be disclosed until the award of the contract to the successful bidder has been announced.

20. Evaluation of Bids: The Municipality will award the Contract to the bidder whose bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest evaluated bid price. In evaluating the bids the Municipality will determine the evaluated bid by adjusting the price bid by making any correction for any arithmetic errors as follows:

a. where there is a discrepancy between a unit rate and the line item price resulting from multiplying the unit rate by the item quantity, except in case where the discrepancy obviously results from misplacement of a decimal point or similar error, the unit rate will govern;
b. where there is a discrepancy between the correct arithmetic total of all line item prices, and the total bid price, the correct arithmetic total of all line item prices will govern[7].

21. Post-Qualification The Municipality will carefully check the eligibility of the bidder whose bid has been evaluated as the lowest responsive bid. This may include inspecting originals of any copy documents submitted as evidence of the bidder's qualifications. The bidder must provide such original documents for examination within three working days of receiving a request in writing from the Municipality. If the bidder is unable to provide the original documents the bid will be excluded and the bidder may be disqualified from bidding for further contracts with the Municipality and with other Municipalities of *(insert name of country)* for a period of two years.

22. Right to Accept Any Bid and to Reject any or all Bids: The Municipality reserves the right to accept or reject any bid, and to cancel the process of competition and reject all bids, at any time prior to the award of the Contract, without thereby incurring any liability to the affected bidders or any obligation to inform the affected bidders of the grounds for the decision.

23. Notification of Award and Signing of Contract: The Municipality will prepare a complete copy of the contract documents. The Municipality will then sign the "Acceptance" section of both the original and the copy. The Municipality will then send the signed copy document to the bidder whose bid has been accepted. The Contract will come into effect upon receipt of the signed contract document by the bidder[8].

7 *It is conventional to include here a clause stating that "where there is a difference between the amount stated in words and the amount in figures, the amount in words will govern." However, there is no obvious application: it is the correct arithmetic total of the bills of quantities that should be considered as the bid price.*

8 *I.E no separate "letter of acceptance" is needed and there is no further "contract signing."*

BID DATA		
Data	**Para[9]**	**Specific data relating to this Contract**
The Employer	1.1	(Name of Municipality)
Contract Number	15.1	(Insert contract number)
Employer's Address	1.1	(Address of Municipal Administration)
Employer's Authorised Representative		(Name of project manager)
Contact		(Procurement Officer who should be contacted for enquiries)
The Works	1.1	(Insert description and location of works)
Time for Completion	1.2	(Insert time allowed for completion from signing of contract)
Bidder to have Tax Certificate for Quarter	3.1	(Insert quarter for which bidder must have a valid tax certificate)
Bidder to have completed construction works in each of the last three years of average value at least	3.1	(Insert average value required)
Bidder to have completed at least one similar project as main contractor of type	3.1	(Insert type of contract the Bidder must have completed)
Similar project to be of value at least	3.1	(Insert Minimum value of example project)
Working Capital required	3.1	(Insert rule, e.g. 25% of Bid Price)
Maximum value of ongoing contracts permitted	3.1	(Insert maximum value of ongoing projects)
Time, place and date of pre-Bid Meeting	7.2	
Time and date of Site Visit	7.2	
Qualification Documentation Required	10	Business Registration Tax Certificate Bank Statement
Personnel to be listed in the Schedule of Key Personnel	11	Works Manager (List any others)
Equipment to be listed in the Schedule of Key Equipment	11	(List any equipment the bidder has to show details of. Only the most important equipment should be listed)
Validity of Bid	13	30 days
Language of Bid	14	
Deadline for Submission of Bids	17	(Insert deadline for submission)
Place for Submission of Bids	17	(Insert place for submission)

9 Refers to paragraph number in the Instructions to Bidders.

CONTRACT
FOR SMALL WORKS

$50 000 and less

CONTRACT No. .....

(from ITB No. .....)

For

(.....Insert description of Works.....)

Day, Month, Year

CONTRACT AGREEMENT[10]

In this Contract Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to, and they shall be deemed to form and be read and construed as part of this Contract Agreement.

By signing and submitting the "Bid" section of this Contract Agreement the Contractor undertakes a binding obligation to execute the Works under the conditions proposed by the Employer and in return for the Contract Price. By signing the "Acceptance" section below and returning the signed Contract Agreement to the Contractor the Employer accepts the Bid by the Contractor.

The **Employer** Is: *(Insert name and address of Municipality)*

The **Contractor** Is *(bidder to insert name and address)*

The **Bid Document** means the bid document issued by the Employer in relation to bidding for Contract Number *(insert identifying number of contract)* on *(insert date of issue of bid documents)* for execution of the following Works *(insert description of works):*

BID

To: *(insert name of Employer)*

We have carefully examined the Bid Document. We hereby offer to execute and complete the Works to remedy any defects therein under the conditions stated in the Bid Document in return for the sum of *(insert amount in numbers and amount in words)*

or such adjusted Contract Price as may be determined in conformance with the procedure described in the Instructions to Bidders.

This Bid and your Acceptance of it by signing below shall constitute a binding Contract between us. We understand that you are not bound to accept the lowest or any Bid you receive.

Signature Date

Name On Behalf Of:

Position

Affix Stamp of Contractor

10 *This Contract Agreement replaces three documents: the Form of Bid, Letter of Acceptance and Form of Contract used in traditional bid documents. The contract comes into effect when the Employer signs and returns the Contract Agreement. However, if there is doubt over whether this procedure results in an enforceable contract under national laws, a formal contract signing with witnesses should be used.*

ACCEPTANCE

To *(insert name of Contractor):*

We hereby accept your Bid and agree that on satisfactory completion of the Works by you we will pay you the Contract Price of *(insert amount in numbers and words).*

Reason for the difference between the amount stated in the Bid, if any:

You are therefore instructed to commence execution of the Works within the period stated in the Contract Data.

Signature | Date

Name | On Behalf Of:

Position

Affix Stamp of Municipality

CONTRACT DATA			
Data	**Para[11]**	**Specific data relating to this Contract**	
Contract Number	1		
The Employer	1	(Insert name of Municipality)	
Employer's Authorised Representative	1	(Insert name of Executive Secretary)	
The Contractor	1		
The Works	1		
The Site	1		
The Contract Documents	1	Part	No. of Pages
		Contract Agreement	
		Contract Data	
		Conditions of Contract	
		Specifications	
		Drawings	
		Priced Bills of Quantities	
Technical Supervisor	1	(Insert name of Technical Supervisor)	
Insurance Requirements	4	(Insert details of any insurance the Contractor is required to purchase)	
Start Date	1, 7		
Intended Completion Date	1, 7		
Defects Liability Period	1,13,23		
Time for Contractor to Submit Works Program	8		
Payment Schedule	17, 18, 23	Payment Amount	Condition
			(advance, if any)
			e.g. % complete
			100% complete
			End of Defects Liability Period
Performance Security	18	Bank Draft equal to the amount of the advance payment, if any[12].	
Interest Rate Payable on Late Payments	18		
Liquidated Damages	19	0.1% of Contract Price per day	
Maximum Amount of Liquidated Damages	19	10% of Contract Price	

11 Refers to paragraph number in the General Conditions of Contract.

12 I.E if no advance payment, no performance security is required.

CONDITIONS OF CONTRACT

GENERAL CLAUSES

1. Definitions: Boldface type is used to identify the defined terms

Bill of Quantities means the priced and completed Bill of Quantities forming part of the Bid

a. **Activity Schedule** means the priced and completed schedule of activities forming part of the Bid.
b. The **Completion Date** is the date of completion of the Works as certified by the Employer in accordance with Clause 22 hereunder.
c. The **Contract** is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works as specified in the specifications or in other sections of the Contract. The name and identification number of the Contract is given in the Contract Data.
d. The **Contract Documents**: the documents listed in the Contract Data are considered to comprise the contract documents and in case of discrepancy the first-listed document shall take precedence.
e. The **Contractor** is a person or corporate body whose Bid to carry out the Works has been accepted by the Employer.
f. The **Contractor's Price Bid** is the completed bid document submitted by the Contractor to the Employer.
g. The **Contract Price** is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.
h. **Days** are calendar days; **months** are calendar months.
i. A **Defect** is any part of the Works not completed in accordance with the Contract.
j. The **Defects Liability Certificate** is the certificate issued by the Employer upon correction of defects by the Contractor.
k. The **Defects Liability Period** is the period for rectification of defects stated in the Contract Data, counted from the Completion Date to the date of the Defects Liability Certificate.
l. The **Employer** is the party who employs the contractor to carry out the Works.
m. **Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
n. **Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.
o. The **Intended Completion Date** is the date specified in the **Contract Data** on which it is intended that the Contractor shall complete the Works. The Intended Completion Date may be revised only by the Employer by issuing an extension time or an acceleration order in writing.
p. **Specification** means the Specification of the Works included in the Contract and any modification or addition made or approved by the Employer.
q. The **Site** is the area defined as such in the Contract Data.

r. The **Start Date** is defined in the Contract Data. It is the latest date when the Contractor shall commence the execution of the Works. It does not necessarily coincide with the site possession dates.

s. The **Technical Supervisor** is the person appointed by the Employer and notified to the contractor who is responsible for supervising the execution of the Works. The Technical Supervisor does not have any power to issue certificates or to give instructions which have the effect of changing the Contract Price.

t. **Temporary Works** are works designed, constructed, installed and removed by the contractor that are needed for construction or installation of the works.

u. A **Variation** is an instruction given by the Employer which varies the scope of the original Work requirements.

v. The **Works** are what the Contract requires the contractor to construct, maintain, rehabilitate or install, and turn over to the Employer as briefly defined in the Contract Data.

2. **Language and Law:** The Contract shall be in the language stated in the Contract Data. The law governing the Contract shall be the applicable law of *(insert name of country)*.

3. **Communications:** Communications between parties that are referred to in these Conditions shall be effective only when made in writing. A notice shall be effective only when it is delivered.

4. **Contractor's Risks and Insurance:** Risks of personal injury, death, and loss or damage to property and adjacent property (including, without limitation, the Works, Plant, Materials and Equipment) as a direct or indirect consequence of the Contractors' operations on the site are Contractor's risks. The Contractor is responsible to purchase insurance against contractors' risks in accordance with the insurance requirements stated in the Contract Data.

5. **Safety and Environmental Protection:** The Contractor agrees to ensure that the work is carried out in a safe manner and with the minimum disturbance to people living close to or passing by the site, or damage to the environment. The place of disposing of excavated earth, dirty water or other waste materials must be approved by the Project Owner before disposal starts. On completion of the works the contractor shall be responsible for removing all plant, surplus materials and wastes from the site and for restoring the site to a clean and tidy condition.

6. **Sub-Contractors:** The Contractor shall not sub-contract the whole of the works. The Contractor shall not, without the written consent of the Employer, sub-contract any part of the Works. In the event the Employer approves the sub-contracting, such consent shall not relieve the Contractor of his obligations under the Contract.

TIME CONTROL

7. **Works to be Completed by the Completion Date:** The Contractor shall commence execution of the Works on the Start Date and shall carry out the Works in accordance with the work schedule submitted by the Contractor, as updated with the approval of the Employer, and complete the Works by the Intended Completion Date.

8. **Program:** Within the time stated following written notification of award in the Contract Data, the Contractor shall submit to the Employer for approval a Program showing the general methods, arrangements, order, and timing for all activities of the Works. The Employer's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Employer again at any time. A revised Program will show the effect of Variations.

9. **Extension of the Completion Date:** The Employer shall extend the completion date if any instruction given by the Employer or any event beyond the control of the Contractor makes it impossible for Completion to be achieved by the Intended Completion Date without incurring extra cost.

10. **Delays Ordered by the Employer:** The Employer may instruct the Contractor to delay the start or progress of any activity within the Works. In an emergency the Technical Supervisor may instruct a delay of up to three working days without written confirmation from the Employer.

QUALITY CONTROL

11. The Works Manager will be present on-site all the time that work is in progress.

12. The Works Manager will record progress of the Works in a **Works Notebook** that is kept at the construction site. The Employer or any person named as a representative by the Employer may inspect the Works Notebook and may enter written records or comments which should be counter-signed and dated by the Works Manager.

13. Defects :

13.1 The Employer shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion. The Defects Liability Period shall be extended for as long as Defects remain uncorrected.

13.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Employer's notices. If the Contractor has not corrected a Defect within the time specified by the Employer's notice, the Employer will assess the cost of having the Defect corrected, and the Contractor will pay this amount, or the Employer shall recover these amounts by deduction from the amounts due to the Contractor.

14. The Employer, or any person named as a representative by the Employer, has the right to monitor all activities connected with the works, inspect materials delivered to the site, inspect the Works at any time, and to record comments in the Works Notebook. The Employer also has the right to instruct the Contractor to stop work for up to 2 full working days, to allow the Technical Supervisor to inspect the Works.

15. The Technical Supervisor may inspect the work at any time. The Technical Supervisor may instruct the Contractor to provide samples of materials for quality testing. The Technical Supervisor may instruct the Contractor to dig inspection holes in completed sections of the work in order to allow inspection. The Contractor will cooperate with the Technical Supervisor and allow the Technical Supervisor to use the Contractor's staff and equipment as necessary to carry out inspections of the work.

CONTRACT PRICE AND PAYMENTS

16. Contract to Be a Fixed Price Lump-Sum Contract. The Contract Price is a fixed price lump-sum amount for all the works shown in the Drawings and described in the Specifications and Bills of Quantities. In the case of Variations, the Contract Price will be adjusted in accordance with the unit prices in the Bills of Quantities.

17. Payment Certificate:[13]

17.1 Payments will become due on completion of the stages of work shown in the Schedule of Payments in the Contract Data. Where the condition for release of a stage payment is expressed as a percentage of the work completed, the value of completed parts of the Works shall be calculated according to the unit rates in the Bill of Quantities.

17.2 When the Contractor considers that the conditions for release of a stage payment have been fulfilled the Contractor shall submit a Request for Payment in writing to the Employer.

17.3 The Technical Supervisor shall check the Contractor's executed work and report to the Employer. The Employer will then issue a Payment Certificate showing the amount to be paid to the Contractor.

17.4 The value of the work executed shall include Variations.

17.5 Items of the Works for which no rate or price has been included will not be paid for by the Employer and shall be deemed to be covered by other rates and prices in the Contract

17.6 The Employer may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information

18. Payments:

18.1 The Employer may make advance payment to the Contractor in the amount of the percentage of the Contract Price stated in the Contract Data after the Contractor has provided an advance payment Bank Guarantee for an equal amount.

18.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Employer.

18.3 The Employer shall pay the Contractor the amount shown on the Payment Certificate within thirty (30) days of the date of each certificate.

18.4 If the Employer delays the payment the Contractor shall be entitled to be paid interest on the late payment. Interest shall be calculated from the date by which the payment should have been made, up to the date when the late payment is made, at the rate of interest stated in the Contract Data.

13 In this contract payments are made according to a fixed schedule. The schedule includes the advance payment, stage payments and release of a final payment at the end of the defects liability period. Therefore there is no explicit "retention" although the effect is the same as retention as the stage payments are always less than the value of work completed.

19. Liquidated Damages:

19.1 The Contractor shall pay liquidated damages to the Employer at the rate per day stated in the Contract Data for each day that the Completion Date is later than the Intended Completion Date.

19.2 The total amount of liquidated damages shall not exceed the amount defined in the Contract Data. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

20. Variations: The works shall be carried out by the contractor in accordance with the approved drawings and specifications. However, if, on account of site conditions or any other factors, variations are considered necessary, the Employer will instruct the variation and the Contract Price will be adjusted based on the Unit Prices stated in the Bills of Quantities. The cumulative effect of all variations may not have the effect of increasing or decreasing the Contract Price by more than 20% except with the agreement of the Contractor.

21. Taxes: The Contractor is responsible for all taxes in accordance with the laws of *(insert name of country)*.

COMPLETION OR TERMINATION OF THE CONTRACT

22. Completion and Taking Over: The Contractor shall request the Employer to issue a certificate of completion of the Works, and the Employer will issue such a certificate when he determines that the work is satisfactorily completed. The Employer shall take possession of the site within seven (7) days of the Employer issuing a certificate of completion of the Works.

23. Defects Liability Period: The Defects Liability Period starts on the date of issue of the Completion Certificate and is for the period stated in the Contract Data, or until all defects notified to the Contractor during that period have been made good, whichever is the longer. During the Defects Liability Period the Contractor is fully responsible to improve and repair any defect that appears due to quality of materials or workmanship and any defect that appears as a result of normal use of the works. At the end of the defects liability period the Employer will inspect the works. If there are no defects for which the Contractor remains liable, the Employer will issue a Payment Certificate for the final payment to the Contractor.

24. Termination: The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract. Fundamental breaches of Contract shall include, but shall not be limited to, the following:

24.1 The Contractor stops work for ten (10) days when the stoppage has not been authorized by the Employer;

24.2 A payment certified by the Employer is not paid by the Employer to the Contractor within sixty (60) days of the date of the Employer's certificate;

24.3 The Employer gives notice that the Contractor has failed to correct a Defect within twenty one (21) days as determined by the Employer; and

24.4 The Contractor has delayed the completion of the Works by thirty (30) days.

24.5 If the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract. For the purpose of this paragraph:

24.5.1 "Corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.

24.5.2 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Employer, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition.

24.5.3 "Coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract.

25. Notwithstanding the above, the Employer may terminate the Contract for its convenience by giving the Contractor a thirty (30) day notice in writing. If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site within fifteen (15) days of the completion of the notice period.

26. Force Majeure: Either party may terminate the Contract by giving a thirty (30) days notice to the other for events beyond that party's control, such as Wars and natural disasters such as earthquakes, tsunami, floods, fires and landslides.

27. Payment Upon Termination :

27.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Employer shall take over the Works and may complete the Works by any means the Employer sees fit. The payment due to the Contractor, if any, shall be the Contract Price minus the cost to the Employer of completing the works.

27.2 If the Contract is terminated because of Force Majeure or for the convenience of the Employer, the Employer shall issue a certificate for the value of the work completed and for the materials already ordered less the payments received up to the date of issue of the certificate.

27.3 In either case, if the final amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable by the Contractor to the Employer.

28. Property. All materials on the Site, temporary works and Works, and any equipment needed to maintain the Works in a safe condition shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor's default.

RESOLUTION OF DISPUTES

29. Resolution of Disputes. The Employer and the Contractor shall make every effort to resolve amicably by direct negotiations any disagreement or dispute arising between them under or in connection with the Contract.

30. Arbitration: If direct negotiation fails, the parties should agree to submit the matter to arbitration. This is done in the following manner:

30.1 Each party can propose three names of respected local citizens who are suitable to be members of the Arbitration Panel (that will decide the solution to the dispute). These citizens must not be elected representatives of the Municipal Assembly nor public employees of any kind and must not be related to or financially connected with the contractor. They must not have had any involvement with the contract or the dispute so far;

30.2 The two parties compare their lists of names to choose three members for the Arbitration Panel. If:

30.2.1 All three names are the same on both lists, these citizens form the Arbitration Panel;

30.2.2 Two names appear on both lists, these two citizens are asked to choose a third member for the panel;

30.2.3 Only one name appears on both lists, each party chooses one from the list proposed by the other party;

30.2.4 Name appears on both lists, each party chooses one from the list proposed by the other party, and these two members select a third member to join them.

30.3 The two parties make a written agreement to respect the decision of the arbitration panel.

30.4 The arbitration panel then discusses the matter and makes a decision.

QUALIFICATION DOCUMENTS

THE FOLLOWING DOCUMENTS ARE TO BE SUBMITTED AS EVIDENCE OF THE BIDDER'S QUALIFICATIONS.

DOCUMENTS MAY BE SUBMITTED AS ORIGINAL OR PHOTOCOPY.

BIDDERS SUBMITTING DOCUMENTS AS PHOTOCOPY MUST SIGN THE DECLARATION AT THE FOOT OF THIS PAGE.

DOCUMENT REQUIRED	Tick if Original	Tick if Photocopy
BUSINESS REGISTRATION CERTIFICATE		
PROOF OF TLRS TAX PAYMENTS FOR QUARTER ENDING		
EVIDENCE OF FINANCIAL CAPACITY (BANK STATEMENT OR SIMILAR)		

BIDDER'S DECLARATION

I HEREBY DECLARE THAT I AM IN POSSESSION OF ORIGINAL DOCUMENTS MATCHING THE PHOTOCOPIES SUBMITTED AND THAT I WILL MAKE THE ORIGINAL DOCUMENTS AVAILABLE FOR INSPECTION BEFORE BEING AWARDED THE CONTRACT. I UNDERSTAND THAT FAILURE TO PRODUCE ORIGINAL DOCUMENTS ON REQUEST WILL LEAD TO MY BID BEING REJECTED AND MAY LEAD TO DISQUALIFICATION FROM BIDDING FOR FUTURE CONTRACTS.

SIGNED

BIDDER'S AUTHORISED REPRESENTATIVE

BID DOCUMENTATION

1. Total annual volume of construction work performed for each of the past three years:

Year **Value**

2. Describe at least one project of a similar nature and size to the present proposal and provide name and contact details of client for verification.

Project Name: Project Location:

Project Description:

Project Value:

Start Date: Completion Date:

Name of Client: Contact Details of Client:

3. The Bidder to provide details of any current on-going contracts

Client	Description	Value	Completion Date

4. Is the Bidder currently engaged in litigation of any type? Yes / No

If Yes please provide details below:

5. Bank Reference

Bank Name Branch Address

Branch Telephone Number Contact Person

Account Name Account Number

6. Bidder's Declaration of Eligibility

Having read the Instructions to Bidders, the Bid Data and the Contract Data we hereby declare that we meet all qualifications to bid for the Contract. We further declare that we are not ineligible due to conflict of interest by way of past or present associations with consultants that have prepared designs, specifications or other documents for the Project or with public servants or members of the Municipal Assembly.

SIGNED

BIDDER'S AUTHORISED REPRESENTATIVE

SCHEDULE OF KEY PERSONNEL

For each position specified by the Employer in the column headed "personnel" the bidder is to provide details of the person proposed for the position

Position	Person Proposed	Age	Qualification
Works Manager			

SCHEDULE OF EQUIPMENT

For each item of equipment specified by the Employer in the column headed "Equipment Required" the bidder is to provide details of the equipment proposed.

Equipment Required	Type	Age	Owner

SCHEDULE OF SUB-CONTRACTORS

If the Bidder proposes to engage sub-contractors for any part of the works, details of the sub-contractors proposed should be entered below.

Name of sub-contractor	Part of works to be sub-contracted

BIDDER'S PROPOSED PROGRAM OF WORKS

The Bidder should indicate the weeks during which each major part of the works will be on-going, counting from the date of award of the contract.

	Weeks (From Award of Contract)																			
Part of Works	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20

BILLS OF QUANTITIES

Preamble

1. The Bill of Quantities shall be read in conjunction with the Instructions to Bidders, General and Special Conditions of Contract, Technical Specifications and Drawings.
2. The Contract is a fixed price, lump-sum contract without re-measurement. The Contract Price is for all the whole of the works shown on the Drawings and described in the Specifications and the Bills of Quantities. Any variations ordered by the Employer will be priced according to the unit rates entered by the Contractor in the Bill of Quantities.
3. A rate or price shall be entered against each item in the priced Bill of Quantities, whether quantities are stated or not. The cost of Items against which the Contractor has failed to enter a rate or price shall be deemed to be covered by other rates and prices entered in the Bill of Quantities.
4. The whole cost of complying with the provisions of the Contract shall be included in the Items provided in the priced Bill of Quantities, and where no Items are provided the cost shall be deemed to be distributed among the rates and prices entered for the related Items of Work.
5. General directions and descriptions of work and materials are not necessarily repeated nor summarized in the Bill of Quantities. References to the relevant sections of the contract documentation shall be made before entering prices against each item in the priced Bill of Quantities.

Bills of Quantities

Contract	
Contract Number	
Bill Number	
Description	

Bill Item No	Pay Item No.	Item Description	Unit	Quantity	Rate US $	Amount
		Section				
					TOTAL BILL NO. ….. (Carried forward to Summary)	

SUMMARY – BILLS OF QUANTITY

Contract	
Contract Number	

Bill No.	Description	Amount US $
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
	Sub Total of Bills	
	Tax (...%)	
	BID PRICE	

DRAWINGS

CONTENTS

Standard Details

8. SPECIFICATIONS

APPLICABLE TECHNICAL SPECIFICATIONS	State YES or NO

ANNEX IV: Model Community Contract Agreement

This model community contract agreement is based on a format developed with UNCDF assistance for use in Bhutan.

The agreement is appropriate for a situation where the community contractor will be the owner of the completed scheme and will take responsibility for operation and maintenance. It is assumed that the community contractor will pay part of the scheme costs in cash, labour or locally available materials contributed by the community.

In this format, the contract price is a fixed lump-sum. This is appropriate in the case that a substantial part of the cost is funded through community contributions – the community contractor cannot make a profit from implementing the scheme. However, the community contractor is required to maintain financial accounts, records of labour hire and so on.

Payments are made according to completion of stages of the work. However, a provision is made for advance payments (which should then be deducted from the following stage payment) if the community contractor needs cash to buy materials or rent equipment. There should not be a need to advance cash for labour payments.

Under the agreement, the Technical Supervisor (provided by the Municipality) is responsible to advise and assist the Community Contractor in implementation of the scheme, as well as to certify progress.

The budget for the scheme is divided into four Schedules plus a summary sheet. The schedules are:

1. Labour costs;
2. Locally Procured Materials (i.e. procured by the Community Contractor);
3. Other Costs;
4. Materials Supplied by the Municipality. This is intended for the situation where the Municipality procures materials and delivers them to the Community Contractor. It could also be used for items such as equipment provided rent-free to the Community Contractor.

Schedules 1–3 allow for community contributions to be entered against each item cost (for example, this could be used to specify community responsibility for a particular labour task). The community contribution can then be calculated as a percentage of the schedule cost and of the scheme cost (on the summary sheet).

Not all schedules will be needed in all schemes. For the simplest schemes the budget may consist mainly of Schedule 1 (Labour Costs).

Other formats provided are:

1. Work Program ;
2. A Maintenance Plan;
3. Progress Report, divided into two parts: the Technical Supervisor's Report and comments from the Community Oversight Committee;
4. A Contract Monitoring Sheet. There are two parts: the first for recording cash payments and the second for recording delivery of materials (i.e. the materials the Municipality has agreed to provide in-kind under Schedule 4 of the budget).

COMMUNITY CONTRACT AGREEMENT

PART A: AGREEMENT

THIS AGREEMENT is made the .....day of .....20...

BETWEEN the Municipality of ..... , (hereinafter called "the Municipality") of the one part

AND the association of local residents called: .....
and represented by: .....

(hereinafter called "the Community Contractor") of the other part.

WHEREAS the Municipality has decided in the interests of community development to support the implementation of the following works by the Community Contractor and the local community:

.....

NOW THEREFORE, THE MUNICIPALITY AND THE COMMUNITY CONTRACTOR AGREE AS FOLLOWS:

The Agreement consists of this document together with the following attachments:

a. The Drawings
b. Budget Schedule 1: Labour
c. Budget Schedule 2: Locally Procured Materials
d. Budget Schedule 3: Other Costs
e. Budget Schedule 4: Materials Provided by the Municipality
f. The Summary Budget
g. The Programme of Work

In consideration of the payments to be made by the Municipality to the Community Contractor as described below, the Community Contractor hereby agrees to:

1. Construct the Works in conformity in all respects with the provisions of the Community Contract and under the conditions set out in Part B below; and
2. Accept responsibility for the proper operation and maintenance of the completed Works on behalf of the community.

The total value of the works to be implemented is .....
..... (Amount in figures: .....)

Of which:

....
..... (Amount in figures: .....) (THE CONTRACT PRICE) will be paid in cash by the Municipality to the Community Contractor;

Of which ..... is the value of materials, equipment or other things to be supplied in-kind by the Municipality to the Community Contractor; and

Of which ..... will be contributed by the local community either in cash or in labour and locally sourced materials.

PART B: CONDITIONS

The Community Contractor Agrees to:-

1. Provide all labour, materials, equipment and small tools and everything necessary to execute and complete the works, except for materials or other things stated in the attached Schedules to be provided by the Municipality.
2. Execute the works in accordance with the Drawings and under the technical direction of the Technical Supervisor.
3. Keep clear written records consisting (as a minimum) of all receipts for expenditures plus a Scheme Notebook in which the Community Contractor will record:
   a. Purchases of materials;
   b. Hire of equipment;
   c. Payments for skilled and unskilled labour including name, age, gender, number of days worked and payments received for all workers;
   d. Delivery of materials supplied by the Municipality.
4. Materials and other things provided by the Municipality remain the property of the Municipality until they are used in construction of the Works. The Community Contractor shall not make use of these materials or other things for any purpose whatsoever other than the intended use in execution of the Works without the written agreement of the Municipality.
5. Notify the Municipality immediately if the Community Contractor identifies that:
   a. Materials provided by the Municipality are defective in any way;
   b. The materials described in the Schedule of Materials to be provided by the Municipality, or the actual Materials delivered, are not sufficient to complete the Works.
6. Complete the Works no later than the Intended Completion Date which is ....
7. Ensure that the work is carried out in a safe manner and with the minimum disturbance to people living close to or passing by the site, or damage to the environment.
8. Allow the Technical Supervisor, the Community Oversight Committee or any other person representing the Municipality for this purpose, full access to monitor progress of the works and to inspect the Scheme Notebook and other written records and accounts.

The Municipality Agrees to:-

1. Provide technical advice and assistance to the Community Contractor through the Technical Supervisor;
2. Provide to the Community Contractor any materials or other things listed as to be provided by the Municipality in the attached Schedules;
3. On the request of the Community Contractor and certification by the Technical Supervisor, make advance payments for specific purposes connected with the purchase and transport of materials or the purchase or rental of equipment needed for execution of the works, provided that the total of unliquidated advances does not exceed 25% of the Contract Price.

4. Pay to the Community Contractor the Contract Price in the amounts shown in the Schedule of Payments, on certification by the Technical Supervisor and confirmation by the Monitoring and Evaluation Committee that progress of the works has reached the stage shown in Schedule of Payments, as follows:

No.	% of Work Complete	% of Contract Price	Amount
1	25%	25%	
2	50%	25%	
3	75%	25%	
4	100%	25%	
		TOTAL CONTRACT PRICE:	

C. The Municipality Reserves the Right Terminate the Contract if:-

1. The Community Contractor fail to fulfil its obligations under the Contract; or
2. The Community Contractor fail to comply with the agreed work programme or to complete the works within the time allowed.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be entered into the day, the month and year first above written.

Signed for and behalf of the Municipality

By:	.....	Witnessed By:	.....
Signature:	.....	Signature:	.....
Designation:	.....	Designation:	.....
Date:	.....	Date:	.....

Signed for and on behalf of the Community Contractor:

By:	.....	Witnessed By:	.....
Signature:	.....	Signature:	.....
Designation:	.....	Designation:	.....
Date:	.....	Date:	.....

BUDGET SCHEDULE 1: LABOUR

Budget Item	Description of Labour Task	Labour Days Required	Rate	Value of Labour	Amount to be Contributed by the Community	Amount in Contract Budget
1.1						
1.2						
1.3						
etc						
Total Value				$	$	$
Percentages Contributed by Community and by Municipality					%	%

BUDGET SCHEDULE 2: LOCALLY PROCURED MATERIALS

Budget Item	Description of Materials	Purpose (Use in works)	Unit	Quantity	Unit Rate	Total Cost	Amount to be Contributed by the Community	Amount in Contract Budget
2.1								
2.2								
2.3								
etc								
Total Value of Community and Municipality Contributions						$	$	$
Percentages Contributed by Community and by Municipality							%	%

BUDGET SCHEDULE 3: OTHER COSTS

Budget Item	Description of Item	Unit	Quantity	Unit Rate	Total Cost	Amount Contributed by Community	Amount in Contract Budget
3.1							
3.2							
3.3							
Total Value of Community and Municipality Contributions					$	$	$
Percentages Contributed by Community and by Municipality						%	%

BUDGET SCHEDULE 4: MATERIALS AND OTHER THINGS TO BE SUPPLIED BY THE MUNICIPALITY

Budget Item	Description of Item	Purpose (Use in Works)	Unit	Quantity	Unit Cost	Total Cost
4.1						
4.2						
4.3						
etc.						
TOTAL VALUE OF MATERIALS TO BE SUPPLIED BY THE MUNICIPALITY						

SUMMARY CONTRACT BUDGET				
ITEM	DESCRIPTION	TOTAL COST	COMMUNITY CONTRIBUTION	MUNICIPALITY CONTRIBUTION
1	LABOUR (FROM SCHEDULE 1)	1	2	3=1–2
2	LOCALLY PROCURED MATERIALS (FROM SCHEDULE 2)	4	5	6=4–5
3	OTHER ITEMS (FROM SCHEDULE 3)	7	8	9 = 7–8
4	SUB-TOTALS	10 = 1 + 4 + 7	11 = 2 + 5 + 8	12 = 3 + 6 + 9
5	ADMINISTRATION COST(3% OF CONTRACT BUDGET)	13 = 12 X 3 / 100		14 = 13
TOTAL CONTRACT BUDGET				15 = 12 +14
6	MATERIALS SUPPLIED BY MUNICIPALITY (FROM SCHEDULE 4)	16		17 = 16
TOTALS		18 = 10 + 13 + 16	19 = 11	20 = 18–19
% CONTRIBUTIONS			21 = 19 / 18 X 100 %	22 = 20 / 18 X 100 %

COMMUNITY CONTRACT: WORK PROGRAMME

PART OF WORK	VALUE[14]	PLANNED START DATE	PLANNED FINISH DATE	PLANNED PROGRESS BY WEEK											
Total Cost of All Parts of Work															

14 Approximate total value of labour, equipment and materials needed for this section of the work.

COMMUNITY CONTRACTING: MAINTENANCE PLAN

Name of Contract		Name of Community Contractor			
On behalf of the local community, the Community Contractor undertakes to carry out maintenance of the completed works in accordance with the Maintenance Plan below.					
Description of Activity	How often activity is needed	How many days of local labour each time	Other Costs	Source of Funds	Comments

Signed on behalf of the Community Contractor	Signed on behalf of the Municipality Administration
Name	Name
Signature	Signature
Position	Position
Date	Date

COMMUNITY CONTRACT: PROGRESS REPORT PART 1: TECHNICAL SUPERVISOR'S REPORT

Contract:				Date of Report:			Report Number:	
Part of Work	Value of part of work $	% Comp-lete	Value Completed	Work Programme Date for Completion	Construction following design?	Materials of correct quality?	Workman-ship acceptable quality?	Comments
(As on work programme)	From WP	Actual %	Value x %	From WP	Yes / No	Yes / No	Yes / No	Comments
Total Value				$		Name of Technical Supervisor:		
Percentage of Total Value of Work Completed				%		Date		

COMMUNITY CONTRACT: PROGRESS REPORT: PART 2: COMMUNITY OVERSIGHT COMMITTEE COMMENTS

Contract:	Date of Report:	Report Number:

We, the Community Oversight Committee appointed to monitor on behalf of the local community for this contract, have seen the Progress Report Part 1 submitted by the Technical Supervisor on date and have the following comments:.

Signatures of Community Oversight Committee

Name

Signature

Date

COMMUNITY CONTRACTING: CONTRACT MONITORING SHEET

Name of Contract

PART 1: RECORD OF PAYMENTS

Date	Description	Amount Due (stage payments)	Advances Deducted	Amount Paid	Outstanding Advances	Total Stage Payments + Outstanding Advances	Balance of Contract Budget

COMMUNITY CONTRACTING: CONTRACT MONITORING SHEET

Name of Contract

PART 2: RECORD OF MATERIALS DELIVERED

Date	Description	Quantity	Unit	Quantity Delivered Previously	Quantity Delivered to date	Balance of material to be supplied	Comments

ANNEX V: Bibliography

Bibliography

1 *Action Aid, Christian Aid and Oxfam, 2008, EU FTA Manual Briefing Paper 7: The EU's Approach to Free Trade Agreements: Government Procurement.*

2 *African Development Bank, 2008, Rules and Procedures for Procurement of Goods and Works.*

3 *African Development Bank, 2008, Rules and Procedures for Procurement of Goods and Works.*

4 *Agaba, Edgar and Shipman, Nigel 2007, Public Procurement Reform in Developing Countries: The Uganda Experience.*

5 *Asian Development Bank, 2007, Procurement Guidelines.*

6 *Asian Development Bank, 2007, Project Administration Instructions PAI5.12 Implementing Small Projects with Community Participation.*

7 *Asian Development Bank, 2008, Project Administration Instructions PAI3.04 Local Procurement.*

8 *Basheka, Benon, 2009, Procurement Planning and Local Governance in Uganda: A Factor Analysis Approach.*

9 *Bretton Woods Project, 2008, World Bank and Procurement: Development Tool or TNC sop.*

10 *de Silva, Samanth, 2000, Community-Based Contracting: A Review of Stakeholder Experience.*

11 *FIDIC, 2007, Response to the World Bank's Paper: Detailed Methodology for Procurement Country Systems Piloting Programme.*

12 *Government of Bangladesh, 2008, Public Procurement Rules.*

13 *Government of Nepal, 2007, Local Body Financial Administration Rules.*

14 *Government of Nepal, 2007, Public Procurement Act.*

15 *Government of Nepal, 2008, Procurement Manual for the Rural Reconstruction and Rehabilitation Sector Development Programme (ADB).*

16 *Government of the Philippines, 2008, Procurement Manual for Local Government Units.*

17 *Government of the Republic of South Africa, undated, General Procurement Guidelines.*

18 *Government of Uganda, 2003, Public Procurement And Disposal of Public Assets Act.*

19 *Local Government Association (UK), 2007, Local Government Sustainable Procurement Strategy.*

20 *Martin Khor, undated, Procurement and FTA.*

21 *McDonald, Olivia, 2008, Buying Power: Aid, Governance and Public Procurement (Christian Aid).*

22 *OECD, 2006, Methodology for Assessment of National Procurement Systems.*

23 *Public Procurement and Disposal of Assets Authority, Uganda, 2008, Local Government (Procurement and Disposal of Public Assets) Guidelines.*

24 *Royal Government of Cambodia, 2005, Procurement Manual for Externally Assisted Projects.*

25 *Royal Government of Cambodia, 2008, Commune-Sangkat Fund Project Implementation Manual.*

26 *Schiavo-Campo, Salvatore, and Sundaram, Pachampet, 2000, To Serve and Preserve: Improving Public Administration in a Competitive World (Asian Development Bank).*

27 *Searcy, Cynthia S. and Duncombe, William, 2004, What do we know about purchasing practice of New York State school districts? (Syracuse University, Powerpoint).*

28 *State Government of Victoria, 2008, Local Government Procurement: Best Practice Guideline.*

29 *United Nations Commission on International Trade Law (UNCITRAL), 1994, Model Law on Procurement of Goods, Construction and Services.*

30 *van Dissel, Serge Cartier, 2009, Community Infrastructure Development in Urban Areas (International Labour Organization Office for Nepal).*

31 *Wittig, Wayne A., 1999, Building Value through Public Procurement: A Focus on Africa (International Trade Centre).*

32 *World Bank, 2000, Sample Bidding Documents for Procurement of Simple Works.*

33 *World Bank, 2004, Guidelines for Procurement under IBRD Loans and IDA Credits.*

34 *World Bank, 2008, Implementation Completion and Results Report (IDA-36390) Bangladesh Public Procurement Reform Project.*

35 *World Bank, 2008, Standard Bidding Documents for Procurement of Small Works.*

36 *Yilmaz, Serdar, Beris, Yakup and Serrano-Berthet, Rodrigo, 2008, Local Government Discretion and Accountability: A Diagnostic Framework for Local Governance. Local Governance and Accountability Series Paper No. 113 (World Bank).*

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