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Review of Public Procurement System

November 2017

DISCLAIMER NOTE

The review was confined to the public procurement system and practices in the country. The review was based on the objectives of audit and the programme prepared by the Royal Audit Authority. The findings were based on the information and documents made available by the audited agencies.

This is also to certify that the auditors during the audit had neither yielded to pressure, nor dispensed any favor or resorted to any unethical means that would be considered as violation of the Royal Audit Authority's Oath of Good Conduct, Ethics and Secrecy.



REVIEW OF PUBLIC PROCUREMENT SYSTEM

NOVEMBER 2017



ཀྲུལ་གཞུང་ཚུམ་ཞིབ་དབང་འཛིན།
ROYAL AUDIT AUTHORITY
Bhutan Integrity House



Reporting on Economy, Efficiency & Effectiveness in the use of Public Resources

RAA/AG-SP/10/2017-18/

13th November 2017

Hon'ble Secretary
Ministry of Finance
Thimphu

Subject: Report on the review of Public Procurement System

Sir,

On Command of His Majesty the Druk Gyalpo, the Royal Audit Authority (RAA) has conducted a review of public procurement system in the country. As per the Royal Command, we are issuing a copy of the report on the '**Review of Public Procurement System**'.

The review entailed ascertaining the adequacy and relevancy of existing legal and institutional framework, enforcement mechanisms and practices in ensuring the intended objectives of public procurement. The review aimed to ascertain whether the existing procurement rules and regulations allow for innovative practices conforming to highest standards and norms to support the government's intent of achieving value for money in public procurement.

The review was carried out for the period 2012-13 to 2016-17 and included, mainly of procurement of goods and works. The review does not cover procurement of consultancy services as the RAA had carried out a separate review and issued '*AG's Advisory Series on Procurement of Consultancy Services 2013*' containing hosts of recommendations for appropriate course of actions. For this review, ten ministries and thirty-two autonomous agencies as shown in **Exhibit I** were selected based on the size of expenditure incurred on procurement. For the purpose of identifying persistent issues and obtaining better perspective on the practices of public procurement, the RAA also referred past audit reports and many instances and case studies from those reports are included in this report.

The RGoB's Procurement Rules and Regulations (PRR) have undergone significant progressive changes over the years. Corresponding progressive reforms have also been witnessed in institutional framework governing the public procurement, such as establishment of Government Procurement and Property Management Division, Independent Review Board and arbitration award system. The public procurement system in Bhutan embraces some of the international good practices and principles of public procurement.

The assessment of public procurement regulatory system in 180 economies by the World Bank Group showed that Bhutan scored 397 performance score out of 600 on certain specified parameters. Correspondingly, the assessment carried out under PEFA 2016 framework also indicated aggregate score of 'B', measured based on pre-identified dimensions of public financial management. The reviews by these independent bodies suggest that procurement system in Bhutan are of comparable standards to other high-ranking countries in the world.

The e-GP System developed by Ministry of Finance holds huge promise and offers substantial reasons for government to move its purchasing online. It has potential to revolutionize the public procurement system and expected to boost transparency, bolster efficiency and enforcement mechanisms in public procurement.

*"Every individual must strive to be principled. And individuals in positions of responsibility must even strive harder."
- His Majesty the King JigmeKhesarNamgyelWangchuck*

Despite significant initiatives and progressive developments, there are still major problems surrounding public procurement. The public procurement is still being perceived as a major area of fraud and corruption, inefficiencies and wastages involving huge public resources. The nature and instances of irregularities and inadequacies observed by the RAA as detailed in the main report provide strong indication of possible risk of public procurements not achieving value for money.

The RAA's study showed that while there is scope for further improving the PRR, there are other factors which influence the effectiveness of public procurement which must also be improved. These include overall soundness of public financial management system, competitiveness of economy, communication system and access to information, integrity, ethics including business ethics and behavior, enforcements and sanctions, corruption control and prevention mechanism, judiciary dispensations on reported cases amongst other factors.

Accordingly, the RAA has provided set of recommendations with an aim to enhance greater accountability, transparency and effective implementation of public procurement system.

The RAA would appreciate receiving an **Action Plan with definite timeframe for implementation of each recommendation on or before 1st February 2018**. We would request the MOF to identify officials responsible for implementation of each recommendation and submit the duly filled and signed Accountability Statement (attached) to the RAA along with the Action Plan. **In the event of non-submission of the Accountability Statement or responsible officials not identified, the RAA shall fix the responsibility for implementation of the recommendations on the Head of the Agency.** The RAA will follow-up implementation of the recommendations based on the timeline identified in the Action Plan submitted by the MoF. Failing to adhere to the timeframe for implementation of each recommendation may result in taking appropriate actions, which may include suspending audit clearances to the accountable officials.

The RAA hopes that the Ministry of Finance and the Government would find the report and recommendations useful in further addressing the issues in public procurement. We would once again like to acknowledge the officials and agencies rendering necessary co-operation and support that had facilitated smooth completion of the audit assignment.

Yours Sincerely,

(Tshering Tenzang)

Auditor General of Bhutan

Copy to:

1. Hon'ble Gyalpoi Zimpon, Office of Gyalpoi Zimpon, Tashichho Dzong, Thimphu for kind information;
2. Hon'ble Chairperson, Anti-Corruption Commission, Thimphu;
3. Secretary, Ministry of Works and Human Settlements, Thimphu;
4. Director General, Bhutan Standards Bureau, Thimphu;
5. Director General, Department of National Properties, MoF, Thimphu;
6. Director, Construction Development Board, Thimphu;
7. Director, Department of Engineering Services, MoWHS, Thimphu;
8. Director, Department of National Budgets, MoF, Thimphu;
9. Director, Department of Public Accounts, MoF, Thimphu;
10. Director, Department of Revenue and Customs, MoF, Thimphu;
11. Chief Program Officer, GPPMD, DNP, MOF, Thimphu;
12. Chief Engineer, Engineering Service Division, MoWHS, Thimphu;
13. Office copy.

*"Every individual must strive to be principled. And individuals in positions of responsibility must even strive harder."
- His Majesty the King Jigme Khesar Namgyel Wangchuck*

TITLE SHEET

1. Title of the Report	:	Review of Public Procurement System
2. AIN	:	001-01-14886
3. Audited Entities	:	Listed in Exhibit I
4. Schedule of Audit	:	1 st May 2017–28 th July 2017
5. Audit Team	:	1. Tashi Tobgay, Assistant Auditor General 2. Dorji Wangchuk, Assistant Auditor General 3. Minjur Dorji, Assistant Auditor General 4. Gaza Wangchuk, Dy. Chief Auditor 5. Kinley Zam, Sr. ICT Officer 6. Namgay Wangchuk, Audit Officer 7. Tashi Phuntsho, Sr. Auditor III
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ACRONYMS AND ABBREVIATIONS

ADB	Asian Development Bank
ACC	Anti-Corruption Commission
AFD	Administration and Finance Division
AIN	Audit Identification Number
BoQ	Bill of Quantities
BSB	Bhutan Standards Board
BSR	Bhutan Schedule of Rates
BUP	Budget Utilization Plan
CDB	Construction Development Board
CiNET	Construction Industry Information System
CPWD	Central Public Works Department of India
CRPS	Contractor Registration and Performance System
DGM	Department of Geology and Mines
DNB	Department of National Budget
DNP	Department of National Properties
DPA	Department of Public Accounts
DPR	Detailed Project Report
e-GP	Electronic Government Procurement
FAM	Finance and Accounting Manual
FRR	Financial Rules and Regulations
FY	Financial Year
GCC	General Conditions of Contract
GPMD	Government Performance Management Division
GPPMD	Government Procurement and Property Management Division
IRB	Independent Review Body
LMC	Labour and Material Coefficient

MoF	Ministry of Finance
NIT	Notice Inviting Tender
NLCS	National Land Commission Secretariat
OECD	Organization for Economic Cooperation and Development
PEFA	Public Expenditure and Financial Accountability
PFA	Public Finance Act
PPPD	Public Procurement and Policy Division
PRR	Procurement Rules and Regulations
RA	Running Accounts
RAA	Royal Audit Authority
SBD	Standard Bidding Documents
SCC	Special Conditions of Contract
USD	United States Dollar

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
CHAPTER 1: ABOUT THE AUDIT	1
CHAPTER 2: PUBLIC PROCUREMENT SYSTEM	3
CHAPTER 3: COMMON ISSUES	7
3.1.1 <i>Inadequacies in regulatory framework</i>	7
3.1.2 <i>Inadequacies in institutional and administrative arrangements</i>	8
3.1.3 <i>Lack of registry for suppliers of goods.....</i>	14
3.1.4 <i>Lack of debarment registry.....</i>	14
3.2.1 <i>Absence of proper procurement planning</i>	15
3.2.2 <i>Agencies are not obtaining economical/competitive prices</i>	19
3.2.3 <i>Agencies not receiving required quality of goods</i>	22
3.2.4 <i>Inadequacies and non-enforcement of contractual provisions.....</i>	25
3.2.5 <i>Procurement practices restricting competition</i>	27
3.3.1 <i>Planning</i>	31
3.3.1.1 <i>No feasibility studies conducted.....</i>	31
3.3.1.2 <i>Faulty drawings, designs, specifications and detailed estimates</i>	33
3.3.1.3 <i>Determination of construction duration.....</i>	35
3.3.1.4 <i>Change of design and specifications</i>	37
3.3.2 <i>Tendering, Evaluation and Award</i>	39
3.3.2.1 <i>Bhutan Schedule of Rates (BSR).....</i>	39
3.3.2.2 <i>Improper evaluation.....</i>	42
3.3.2.3 <i>Unjustified rejection of bids</i>	43
3.3.2.4 <i>Failure to reject non-complying bidders.....</i>	44
3.3.2.5 <i>Issues related to imbalanced rates</i>	45
3.3.2.6 <i>Issues related to analyzed rates.....</i>	46
3.3.2.7 <i>Use of evaluation criteria not specified in the bidding documents</i>	46
3.3.2.8 <i>Deficiencies in parameters of bid evaluation.....</i>	48
3.3.2.9 <i>Direct Award of work.....</i>	50
3.3.2.10 <i>Award to non-participating bidder.....</i>	52
3.3.2.11 <i>Award to non-responsive bidder</i>	52
3.3.2.12 <i>Direct award of additional works.....</i>	53
3.3.2.13 <i>Piece meal award/ Splitting of works.....</i>	54
3.3.3 <i>Performance Security.....</i>	55
3.3.4 <i>Insurance.....</i>	56
3.3.5 <i>Advances.....</i>	58
3.3.6 <i>Rebates</i>	59

3.3.7	<i>Inadequacies in contract agreement</i>	59
3.3.8	<i>Non enforcement of Contractual terms and conditions</i>	60
3.3.9	<i>Non-deployment of machineries and personnel</i>	61
3.3.10	<i>Grant of unwarranted time extension</i>	62
3.3.11	<i>Time overruns</i>	63
3.3.12	<i>Extra Payments</i>	64
3.3.13	<i>Handing/Taking of works</i>	69
3.3.14	<i>Booking of expenditure in closed work account</i>	71
3.3.15	<i>Non/under utilization of Infrastructures</i>	73
3.3.16	<i>Arbitration of cases arising from audit issues</i>	73
CHAPTER 4: COMMON CAUSES		77
4.1	<i>Lack of due diligence on the part of procuring agencies</i>	77
4.2	<i>Inadequate enforcement mechanism of procurement rules and norms</i>	78
4.3	<i>Integrity of dealing officials</i>	78
4.4	<i>Lack of due care and prudence in managing public resources</i>	78
4.5	<i>Technical competency of contractors determined based on minimum technical scores</i>	78
4.6	<i>Absence of oversight functions</i>	79
4.7	<i>Absence of competitive market conditions</i>	79
4.8	<i>Availability of sub-standard and spurious products in the market</i>	79
4.9	<i>Absence of Anti-Trust Law to check on business ethics and practices</i>	79
4.10	<i>Procurement procedures resulting in higher processing cost and adding up in determination of quoted price</i>	80
4.11	<i>Ineffective enforcement of Quality Standards and Checks</i>	80
4.12	<i>Lack of information system and market price references for goods</i>	80
4.13	<i>Lack of professional capacity</i>	81
4.14	<i>Lack of awareness of complaints redressal mechanism</i>	81
4.15	<i>Inadequacies in BSR and SBD</i>	81
4.16	<i>Lack of policy objectives on ethical requirements in the PRR</i>	82
4.17	<i>Lack of effective collaboration among relevant agencies</i>	82
CHAPTER 5: RECOMMENDATIONS		83
CHAPTER 6: CONCLUSION		95
CASE STUDIES		96
APPENDICES		96
EXHIBITS		96

EXECUTIVE SUMMARY

WHY RAA DID THIS STUDY?

As per the Royal Command granted to the Royal Audit Authority (RAA) on 11th April 2017, a review of public procurement system was conducted. The review entailed ascertaining the adequacy and relevancy of existing legal and institutional framework, enforcement mechanisms and practices in ensuring the intended objectives of public procurement.

The review aimed to ascertain whether the existing procurement rules and regulations allow for innovative practices conforming to highest standards and norms to support the government's intent of achieving value for money in public procurement.

WHAT RAA FOUND?

Public procurement constitutes substantial government expenditure, accounting for 43.96% on average for last five years (2012-13 to 2016-17). Over the period, the proportionate expenditures for goods, works and services constituted 20%, 72% and 8% respectively.

The Procurement Rules and Regulations (PRR) of Royal Government of Bhutan has undergone significant progressive changes over the years. The public procurement system in Bhutan embraces some of the international good practices and principles of public procurement. Despite various initiatives and progressive improvements, there are still persistent problems in public procurement. The public procurement is still being perceived as a major area of fraud and corruption, inefficiencies and wastages involving huge public resources. Some of the significant issues surrounding the public procurement system in Bhutan are briefly summarized below:

I. Issues in legal and institutional framework

The deficiencies, lapses and issues under legal and institutional framework include:

- The effective enforcement of PRR is seen impeded due to inadequacies in the current legal and institutional framework, particularly in absence of Public Procurement Act.
- Despite specific mandates, due to lack of clear delineation of roles and responsibilities in public procurement, the agencies are individually or collectively seen faltering in efficient and effective delivery of their respective mandates.
- There is no coordinated mechanism amongst different regulating agencies to ensure compliances as well as to derive synergy in attaining common objective of public procurement.
- Institutionalization of procurement function within agencies is yet to attain desired level of professionalization in terms of delineating responsibilities, instituting control mechanisms and building professional capacity.
- There is no common information database to make the information available for analysis and insights. The use of ICT is expected to leverage existing procurement processes as well as overseeing compliances at all levels.

II. Issues in enforcement

The pertinent issues in enforcement are discussed separately for goods and works as follows:

Procurement of Goods

- There is absence of proper procurement planning and need assessment.
- The RAA observed cases where the lowest evaluated bids were found to be higher than the prevailing market prices. Agencies do not generally compare quoted rates with market prices. Moreover, the lowest evaluated price obtained through competitive bidding process for the same product also varied significantly amongst different procuring agencies.
- The provisions of PRR intend to ensure fair treatment of all suppliers and equal opportunity to all bidders and brand names for goods are allowed only in unavoidable situations. However, brand preference were found given without fulfilling the specified criteria and procedures.

- There is no mechanism instituted to systematically capture information on the spouse and relatives of public servants carrying out business to safeguard against risk of procuring agencies making purchases from such business entities.
- Agencies accepted inferior quality products i.e., duplicate, recycled as there was no capacity to check the quality particularly in respect of cartridges, computers, laptops, etc.
- Considerable amount of public funds were wasted due to non-functioning or non-utilization of equipment procured.

Procurement of Works

- Adequate investment in requisite feasibility studies are not made in construction works which resulted in faulty designs, drawing and estimates. This has cascading impact on cost and time overruns as this results in changes during execution.
- There were cases where Technical Sanctions were not obtained as required to ensure technical soundness of structures.
- BSR is a guiding document for projecting the costs of civil construction works and widely used by all procuring agencies. However, the BSR does not reflect the current market prices and there is no formalized system of conducting market research for price analysis. Moreover, there is varying practices in application of cost index resulting in preparation of inaccurate project cost.
- The RAA noted many instances of limiting competitions through direct contracting of new works as well as additional works exceeding prescribed limit without assigning valid justifications.
- There are deficiencies in the evaluation systems specifically on assigning weightage to parameters. The award of works using existing evaluation system is principally driven by the financial bids and technical capacity is not considered at the final stage of evaluation.
- In some agencies, adequate safeguards are not put in place to ensure that deposits and recoveries such as performance security, insurance, advances, rebates, liquidated damages, etc. pertaining to contracts are made in accordance with the terms of contracts.
- Supervision and monitoring of work are generally lacking thereby resulting in execution of substandard works, delivery of works not conforming to the specifications sought, non-deployment of committed resources, slow progress of work involving time and cost overruns, inaccurate measurements and avoidable/extra payments, etc.
- Extra payments in various forms are made to the contractors. Such payments basically arise from wrong certification of works done, non/short execution, double payments, payment at inflated rates, inadmissible payments, payment for variations at analyzed rates, use of wrong nomenclature of items, etc.
- PRR stipulates the requirement to insure the works by the contractor and insurance cost to be in-built in their item rates. The RAA however, noted instances where insurance costs were included as separate item of work which were far in excess of actual insurance premium paid to the insurance companies.
- Judicial/arbitration decisions awarded on issues reported by RAA were mostly in favour of contractors even for apparent cases of violation of the extant rules and regulations. The past experiences showed that the amount worth millions of Ngultrums recoverable from the contractors were waived-off or refunded through arbitral award on the premise that procuring agencies had accorded approvals for waiver of penalty and time-extension.

Common Causes

Based on the nature of issues noted in the public procurement, the RAA established common causes that led to their occurrences. The RAA noted that the intent of deriving value for money in public procurement is generally undermined due to various reasons:

- Lack of due diligence in administration and management of procurement activities by those charged with responsibility;
- Non conducting market research on prices of goods and services to compare with quoted rates and non-availability of information on products, prices, material sourcing, etc.;

- Absence of sanctions for non-compliances and violations;
- Absence of competitive market conditions;
- Inadequate quality controls and availability of spurious and low quality goods;
- Absence of Anti-Trust Law to check on business ethics and practices;
- Inadequate mechanism to promote integrity and ethical conduct of public servants;
- Lack of professional capacity of procurement officials;
- Inadequate procurement planning including feasibility studies and need assessment;
- Inadequate monitoring and control mechanisms including oversight functions;
- Inadequacies in BSR;
- Inadequate collaborative mechanism amongst relevant agencies;
- Lack of accountability and specific delineation of responsibilities and accountability at various levels including the tender committee;
- Limited use of ICT to leverage procurement functions.

WHAT RAA RECOMMENDS?

With a view to improve overall procurement functions and facilitate government in deriving value for money in procurement and promulgating ethical values and governance across the board, the RAA has made a total of **31** recommendations. Significant ones are provided below:

- There is a need for a separate Public Procurement Act to adequately empower regulating agencies and to prescribe accountability mechanisms in enforcing the PRR and also to uphold ethical behaviours through appropriate sanctions for non-compliances.
- There is a need to develop professional capacity in procurement functions across the procuring agencies and improve control mechanisms within the procuring agencies.
- The agencies such as the GPPMD, MoF and CDB must scale up oversight functions to ensure compliances. There is a scope for better coordination amongst relevant agencies in regulating and monitoring of procuring agencies.
- The procurement process must be constantly evolving, innovative and embrace best practices with the use of Information Technology. The e-GP developed by the MoF holds huge promises to revolutionize the way the public procurement is conducted.
- There is a need to prescribe due diligence processes for critical functions such as preparing estimates, evaluations, conducting market surveys, etc. in public procurement process.
- The Bhutan Schedule of Rates (BSR) must be robust, comprehensive and reflective of market prices to provide reliable and more authoritative basis for preparation of estimates ensuring technical soundness, innovations and technical solutions to persisting problems.
- There is a need to ensure Quality Standards and Checks. There are no specific requirements in PRR and other authoritative documents to use BSB certified products.
- There is a need for standardization of products for public procurement. While brand preference may be inevitable in certain situations for technical and other reasons, such preferences may not always result in judicious procurement decisions particularly when such decisions are not driven by actual requirements.
- PRR should stipulate requirement for conducting preliminary/feasibility studies for large construction projects to avoid flawed design, drawing and estimates leading to cost and time overruns.
- There is a need for controlling payments for variations. The payments for variations in quantity including additional items and extra quantity beyond deviation limits are major causes for huge increase in cost of projects as well as time overrun.
- The bid evaluation system needs appropriate review to ensure technical competence of contractors and also to see the rationality of weightage assigned and need for minimum score under various sub-parameters for objective and transparent evaluation.
- The procuring agencies need to ensure strict monitoring and supervision mechanism to oversee the execution of contract and reinforce cost and quality control measures through

streamlined processes inter alia, project milestones, rationalized deployment of site engineers, quality control, regular appraisal, review and validations by the higher authorities.

- The procuring agencies should prepare Annual Procurement Plans indicating procurement requirements and timing, and uploaded in website and/or appropriate media for the potential suppliers/contractors to make informed decisions.
- There is a need for objective determination of construction duration based on the minimum resources expected to be deployed during the execution. The MoWHS should formulate specific guidelines in determining the duration of construction works having regard to size, nature and complexity of works.
- Considering the persisting defects in works carried out entailing recurring maintenance costs, there is a need to review the existing system and see the relevance of specifying value based range for the defect liability period to ensure quality of works.
- In conformance to the best practices, the desirability of developing “Guidelines on staff ethics and professional responsibility” within the PRR needs to be considered to ensure professional conducts in public procurement.
- There is a need for intelligence mechanisms to systematically gather information, investigate and conduct raids on procurement fraud and corruption cases particularly those who have accumulated wealth disproportionate to their known/declared source of income to create deterrence to corrupt practices in public procurement.
- In order to avoid ambiguity and flaws in contract documents, legal vetting and scrutiny of any changes brought about in PRR and related documents should be carried out.
- For ensuring better accountability of the tender committee and consistency of tender committees’ roles, there is a need for specific stipulations in the PRR as to its roles on dispensing decisions or granting approvals for various issues arising out of contract. The tender committee members should be collectively and individually accountable for their decisions and actions.

CONCLUSION

The PRR provides overall framework for public procurement and it purports to put in place a well-designed system to promote objectives of public procurement. In essence, it has been the guiding document for public procurement and intrinsically embraces good practices to support systems and structures that upholds the goals of public procurement.

Most observed issues in public procurement emanate from gaps in the enforcement and implementation having root in inadequacies in the PRR. The PRR needs to be a dynamic document embracing innovation and best procurement practices. BSR should be comprehensive and accurate providing reliable basis to prepare estimates. The accountability mechanism needs to be reinforced through prescribing code of ethics, responsibilities and sanctions by adequately empowering authorities with appropriate legal teeth to ensure that individuals engaged in the procurement process, private or government, are bound by such code and sanctions.

Failing or weak enforcement as noted by RAA resulted in inadequate safeguards to protect the interest of the government. Millions of Ngultrum is lost through extra payments, wasteful and infructuous expenditures, delivery of low quality outputs, etc., resulting in agencies not achieving value for money. Besides, unchecked irregularities may breed undesirable culture that is devoid of ethics and morality.

Therefore, enforcement mechanisms in ensuring compliance to the intent of PRR needs to be beefed up. This would entail reinforcing systems and processes, developing professional capacity, and bolstering monitoring and controls to ensure compliances to the PRR.

Effectiveness of public procurement system depends on various factors both internal and external. It is unlikely that reforms in procurement rules and regulations alone will bring in desired impact. Reform initiatives should be broad based and supported by strong financial management system, conducive and competitive market environment, culture of integrity and ethics, enforcement and regulatory mechanism, effective media, independent watch groups including NGOs and judiciary system.

CHAPTER 1: ABOUT THE AUDIT

Background

As per the Royal Command granted to the Royal Audit Authority (RAA) on 11th April 2017, a review of public procurement system was conducted. The review entailed ascertaining the adequacy and relevancy of existing legal and institutional framework, enforcement mechanisms and practices in ensuring the intended objectives of public procurement.

The review aimed to ascertain whether the existing procurement rules and regulations allow for innovative practices conforming to highest standards and norms to support the government's intent of achieving value for money in public procurement.

Objectives of Audit

The overall objective of the review is to ascertain whether the existing procurement rules and regulations support the government's intent of achieving value for money in public procurement.

The specific objectives are:

- i. To review adequacy of legal and institutional framework governing public procurement;
- ii. To identify problem areas in public procurements for goods and works based on RAA's experiences and determine its causes and effects; and
- iii. To recommend measures to improve public procurement systems embracing the principles and good practices of public procurement.

Scope of Audit

The review was carried out for the period 2012-13 to 2016-17 and included following two areas:

- i. Procurement of goods, and
- ii. Procurement of works

The review does not cover procurement of consultancy services as the RAA had carried out a separate review and issued '*AG's Advisory Series on Procurement of Consultancy Services 2013*' containing hosts of recommendations for appropriate course of actions.

For the purpose of this review, ten ministries and thirty-two autonomous agencies as shown in **Exhibit I** were selected based on the amount of expenditure incurred on procurement.

Audit Methodology

The RAA used following audit methodologies:

- ★ Documentary Review
 - Examine and review rules, regulations, procedures, guidelines, BSR and standard bidding documents governing public procurement

- Tender documents, in particular Evaluation Reports of 44 selected procuring agencies
- ✦ Review of past audit reports
- ✦ Field verification and market study
- ✦ Diagnostic review of PRR 2009 (**Appendix A**)
- ✦ Review of Bidder Qualification and Bid Evaluation parameters
- ✦ Study of international good practices on public procurement
 - Conduct a literature review on public procurement
 - Compare current practices with international good practices
 - Mapping current practices and principles vis-à-vis OECD recommendations for promotion of integrity in public procurement (**Appendix B**)
 - Benchmarking Public Procurement 2017, World Bank Group (**Exhibit III**)
 - Public Financial Management Performance Report 2016, World Bank Group

CHAPTER 2: PUBLIC PROCUREMENT SYSTEM

Introduction

Public procurement constitutes substantial government expenditure accounting for 43.96% on average for last five years (2012-13 to 2016-17)¹ as summarized in **Table 2.1** and detailed in **Exhibit II**.

Table 2.1: RGoB's procurement expenditures vis-à-vis total expenditures during FY 2012-13 to 2016-17 (in million Nu.)

Particulars	2012-13	2013-14	2014-15	2015-16	2016-17	TOTAL
Procurement Expenditures:	17,684.34	13,535.65	14,480.13	19,765.27	23,270.78	88,736.17
Goods	3,243.75	2,885.83	3,168.51	3,570.48	4,517.26	17,385.83
Works	13,028.89	9,296.88	9,853.48	14,442.59	17,135.45	63,757.29
Services	1,411.70	1,352.94	1,458.14	1,752.20	1618.07	7593.05
Total RGoB's Expenditures	36,527.82	34,609.90	36,475.85	44,688.45	49,565.13	201,867.14
% of Procurement Expenditures to Total	48.41%	39.11%	39.70%	44.23%	46.95%	43.96%

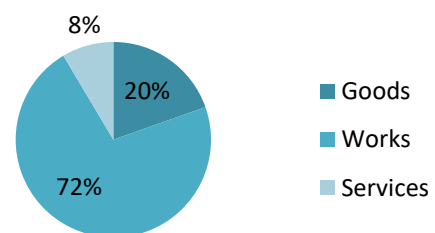
Source: Public Expenditures Management System, MoF

The **Figure 2.1** represents expenditure related to procurement which constitutes goods, works and services representing 20%, 72% and 8% respectively over the period 2012-13 to 2016-17.

The RGoB has brought progressive reforms in legal and institutional frameworks for national procurement system. The procurement system underwent several reforms starting with the development of finance and accounting manual since 1988.

In 2005, with assistance from the World Bank, procurement rules and regulations were updated to align with international good practices.

Figure 2.1: Aggregate Procurement Expenditures for 2012-13 to 2016-17



Legal Framework

The Public Finance Act (PFA) 2007 empowers Ministry of Finance (MoF) to formulate rules and regulations on government procurement. Procurement Rules and Regulations 2009 (revised July 2015) governs the public procurement in Bhutan.

Standards, directions, and guidelines on procurement are issued from time to time by Government Procurement and Property Management Division (GPPMD) and other relevant agencies.

¹ Source: Public Expenditure Management System (PEMS), Department of Public Accounts, MoF

Institutional Arrangements

The PRR delineates responsibilities to specific regulating and collaborating agencies to ensure enforcement and compliances to the procurement rules and regulations.

i. Government Procurement and Property Management Division (GPPMD)

Public Procurement Policy Division (PPPD) was established in 2008 as the oversight body on public procurement. The role and functions of PPPD is depicted below:



Figure 2: Functions of PPPD as specified under chapter VIII of PRR 2009

In December 2016, PPPD and Government Procurement and Property Management Division (GPPMD) was merged as Government Procurement and Property Management Division (GPPMD) under Department of National Properties in Ministry of Finance.

ii. Independent Review Body

As required by PRR 2009, the Independent Review Body was first established in 2012 and later reconstituted in 2015 to address the grievances related to procurement. The review body consists of seven members from relevant agencies.

iii. Construction Development Board (CDB)

The Construction Development Board (CDB) is overseer as well as a promoter of the construction industry. One of the key functions of the Board is registration, classification and monitoring of contractors, consultants (for works) and engineers/architects. It acts as a bridge between the private and public sectors, assists contractors in undertaking a more expansive part in the industry, and ensure genuine contractors fair and equal access to the awards of contracts as well as fair treatment in the execution of contract.

iv. Bhutan Standards Bureau (erstwhile Standard and Quality Control Authority)

The Bhutan Standards Bureau (BSB) is responsible to foster and promote standards and standardization activities. It was established as an autonomous organization in 2010 after enactment of the Bhutan Standards Act 2010.

The functions of BSB are development of standards and their implementation, promotion of quality, carry out/operate product and management system certification schemes, set up and operate calibration laboratories and product testing infrastructure, and carry out monitoring and quality control functions.

v. Procuring agencies

Procuring agencies are responsible for their own procurement. As prescribed under PRR 2009, a tender committee is formed in each procuring agency. Tender committee is constituted depending on the size and complexity of operations of procuring agencies.

Progressive Developments in Public Procurement

The Procurement Rules and Regulations of Royal Government of Bhutan has undergone significant progressive changes over the years. Corresponding progressive reforms have also been witnessed in institutional framework governing the public procurement. The public procurement system in Bhutan embraces some of the international good practices and principles of public procurement.

These included:

- Establishment of Government Procurement and Property Management Division (GPPMD);
- Establishment of Independent Review Board (IRB);
- Establishment of arbitration award system;
- Revisions and updates of PRR;
- Introduction of electronic Government Procurement (e-GP) to provide a single point access to information on procurements. The system intends to avoid direct interface between procuring agencies and bidders.
- CDB has developed e-zotin which is a composure of online services related to public works and caters to following applications:
 - CRPS (Contractor Registration and Performance System) – for managing contractors, consultants, architects and specialized trade;
 - e-tool – Online evaluation tool for procurement of works carried out by government procuring agencies;
 - CiNET(Construction Industry Information System) – Interface for corporates,NGOs and donor funded projects to update the work information; and
 - Registration Services – Online registration services provided by the Secretariat for Contractors, Consultants, Architects and Specialized Trades.

Independent review by the World Bank Group

The assessment of public procurement regulatory system in 180 economies by the World Bank Group showed that Bhutan scored 397 performance score out of 600 on certain specified parameters² with scores of countries ranging from 57 to 485 as shown in **Exhibit III**. Correspondingly, the assessment carried out under PEFA 2016³ framework also indicated aggregate score of 'B' on the scale of A to D, measured based on pre-identified dimensions of public financial management. The reviews by these independent bodies suggest that

² World Bank Group, *Benchmarking Public Procurement 2017*

³ World Bank Group 2016, *Public Financial Management Performance Report* based on Public Expenditure and Financial Accountability (PEFA) 2016 Framework

procurement system in Bhutan are of comparable standards to other high ranking countries in the world.

The World Bank report, however, recognizes other factors that contribute to effectiveness of public procurement system which include existence of a sound socio-economic and legal system, competitiveness of the economy, sound financial management system, tax regime, workforce qualifications and infrastructure for accessibility and communication of information.

CHAPTER 3: COMMON ISSUES

Despite various initiatives and progressive improvements, there are still persistent problems in public procurement. The public procurement is still being perceived as a major area of fraud and corruption, inefficiencies and wastages involving huge public resources. Though the audit findings are exceptions, the nature and instances as well as persistent recurrence of irregularities and inadequacies in the public procurements provide strong indication of possible risk of not achieving value for money in sizeable public procurement expenditure. The issues observed in public procurements are identified under different areas of procurement cycle. The issues related to legal and institutional arrangements, cases with specific reference to procurement of goods and works are discussed under **Part I, II and III** respectively. A specific diagnostic review of PRR 2009 and mapping of principles and existing practices with OECD recommendations are also conducted as exhibited in **Appendix A and B** respectively to identify inadequacies in principles and practices and recommend necessary changes to facilitate achieving value for money in public procurements. The report also includes **Case Studies** to illustrate the general characteristics of issues observed in public procurement and prominent ones are highlighted in the relevant paras.

Public procurement is still being perceived as a major area of fraud and corruption, inefficiencies and wastages involving huge amounts of public resources.

The common issues observed by the RAA in public procurements are discussed below:

Part I: Legal and Institutional Framework

3.1.1 Inadequacies in regulatory framework

- a) The Procurement Rules and Regulations 2009 (revised 2015) governs the procurement of goods, works and services by government agencies. Most of the government owned corporations and financial institutions have their own procurement rules and regulations within the broad principles of government PRR.
- b) Although Public Finance Act (PFA) 2007 empowers Ministry of Finance to issue rules governing public procurement system, there is no separate public procurement Act to serve as framework for organizing institutions, laying cardinal principles of public procurement and vesting appropriate authorities to relevant institutions. The specific legislations in the form of Public Procurement Act is necessary to provide strong legal basis for enforcement of Procurement Rules and Regulations.
- c) The absence of appropriate legislations cripples the enforcement machineries as they do not have legal basis to enforce the provisions of the PRR. The procuring agencies as well as regulating agencies face challenges in pursuing

The absence of appropriate legislations cripples the enforcement machineries as they do not have legal basis to enforce the provisions of the PRR

their mandates as there are no legal authority to promote culture of compliance through deterrence by way of prescribed sanctions for deviation or non compliances by various parties.

- d) For instance, there is no legal authority for awarding sanctions on public officials as well as private parties in the event of proven cases of misrepresentations or non compliances to the PRR. The PRR does not contain provisions obligating private parties to be accountable for issues arising from their wrong doings except for few breaches such as rectifying defective works, imposition of liquidated damages for delay, forfeiture of security and other deposits, replacing damaged/wrong products etc.
- e) The absence of appropriate legal authority would undermine the initiatives of regulating authorities and may act as counter-productive in their attempt to uphold the principles of public procurement. Without the specific legitimacy of their authority, the promotion of good governance in the procurement process would be thwarted.

3.1.2 Inadequacies in institutional and administrative arrangements

The PRR specifies institutions and prescribes process for enforcement of its provisions. The procuring agencies have obligations to comply with the Procurement Rules and Regulations. The regulating authorities have mandates to oversee the compliances besides other oversight functions.

The RAA observed systemic issues in enforcement and delivery of specific mandates of responsible agencies and issues related to institutional arrangements in public procurements as discussed below:

3.1.2.1 Procuring agencies

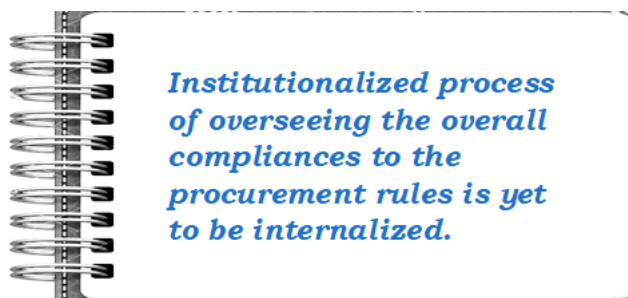
- a) The PRR prescribes levels of tender committees to be formed based on the procurement threshold and their representations. The primary responsibility of the Committee is to ensure compliance of procurement procedures of the PRR. The procurement function is typically confined to the application of rules for government procurement – goods, works and services. The following inadequacies are apparent in the existing arrangements within the procuring agencies:
 - The procurement units in individual procuring agencies tend to work in isolation with responsibilities limited to processing tenders, orders and other compliance aspects.
 - Current practice suggests that except for some centralized procurement in some ministries, procurement functions are not instituted as separate specialized area. Procurement functions as integral part of public financial management system, commensurate importance needs to be given in terms of developing procurement professionals possessing range of skills guided by ethical and accountability principles.
 - There is no separate procurement unit independent of accounting units and/or engineering sections in most of the agencies. Currently there are around 63 trained procurement officers placed in various procuring agencies. In most of the agencies, the procurement function is undertaken by individuals who are not professionally designated. This leaves no room for segregation of duties generally characterized by overlapping or duplication of roles between these units undermining the cardinal principles of control process.

- The National Internal Control Framework provides best practices to be instituted within the procuring agency to deliver procurement functions. However, the existing inadequacies and lapses observed in procuring agencies suggest that they are yet to internalize the prescribed processes.
- b) While the PRR allows for formation of tender committee, it does not prescribe a separate administrative structures to execute procurement functions. The absence of consistent structures in place in different procuring agencies leave room for isolated approach and differing practices undermining the PRR's objective of achieving uniformity and efficiency of procurement procedures.
- c) Inadequate control processes lead to non-compliances and provide opportunities for flouting the rules as observed and discussed under Part II and III of this Chapter.

3.1.2.2 Government Procurement and Property Management Division

- a) GPPMD (erstwhile PPPD) of the Department of National Properties under Ministry of Finance is given a comprehensive mandate to function as a nodal agency for all public procurements. Given the size of expenditure, the quantum of work and complexity of procedures involved, the functions of the GPPMD is critical to the achievement of the objectives of public procurement.
- b) The PRR 2009 stipulates specific functions inter alia, providing advice and interpretation, undertaking research, commissioning studies and formulating policy and professional development in the field of procurement to Public Procurement Policy Division (now merged with GPPMD) established within the Ministry of Finance. It is also mandated to review and exercise monitoring functions to see compliances and implementation of rules besides promulgating new developments in the area of public procurements.
- c) On review of delivery of GPPMD's responsibilities, the RAA noted various instances apparently showing that intended mechanisms of regulations and actual delivery of functions have not been attained undermining the intent of institutional arrangement prescribed by the PRR. It showed that:
- GPPMD is expected to monitor the implementation of the PRR in the public procurement, but the monitoring functions are impeded in absence of systems and procedures for gathering and analyzing information;
 - GPPMD is envisaged to be the focal point for information and enquiries with regard to public procurement. GPPMD is yet to develop information system on public procurements. GPPMD has plans to develop database of information regarding suppliers, prices etc., as part of e-Government Procurement (e-GP) system implementation;
 - GPPMD is also supposed to report to the Secretary, Ministry of Finance on the functioning of the national procurement system annually. On the contrary, GPPMD had not submitted any such report;
 - The amendments to PRR is usually initiated on the basis of feed-back and suggestions received from different stakeholders. There was no document indicating the independent research and reviews carried out on compliances and enforcements by GPPMD to drive the amendments;

- With regard to professionalization of procurement functions and human resource capacity development, GPPMD had instituted a certification programme for procurement officials in collaboration with Royal Institute of Management.
- d) The GPPMD has recently initiated Electronic Government Procurement (e-GP) and the system is pilot run in some select agencies. The system is intended to serve as a single window and a primary source of information in all government procurement.
- e) Various functionalities envisaged in the system (e-GP) promises transformational changes that leverages on the use of ICT. While the Division is geared to be responsive to the mandates of the PRR in exercising the role of a nodal agency for government procurement, institutionalized process of overseeing the overall compliances to the procurement rules is yet to be internalized.
- f) Lack of monitoring and deterrence actions for non-compliances can create apathetic attitude and violation/flouting of procurement rules can be perceived as acceptable norms. Such apathetic attitude may seriously undermine the principles and practices of public procurement system.



3.1.2.3 Independent Review Body

- a) Grievance redressal mechanism is an important aspect of promotion of accountability and resolution of contractual and procedural issues in a timely manner. Accordingly, PRR 2009 clearly stipulated the need for such a mechanism. Grievances could be redressed at the procuring agency level and if the parties are not satisfied with the decisions and actions they could initiate review procedure before the Independent Review Body (IRB).
- b) IRB was initially constituted in 2012 but it was functional only after reconstitution in 2015. The Rules of procedure for IRB was adopted with effect from February 2015. Since the reconstitution of the IRB, only four cases were reviewed and decision awarded.
- c) Independent Review Body is mandated to address the issues with breach of duty potentially impacting the suppliers and contractors in public procurement procedures. The disputes arising out of contractual provisions in works are dealt by the Construction Arbitral Committee facilitated by Construction Development Board.
- d) The fact that only four cases were referred to the IRB, it could be possible that the awareness of existence of grievance redressal mechanism is lacking among the parties.

3.1.2.4 Construction Development Board

- a) The Construction Development Board (CDB) plays a critical role in facilitating the professional development of construction industry and is the registration authority for contractors, consultants, engineers and architects. Currently, CDB also facilitates arbitral functions for resolution of disputes arising out of contractual enforcement in public works. Moreover, CDB provides monitoring of contractor's performance in executing works contracts.

- b) The PRR designates CDB as the competent authority for registration and provides authority to issue guidelines on registration for efficient and effective implementation of works. However, there is no adequate basis for monitoring function as there is no specific delineation in the PRR.
- c) In view of the fact that various issues and non compliances persisting in the government constructions are basically arising from inadequate enforcement and monitoring, the role of CDB has become more relevant in ensuring the performance of the contactors.
- d) Ineffective monitoring is seemingly rendered by lack of specific mandate for monitoring function which would entail entering construction sites, access to necessary documents, enquiries, sanctioning and blacklisting of defaulting contractors/consultants, imposing fines, etc. The enforcement of such monitoring and oversight functions would require specific authority or legitimacy for effective enforcement.

3.1.2.5 Bhutan Standards Bureau (erstwhile Standard and Quality Control Authority)

- a) The Bhutan Standards Bureau (BSB) was established under Bhutan Standards Act 2010 to promote standards and standardization activities. The BSB provides mainly three services: calibration services, certification services and testing services.
- b) The BSB publishes approved list of items both for civil and electrical works along with the brands and manufacturers. Procuring agencies are expected to use only those items which are approved by the BSB.
- c) The BSB assumes the role of service provider and not of a regulator. The certification of conformance to standards is done on the basis of request from the manufacturers or distributors. The onus of insisting contractors/suppliers to provide products within the range approved by the BSB lies solely on the procuring agencies, which shall validate or confirm from the BSB.
- d) The PRR implies the use of BSB publications and approved products for estimations and implementation, but there are no specific requirements in PRR and other authoritative documents to use BSB certified products. Even in case procuring agencies specify the use of BSB certified products in the BOQ, there is no enforcement mechanism to ensure the use of specified items during actual execution.
- e) Inadequate arrangements for overseeing the use of approved standards by appropriate authority diffuses responsibilities that would have serious impact on the quality of the infrastructure as well as goods supplied to the government.

3.1.2.6 Department of National Budget (DNB)

- a) DNB under the Ministry of Finance is mandated to formulate, monitor, review and report on the annual national budget of the Royal Government of Bhutan. DNB plays a vital role in budget formulation and management.
- b) With the introduction of e-GP, procuring agencies are required to prepare the annual procurement plan. However, most of the procurement expenditure is skewed towards the last quarter of the financial year which indicates that the procurements were not planned properly.

- c) The procurement functions need to be fully integrated into the public financial management system to ensure that procurement is well planned and driven by the actual need. If the budget planning is not tied to procurement functions, budgetary controls may be rendered weak and not supportive of efficient allocation and utilization of budgets.

3.1.2.7 Tender Committee

- a) The PRR requires to constitute a Tender Committee of an appropriate level by the Head of the procuring agency to ensure that the procedures of the PRR are complied with in all cases of procurements where the estimated value of the contract exceeds the threshold limits prescribed for the Limited Enquiry method.
- b) The procurement checklist annexed to the PRR contain list of items that fall under the responsibility of the tender committee and recording of proceedings or decisions. However, its functions is limited to seeing that the procurement processes contained in the procurement checklist are duly observed by the procuring agencies. There is no specific delineation of responsibilities pertaining to approvals on issues of other aspects of contract execution such as time extensions, liquidated damages, escalation payments, rescinding and termination of contractors, etc.
- c) In order to ensure better accountability of the tender committee and consistency of tender committees' role, there is a need for specific stipulations in the PRR as to its roles on dispensing decisions or granting approvals for various issues arising out of contract. While roles of the tender committees pertaining to tendering process are specified in the PRR, there is no clarity on their roles in the contract administration.
- d) The lack of clarity on the roles of tender committee beyond tendering process led to inconsistent practices across agencies. In most cases tender committees are involved in taking decision beyond the tendering process whereas in other instances approvals/instructions for certain proposals including adhoc changes were given by other officials.

ILLUSTRATION: UNCLEAR DEFINITION OF COMPETENT AUTHORITY IN THE PRR

The Department of Medical Services, MoH had installed Heating, Ventilation and Air Conditioning (HVAC) system in the Public Health Laboratory (PHL) building in Serbithang, Thimphu. The Department Level Tender Committee had approved the direct award of the work '*Supply, Installation, Testing & Commissioning of HVAC System at PHL*', which was further endorsed by the Ministerial Level Tender Committee. The departmental estimate was Nu.72.385 million, against which the contractor had quoted Nu.64.159 million, which exceeded the threshold for direct contracting prescribed in PRR.

The Ministry then decided to seek advice/guidance/approval of the Government to the Ministry of Finance. Subsequently, the Secretary, MoF had conveyed the approval of the MoF in line with the clause No.4.2.5.2 'F' of PRR 2009, which states that, '*Additional works exceeding 20% of the original contract price, and subject to availability of budget within the same program, special approval must be sought from the competent authority*'. Although the PRR provides for seeking special approval from the competent authority, the PRR is not very clear on who should be the competent authorities at various thresholds.

- e) The RAA also noted non-constitution or inappropriate constitution of tender committee. Such practice may result in overriding of controls and not observing necessary procedures required by the PRR and give rise to the question of legality of the decisions made.
- f) The effect of such lapses is not limited to non-compliance but may extend to increasing vulnerabilities for undesirable practices where prescribed procedures and requirements could be circumvented to extend or derive undue favours.
- g) The occurrence of such lapses is apparently due to failure of agencies concerned to put in place appropriate and necessary administrative structures as required by the PRR. Besides, it is possibly due to lack of central monitoring mechanism put in place to ensure minimum compliances by the agencies.

ILLUSTRATION: IMPROPER CONSTITUTION OF TENDER COMMITTEE

As the procurements were made by the Department of Information Technology & Telecom, the following Levels of Tender Committees should have been constituted in line with the provisions of the PRR 2009.

Departmental Tender Committee:

- i. Head of the Department (Chairman)
- ii. Head of the relevant field Division
- iii. Head of the AFD
- iv. Head of the Finance Section in AFD/AFS
- v. In case of goods, the appropriate officer responsible for custody/use of the goods and technical expert or consultant.

It was observed that the DoIT&T had procured above items worth Nu. 2.295 million by constituting Tender Committee in violation to the provision of the PRR 2009 as below:

- i. Budget Officer (AFD) as Chairman
- ii. Asst. Procurement Officer, Accountant (AFD)
- iii. Tshewang Norbu (DoIT&T)
- iv. Mrs Kinley Yangzom (DoIM)
- v. Lungten Tshering (AFD)

3.1.2.8 Tender Evaluation Committee

ILLUSTRATION: IMPROPER CONSTITUTION OF EVALUATION COMMITTEE

The Dzongkhag Administration, Samtse had called annual tender of RWSS Materials and Hardware for FY 2012-13. The RAA observed that there were no records on when and who opened the bids and so, there was no information validating overwriting, deletion, and omissions submitted by the bidders. Moreover, the evaluation was carried out by only one person, the engineer. Interestingly, M/s PEE PEE Enterprise had submitted a petition within seven days of submitting his bids that the rates quoted for two items were erroneously recorded in the comparative statement by Samtse Dzongkhag. It was not understood as to how and when the comparative statement prepared by the engineer was made public or the information was conveyed to bidder who subsequently appealed for change. (AIN: 12738)

a) Evaluation committee plays a crucial role in procurement as it is their decision that determines the outcome of the tendering process. The members have to be competent and charged with the responsibility to uphold the core principles of procurement.

b) The RAA observed that in some cases, only one committee member evaluated the bids and prepared the comparative statement while other committee members signed on the completed evaluation report. At times, the committee members are not competent to assess and evaluate the bids. Such instances are presented in **Case Study 3.1**.

- c) Failure on the part of evaluation committee members seem to be a major cause for most procurement errors or non-compliances.

3.1.3 Lack of registry for suppliers of goods

- a) Sections 2.1.1 and 2.1.2 of the PRR 2009 require creation of registry by a competent authority. A registry was created for contractors in the construction sector by the Construction Development Board, but such a registry for supply of goods is yet to be created.
- b) Registry system would ensure prequalification of capability of suppliers/consultants/contractors to handle a type and volume of contract. This would help to create a pool of suitably qualified bidders.
- c) Without the registration system, the bureaucratic process of prequalifying bidders would become cumbersome and entails costs and time to both the procuring agencies and bidders. Hence, the efficiency of procurement processes is impeded. Lack of registration system poses challenges to track the performance of suppliers.
- d) The requirement of PRR is broad and does not specify the relevant sector responsible for registration of suppliers. The integration of information would demand collaborative approach amongst agencies such as Drugs Regulatory Authority, BSB, and Department of Trade etc.

3.1.4 Lack of debarment registry

- a) Ministry of Finance in accordance with Debarment Rules 2013 is supposed to maintain a debarment list and make it publicly accessible and to use the information to avoid doing business with the debarred party.
- b) However, debarment list is not easily accessible to the procuring agencies except for suspension orders sanctioned by Anti-Corruption Commission. Due to lack of such information on debarred contractors/suppliers, there is strong possibility of black-listed contractors/suppliers being awarded contracts by other procuring agencies.
- c) There is a possibility of engaging debarred individuals by other firms or operating under others' licenses. This would defeat the very purpose of debarment.
- d) The robust registry systems and publicly accessible debarment lists shall prevent award of works to debarred suppliers/contractors in order to ensure expected performance of the contract.

Part II: Issues related to procurement of goods

The RAA's review on procurement of goods revealed several cases of deficiencies ensuing either from inadequacies of the procurement rules or in the enforcement of contract. Some of the common issues observed in procurement of goods are discussed in the succeeding paragraphs.

3.2.1 Absence of proper procurement planning

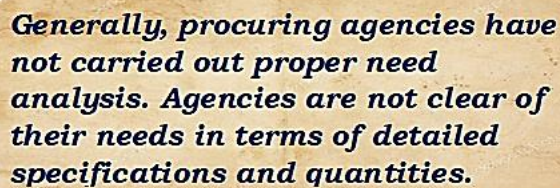
Procurement planning and requirement analysis is one of the important phases in procurement management. Realistic budgets should be proposed based on the requirement analysis allowing for proper allocation of resources, and sufficient time to select appropriate procurement method.

Some of the shortcomings observed under planning phase of procurement of goods are discussed below:

3.2.2.1 Need Assessment not carried out

a) Needs are to be identified and assessed to determine actual requirement of goods so that only goods are procured with right specification and quantities and at right time. Proper assessment of needs ensure that funds are utilized on goods that are actually needed and unnecessary expenditures avoided through prioritization.

b) Generally, procuring agencies have not carried out proper need analysis. Agencies are not clear of their needs in terms of detailed specifications and quantities. As needs are not adequately or clearly defined, goods procured are not of right quality and specifications, and sometimes procurements are made without any requirement or in excess of requirement. Such practice has resulted in goods remaining idle, thus resulting in wastage of public resources. Some of such cases observed are discussed under **Case Study 3.2**.



Generally, procuring agencies have not carried out proper need analysis. Agencies are not clear of their needs in terms of detailed specifications and quantities.

- c) The existing practices of budgeting is not supported by detailed and complete assessment of requirement having regard to existing level of stocks, conditions, age, replacement requirements, timing of purchase and use, etc. This indicates lack of prudence on the part of procuring agencies in managing scarce public resources. PRR 2009 is not explicit on the requirement of agencies to carry out need assessment before procurement or even prepare a procurement plan.
- d) Since procurements are not supported by proper need analysis at the agency level, government is not able to achieve optimum allocation of resources. Therefore, such practices undermine the budgetary prudence.

ILLUSTRATION: IMPROPER NEED ANALYSIS

The Department of Information and Media (DoIM) received grant in 2011 from the Government of the Republic of Korea under the assistance for Development Cooperation for the film industry. The DoIM called open tender for purchase of filming equipment. However, the bids were rejected as the quoted price far exceed the availability of budget. Subsequently, the grant amount of Nu. 9,538,825.00 was paid as an advance to Motion Picture Association of Bhutan (MPAB) on May 15, 2013. The MPAB procured the filming equipments viz. Camera, Sound and light and Grips package directly from the authorised dealer in Singapore at a price of Nu.8,396,601.81. However, on physical verification of filming equipments during audit, it was found that filming equipments procured by the DoIM through MPAB were lying idle with the Department though it claimed that the equipment were procured on urgency basis. (AIN: 12045)

3.2.2.2 Lack of control in procurement of similar items having same function across the government agencies

- a) The PRR 2009 does not provide appropriate guidance on exercising prudence on procurement of certain items having same utility/function by different procuring agencies. Appropriate guidance is necessary in view of availability of range of similar products with different price tags and in many cases entailing substantial price differences. In absence of appropriate guidance and technical advice, procuring agencies make inappropriate and uneconomical choices.
- b) Therefore, some procuring agencies resort to purchasing luxurious or standard items depending on availability of budget. As a case in point, the National Land Commission Secretariat had purchased an executive chair worth Nu.68,000.00 in FY 2015-16 and in the same year National Council Secretariat procured revolving chairs at the rate of Nu.4,300.00 per chair. While the basic utility remain same, the varying needs of individuals dictating the requirements does not accord to the principles of economy.
- c) Similarly in 2015, the Cabinet Secretariat purchased a MacBook Pro 13.3 at the rate of Nu.98,000.00 in contravention to the circular issued by the Ministry of Finance in August 2011 prescribing maximum ceiling amount of Nu.40,000 for purchase of laptops/computers.
- d) Besides regulation through prescribed ceiling amount on purchase of computers/laptops, there is no specific restriction for other commonly used items, like furniture and office equipment. There is no control on procuring agencies in buying items of higher specifications. There is a tendency for opting higher specifications if allowed by the availability of budget.

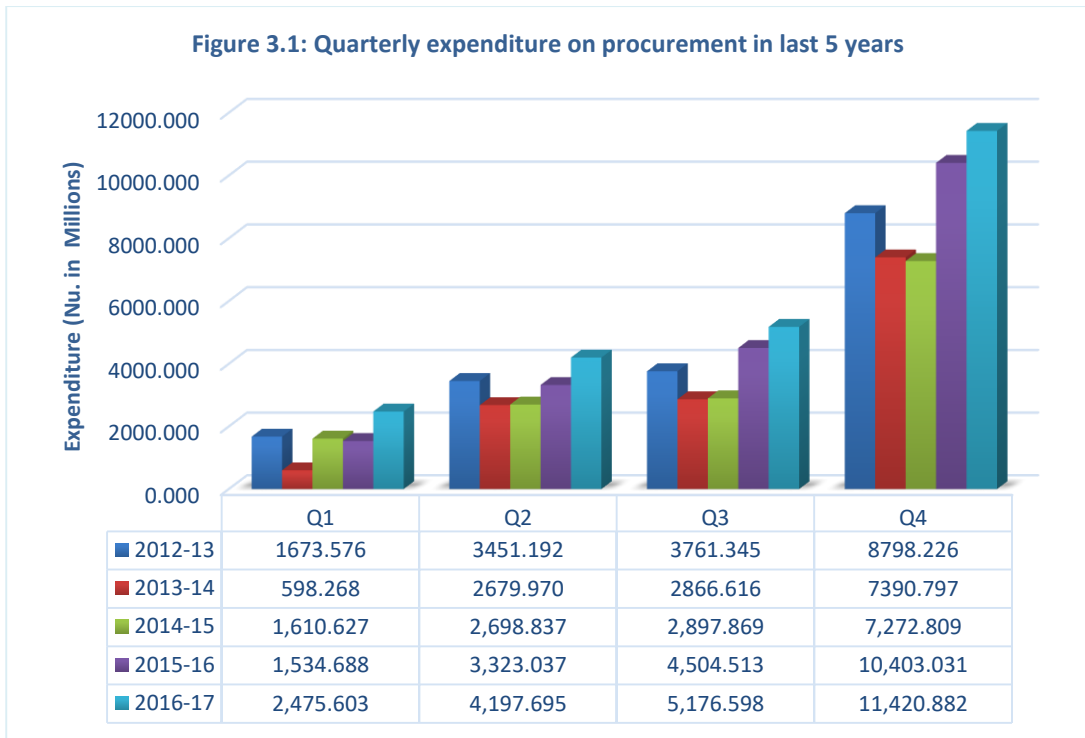
- e) Keeping aside the specialized agencies and individuals requiring higher specifications, most of the government institutions have common requirements. And therefore, unrestricted specifications for commonly used items do not seem appropriate.

3.2.2.3 Purchases towards the fag end of the financial year

- a) Purchases should be planned to ensure that only those goods which are necessary to meet business objectives are procured at the right time and price.

- b) On the contrary, procuring agencies do not plan their purchases and most of the procurement activities are carried out towards the last quarter of the financial year. The analysis of expenditure incurred on purchase of goods showed that most of the agencies make their purchases towards the end of the financial year as given in **Figure 3.1**.

Procuring agencies do not plan their purchases and most of the procurement activities are carried out towards the last quarter of the financial year.



- c) From the trend shown in the Figure 3.1, it is apparent that maximum procurements are happening in the last quarter of the financial year, which reflect that the procurement expenditure is not planned properly. Even though the agencies are required to prepare and spend as per Budget Utilization Plan (BUP), the trend above indicated that BUP is not serving its purpose and the plan is being prepared merely to complete a formality.

- d) Rush of procurements towards close of the year may also indicate that procurements decisions are being driven mostly by the availability of fund and not by the actual requirement of the procuring agency. Examples of such past audit issues related to rush of procurement expenditure towards the end of FY are given in **Case Study 3.3**.

ILLUSTRATION: PURCHASE MADE TOWARDS END OF FINANCIAL YEAR

Wangchuck Centennial Park (WCP) had placed orders for supply of items for bio-gas plant on 18th June, 2012 during FY 2011-12 to M/s Agro Mechanical Workshop, Bumthang for Nu. 429,948.00. The expenditure for the same was already booked and Nu. 343,077.00 was paid to M/s Agro Mechanical Workshop, Bumthang and the balance amount of Nu. 86,871.00 was retained in the form of Cash Warrant. The supplier had failed to supply the materials even after about 9 months of making the part payment. (AIN: 11279)

- e) The determination to avoid budget lapses and demonstrate financial performance without actually having a proper procurement planning contributed greatly to purchases towards the end of financial year. The drive to avoid budget lapses and demonstrate financial performance is partly attributable to the budget approval process which requires prior year financial performance to determine the current period budget.

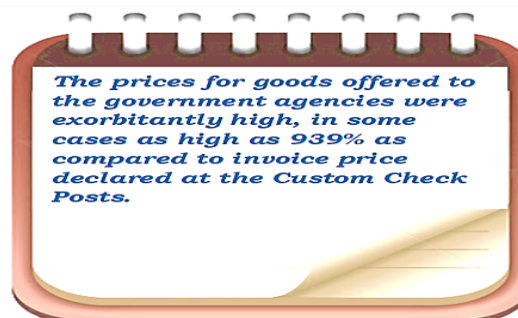
3.2.2 Agencies are not obtaining economical/competitive prices

While one of the objectives of the PRR is to achieve value for money in public procurements, there were instances where the competitive bidding process did not result in obtaining competitive prices as discussed below:

3.2.2.1 Suppliers charging astronomical prices for goods supplied to the government agencies through quotation

a) The RAA carried out an exercise to ascertain variations in rates for few selected goods procured following competitive bidding procedures by government agencies as compared to invoice prices declared at Customs Check Posts.

b) It was observed that the suppliers charge huge margin on the goods supplied to the government agencies following competitive bidding procedures. There were several instances where the prices for goods offered to the government agencies were exorbitantly high, in some cases as high as 939% as compared to invoice price declared at the Customs Check Posts. Few similar instances are discussed under **Case Study 3.4**.



c) It is possible that in absence of adequate check and control in the rates declared by the suppliers at the Customs Check Posts, the suppliers are engaged in unethical business practices of under invoicing to evade tax or misinform customs officials.

ILLUSTRATION: CASE OF SUPPLIER CHARGING UNREASONABLE PRICES

During the FY 2016-17, the MoH had obtained competitive bids for essential medicines and laboratory consumables to be supplied to hospitals in the country. The audit carried out a review to compare quoted prices and customs declared rates by the supplier, M/s KMT Pharmaceuticals and Medical Supplies for the following two items:

Items	Bid Quantity	Quoted Rates (Nu.)	Rates declared at RRCO	Differences (Nu.)	Margin (Nu.)	Value (Nu.)
Paracetamol tablet 500 mg	17,320,000	0.23	0.10	0.13	130%	2,251,600.00
Ethanol (100% 500ml)	5,764	1,687	1,020	667	65%	3,844,588.00
TOTAL						6,096,188.00

As evident from the above table, the supplier had charged huge mark-up price as high as 130% of the declared rate. Therefore, the supplier had profited over Nu.6.00 million on supplies of above two items.

d) Although the PRR requires to exercise due diligence in inquiring the prices and compare with the market prices, the procuring agencies generally do not conduct market surveys. This had defeated the intent of public procurement in obtaining the competitive price and had resulted in government agencies paying exorbitant prices. Absence of reliable information source on products and market price

also renders it difficult to make valid comparison of quoted rates with the market rates.

3.2.2.2 Huge variances in lowest quoted rates for same items supplied in different agencies

- a) The RAA carried out a review to compare lowest quoted rates for procurement of HP Printer Cartridge 49A and 80A by different government agencies during the period 2016-17.
- b) Since the agencies are based in same locality, the procuring agencies should be able to obtain prices within a comparable range. Though operational costs might differ slightly amongst the suppliers, substantial range would not be expected in the prices they offer.

ILLUSTRATION: RANGE OF PRICES AGENCIES OBTAIN THROUGH QUOTATIONS

The RAA reviewed the lowest quoted bids obtained through open tender by different government agencies for HP Printer Cartridge 49A during the period 2016-17. The range of prices obtained by different procuring agencies for HP Printer Cartridge 49A is as shown in the table:

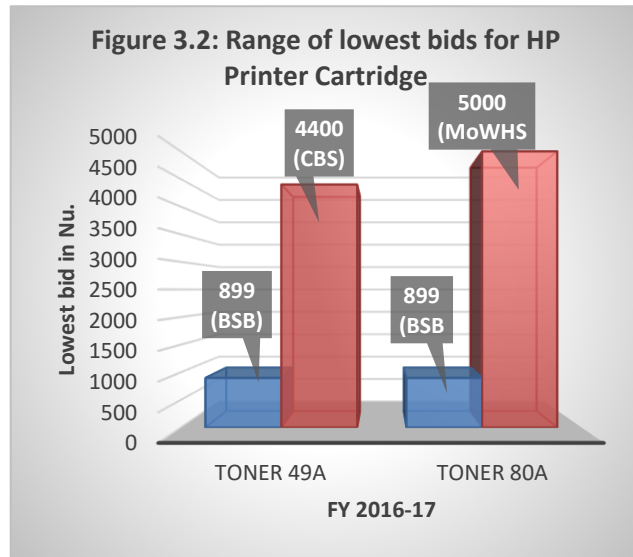
Sl. No.	Procuring Agencies	Lowest Quoted Rate (Nu.)	Bidder	Variance
1	BSB	899	Khengrig	0%
2	BNCA	900	Panglung	0%
3	MoHCA	910	SITC	1%
4	MoLHR	939	Khengrig	4%
5	Cabinet Secretariat	999	Khengrig	11%
6	NA	999	Khengrig	11%
7	ACC	1290	AB	43%
8	Dratshang	1350	CPS	50%
9	RBP	2790	Nana	210%
10	BICMA	3250	T Nam	262%
11	KGUMS	3600	Gyelyong	300%
12	ECB	3700	Gyelyong	312%
13	TCB	3995	AB	344%
14	MoWHS	4200	Muthri	367%
15	NEC	4300	Nana	378%
16	CBS	4400	CPZ	389%

As evident from the tables above, Bhutan Standard Bureau (BSB) had obtained the lowest bid price for Printer Cartridge 49A at Nu. 899.00 while the Centre for Bhutan Studies (CBS) had obtained at Nu. 4,400.00, representing a range of 389%.

While some of the above variations in prices may be largely attributable to supply of original, duplicate and refilled cartridges, as may be apparent from the above analysis there were significant variations both within the lower and higher rate brackets. This indicates that rates obtained in most cases through competitive bidding process were not reasonable. In the similar analysis for Cartridge 80A, the RAA noted that the BSB had obtained the lowest bid price for Printer Cartridge 80A at Nu. 899.00 while the MoWHS obtained at Nu. 5,000.00, representing a range of 456%.

The range of prices at which the government agencies are able to obtain through competitive prices showed that agencies buying at comparatively higher than others are not able to get same value for money for procuring same item.

c) However, the analysis showed that lowest quoted prices for Toner Cartridge 49A and 80A obtained by different procuring agencies in the same period differed significantly, ranging as high as 389% and 456% respectively as exhibited in **Figure 3.2**.



d) Therefore, the procuring agencies apparently do not get similar competitive prices for the same items or supplies. The range of prices paid for similar items show that the procuring agencies are not receiving equal value of goods.

e) While procurement processes are adhered to, by both the procuring agencies and the suppliers, the existence of disparities in the prices obtained through competitive bidding and deemed to be economical undoubtedly provide to show that procuring agencies are not getting reasonable rates. These apparently have root in the inadequacies of the Procurement Rules and Regulations in terms of prescribing process of due diligence that every procuring agencies must exercise to obtain reasonable prices that are consistent across agencies within same geographical locations.

f) The other reason is the failure to investigate or enquire on reasonableness of prices and negotiate to obtain the best prices. If sufficient market studies or due diligence is exercised, the procuring agencies could obtain same quality of goods at much cheaper price.

ILLUSTRATION: EXERCISE OF DUE DILLIGENCE THROUGH MARKET SURVEY SAVES HUGE COST

The Dratshang Lhentshög had asked the Bhutan Power Corporation Limited (BPCL) to prepare an estimate of electrical items for internal lighting in Kuenrey, Tashichho Dzong. Accordingly the BPCL had submitted the estimate of Nu. 4.112 million.

Alternatively, the Royal Construction Office (RCO) had made an independent market survey in Siliguri, India and obtained the electrical items for Nu. 1.235 million including Cost, Insurance & Freight (CIF). The difference of cost estimates of BPCL and RCO was Nu. 2.877 million representing about 233% above the market price at Siliguri.

The official concerned of the BPCL stated that their estimates were prepared based on Korean Brand electrical items and the market prices obtained by RCO was of Jaquar Brand, which is a premium brand in India.

3.2.2.3 Price obtained through competitive bidding higher than retail market price

a) The rates obtained through competitive bidding should be lower than the retail market price if public procurement procedures were effective in achieving its intended objectives of obtaining value for money. In public procurements, generally the suppliers get the advantage of economies of scale as agencies procure in huge quantities and do not have to bear holding costs.

- b) However, there were instances where procuring agencies did not obtain competitive prices for supply of goods even after fulfilling the procurement formalities and tendering process. The rates offered were higher than market price and maximum retail price marked on the goods. Few such cases are illustrated in **Case Study 3.5**.
- c) Such practices indicate that public procurement process encourages bidders to adjust or hike their bid prices at their discretions. The factors such as no upfront cash payment or delay in payment, long public procurement procedures, collusive practices and monopoly could have been possible reasons for hiking the bid prices.
- d) The procuring agencies also failed to exercise due diligence in investigating and comparing bidders' prices with the market rate resulting in buying of goods at higher rates, thus undermining the intended objectives of obtaining best price through competitive bidding procedures.

3.2.2.4 Agencies do not obtain similar price for items sourced from outside the country

a) The RAA noted that procuring agencies which require sourcing of specialized items from outside the country had paid different prices for similar kinds of goods. Though separate procurement process were initiated at different times, the coordinated approach of taking advantage of lower prices obtained by other agency would have avoided payment at higher prices.

b) The existence of such practice of agencies working in isolation does not seem to protect the overall interest of achieving economy at the national level. The system of coordination and price enquiry at least based on the historical prices of similar purchases would have saved huge amount on procurement expenditure.

ILLUSTRATION: LACK OF DUE DILIGENCE LEADING TO HUGE DIFFERENCE IN PRICES PAID BY PROCURING AGENCIES

The Construction Development Corporation Ltd (CDCL) and Department of Roads had procured bridge parts for construction of bridges as shown in the table below.

Agency	Qty.	Year of Procurement	Rate per Set (Nu.)	Remarks
CDCL	One set	2016	7,600,000.00	170 feet span DDR
DOR	One set	2017	13,525,228.00	150 feet span TSR
Difference			5,929,228.00	

The RAA noted that prices in most cases were similar, the differences in price of one specific bridge part was very substantial as can be seen from the table above.

The RAA enquired about the functionality aspects of Double Double Reinforcement (DDR) and Triple Single Reinforcement (TSR) and found that DDR has technical superiority. Besides, the DDR is recommended for bridge span of 150 feet and above.

The huge price differences had possibly occurred in absence of due diligence exercise carried out by DOR.

3.2.3 Agencies not receiving required quality of goods

The procuring agencies and suppliers enter into an agreement after completing tendering formalities and evaluation. Contract execution is the delivery of agreed quality and quantity of

goods by the suppliers to the procuring agency at agreed price and time. A formal contract is signed binding on both the parties to meet their respective obligations.

The RAA observed cases in public procurements where the suppliers absolved their obligations by supplying inferior or spurious quality of goods in complete violations of the contractual provisions. The modus operandi adopted by the suppliers to profit from supplies of public contracts through unethical business practices are as discussed below:

3.2.3.1 Supplying counterfeit items at quoted price for genuine products

- a) The RAA carried out an exercise to confirm whether the government agencies are getting the goods as specified in the quotation and as per the sample provided by the bidders.
- b) The RAA found existence of both genuine and counterfeit products in the market as shown in the illustration below:

ILLUSTRATION: EXISTENCE OF IMITATED PRODUCTS

There are existence of seemingly identical HP toner cartridge 80A in the market as depicted in the photograph.



DUPLICATE

ORIGINAL

Without adequate knowledge and experience, it is difficult task for the consignments receivers to distinguish between the original and duplicate toner cartridge.

- c) The absence of quality check and control would allow the suppliers to resort to unethical practice of supplying counterfeit items at quoted price meant for original products. Such practice is generally prevalent in government agencies where the officials responsible for receiving actual delivery are not competent enough to differentiate the genuine and imitated goods or due to possible mala fide intentions of suppliers and officials.

- d) Through verbal interactions with one of the

suppliers, the RAA was made to understand that suppliers submit bids for higher quality toner and the samples usually conform to the specifications sought. However, during the actual supply, the items of inferior quality are supplied along with original ones.

- e) The PRR does not require the procuring agencies to institute mechanism for addressing the complaints of the end users. Despite prevalence of such deceptive practices of supplying counterfeit items, no action has been taken to create awareness amongst procuring agencies. Besides, deterrence actions need to be prescribed to penalize the suppliers on noted cases of manipulations. There is also no prescribed process of holding dealing officials accountable for failing to ensure

ILLUSTRATION: CASE OF SUPPLY OF INFERIOR GOODS

The FCBL, Phuentsholing had procured 30 metric tons of Mansuri rice from M/s Balajee Enterprise, India that was rejected as it did not meet the WFP rice specifications. However, the rejected Mansuri rice was retained and later converted/changed to 551 rice with the same invoice number 168 dtd 2/03/2013 and same rate as 551 rice at Nu. 17,895/- per metric ton (MT) as M/s Balajee Enterprise had won the bid to supply 551 rice. (AIN: 13303)

the receipt of products of right quality and specifications.

3.2.3.2 Acceptance of inferior quality/defective items

- a) On review of issues raised in the past audit reports, it can be assumed that procuring agencies have not been diligent while accepting goods as there were instances where inferior quality goods were accepted by procuring agencies. Some of such cases are illustrated in **Case Study 3.6**.
- b) The occurrence of such cases suggest that the procuring agencies were indifferent towards quality of goods delivered. These lapses are apparently resulting from procuring agencies failing to exercise due diligence or a collusive practice which is made convenient in absence of appropriate control mechanisms and deterrence.
- c) Some cases may also be attributed to the fact that procuring agencies do not have clear specifications of their requirements resulting in inferior quality of goods being accepted.
- d) While PRR intends to ensure that procuring agencies receive value for money in public procurement and places requirement to inspect the goods received before accepting, these intents are apparently undermined by weak enforcement by officials entrusted with the task or lack of capacity of officials. There are no prescribed course of actions to be taken both on officials and suppliers on such observed cases. These circumstances render conducive conditions for unethical practices.

3.2.3.3 Acceptance of equipment in deviation to recommendation of technical evaluation committee

- a) The RAA observed the cases where the suppliers delivered equipment which was found not meeting the required specifications. Another bidder who quoted for the required specification of item was technically disqualified.

ILLUSTRATION: ACCEPTANCE OF GOODS NOT MEETING SPECIFICATIONS

The National Land Commission Secretariat (NLCS) had invited quotations for multi-function printer for Map Production Division in 2016-17. The participating bidders and rates quoted were as follows:

Name of Firm	Printer Model	Quoted Price (Nu.)
M/s Nana Enterprise, Thimphu	Ricoh MP W3601	1,769,539.00
	Ricoh MP W2401	1,769,539.00
M/s Office Automation, Thimphu	Ricoh MP W3601	1,057,000.00
	Ricoh MP W2401	957,000.00

The equipment bearing model number MP W3601 submitted by M/s Nana Enterprise was considered for technical evaluation. However, the same model as evident from the catalogue contained inside the bid submitted by M/s Office Automation though mentioned as MP W3061 (typo error in the bid) submitted was not considered by evaluation committee as the specified model was not available in the market. The bid for equipment MP W2401 of M/s Office Automation was technically rated low as it did not meet the requirement. Therefore, financial bid of M/s Nana Enterprise was found evaluated as the single technically qualified bidder with quoted rate of Nu. 1,769,539.00 per machine of model MP W3601. Eventually, the NLCS had procured MP W2401 which was initially considered unsuitable for Nu. 1,769,539.00 as against lowest rate of Nu. 957,000.00 quoted by M/s Office Automation resulting in additional cost of Nu. 812,539.00. Acceptance of equipment which was initially assessed as not meeting the requirements of the procuring agency, indicate biasness and favouring a particular supplier. Such instances apparently suggest the existence of possible collusive practice.

- b) Such practice suggest to show lack of due diligence of the procuring agencies and also possibility of collusive practices.
- c) Besides, procuring agencies may not be able to obtain competitive prices since the lowest offer is rejected on unjustified grounds.

3.2.4 Inadequacies and non-enforcement of contractual provisions

The RAA observed many issues in actual delivery of contracts ensuing either from inadequacies or non-adherence to contractual provisions. Some of the instances observed under contract execution are discussed below:

3.2.4.1 Flaws in contract agreements or bidding documents

- a) The RAA observed instances where there were contradicting clauses incorporated in the agreement. In some cases the standard terms were not incorporated. Examples of such instances are discussed in **Case Study 3.7**.
- b) Contradictions in the contract clauses in contract agreements could be a result of negligence, carelessness and inconsideration to agency's interest. On the other hand, lack of knowledge and competence can also lead to such flaws resulting in loss to procuring agencies.
- c) Flaws in contract agreements would lead to unnecessary complications and enforcement problems resulting in non-achievement of intended goals.

ILLUSTRATION: NON-INCORPORATION OF TERMS AND CONDITIONS IN AGREEMENT

The Rural Livestock Development Center, Khangma had purchased Power Generator (Kirloskhar Engin-63 KVA, Air cool type at Nu. 1,039,000.00 from M/s Ugyen Medical Store in May 2014. The RAA found that the equipment was not installed even after one year of receipt of the equipment.

The management responded that after the audit observation was issued, the supplier was notified to depute the engineer for installation of the machine. The RAA pointed out the lapses in the supply contract where the management had failed to incorporate specific clause for installation by the supplier. Thus, the non incorporation of critical element in the contract had allowed indefinite deferment of installation which had rendered inability for the management to put the machines to intended use. (AIN: 13099)

3.2.4.2 Non-enforcement of contractual obligation

- a) The RAA noted several instances where parties failed to fulfil the contractual obligations and the procuring agencies had not invoked relevant provisions of contract in such events. Instances showing non-enforcement of contractual obligations are presented in **Case Study 3.8**.

- b) Non-fulfilment of the contractual obligations would generally result in agencies not deriving intended results from the contract. If the safeguards in the form of specific provisions are

ILLUSTRATION: NON-ENFORCEMENT OF CONTRACTUAL OBLIGATION

The Jigme Dorji Wangchuck National Referral Hospital had incurred expenditure of Nu.27.60 million on procurement and installation of four Chiller plants in 2010. The RAA noted that the management had taken over the chillers without commissioning and testing along with the project infrastructure. It was commissioned only after six months of taking over. There had been series of problems due to which the machines could not achieve desired functionality. The management had failed to rectify the defects and problems during the defect liability period.

The machines are still not put to intended use as of now. The entire amount of Nu. 27.60 million was therefore rendered waste as the machine could not be utilized besides incurring additional costs. (AIN: 13992)

not invoked in the event of non compliance, such apathy of procuring agencies could be either intended to extend undue favours or agencies not concerned in safeguarding the government interest. Such cases are normally failure to levy liquidated damages, forfeiting performance security, termination and also taking appropriate legal recourses.

- c) The PRR does not prescribe course of actions and the process for failure to invoke enforcement actions in the event of breaches of contract.

3.2.4.3 Increasing the scope of contract after the award

- a) The PRR allows additional supplies within 15% of the original contract to be awarded to the same suppliers without having to re-tender following the procurement process.

- b) The RAA observed instances wherein the initial tender was invited for smaller quantities of goods and later, orders placed for additional supplies exceeding 15% of the original contract to the same suppliers without resorting to procurement procedure. The cases are as illustrated in **Case Study 3.9**.

ILLUSTRATION: INCREASING SCOPE OF CONTRACT AFTER THE AWARD

In 2013, BDBL had initially tendered for 35 desktops computers and 14 DOT matrix printers and awarded to M/s NGN Technologies Private Limited and M/s Drasindra Technology respectively. BDBL had later procured additional 43 desktop computers and 8 DOT Matrix printers directly from aforementioned suppliers at initial contract price for an aggregate worth of Nu. 2,270,475.00, thus exceeding original contract value by 122.86% and 35.71% respectively. (Audit of BDBL Corporate Office)

- c) The lapses could be attributed to improper planning of procurement where the procuring agencies are not able to comprehend the quantities actually required at the time of inviting bids.
- d) The placing of orders for the quantities and values of additional supplies exceeding the limit not only violates the rules but also the possibility of extending undue favours cannot be ruled out. Besides, it would also restrict opportunities for other potential firms, forgoing benefits of bulk discounts, and selecting wrong procurement method.

3.2.4.4 Payment made for items not specified in the contract agreement

- a) The RAA observed that the procuring agencies had made payment for items not conforming to the specifications provided in the contract agreements.

ILLUSTRATION: ACCEPTANCE OF GOODS NOT SOLICITED IN THE QUOTATION

The Thimphu Thromde had paid Nu.268,320 (USD 4,000) for a special stainless tray for electric cremators in 2014-15. The price for the same was not solicited in the quotation, and installation and commissioning of three unit electric cremators agreed for USD 171,000 nor was it ordered by Thimphu Thromde. Instead, the supplier had just brought the item and Thimphu Thromde had accepted and paid for the same. The stainless tray was found lying uninstalled at the crematorium as it was designed for old electric incinerator and not for the new machines supplied and installed. (AIN: 14467)

- b) Accepting the items which do not conform to the specification indicate that there was no proper basis on which the requirement of particular item was assessed.
- c) There could have been possibility of collusions between the officials and supplier.
- d) These lapses occur due to inadequate control mechanisms instituted within the procuring agencies to safeguard the government interest and also failure of officials entrusted with the responsibility to act in a manner required of them.
- e) The PRR does not contain explicit procedures on how agencies should take recourse in the event of such lapses and hold the officials accountable.

3.2.5 Procurement practices restricting competition

The RAA observed cases in public procurements where the procurement procedures were designed to create unnecessary barriers to potential bidders thus restricting competition and favouring few suppliers/vendors. There are also cases where the procuring agencies had resorted to direct contracting thus forgoing the advantage of competitive bidding process. Some of such cases are discussed below:

3.2.5.1 Undue preference to certain brands and particular bidders

- a) The provisions of PRR intends to ensure fair treatment of all suppliers and equal opportunity to all bidders. It generally prohibits procuring agencies from specifying brand names for goods, which will restrict competition. If the use of brand names or catalogue number is unavoidable, the words “or their equivalent” should follow them.
- b) Although procuring agencies refrain from specifying brand names in the tender invitation, the RAA observed cases wherein a procuring agency had shown preference for a particular brand as illustrated in **Case Study 3.10**.
- c) The preference to certain brand had restricted the competitions and the bidder who had offered equivalent brands had been unfairly kept out. Thus, the decisions to prefer specific brands had not only violated the PRR but had provided opportunity to lock up brand to possibly extend undue favour to a particular bidder.
- d) This could have been made possible due to inadequacy in the enforcement mechanism in ensuring appropriate safeguards against possible conflict of interest.
- e) There is no established procedures to identify and prevent procurements being made from suppliers who are related to procurement or dealing officials of the procuring agencies.

ILLUSTRATION: CASE OF RESTRICTIVE COMPETITION

The Department of Agriculture had called open tender for supply of Mini Excavators for the Financial Year 2016-17. Against the required specifications, the following bidders offered the specifications as follows:

Required specifications	Rinwang Heavy Equipment & Services	Yoebar Trading	Ugyen Earth Movers
<i>Engine Horse Power 24-28 hp, Gross Weight 2-3 ton and Bucket Capacity 0.06-0.08 cum</i>	<i>Engine Horse Power 48.8 hp, Gross Weight 5.8 ton, Bucket Capacity 0.07 cum</i>	<i>Gross Weight 3.78 ton, Engine Horse Power 27.4 hp, Bucket Capacity 0.12 cum</i>	<i>Engine Horse Power 24.7 hp, Gross Weight 2.85 ton, Bucket Capacity 0.074 cum</i>

It was noted that the Evaluation Committee recommended for selection of M/s Ugyen Earth Movers as other two firms were declared non-responsive. The reasons recorded was that the specifications of those two bidders would affect the scope and performance of the services required.

However, on comparison of the specifications, it was noted that the specifications offered by firms who were declared as non-responsive were within the required specifications and there were no other evidences to support committee’s decision. It appeared that competition was restricted on unjustified grounds and as a result the bidder who had quoted lowest was eliminated from the competition. Further, the lowest bidder M/s Yoebar Trading who had quoted Nu. 2,685,000.00 had offered superior specifications compared to M/s Ugyen Earthmovers which had quoted Nu. 3,400,000.00.

Besides unfairly treating other bidders, the government had lost Nu. 2,145,000.00 for the purchase of three mini excavators.

3.2.5.2 Procuring agencies resorting to direct contracting

- a) PRR specifies the use of appropriate procurement method to obtain competitive bids and value for money. It also provides for direct contracting under certain specified situations including where there are extreme urgency and the procuring agencies have no luxury of time for other methods of procurement.

- b) The RAA noted that while for some cases adequate justifications were recorded to justify direct contracting, some procuring agencies merely cited time constraints which did not justify resorting to direct contracting. It was found that ‘urgency’ is conveniently cited in most cases but not adequately justified. Such cases are depicted in **Case Study 3.11**.

ILLUSTRATION: CASE OF USING DIRECT CONTRACTING

Bhutan Board Products Limited, Phuentsholing had directly procured Decorative Papers and Melamine worth Nu.18.711 million in 2013 from a supplier without inviting quotations, thereby forgoing the benefits of competitive market rates. There were frequent fluctuations in the rates which were not substantiated with evidence for the revision. (AIN: 13220)

c) It can be seen from the cases that even with direct award without procurement procedures, there are lapses and delays. The items purchased through non-competitive procedure on urgent need seemed foreseeable and often times, procured goods were left idle resulting in wastage of government resources. These lapses did not concur the justifications or grounds on which the direct contracting was preferred.

- d) While PRR imply examining the merit of the case, there is a tendency amongst procuring agencies to do away with formalities when procurement plans are not developed and adhered to. Usually, the procurement of certain items are deferred to later stage of the procurement, procuring agencies tend to resort to direct contracting as there is little time to follow due process. Procuring towards end of the financial year is usually practiced especially when agencies anticipate savings from various budget heads and agencies decide to go for unplanned procurement. Spending of balance budget is usually preferred over surrendering by agencies across the board.

Procuring towards end of the financial year is usually practiced especially when agencies anticipate savings from various budget heads and agencies decide to go for unplanned procurement

- e) Resorting to direct contracting eliminates competitions and the government may not be able to get competitive prices if the procuring agencies do not investigate market prices and establish reasonableness of the prices and initiate negotiations.
- f) Other potential impacts can be that such practices may become acceptable norm and procuring agencies may conveniently cite “urgency” without actually ascertaining the validity of grounds on which the direct contracting method was preferred.
- g) The process of validating the grounds of urgency for resorting to direct procurement is not clearly defined in the PRR.

3.2.5.3 Related Party transactions

- a) BCSR 2012 prohibits civil servant from engaging and promoting of family business. The PRR also provides as:
- Before each sitting, the Chairperson and each of the members of a Tender Committee shall render the following certificate:

“Declared that none of my close relatives (father, mother, brother, sister, spouse and own children) have taken part in the competitive bidding and that I do not have any direct interest in any of the parties participating in the bidding.”

- No spouse or dependent of a Public servant shall be allowed to participate in supply of goods and services to the particular office where the civil servant is employed or where the Public servant has an authority over.
- b) However, there is no mechanism instituted to systematically capture information on the spouse and relatives of public servants carrying out business to safeguard against risk of procuring agencies making purchases from such business entities. Thus effective enforcement of the requirement of the BCSR and PRR is rendered difficult. RAA nonetheless observed cases of such transactions in corporations and financial institutions. These included procurement from family owned and sister concern business entities, some of which are indicated below:

- BOBL bought computer, office equipment and furniture items in 2014 worth Nu.1.52 million from M/s Dolma Enterprise owned by close relatives of the CEO by indicating brand preference, even though the CEO was not involved in bid evaluation and award.
- BDBL had awarded the contract for supply and installation of cubicles to M/s Wood World worth Nu.3.79 million in 2008. The firm was owned by relative of one of the senior officials of the BDBL
- The statutory audit report of BFAL for successive years have disclosed related party transactions with sister concerns involving millions of ngultrums.

ILLUSTRATION: RELATED PARTY TRANSACTIONS

BoBL had invited quotations for supply of office equipment and furniture for the year 2014. The evaluation committee had evaluated bids without considering the bid submitted by M/s B.D. Commercial. Reasons for excluding M/s B.D. Commercial for evaluation were not documented. BoBL had stated that they required Godrej and while other bidders who have quoted for furniture and office equipment other than Godrej brand have been considered for evaluation purpose, M/s B.D. Commercial was not included for the same. This was probably because M/s B.D. Commercial had quoted the lowest in all the items. Subsequently, the contract was awarded to M/s Dolma Enterprise. Although the CEO had abstained from the tender evaluation and award, the procurement resulted in related party transaction. (AIN: 14054)

Part III: Issues related to constructions

3.3.1 Planning

The planning for the construction projects include preliminary/feasibility studies, preparation of estimates, drawings, designs and specifications and bids, and other necessary works completed before the procuring agencies proceed for tender.

The RAA's experiences showed that construction projects undertaken by the public entities generally lack proper planning. Though huge investments are made for feasibility studies in the complex and mega projects such as hydropower undertaken by the government, issues in this area still persist. The observed deficiencies in all forms of works projects included the following:

3.3.1.1 No feasibility studies conducted

- a) The main components of feasibility studies include technical feasibility, economic feasibility, environmental impact assessment and socio-economic feasibility among others.
- b) Feasibility studies entail a detailed analysis and reviews to decide the feasibility of different investments alternatives by calculating costs and benefits to extract measurements for every alternative. These alternatives should then be evaluated against a set of agreed criteria. The feasibility study generally recommends a course of action and a realistic estimate of the total project end cost and life cycle cost.
- c) Some of the construction projects require detailed technical studies and subsurface explorations to see the geological conditions for the proposed infrastructure. This require in-depth soil investigations to ensure the stability of the

ILLUSTRATION: IMPROPER SOIL INVESTIGATIONS RESULTING IN WASTEFUL AND AVOIDABLE EXPENDITURE

For the development of the plan of Punatsangchhu II as project, pre-feasibility study was carried out by a Norwegian Consultant which was subsequently revised and submitted by Water and Power Consultancy Services (WAPCOS) in 2003-04 for preparation of a Detailed Project Report.

The management had identified Kamechu confluence for Construction of Underground Powerhouse (UPH) without conducting proper sub-surface explorations. Despite repeated recommendations by Geological Survey of India (GSI), the drift work was terminated at 125m instead of 300m and the boreholes were drilled at top of the crown or above level and not at the foundation level. The size of the Downstream Surge Chamber (DSSC) was also enhanced in contravention to GSI's suggestions.

The excavation profiles of DSSC at the location of rock fall showed large over breaks and those profiles extended much beyond the pay line shown in the drawings. Central Water Commission (CWC) expressed their deep concern over the over breaks in July 2014 and the same concern was shared by CWC and Central Electricity Authority (CEA) in May 2016 and stated the large over breaks could not be treated fully as "Geologically Accepted Over-breaks".

Thus, changing of power house set-up from feasible Surface Powerhouse (SPH) to complicated UPH without carrying out adequate pre-construction/sub-surface investigations, non-shifting of the DSSC even after identification of a shear zone, increase of the size of the DSSC even after strong recommendations and the large over-excavations/breaks resulted in hazardous mishap where six lives were lost and three of them still under loose rockfall. Besides, the expenditure of Nu.500 million incurred on DSSC remained wasteful. This would also affect the scheduled completion date of UPH and incurrence of addition estimated expenditure of Nu.800 million to Nu.1000 million to set right the changes. (AIN 14137)

proposed structures. The RAA noted the cases of failure of undertaking requisite soil investigations and the corrections that were needed at the later stage (during or after the completion) entailing additional cost and resources.

- d) Adequate time and resources were not invested on geo-tech investigations and feasibility studies to prepare a realistic and Detailed Project Report even for mega construction projects.
- e) Most of deficiencies in planning and feasibility studies include failure to conduct geotechnical study in relation to soil, rock, and ground water and topographic survey to facilitate realistic preparation of design and drawings, technical specifications, estimates and BOQs.

Adequate time and resources were not invested on geo-tech investigations and feasibility studies to prepare a realistic and Detailed Project Report even for mega construction projects

- f) The inadequacies in planning usually result in following impacts:

- Wrong specifications and omission of important items of work resulting in faulty BOQs and estimates. The corrective actions entail additional costs resulting in cost overruns;
- Change of locations for proposed structures deviating from the intended sites and abandonment of selected sites without due regard to the expenditure already incurred;
- Washed away roads due to non provision of permanent drains in the construction of roads. The Granular Sub Base (GSB) was seen constructed without construction of proper drainage based on location of sites, expected seasonal streams and heavy rainfalls;
- Demolishing constructed structures in taking up new constructions by different project rendering waste of expenditure incurred;
- Required gradients were seen not maintained as proper surveys for farm roads were not conducted;
- Inappropriate identification of scope of works, estimations and BoQs which further result in substantial additional works at later stage;
- Functionality of the project is affected as in case where continuity of water supply was not ensured due to failure to identify seasonality of water source.

ILLUSTRATION: IMPROPER PLANNING LEADING TO WASTEFUL EXPENDITURE OF NU.146.04 MILLION

The Road Network Project (RNP-1) had carried out the pavement strengthening works on the Gelephu-Trongsa National Highway from August, 2007 covering a total distance of 98 KM. However, during the joint verification of the construction sites in August 2011, it was noted that in most of the stretches along the Gelephu-Trongsa National Highway, the road widening work was carried out by the DOR causing damages to the structures, viz. road side drains, breast walls and pavement constructed under RNP within two months of taking over. The DoR had carried out widening and improvement works on the same locations to fulfill the requirements of minimum geometrical specifications for the roads and bridges for safe transportation of heavy Electro-Mechanical Equipment package for Mangdechu Hydro Power Project (MHPP). The review of documents showed that the DoR and Project Management knew the requirement of the MHPP within four months of commencement of the RNP-1 works in 2007, despite of which the RNP-1 continued as per project document and thus leading to damages to newly constructed road structures amounting to Nu.146.04 million. It is the effect of improper planning and poor coordination between implementing agencies (AIN 9887)

- g) Adequate studies are not carried out apparently due to incompetence of the procuring agencies. Even if the consultants were involved, the agencies are not in position to validate the works delivered. While the Ministry of Works and Human Settlement have developed specific guidelines for different constructions such as bridges, roads, buildings etc., the PRR does not prescribe the requirement of feasibility studies before commencing the constructions. Thus, there are varied practices amongst procuring agencies in terms of taking up necessary preliminary feasibility studies. Such cases are depicted in **Case Study 3.12**.

3.3.1.2 Faulty drawings, designs, specifications and detailed estimates

- a) The Technical Sanction is issued based on the drawings, designs and specifications including detailed estimates amongst other necessary conditions. The Finance and Accounting Manual stipulates that unless otherwise specifically mentioned, all works shall be initiated only after obtaining Administrative Approval & Financial Sanctions and proper Technical Sanctions.
- b) The drawings and designs are schematic representation of kind of structures desired for specific intended purposes conforming to the statutory, technical and aesthetic requirements and provide basis for preparation of bills of quantities and detailed estimates. Any deviations to the initial drawings, designs and estimates must be supported by Technical & Administrative Sanctions.
- c) The RAA noted instances where designs and drawing were not prepared at all and the procuring agencies had undertaken the construction without these. Some procuring agencies have prepared or accepted deficient and flawed designs, drawings and estimates. Such cases are depicted in **Case Study 3.13**.

ILLUSTRATION: FLAWS IN DESIGN, DRAWING & TECHNICAL SPECIFICATION DEFECTIVE WORKS ENTAILING ADDITIONAL COST OF Nu. 33.30 MIL

The construction of airport runway, terminal buildings and river protection works at Bumthang Domestic Airport was awarded on 14th May 2010 to M/s Tshering Construction at a cost of Nu. 48,854,225.44 with schedule date of completion by 25th Nov 2010 giving contract duration of little over six months. As against the contract period of six months the works was actually completed on 10th Nov 2011 with a delay of over 11 months (348 days). The RAA noted following deficiencies in the management of construction project:

- There was no topographic survey, geotechnical study conducted to facilitate realistic preparation of design and drawings, technical specifications, estimates and BoQs;
- There were omissions of many items of works in the BoQs and estimates;
- Execution of various defective works

The RAA found that the airport was rendered non operational soon after the launching of air services apparently due to defective runway pavement which required resurfacing works involving substantial additional cost of Nu. 33.300 million. (AIN 10922)

d) There were also instances where the investment in creating infrastructure was decided without seeking expert recommendations from the relevant authorities and the infrastructure could not be put to intended use due to instability of the soil underneath. In some cases, though the implementing agency had sought technical studies from the competent authorities, the agencies failed to adhere to the recommendations resulting into persistent problems of landslides within the construction area. Such cases are depicted in **Case Study 3.14**.

e) The faulty drawings and designs have multi-dimensional effect on realizing the intended objectives of the proposed structures besides resulting in direct financial implications on the government.

f) The technical sanctions remain a mere formality as there is no process of validation of designs, drawings and estimates by the competent authority.

g) Further, in cases where drawings and designs are entrusted to the private consultants, the value obtained from the money spent on the consultancy services stand questionable.

h) The reasons of preparation of faulty drawings and designs include the following:

- Incapacity rendered by technical incompetence of officials assigned with preparing drawings and designs and/or inadequate number of qualified engineers in the particular procuring agencies. In some cases, inexperienced engineers were given the responsibility to handle the entire project management. A separate study needs to be conducted to see the rational deployment of engineers in the procuring agencies;
- Absence of proper check and control mechanism to review the drawings, designs and estimates by competent authorities. This can be applicable to both the designs prepared in-house and the private consultants;
- PRR does not have provision to hold consultants accountable for any problems arising from the drawings and designs prepared by them;
- There is possibility of collusive practices and intentional manipulation of work specification for unfair financial gain; and

ILLUSTRATION: NON-ADHERENCE TO TECHNICAL REPORTS RESULTED IN HUGE COST AND TIME OVERRUNS

The Punatsangchhu Hydroelectric Project Authority-I (PHPA-I) had gone for relocation of dam from the site indicated in Detailed Project Report (DPR) and identified the site at 1.5 Km upstream of location suggested in the DPR. The geophysical survey conducted by DGM indicated availability of bedrock at 35-40 meters below the river bed. Accordingly, the team of experts from CWC, CEA and WAPCOS confirmed that the new site was preferred.

Later, the CWC indicated that the depth of overburden at new dam site was similar to the site indicated in DPR. However the GSI, reported that the proposed location was worse than DPR site as the right bank slope was entirely covered by landslide debris.

A meeting between the Project Authority, WAPCOS, CEA, CWC and GSI stated that issues pointed out by GSI were technically manageable by entailing additional cost. Subsequently, the execution was commenced without taking up the strengthening works and when the excavation was at 55 meters, the sliding of whole mass of right bank occurred in July 2013. Since then, the construction of dam has been stopped and strengthening works at right bank had commenced.

The additional cost of dam relocation and strengthening works at right bank of dam site complex was estimated at Nu.7,545.46 million. The completion date of dam was rescheduled from 2013 to 2019 and now it has been rescheduled to 2022. This had led to huge cost and time overruns. (*Report of Joint-Performance Audit of Punatsangchhu Hydroelectric Project Authority-I*)

- There is absence of adequate documentation of detailed workings for quantification of works from the drawings for inclusion in the BOQ.

ILLUSTRATION: MISMATCH OF QUANTITIES IN DRAWINGS AND BOQ

The Department of Human Resources had accepted faulty estimates prepared by the consultant in the construction of Vocational Training Institute at Dolungang which was awarded at quoted rate of Nu.287.988 million. The estimate was prepared by Design and Supervising Consultant M/s Progressive Research Consultancy Services (PRCS) hired at a cost of Nu.4,755,500.00. There were multiple inconsistencies in the quantities of BOQ and those derived from the drawing and designs as shown in the table below (AIN 10490):

	Items	Quantity as per BOQ			Quantity as per Drawings			Deviation		Remarks
		Qty (Nos)	Rate	Amount	Qty (Nos)	Rate	Amount	Qty (Nos)	Amount	
Hostel Blocks	W2	48	15,500.00	744,000.00	30	15,500.00	465,000.00	18	279,000.00	It was for one block, there were three blocks
	D2	27	7,500.00	202,500.00	24	7,500.00	180,000.00	3	22,500.00	
	D3	60	7,000.00	420,000.00	66	7,000.00	462,000.00	-6	- 42,000.00	
Principal Quarter	W2	17	16,500.00	280,500.00	12	16,500.00	198,000.00	5	82,500.00	
	W2A	7	8,000.00	56,000.00	6	8,000.00	48,000.00	1	8,000.00	
	W4	10	7,000.00	70,000.00	5	7,000.00	35,000.00	5	35,000.00	
	V2	2	7,000.00	14,000.00	0	7,000.00	-	2	14,000.00	
	W2B	0	-	-	2	-	-	-2	-	
	W3	0	16,000.00	-	4	16,000.00	64,000.00	-4	- 64,000.00	
	D2	12	9,000.00	108,000.00	10	9,000.00	90,000.00	2	18,000.00	
	D3	4	8,000.00	32,000.00	6	8,000.00	48,000.00	-2	- 16,000.00	
Instructor Quarter	W2	28	16,000.00	448,000.00	22	16,000.00	352,000.00	6	96,000.00	It was for one block, there were three blocks
	W2B	0	-	-	6	-	-	-6	-	
	D2	18	8,000.00	144,000.00	12	8,000.00	96,000.00	6	48,000.00	
Support Staff	D3	18	7,500.00	135,000.00	24	7,500.00	180,000.00	-6	- 45,000.00	It was for one block, there were two blocks
	W2	28	16,500.00	462,000.00	22	16,500.00	363,000.00	6	99,000.00	
	D3	0	-	-	6	-	-	-6	-	

The RAA questioned the value for money derived from the consultancy services in view of the faulty estimates prepared which had potential to impact the quality of constructions.

3.3.1.3 Determination of construction duration

- Determination of construction duration is critical in order to provide reasonable timeframe to the contractors to complete and deliver the outputs. While it depends on the contractors' capacity to make available the required resources of labour, materials and equipment, it would provide rational basis to impose deadlines for completion.
- The comparison of estimated duration for constructions undertaken by some of the procuring agencies showed that the duration estimate varies to a wide range and there is no proper basis for determining the durations.
- The PRR requires the agencies to determine the equipment and key personnel required by the contractor to execute the work. However, there is no minimum requirement of labour to be committed for the works undertaken, which are actually critical in ensuring the progress of the works. The predetermined resources if identified would render basis for estimating realistic construction durations.

- d) Though the PRR requires for submission of contractors' work plan, the submission of work program is seldom insisted by the procuring agencies. Even if it is submitted, it is mere a formality as procuring agencies fail to check sequences of works and identifying milestones of the projects which shall facilitate monitoring and supervision by the procuring agencies.

ILLUSTRATION: CASES OF VARIED CONSTRUCTION DURATION FOR SAME TYPE OF WORKS

Different duration for same design and scope of works

The Construction of Dzongkhag Courts followed the same design having same estimates. However, the quoted rates and project durations had huge variances, in the construction of Courts in Dagana and Bumthang Dzongkhags.

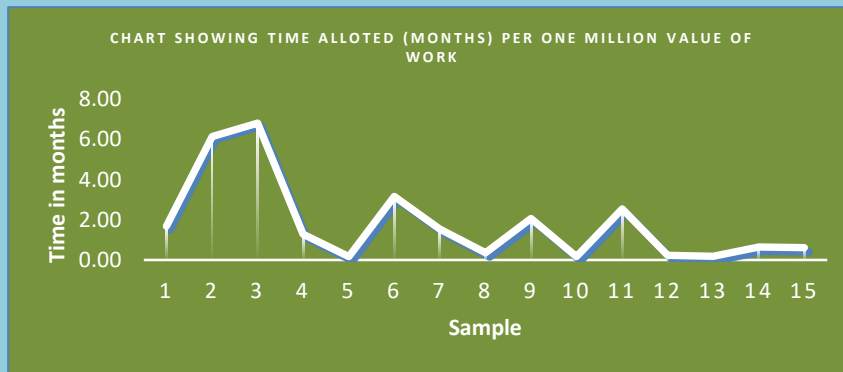
Place	Project Duration (in months)	Estimated Cost (in millions of Nu)	Quoted rates (in millions of Nu)	Delay (in days)
Bumthang	24	26.52	38.87	145
Dagana	18	26.27	28.33	101
Variations	6	0.25	10.54	

The construction of Royal Court of Justice at both Bumthang and Dagana were estimated at Nu. 26.520 million and Nu. 26.270 million respectively. However, the duration was estimated differently at 24 and 18 months for Bumthang and Dagana respectively.

It could be implied that distance for transportation of materials could have been the determining factor. However, since the onus of making required materials available rests with the contractor, it does not hold reasonable logic to influence the construction duration. It is the management imperative that drive their efficiencies insofar as mobilizing resources are concerned and not to be considered influencing factor for determining construction duration.

Duration determined not proportionate to value of work

The time determined for the sampled 15 construction works showed that there were no consistency in time allotment with respect to the value of works as depicted in the graph below:



The above chart depicts the duration in months per million Ngultrum value of work. The chart shows that for every million Ngultrum spent, the duration allocated ranges from less than one month to as high as seven months.

While the completion will depend on the overall efficiency of the contractors in managing the contracts, it is important to determine comparable construction periods for all construction works undertaken by the government, taking into account the minimum level of resources. The scientific basis would ensure realistic determination of time that is seen just and fair to contractors undertaking the project. And thus, avoiding possible compromise of quality in a bid to accomplishing the impossible.

- e) When duration of contract is determined unrealistically, and the work programmes are not matched with capacity of manpower, equipment and other resources, the contractors may not be able to complete the work within the stipulated duration. If the contract duration is not determined realistically and are not practicable, there is a possibility of contractor

factoring in associated and hidden costs in their rates. On the other hand the contractors may also be unfairly penalized for unrealistic short duration of construction period.

- f) The contract period allowed must be a realistic assessment of the time in which a reasonably competent contractor could be expected to complete having regard to not only the desired completion date but also in ensuring timely delivery of services.

3.3.1.4 Change of design and specifications

- a) The PRR stipulates that Technical & Administrative Sanctions must be obtained for adopting any deviation from the approved drawings, designs and specifications;
- b) The RAA noted instances of agencies not complying with the requirement as far as obtaining prior approval is concerned in cases where substantial deviations have occurred. Instances included not obtaining the technical sanction at all for the proposed project, and in some cases substantial changes were made without obtaining necessary approval of the competent authority. Such cases are depicted in **Case Study 3.15**.

- c) The changes to the original design have been made during the construction time. The management claimed that the changes were made in view of the practical difficulties during implementations. However, the RAA found that the practical difficulties as asserted by the management have not been properly assessed.

- d) While the changes from the original designs and specifications could be necessitated and driven by genuine requirements/difficulties, the requirement to obtain necessary approvals must be seen inevitable and the reasons for changes ought to be appraised thoroughly. The lapses in this areas might have following consequences:

- Undermining and compromising the technical soundness of the structures built as there is no validation of technical soundness without necessary approvals or technical sanctions;
- Avoidable cost and time overruns as changes without actual need or requirement basically drive enhancement of scope and durations. If the decisions are not driven by objective basis, it would have been taken solely to benefit the parties by way of enhanced scope of work;

ILLUSTRATION: TECHNICAL SANCTION NOT ACCORDED

The construction of Gelephu domestic airport was awarded to M/s Tashi Kunzom Construction Pvt Ltd. in June 2011 at a contract amount of Nu. 192.222 million with contract duration of eleven months. Administrative and technical sanctions are prerequisites of any construction work. However, technical sanction was not on record. There had been a lot of audit issues pertaining to the case.

The runway was shifted after substantial amount of excavations to another location. The reason for such a change during the execution was not documented and appraised. Rendering the expenditure on consultancy and additional works wasteful. Apparently it had root in the technical aspects of the project. (AIN: 10922)

- Wasteful expenditure in cases where consultants were engaged in preparation of initial designs.

ILLUSTRATION: CHANGE OF DESIGN AT LATER STAGE RESULTING IN WASTEFUL EXPENDITURE

The Thromde Administration, Phuentsholing had awarded the consultancy services for Design and Construction Supervision of two bridges over Omchu at Phuentsholing to M/s Bhutan Consultant & Research (BHUCORE). As required by the ADB, the Department of Roads, Ministry of Works and Human Settlement was requested for a Third Party review in April 2012. The review concluded that while the design met the strength and serviceability of the bridge, but could pose certain challenges during execution in view of dimension of the bore hole. It recommended use of special tool/equipment to execute the construction and to be handled by a specialist sub-contractor.

The work was then awarded to M/s Tundi Construction Pvt. Ltd., Nepal in May 2015. However, in January 2016, i.e. 8 months after the commencement of work, a change of design in bridge foundation from pile with a single span to well foundation was proposed. The reasons for the change were basically difficulty in boring, and permanent casting that were expected to take longer time and additional cost. The change was felt necessary during the visit of Secretary, MoWHS and subsequently, it was put up to the technical committee.

The challenges presented were:

- Mismatch of subsoil condition with investigation report
- Chisel and Bellar equipment caused heavy ground vibrations
- Seepage water hampering the boring

Based on the justifications, the Hon'ble Minister approved the change. The redesigning bridge was awarded to M/s STUP Consultancy Private Limited, Kolkota at N. 2.530 million.

The RAA pointed out following issues:

- Wasteful expenditure of Nu. 2.758 million paid to consultant as design was not used;
- Avoidable expenditure of Nu. 1.012 million paid to contractor for the value of works discarded after the change in design was approved after 8 months;
- There was no documents submitted by contractor expressing difficulty in executing the initial designs;
- After the approval, it was decided to use the soil study conducted for pedestrian bridge carried out earlier.

e) The lapses in this area could be attributed to the following:

- Agencies' apathy to the requirement of obtaining necessary approvals and technical sanctions basically driven by management override of controls and absence of control procedures to check on compliances to the requirements;
- Rush of project implementation and agencies are thrust with responsibilities to complete the projects within specified dates;
- If the scope of project had resulted in undue enhancement or curtailment of scope and cost, it could be a deliberate decision to favour the contractors;
- Absence of mechanism of holding the private consultants accountable in cases where the designs are prepared by the private consultants and the changes were required due to inadequacies of the designs and specifications.

3.3.2 Tendering, Evaluation and Award

In order to achieve the objectives of public procurement, the PRR requires that as far as practicable, all public procurements be conducted through an open and fair competitive bidding process. Depending on the urgency, volume and value of the procurement and the method adopted for procurement, the bidding process can vary from making of reasonable enquiries in the local markets to observation of elaborate procedural requirements. These include invitation of bids, thresholds, and minimum time limits, bidding process, bid security, performance security, evaluation and award of contract.

The RAA observed following issues related to tendering, evaluation and award process:

3.3.2.1 Bhutan Schedule of Rates (BSR)

- a) The BSR is a guiding document for projecting the costs of civil construction works. The most commonly used materials listed in the Bhutan Standard Bureau (BSB) approved brands are incorporated with the average market rates due to high diversity in type and class of construction material available in the market.
- b) All the items of work prescribed in the BSR are to be read and understood in conjunction with Specifications for Building and Road Works. The basic material rates are based on market prices of base towns Gelephu, Phuentsholing, SamdrupJongkhar and Thimphu. The rates are to be applied while analysing and developing built-up rates. The Labour and Material Coefficients are used for the purpose of analysis.
- c) The rates shown for all built-up-items are for up to 10 Km radius and inclusive of 5% hand tools & equipment and machinery & material wastages, 1% water charges and 10% overhead charges.
- d) The MoWHS disclaims that:
 - The BSR is supposed to be suggestive averages and not accurate current market rates. The users are to refrain from using BSR for the purposes of filling tenders, evaluating tenders, awarding works and/or making contractual payments and only use as guide;
 - The procuring agencies are suggested to analyse rates for specific construction projects as the BSR is designed primarily as a tool for estimation of construction projects. However, it is seen that the procuring agencies take it as given rates supposed to be used as guide for preparing estimates of the projects. This practice may not reflect the current market price and hence the estimates could be flawed;
 - The Department of Engineering Services do not assume any accountability for any issue arising as a result of individuals or agencies using the rates in the BSR. It is therefore, deemed incumbent upon the procuring agencies to undertake rate analysis of every project instead of using rates in the BSR. Thus, it is implied that the BSR is to be used as reference for use of nomenclature and specification of works and not for prices.
- e) The RAA noted following issues in the preparation of estimates for the construction works:

- Non exhaustive items in the BSR result in ambiguity in nomenclature, unit of measurement and rates of items of work specified in the BSR. The rates were not analysed and unit of measurement not aligned to standard of providing and laying of item of work and the RAA found exorbitant prices paid to the contractor/supplier;
- There were instances where contractors' bids were abnormally low or high from the procuring agencies' estimates although based on BSR rates for built-up items which in a way may also indicate unrealistic rates of the BSR.

ILLUSTRATION: ABNORMAL DEVIATIONS IN THE QUANTITIES OF BOQ AND ACTUAL EXECUTION

The Department of Road had estimated the construction of ‘Samdrupcholing-Samrang Road Project’ in Samtse which was executed by Construction Development Corporation Limited. Upon review of the initial estimated Bills of Quantities (BoQ) and the final executed quantities of work, it was noted that there were huge variations between the BoQ and final quantities, which could be attributable to poor estimates or unforeseen change in scope of the work at the time of execution. The quantities that changed were as high as 1303% on positive side and as high as minus 99% on the negative side. The two items which deviated considerably are as in table below:

Item	Description	Unit	Initial BoQ			Executed Quantity		Difference	
			Qty	Rate (Nu)	Amount (Nu)	Qty	Amount	Qty	Amount
10.07	Supply and place boulder walls as specified or as directed by Engineer [1800]	Cum	115.00	490	56,350.00	1,613.74	790,732.60	1,498.74	734,382.60
13.06	Providing and laying Reinforced cement concrete in sub-structure section including shuttering complete as per drawing and technical specifications and as per relevant clauses of sections: RCC M40 grade concrete	Cum	1150.00	6217.00	7,149,550.00	1.60	9,947.20	(1,148.40)	-7,139,602.80

Thus, the estimates prepared showed huge deviations indicating that the estimates are not even near to realistic indicating either prerequisites in determining the quantities of work or the BSR is flawed.

- There is no consistent approaches in application of cost index in different agencies despite the BSR stipulates procedures for calculation of cost index. The cost index are applied to base rates of Phuentsholing, SamdrupJongkhar, Gelephu and Thimphu determined in the BSR to cover the cost of making the items available at places of constructions. The varied practices adopted by the agencies result in different cost estimates. There is no system of validation of cost indices by central authorities as to the representative items identified for computation and weightage assigned to each items to reflect the objective analysis. There is no stipulations on regularity of such revisions due to which the agencies resort to different time period for computing cost index as shown in **Appendix C**.

f) There are gaps in the process of preparing BSR as described below:

- Inadequacies in BSR are largely attributable to the way BSR is prepared and extent of research and analysis undertaken for the purpose, i.e. market prices and labour/material coefficients are two major factors which contribute towards accuracy and reliability of BSR;
- The rates are collected directly from the market (dealers/suppliers) through informal enquiry. There is no formal procedures adopted as to obtaining through competitive basis or obtaining prices from minimum dealers/suppliers. The spread of suppliers/vendors are not ensured to reflect the overall market price. Hence the market prices determined and incorporated in the base rates may not be realistic or reflective of existing market prices;
- There is no time fixed for updating of BSR. The current trend has been two years since 2013 but there is no stipulations in the PRR or any other authorities on the time period for updating of the BSR;

- The coefficient related to labour had remained static for many years. Despite significant progress made in mechanization of construction sector, labour coefficients have not been changed indicating that the BSR does not reflect the changing dimension of the construction industry in Bhutan. The static labour coefficient will have substantial influence on the cost estimates;



- The coefficient for some equipment and machinery are not provided in the Labour and Materials Coefficient (LMC) 2017. The absence of coefficient may result in flawed analysis of rates in the event such equipment and machinery are deployed for the execution of works (e.g. use of Asphalt Drum Mix Plant in place of Spot Mix Plant and coefficient of Spot Mix Plant used for analysis of rates);
- The agencies tend to use national minimum wage rate in estimating the labour costs whereas the market price of labour are generally higher resulting in underestimation of project cost and necessitating revisions of estimates;
- There is no standardized specifications for traditional wood works or works pertaining to locally made products such as paintings, carvings, etc. Except for classifications into *Rab*, *Dring* and *Tha* connoting different quality, there are no scientific methods of specifications. The determination of values is difficult and hence, estimating the costs.

g) These inadequacies have following impacts:

- Unrealistic estimates that would result in high cost as the procuring agency's estimates may not be reasonable. When the basis for comparisons of bid amounts are not

reasonable, near realistic cost of the construction remain unknown. The procuring agencies do not know whether they obtain value for money;

- Inconsistent approaches of applying cost index lead to distortion and unrealistic estimates. This is a serious flaw in the present system of application of cost index which would impede value for money in public procurement. This has also bearing on the works executed departmentally as cost estimates influence what would be the final cost of the works;
 - This may result in abnormal variations in the costs of similar construction works in different places. While the cost could depend on the site condition such as type of soil, weather conditions, topography etc. but the absence of proper system of comparative studies and appropriate mechanisms to address such variations would cause substantial financial burden to the national exchequer;
 - Absence of standardized specifications, rates and coefficient for traditional wood works or works pertaining to locally made products such as paintings and carvings may have led to higher rates based on analysis and extra financial burden to the national exchequer;
 - The absence of coefficient for some equipment and machinery may result in flawed analysis of rates where such equipment and machinery are deployed for the execution of works; and
 - The works directly awarded are usually based on estimates prepared on the basis of BSR and when it is not reflective of market prices there are more chances of paying at inflated rates.
- h) Despite the above issues, the BSR is widely used documents in the government constructions and serve as reference point for cost as well as quality control in terms of technical specification for works. If there are no BSR, there is no basis for comparison and there could be risk of uncontrolled estimates based on individual analysis and danger of compromising quality of works.
- i) The BSR to be used as a prescriptive guide for estimation of public works needs to be more comprehensive, realistic and reflective of current market prices.

3.3.2.2 Improper evaluation

- a) The RAA noted instances where process of evaluation did not conform to the provisions of the PRR and thereby not upholding the spirit of the provisions. Such cases are depicted in **Case Study 3.16**. These have had implied impacts in delivery of services besides, impeding transparency in the process.
- b) The PRR prescribes that such methods and factors as specified in the bidding documents shall only be used in actual evaluation and not some other methods or criteria. Introduction of methods and factors not mentioned in the bidding documents would be considered unfair and shall be prohibited.
- c) The evaluation is based on point based system in two stages: Stage I: Bidder Qualification and Stage II: Bid Evaluation.

- d) The RAA noted instances of improper evaluation which generally takes place as follows:
- Including outside people holding license of different companies under key professional staff;
 - Considering technically non-responsive bidder as responsive;
 - Unjustified rejection of bid due to mistakes in computing, bid validity and rebate during bid evaluation;
 - Overlooking requirements of financial capacity, performance history and personnel requirements by the committee and considering particular bidder for award.
- e) The above lapses result in undermining the objectivity of the evaluation process, unfair treatment and wrong selection of bidders leading to huge financial implications.
- f) These non compliances can be attributed to the following:
- Lack of due diligence/clarity on the requirements coupled with inadequate oversight mechanisms instituted within the procuring agencies to ensure mistakes are detected and corrected timely;
 - Lack of transparency in disseminating the evaluation result to all bidders. Participating firms do not know the results of evaluation, as unsuccessful bidders are not notified of their results and reasons for non-award;
 - Non existence of mechanism for entertaining complaints or affected bidders choose to remain silent for fear of repercussions in future participations.

3.3.2.3 Unjustified rejection of bids

- a) The PRR specifies circumstances under which the Procuring Agency may reject bids without incurring any liability towards the contenders. These include:
- Bid/s being found not responsive as specified in the SBD;
 - All bid prices substantially exceeding the estimated cost;
 - Any or some of the bids appearing to have been tampered with;
 - The Rate Analysis submitted for the abnormally low bid is not acceptable to the client.
- b) The RAA observed instances where bids were considered non responsive and rejected on grounds/reasons that appeared not justifiable. Though reasons cited were insignificant non-compliance such as failure to submit documents by the bidders or overwriting not initialed, the RAA saw it irrational to have warranted rejection. Such cases are depicted in **Case Study 3.17**.
- c) Thus, process of bid submissions were administered purely by the letter of the provision and what was equally desirable was to also interpreting the intent of the requirement.
- d) In such cases, the RAA sees opportunity to create room for exercising due diligence and considering materiality of non-compliance to avoid additional cost that would entail as well as for the process to be seen fair and just in treating the participating bidders.
- e) The cases of unjustified rejections are possibly fueled by the following:

- Lack of due diligence or prudence to determine what is material/significant non-responsive bids. Mere failure to submit documents may not necessarily justify/merit rejections;
- Lack of transparency that might prevent bidders for lodging complaints as comparisons of bid evaluations cannot be done by non winning bidders;
- No provision in the PRR to determine materiality of non compliance of the bidders specifically on the aspects of additional cost that the rejection would entail;
- Absence of comprehensive guidance materials to sufficiently explain the principle of materially non-responsive bids with examples of material and immaterial issues.

3.3.2.4 Failure to reject non-complying bidders

a) The PRR prescribes circumstances under which procuring agencies may reject bids. The rejection of bid is justified when there is lack of effective competition, or bids are not substantially responsive or when bid prices are substantially higher than existing budget;

b) The RAA noted instances where bids which otherwise could have been rejected on account of not fulfilling the evaluation criteria were selected and works awarded. The audit review showed that requisite documents were falsified when cross verified with other sources but was considered for award;

c) The lapses had primarily occurred due to lack of due diligence exercise during the evaluation of the bids. The possibility of intentional manipulation cannot be ruled out. Such lapses are also apparently facilitated by following:

- Lack of appropriate internal controls instituted within the agency to check and correct any errors committed. The possibility of such errors going undetected can be minimized if adequate number of officials are engaged instead of entrusting to a single individual;
- PRR does not specify recourse or mechanism to enforce accountability to responsible officials and agencies for the lapses. With no deterrence through appropriate actions, the commission of errors in bid submission becoming norms amongst the bidders;
- The PRR prescribes institutional arrangements for any supplier, contractor or service provider to lodge complaints regarding loss or injury resulting from an alleged breach

ILLUSTRATION: FAILURE TO REJECT NON-COMPLYING BIDS

The Department of Air Transport, Paro had awarded the contract for the construction of new Terminal Building at Gelephu Domestic Airport to M/s Dee Gee Construction for a contract price of Nu. 9.882 million. A review of the tender documents indicated that the winning bidder did not satisfy the “Evaluation and Qualification Criteria” of Standard Bidding Documents of the ADB project.

The bidder had submitted financial statements for only two years instead of the required three years as required to prove he had sound ‘Historical Financial Performance’. The bidder had also provided false information with regard to ‘Personnel Requirements’, where the Project Manager’s experience in works of similar nature and the experience of site engineer as submitted through hard copies were found conflicting with the CDB records. The Bid Evaluation Committee failed to exercise reject the non-complying bidder. (AIN: 13616)

of duty. However, the affected bidders apparently do not resort to such mechanisms due to lack of transparency in bid evaluation and for other reasons.

- d) With no remedial actions either prescribed by the central authorities or the procuring agencies, the issues of committing such errors have far reaching impacts of:
- Selecting and awarding contracts to non-responsive bidders. This would risk the fulfillment of contractual obligations in a way desired by the procuring agencies;
 - Unfairly depriving bidders who otherwise could have won;
 - Deteriorating trust and confidence of potential bidders in the government procurement system;
 - Rationalizing wrong doings in the absence of stringent actions for the lapses.

3.3.2.5 Issues related to imbalanced rates

- a) The PRR states that “where the prices in a particular bid appear abnormally low or the bid appears seriously unbalanced, the Procuring Agency may reject it only after seeking written explanations from the bidder submitting the low or seriously unbalanced bid”.

ILLUSTRATION: ABNORMALLY IMBALANCED RATES

As a case in point, the RAA noted that the tender committee had accepted abnormally imbalanced rates in the award of work of construction of domestic airport at Gelephu undertaken by the Department of Civil Aviation. It was found that the nomenclature for item was not within the BSR and the contractor had quoted abnormally high.

The RAA pointed out that if the management had used the existing nomenclature which was relevant for the particular item, the quoted rate would have been found to be abnormally high. Thus, the use of irrelevant nomenclature provided no basis for comparison of quotes during evaluation.

The RAA used the existing nomenclature which was relevant for the particular item of work from the BSR to conclude that the bids were abnormally high. The wrong use of nomenclature was specific to three items of work: earthwork excavation, providing and laying Dense Bituminous Macadam and Providing and laying Asphalt Concrete. As per RAA’s computation, there had been financial implication of Nu. 64.548 million. (AIN 10922)

- b) The RAA observed such instances as illustrated.

- c) The main causes of the lapse are:

- Application of wrong nomenclature for items of works which could either be driven by incompetence of official in preparing Bills of Quantities or deliberate intention to extend undue benefits to the party;
- Non-according or inadequacies in according technical sanction by the competent authorities;
- Lack of review mechanism including supervisory mechanism instituted within the agency in the form of internal controls and segregation of duties could be other reason that led the error go undetected and uncorrected;
- E-tool not incorporating feature to detect imbalanced rates or front loading of rates;
- Inadequacies in the provision of the PRR to hold the official concerned accountable for the errors entailing huge financial implications;
- Due process of obtaining explanations for quoting abnormal rates were not complete.

- d) Seriously imbalanced rates have effects on performance of the contract and additional cost burden to the government. The imbalanced rates must be reviewed thoroughly in order to ensure that the rates offered are not too low that performance of contractor is affected or too high that the rates offered are not justified.

3.3.2.6 Issues related to analyzed rates

- a) As per the PRR, the agencies should analyze the rates to make payments if the quantity of item of work deviate beyond 20% and item of work not included in the BoQ.
- b) The RAA had observed instances of rate analysis carried out by agencies to make payments for deviated items and items not included in BoQ. However, there are instances where the rate analysis were either wrongly done or improperly done.
- c) The RAA had observed that the rate analysis are being carried out by individual agencies because of which varying practices exist within the government agencies. Such cases are depicted in **Case Study 3.18**.
- d) The rate analysis were carried out wrongly by including items which are inadmissible as per the Labour and Material Coefficient (LMC) 2011 and without observing the methods and process prescribed in the LMC 2011.
- e) The rate analysis were carried out on wrong item of work specified in the BoQ thus resulting into wrong rate analysis and leading to higher payment to the contractor.
- f) The RAA observed that the wrong analysis of rates had always resulted in enhanced rates and the extent to which it is applied had brought additional cost implication to the government.
- g) The PRR requires that the rate analysis for deviated items beyond 20% to be carried out and approved by the client prior to execution of the deviated works. This provision is, however, not enforced giving rise to huge additional payments.
- h) The PRR requires analysis of rates to be done, however, the fact that objective analyses have not been carried out indicate inadequate due diligence being exercised to determine objective/fair rates in absence of prescribed guidelines. Besides it also provides to show that there are no control or validation process in approving the rates determined.

ILLUSTRATION: PAYMENT THROUGH INCORRECT ANALYSIS OF RATES

The Department of Civil Aviation (DCA) had paid the contractor at analyzed rates for Dense Bitumen Macadam (DBM) and Asphalt Concrete (AC) for the construction of Gelephu Domestic Airport. It was observed that the rates of machineries and equipment were used at revised hire charges of CDCL, the effective date of which was after the contractor had completed the work. Further, the rate of machinery used for rate analysis is other than the one specified in the LMC 2011. Thus, the claim of the contractor was over stated by Nu.32.680 million due to wrong rate analysis.

3.3.2.7 Use of evaluation criteria not specified in the bidding documents

- a) The PRR prescribes that only such methods and factors as specified in the bidding documents shall be used in actual evaluation. Introduction of methods and factors not mentioned in the bidding documents would be considered unfair and shall be prohibited.

- b) The RAA had come across a particular case where procuring agency had adopted different evaluation criteria and methods not specified in the bidding documents.

IIIUSTRATION: ADOPTION OF EVALUATION METHODS AND CRITERIA NOT SPECIFIED IN THE BIDDING DOCUMENTS RESULTING IN UNJUST DISCRIMINATION OF BIDDERS AND ADDITIONAL FINANCIAL IMPLICATION OF NU. 106.199 MILLION

Four bidders submitted the bids for the Construction of Phase I(A) – Students’ Residence and Dining Hall at Paro. The evaluation was carried as follows:

Stage 1: Bidder Qualification

Only two qualified and further evaluation of Capability and Capacity was carried out for two qualifying bidders. The points scored was as follows:

Parameters	Sub-Parameters	Points scored	
		M/s Penjor Construction Pvt. Ltd.	M/s Vajra Builders Pvt. Ltd.
Capability (85)	Similar Work Experience (5)	2	5
	Access to equipment (20)	16.5	20
	Availability of Manpower (50)	40	45
	Average Performance Scores (10)	9.9	9.5
Capability Score		68.4	79.5
Capacity (15)	Bid Capacity (10)	10	0
	Credit line (5)	2	0
	Capacity Score	12	0
Total Score		80.4	79.5

As per the bidder qualification score, both the bidders qualified.

Stage 2: Bid Evaluation

The bid evaluation was done as follows:

	Points scored	
	M/s Penjor Construction Pvt. Ltd.	M/s Vajra Builders Pvt. Ltd.
Financial Score (10%)	10	6.09
90% of Stage One	72.36	71.55
Total	82.36	77.64
Negative Score	46.50	20.00
Final Score	35.86	57.64

The negative scores were awarded on the points scored after Stage Two. The total scores after negative scoring were 35.86 and 57.64 for M/s Penjor Construction Private Limited and M/s Vajra Builders Private Limited respectively. The work was then awarded to M/s Vajra Builders Private Limited.

The use of evaluation method and criteria not specified in the bidding documents have resulted in awarding of contract to bidder who quoted the highest price. This had led to the overall cost implication of Nu. 106.199 million.

- c) The maximum scores in each parameter under stage one bid qualification were altered from the ones prescribed in the PRR. It appeared that weightages were conveniently changed to suit the predetermined outcome of the evaluation.
- d) Further, even in the stage two bid evaluation, the computation of final score was not done as per the process prescribed. It was found that the final score under stage one were

further taken to compute the score at the evaluation stage which is not suggested in the PRR.

- e) The final scores changed drastically with the negative scoring and the bid which scored highest after completing the process specified in the bidding documents was found relegated to second position and the one which was placed second emerged as the lowest evaluated bidder.
- f) It was noted that even after completing the process of evaluation specified in the bidding documents and the final points were computed which actually should form the basis for award, the procuring agency awarded negative scoring based on the criteria developed without any apparent basis.
- g) The contract was awarded on the basis of points secured after negative scoring with the additional financial implication of Nu. 106.199 million.
- h) While the PRR suggests criteria in addition to the price offered, it further suggest to adopt additional criteria which shall be objective and non discriminatory. However the particular instance is a clear case of discriminatory criteria to eliminate the actual winner by imposing negative scores, which was not within the scope of the bidding documents nor the intent of the PRR.
- i) Besides discriminating the bidder on the basis of criteria which are not seen objective, the adoption of unconventional method of evaluation had compelled the government to bear huge additional cost representing about 65% above the cost offered by initial lowest bidder.
- j) Even if adoption of additional criteria was necessary, prudence should have been exercised by weighing additional cost vis-à-vis benefits arising out of applying additional criteria.
- k) Such issues apparently have root in the following:
 - Lack of internal controls to review the methods and process of evaluation of bids within the procuring agency before the final decision of award is made to detect and remedy the mistakes or intentional wrongdoings;
 - The PRR does not specify administrative structures of overseeing and exercising control or vigilance functions over procuring agencies on a regular basis.
 - The evaluation was not done through the e-tool system which otherwise would not allow changing the weightage of parameters and sub-parameters. Besides, alteration in the final computation of scores would be disallowed if e-tool was used.

3.3.2.8 Deficiencies in parameters of bid evaluation

- a) The availability of manpower parameter evaluates bidders on their ability to deploy personnel with suitable qualifications and experience in order to ensure timely and quality execution of the work.
 - The documents evidencing employment of persons as permanent as well as on contract are suggested to be submitted by the bidders. However, fictitious employees indicated as engaged on contract cannot be ruled out as signed contract can be made available anytime.

- There is no check on engagement of persons whose license have been blacklisted for non fulfilment of contractual obligations in contract works with other procuring agencies. The particular person could be managing the whole contract as employee or sub-contractor of the winning bidder;
 - There is also no system of accrediting technical personnel in various disciplines of engineering such as structural, electrical, architectural, environmental, water, bridge, urban, etc.
- b) The bid capacity parameter evaluates the bidder on the capacity of his/her resources to take on more work in addition to what he/she is already doing. This parameter is crucial in determining whether or not the bidder can successfully execute the work that he/she is taking up given his/her resources and the work he/she is already committed to. From the review of the points/weightage assigned, it is noted that:
- While this criteria assumes critical in ensuring successful execution of the work by the bidder, commensurate weightage is apparently not assigned. The bidders need to score at least 65% to qualify for undertaking tendered work. Even if bidder scores 'zero' in bid capacity, which is to say that bidder does not possess required capacity to undertake the work, the bidder can still manage minimum points from other parameters to qualify. Therefore, the weightage of 10% assigned on this parameter does not influence his/her qualification in a manner it could potentially affect the overall success. This could be the reason why many projects fail to meet deadlines.
 - Bid capacity must therefore be given significant weightage to influence the qualification by way of enhanced points or treat as a separate qualification with minimum points to be scored.
 - Contractors may be involved in contract works tendered out by agencies not within the purview of e-tool. Lack of information on works in hand would jeopardize the objectivity of scores given to particular bidder.

c) The technical score is intended to merely qualify the bidders in terms of technical capacity and capability. Since the qualification score is not used for computing the final score, the award of work is basically driven by the financial bids, which carries weightage of 90% of the total score. Hence, there is no preference given for the firms which score higher in technical evaluation;

d) The PRR intends to award the work to the “lowest evaluated bidder”. However, looking at the system developed for evaluation and award, except qualifying the firms in terms of technical capacity, it is by design that the firm offering low bids secures higher final score as illustrated:

e) The parameters would have been prescribed with the intent to put in place objective evaluation system to ensure that bidders who compete are capable and have necessary resources at his/her disposal. Besides, there must be explicit preference for technical superiority. If not, there could be risk of:

- Selecting wrong bidders whose performance of contract would risk the overall success of the project. The reasons for not being able to meet deadlines may be due to failure to deploy required resources by the contractor.
- The differentiations made on the basis of these parameters would unjustly restrict healthy competitions which might result in procuring agencies by design resort to unjust discrimination;

ILLUSTRATION: AWARD OF WORK DRIVEN BY FINANCIAL BID

Assuming that the bidding Firms A and B qualify with technical score of 65 and 100 respectively in the Bidder Qualification. The Firm A bids Nu. 100,000 and Firm B bids Nu. 150,000 and have secured 10 points each Price Preference Parameter. The final scores for award of work under the present evaluation system are computed as below:

	Firm A	Firm B
STAGE ONE : BIDDER QUALIFICATION		
Technical Capacity Score	65	100
STAGE TWO : BID EVALUATION		
A - Price Preference (10%)	10	10
Say, the Financial Bids of firms are Nu.		
	100,000	105,000
B - Financial Preference (90%)	$90 \times \frac{\text{Lowest quoted bid}}{\text{Financial bid of X}}$	90
		85.70
Total Score (A+B)	100	95.70

As per the score, Firm A secures 100 and Firm B secures 95.70. The work will be awarded to Firm A even though it has secured just minimum points in Technical Capacity. While Firm B which secured maximum possible points in the Technical Capacity, is not able to secure better points than Firm A due to its higher bid price. Therefore, the firm which is assessed to possess superior technical capability and bid capacity does not, by default, stand chance to win the contract if bid prices are higher.

The logic of applying such scoring system may hold true if financial bids of technically superior are substantially higher but, to the extent of tolerable deviation, it does not seem logical to totally disregard technical superiority. Technically, the PRR does not conform to its claim of awarding the contracts to the “lowest evaluated bidder”.

The above analysis confirms that the financial bids significantly determine the selection of contractors.

3.3.2.9 Direct Award of work

a) The PRR allows direct contracting method to be used wherein the procuring agencies can negotiate the terms and conditions of its procurement directly with one or more bidders. It

also specifies circumstances under which this method can be preferred and also prescribes the financial thresholds.

- b) The RAA observed instances of works being awarded directly without applying and adhering the appropriate contracting methods and thresholds prescribed by the PRR; Such cases are depicted in **Case Study 3.19**.
- c) The agencies cited mostly limited time and urgency that necessitated resorting to direct award.
- d) The practice of awarding contracts directly not only violated the PRR but also impeded transparency and competition amongst the potential bidders. Besides, equal opportunities were not provided to the potential bidders but restricted to ones awarded with the works;
- e) The direct award without conforming to the provisions of the PRR also disregards both the technical and financial competence of the contractors as qualification and evaluations are not carried out. This would have consequential effect on the delivery of quality outputs;
- f) While the PRR allows direct contracting methods under specified circumstances and thresholds, the agencies seem to inappropriately use under circumstances not within the spirit of the PRR. This violation could be attributed to the following:
 - Urgency claimed by the agencies could be fueled by delayed procurement process initiated by the agencies. In cases where the actual construction is pushed towards the end of the financial year, even if the works could be completed in time, there is a risk of compromising quality in the process of hastening the process.
 - Agencies tend to use the provision of the PRR to justify the violation as the PRR does not require authentication of justifications for resorting to direct contracting.
 - The PRR does not specify the competent authority to approve the application of direct contracting under such circumstances.
 - Lack of transparency in which the information of direct award is disseminated to stakeholders with appropriate reasons or basis.

3.3.2.10 Award to non-participating bidder

- a) There had been a case wherein contract was awarded to party who did not participate in the tenders which was in deviation to PRR;
- b) The award without participating in the bidding ruled out the competitions besides, providing undue advantage to the contractor at the cost of other bidders who had responded to the tender call;
- c) Such practice is indicative of overriding controls instituted to oversee the procurement process. This may allow deliberate and intentional flouting of rules to extend undue advantage to some parties.

3.3.2.11 Award to non-responsive bidder

- a) The RAA observed cases where bidder who was evaluated as technically non-responsive bidders were considered and awarded the work. The reasons cited for consideration was time constraint, and that the rates offered were practically best etc., which the RAA found not adequately substantiated. Such cases are depicted in **Case Study 3.20**.

ILLUSTRATION: AWARD OF CONTRACT TO FIRM WHICH DID NOT PARTICIPATE IN THE BIDDING

The Gewog Administration, Goserling, Tsirang had called tender for hiring of equipment for Construction of Farm Road. Three bidders responded and found all to be responsive. The Tender Evaluation Committee recommended Gewog Level Tender Committee to review and decide on the mode of execution. The work was found awarded to M/s K.C Heavy Equipment Hiring, Gelephu at Nu. 3.3364 million.

The RAA noted that firm which was awarded the work had not participated in the bidding. It was found that the decision to award was made by Gewog Tshogde Meeting which was chaired by Gewog Administrative Officer in the absence of the Gup.

The Gewog responded that since the approved budget was not sufficient, the GT had gone for contractor who could carry out the work at lower rate (Nu. 270.00 per meter) which was lower than the quoted rates of three firms which responded. It also stated that despite awarding to different contractor, the Gewog had not received any complaint from three bidders.

The RAA pointed out the improper conduct of procurement process and the possibility of existence of conflict of interest. (AIN 13686)

ILLUSTRATION: AWARD OF CONTRACT TO A NON-RESPONSIVE FIRM

The Department of Civil Aviation had floated NIT for the construction of domestic airport estimated at Nu. 42.461 million. The two firms responded with following quotes:

1. M/s Tshering Construction – Nu. 49.154 million with plus 5% rebate
2. M/s Gaseb Construction – Nu. 57.902 million

Notwithstanding that both the bidders were found technically non-responsive as per the terms and conditions set out in the SBD, M/s Tshering Construction was considered for technical evaluation. The bidders were found not complying the SBD specifically on plus 5% rebate at the last page of tender and the requirement to submit copy of bidding documents as per the Instructions to Bidders.

The management responded that though the committee noted the failure of the bidders to comply with SBD, it suggested awarding in view of the time constraint and best rates amongst other grounds.

The RAA reported that time constraints for re-tender was not found justified as commencement of work was delayed by more than 2 months and the copies of documents claimed to have been obtained did not appear identical. The RAA asserted that the acceptance of plus 5% rebate was not proper and had resulted in undue financial advantage of Nu. 2.158 million. (AIN 10698)

competent authorities to regulate and ensure appropriate compliance to the requirements;

- Absence of relevant provision in the PRR specifying authorities to oversee such non compliances or overriding of control procedures.

3.3.2.12 Direct award of additional works

- a) The PRR provides for direct contracting in the case of additional works provided that the value of the additional work does not exceed twenty percent (20%) of the original contract amount, or the maximum threshold value for the use of Limited Tender whichever is lower. For additional works exceeding twenty percent (20%) of the original contract price, and subject to availability of budget within the same program, special approval must be sought from the competent authority.

b) This practice of awarding the work to non responsive bidder not only undermine the intent of the PRR but also have other implications such as:

- Compromising quality of work as the technical capability have not been considered for the award or the agencies have manifested indifference to the technical capacity though evaluated as non responsive. The suitability and competence of the contractor are rendered not relevant at all;

- Since the financial capacity was also not taken into consideration for the award, the agencies remain oblivious to party's financial capacity to successfully execute the work given his/her resources and the work already committed;

- Impeding transparency and equity as the work was not awarded conforming to the prescribed rules and eliminating healthy competitions amongst the potential bidders that would result in government not achieving value for money; and

- Promoting unhealthy practices as such means of selecting the contractor cannot be considered or seen to be fair but an apparent strategy to extend undue favours to some parties.

c) These irregularities apparently have root in the following:

- Indifferent attitude or laxity of the

- b) The RAA noted instances of direct award of additional works of value substantially exceeding 20% of the contract to the same contractor without opting competitive bidding as per the thresholds prescribed in the PRR. Such cases are depicted in **case study 3.21**.
- c) The experiences of the RAA showed that the violation of PRR happened due to following reasons:
- Improper planning where scope of works could not be ascertained and critical components of works have not been included in the BOQ initially. The requirement of particular items of works was felt during the execution;
 - The procuring agencies cite limited time for open tenders and the works are usually awarded to the same contractor involved in the execution of the initial contract.
- d) This has similar implication as in direct award where government is deprived of competitive rates and provide opportunity to procuring agencies to extend undue favour to the parties. Moreover, awarding additional works far in excess of 20% and at times in excess of the value of original contract would also indicate huge understatement of original cost estimates, possible use of inappropriate method of bidding and constitution of inappropriate level of tender committee undermining planning and budgeting process and restricting wider participation and competitive offers.
- e) With regard to award of additional work exceeding 20% of the contract value, the PRR does not specify who is the competent authority to approve the work. There is also no stipulation of upper limit of value of additional work which at times exceeds even original contract value.

ILLUSTRATION: DIRECT AWARD OF ADDITIONAL WORK

The Dzongkhag Administration, Trashiyangtse had awarded successive additional works of Nu. 10.028 million and 9.924 million in the construction of urban road at Khitshang Town, Duksum which was initially awarded at Nu. 17.999 million. The additional works were the construction of service road and construction of sewer network for new town development. The additional works constituted 232% above the initial contract value.

The Dzongkhag cited site situation for the first additional work as it not possible to executed the work by different contractor where parallel works of excavation and dumping of earth was not found safe due to steep land profile. The Dzongkhag also offered justification that there was limited time within which the plot owners were required to start construction of houses after allotment of the plots.

The reason for the second additional work of constructing sewer network was that it was overlooked by the Ministry and the Dzongkhag. It was submitted that the need was realized later by the Dzongkhag before laying of the base course. (AIN 13391)

3.3.2.13 Piece meal award/ Splitting of works

- a) The PRR does not allow the procuring agencies to split the work for the purpose of avoiding the application of particular methods prescribed. Even if it is to be split, the total value of lots must be taken into account for the purpose of applying the threshold and determining the procurement method to be applied;

- b) The adoption of splitting system was noted as one instance and not seen to be rampant across agencies. However, there could be possibility that agencies might resort to it if it is not checked and monitored.
- c) Such practice would undermine the objective of the PRR in prescribing appropriate thresholds to ensure transparency and soliciting wider competitions. Besides, if not monitored, such practices could be resorted to specifically for the purpose of patronizing or favouring some individual parties by eliminating competitions.
- d) The occurrence of such lapses are seemingly made convenient due to inappropriate safeguards or monitoring mechanisms within the agency to ensure compliance to the requirements.

ILLUSTRATION: SPLITTING OF WORK COMPONENTS

The Construction Development Corporation Limited had undertaken construction of retaining walls split into five smaller packages at the Office premises of Tobjikha. The details of packages were as follows:

Sl. No.	Name of work	Award Value (Nu.)	Contractor
1	Penal Retaining Wall	273,261.41	M/s Yang Construction
2	Retaining wall below staff quarter	644,986.00	M/s Radhi Construction
3	Retaining wall behind staff quarter	404,499.00	M/s Radhi Construction
4	Retaining wall below Guard house	313,479.46	M/s SangayZangmo Construction
5	Retaining wall at Guard House	438,046.59	M/s Radhi Construction
Total Work Value		2,100,609.27	

The RAA pointed out the deliberate splitting of works into smaller packages to avoid procurement process. The management responded that due to isolated location of sites, it was difficult to find potential contractors. Since the open tender required minimum 30 days, the direct contracting was resorted to save time (AIN 14064)

3.3.3 Performance Security

- a) The issues pertaining to performance security in some of the agencies include:
- Procuring agencies not insisting on submission of performance security from the contractors;
 - Forging of Bank Guarantee submitted in lieu of performance security;
 - Failure to renew the bank guarantee on expiry;
 - Non-forfeiture of performance security on termination of the contract for failure to deliver the contractual obligations;
 - Untimely release of performance security;
 - Excess release of performance security.

ILLUSTRATION: NON-RENEWAL OF BANK GUARANTEE

In the construction works at College of Science and Technology, the security deposit deducted from the RA Bills amounting to Nu. 15.745 million was refunded based on the production of unconditional bank guarantee.

However, the bank guarantee which was expired had not been renewed by the contractor and the college management had failed to follow-up with the contractor.

ILLUSTRATION: FORGING OF BANK GUARANTEE

The work of Construction of Park Range Office at Nepthangka under Jigme Dorji National Park (JDNP), Punakha was awarded to M/s T.D. Dendup Construction for a duration of 10 months.

The Bank Guarantee in lieu of 10% Performance Security submitted by contractor was asked to be renewed as it neared expiry but, the RICBL, Head Office, Thimphu denied the issuance of such Bank Guarantee in favour of M/s T.D. Dendup Construction. The misrepresentation was highlighted in the Minutes of Meeting held on 2nd July, 2016.

b) The issues are basically resulting from lack of due diligence and control measures within the procuring agencies to detect and take corrective actions. Such cases are depicted in **Case Study 3.22.**

c) The purpose of performance security is to guarantee the performance of contractual obligations. The instance of non-obtaining/non-renewal of bank guarantee does not provide necessary safeguards to protect the interest of the procuring

agencies in the event parties fail to carry out contractual obligations.

3.3.4 Insurance

- a) The Standard Bidding Document require the Contractor to provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles stated in the SCC for the specified events which are due to the Contractor’s risks.
- b) If the Contractor does not provide any of the policies and certificates required, the Employer may affect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due from the Contractor to the Employer.
- c) The RAA noted following issues regarding the insurance.
 - Some agencies do not insist or oversee whether the contractor has insurance coverage for the works undertaken.
 - Specific to construction of bridge, the contractors were allowed to quote as separate items of work. The RAA noted that contractors derived undue benefits as the

ILLUSTRATION: CASE OF NON-INSURING OF WORKS

The Regional Office, Department of Roads had not insisted the contractors to ensure the Pavement Strengthening Works along Wangdue-Changchey Primary National Highway.

During the site visit, the RAA noted that the stretch of road pavement was completely damaged at the core project areas. The value of damages worked out to Nu. 7.135 million. Since the work was not insured, the work could not be restored.

The management responded that the insurance was overlooked and the damages to be rectified with 10% security money withheld by the Regional Office (AIN 12238)

premium paid to the insurance companies were very low compared to the rates quoted by the contractor;

- There had been an instance wherein after the completed works were washed away by flood, the agencies had not insisted the contractor to redo the work as particular structure was found not necessary. However, the contractor had claimed the insurance from the company.
- d) The requirement of insurance is to provide safeguards in the event of eventualities/destruction occurring to the works undertaken and it is in the interest of both the procurer and the contractor.

ILLUSTRATION: NON-RECOVERY OF INSURANCE EXPENSES PAID

The Yangbari Bailey Suspension Bridge under Gongdue Gewog, Mongar was constructed at the cost of Nu. 57,716,656.30 in three apparatuses. M/s Tachog Construction, the contractor for construction of abutment/anchor had quoted insurance as a separate item of work in the BoQ and was duly approved by the procuring agency. Subsequently, the contractor was compensated Nu.1.2 million as insurance premium.

However, upon review of policy documents of the contractor, insurance cover was taken for only the materials upon payment of Nu.133,779 constituting only 11.26 % of the amount claimed by him.

RAA insisted on recovering difference between the insurance amount paid and premium actually paid. (AIN: 13880)

- e) Considering the insurance as a separate item of works provide unreasonable/undue benefits to the contractors. The quoted rates for insurance had always been higher than the insurance premium and the difference is an additional cost to the government. Such cases are depicted in **Case Study 3.23**.

ILLUSTRATION: NON RESTORATION OF DAMAGED STRUCTURES DESPITE CLAIMING INSURANCE BY THE CONTRACTOR

The construction of retaining wall along the football field of the Minjey Middle Secondary School was completed at Nu. 6,665,266.12 by M/s T K Construction. The RAA on enquiry learnt that the completed works were completely washed away and the contractor had not redone the work.

Contrary to management's statement that contractor did not claim insurance for the damaged works, the RAA confirmed that the contractor had actually claimed insurance amounting to Nu. 5,240,887.56 from the Bhutan Insurance Limited. The management also maintained that due to re-orientation of the layout of the football ground, reconstruction of wall was not felt necessary.

However, the RAA asserted that besides defrauding the government and siphoning off insurance claims by the contractor, the cost of Nu. 6.665 million incurred on construction of wall was a total waste. This had occurred due to improper planning of the requirement and improper safeguards put in place to check against fraudulent practices perpetrated by the contractor. (AIN 12026)

- f) In case of damages occurring to the structures/works during execution and within defect liability period, though the restoration is the responsibility of the contractor, appropriate insurance would provide adequate safeguards to both the contractor and the procuring agencies.

3.3.5 Advances

- a) The PRR specifies the type and limit of advances to be paid to the contractor along with the conditions for granting such advances. Mobilization advances are to be paid on submission of the required performance security and an unconditional bank guarantee for an equivalent amount of mobilization advance.
- b) The Secured advances are paid based on the materials delivered at the site of works along with specified conditions of specification, safeguards and declaration on passing lien on rights of the materials brought at site.
- c) The following are general issues pertaining to advances:
 - Grant of unjustified advances in excess of limits of contract provisions and the PRR;
 - Non-recovery of advances in line with the terms of contract. Where contract provide for recovery of advances in full, the advances remain unrecovered even when substantial portion of works are completed. In some cases, the advances had remained unadjusted even after payment of the final bill;
 - The procuring agencies failing to adjust the advances from contractor's bills either from the running or final bills. In the cases of non-deduction from the final bills, the obligation of the contractors cannot be pursued as the work has been already taken over and final bill are passed. Such cases are depicted in **Case Study 3.24**.

ILLUSTRATION: NON-LIQUIDATION OF ADVANCES EVEN AFTER COMPLETION OF WORKS

The contract for the construction of 6 Nos. of Hostel Block (Package IIIB) was awarded to M/s T & K Construction, valuing Nu. 91,777,335.90 with a completion period of 24 months.

It was noted that an amount of Nu.16,153,679.00 was paid to the contractor out of which Nu.11,002,058.00 was found recovered from the running bills, advances to the extent of Nu. 5,151,621.00 had remained un-recovered from the contractor even after completion of work. The advance had remained unrecovered due to non-deduction of advances in proportionate with the physical progress of the work at site.

contract or the PRR.

- d) Lack of proper verification of bills can lead to non-deduction/adjustment of advances with resultant over or double payments for items of work executed.
- e) The agencies generally do not recover the advances on pro-rata basis or proportionate to value of works completed.
- f) Advances are given to contractors/suppliers without any interest obligation. If the releases and recoveries are not regulated as per the contract terms and conditions, the advances

given in such manner constitute undue financial benefits extended to the parties. The government bears the interest forgone from the parties.

3.3.6 Rebates

- a) As per the PRR, the bidders are permitted to offer discounts or rebates. These discounts should be announced during opening of the bid. If the discounts are not announced during opening of bids, it should not be considered in the evaluation.
- b) The RAA noted instances where the term “rebate” is applied as both additional charge and discount offered by the bidders on the bid value. The RAA raised concerns on the anomaly in the interpretation of the term and pointed out differences as financial advantage to the contractor. Such cases are depicted in **Case Study 3.25**.
- c) Besides anomaly in the interpretation of the term, issues of non deduction of rebates from the running bills and the final bills are prevalent in procuring agencies.
- d) The anomaly in the interpretation of the term arise from unclear articulation of the intent in the PRR and other related documents. For lapses of not applying rebates offered and recovering from the contractors result from lack of controls exercised while evaluation of bids and passing the claims.
- e) Anomalies in the interpretation of term “rebate” create confusion and it seemingly act against the intent of the PRR and not protecting the interest of the procuring agencies.
- f) The lapses of not deducting rebates offered from the claims have visible financial loss to the government which, through RAA's experiences, is irreversible if the lapses go undetected during the auditing which is possible if audit plan scopes out particular contract works.
- g) There are no mechanisms to review by agencies themselves on the claims passed and paid. This increases vulnerability for malpractices.

ILLUSTRATION: FLAWED AGREEMENT RESULTING IN FINANCIAL IMPLICATIONS OF NU. 69.697 MILLION

The Mangdechu Hydropower Project Authority had awarded the contract of Electro-Mechanical package EM-1 to M/s BHEL, India at a cost of Nu.5,162.728 million. The BHEL had indicated the payment of commission or gratuity charges of 1.35% of contract value to local representative (agent), M/s Bhutan Ventures Trading (BVT) in Technical Offer and Financial Bid. The techno-commercial and price evaluation of the bid was carried out at two level Tender Evaluation Committee of the Project Authority. The bid documents were also vetted by Office of the Attorney General (OAG) in Bhutan and lawyers from India but none commented on the appointment of local representative and commission payment although the BHEL had never engaged a local representative in Bhutan before this, as it had associated with all hydropower projects in Bhutan until now. In addition, as the BHEL have official establishment in Thimphu, Bhutan to facilitate smooth execution, the need to appoint a local representative should have been critically reviewed. Since the bid documents were approved without critical scrutiny, the project had borne financial implication of Nu.69.697 million, which could have been built-in in the bids of M/s BHEL. (AIN 14059)

3.3.7 Inadequacies in contract agreement

- a) The PRR requires the procuring agencies to include General Conditions of Contract (GCC) and where further conditions are required by the standard for contracts, such conditions shall

usually be referred to as “special” conditions of contract;

- b) The RAA noted following deficiencies in the terms of contract:
- Procuring agencies not specifying time period of contract, labours to be deployed, mode of payment etc.;
 - Erroneous inclusion of percentage of value of work done in the formula in determining price adjustments in contrary to the percentage prescribed in the PRR. Such cases are depicted in **Case Study 3.26**.
- c) Deficient contract agreements apparently result from lack of due diligence and control measures to detect and correct before contracts are executed.
- d) These have resulted in weakening safeguards to protect the interest of the procuring agencies by way of additional costs besides, placing the government at disadvantaged positions during implementation of the works. The flawed provisions of the contract could give rise to unnecessary litigations during enforcements. Besides, it may provide opportunity for perpetration of undesirable practices to derive undue advantage through the erred terms of contract.

3.3.8 Non enforcement of Contractual terms and conditions

- a) The RAA noted cases of failure to enforce terms of contract that affect delivery as well as safeguarding the interest of the government. These included:
- Non-levy of liquidated damages for delay in the completion of works within the stipulated time;
 - Non-termination of works even for fundamental breach of contract such as stopping work beyond stipulated time in the bidding documents, repeated failure to show progress of the work etc. The agencies justify that termination will entail cost implications.
 - No action being taken as per the contract for non-adherence to the notice of the procuring agencies in observed cases where contractors failed to adhere to the notice issued by the employer;
 - Releasing of payments without fulfilling the criteria of payment schedule or payments to parties not regulated by terms of agreements;
 - Not invoking the provision of contract to effect specified deductions for deployment of machineries other than those specified and committed by the contractor in the SBD;
 - On termination, non recovery of 20% of the amount for incomplete work representing the employer’s additional cost for completing the balance work. Such other cases are depicted in **Case Study 3.27**.
- b) These lapses occur from lack of controls instituted within the procuring agencies to exercise due diligence and overseeing the execution of the contracts.
- c) Besides the direct financial implications resulting from non enforcement, the procuring agencies also remain oblivious to the impact on delivery of services in terms of quality and timeliness.

3.3.9 Non-deployment of machineries and personnel

- a) The weightage of 25 points is allocated to bidders capacity in the first stage of bidder qualifications. The bidders shall get 100% points under this parameter if the equipment required is owned and 75% if hired.
- b) Similarly, 25 points is also allocated for availability of skilled manpower.
- c) The bidder's equipment commitment is to be evaluated against the procuring agency's requirement. The points allocated to each equipment and personnel represent its importance in the execution of the work. The equipment and personnel indicated as required are deemed to be essential in executing the work and substantial points allocated for this parameter is indicative of being critical pre-requisites for qualification. And therefore, differentiation on the basis of access to equipment have been kept at substantial range through point system.
- d) The RAA noted instances where the deployment of machineries and personnel for works under contract have not been enforced during execution of the work. Such cases are depicted in **Case Study 3.28**.
- e) The lapses could be attributed to the following:
 - Ineffective monitoring system in place to oversee that whatever equipment and personnel committed by the bidders are deployed;
 - The evaluation process merely see the access and availability but does not evaluate their prior engagements in works-in-hand, if the contractor is engaged in works outside government agencies which do not come within the purview of e-tool system. The requirements to evidence access to equipment is limited to submission of ownership (if owned) and lease agreement (if hired). This does not necessarily ensure its engagement during the constructions;
 - For the personnel employed by the firm, contract agreements and documents related to Provident Funds Accounts need to be submitted. However, instances showed that engagement of personnel not employed by same firm indicate that adequate checks are not exercised;

ILLUSTRATION: NON-DEPLOYMENT OF MACHINERIES AS COMMITTED

In the construction of domestic airport by Department of Civil Aviation, the contractor had claimed deploying 6 excavators and 12 trippers and payments were accordingly made. On verification of the final bills, the registration numbers of the excavators and trippers in the log book did not match with that of the registration numbers committed as per the contract agreement.

On cross verification of the registration numbers of the excavators and trippers with the RSTA records, it was revealed that one excavator claimed to have been deployed at the site was actually a tripper which has met with an accident and was off road.

Since there were prima facie evidence of collusion of contractor and site engineers, RAA recommended for further investigation into the case to make good all the loses sustained on account of fictitious claims on deployment of machineries. (AIN: 10922)

- Although PRR allows change of machineries and personnel with prior permission of the procuring agency provided that the replacements are of equal or higher capacity, qualification and experience. However, there were instances where replacements were made without approval and fulfilling the criteria.
- f) While assessment of impact on quality or service delivery needs to be done separately, significant impact such as poor workmanship, defective works, delays in execution etc., could be attributable to contractor's failure to deploy the equipment and personnel committed.
 - g) Besides, non deployment of committed equipment and personnel does not justify winning the contract on the basis of points scored under these parameters. Nor it is seen fair for non-winning bidders who would have done otherwise.

3.3.10 Grant of unwarranted time extension

- a) The extension of the time for completion of the work is granted on the basis of events or factors specified in the contract agreement, on account of which the contractors cannot complete the work as originally agreed to. The PRR prescribes exceptional event or circumstance termed as "force majeure" which are essentially to save performing party from consequences of nature stated above or over which he has no control.
- b) The RAA noted instances where unwarranted grant of time extensions were approved contravening the provisions of the PRR. It was found that grounds on which time extensions were granted included those events which are specifically prescribed as not allowable. Such cases are depicted in **Case Study 3.29**. These included:
 - Delay in process of labour permits
 - Rainfall, snowfall etc.
 - Non-availability of materials
 - Strike in other countries
- c) The RAA noted that in some cases, the procuring agencies extend the completion time due to additional works during execution. However, it was noted that time extensions are not proportionate to the value of increased work and there is no corresponding decrease of time for reduced scope of work, which the agencies justify that PRR does not provide for.
- d) The RAA reported that time extension approved were not admissible and the defaulting parties were not levied applicable liquidated damages as calculated as per the terms of the contract.
- e) The time extension granted on the basis of unjustified grounds may not only be seen unfair but also contribute to delaying completion of the project. Besides, also constitute unjustified waiver of liquidated damage for non-completion.
- f) The PRR or SBD do not specify how time extension is allowed for additional works. There is no specified procedures to allocate on the basis of value or quantum or the complexity of additional works for time allocations. Therefore, there lacks uniform approach which result in discretions that may not be objective.
- g) This usually happen as there is no penalty prescribed for irregularly granting time extensions.

3.3.11 Time overruns

a) The delays in completion of the construction works is one of the persisting issues in constructions undertaken by the government. Delays due to factor beyond the control are inevitable. However, delays occurring due to poor performance of the contractors or due to procuring agencies' actions are avoidable.

- The RAA's experiences showed that the following are the common reasons contributing to delay in the completion of the construction works carried out by different government agencies:
- Unrealistic determination of contract period result in imposing unreasonable deadlines on contractors. As discussed earlier, there is no recorded basis for determining the construction duration with respect to available resources such as labour, machines and materials;
- The PRR requires the contractor to submit work program or the work schedule to the procuring agencies. In most cases, work programs are not insisted and even in cases where work programs are submitted, the procuring agencies do not validate or review to see its implementability. The improper planning by the contractor before the start of the construction result in poor management of the contract as well as monitoring by procuring agencies;

Unrealistic determination of contract period result in imposing unreasonable deadlines on contractors

ILLUSTRATION: IMPROPER SEQUENCING OF WORKS RESULTING INTO TIME OVERRUNS

In the construction of Ministers' enclave, the RAA reported that there was substantial delays resulting in time overruns to the extent of 510 to 958 days beyond contract duration. The hindrance records revealed that the main reason for time overrun was delay in supplying door and windows. This delay has happened due to improper scheduling of works.

The work was split into two components namely, supply of door and windows and the structures. The contract for supply of windows and doors was awarded, 6 months after the award of work for the construction of structures. When in fact the contract for supply for doors and windows should have preceded or run concurrently with the contract component of structures.

With further delay of 2 months in supply of doors and windows, it aggravated the time overrun in the execution of the project.

NHDC responded that the work was squeezed within the contract duration of 9 months, which otherwise could take at least 3 years. However, RAA was still of the view that given the deemed urgency, the procuring agency could have matched it with deployment of additional resources and mechanization. (AIN: 9081)

no independent checks and monitoring by the regulating agencies, the contractors may not employ the committed resources for the work;

- While the contractors' financial capacity is evaluated during the qualification stage, some of the slow progress of work can be attributed to poor financial conditions of the contractors. The contractors' failure to mobilize labours and necessary materials due to financial constraints are attributing factors for delays.
- The demands for labour in the construction sector is mostly met by expatriates of neighbouring country, India. Since the labour is not readily available within the country, contractual arrangements need to be made with labour supplier outside the country as well as having to undergo hassles of processing permits as per the existing rules. The contractors are likely to face the shortages of labours throughout the construction period, which affect the progress of the work.

- The procuring agencies also fail in sequencing of components of works awarded to different contractors. The disruption caused in particular activities have cascading effects on the overall delivery of the contracts;

- Delayed handing over of site by the procuring agency to the contractor due to incomplete processing of clearances such as land, environment, community clearance etc;

- Major changes in the designs and inclusion of additional works during execution lead to halting of works. These are time taken for changes in specifications and scope which were not considered originally or changes in design to address some omissions that were vital to the project functionality;

- Non deployment of committed resources such as key personnel and machineries lead to poor progress of the work. Since there is

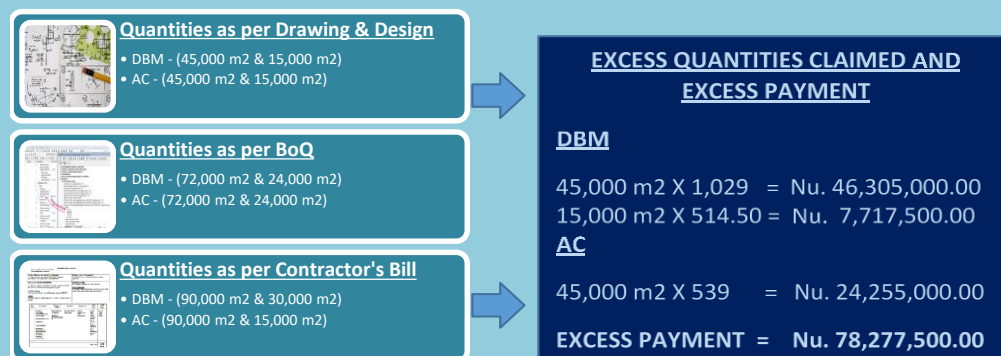
3.3.12 Extra Payments

- a) The basis of payment to the contractor is the value of work done based on the rates offered. Any prior payments remaining unadjusted and statutory deductions are to be made from the claims submitted in the form of running or final bills as per the terms of the contract and applicable authorities.

- b) The issues of extra payment to contractors in the form of excess payment and double payments are repeatedly observed in the audit of constructions. These are basically payments which are found not commensurate with value of outputs/deliverables of the contract.
- c) The extra payment to contractors take different forms as below:
- The extra payments across agencies generally happen due to wrong recording of measurements of work done. The RAA's experiences show that during physical verification of the verifiable work items, actual quantities/dimensions of work executed fall short of what was claimed and passed for in the contractors' bills resulting in enhanced claims. Such cases are depicted in **Case Study 3.30**.

ILLUSTRATION: INFLATED QUANTITIES RESULTING IN OVER PAYMENT OF NU. 78.278 MILLION

The Department of Civil Aviation had inflated the quantities of work for providing and laying "Dense Bituminous Macadam (DBM)" and "Asphalt Concrete (AC)" in the construction of Gelephu Domestic Airport. The sequence of events that resulted in enhancement were as depicted in the diagram below:



The quantities reflected in the BOQ prepared by the project engineer was not as per the quantities indicated in the designs but was found enhanced substantially. There had been further enhancement of quantities in the contractor's bills which was passed for payment. The RAA compared the quantities with the actual requirement and executed at site with that of quantities claimed and passed. The total excess payment that were passed for payment amounted to Nu. 78,277,500.00 which was avoided after the RAA detected the case.

This had resulted from project's failure to exercise proper check and controls on the estimates prepared by the engineer, and certification of claims of contractors. The RAA indicated possible existence of collusion for which the Department was asked to establish. (AIN 10922)

- Payments are found made for inferior quality of works executed or materials supplied. Agencies have tendency to accept inferior quality of materials or works and goods not conforming to agreed specifications but paying the rates applicable to higher specifications quoted by the contractor. When the differences of prices are compared, agencies are seen to have paid more than the actual cost of works/materials;

- Procuring agencies make final payment without actually completing the works. Such cases are depicted in **Case Study 3.31**. This is not only violation of financial norms but also manifest apathy towards obtaining value for money for the government. It is also defying logic in settling claims which are not delivered and due;
- Double payments due to repeat claims for same item of works in successive running bills;
- Payment made at inflated rates due to collusive practices between the engineer and the contractor;
- Extra payments also happen due to improper analysis of rates for items which substantially exceed the allowable deviation during execution. Generally, the analyzed rates are higher than the initial rates;
- Procuring agencies make extra payments due to erroneous calculations/measurement of works.

ILLUSTRATION: ENHANCED QUANTITIES OF WORK RESULTING IN EXTRA PAYMENT OF NU. 7.244 MILLION

The contractor was paid extra payment of Nu. 7.244 million due to enhancement of quantities of TMT Reinforcement bar in the construction of Central Regional Referral Hospital, Gelephu. The excess payment was made as follows:

Quantity Executed (No of bars)	Quantity as per Bill (No of bars)	Excess Quantity Claimed (bars)	Excess Quantity Claimed (converted to Kg)	Rate per Kg (Nu)	Excess Payment (Nu.)
64	6,416	6,352	85,348.648	84.88	7,244,241.45

The number of TMT bar was recorded as 6,416 against the actual execution of only 64 bars. The RAA indicated laxity or existence of malpractices amongst the officials and contractors for huge illegitimate claims. The work was supervised by consultants.

- d) The payment of contractor is to be regulated by governing authorities such as the Financial Rules and Regulations, PRR and specific terms of the contracts. Any payments made in contrary to governing rules and regulations is therefore deemed not admissible.
- e) The RAA noted instances where some procuring agencies do not adhere to the appropriate rules in administering the claims of the contractors. These have led to various forms of inadmissible claims such as:
- Payments were found made before delivering specific outputs sought from the contract as per the contract documents;
 - Payments made found to have included cost components which were agreed to be borne by third parties as per the contract agreements;
 - Payments were released in full without fulfilling the criteria stipulated in the payment schedule;
 - The payment to the contractor is done based on the bills submitted by the contractor duly verified by the site engineer as to its actual delivery or completion of works for which the payment is claimed for. The RAA noted instances of payments being made without actual completion of works. The agencies claim that due process could not be completed due to prior engagements of relevant officials, multiple sites to handle,

hassles towards end of financial year, etc., implying unmanageable work the officials have to handle. Such cases are depicted in **Case Study 3.32**.

f) The RAA's experiences of such cases of extra payments showed varied reasons, some of which are common and some are agency specific. The common reasons cited in the RAA's reports are generally lack of monitoring and supervision mechanisms instituted within the agencies. However, there are also other possible causes that cuts across governing authorities, administrative structures, professionalism, moral and ethical values of dealing officials as well as private parties in the whole process as discussed below:

- Absorption capacity both in terms of number, qualifications and experience of engineers vis-à-vis workload in terms of number of sites and magnitude. The engineers responsible for sites may be pressed with multiple works/sites that continuous and simultaneous supervision is rendered as a difficult and challenging task;
- Limiting accountability to mere recovery of amount pointed out by the RAA unless prima facie evidences are obtained to indicate it as fraudulent practice. Repeat offences are not traced to specific officials and ease of absolving accountability issues with mere recovery does not act as deterrence;
- There are no authorities that allow holding contractors accountable for the lapses. It may be looked as accepted norms in submitting enhanced claims which if detected later would only result in mere recovery;
- Accounts personnel and site engineers not acting diligently in making payments and effecting necessary adjustments and exercising controls necessary in passing the claims;
- The agencies cite reasons for payments made without completing work to avoid lapse of funds;
- The possibility of breeding familiarity between officials responsible for supervision and monitoring and contractors that facilitate forging alliances to conceal/manipulate for mutual benefits;
- Unreasonable trust placed on officials and engaging particular person throughout the process of project

ILLUSTRATION: ERRONEOUS ADOPTION OF MEASUREMENT RESULTING IN EXCESS CLAIM OF NU. 21.177 MILLION

The Department of Civil Aviation had adopted erroneous measurements in the supply and fixing of concertina wire fencing which resulted excess claim of Nu.21.177 million in the construction of Gelephu Domestic Airport.

The RAA noted that the contractor had executed concertina fencing measuring 2,583 meters over the fence. However, the claim for 54,033.30 m was made and passed for payment. The contractor had made excess claim for 51,450.30 m of concertina fencing amounting to Nu. 21.177 million.

The review of the estimate prepared for the item work indicated erroneous estimation of the quantity by using the total length of fencing wall multiplied by twenty(20) which had no plausible explanation. The mere multiplication of the length of the fencing works by twenty (20) Nos. indicated wrong estimation of the quantity of works.

No appropriate details were incorporated in the technical specification of the item of works as to the minimum coverage of the fencing length in terms of rolls, bundles and coils. Such ambiguity and flaws in the technical specification and erroneous estimation of BOQ had given scope for manipulation of the quantum of work done both by the Site Engineer and the Contractor. (AIN 12148)

implementation on the pretext of indispensability of certain skills of a particular official;

- Lack of morality and sense of responsibility that perpetration of frauds/collusion is perceived as accepted norm and the deceitful act is rationalized when there is no control or oversight functions to see the compliances. Such cases are depicted in **Case Study 3.33**.

g) The inadmissible payment made without observing the terms of agreement usually occur due to:

- Lack of controls which allow passing and approving of claims without adhering to the schedules of payments as per the contract. This could also happen due to failure to validate the claims vis-à-vis specific deliverables sought prior to approving the claims;
- Besides the lack of control functions, the possibility of extending undue favours through connivance with parties in falsification of work done could constitute main drivers of such irregularities and the possibilities of these cannot be ruled out;
- No stringent actions prescribed for observed cases within the agencies or authorities concerned;

h) These lapses not only violates the governing rules and regulations, but also have other impacts on safeguarding the interest of the government. While all such cases of inadmissible payment may not be direct financial loss to the government, the act of releasing of payments without fulfilling the contractual obligations of delivering outputs do not safeguard the interest of the government. However, if there are no follow up actions to insist for full delivery of outputs after the payment is made, the value of outputs not delivered is the direct loss to the government;

i) If deterrence is not created by way of stringent actions for such lapses, there is a possibility of becoming an accepted norm to violate provisions of contract which would further facilitate compromising ethics and morality of dealing officials.

ILLUSTRATION: ERRONEOUS CALCULATION RESULTING IN EXCESS PAYMENT OF NU. 7.080 MILLION

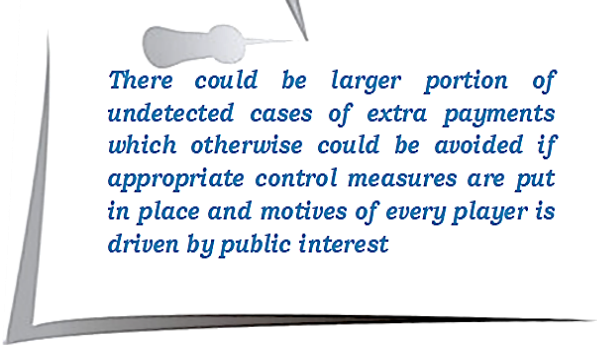
The Election Commission had made excess payment of Nu. 7.080 million due to erroneous application of formula in determining the area of circular columns in the construction of ECB HQ Building.

The RAA reviewed the working and noted the following errors resulting in enhancement of quantities of work.

Column Type	Diameter (d) in meter	Radius (r) in meter	Area worked out by ECB using (πd) in meter square	Area worked out by RAA using (πr^2) in meter square
800 mm dia	0.800	0.400	2.510	0.502
1000 mm dia	1.000	0.500	3.140	0.785

The wrong application of formula for calculating cross sectional area of circular column was used using πd instead of correct formula πr^2 . This differences in the area had proportionately increased the total volume of work for which the payments were made. The resultant effect was enhancement of contractor's claims by Nu. 7.080 million, which was a direct loss to the government. (Audit of ECB for 2015-16)

- j) The amount lost through extra payments are visible and direct monetized losses that the government bears. These constitute additional pores to drain out public resources.
- k) However, these are limited to only those which RAA could detect by employing certain appropriate audit techniques. There could be larger portion of undetected cases of extra payments which otherwise could be avoided if appropriate control measures are put in place and motives of every player is driven by public interest.



There could be larger portion of undetected cases of extra payments which otherwise could be avoided if appropriate control measures are put in place and motives of every player is driven by public interest

3.3.13 Handing/Taking of works

The RAA's experiences show that the handing/taking of completed works are not done properly resulting into range of issues that RAA come across during the audit as discussed below:

3.3.13.1 Taking over of incomplete works

- a) Proper supervision and monitoring of construction activities entail thorough verification of works executed at site, accurate measurement of works executed and correct recording in the Measurement Books and proper verification of the contractor's claims in the RA bills. The handing and taking note signed by the committee is deemed to be validation that works have been completed in all respect and also to identify items that need to be redone within specified time.
- b) However, the RAA noted instances where proper checks on the outputs delivered have not been done and the handing over of sites have been complete. Such cases are depicted in **Case Study 3.34**. The issues generally noted include:
- Taking over of defective works or items of works which did not meet required standards or quality the procuring agencies desired;
 - Taking over of work without provision of certain items of work;
 - Taking over of work without conducting required test of functionality of certain works/structures;
 - Not issuing notification requiring the contractors to rectify the defective works noted during auditing;
 - Forging of signature of committee members in taking over the works;
 - Procuring agencies also delay in taking over the works.
- c) These lapses occur basically due to improper check exercised on outputs delivered by the contractor. The lack of monitoring can be further attributed to the following:
- Real validation of works delivered by the contractor are not carried out by the committee taking over the completed works. Complete reliance could be placed on verification reports submitted by the official responsible for site supervision;

- The PRR does not prescribe specific roles of handing/taking committee and due diligence process during taking over of works. In the absence of specified roles, the members of the committee may take it as mere formality to sign on the basis of site engineer's report. Further, there is no clarity on the responsibility of the handing/taking committee in the event of such lapses;
 - Such practice becoming accepted norms in the absence of deterrence within the agency and rationalize their lapses;
 - No clear accountability system to hold contractors responsible for their lapses;
 - Urgency of the procuring agency to use the facilities before completion.
- d) Besides additional financial implications, non delivery of outputs as per the specifications are persistent issues which show that the procuring agencies do not obtain value for money spent on these works. These include:
- Deliverables do not conform to requirement and the very objective of seeking particular outputs remains defeated. Such cases are depicted in **Case Study 3.35**.
 - Risking the sustainability of the structures built due to substandard works or provision of inferior quality of items.

3.3.13.2 Quality of work

- a) The procuring agencies are expected to institute quality control mechanism to ensure that works conform to the specifications. However, in view of the instances noted where structural damages are detected after the construction provide to show the inadequacies in the quality control mechanisms.
- b) The non conformance risks the life of the structures and seriously undermine the achievement of intended purposes. The government does not achieve value for money and constitutes waste of resources.
- c) Compromising of quality of works takes different forms and it is difficult to monetize. These include:
- Poor workmanship/ Substandard works
 - Materials not as per specifications
 - Defects in structures built
- d) Most of the poor quality of work can be attributed to the weaknesses in control during project execution. The onus of monitoring the progress of works, deployment of human resource and machineries and specifications of items used during construction is solely thrust on the procuring agencies usually represented by site engineers. The close interaction on daily basis between the contractor and site engineer exposes to risk of familiarity that may compromise effective monitoring.
- e) The PRR does not prescribe vigilance function to any specific regulating agencies to ensure timely and surprise review of the quality of works being carried out by the procuring agencies.
- f) The quality issue in construction is not only a compromise of value and economic life of the structure itself, but also provides opportunity for private contractors to derive undue

benefit from skimping which are apparently triggered from the knowledge that control mechanism is nonexistent or gullible enough to be deceived.

- g) Also because of the fact that the PRR does not prescribe appropriate sanctions for detected case of low quality, the party is aware of the little “risk” of being held accountable. This may not deter unscrupulous practices to derive undue advantage at the cost the government.
- h) Besides, there is no specific code of conduct/ethics developed for official engaged in supervision especially the site engineers who play a critical role in ensuring that the outputs delivered are in conformity to standards sought.
- i) The following are the other causes that are responsible for delivering poor quality of works:
 - Inadequacies in drawings and designs leading to substandard work outputs;
 - Improper planning and non-synchronization of works;
 - Unrealistic contract duration imposed on contractor resulting in compromise of quality in a bid to complete the work within stipulated time period;
 - The poor performance resulting from incapacity of contractor also lead to poor quality of the works;
 - The contactors’ obligation is limited to rectification of noted deficiencies in the work. There is no requirement to redo the whole work instead of mere rectifications. This does not create deterrence to strictly observe the quality requirements of the works;
 - The poor workmanship could be result of inexperience of the site engineers and unskilled laborers deployed in works contracts contrary to the ones committed by the contractors.
 - The defect liability period is limited to six months to one year is less during which the defects usually do not appear and the contractors are absolved of any responsibility beyond this period.

3.3.14 Booking of expenditure in closed work account

- a) Booking of expenditure in closed work account occur when the financial year is about to end and on-going works are incomplete. The implementing agency in its efforts to prevent the fund from being lapsed, usually book the expenditure without actually completing the works. Such cases are depicted in **Case Study 3.36**.
- b) FAM allows to book expenditure under ‘closed work’ on conditions that works have been completed in all respects but only due process of verifications could not be completed due to specified circumstances. The works which are not completed or not even started during the FY do not qualify to be booked as closed works.
- c) Since the works cannot be identified as spillover works at the time of preparing budget proposal, such works do not qualify to be treated as spillover work for the next financial year.
- d) Through the experiences of the RAA, the following reasons compel the procuring agencies to resort to deviating from the norms:

- Requirement to identify the spillover activities ahead of the last quarter i.e. within March. Most agencies do not anticipate risk of not completing activities within the Financial Year and thus, pinning hopes amidst potential odds of completing within the current financial year.
 - Some of the agencies especially Dzongkhags face challenges of completing deposit works entrusted by central agencies towards the end of the Financial Year. Those works which are entrusted during the last quarter to be completed within the Financial Year pose challenges of compelling them to juggle with the already pre-engaged resources.
 - Some are adhoc works which are taken up by the procuring agencies due to pressing emergencies towards the last quarter of the Financial Year. The unplanned works mostly face the fate of time slippages, requiring additional time beyond the financial year.
 - The challenges are also rendered by contractors' poor performances resulting in deferring the completion beyond the financial year. When completion of works have already been stipulated within the financial year and the contractors are not able to do, agencies have no alternative other than to violate the financial norms.
 - Inherent inflexibility in budgeting process which does not allow carrying forward and revitalization and fear of subsequent year's budget cuts.
- e) The booking of expenditure without completing works not only constitute violation but also poses multiples risks that may potentially undermine value for money in public procurement. The risks include:
- Since the expenditure is already booked, the procuring agencies may not be bothered about the outputs delivered unless systematic procedures are put in place with delineation of appropriate oversight roles. Any recoveries including costs, liquidated damages etc. to be effected may not be pursued to avoid hassles of additional administrative processes involved;
 - There is also risks of misuse of the funds in the event if it is not fully paid out or works not carried out;
 - Proper accountal of structures may be undermined as the year of booking the expenditure is different from the year in which actual possessions of the structures delivered differ. The oversight functions of RAA may also be impeded as the properties may go unaccounted;
 - There is also a risk of indefinite delay in the completion as the contractor is already assured of the bill amount kept aside;
 - This would also inflate the expenditure of the year in which it is booked.
- f) This practices provide to show that relevant authorities do not enforce the requirement strictly, which the procuring agencies may perceive as concurrence and acceptable practices.

3.3.15 Non/under utilization of Infrastructures

- a) The infrastructures are created in order to serve specific purposes. The decision to create infrastructures should have been made on the basis of needs and the investment alternatives would have been evaluated during the planning stage.
- b) Besides, the fact that the approval obtained for budget validates that the activities proposed were aligned to the objectives which the agencies intend to achieve within the overall framework of Five-Year Plan.
- c) However, the RAA noted instances where the procuring agencies did not bring the structures to intended use or any beneficial use.
- d) The result is usually abandonment or underutilization of infrastructures created. These are indications of failure to envisage needs and prioritization of activities. The investment made in such activities are rendered wasteful.
- e) Such lapses occur when adequate assessments are not carried out for the actual requirements based on agencies' strategic priorities. Either the agencies fail to achieve their intended purposes or the activities envisaged were not aligned to its strategic intents of Five-Year Plan.
- f) Further, such issues may arise from lack of proper accountability of agencies in ensuring that the investments made in such activities bring about intended benefits and utility.

ILLUSTRATION: NON-UTILIZATION OF PROPERTY

As one of the important means of accelerating rural development, the 10th Five-Year Plan, (2008-2013) had placed high priority on expansion of rural infrastructure particularly the feeder roads and farm roads to improve rural accessibility. This was mainly intended to facilitate increased accessibility to markets and other services to help the rural populace.

With this noble objective, the Gewog had constructed 4 KM farm roads stretching from Dochu-Ritsa to Tongtshana at the total cost of Nu.1,323,584.00 during the financial year 2012-13. However, the farm road has not been put to effective use and instead abandoned due to land disputes. The road condition has deteriorated as observed during the joint verification of site on 18th September, 2013. (AIN 11818)

3.3.16 Arbitration of cases arising from audit issues

- a) The RAA exercise its oversight function through regular audits and through its reports, insist for any recovery to be made from the contractors if there had been any excess payments or illegitimate waivers of penalties such as liquidated damages, penalties on termination, etc.
- b) However, disputes arise when contractors do not agree to the observations raised by the RAA. The procuring agencies are not able to pursue the matters as recommended as the contractors refuse to make good the losses indicated in the audit report. In such event, issues are referred for arbitration.

- c) The arbitration proceedings are carried out by qualified arbitrators selected by the parties through establishment of an independent and competent list of trained and certified arbitrators. The CDB does not arbitrate disputes but merely facilitates the conduct of arbitration proceedings through an institutionalized system. The parties are generally the procuring agencies and the contractors;
- d) While the institution of dispute resolution system enables faster resolution of the disputes, the past trend of decisions on issues arising from audit reports has shown to have been always in favour of the contractors. Most of the time, it is seen that the audit findings were rendered invalid and contractors are discharged from obligations insisted by the audit report.
- e) On study of the cases referred and the decisions, the RAA noted that the contractors were discharged even from proven cases of violations to the contracts and the PRR. For instance, the circumstances specified for force majeure to claim time extension were recognized without due compliance to the stipulations. If compromise to the requirement is allowed, such decisions are not seen to protect the larger interest of the government.

ILLUSTRATION: ARBITRAL AWARD FAVOURING THE CONTRACTOR

For the work of construction of security quarters in Paro by the Department of Air Transport, Ministry of Information and Communications was awarded to M/s Kencho Dorji Construction Ltd. (KDCL) for Nu.109.24 million. The work started on 21st June 2011 with approved duration of 18 months. Due to substantial delay M/s KDCL was levied liquidated damages (LD) of Nu.11.36 million.

The contractor contested the decision and appealed to the Arbitral Committee which overturned the decision and awarded that the LD be waived and contractor refunded. The case was appealed to successive courts (high court and supreme courts), the outcome being upholding the decision of the Arbitration.

One of the main grounds for delay as reported was absconding of the labourers which is not a force majeure according to clause 44 of the General Conditions of Contract (GCC). However, Arbitral Committee award considered it as force majeure.

Ultimately government had to refund the LD amounting to Nu.11.36 million from the RGR account.

- f) These decisions apparently emanate from systemic arrangements in representing the interest of the government. The procuring agencies are agents of the government and are expected to protect the interest of the government but the issues arising specifically from audit reports are points of disagreement even for procuring agencies. It is always in the interest of the procuring agencies to resolve the audit matters at the earliest lest responsible officials are held to account until the issue is resolved. The procuring agencies prefer to avoid hassles of pursuing audit matters. And therefore, the interest of the government is not well safeguarded and the parties to the disputes share common interest just to resolve the issues.

- g) Further, there is no mechanism to consult RAA for seeking expert opinion by the arbitral committee or agencies on audit issues referred for arbitration.

ILLUSTRATION: ARBITRAL AWARD BASED ON INADEQUATE REPRESENTATION

For the Construction of Office Building of the Office of the Attorney General, the work was awarded to M/s Tshenden Construction Ltd. for Nu.81.65 million. The work started on 25th May 2011 with approved duration of 18 months. The work was not even completed in 2015, as per audit report. Due to substantial delay beyond extended time frame, M/s Tshenden Construction Ltd was levied liquidated damages (LD) of Nu.7.40 million, as a result of RAA's observation.

The contractor contested the decision and appealed to the Arbitral Committee which overturned the decision and awarded that the LD be waived. The contractor was refunded subsequently.

In the Audit report issued in 2015 (AIN: 12961), it was reported that the work was not completed or not handed over as on 22.03.2015 (date of audit). It was acknowledged by the OAG in the response in the same report. However, during the arbitration process, the OAG represented otherwise. OAG presented that the work was taken over on 01.10.2014 and apparently treated as completed within the extended time frame.

The submissions were misrepresented and RAA had a strong case to contest the arbitral award since the time extensions were also granted post-facto. However the outcomes are constrained by the current arrangement, whereby RAA is not a party even when the Arbitrations are initiated by audit issues.

- h) Thus, the decisions of the arbitral committee specifically on audit issues are rather seen concurring the violations to the requirements, which poses risk of creating wrong precedence by rationalizing the wrongdoings and non compliances to authorities governing the contract. There is a serious concern on losing of millions of Ngultrum and proper safeguards not appropriately instituted in the current dispute resolution mechanism.
- i) The award of the Arbitration is apparently guided by the decision of the client in exercise of their authority and not by the merit or legality of such a decision, in spite of such decision being contrary to contract provisions.
- j) The Ministry of Finance had expressed concerns with regard to undesirable precedence set in the government construction management through arbitration. The letter stated that the contractors are increasingly resorting to resolution of disputes through arbitration. Consequently, government had dished out around Nu.292 million as a result of arbitral awards to various contractors. Liquidated Damages was waived off through arbitral award, when in fact it had strong legal basis not to.
- k) Since these arbitration cases involve substantial amount of money, there is a possibility of rendering the system vulnerable to malpractices such as resorting to undue favors. The institution of arbitration system may be justified as far as resolving the issues amicably is concerned, but most arbitral awards are seen to be detrimental to the larger public interest.

CHAPTER 4: COMMON CAUSES

The RAA's review of the public procurement system as illustrated in Chapter 3 indicated several inadequacies and shortcomings either in the governing rules and regulations or at the time of enforcement of the contracts. Some of the causes attributable to these inadequacies or factors contributing to deficiencies and ineffectiveness of public procurement system are discussed below:

4.1 Lack of due diligence on the part of procuring agencies

The sufficient due diligence exercise would provide demonstrated assurance that procuring agencies ensure full compliance with procurement rules and regulations and achieve value for money in public procurements. There are several fronts where the agencies have to exercise due diligence – in planning and budgeting, administering, evaluating and enforcing contract, documenting, conducting market research on prices of goods and services, confirming to specifications on actual delivery of outputs by suppliers/contractors, etc.

It is very critical that evaluation committees evaluate abnormal variations in tenders submitted by bidders, procurement officials augment verification process diligently and site engineers carry out their functions of supervision and measurement of works with utmost sincerity and probity. However, the lack of due diligence on the part of tender committee members and dealing officials have contributed in waste of huge public resources in the form of

COMMON CAUSES IN CONSTRUCTIONS: A CASE OF DOMESTIC AIRPORT CONSTRUCTIONS

The Department of Civil Aviation had undertaken the construction of three domestic airports at Bumthang, Gelephu and Yonphula. The massive scale and complex projects entailed huge aggregate budget outlay of Nu. 435.466 million. Due to improper planning and inadequate preliminary studies, and due to numerous internal control issues including segregation of duties and monitoring and supervision in the implementation of the project, the infrastructures created could not be put to intended use even after its completion. The government had to re-do and rectify Yonphula Domestic Airport at huge additional cost due to various technical deficiencies.

The RAA's audit of these projects indicated various deficiencies in the whole cycle of project management and pointed out various cost implications. Some of the major issues pointed out amongst others were:

- Inadequate preliminary studies such as geological studies;
- Flaws in preparing estimates resulting in huge deviations in the quantities of items in the BoQ and actually executed. There were differences of quantities of Designs & Drawings, BoQs and Final Bills;
- Wrong nomenclature of items of works included in the BoQ resulting in massive deviations and over payments;
- Inadequate supervision of executions leading to various sub-standard execution of works;
- Possible existence of collusions;
- Instances of various overpayments/inadmissible payment amounting to Nu.121.615 million and avoidable and wasteful expenditure of Nu.114.886 million in the construction of three domestic airports.

The RAA pointed out various causes leading to these deficiencies. However, all these issues apparently had root in control mechanisms which were seen inadequate in the implementation of the project. It was noted that the particular civil engineer was entrusted with range of responsibilities spread over entire project cycle essentially the following:

- Preparing drawings and designs
- Site Supervision
- Handing over of works
- Certification of contractors' claims

This had led to errors and oversight, possible existence of corrupt practices, and lacked due care, diligence and prudence in the implementation of the project. All of these apparently had resulted in compromising quality and undermining value for money (AIN 10922)

excess payment, receiving poor quality of goods and infrastructures, payment of exorbitant price for goods and services, etc.

4.2 Inadequate enforcement mechanism of procurement rules and norms

The existing procurement rules and regulations though not devoid of inadequacies as discussed under Appendix A of this report, it also reflects many good practices in public procurement. However, the actual enforcement is not accompanied with adequate mechanism to ensure compliances to good procurement norms and practices.

Inadequate enforcement mechanism in procuring agencies:

- Roles and responsibilities of committees
- Monitoring at national and at procuring agency level

For instance, while the standing rules provide for comparing quoted prices with the market price to determine the reasonableness of quoted prices, the procuring agencies have invariably not carried out such exercises. There are no prescribed procedures in the rules or procurement guidelines that would ensure enforcement of such provisions as to 'how market value to be obtained', 'from where it is to be obtained', 'who will obtain' and 'to whom the accountability be fixed, if it is not obtained and documented'. Therefore, one of the causes for not receiving value for money in procurement is attributed to non-enforcement of such critical provisions of the standing rules and regulations.

4.3 Integrity of dealing officials

The achievement of intended objectives of receiving value for money procurement is largely dependent on the integrity of the dealing officials. The success of any procurement method followed is inherent in the individuals involved in the procurement process. Procurement officer plays a significant role in administrating and executing contract, site engineer in supervising and assessing the actual quantity of works executed, accounts personnel in ensuring correct and timely payment to suppliers or contractors, and project manager in supervising and monitoring the progress. Therefore, the sincerity and honesty of these dealing officials have a huge stake in determining the success of the project or achieving the intended objective of public procurement.

4.4 Lack of due care and prudence in managing public resources

Sound Financial Management principles require exercising due care and prudence in managing public resources. This entails exercising the same degree of care and diligence that is expected to be exercised from a person of ordinary prudence in managing his/her own resources. This is lacking in many cases in absence of effective accountability mechanism and sanctions.

4.5 Technical competency of contractors determined based on minimum technical scores

In the case of procurement of works valuing above Nu. 4.00 million, the bidders are also required to obtain minimum of 65% technical scores in the 1st stage of evaluation to determine

technical qualification of bidders. In most cases, the bidders manage to secure minimum technical scores thus providing very less differentiated technical competency requirement and having no significant impact on ensuring quality of works. Even without sufficient score for technical qualification of personnel and/or equipment, a bidder can still qualify for the second stage of evaluation. Once the bidders obtained minimum technical scores, the final stage of evaluation is completely based on financial score. Such evaluation system does not provide incentive or differentiated value to one who is highly qualified in terms of technical competency to ensure better quality of works.

4.6 Absence of oversight functions

The functions of the Government Procurement & Property Management Division (GPPMD), the erstwhile Public Procurement Policy Division (PPPD) include amongst others, to monitor implementation of the Procurement Rules & Regulations, developing and promulgating implementation of regulations, methodologies, guidelines and documentation such as standard bidding and contract documents for the benefit of procuring agencies. However, the monitoring function is seen to be ineffective in absence of robust monitoring and reporting mechanism to check on procurement practices across the government agencies. As a result, shortcomings and lapses in public procurement continue to surface across the procuring agencies.

4.7 Absence of competitive market conditions

Inefficiency and ineffectiveness of public procurement system is also attributed to the inherent market conditions existent in the country. The existing market conditions allow suppliers/contractors to influence prices and production, and procuring agencies have no sufficient information of the product or market.

There are too few suppliers/contractors that control too much of a single market, thus justifying government intervention to promote increased efficiency in public procurement. Such interventions may come in the form of fiscal policy or market regulation.

4.8 Availability of sub-standard and spurious products in the market

In absence of effective mechanism of quality checks at entry points, there is unrestricted entry of spurious and fake products into the country. Thus availability of such items and cheaper substitutes makes it difficult to make the right choice. Barring a few items, there is also no system to identify, approve and certify range of products that are fit for public procurement. Moreover, there is also possibility of supplying sub-standard items even if payments are made for original products.

4.9 Absence of Anti-Trust Law to check on business ethics and practices

On the supply side, the behavior and disposition of suppliers/contractors also play a major role in determining the success of achieving the intended objectives of public procurement. Generally, there is no ethical standards and business practices to bind or subscribe suppliers/contractors to highest standards of ethical business practices.

The absence of strict business code of ethics and anti-trust law has provided opportunities to some suppliers/contractors to engage in fraudulent business practices.

4.10 Procurement procedures resulting in higher processing cost and adding up in determination of quoted price

The long procurement and budget cycles discourage bidders that cannot afford to invest significant resources (time and money) in projects that do not provide immediate and definite return on end. The government procurement procedures at times become too lengthy and bureaucratic that the bidders, especially for smaller purchases and projects have no incentives to endure longer selection process without definite assurance of winning the bids. Generally, even after winning the bids through selection process, the bidders (especially for works) can take on average three to four months obtaining various clearances and finally taking up site for actual execution of the contract.

Such bureaucratic public procurement process encourage bidders to adjust or hike their bid prices to make up for cost and time overrun that has no definite returns or assurance of actually winning the bids. Though the requirements are meant to enhance the transparency of the bidding process but they also add to the time it takes to select bidders and awarding the actual contract, thus proving to be counterproductive and resulting in inflating the bid prices and undermining the intended objective of achieving value for money procurements.

4.11 Ineffective enforcement of Quality Standards and Checks

The Bhutan Standard Bureau (BSB) publishes approved list of products to promote use of quality items by procuring agencies. However, its role is limited as a service provider for promoting standards, but have no authority to enforce agencies to actually use the certified product. The onus of insisting contractors/suppliers to use products within the range approved by the BSB lies solely on the procuring agencies.

The PRR though implies the use of BSB publications and approved products for estimations and implementation, but there are no specific requirements in PRR and other authoritative documents to use BSB certified products. Even in case of procuring agencies use the BSB certified products in the BoQ, there is no enforcement mechanism to ensure to check the use of specified items during actual execution. Non-adherence to quality standards by some agencies have resulted in creating poor quality public infrastructures and receiving inferior quality of goods.

On-sight quality inspections of ongoing and completed construction works are not carried out on a regular as well as on surprise basis to ensure that requisite quality standards are maintained. This is one of serious flaws in the construction works executed in the public sector.

4.12 Lack of information system and market price references for goods

The GPPMD is yet to develop information system on public procurements. GPPMD has plans to develop database of information regarding suppliers, prices etc., as part of e-Government Procurement (e-GP) system implementation. The information system which provides for market price reference for range of goods would ensure that procuring agencies are receiving the right goods at right price. If the market price for goods are readily assessable from the

system, the procuring agencies could check that quoted price of bidders do not deviate significantly from the market price and provide an edge to the agencies to negotiate for competitive price.

However, there is no such market price information. The procuring agencies could not determine whether they are receiving the competitive prices even after following the open tender. As a result, some agencies purchase goods at quoted price which are higher than market rate.

4.13 Lack of professional capacity

Procurement functions as integral part of public financial management system, the commensurate importance needs to be given in terms of developing procurement professionals possessing range of skills guided by ethical and accountability principles.

There is no specialized procurement unit in many government agencies. In most of the agencies, the procurement function is undertaken by individuals who are not professionally designated. There are about 63 designated procurement officers placed in few procuring agencies. Lack of capacity and capability in procurement functions in government agencies have rendered in flouting of procurement rules and exhibited several flaws contributing to inefficiencies and ineffectiveness of public procurement process.

4.14 Lack of awareness of complaints redressal mechanism

The PRR establishes a mechanism for bidders to challenge procurement decisions, allowing bidders to file an application for review of any error or breach of duty by a procuring agency. It requires establishment of an Independent Review Body (IRB) for procurement grievance and the operation of the body.

In absence of effective review system, not many complaints are lodged by the complainants because of fear of repercussion on their future business opportunities. Further, contractors/suppliers are not aware on the existence of IRB for redressal of procurement related grievances. This is evidenced by the fact that there were only four complaints reviewed by IRB.

4.15 Inadequacies in BSR and SBD

Despite considerable improvements made over the years, there are still certain inadequacies in BSR and SBD resulting in poor quality of works and increased time and costs. Some of the inadequacies are:

- Non-consideration of capacity and condition of equipment in the scoring system of evaluation;
- Imprecise technical work specification of some items of works;
- Payment for deviation beyond 5% for item works;
- Payment for additional supplies and works beyond 15% and 20% respectively.

The inadequacies in BSR include:

- Inappropriate application of cost index;

- Inadequate analysis of rates in the BSR;
- BSR not developed as authoritative technical standards for works but suggested to be used as reference only by procuring agencies;
- Absence of standard co-efficients for traditional works and machineries;
- Co-efficients used in BSR have remained static for decades and have not changed with rapid advancement in mechanization of construction sector.

4.16 Lack of policy objectives on ethical requirements in the PRR

The public procurement system to be efficient and be able to deliver the intended results largely depends on the individuals and officials who man them. Even the best of systems are bound to fail if the officials concerned do not exercise due diligence, professionalism and highest standards of ethical conduct. Since procurement officials are particularly susceptible to unethical practices, it is important to put adequate safe-guard mechanisms in place.

For achievement of the goals of procurement, the integrity and ethical behavior of the people involved are highly desirable. It includes public servants such as procurement officers and the suppliers.

For, instance Singapore has one of the best public procurement systems in the world. One of their key principles is to maintain the highest standards of probity in the procurement process, so minimizing the possibility of corruption. The PRR does not seem to emphasize adequately on requirement of highest ethical behaviors of the officials involved in procurement. While it does not explicitly mention about the ethical behavior of the officials concerned, it requires the members of the committees to declare conflicts of interests which at best is apparently ineffective. In absence of strong mechanisms to ensure probity of officials involved, the system is prone to fraud and corruptions resulting in wastage of huge public resources.

4.17 Lack of effective collaboration among relevant agencies

In the sphere of public procurement number of institutions are created. However, they are apparently functioning in an un-coordinated manner. For the purpose of achievement of the overall goals of public procurement, it is imperative for all the related agencies to collaborate.

For instance, Department of Revenue and Customs has information on rates declared of all the imported items. This information can serve as input for procuring agencies prior to actual procurement for price comparison. Department of National Budget (DNB) has the budget information and Department of Public Accounts (DPA) has the expenditure information. DNB and DPA can provide procurement expenditure information to GPPMD for monitoring, reporting and exercising controls on procurement expenditure.

Likewise, CDB has information on the number and performance of contractors of works and Drug Regulatory Authority has information on suppliers of drugs. Department of Trade hold trade statistics and information on trade license holders.

There is a possibility of creative collaboration of these institutions or integration of the computer systems of these agencies to serve the ultimate purpose of procurement.

CHAPTER 5: RECOMMENDATIONS

The issues persisting in public procurement for both goods and works have been synthesized and causes identified to understand the root problems contributing to deficiencies in public procurements. While some issues emanate from inadequacies in the existing legislations, institutional and administrative framework, the RAA found that most of the issues are attributable to faltering monitoring and enforcement mechanism in the procurement process.

In order for the Royal Government to bring about improved procurement systems to uphold the principles and international best practices of public procurement, following recommendations are provided.

5.1 Government should propose for a separate Public Procurement Act

The Procurement Rules and Regulations is the sole authority that governs the procurement of the government agencies. In order to provide strong foundations and also to ensure comprehensive enablers to achieve fundamental objectives of public procurement, there is a need for a separate legislation in the form of Public Procurement Act. This would provide specific legal framework for strict enforcement and sanctions to promote greater transparency and accountability in public procurement. The Act must prescribe necessary prohibitive provisions and appropriate sanctions against violations and non-compliances. Prohibitive provisions shall encourage arms-length transactions and promote ethical behavior. Sanctions for various types of violations, civil or criminal should be prescribed to boost the enforcement drive of the regulating authorities and bolster responsible and law abiding actions of all parties in the procurement system. A system of effective and enforceable sanctions for public and private officials must be developed in proportion to the degree of wrong doings to provide adequate deterrence without creating undue fear of consequences or risk aversion.

The existing Public Finance Act 2007 does not seem to provide concrete legal teeth for enforcement and in the absence of accountability mechanism, there is no fear of repercussions for violations and non-compliances. These are seen to breed inactions and complacencies amongst agencies and parties even for evident cases of violation and non-compliances.

5.2 Government should provide necessary legal mandate to Construction Development Board (CDB)

The CDB can play a critical role to ensure quality of public infrastructures. Therefore, it is paramount that sufficient and necessary legal mandate needs to be provided to CDB to ensure effective monitoring functions and legitimacy of sanctions imposed on the defaulting contractors. It would help to effectively render its vigilance functions of enforcing and regulating contractors to ensure quality of public infrastructures.

In absence of necessary mandate, the regular on-sight quality inspections of ongoing and completed construction works as well as surprise checks are not conducted to ensure that requisite quality standards are maintained. This is one of serious flaws in the construction works executed in the public sector.

5.3 Government should review the existing arrangements in referring audit issues to arbitration

There have been cases of audit issues being referred to arbitration most of which were decided in favour of contractors even though the audit issues/findings were raised on valid grounds having huge financial implications on government. The award of the Arbitration is apparently guided by the decision of the client in exercise of their authority and not by the merit or legality of such a decision, in spite of such decision being contrary to contract provisions.

Therefore, the PRR or any relevant legislation should stipulate ultra-vires provisions clearly indicating any act or decision which are not consistent with the rules and contract agreements shall be deemed null and void and no party shall benefit from such irregular decisions. This may include irregular grant of time extension, waivers, payments etc. granted which are not consistent with the contract documents or PRR.

5.4 Ministry of Finance should provide for requirement of conducting pre-requisite studies in PRR

The need to conduct pre-requisite studies such as geological, topographical, hydrological, meteorological, geodetic, EIA surveys and other associated investigations for major construction projects has to be provided in the legislations or existing PRR. The requirement in the legislations would oblige agencies to carry out these necessary studies. These prerequisite studies are essential to prevent geological surprises during execution that would have impact on quality, cost and time. There is no common understanding amongst procuring agencies to undertake such studies prior to starting the construction.

The requirement stipulated in specific authorities should also identify projects that require mandatory studies and definite timeline for such studies integrated into the budget cycle. The improper studies had shown to have impacts on the sustainability of structures built and result in waste of resources.

5.5 Ministry of Finance should prescribe the accountability for top level management in PRR

Greater accountability at the higher level of management including heads of agencies for ensuring effectiveness of procurement system is crucial. This is lacking as only those directly accountable and immediate supervisors are held accountable. Top level management particularly heads of agencies are responsible to manage the affairs of their organizations systematically, lawfully and effectively. They should set the tone of control environment and ensure good governance. Hence there should be a system to hold the higher level management accountable for recurring and serious lapses along with those directly accountable and immediate supervisors.

5.6 Ministry of Finance should prescribe detailed guidelines on related party transactions in PRR

There should be appropriate mechanism instituted to systematically capture information on the spouse and relatives of public servants carrying out business to safeguard against risk of procuring agencies making purchases from such business entities. This would facilitate effective enforcement of the requirement of the BCSR and PRR.

5.7 Ministry of Finance should conduct procurement capacity assessment and strengthen procurement functions at the agencies level

The PRR specifies institutional arrangements delineating specific regulatory functions to relevant authorities to regulate and oversee the compliances and enforcement of the rules. However, the procurement functions at agencies level are not seen to be organized as a specialized function, except for formation of tender committee prescribed in the PRR. The procurement functions are usually assigned to AFD apparently premised on the perception that it is mere application of rules for government procurement. Thus the role of procuring officials is perceived to be limited to processing of purchase orders or mere administering of tendering processes.

There is a need to conduct procurement capacity assessment and strengthen procurement units in the agencies. Establishment of a separate procurement unit in agencies would ensure specialization of procurement functions and necessary internal control mechanisms in accordance with National Internal Control Framework developed by Ministry of Finance.

5.8 Ministry of Finance should strengthen GPPMD

GPPMD is responsible for monitoring and enforcement functions of PRR besides other important functions related to public procurement. It is therefore, imperative that the GPPMD has requisite capacity to discharge its mandate. The MoF should carry out appropriate study to identify gaps and provide adequate support wherever necessary. Capacity development may include following aspects:

- Education and specialized training programmes for procurement officials
- Monitoring and enforcement of PRR
- Conducting overall evaluation of effectiveness of PRR
- Development of data base with provision of wide range of information including information on products, market and competitive prices
- Innovation and incorporation of best practices in public procurement
- Providing advisory supports to procuring agencies

5.9 Ministry of Finance should ensure strict enforcement of budgetary norms

The Ministry of Finance should strictly monitor and enforce budget execution. In particular:

- Controlling rush of expenditure at the close of the financial year
- Setting aggregate re-appropriation limit at the agency level
- Rationalizing timing of budget releases with procurement plan

The practice of booking of expenditures without completion of work must be regulated and viewed as serious violation. The procuring agencies tend to book expenditure pertaining to incomplete works at the closing of the financial year to avoid lapse of funds. These are usually booked under closed work, which is meant for specific circumstances prescribed in the Financial Rules and Regulations. Such practices not only constitute violation to Financial Rules and Regulations but also exposes to the risk of manipulation in the final bill amount.

The MoF must ensure that these are strictly monitored and appropriate sanctions prescribed to discourage wrong reporting of expenditure. The additional procedures should be prescribed to validate the legitimacy of expenditures booked under closed works including tightening the use of Refundable Deposit Account for deposits and withdrawals of related funds.

5.10 Ministry of Finance should make Debarment Registry publicly accessible

Debarment list is not easily accessible to the procuring agencies except for suspension orders sanctioned by Anti-Corruption Commission. Due to lack of such information on debarred contractors/suppliers, there is strong possibility of black-listed contractors/suppliers being awarded contracts by other procuring agencies.

There is a need for making the debarment list accessible so that procuring agencies can avoid awarding contracts to debarred contractors and suppliers.

5.11 Ministry of Finance (GPPMD) should monitor implementation and enforcement of Procurement Rules & Regulations

Given the overall legal and institutional arrangements, it is evident that most issues in the procurement emanate from inadequate enforcement and monitoring mechanisms to ensure compliances coupled with inadequate collaborative mechanism amongst different agencies.

The vigilance functions of GPPMD needs to be beefed up to oversee the overall compliances. There must be appropriate mechanisms instituted to track decisions and enable the identification of irregularities and potential corruption in the public procurement. For instance, some agencies grant an extension of time in a liberal and routine manner in deviation to the PRR or the contract agreement. In quite a few cases, factors not constituting force majeure as per the contract were considered as basis for time extensions.

GPPMD should develop Standard Operating Procedures to report misconduct, such as an internal complaint desk, or a hotline or other forms of reporting. This may need development of appropriate database of government procurements such as awards, suppliers, contractors, methods and value of procurement, etc. to facilitate systematic vigilance functions.

There is an overall need to establish clear lines for oversight of the procurement cycle for all agencies involved to ensure that the chains of responsibility are defined, oversight mechanisms are in place and that the specific level of authority for approval of key procurement milestones is well defined. The rules for justifying and approving exceptions to procurement procedures should be comprehensive and clear.

5.12 Ministry of Finance (GPPMD) should initiate effective collaboration through sharing of information with relevant authorities as well as procuring agencies

The erratic pricing of bid prices offered by the suppliers are basically facilitated by lack of information on prices of goods imported into the country. The Department of Revenue and Customs has the mandate to levy duties and taxes on imports and is supposed to maintain information on declared values of goods. If these information are shared, the procuring agencies would be able to comprehend range of prices of supplies and the possibility of paying exorbitant prices could be minimized.

The Bhutan Standard Bureau (BSB) is apparently seen as standalone entity only providing mandated services of certifying quality of products. There is a potential for the BSB to pursue collaborative approach with procuring agencies and the regulating agencies in ensuring that quality of works or goods conform to minimum standards through quality checks and vigilance functions on systematic basis.

The issues of quality are main concerns in the procurement of goods and works and it is going to persist as long as the spurious/inferior quality goods are available in the market. One control point therefore is to check influx of these inferior goods into domestic market through collaborative approach between the BSB, Department of Trade and the Department of Revenue and Customs to exercise controls at the entry points.

5.13 Ministry of Finance (GPPMD) should develop Guidelines on carrying out due diligence exercises of critical functions in public procurements

While the existing PRR embraces principles of comparable standards to some of the best international practices, the actual enforcement has been undermined in absence of guidelines prescribing procedures of due diligence exercises to be carried out in the field. There are many critical functions in procurement processes that may require prescriptive procedures to ensure effective enforcement.

Some of these functions include, preparation of estimates based on actual market prices of labour and materials, ensuring correctness of drawings and designs, transparently and objectively evaluating bidder qualification and bid capacity, comparing quoted prices with market prices to ensure lowest bid obtained through procurement process are reasonable, monitoring and supervisions, correctness in measurement of works, receiving deliverables conforming to samples and specifications, etc. Such functions need to be identified and guidelines developed to ensure enforcement of due diligence exercises. The guidelines may also identify officials responsible to execute these functions and accountability prescribed if he/she fails to carry out the exercises.

5.14 Ministry of Finance (GPPMD) should review the existing bid evaluation processes and parameters for evaluation of bidder qualification and bid capacity

The process of evaluation needs to be more robust to ensure transparent and objective evaluations. Therefore, it may be essential to note following:

- a. Every procuring agency must be obliged to adopt e-tool system so that there is no opportunity for manipulating with the parameters to favour particular party;
- b. The evaluation must be carried out by the committee formed for the purpose and must not be entrusted to a single official which may render high vulnerability for mistakes as well as manipulations;
- c. The rejection on the grounds of inadequate documentation or other reasons needs to be reviewed by considering the impact on quality and cost of projects. There may be a need for classification of essential and non-essential documentations and other requirements without directly rejecting bids as non-responsive;
- d. Transparency in evaluation needs to be ensured by providing unrestricted access to evaluation results of all bidders. Current practice allows access to only one's evaluation results and not the overall results. If undue advantage is provided, it remains a secret and there is no opportunity to contest the decision;
- e. The technical capacity assessment is merely to qualify the contractors but does not provide basis for differentiating contractors having superior technical competencies from those who merely qualified. The technical scores are not considered for final bid evaluation. Thus, there may be a need to review final bid evaluation parameters;
- f. Minimum scores against each technical evaluation parameter should be assigned on the basis of criticality of the specified parameters.

5.15 Ministry of Finance (GPPMD) should enhance enforcement of Quality Standards and Checks

The PRR though implies to use BSB publications and approved products for estimations and implementation, there are no specific requirements in PRR and other authoritative documents to use BSB certified products. Even in case of procuring agencies use the BSB certified products in the BoQ, there is no enforcement mechanism to ensure the use of specified items during actual execution. Non-adherence to quality standards by some agencies have resulted in creating poor quality public infrastructures and receiving inferior quality of goods.

There is a need to enforce quality controls in public procurement through use of BSB approved products. There is a need to review the mandates of BSB to enforce and ensure compliance to quality of products used by procuring agencies.

5.16 Ministry of Finance (GPPMD) should develop robust e-procurement system and PRR embracing innovations and best practices

Procurement Rules and Regulations should be robust embracing innovations and best practices. The e-GP system developed by GPPMD holds a huge promise and offers substantial reasons for government to move its purchasing online. With technological innovation and development of new tools for electronic procurement, there is opportunity to revolutionize the way the government carry out its procurement functions. The IT interface

would reduce or eliminate interaction between procurement officials and bidders. Besides enhancing transparency and efficiency of the process, this would reduce opportunity for collusive practices. The procuring agencies would be able to solicit wider participation resulting in more competitions and provide better tool for effective monitoring and planning. The e-GP provides opportunity for soliciting wider participations even for lower thresholds (limited bidding methods).

- To facilitate proper monitoring of the whole procurement process for both works and goods, there needs to be comprehensive database containing all requisite information to be used by the regulating/procuring agencies. However, there should also be adequate guidelines and necessary changes made in the PRR to facilitate e-GP system.
- Through e-GP portal, the GPPMD may also initiate procurement journals/publications for wider information dissemination on public procurements. To provide easy access to relevant information for potential bidders, the system of establishing information dissemination platforms such as journals or any other publications where procurement information or notices, tender opportunities and information on awarded tenders are disseminated on regular basis. It would provide opportunity to curtail cost of advertisements and provide useful information for regulating agencies for monitoring purposes.
- Publishing information on market prices for some of the common items regularly consumed by government agencies on the portal would also help to enhance market competitiveness and provide basis for comparison of quoted rates with market rates.

Thus, there is a need for a integrated system embracing all functionalities beyond e-GP to render enhance capability of facilitating processes, decision making, monitoring and enforcement, further research for improvements etc., that are critical in delivering the mandates of GPPMD.

5.17 Ministry of Finance (GPPMD) should develop Ethical Code of Conduct for procurement officials

There is a need to propound ethical behavior through development of a code of conduct in the procurement process. Procurement officials or officials dealing with procurement plays a critical role in ensuring conformity to procurement rules, resistance to mismanagement, waste and corruption and that the government achieves value for money. In view of this, the public procurement must be recognized as a strategic profession rather than a simple administrative function. Therefore, capacities should be sufficient to ensure that the procurement officials are able to fulfil these important tasks. Besides a detailed guidelines in the form of code of conduct and communicating the Codes to officials is essential to raise awareness and build capacity to handle ethical dilemmas and promote integrity.

In conformance to the best practices, the desirability of developing 'Guidelines on staff ethics and professional responsibility' within the PRR need to be considered. Necessary sanctions should also be prescribed for non-compliances to ethical codes as a deterrence measure. It shall provide legal basis for enforcing and regulating agencies to enforce professional conduct

of procurement officials. Alongside, it may also be important to consider necessary incentives to procurement officials to encourage their conducts in conformity to the Codes.

5.18 Ministry of Finance (GPPMD) should clearly delineate roles, responsibilities and accountability of procurement officials and Tender Committees

While roles of the tender committees pertaining to tendering process are specified in the PRR, there is no clarity on their roles in the contract administration. The lack of clarity on the roles of tender committee beyond tendering process led to inconsistent practices across agencies.

In order to ensure better accountability of the tender committee and consistency of tender committees' role, there is a need for specific stipulations in the PRR as to its roles on dispensing decisions or granting approvals for various issues arising out of contract. The tender committee members should be collectively and individually accountable for their decisions and actions.

5.19 Ministry of Finance (GPPMD) should prescribe sanctions and penalties for violations of PRR to improve accountability

Public procurements are often prone to fraud and corruption. The problem can be addressed by strengthening accountability framework in Government. Accountability is a key deterrent to collusion and corruption and a pre-requisite for procurement credibility. The review of procurement practices across the government agencies brought out that procurement regulations are not strictly adhered to and, therefore, giving rise to repeated cases procurement lapses.

All government officials and procuring agencies must be obligated to comply with financial and procurement regulations and rules applicable for public procurement. Liability and accountability of delinquent officers must be ensured. This would improve compliance and uphold the principles of public procurement.

5.20 Ministry of Finance (GPPMD) should enforce Integrity Pacts prescribing serious penalty in the event of any violation of the Pact

Transparency International has developed Integrity Pact (IP) as a tool aimed at preventing corruption in public contracting. IP involves signing of an agreement between the Government department and all bidders containing rights and obligations to the effect that neither side will: pay, offer, demand or accept bribes; collude with competitors to obtain the contract; or engage in such abuses while carrying out the contract. The IP also introduces a monitoring system by an independent oversight and accountability authority and requires bidders to disclose all commissions and similar expenses paid by them to anybody in connection with the contract.

The PRR requires to sign the Integrity Pact and declare conflict of interest by the parties and officials. This needs to be reinforced through additional measures so that desired intents of the pacts are achieved both in letter and spirit. Existing Anti-corruption Strategy in place may be reviewed and reflected in the public procurement system appropriately.

5.21 Ministry of Finance (GPPMD) should enforce maintenance of central inventory for office equipment and furniture

The GPPMD should identify items or properties whose inventory needs to be centrally maintained to facilitate planning and rationalizing procurement of these items by different government agencies. The property information details of these high value items need to be integrated into the Asset Management System. This would facilitate integration of procurement function into overall asset management system and budgeting system. The acquisition or disposal could be well regulated and proper custody and use of government properties can be ensured.

5.22 Ministry of Finance (GPPMD) should prescribe minimum replacement cycle for office equipment and other assets

The government agencies had incurred substantial amount of expenditure on procurement of computers, furniture, pool vehicles and office equipment. In order to ensure that these assets are used efficiently and its utility is spread over reasonable period of time, there is a need to specify minimum replacement cycles or expected useful life. Ceilings based on value of commonly used products must also be prescribed for procurement of items such as furniture, computers, etc. The purchase of these items must be based on basic utility to the extent possible.

5.23 Ministry of Finance (GPPMD) should standardize commonly used items and provide indicative market prices

The range of prices that the procuring agencies pay for the similar/same products is due to lack of collaborative mechanism for sharing information amongst procuring agencies especially within the same geographical locations.

The Ministry should institute standardization process of commonly used items and disseminating information on features, acceptable substitutes and prices to facilitate the procuring agencies to make right choice.

5.24 Ministry of Finance and procuring agencies should avoid ambiguities and flaws in contract agreements

In order to avoid ambiguity in the contract agreements and to ensure that essential elements of contract agreements are duly considered to provide appropriate safeguards, the procuring agencies must engage available legal professionals in scrutinizing and vetting the contract agreements before parties entering into contract. A legally scrutinized agreements would also ensure consistent terms that are enforceable in court of law and avoid unnecessary complications in enforcement. Legal vetting and scrutiny of any changes brought about in PRR and related documents should also be carried out.

5.25 Ministry of Finance and relevant agencies should impose appropriate controls on payments for variations

The payments for variations in quantity including additional items and extra quantity beyond deviation limits are major causes for huge increase in cost of projects as well as time overrun. While variations can be controlled through proper planning, design and accurate quantification of items of work avoiding unnecessary and adhoc changes during execution, the lack of compliance to procurement rules has also contributed towards increased payment at analyzed rates. The controls may include:

- Approval of rates for variation before execution of work and review thereof by competent authority;
- Imposing budgetary controls to discourage unnecessary and abnormal variations;
- Appraising the impact of variations for additional funds to the appropriate authorities including Ministry of Finance prior to execution;
- Ensuring that increased rates are considered only if the variations entail mobilization of additional resources which would increase item rates.

5.26 Ministry of Finance and Ministry of Works and Human Settlements (MoWHS) should review the need to increase defect liability period

The SBD prescribes defect liability period to be maintained within the range of six months to 24 months. There is no value/nature based defect liability period specified or not relative to life of structure. In such cases, the practice of application of defect liability period may vary and result in varying safeguards to protect the interest of the government.

There is a need to review the existing system and see the relevance of specifying value based range for the defect liability period to ensure appropriate safeguard to protect the interest of the government as well as consistency across public agencies. A separate analysis could be done for different types of works such as roads, buildings, bridges, etc. The following possibilities may be looked into:

- Extended defect liability period
- Letting contractors offer period of defect liability period and assigning additional scores
- Introduction of minimum warranty period

5.27 MoWHS should adopt consistent approach in determining construction duration

There is a need for objective determination of construction duration based on the minimum resources expected to deploy during the execution. The apparent reason for delays and time overruns of most of the construction works is the unreasonable duration thrust upon the contractors. This is manifested by differing duration determined for various constructions. Besides, there is a risk of compromising quality in efforts to complete within unreasonable deadlines.

Thus, the MoWHS must formulate specific guidelines in determining the duration of construction works. This would ensure consistency in fixing duration for all construction works undertaken by government agencies.

5.28 MoWHS should prepare comprehensive Bhutan Schedule of Rates (BSR)

The Bhutan Schedule of Rates (BSR) must be robust, comprehensive and reflective of market prices to provide reliable guide for preparation of estimates. It should also be updated on yearly basis to reflect current market prices in the adoption of base rates for base towns. The annual update should consider following areas for improved estimation of construction works undertaken by the procuring agencies.

- The Labour and Material Coefficient should reflect degree of mechanization and technological advancements instead of maintaining it static over the years;
- The BSR should be the benchmark for estimation of project cost for consistency and uniformity in the preparation of estimates by various executing agencies. Though the existing BSR disclaimed its limited uses as its rate reflects only suggestive averages and not accurate current market rates, it has been widely used and in many cases as authoritative and prescriptive guide;
- Standardized procedures should be instituted for working out the cost index for various locations from the base towns and institute validation process by central authority;
- The BSR should provision for working out the rates for locally available materials (or traditional items of works) and incorporate in the estimates in lieu of application of base rates for materials given in the BSR;
- The incorporation of new or specialized items in the BoQ which are not in the BSR, and having a substantial value must be duly verified and approved by the MoWHS in order to appraise costs and functionality;
- Where changes in specifications are necessary, those must be approved by MoWHS and incorporated in the BSR;
- Innovations must be encouraged to find technical solutions to persisting problems rendered in constructions in using specified standards/specifications specific to certain work items. For instance, technical solutions need to be explored for permanent structures for monsoon restoration works, which could withstand heavy rains and save the government from additional costs of reconstructions.

5.29 Procuring agencies should prepare Annual Procurement Plans

The Ministry of Finance should enforce the requirement of preparing Annual Procurement Plans (APP) by procuring agencies. The APP must be uploaded in appropriate media for the potential suppliers/contractors to make informed decisions to participate in the tender. This would provide them adequate time for planning and thus, possibly eliminate time for tendering. While there is already a requirement to submit Annual Procurement Plans to the Department of National Budget, the format in which the information will be provided must be prescribed for uniformity.

Preparation of APP can control rushing of expenditures towards last quarter of the financial year. The procuring agencies tend to handle frenzy of procurement towards the end of the financial year. This results in indiscriminate utilization of funds and spending money on frivolous procurement to avoid lapse of funds at the end of the financial year. These may result in substantial waste of resources which otherwise could be used for other priority areas. This practice must be discouraged through specific guidelines of budgeting process or procurement process. One way of doing could be mandating the procuring agencies to prepare APP and constant monitoring of purchases made by the procuring agencies.

5.30 Procuring agencies should enhance monitoring and supervision of construction activities

Most of the detected issues in government construction works generally result from inadequate monitoring and supervision mechanism of construction projects. These have resulted in various forms of extra payments, and compromising quality of goods and works. There is a need to strengthen controls in overseeing the execution of the works. The following aspects of project management needs to be kept in mind in ensuring effective control systems in the implementation of the projects:

- The submission of work schedules must be made mandatory to render basis for monitoring the progress and achievement of project milestones;
- Rationalize deployment of site engineers to various sites in terms of skills and experiences vis-à-vis number of sites;
- Absorption capacity of implementing agencies should be considered before executing any project;
- The process of validation of any decision taken at the level of site supervision must be instituted to ensure compliances to PRR and contracts;
- The cost and quality must be ensured by regular appraisal, review and validations by the higher authorities within the agency. Estimates must be supported by detailed workings to show quantities derived from drawings and designs;
- When consultants are engaged for monitoring and supervision of the work, the procuring agencies should be responsible for overall monitoring of their work with due regard to conflict of interest situation, if any.

5.31 Relevant authorities should conduct raids on suspected fraud and corruption cases

There is no intelligence mechanism instituted to systematically gather information on and investigate procurement fraud and corruption cases particularly those who have accumulated wealth disproportionate to their known/declared sources of income. An effective intelligence mechanism in this area will act as strong deterrent against procurement fraud and corruption.

Considering the small size and population of the country, identification of vulnerable groups and keeping vigilance through systematic mechanisms would be effective in creating deterrence to fraudulent and corrupt practices in public procurement.

The relevant authorities should therefore look into the need and possibility of conducting periodic raids on agencies and individuals including business entities suspected of indulging in corrupt practices.

CHAPTER 6: CONCLUSION

The PRR developed by the Ministry of Finance as per the authority conferred by the Public Finance Act provide overall legal and institutional framework for public procurements. It integrates good practices and principles of public procurement and delineates procedures and responsibilities at different stages/process of public procurement. The public procurement in Bhutan is designed to foster competitions and obtain competitive price from eligible bidders through a well designed evaluation process.

Benchmarking of Public Procurement published by the World Bank Group evaluates procurement processes in Bhutan under certain standard parameters. The scores given reflect the outcome of progressive improvements made in the procurement rules and regulations. While at the same time the relatively low scores provided in some areas indicates considerable scope for further improvements.

The RGoB's Procurement Rules and Regulations have undergone significant progressive changes over the years. Corresponding progressive reforms have also been witnessed in institutional framework governing the public procurement, such as establishment of GPPMD, Independent Review Board and arbitration award system. The public procurement system in Bhutan embraces some of the international good practices and principles of public procurement.

There has been increased transparency and improvements in many processes of public procurement. Bid evaluation system has also seen improvement with more objective criteria. Since procurement rules and regulations provide common basis and reference, the need and usefulness of these are ever increasing. These are, therefore, still relevant in terms of standard approach and practices, increased transparency and objectivity but lags far behind in embracing the aspects of ICT developments which have revolutionised public procurement system in many developed economies in terms of access to information about the product, services, market prices and public procurement plans, communication and decision making which contribute towards a fair, transparent and competitive system. Besides, system is still flawed in terms of not being able to control prices, costs and quality. Progressive reform initiatives not holistic to translate into Value for Money in Public Procurement

The overall legal and institutional framework portrays a well designed system intended to achieve the universal objectives of public procurement except for a need to integrate the aspects of ethical and sanctions, elaborate delineation of responsibility and accountability and controls in the processes. However, no matter how well the procurement system is intended and designed, it is only as good as players who manifest the intents and live by desirable behaviors. While inadequacies in the overall framework are responsible to some extent, most issues highlighted in the report stem from poor enforcement at various levels. The violations/non compliances to specific rules rendered by inadequate controls within the procuring agencies as well as ineffective oversight of regulating agencies are seen to be the common feature in public procurement across the board.

One of the reasons that seriously impede value for money in public procurement is incapacity to manifest desired actions conforming to the letter and spirit of the rules and regulations by those responsible. For instance, planning of procurement would imply necessary assessment

of needs, appropriate studies, aligning to strategic intents, choice of investment alternatives, funding mode etc., are not explicitly specified in the PRR. These prerequisites are deemed necessary by any standard practices prior to decision for procurement. When these things are not complete, decisions are not supported by appropriate appraisals on viability and suitability of the proposed procurement and thus, rendering uneconomical investments and waste of resources in many cases. The exercise of due diligence and prudence required by the PRR is apparently understood narrowly to connote mere procedural compliance. As a result, government interest is not well protected. The exercise of due diligence seems to be limited and needs minimal guidance through PRR.

The existing market conditions which is characterized by unstable prices, result in range of market prices. There is no consistent market prices for particular items and comparisons of prices and to seek comparable prices become difficult. Effectiveness of public procurement system also depends to a large extent on the competitiveness of economy and market conditions. Lack of readily available and reliable information on market i.e., about the products and market prices renders it difficult to make right choices. These market imperfections provide scope for unfair trade practices and exploitations.

The extent to which the procurement functions and associated controls are placed within the procuring agencies have significant impact on how efficiently and effectively the procuring agencies conduct the procurement. Most issues emanate from faltering designs of system, monitoring and control mechanism, ethical behaviors, integrity, professional capacity of officials within the procuring agencies. These had shown to be significant reasons for cases of extra payments, inferior quality of goods, works and services delivered and other forms of irregularities reported in the audit reports. These are common issues that are prevalent across procuring agencies and have huge financial impacts besides affecting the achievement of intended outcomes of individual procuring agencies. These translates into millions of Ngultrum representing both direct and implied loss to the government.

At the institutional level, the absence of specific provisions delineating accountability and sanctions and ethical behaviours of players in the procurement system has apparently created convenience for perpetration of undesirable acts having potential to undermine the principles of public procurement. The proper check and balance by the regulating agencies are yet to be institutionalized to oversee the overall compliance to the PRR.

In order to achieve desirable outcome of the public procurement, it is imperative that remedial measures are initiated at all levels of public procurement system. The RAA recommends for enactment of Public Procurement Act. The overall procurement framework must be comprehensive and enabling to be responsive to promoting economy, efficiency and effectiveness in the use of public resources. The reorientation of systems and process, professionalizing and strengthening procurement functions, reinforcement of ethical behaviours, are some of the aspects that need to be emphasized at the agency level. Regulatory and monitoring functions by regulatory bodies need to be beefed up to leverage the procurement functions through the use of ICT. The regulating agencies must be adequately empowered to enforce through sanctions and specific penalties against violations of procurement rules and regulations. There are possibilities that ineffective monitoring and enforcement may provide good opportunities for abuse of the system often with total impunity, some of which are evident in the issues noted by the RAA. Promoting greater accountability

among public officials in ensuring faithful adherence to laws, rules and regulations and achieve value for money in public procurement should be taken as a priority. The collaborative mechanisms between relevant agencies, which are almost non-existent, must be initiated to discard compartmentalization of functions. Instead, overriding objectives must drive the functions of those agencies than being driven by their own specific mandates.

Effectiveness of public procurement system depends on various factors both internal and external. It is unlikely that reforms in procurement rules and regulations alone will bring in desired impact. Reform initiatives should be broad based and supported by strong financial management system, conducive and competitive market environment, culture of integrity and ethics, enforcement and regulatory mechanism, effective media, independent watch groups including NGOs and judiciary system.

CASE STUDIES

Case Study 3.1: Instances of lapses of the Evaluation Committee

- a. The evaluation committee in Medical Supplies Procurement Division (MSPD), MoH do not have required number and competent members. In 2015-2016, the evaluations are carried out without the head of clinical department, a representative from quality inspection team and AFD. Further, the tender evaluation was administered without the representation of the technical members for supplies related to Departments like Ophthalmology, Suture, Dermatology, Endoscopy, Laparoscopy, Urology, Pharmacy, ENT, Physiotherapy, Hemodialysis, Gynecology, Pediatrics and General Equipment. (Compliance Audit for Procurement and Management of Medical Supplies, MSPD, Ministry of Health)
- b. During the FY 2014-15, the evaluation committee members had not conducted the evaluation and had just signed in the evaluation sheet in office as produced by Site Engineer in Pemagatshel Dzongkhag. The usual practices of evaluation are that the site engineer prepares the evaluation and the other members just sign to complete the formality. This is against the norms of evaluation and failure of controls in bid evaluation. Evaluation carried out by one person had led to overwriting in BOQ resulting in manipulation of rates, excess payment to contractors, evaluation on the original copy of bidding documents, and signing on behalf of evaluation chairman on the result announcement even though the chairman was at the office on the same day. (AIN: 13501)

Case Study 3.2: Instances of inadequate needs assessment

- a. Auto Clear X-Ray machine procured by Regional Revenue and Customs Office (RRCO), Paro in 2011 for use at Paro International Airport was lying idle due to non-functioning of generator procured in 2013. The cost of the X-Ray machine was Nu.3,034,395.00 and the generator to be used with the X-Ray machine was procured at Nu 580,254.00. (AIN: 12776)
- b. The National Biodiversity Centre (NBC), MoAF procured Thermo Fisher Sample Storage tank for Cryo preservation and its accessories in May 2015 at Nu. 2,540,919.00. However, the physical verification on 12th April 2016 found the equipment lying idle since May 2015 as other reagents required to use the Thermo Fisher was not procured due to non-availability of fund. (AIN: 13777)
- c. In FY 2009-10, Naja Gewog procured a school bus for Bitekha Middle Secondary School which was used till the end of academic year 2012 and was left idle in 2013 as there was no budget for maintenance and salary of driver. (AIN: 11868)
- d. During FY 2015-16, Wangchuck Centennial National Park (WCNP), Bumthang had paid Nu.357,500.00 for supply and installation of Solar Heating System at Padseling Goenpa, Bumthang which was not installed even after lapse of more than 6 months. The supply order did not stipulate date of completion and although the supplier came to install twice, solar heating system could not be installed due to coinciding maintenance of water supply work with Dzongkhag Administration and non-availability of continuous water supply. (AIN: 14424)
- e. The Electricity Services Division (ESD) & Regional Stores Division, Samdrupjongkhar had procured a conductor winding machine costing Nu. 0.901 million in 2010. The machine was not utilized/ installed even after 4 years of its purchase due to space constraints which clearly indicates that the machine was purchased without assessing its actual requirement. (AIN: 12194)

- f. In 2013 the Regional Stores Division Phuentsholing, BPC had procured materials worth Nu. 64.225 million without considering the opening stock balances worth Nu. 145.244 million. The issuance of materials for the year amounted to Nu. 148.580 million leaving huge stock balances worth Nu. 60.887 million. (AIN: 12331)
- g. Drepong Gewog had procured various sizes of HDPE pipe for RWSS worth Nu.657,163.00 during the FY 2015-16. Yet all the HDPE pipes were stacked outside Gewog office and have not been used ever after more than five months of purchase. (AIN: 14506)
- h. On comparison of uniforms and extension kits available for distribution (Opening Stock plus Procured) with distribution list (Issued), the Department of Forests and Park Services had procured forestry uniform in excess of requirement by Nu.425,681.00 for FY 2013-2014. (AIN: 12782)
- i. Haa Dzongkhag procured electrical items amounting to Nu. 1,816,575.00 for 83 resettlement households at Bebji rehabilitation site in 2012-13. However, the actual number of resettlement households was only 72 and this had resulted in excess procurement of electrical items for 11 households valuing Nu. 240,795.90.00. (AIN: 12066)

Case Study 3.3: Instances of procurement with surplus budget

- a. The National Plant Protection Centre had made excess procurement of Electric Fencing System (EFS)-Energizers for further distribution to general public. Energizers were procured on ad-hoc basis as per the instruction from Department of Agriculture and the fund was received only towards the end of the financial year 2015-16. Out of 282 EFS-Energizers procured during 2014-15, the Centre had sold 82 numbers leaving a balance of 200. In spite of having huge stock balance, the Centre purchased another 662 numbers of EFS-Energizers during the financial year 2015-16 bringing the total stock balance to 862. (AIN: 13758)
- b. Pangbang Dungkhag had withheld Nu.582,000.00 in the form of draft at the end of the FY 2015-16 to avoid lapse of fund for the supply order of 12 sets fuel efficient cooking stove. Besides, the Dungkhag had not levied liquidated damages as the supplier had supplied even after delay of 4 months. (AIN: 14317)
- c. The Gewog Administration, Goserling had paid Nu. 394,474.00 to M/s. Namsey Tashi Tailoring Shop, Thimphu in FY 2015-16 towards the procurement of religious items for Manidara Lhakhang on 29/06/2016. However, the Gewog Administration had not received materials worth Nu. 347,108.00 even after a lapse of 4 months. (AIN: 14399)
- d. During FY 2012-13 Technical Training Institute, Rangjung had paid Nu. 105,000.00 to M/s. Bhutan Sports Goods, Thimphu towards the cost of T-shirts bearing institute's name and logo without actually receiving the supplies as the supply order was given only at the end of the financial year resulting in rush of expenditure towards the financial year end. (AIN: 12110)
- e. Dzongkhag Administration, Pemagatshel had paid Nu. 104,006.00 in June 2014 to Regional Agriculture Machinery Centre (RAMC), Khangma towards the cost of machineries and its accessories without actually receiving the supplies. (AIN: 12866)

Case Study 3.4: Instance of huge differences between quoted rates and rates declared at RRCO

- a. In FY 2016-17, M/s Sachock Enterprise supplied Magnum Boots to RBP at the quoted rate of Nu.4,300.00 per boot but the rate declared at the RRCO under the generic description of items (leather shoes) was Nu.413.89 (USD 6.10 at the exchange rate of 67.85), representing a difference of 939%. It either indicates under-invoicing to avoid taxes or exorbitant suppliers mark-up.
- b. M/s Karma Show Room had supplied executive revolving chairs to National Land Commission at the quoted rate of Nu.68,000 per chair (Rajkamal brand, RC 9600), while the rate declared for executive revolving chair at the RRCO Phuntsholing was Nu.5,759.00 (Rajkamal brand, RC 8000) representing 1081% of the declared rate. The declaration for RC 9600 was not on record at the RRCO.
- c. M/s Nana Enterprise had supplied a multi-function printer at the rate of Nu.1,769,539.00 to National Land Commission during the FY 2016-17 but the rate declared at the RRCO was Nu.938,718.75 (CIF value), representing 88.50% of the declared rate.
- d. M/s NGN Technologies had supplied Fuser 220V for phaser 4620 printer to the National Land Commission at the quoted rate of Nu. 25,880.00 but the rate declared at RRCO was Nu. 11,960.25 representing 116.23% of the declared rate.
- e. M/s B.D. Commercial had supplied HP LaserJet Pro 402D printer to National Assembly Secretariat during FY 2016-17 at quoted rate of Nu. 18,790.00 but the rate declared at RRCO was USD 133.00 (equivalent Nu. 8,718.15), representing 115.53% higher than the declared rate.
- f. M/s Kharsapani Enterprises had supplied and installed Biometric system to JDWNRH, Thimphu during FY 2015-16 at the quoted rate of Nu.5.56 million while the items were imported from India and declared at RRCO, Paro at Nu.2.81 million, indicating huge mark-up price as high as 97.81% of the declared rate.
- g. M/s SAFAMB Traders had supplied air compressor (firefighting equipment) to Royal Bhutan Police at the quoted rate of Nu.1.64 million but the rate declared at RRCO is Nu. 0.957 million (CIF Value), representing 71.42% of the declared rate. Therefore the total differential between the quoted and declared rate is Nu.0.68 million.
- h. M/s NGN Technologies Pvt. Ltd. had supplied heavy Duty printer (Xerox Phaser 5550dn) to the National Assembly Secretariat during FY 2016-17 at the quoted rate of Nu.170,699.00 but the rate declared at RRCO was Nu. 101,392.08 (CIF value) representing mark-up price as high as 68.35% of the declared rate.

Case Study 3.5: Instances of Quoted price higher than market price and maximum retail price

- a. The procurement of Non-Destructive Testing (NDT) equipment was awarded to M/s Tshomo Geo Tech based on single quotation without any negotiations along with training on the use of the equipment by EARRD, MoWHS in FY 2015-16. The full payment of Nu.2,009,875.00 was made without bill verification, without testing and certifying the equipment by any technical experts. Since the procurements were based on single quotation, the RAA made an attempt to ascertain the market price of the equipment through the Internet. The verification from the net indicated that the equipment cost ranged in between Nu 0.135 million to Nu. 0.170 million for

NDT Ultrasonic Test equipment (Ultrasonic Pulse Velocity-Pundit) indicating the supplier had exorbitantly charged to the extent of Nu. 0.664 million. (AIN: 14221)

- b. During FY 2015-16 Medical Supplies and Procurement Division (MSPD), MoH had procured cyclosporine at the rate of Nu.151/tab and Nu. 75/tab against the Maximum Retail Price (MRP) of Nu. 118.30/tab and Nu.54.43/tab for 100mg tab and 50mg tab respectively. MSPD had neither referred the price structure maintained with Drug Regulatory Authority (DRA) nor specified not to quote for price exceeding MRP in the Standard Bidding Document. (Compliance Audit for Procurement and Management of Medical Supplies, MSPD, Ministry of Health)

Case Study 3.6: Instances of inferior quality goods supplied

- a. The FCBL, Phuentsholing had procured 30 metric tons of Mansuri rice from M/s Balajee Enterprise, India that was rejected as it did not meet the WFP rice specifications. However, the rejected Mansuri rice was retained and later converted/changed to 551 rice with the same invoice number 168 dtd 2/03/2013 and same rate as 551 rice at Nu. 17,895/- per metric ton (MT) as M/s Balajee Enterprise had won the bid to supply 551 rice. (AIN: 13303)
- b. In 2014-15, Dzongkhag Administration, Samtse had procured furniture worth Nu.0.84 million for distribution to various schools and had accepted inferior quality furniture as the specification was not clearly defined. (AIN: 13646)
- c. Minjiwoong Central School, Samdrupjongkhar had procured 908 track suits in 2014-15, out of which only 150 were as per the specified size and the balance stock of 758 worth Nu. 606,400 were kept in the store as it did not fit the students. (AIN: 13454)
- d. Gewog Administration, Orong had procured and accepted furniture worth Nu. 208,969.00 in 2013-14 which were not as per specification and were of inferior quality. (AIN: 12996)
- e. Drukjegang Central School, Dagana had accepted 168 pairs of defective converse shoes worth Nu.71,904.00 in 2015-16 and is remaining idle in the store. 149 pairs of shoes were undersize and 19 were unpaired. (AIN: 14191)
- f. During the construction of water supply works in 2013-14 for 32 households at Zamthokha & Dongtshe village in Haa Dzongkhag, 63mm HDPE pipes amounting to Nu.136,038.00 were all found broken. The audit team was informed that the pipes broke by itself without any external factors indicating inferior quality bought by the contractor and accepted by Engineering Cell. (AIN: 12718)

Case Study 3.7: Instances showing flaws in contract agreements

- a. Bhutan Board Products Limited, Phuentsholing had inconsistencies in the Memorandum of Understanding signed with M/s Assam Petro-Chemical Limited in 2013. Clause 3 of Article 03 contradicts with Clause 1 of Article 14 for the supply of formaldehyde. The supplier was paid on the rate billed as per the revision in the market from time to time. (AIN: 13220)
- b. In 2015 Bhutan Ferro Alloys Ltd., had signed a contract agreement for the supply of quartzite with DrukThuendrel Leyrik (DTL). The contract terms encapsulated only the increase in the price of High Speed Diesel (HSD) into the price of quartzite thereby favouring DTL and had not factored in the decrease in price of HSD. (AIN: 14631)

Case Study 3.8: Instances showing non-enforcement of contractual terms

- a. Dampfu Central School, Tsirang had not received supplies worth Nu.1.284 million from suppliers within the agreed time in 2015-16. The School Procurement Committee had also granted time extensions without any valid reasons. (AIN: 14063)

Case Study 3.9: Instances of procurement with change in contract scope

- a. The Early Child Care & Development and Special Educational Needs of the Ministry of Education had floated tender for the supply of ECCD toys and equipment for 24 ECCD centres in 2015-16. Despite identifying 23 new community ECCD centres with WASH facilities in remote areas and supply of learning materials to 50 old ECCD centres in the Annual Work Plan, the tender was floated for only 24 ECCD centres at the contract price of Nu.1,203,456.00 for package-A and Nu.750,696.00 for package-B. Both the packages were awarded to M/s Dejung Norbu Enterprise. Later on, after the award of the contract, the scope was increased to 44 ECCD centres escalating the contract price to Nu. 2,512,706.00. The award of additional supply contract involving financial implication of Nu. 2,512,706.00 exceeded the initial contract price of Nu.1,954,152.00 (Nu.1,203,456.00+Nu.750,696.00) by almost 128% and was in total violation of the provisions of the PRR wherein it allows additional supplies of just 15% of the original contract. Further, no new contract was found signed between the agency and the supplier for additional supplies and so, there was no approval for change in contract scope. (AIN: 14218)

Case Study 3.10: Instance of excluding a qualified bidder to favour another

- a. In 2015-16 Medical Supplies and Procurement Division, MoH had awarded the supply of suture items to M/s Dzambala despite having quoted higher rates than the other two bidders. The basis for selecting M/s Dzambala whose quotes were for Johnson and Johnson brand was user friendliness as the technicians preferred and were familiar with Johnson and Johnson brand of suture items. (Compliance Audit for Procurement and Management of Medical Supplies, MSPD, Ministry of Health)

Case Study 3.11: Instances of procurement through non-competitive methods

- a. The Supreme Court had directly procured goods and services worth Nu.3,859,100.00 from three suppliers based on note sheets approved by the Hon'ble Chief Justice of Bhutan in 2013-14. Two of the suppliers were from India and Nepal. (Audit of Accounts and operations of both LC Account & Gol funded project 'Construction of Supreme Court' of Supreme Court)
- b. In 2015, Dungsam Cement Corporation Limited, Nganglam, Pemagatshel had procured expensive mechanical and electrical items valuing Nu.2.429 million from Indian suppliers through limited enquiry citing reasons of urgent requirements. However, the items supposedly procured on an urgent need basis were found still unused at the time of audit on 3rd June 2016. (AIN: 14125)
- c. Department of Culture had made direct procurement of goods and services totaling to Nu.651,000.00 by splitting orders to various parties for Punakha Tsechu in 2012. The approval to procure directly without having to call for quotations were found approved by the then hon'ble

Home Minister. (Audit of Letter of Credit (LC) including GOI funded activities of the Department of Culture)

- d. During the FY 2015-2016, Damphu Central Schoolin Tsirang had directly awarded the procurement and constructions works for statues worth Nu.0.160 million without adhering to the procurement formalities and financial norms. This work was not completed even after almost a year. (AIN: 14063)
- e. Gewog Administration, Nubi had procured furniture worth Nu. 61,000.00 from M/s Wangdag Furniture, Trongsa without calling quotations in 2014-15. The supplier had failed to deliver the furniture even after lapses of 4 months. (AIN: 13426)
- f. Limited tendering was floated for the supply of Officer Mess Guest House items for RBA Samtse wherein four bidders participated, out of which, three bidders were from West Bengal, India in 2013-14. Tendering formalities such as; obtaining the valid licenses, the registration of business, and obtaining earnest money deposits etc., were not completed and documented. Rates submitted by the Indian suppliers were comparatively higher for all the items than the rates quoted by M/s. S.R. Enterprise, Samtse, Bhutan. (AIN: 13910)

Case Study 3.12: Instances of improper feasibility studies conducted

- a. The Dzongkhag Administration, Samdrupjongkhar had undertaken construction of Four Unit Staff Quarter at Khoyar Primary School under Gomdar Gewog. The RAA noted that site for the proposed structures were shifted to another location without following the proper procedures. The new location needed additional fund of Nu. 1.763 million for retaining wall. It was noted that the major item of RRM was quoted at Nu. 5,000 which was more than double of BSR of Nu. 2,308.36. The Dzongkhag had not negotiated the rates for the same item. (AIN: 13454)
- b. The consultants (GSI) entrusted to carry out the preconstruction stage geotechnical investigation for preparation of DPR for PHPA-I had completed only the geological mapping and not the sub-surface exploration to determine reach wise quantitative estimate of rock mass quality prior to floating Tender. The DPR was prepared without conducting the sub-surface exploration. Subsequently, during execution there was deviation in quantity fixed for support system due to actual condition of rock mass with resultant extra expenses of Nu.115.088 million incurred towards deviated items at market rate. (AIN 13973; Para 1.2.2)
- c. The DOR Phuentsholing had executed Granular Sub Base(GSB) along Dorokha-Doongtoed Gewog Centre Road without studying the need to constructed permanent drainages. It was found that the GSB laid were washed away without provision of proper drain. The RAA pointed out the expenditure of Nu. 3.081 million as waste and avoidable (AIN 14081)
- d. The Dzongkhag Administration of Punakha had constructed a huge RCC structure to hold two numbers of 1000L water tanks for the General Hospital at Punakha in 2014. The RAA observed that the Dzongkhag had failed to carry out preliminary assessments of actual requirements and the availability of water supply. Due to flawed drawings and design by the concerned site engineer, the completed structure was larger than required, and defunct due to lack of water supply. (AIN: 12518; Para 2)

Case Study 3.13: Instance of faulty drawings and designs

- a. The RAA noted defects in both the civil and electrical design in the Light Gauge Steel Framework structures in Autsho, Sonamthang, Ramjar and Trashigang Middle Secondary Schools under Education Development Project implemented by Ministry of Education. The faulty designs included wrong fixation of sockets, tube light, and windows. (AIN 10664)
- b. The Gewog Administration, Wangphu under Samdrupjongkhar had prepared deficient design for Gewog Meeting Hall which was constructed at the cost of Nu. 1.714 million. The RAA noted that the design and drawings did not provide for essential permanent structures like breast walls and retaining walls posing risk to the main structure. (AIN 14308)
- c. The National Pension and Provident Fund (NPPF) had prepared faulty design of toilet ventilators and glass. The RAA noted that the glass provided was not louvered or glazed with frosted glass which are preferably used to secure privacy of users (AIN 14396)
- d. The RRCO Gelephu had accepted the deficient estimates prepared by the consultant for the construction of office building. It was found that the expansion joints specified in the drawings was not incorporated in the BOQ. The RAA raised concerns on the competency of the consultants for overlooking important components to ensure technical soundness of the structures. (AIN 13906)
- e. The work of designs, drawings and estimates of 40 bedded hospital at Samtse was given to consultant at Nu. 6.537 million which was 3.5% of the estimated value. It was found that the estimates prepared by the consultant contained anomalies in estimation of quantities and rates. Since the works of consultants were not scrutinized by the Department, the RAA raised concerns on correctness of estimates as well as correctness fees. (AIN 10620)
- f. The Ministry of Education's World Bank funded Education Development Project had applied uniform designs for construction of school infrastructures with LGSF technology irrespective of geographic regions. One of striking instances was the height of classrooms at 8.8 feet against a standard ceiling of 10 feet due to which schools located in tropical regions had problems installing fans and adequate ventilation & air circulation. (EDP)
- g. The Ministry of Finance had approved ad-hoc budget of Nu. 6.428 million during the financial year 2015-2016 for rebuilding palace of Kikha-Rathoed at Gyalikhar under Chokhor Gewog. The RAA observed that an expenditure of Nu. 4.33 million was spent on structural compensation on acquisition of structure, and balance of Nu. 2.098 million was kept as closed work. There was no administrative and technical sanctions accorded for the work. The Dzongkhag was not able to prepare drawings, design & estimates as the project was not proposed by the Dzongkhag but was thrust upon Dzongkhag without clear directives by the central agency. It also seemed that the capacity of Dzongkhag were not considered. (Audit Report of Dzongkhag Administration, Bumthang)

Case Study 3.14: Instance of non-consultation and non-adherence to recommendations of competent authorities

- a. The Dzongkhag Administration, Trongsa had contracted out the construction of Dzongkhag Veterinary Hospital (DVH) and Two Unit Staff Quarters at Nu. 4.603 million and Nu. 3.633 million respectively without adhering to recommendation of Department of Geology and Mines to

construct deep garland type drain deep enough to intersect the flow of ground water in order to stabilize the area of construction. During the construction, the flood had washed away the retaining walls that were constructed. Further, due to instability of the site, the construction of additional walls were felt necessary which is estimated to cost Nu. 2.706 million. Further, the impending disasters that would follow due to instability of the site may further require additional expenditure that would only add unnecessary burden on the government exchequer. (Audit Report of Trongsa Dzongkhag)

- b. The development of truck parking & approach road at Trongsa was contracted at Nu. 16,709,698.00 in 2014. The construction of walls, base course works, and construction of drainage were completed by the contractor. The black topping work was not executed because of unfavorable weather conditions. The unfavorable rainy weather condition, coupled with situation where collected rain water and drain water of DoR campus and BOD area flowed continuously to the truck parking area, caused destruction and cracks to structures already constructed or executed by the contractor. As a result, despite investing of huge resources, the truck parking had remained still non-functional even as of December 2016 and failed to meet the intended purpose.

Case Study 3.15: Instances of change of designs and specifications

- a. The Department of Engineering Services had changed the design of bridge to single span arch cantilever bridge with well foundation from pile foundation with a provision for High Flood Level midway through the construction. The change was supposedly made based on the difficulties faced during the implementation. The RAA raised concern on improper assessment of practical difficulties faced during implementation. This had resulted in time and cost overruns to the tune of Nu. 1.012 million. (14392)
- b. The Royal Bhutan Army (HQ) had made change in design and specification without prior approval in the construction of three storied Officers' Transit Building. It was found that the approvals were obtained only after the works were completed. (AIN 12451)
- c. The Department of Air Transport had awarded the work of providing and fixing superior quality modular kitchen without specific drawings and design which was supposed to be provided for approval of the client. It was found that the contractor had submitted on the sketch of 3D obtained from internet. (AIN 14383)
- d. The Department of Civil Aviation had relocated the runway position selected after partial execution. The initial site was chosen on the basis of the option proposed by the consultant who was paid Nu. 5.600 million, which RAA indicated as wasteful expenditure. (AIN 10922)
- e. The construction of RWSS Irrigation Channel at Mendrelgang completed at the cost of Nu. 11.248 million had deviations in works items executed ranging from -100% to 1160%. It was found that the contractor had not laid the alignment of GI pipers as per the original alignment. The contractor had not adhered to the notice to stop realignment of the Dzongkhag. (AIN 11873)

Case Study 3.16: Instances of improper evaluation of bids

- a. The technical evaluation for conducting detailed survey for grid electrification of potential off-grid households carried out by the Department of Renewal Energy was found flawed resulting

in allotting extra points to the bidder. It was found that key professional staff included people holding license of different companies. The management justified that there is no specific requirement in the PRR that debar from engaging people from other firms. (AIN 14118)

- b. The technical evaluation of bids for earth moving works for Yonphula Domestic Airport carried out by the Department of Civil Aviation was found flawed as the technically non responsive bidder was considered as responsive. The RAA noted that the winning bidder actually did not fulfill minimum qualification criteria which could be grounds for technical disqualification. The work was awarded at Nu. 15.032 million against the estimated cost of Nu. 13.762 million after rebate of 20%. The review showed that project manager and site supervisor did not possess required experience, and the bid capacity was not supported by appropriate documents (AIN 10922)
- c. The RAA noted that bid for Redesigning of Jamthog and Renovation of Regional Office building of RSTA Phuentsholing was rejected on unjustified grounds. It was found that computational mistakes of evaluation committee for computing bid validity and rebate had resulted in rejection of bid for evaluation. The RAA pointed out financial implication of Nu. 0.082 million on account of this lapse.
- d. The RAA found that the evaluation committees were not engaged in the evaluation of bids in the construction of Dzongkhag Guest house undertaken by the Dzongkhag Administration, Pemagatshel. The RAA was given to understand that evaluations were done by the concerned site engineer and the committee members merely signed on the evaluation report. The work was awarded at Nu. 4,447,701.64. (AIN 13501)
- e. The technical evaluation for the construction of Gelephu Domestic Airport carried out by the Department of Civil Aviation was found to be flawed resulting in award of contract to a technically non-responsive bidder. The committee had overlooked requirements of financial performance history and personnel requirements failing to exercise due diligence during evaluation. The work was awarded at Nu. 8.536 million. The RAA pointed out failure to exercise due diligence and depriving other responsive bidders (AIN 13616)
- f. The improper evaluation done by the Territorial Forest Office, Samtse had resulted in wrong award of work. The RAA found that the bid price of a particular work item was understated in the amount column resulting in lower aggregate bid amount of bidder who was awarded the work. The RAA pointed out the financial implication of Nu. 0.056 million and issue of rejection of actual lowest bidder. (AIN 14491)

Case Study 3.17: Instances of unjustified rejection of bids

- a. The RAA noted that the Department of Renewal of Energy had provided only one day for submission of power of attorney to the bidder who scored highest points during first evaluation to carry out detailed feasibility survey for converting potential off-grid households into grid electrification in 20 Dzongkhags. As the firm was not able to provide the documents within the given time, the firm was considered non responsive. The RAA raised concerns on unjustified rejection of potential bidders. (AIN 14118)
- b. The Dungkhag Administration, Tashicholing, Samtse had rejected the lowest quoted firm as the firm had not initialed on overwriting on figures of two items for the construction of 2 blocks of

32 bedded hostel at Bara LSS. The contract was awarded to second lowest who had quoted Nu. 1.077 million above the first lowest. The RAA raised concerns on lack of due diligence and implied loss of Nu. 1.077 million by awarding to the second lowest bidder. (AIN 12740)

Case Study 3.18: Instances of issues related to analyzed rates

- a. The DCA had recruited a consultant to analyze the rates for earthwork excavation and transportation after the rate analysis submitted by the contractor, the DCA and one based on BSR 2011 were not accepted. However, it was observed that the consultant had wrongly included 5% for labour for separating and staking stones and rock for rate analysis for earthwork excavation, which was not admissible by LMC 2011. Due to the inclusion of inadmissible item in the rate analysis, the claim of the contractor was overstated by Nu.1.387 million. The consultant also did not follow the prescribed methods in LMC 2011 while analyzing the rates for transportation of excavated materials and applied the wrong capacity of truck, thus leading to overstatement of contractor's claim by Nu.4.867 million.
- b. The DCA had also paid the contractor on the wrong rate analysis due to using wrong nomenclature in the BoQ. The item of work "*Earthwork in excavation over areas, depth <300mm, width >1.5m, area>10 sq.m in plan, including disposal of excavated earth within 50m lead and 1.5m lift & disposed soil to be neatly dressed*", was wrongly specified as "*Earthwork in excavation over areas, depth >300mm, width >1.5m, area>10 sq.m in plan, including disposal of excavated earth within 50m lead and 1.5m lift & disposed soil to be neatly dressed*". Due to the wrong specification of the item of work, the cost was inflated by Nu.4.368 million.
- c. The DCA had also paid at analyzed rates for 'providing and laying dry earth bedding, including consolidating each deposited layer by watering, ramming and dressing'. The rate analysis had included 'Dry Mud' which should not have been included as the excavated materials from the formation cutting for runways and shoulder formation/trace/box cutting with excavator including separate disposition of soil, rocks and stones within 50 meters for reuse was paid separately. Due to this, the contractor's claim was overstated by Nu.2.647 million.

Case Study 3.19: Instances of direct award of works

- a. The Bhutan Indigenous Games & Sports Association had made direct award of consultancy service for designing and supervision of Hostel Construction and the office cum Archery shed construction worth Nu. 2.346 million without calling quotations. It was also noted that the consultant was a non Bhutanese and not registered with the Construction Development Board and did not hold any business license in the country. (AIN 10711)
- b. The Bhutan Archery Federation had made direct award of work of constructing Prefabricated structure, Office cum Shooting shed and walk way at Lanjophakha valuing Nu. 5.594 million without calling quotation. (AIN 10711)
- c. The Bhutan Centennial Distillery, Gelephu had directly awarded the remaining work at 40.500 million after termination of the contract with the previous contractor. The RAA noted that the management had not negotiated price of items which were offered at higher than the previous supplier. If negotiated the management could have saved Nu. 1.022 million. Besides there was no concurrence sought from the Board for the award. (AIN 11195).

- d. The Bhutan Centennial Distillery had made direct award of work for installation of dryer plant valuing Nu. 17.170 million without inviting offers from prospective bidders. The item was initially not included in the DPR but later on the recommendation of the field team the item was found to be necessary. Further, the price offer of one of the bidders contained price for this particular item which was quoted at Nu. 10.000 million which was rejected as it was not within the DPR. (AIN 11195) (This can also be reflect under Feasibility)
- e. The Gewog Administration, Naja under Paro Dzongkhag had hired the air compressor directly from the hiring agent without calling quotation. It was submitted that the work was delayed due to conflicts and there was no time for quotation. (AIN 11868)
- f. The Gelephu Thromde had directly awarded the work of roofing valuing Nu. 1.500 million without calling open tender. (AIN 12304)
- g. The Dzongkhag Administration, Lhuentse had awarded the River Training works vauing Nu. 2.981 million at Lekpachu under Gangzur Gewog without competitive bidding. The award was made based on the decision of the Dzongkhag Tender Committee. (AIN 13365)
- h. The Dungsam Cement Corporation Ltd., had directly awarded the construction of road without inviting competitive bids. The management had submitted that procurement process was not followed as the work had to be carried out on emergency. (AIN 13705)
- i. The Dungsam Cement Corporation had awarded the contract for design, engineering, manufacturing, supply, erection, testing and commissioning of workshop equipment valuing Nu. 12.383 million without calling competitive bids. (AIN 13705)
- j. The Lhuentse Dzongkhag Administration had deviated from the requirements of the Procurement Rules and Regulations and awarded the river training works at Lekpachu under Gangzur Gewog to M/s. Druk Choden Construction, Lhuentse without following due tendering processes to obtain competitive bidding. The contract estimated to cost of Nu. 2.981 million was over and above the Procurement Threshold levels prescribed in the Procurement Manual 2009 and required tendering. (AIN: 13365; Para 1)

Case Study 3.20: Instances of award of work to non-responsive bidder

- a. The Department of Civil Aviation had awarded the construction of domestic airport valuing Nu. 49.154 million at Bumthang to non responsive bidder. It was found that after both the bidders who responded were evaluated as technically non responsive, the Evaluation Committee later had considered offer of one of them. The reasons cited for consideration were time constraint, rates offered were practically best etc, which the RAA found not substantiated. (AIN 10698)
- b. The Department of Civil Aviation had awarded the Site Development Works of Yonphula domestic airport to non-responsive bidders. It was noted that the work was awarded on various justifications which the RAA pointed as violation to the PRR. (AIN 10922)

Case Study 3.21: Instances of direct award of additional work

- a. Dzongkhag Administration, Trashiyangtse had awarded the additional work of constructing Sewer Network valuing Nu. 9.924 million without obtaining special approval of the competent

authority. The additional work was 232% over and above the original contract price. It was learnt that the need for sewer network was overlooked during initial plan. (AIN 13391)

- b. The Bhutan Olympic Committee had directly awarded the additional work of site development works of levelling ground valuing Nu. 0.200 million. It was noted that the additional work was given after completion of the initial contract. (AIN 10711)
- c. The Dzongkhag Administration Pemagatshel had awarded additional construction works worth Nu. 101.614 million to M/s. U Wangchuk Construction in violation to the Anti-Corruption Commission's Suspension Order of the contractor. As per the order, the contractor was expected to complete the work in hand before leaving. The additional work was necessitated due to improper planning as the initial work was for eight RRM wall, but later required twelve RRM walls. The management instead of floating tender as per procurement norms, awarded the additional works to the same contractor. The additional work was worth Nu. 101.614 million and represented 324.21% of the initial contract price. (AIN: 12943; Para 1.1)

Case Study 3.22: Instances of issues in performance security

- a. The Gewog Administration, Naja had not insisted on deposit of performance guarantee for hire of air compressors from the hiring agency. (AIN 11868)
- b. The bank guarantee submitted by consultant engaged by the Penden Cement Authority Limited for carrying out detailed technical feasibility study for preparation of DPR on installation of materials transportation ropeway was found expired. (AIN 10787)
- c. The NRDCL Samdrupjongkhar had not insisted on renewal of bank guarantee of Nu. 0.170 million submitted as security deposit for constructions of Office cum staff quarter at Golanti, Jomotshangkha.(13058)
- d. The Royal Bhutan Police, HQ had not renewed the bank guarantee of Nu. 0.722 million submitted as performance security for the construction of family quarter for the RBP personnel at Gakidling, Haa. It was found that the bank guarantee had expired beyond 300 days. (AIN 13734)
- e. The Royal Bhutan Police, HQ had not renewed the bank guarantee of Nu. 0.532 million submitted as performance security for the construction of office of the RBP at Gakidling, Haa. It was found that the bank guarantee had expired beyond 300 days. (AIN 13734)
- f. The Royal Bhutan Police, HQ had not renewed the bank guarantee of Nu. 0.2.810 million submitted as performance security for the construction of 18 units family quarter at Tashigatshal, Chukha. It was found that the bank guarantee had expired beyond 300 days. (AIN 13734)
- g. The Royal Bhutan Police, HQ had not renewed the bank guarantee of Nu. 0.6.527 million submitted as performance security for the construction of 20 units officers' quarter at RBP, HQ. It was found that the bank guarantee had expired beyond 300 days. (AIN 13734)
- h. The Faculty of Traditional Medicine in the GoI funded project "Construction of Academic, Library, MPH, 100 Bedded Hostel, Provost Quarter and Site Development Works" had not collected the additional differential amount of Nu.10.633 million from the contractor as recommended by the Evaluation Committee. The Evaluation Committee recommended the Award Committee to obtaining additional differential security for difference between estimated

amount and quoted price, if they decided to award the contract to the lowest responsive bidder M/s Jachung Builders. The lowest bidder had submitted a bid price of Nu.28.203 million, which was 27.38% below the estimated cost of Nu.38.836 million.

- i. The Ministry of Education had not forfeited the performance security of Nu. 4.840 million after taking over the incomplete work of construction of Autsho MMS, Lhuentse after contractor failed to complete. (AIN 9313)
- j. The Dzongkhag Administration, Sarpang had not forfeited the performance security of Nu. 0.473 million on termination of contract due to failure to complete the work (AIN 11418)

Case Study 3.23: Instances of insurance quoted as separate item of work

- a. The Department of Roads, Lingmethang had paid insurance of Nu. 0.100 million to the contractor for the construction of Bridge Abutments for Wambhurchu Zem at Lelebi to Pelphu farm road. It was noted that the insurance was allowed to be included as separate item of work contravening the provision of the GCC (AIN 12026)
- b. Ministry of Education had undertaken the construction of Retaining Wall at Minje Middle Secondary school at the cost of Nu. 6.665 million. After the work was taken over, the wall was washed away. The contractor was not asked to redo though the insurance 5.600 million was claimed from the BIL. It was justified that wall was not required. The RAA pointed out that the expenditure was waste due to improper studies being conducted prior to construction. (AIN 14079)
- c. The Ministry of Education had incorporated “insurance of damages to the works, plants and materials” as separate item in the BOQ for the construction of various schools. The RAA found that the insurance cost borne by the project for these constructions exceed the actual premium paid by the contractors by over Nu. 9.939 million. (AIN 9104)

Case Study 3.24: Instances of unadjusted advances

- a. The Dzongkhag Administration had not recovered advance of Nu. 1.310 million on termination of the contract for rehabilitation of adarchu-Peteykha irrigation channel (13724)
- b. The Dungkhag Administration, Wamrong had not adjusted the mobilization advance of Nu. 1.000 million from the running bills in the construction of farm roads from Kurichiloo to Drupkhang. It was noted that four running bills aggregating to Nu. 7.786 million were passed and paid. (AIN 10116)
- c. The Faculty of Traditional Medicine had not adjusted advances amounting to Nu.2.736 million from the contractor in the Gol funded Project “Construction of Academic, Library, MPH, 100 Bedded Hostel, Provost Quarter and Site Development Works”.
- d. The Project Management had released payments aggregating to Nu.25.693 million up to the 9th RA bill but had not adjusted advances amounting to Nu.2.736 million from the pre-final bills. The management had failed to comply with the contract agreements and had not deducted proportionate amounts from payments by following the schedule of completed percentages of the works and had also, not adjusted all advances when 80% of contract is executed as required. (AIN: 14188; Para: 1)

Case Study 3.25: Instances of issues in rebate

- a. The “5% plus rebate” amounting to Nu. 2.458 million offered by the contractor for the work of construction of domestic airport at Bumthang was interpreted as additional cost on the bid amount contrary to the legal definition of the term “rebate”. The RAA raised concerns on anomaly in the interpretation and pointed it out as undue financial advantage to the contractor. (AIN 10698)
- b. The 15% rebate amounting to Nu. 0.084 million in the construction of Warden and Matron’s Quarter at Gomphu LSS implemented by Dzongkhag Administration was found not deducted from the running bills. (AIN 11203)
- c. The Dungkhag Administration, Phuentsholing had not deducted 5% rebate amounting to Nu. 0.384 million in the construction of Matron, Warden and Principal’s quarter. (AIN 12144)
- d. The Dzongkhag Administration, Chukha had not deducted 5% rebate amounting to Nu. 0.334 million in the construction of four unit staff quarter at Rangaytong BHU (AIN 12190)
- e. The rebate of Nu. 0.234 million was not deducted in the construction of 8 KM Phadi-Galingkhar Farm Road. (Nu 12112)

Case Study 3.26: Instances of inadequacies in contract agreement

- a. The labour contract entered into by the Royal Body Guard, Dechencholing for the construction of officers’ and family quarters had not specified time period of contract. The construction started in 2011 was completed only in 2014. Further, the agreement did not specify number of labourers to be deployed, and payment procedures. (AIN 12470)
- b. The Punatsangchhu II had made avoidable expenditure of Nu. 74.720 million due to non-adherence to the Procurement Rules and Regulations pertaining to price adjustment in the work of construction of Contract Package C3. It was noted that in computing price adjustment, the PRR prescribed 0.80 of value of work done in the formula of price adjustment. However, the management had used 0.85 of the value of work done resulting in avoidable expenditure. This had occurred due to non incorporation of appropriate escalation clause in the Notice Inviting Tender (AIN 14137)
- c. The Punatsangchhu II had incurred extra expenditure of Nu. 27.830 million on account of non-exclusion of advance payment from the base price in price adjustment in EM1. It was found that the provision for exclusion of advance payment for calculation of price adjustment was kept in the General Conditions of Contract (GCC) of EM-2 and the same provision was not kept in GCC of EM1. Both EM 1 and EM 2 had similar nature of work but EM 1 package was larger than EM2. The inconsistencies in the clauses maintained in the GCC of different packages had resulted in extra payment. (AIN 14137)

Case Study 3.27: Instances of non-enforcement of contractual obligations

- a. The RAA noted slow progress of the work in the construction of 12 KM Farm Road from Kurichiloo to Drupkhag awarded at Nu. 14.500 million implemented by the Dungkhag Administration, Wamrong. It was found that the physical progress of the work was only Nu.

42.86% upon expiry of contract period of 12 months. The Dungkha explained that progress had remained slow despite repeated reminders. (AIN 10116)

- b. The construction of two toilets at Sonamthang MSS awarded at Nu. 2.369 million by the Dungkha Administration, Panbang was found not completed even after the lapse of more than 5 months from completion date. The RAA noted that physical progress was only 30-40% only. (AIN 11181)
- c. The construction of Wangchuck Centennial Park Head Office awarded at Nu. 7.740 million was not completed even after the lapse of 200 days from the envisaged completion date. (AIN 11279)
- d. The ESD, BPCI, Mongar had not completed the work of renovation of Khalanzi Mini Hydro Power Plant awarded at Nu. 4.572 million even after lapse of more than two months from the completion date (AIN 11520)
- e. The NRDCL, Samdrupjongkhar had not terminated the contract for stopping the work of Office cum staff quarter at Golanti, Jomotshangkha for more than one month. As per the bidding documents, stopping of work beyond one month should have construed fundamental breach of contract. (AIN 13058)
- f. The NRDCL Samdrupjongkhar had not terminated the contract of construction of Office cum staff quarter at Golanti, Jomotshangkha as per the terms of contract. The work had remained abandoned with remaining value of work not executed of Nu. 0.635 million (AIN 13058)
- g. The JDNRH had taken over the chiller machines valuing Nu. 21.000 million without commissioning and testing as required under contract. It was noted that the machines were commissioned after six months of taking over. The machine had become non-functional after four months of commissioning and the supplier was asked for rectification. However, the chillers had remained non functional even after the repairs and expiry of the defect liability period. The RAA pointed out that the expenditure incurred was wasteful and that the management had failed to take legal course for fundamental breach of contract by the contractor. (AIN 13992)
- h. The Dzongkha Administration, Punakha had not recovered 20% of the total value of balance works amounting to Nu. 0.256 million on termination of the contract (AIN 11059).
- i. The Department of Civil Aviation had not enforced the provision of the contract for failure to complete the work even after lapse of 24 months from the agreed completion date. The work pertained to construction of security quarter which was awarded at 109.019 million (AIN 12990)

Case Study 3.28: Instances of non-deployment of equipment and personnel committed

- a. The RAA noted deployment of machineries other than those specified and committed by the contractor in the SBD for the construction of domestic airports undertaken Department of Civil Aviation. The clauses of GCC and SCC specify deductions to be made for non adherence but had never invoked the provision. (AIN 10922)
- b. The technical proposals included four specialists to make field visit as a part of consultancy services for carrying out Environmental Impact Assessment for the proposed construction Bhutan Education Cit at Wangsisina. The RAA noted that only one specialist was deployed. (AIN 11684)
- c. The Dzong Construction Project, Pemagatshel had engaged engineer on contract for interpretation of drawings and to report the discrepancies to the Department. However, it was

the responsibility of consultant to engage engineer for the same purpose as per the Terms of Reference. The RAA pointed out additional cost to the government on account of monthly salary of Nu. 0.110 million per month. (AIN 11983)

- d. The Royal Bhutan Police, HO had not deducted the amount of Nu. 1.845 million for not deploying the key personnel by the contractor in the **construction of family quarter** for the RBP personnel at Gakidling, Haa. The deduction was stipulated in the terms of contract. (AIN 13734)
- e. The Royal Bhutan Police, HO had not deducted the amount of Nu. 1.845 million for not deploying the key personnel by the contractor in the **construction of office cum lockup** at Gakidling, Haa. The deduction was stipulated in the terms of contract. (AIN 13734)
- f. The Royal Bhutan Police, HO had not deducted the amount of Nu. 1.080 million for not deploying the key personnel by the contractor in **the construction of 18 Units Family Quarter** at Tashigatshal, Chukha. The deduction was stipulated in the terms of contract. (AIN 13734)
- g. The Royal Bhutan Police, HO had not deducted the amount of Nu. 1.080 million for not deploying the key personnel by the contractor in **the construction of Four Units Officer Quarter** at Tashigatshal, Chukha. The deduction was stipulated in the terms of contract. (AIN 13734)
- h. The Royal Bhutan Police, HO had not deducted the amount of Nu. 1.050 million for not deploying the key personnel by the contractor in the construction of 20 units officer quarter at RBP HO. The deduction was stipulated in the terms of contract. (AIN 13734)

Case Study 3.29: Instances of grant of unwarranted time extension

- a. The contract for the construction of 14.983 km Autsho-Gumrang, Lhuntse was awarded at Nu. 129.900 million and completed at Nu. 86.005 million. The RAA noted that time extensions were granted despite substantial reduction of scope of work by 39.41% which should have allowed the contractor to complete the work before the scheduled time. This had resulted in waiver of liquidated damages amounting to Nu. 4.997 million. (AIN 9887)
- b. The construction of approach road and one block staff quarter Khatakha was awarded at Nu. 7.254 million. The RAA noted that the hindrance of 90 days was granted on account of road block and heavy rainfall resulting in short levy of liquidated damages of Nu. 0.457 million. (AIN 12190)
- c. The Gaeddu College of Business Studies had granted unwarranted time extension of 111 days in various construction works. It was noted that there was no rational basis to consider it as hindrances and thus, the liquidated damages of Nu. 2.475 million was not levied (AIN 12349)
- d. The construction of Academic Building and its associated site development works at the Royal Institute of Health Sciences, Thimphu was awarded at the quoted amount of Nu. 100.458 million against the estimated cost of Nu. 81.788 million. The work was expected to be completed within 18 months. There was considerable delays and contract period was extended over 524 days out of which 191 days could not be admitted as per RAA's review. The implication by way liquidated damages amounted to Nu. 9.289 million. (AIN 12387)
- e. The construction of hostels and dining hall at Royal Institute of Health Sciences, Thimphu was awarded at Nu. 52.305 million. The RAA found that time extensions were granted without rational basis and the commensurate reduction of time for reduced scope of work was not computed. The RAA pointed out the recoverable liquidated damages of Nu. 5.231 million (AIN12387)

- f. The construction of 220 KV Transmission line from Malbase to Samtse was awarded at Nu. 382.488 million and the final cost was Nu. 607.395 million. The RAA noted that series of time extensions were approved and the project was delayed by 786 days. The RAA reviewed the time extension approved and found that time extension granted was not substantiated by genuine grounds and causes of hindrances were mainly due to contractor's own negligence and incompetence. Therefore, as per the contract agreement, the contractor was liable for 10% liquidated damages amounting to Nu. 38.248 million (14211)

Case Study 3.30: Instances of extra payments

- a. The Department of Civil Aviation, Paro had analysed rates for item of work in deviation to the terms of the contract that resulted in irregular payments of Nu. 55.354 million due to deviations exceeding variation limits of 5% of the initial contract price in the construction of the Gelephu Domestic Airport. There were no prior approval of the Employer and Tender Committee for the deviations. (AIN: 12148; Para 1)
- b. The Department of Civil Aviation had made excess payments to the contractor due to improper rate analysis carried out for the items of work in the construction of Gelephu Domestic Airport. Nu. 32.680 million for Providing and laying Dense Bituminous Macadam (DBM) and Dense Asphalt Concrete (DAC), Nu.3.579 million for Earthwork Excavation, and Overstatement of Final Bill by 2.647 million. (AIN: 12148; Paras: 2, 3, 4)
- c. The Dzongkhag Administration, Dagana had made payment at inflated rates resulting into extra payment of Nu. 3.015 million in the construction of two unit science block, toilet for girls, MPH and ground development at Gesarling Middle Secondary School. The payment was found made at inflated rates for three items of works. (AIN 12636)

Case Study 3.31: Instances of payment of final bills without completing the work

- a. The Dzongkhag Administration, Tsirang had released the final payment of Nu. 1.892 million without completing the work in all respects. There were no necessary documents of work completion report, handing/taking and joint measurements taken. (AIN 14413)
- b. The Dzongkhag Administration, Punakha had released the entire payment of Nu. 1.399 million without completion of the work for the construction of administrative block at Laptshakha Primary School. The physical progress was only Nu. 60%. (AIN 11059)

Case Study 3.32: Instances of inadmissible payment

- a. The Department of Roads had released payment of Nu. 1.800 million without fulfilling the training obligations of the contract by the supplier of Galvanized Steel Truss Bridges Parts in the Road Network Project, Gedu. As per the contract document the amount was payable to the supplier only after conducting draining but was released without conducting the training on the basis of bank guarantee submitted by the supplier. (AIN 10770).
- b. The Department of Roads had made payment of Nu. 0.502 million for the supply of Bailey Bridge parts for Chaka Zam located at Paro and Nimtola Zam at Dagana in contravention to the terms

of agreement. The payment pertained to 12% central excise duty and 3% cess which as per the agreement should have been borne by the supplier. (AIN 11035)

- c. The G2C project had released the 30% consultancy fee amounting to Nu. 11.010 million without fulfilling the criteria of payment schedule. As per the payment schedule, the payment shall be released only upon completion of User Acceptance Test (UAT). (AIN 11410)
- d. The Department of Engineering Services had made payment of Nu. 0.250 million without receipt of “as built” drawing for the construction of road works in Semtokha Local Area Plan as required by the contract agreement (AIN 11859)
- e. The Mangdechu Project had not deducted interest free advance from escalation payment as stipulated as per the contract agreement for the civil works under three contract packages. The project had made extra payment of Nu. 20.240 million on account of not adhering to the contract agreement (AIN 14059)
- f. The PHPA II had made excess payment of Nu. 11.069 million during escalation payment. The RAA found that provisions relating to adding secured advance to the value of work done in determining the escalation payment was not incorporated in the contract agreement. (AIN 14137)

Case Study 3.33: Instances of issues in payment to contractors

- a. Samtse College of Education had made excess payment of Nu. 0.030 million in the procurement of CGI Sheets. The RAA observed that the payment of inferior quality of CGI sheet was paid at rates quoted for superior quality. (AIN 12433)
- b. The Field Division, DoR, Sarpang had made payment of Nu. 0.362 million in the construction of Multi Cell Box Culvert at Pithakhola and Punditchu. It was found that the work was not completed. (AIN 11431)
- c. The Gewog Administration, Lauri, Samdrupjongkhar had made payment of Nu. 0.376 million in the construction of farm road from Langsa to Lauri village without completing the work. (AIN 14315)
- d. The Gewog Administration, Serthi, Samdrupjongkhar had made payment of Nu. 2.795 million in the construction of Phogcheri to Serthi village without completing the work. (AIN 14314)
- e. The RRCO Samtse had paid Nu. 0.415 million for the abnormally deviated items without obtaining approval in the construction of Conference Hall cum Office building. The quantity paid for disposal of surplus earth was estimated at 6 cum by the consultant but the payment was made for 314.18 cum. (AIN 12899)
- f. The RAA noted payment of Nu. 1.845 million made on account of additional works in the construction of Vocational Technical Institute at Dolungang undertaken by the Department of Human Resources. The additional works were the result of omission of items in the BOQ prepared by the consultant. The RAA found the payment made to various additional items inadmissible as the work was awarded on lump sum basis (AIN 13773)
- g. The Department of Roads had deviated from the nomenclature used for L-Drain and resulted in separate payment for Granular Sub Base (GSB) in the Road Network Project, Gedu which

otherwise should have been part of L-Drain paid in running meters. The RAA pointed out unjustified payment of Nu. 0.671 on account of treating it as a separate item. (AIN 12089)

- h. The Dzongkhag Administration of Punakha had contracted out the construction of Water Treatment Plant at Khurthang worth Nu. 5.906 million in 2006. The contractor breached the contract and refused to complete the works and the management had to drag the contractor to court after which the contractor resumed the works. Unwarranted time extensions were also given numerous times and works finally completed in 2013. The RAA during its audit found that the contractor had claimed payments of Nu. 0.855 million for works not provided/executed. (AIN: 11870; Para 1.1)
- i. The contractor for the Gol funded Project “Construction of Academic, Library, MPH, 100 Bedded Hostel, Provost Quarter and Site Development Works” implemented by Faculty of Traditional Medicine had claimed payments of Nu.0.248 million twice for brick work in superstructure. The measurements and payments for ‘250mm brick work’ for ground floor in Block A & B were claimed twice, once in the 4th RA bill and then again in the 7th RA bill. (AIN: 14188; Para: 5)
- j. The contractor for the Gol funded Project “Construction of Academic, Library, MPH, 100 Bedded Hostel, Provost Quarter and Site Development Works” implemented by Faculty of Traditional Medicine had made claims of Nu. 0.350 million for wooden skirting due to bogus measurements of prefabricated wooden flooring. The supervision consultant had repeated the flooring measurements of the conference hall in the flooring of second floor and ‘jamthog’ and the contractor had claimed for wooden flooring in the lobby, which was actually kota-stone flooring. (AIN: 14188; Para: 16)
- k. The RAA noted that the construction of three unit staff quarter at Dungna under Chukha Dzongkhag awarded at Nu. 3.179 million was not taken over formally through proper handing/taking note. It was found that buildings were occupied and had several defects in roofing, woods used in window and door frames etc. The RAA pointed out how the completed works were certified for payment even without taking it over. (AIN 12190)

Case Study 3.34: Instances of issues related to handing/taking

- a. The Contract Package of GT-06 under Road Network Project for provision of metal crash barriers was completed and taken over by the Department of Roads. However, it was seen that no fish tails as provisioned in the standard design were provided at 34 locations. The Department explained that the fish tails brought by contractor did not fit due to different specification and were sent back to the supplier. The RAA noted that the management had not followed up even after six months of taking over the work. (AIN 10731)
- b. The Field Division, DoR, Trongsa had taken over defective works in various works of resurfacing and maintenance of roads under its jurisdiction. The defects included potholes, peeling, and cracks in the works completed. (AIN 10520)
- c. The MHPA had awarded the contract for construction of water supply and sewerage system for permanent colony at Dangdung to M/s. Rinchen Builders at a total cost of Nu. 81.598 million. The intake tank had leakages and was not functional. Subsequently, an additional intake tank construction work was awarded to M/s. Deki Samphel Construction “up-gradation of intake tank”. However, the new tank had also developed mild cracks and had leakages. Besides, the

management also awarded additional work of constructing gabion wall. The RAA raised concerns on defective works and erratic water supply even after its completion (AIN 14059; Para: 7)

- d. The Haa Dzongkhag Administration had taken over the poorly constructed sub-standard Staff Quarter at Ngatsena, Gakiling Gewog without even visiting the site for verification. (AIN: 12066; Para: 2.2)
- e. The Thimphu Dzongkhag Administration had constructed water supply system worth Nu.21.768 million to provide water supply to the proposed new Dzongkhag office complex and the nearby inhabitants at Debsiphakha. Though the work was completed and handed over to the Dzongkhag Administration in February 2014, the water supply system could not be put to use and had remained non-functional as of October 2014. (AIN: 12681; Para 1.1)
- f. The High Court of Bhutan had accepted defective works for Parking and Retaining Wall in the construction of the Supreme Court. The total cost of construction was Nu.2.351 million. (AIN: 14136; Para: 2)
- g. The Department of Air Transport had accepted defective works in surface of top marble flooring and RCC worth Nu.0.464 million in the construction of Security Quarters and Fire Station. (AIN: 13320; Para 1.1)
- h. The Chhukha Dzongkhag Administration had cleared the final bills and paid the contractor without even carrying out proper handing/taking of 3-Unit Staff Quarters at Dunga LSS. Later, it was discovered that the structure had numerous defects that had not been rectified prior to hand/taking. (AIN: 12190; Para: 8)
- i. The Ministry of Education had accepted defective marble chips flooring of Nu.1.405 million for Sarpang Middle Secondary School. The 40mm thick marble chips flooring 12.5mm aggregates in grey cement provided was found not troweled over, pressed and brought true to required level to bring maximum amount of marble chips come up and spread uniformly over the surface. Further, pin holes were seen in all the buildings indicating poor workmanship. (AIN: 14079)

Case Study 3.35: Instances of taking over of defective works

- a. The completed farm road from Riserboo to Kherigaphu valuing Nu. 10.200 million implemented by the Dungkha Administration, Wamrong was handed over. However, the RAA noted that road was blocked at many places due to land slides and the major wall (breast wall) at the take off point was washed away. The RAA asked the Dungkha to initiate rectification of work by the contractor as work was within the defect liability period. (AIN 10116)
- b. The RAA noted that the wing wall on the left abutment of bridge over Drangmechu under Yallang Gewog implemented by Dzongkhag Administration, Trashiyangtse valuing Nu. 1.223 million was completely washed away after it was taken over. The RAA pointed out that destruction had occurred due to non provision of adequate drainage system to divert the rain water. (AIN 11025)

Case Study 3.36: Instances of booking of expenditure without completion of works

- a. The Haa Dzongkhag Administration had retained Nu. 0.341 million in the form of a cash warrant and booked it as expenditure for the construction of Deondo Zam at Gakiling. The construction of the bridge was delayed and incomplete. (AIN: 12066; Para: 3)
- b. The Department of Air Transport had awarded work for the construction of two numbers of billboards of Nu.0.988 at Paro International Airport to M/s. Rinson Construction Company Pvt. Ltd and the supply and installation of the GRC Cornice Profile works was awarded to M/s. Bhutan GRC, Thimphu for Nu.0.208 million. The two contract works worth Nu.1.196 million, although not started was found booked under closed works Account as on 30th June 2016 against the related provisions of the Financial Rules and Regulation 2001. Further, the expenditures were booked under the object code 15.06 Maintenance of Property as 'current expenditures' instead of 'capital expenditure' in violation of the budgetary and financial norms. (AIN: 14249; Para 2)
- c. The Gewog Administration, Tongzhang under Trashiyangtse had booked Nu. 1.383 million as final expenditure for various unexecuted construction works under the gewog. The amount was found deposited into refundable deposit account for future payments. (AIN: 9803; Para: 4)

APPENDICES

APPENDIX A: Diagnostic Review of PRR 2009

The RAA carried out a diagnostic review of Procurement Rules and Regulations 2009. The review aimed at critically assessing the specific clauses in terms of its applicability and impact it may have on overall public procurement system. However, this review doesn't consider concerns or areas that is beyond the scope of provisions in the existing rules. Based on the review, prescriptive recommendations are provided against those clauses/provisions in the rules that are expected to add greater value and impact.

Section Ref.	Subject	Requirements	Concerns	Remarks/Recommendations
1.1.1.1	Purpose of PRR 2009	<p>a. Ensure the transparency of Government procurement through the application of standard procurement procedures;</p> <p>b. Achieve uniformity of the procurement procedures of Government Agencies;</p> <p>c. Achieve economy and efficiency in the procurement of goods, works and services;</p> <p>d. Ensure fair and equal access to the suppliers, consultants and contractors for award of contracts for supply of goods, services or works.</p>	<p>a. There is no system instituted to carry out comprehensive evaluation to ascertain whether or not the purposes are being achieved.</p> <p>b. Purpose did not explicitly indicate:</p> <ul style="list-style-type: none"> • promoting fair and healthy competition, • promoting fair and ethical business practices • achieve quality standards in procurements • promote healthy competition and contribute in creating competitive market 	<ul style="list-style-type: none"> • MoF should institute periodic (say once in five years) assessment to see that PRR meet the specified objectives • MoF should specify explicitly other important objectives of PRR.

1.1.2.1	Application	<ul style="list-style-type: none"> • Exemption from application of PRR 2009 on externally funded projects: • When due to some special circumstances Government grants exemption and provides for adherence to specific procurement procedures under the financing agreement. 	<ul style="list-style-type: none"> • Exemption may be inevitable in certain circumstances, which is provided. • However, compatibility issues and risk of undermining important provisions of PRR needs to be reviewed and addressed. • May lead to incurring expenses which are generally not allowed under PRR and may also create disparities. • Process of granting exemption, not clearly mentioned i.e., just to mention the specific procurement procedures in the financing agreement would suffice or issuing exemption order by the MoF necessary. • Special benefits are provided during project implementation period say under ADB/WB financing (free and furnished accommodations, equipments to Project personnel, Construction of Site camps etc). • PRR 2009 generally recognizes and reflects Bhutanese conditions governing procurements, whereas other procurement standards may not be suitable for Bhutanese conditions. 	<ul style="list-style-type: none"> • Implications of granting exemption should be reviewed. • Exemption should be granted if specific procedures under financing agreements are more elaborate and fair and do not undermine important provisions of PRR, promote accountability, transparency and competition and achieve value for money. • Standard exemption Certificate may be issued. • There may also be certain best practices incorporated by entities who have developed their own procurement rules and regulations. These may be reviewed and incorporated if found appropriate.
1.1.2.4	Application	<p>Corporations and Financial institutions (fully and partly owned), Welfare and Trust Funds may develop separate rules and regulations within the broad principles of these rules or use these rules if no separate rules and regulations are developed.</p>	<ul style="list-style-type: none"> • Due flexibility to these institutions is provided. • Need to review and include other categories of agencies (e.g., Civil Society Organizations etc). 	<ul style="list-style-type: none"> • All Government entities including corporations, who have developed their own procurement rules, should follow competitive procurement procedures for procuring goods, materials and services for executing deposit works or contract works. • Mechanism to ensure that separate procurement rules and regulations developed by such organizations are within the broad Principles of PRR 2009.

2.1.2.1	Creation of Registration System	Appropriate technical authorities of the relevant sectors, as may be identified by the Government from time to time, may establish lists of Registered Suppliers/Contractors/Consultants, herein after called Registers.	Appropriate technical authorities from relevant sectors have not been identified except for works and consultancy services for works (identified as per Clause 2.3.1.1).	<ul style="list-style-type: none"> MoF should review and implement these requirements for procurement of goods and other consultancy services.
2.1.3.1	Qualification Criteria	Procuring agencies may apply , as appropriate, any or all of the permitted selection criteria (General Suitability, Financial Capacity and Technical ability)	General suitability seem important for all procurements (at least for significant value), thus the discretion to determine the necessity of applying this criteria may result in registering suppliers/contractors/consultants to whom disqualification conditions enlisted under clause 2.1.4.1 applies.	<ul style="list-style-type: none"> MoF should review and revise this subsection ensure appropriate application of qualification criteria.
2.1.3.2	i. General Suitability	May require the party to furnish evidence establishing that none of the conditions enlisted under clause 2.1.4.1 applies to it.	May work if there is an effective mechanism instituted to independently establish that none of the conditions enlisted in clause 2.1.4.1 applies to the party.	<ul style="list-style-type: none"> Appropriate technical authorities should institute mechanism to gather information on the occurrences of conditions stipulated in Clause 2.1.4.1. Procuring agencies and other agencies/authorities to inform the technical authorities as and when any condition(s) specified in clause occur(s).
2.1.3.3	ii. Financial Capacity	Requirement to submit audited balance sheets for last three years, Turnover and Tax clearances.	<ul style="list-style-type: none"> It would be useful, if some important aspects as necessary are specified (e.g., net assets relative to contract value, quality of assets, liquid resources, cash flows, and solvency ratios - ability to pay liabilities as and when they become due for payment) Turnover is at times as one of determinant factor. This alone without looking at the balance sheet ratios may not suffice. High turnover may not necessarily translate to high profit and increased cash flows. Some companies 	<ul style="list-style-type: none"> It may be necessary to mention important items/aspects of the financial statements to be reviewed and analyzed for determining financial capacity.

			have reported increased losses despite increase in turnover.	
			<p>In addition to General Suitability, Financial Capacity and Technical ability, it may be necessary to incorporate clauses on business ethics and fair trade practices:</p> <ul style="list-style-type: none"> • Subscribing to fair and competitive business practices • Not forming syndicates to undermine competitive processes • Not taking advantage of their dominant and monopolistic positions • Not overcharging customers/procuring agencies • Maintaining transparency in their dealings and disclosure of required information • Not dealing in and supplying spurious and harmful materials/equipment • Honest and complete declaration of imported items and value thereof to custom authorities • Dealing in standard and quality products/services <p>(Non-adherence to these principles should result in exclusion from registration and participation to bidding process)</p>	<ul style="list-style-type: none"> • Registration process should incorporate these and other principles as may be necessary in a Standard Form developed for the purpose, which should be signed by the firms applying for inclusion in the Register.
2.2.1	Pre-qualification	May be applied in case of large and complex procurements or in any circumstances in which high cost of preparing detailed bids could discourage competition.	Good practice. However, what constitutes a large and complex procurement is not clear. May be value, volume, technicalities and uncertainties involved could be main factors.	<ul style="list-style-type: none"> • More clarity and guidance required for consistent application. Specifying value with caveat could be one of objective criteria.
3.1.1.1	Conflict of Interest	In constituting a Tender Committee, the Procuring Agency shall ensure that no members of the Tender Committee have	Essential provision. However, more elaborations are required to address certain situations:	<ul style="list-style-type: none"> • MoF should review the possibility of excluding close relatives of key members/employees of procuring agencies from participating in the Bids.

		any Conflict of Interest with any of the participating Bidders.	<ul style="list-style-type: none"> • Participation in the bids by relatives of key members of the Tender Committee including the Head of agency • Even by complying clause 3.1.1.1, they can influence the Tender Committee decisions. • In the larger public interest and to rule out any conflict of interest situation and leakage of information selectively to relatives, exclusion of close relatives of such members of the Tender Committee may be appropriate. 	<ul style="list-style-type: none"> • The RAA has noted cases of involvement of key employees in facilitating award of contract to their relatives and relatives of Head of Agency. • Even if it may not be fair to exclude relatives of key members of the Tender Committee/Procuring Agency from participating in the Bids, such harsh decision may be justified in the larger public interest and promoting accountability, transparency and ethical values.
	Task Force		Currently there is no requirement for formation of Steering Committee or Task Force which may be required for undertaking a large and complex procurement activity. (Construction activities like domestic airport constructions undertaken with very tight time schedule could have benefitted from a Task Force)	<ul style="list-style-type: none"> • The MoF should review the need for formation of such a Committee or Task Force. Procurement activities of national significance may warrant establishment of a Steering Committee or a Task Force with adequate Technical and Financial and other expertise.
3.1.2.2	Function of the Tender Committee	The primary function of the Tender Committee is at appropriate time to satisfy itself that the procurement procedure has been properly observed by the procuring agency	<ul style="list-style-type: none"> • Tender Committees also decide time extension, liquidated damages, Escalation Payments, Rescinding and Termination etc • Whether Tender Committee's role should extend beyond tendering process? 	<ul style="list-style-type: none"> • For proper accountability and consistency of Tender Committee's role, PRR should establish detailed TOR for the Tender Committees. If Tender Committees are to be involved for all decisions relating to procurements, it should have been better mentioned as Procurement Committee with all inclusive responsibilities.

4.1.2.1	International Procurement	Procuring agency may seek offers from and/or invite bids from individuals and legal entities from outside Bhutan when certain goods or capacity to undertake certain works or services are not available in the country.	Discretion of procuring agencies to seek offers from outside the even when certain goods or capacity to undertake certain works or services are not available in the country.	<ul style="list-style-type: none"> • There should be appropriate mechanism to address the risk of awarding procurement contracts to bidders not having capacity and competence in the country. • Joint collaboration / international bidding may be necessary or Government directly manufacturers/suppliers in respect of large procurements for bulk discounts and saving other costs e.g., commission.
4.2.5.3	Direct Contracting Method	<p>c. The offer/s which comply with the specifications, terms and conditions shall be considered to determine whether the price is consistent with the current market prices;</p> <p>d. Negotiations to bring down the prices may be carried out if the prices offered are deemed to be excessive or substantially in excess of the prevailing market prices.</p> <p>(wrongly mentioned as b instead of d).</p>	<ul style="list-style-type: none"> • Good Provision. Such stipulations are absent in other methods. Rates obtained through open or limited quotations are deemed competitive even if not so. Elements of due diligence and market price check will be necessary. • For example in procurement of imported specialized items, price charged may be very high and may not be apparent through bidding process. • There are cases of items bought at prices several times higher than those prevailing in India. 	<ul style="list-style-type: none"> • Due diligence and market price checks should be made mandatory. • If quoted rates are very high and not competitive, bids should be rejected. • A central agency such as GPPMD should publish current market prices of regularly imported products particularly those often used by government agencies and update the same on monthly or at least on a quarterly basis. This should serve as guide and reference point for further competition and negotiation.
4.2.6	Framework Contracting		Guidelines for framework contracting may be necessary	<ul style="list-style-type: none"> • Type of procurements where framework contracting is suitable maybe specified
4.3.1.4	Procurement Process: Two-Stage Process (a. to h.)	Two-Stage process outlined in a. to h. (No Envelop system in the e-GP system).	Generally clear. However, more clarity may be necessary, if there are more than one technical proposals which are suitable or equally acceptable, whether to: <ul style="list-style-type: none"> • Select the most suitable technical proposal 	<ul style="list-style-type: none"> • If only one best technical proposal to be selected, it should be clearly specified. • Since there could be substantial cost implications of different technical proposals, it may be prudent to obtain financial bids for all technically suitable bids to make an overall assessment

			<ul style="list-style-type: none"> • Necessary changes to be carried out to one most suitable or all acceptable proposals • Obtain financial bids for one or all acceptable technical proposals 	and determine the lowest evaluated bid.
4.3.1.4	Two-Stage Process	c. During the review of Technical Proposals, the Procuring Agency shall determine to its satisfaction whether the bidders are qualified to perform the contract satisfactorily. Affirmative determination is pre-requisite to for further consideration of the technical proposal and a negative determination shall result in disqualification.	<ul style="list-style-type: none"> • Some guidelines for determination of affirmative determination to minimize subjectivity. • Will the criteria be same to determine technical and financial capability of the bidders? – appears like qualification criteria 	<ul style="list-style-type: none"> • Instructions to bidders include a Format for bidders to complete for this purpose. • Guidelines may facilitate development of appropriate Format. Format prescribed in instructions to bidders to be reviewed to see if this section 4.3.1.4(c) to be retained here.
5.1.1.2	Essentials of the Bidding Process	The applicable standard bidding documents shall be used with minimum changes as necessary to address project specific conditions. Reasons for changes, if any, shall be recorded and seek approval from the Head of the Procuring Agency.	Phrases indicated in bold not properly constructed.	<ul style="list-style-type: none"> •and approval sought from Head of the Procuring Agency.
5.1.1.3	Prior approval of Technical and Administrative Sanctions	Technical and administrative sanctions and funds to be secured prior to tendering or awarding additional works and adopting any deviations from approved drawings, designs and specifications.	<ul style="list-style-type: none"> • Not implemented as stipulated in most cases. • In spite of huge financial implications involved, technical and financial approval is not sought prior to tendering or awarding additional works; and making changes in designs, drawings and specifications. 	<ul style="list-style-type: none"> • Need for prior approval should be made condition for securing and releasing additional budget/fund.
5.1.1.5	Suspicion on bidder engaging in fraudulent or corrupt practices	If the employer suspects that a bidder has directly or through an agent engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for or in executing a contract, the employer shall inform the ACC or any other Competent Authority of such suspicions.	<ul style="list-style-type: none"> • Not clear what the Procuring Agency should do after informing ACC or other competent authority. • If suspicion arises during the bidding process, whether the bid(s) should be cancelled or to continue? • If suspicion arises during the execution of contract, what to do? 	<ul style="list-style-type: none"> • If suspicion arises during bidding or evaluation process prior to award of works or commencement of work, bid should be cancelled without assuming any liability, till investigation or inquiry is completed. • Prima-facie evidence of suspicion should result in suspension of

				particular/affected bids, and termination of contract at the risk and cost of contractor plus award of additional compensation by the Court.
5.1.9.7	Forfeiture of Bid Security	Bid security may be forfeited...	Use of the word may be is not helpful as it gives scope for using discretion.	<ul style="list-style-type: none"> • Shall be would be more definitive and reduces discriminatory practices.
5.1.11.5	Refund of Retention Money	If the contractor fails to remedy any reported defect within the Defects Liability Period, the Procuring Agency shall withhold the payment or realize claims from the guarantee, of an amount, which in the opinion of the Procuring Agency; represent the cost of the defects to be remedied.	<ul style="list-style-type: none"> • Second option to realize the claim from the guarantee may lead to short or excess recovery of the cost of the defects to be remedied. • What will happen if there are major defects and cost exceed amount of the Bank Guarantee? 	<ul style="list-style-type: none"> • Bank Guarantee amount should be withheld till rectification of defects or up to reasonable specified period after the defect liability period required for remedying defects. • Situations where retention money is not likely to be sufficient enough to remedy major defects may be appropriately addressed in the PRR.
5.1.12.4	Recovery of Secured Advance	c. The secured advance shall be recovered from the interim progress payments in the months in which these materials are used in the works.	Months of interim progress payments and months in which materials are used may not be same. Bills may be preferred in subsequent months.	<ul style="list-style-type: none"> • The secured advance shall be recovered from the interim progress payments in respect of works in which the materials are used.
5.2.1.2	Bidding documents: General	In the case of works, the procuring agency shall use the Bhutan Schedule of Rates (BSR) where applicable to establish an estimate for the cost of the works. Detailed estimates shall not be disclosed to the bidders. <i>The bidders shall be expected to make their own estimates based on the specifications set out in the bidding documents; carry out site visits where necessary for calculation of estimates and submit the bids to the procuring agency.</i>	Geo-tech investigations and other studies may be necessary in construction works. Site visits by Contractors will not suffice where detailed site survey and geo-tech study is required.	<ul style="list-style-type: none"> • The Procuring agency should itself carry out proper geo-tech study to ascertain the suitability of area for the proposed construction.
5.2.2.5	Bidding Instructions	The bidders shall be directed to quote their final all-inclusive net price including all incidental cost of carrying out the contract such as taxes, duties, royalties	Final all inclusive net price including charges, taxes, duties, royalties.....etc.	<ul style="list-style-type: none"> • <i>Final all inclusive price including all incidental cost of carrying out the contract such as taxes, duties, royalties insurance etc. Tax exemptions and any</i>

		insurance etc. Tax exemptions and any offers of rebates/discount should also be declared.		<i>offers of rebates/discount should also be declared.</i>
5.2.2.9	Bid Form and Price Schedule	The prospective bidders shall be instructed to include or mention in the Price Schedule Form about any discount that may be offered by him on the quoted prices. The presence of alternate bids, if any, shall also be mentioned in the Price Schedule Form.	The e-GP does not provide for alternative bids.	<ul style="list-style-type: none"> • This was an important provision to explore better and economical alternatives. • The e-GP can also include a separate Bid Form and price schedule for alternate Bid.
5.2.2.14	Integrity Pact	An Integrity Pact shall be signed as part of the bid documents. The Integrity Pact will come into effect once it is finalized and approved by the Competent Authority.	If it is already finalized and approved, the phrases in bold are not appropriate.	<ul style="list-style-type: none"> • Finalized and approved version of Integrity Pact should be included. • May be good idea to reiterate important elements of Integrity Pact in this section for appreciating the essence of it.
5.3.2.5	Receipt of 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. If none of the received bids are found responsive or the bid prices are abnormally high then the procuring agency may reject all bids and re-tender or follow the Limited Bidding procedure as applicable.	<ul style="list-style-type: none"> • If there is only one responsive bid, there is no effective completion. In situations where there are many eligible bidders, receipt of single responsive bid may indicate existence of collusive practices. Such stipulations may be appropriate for specialized services and single manufacturer or authorized dealer of specific product without alternatives. • At this stage bids are in a sealed Box. Therefore, responsiveness of bid(s) and reasonableness of prices will not be known. • Provisions in bold indicate requirement for procuring agencies to compare bid prices with market rates. However, this important requirement is categorically not mentioned for open and limited tenders including framework contracts. 	<ul style="list-style-type: none"> • Situations where single responsive bid subject to reasonableness of rate compared to market prices should be specified to reduce abuse of this provision. • Bid evaluation procedures should include requirement for procuring agencies to ascertain market prices or conduct market survey. May carry out internet search to compare market prices with those offered by bidders. • Bidding documents should also indicate that rates quoted are competitive market rates and procuring agency has right to reject the bid(s) if rates are not found reasonable and competitive.

5.3.5.4	Opening of Bids	All members of the Bid Opening Committee including the Chairperson shall examine the conditions of the envelopes and shall sign on the envelopes. In the event that an envelope of the original bid document(s) is found to have been tampered with or opened, the Bid Opening Committee shall decide whether the bidding is to be cancelled or to proceed with the bid opening.	If the envelop of original bid documents is tampered, there is possibility of some wrong doings.	<ul style="list-style-type: none"> • Discretion should be exercised after ruling out any wrong doing if envelope/bid documents are found tempered.
5.4.2.2	Responsive bids (Material deviation)	In relation to substantially responsive bids, three situations of material deviation have been listed which would render the bids non-responsive.	<ul style="list-style-type: none"> • However, there may be problems in actual implementation to appropriately interpret as to what constitutes a material deviation and deviations which should not be regarded as material deviation. 	<ul style="list-style-type: none"> • Based on experiences gained in implementation and feed-backs provided by procuring agencies, the MoF may provide guidelines with observed examples of material deviations and which should not be regarded as material deviations for correct and uniform application.
5.4.5.3	Acceptance of abnormally low bid	If the Procuring Agency decides to accept the abnormally low bid or the bid with the seriously unbalanced rates after considering the above factors, the bidder shall be required to provide additional differential security equivalent to the difference between the estimated amount and the quoted price in addition to the performance security.	<ul style="list-style-type: none"> • After having satisfied with the justifications provided for abnormally low bids or seriously unbalanced rates, it may not be fair to ask for additional security of entire differential amounts. • Further it would also mean that bidders who are very competitive are penalized by requiring them to provide additional security deposit of entire differential amount. • Bidder's track record (performance record) and bid prices in the past may also provide indications of bidder's ability to execute the contract. 	<ul style="list-style-type: none"> • Amount of additional security deposit may be reduced to 10% of differential amount (difference between estimate and quoted amount) • Security may be in the form of Bank Guarantee and not necessarily cash warrant. • Provide guideline as to what constitute abnormally low bids may be prescribed.
5.4.6.1	Rejection of Bids	Without incurring any liability towards the contenders, the Procuring Agency may reject bids under any or all circumstances as given below:	Other important grounds for rejection not included:	<ul style="list-style-type: none"> • Consider inclusion of other possible circumstances for rejection of bids.

		<p>a. Bid/s being found not responsive as specified in the SBD;</p> <p>b. All bid prices substantially exceeding the estimated cost;</p> <p>c. Any or some of the bids appearing to have been tampered with;</p> <p>d. The Rate Analysis submitted for the abnormally low bid is not acceptable to the client.</p>	<ul style="list-style-type: none"> • All bid prices substantially exceeding market prices or not being reasonable/competitive • Prima facie evidence of collusive practices • Sudden resource limitations facing the Government/Procuring agency • Discontinuation of manufacturing of particular products being tendered posing risk of obsolescence or incompatibility • Restrictions imposed on specific products, works or services by the Government after bid announcements • Products banned for safety, health and other risks or technical defects in various countries. 	
6.3.1.13	Cost plus fee	<p>This is used for consulting service contracts finalized through a bidding process. The price under this type of contract shall generally be based on an agreed "billing rate per unit of time (hour, day, month, for example) multiplied by the units of time actually spent, together with any reimbursable costs foreseen and agreed upon in the contract.</p>	<p>Used usually for externally funded Projects. Bhutanese consultants quote lump sum amount.</p>	<ul style="list-style-type: none"> • Maximum ceiling on fee should be defined • Fee should be on cost plus model • Man days and expertise required for preparing design and estimates should be ascertained • Similarly expertise and man days required for supervision should be ascertained • Fee charged should be reasonable and perhaps scale of fee charges for short term and long term consultancy works at hourly, daily, monthly rate for engineers and junior engineers,

6.3.1.14	Maximum ceiling	A contract of this type should include a “maximum payment” clause with an obligation on the service provider to complete the tasks assigned without exceeding the amount of the agreed maximum payment.	<ul style="list-style-type: none"> • This provision is not strictly enforced. Both design and supervision engineering consultancy contracts do not adhere to maximum ceiling. In fact fee is increased in proportion to increase in the cost estimates of proposed structures and increase in duration of contract. • Provide incentive to inflate estimates, prolong construction duration and suggest changes in design and duration of work. 	technical and other staff members may be fixed.
6.3.2.2	Price Adjustments	Where the rates and prices are subject to adjustments due to rise and fall in the cost of labour and/or materials, provisions relating to the possibility and method of price adjustments may be prescribed and included in the Standard Bidding Documents. Either party, under such circumstances, shall be allowed to seek a price adjustment by submission of documentary evidence of the changes in the market prices of the components.	<p>Change in market price of applicable materials and labour components are regulated without considering rate analysis of item of each work. Increase in market rates paid even if the contractor had won the contract by quoting lower rates due to various factors and advantages (e.g., the explanations provided in 5.4.5.2of PRR justifying abnormally low rates quoted).</p> <p>Is it necessary to pay escalation for increase in market cost if contractor had taken steps to protect against increase in market prices of those materials and fittings where practicable to do so and his quoted rates duly reflect the same.</p>	<ul style="list-style-type: none"> • Rate analysis of winning contractor for items of works including for items for which abnormally low rates are quoted should be obtained. • Escalation payment should be considered after taking into account explanations for abnormally low rates offered by the contractor, payments should be considered for those materials and components which are actually impacted by increase in the market rates.
6.3.4.2	Compensation or Liquidated damages	<p>Compensation for the Procuring agency, which is generally referred to as “Liquidated Damages” in the contract documents, if applied, shall be within the following limits:</p> <p>a. It should not be less than point zero five (0.05%) percent and should not be more than zero point one (0.1%) percent for every day of delay; and</p>	Does not mention on what 0.05% or 0.1% should be applied i.e., value of undelivered portion of supplies or value of unexecuted works.	<ul style="list-style-type: none"> • Should be mentioned clearly.

		<p>b. The total amount of compensation shall not exceed ten percent (10%) of the Contract Price. Similarly in case of revenue generating projects, a bonus may be paid to the contractor/supplier for completion of work/delivery ahead of completion date when such early completion/delivery would be of benefit to the employer. However, such bonus payment would be subject to the approval of Ministry of Finance.</p>	<p>Bonus limit not defined. May result in implementation problems and subjectivity.</p>	<ul style="list-style-type: none"> • Good idea to identify procurement works where Bonus should be applied and tender documents should incorporate such provisions. • Bonus could be paid at prescribed rate out of revenue generated or savings crystallized from early completion/delivery.
6.3.5.1	Sub-contractors	<p>The procuring Agency shall define the mechanism for sub-contracting if necessary. The contract shall contain provisions relating to the employment and obligations of sub-contractors if any to be employed by the successful bidder.</p>	<p>There is no clarity on as to whether the entire contract work can be sub-contracted.</p> <p>The winning bidder may sub-contract the entire contract work. This may not be appropriate as the sub-contractors may not have technical and financial resources to execute the works.</p>	<ul style="list-style-type: none"> • Sub-contracting should be allowed only for executing small portions of contract works, which can be executed by the sub-contractor expeditiously without compromising the quality.
6.3.6.1	Variation in Quantities	<p>Should cover following possibilities:</p> <p>a. Increase or decrease in the quantity of works</p> <p>b. Deletion or insertion of any item of works;</p> <p>c. Change in level, lines, positions and dimensions of any part of the Works;</p> <p>d. Change in the character, quality or kind of any work;</p> <p>e. Additional works of any kind;</p> <p>f. Changes in the sequence or timing of construction activities.</p>	<ul style="list-style-type: none"> • Variations include reductions in the quantity of work. But is silent on the pricing of negative variations. Intention seems to be negative variations not to be paid and payments to be made for quantity actually executed. • If only negative variations exist, variation above 20% to be paid but at rate, for quantity not executed to be compensated only for profit margin i.e. Profit margin at BoQ rate (If contractors) are required to indicate their estimated profit margin. 	<ul style="list-style-type: none"> • Clarity required. Appears reasonable not to pay for the negative variations i.e., for the quantity of work not executed. • However, cement and other materials actually brought at site which could not be used for other works due to deletion/reduction of works needs to be looked into. • There should be provision to ensure utilization of labour and materials for other works to avoid wastage and need for payment for negative variation.
6.3.6.3	a. Pricing of the variation of items of works	<p>Note: Generally, the average percentage above or below the applicable BSR quoted by the contractor shall be taken into consideration for fixing prices of the varied</p>	<p>May not be appropriate in certain cases to apply the average percentage, e.g., item of work varied is specialized/complex in nature requiring specialized skills.</p>	<ul style="list-style-type: none"> • Apply average percentage where appropriate for varied items, communicate and agree with the contractor in advance.

		items not existing in the contract (Bill of Quantities).	The practice of market and analysed rate which had been abused with huge financial implications, has been avoided.	<ul style="list-style-type: none"> Where application of average percentage not appropriate, work out the rate and communicate and agree in advance.
6.3.7.2	Method of payment upon termination	The method of payment upon termination shall be prescribed in the contract. The percentage to be applied to the value of work not completed at the time of termination shall usually be twenty (20%) percent subject to a maximum limit of ten (10%) percent of the initial Contract Price.	The percentage to be applied may not be for the termination due to force majeure.	<ul style="list-style-type: none"> Should be made clear that 20% to be applied for early termination cases due to breach of contract provisions.
6.3.8	Dispute Resolution	Appropriately indicated.	<ul style="list-style-type: none"> Credibility of the National Arbitration Committee must be ensured at all times. Committee decisions failed to protect the public interest. No trainings provided to members on arbitration mechanism and procurement rules and regulation. 	<ul style="list-style-type: none"> Independence of the National Arbitration Committee and objectivity in its functioning necessary. Technical competence, ethical requirements and conflict of interest are some of the areas to be addressed.
7.1.1	Use of Consultants	The procuring agency may contract with firms of consultants or individual consultants for the purposes of the provision of expert advice or assistance in institutional matters and specialized services in connection with the implementation of projects and detailed engineering and design.	Not very clear whether consultants should be used if such expert advice or assistance and specialized services are available within the government agency.	<ul style="list-style-type: none"> Consultancy services should be used if it represents best value for money in terms of expertise, cost effectiveness and quality of services. There should be process of identifying whether consultancy service is needed having regard to nature of services, complexities, expertise availability within the Government agency, Cost-benefit analysis i.e., in some cases it may be more economical option to recruit experts on pay roll.
7.1.2		Consulting firms will be preferred where the work involves the application of multi-disciplinary expertise and requires the support of an organization with competent personnel. Individual consultants will be used where a particular assignment can be best carried out by an individual expert with the requisite qualifications and experience.		
7.2.1	Conflict of interest	Requirement of avoiding conflict of interest elaborated stipulating some specific situations.	<ul style="list-style-type: none"> In practice, conflict of situation also arises if an engineering design consultant is also engaged for 	<ul style="list-style-type: none"> May be good idea for the Government to work out scale of fixed amount of fee for various types of engineering

			<p>supervision of the work. Problems identified during audit included:</p> <ul style="list-style-type: none"> • Even for fixed amount/term contract, duration extended and more amounts paid, usually in proportion to original fee. • Scope, design and duration of actual construction contract changed which entailed huge cost implications. Both design and supervision consultancy fee had increased. • Difficult to establish conflict of interest but the same cannot be ruled out since such changes were in the interest of Consultant. • The very objective of fixed fee is defeated. • Supervision fee paid for the extended period of construction contract was found more than the fixed fee for original contract duration. 	<p>consultancy works based on their time cost and other resources needed. The fee should be sufficiently enough and attractive but not exorbitantly high. For repeat designs, same level of fee should not be paid, say may be 10 to 15% of original fee.</p> <ul style="list-style-type: none"> • Such irrational payment is not cost effective and economical and needs to be appropriately addressed. • Merit of Design and Execute approach may be looked into where contractors prepare design, drawings and estimates as well as execute the construction work.
8.2.2.1	Functions of the Public Procurement Policy Division	Duties and authorities listed under (a) to (p)	Quite exhaustive but does not provide scope for carrying out or exercising other duties/authorities.	<ul style="list-style-type: none"> • Carrying out or exercising such other duties/ authorities as may be necessary in enforcing PRRand achieving its objectives. • Promote best procurement practices of particular goods/services, • Remove market imperfections through research and educating/creating awareness amongst buyers /sellers • Promote competitive market environment and healthy procurement practices • Study the impact of extant procurement rules and regulations (economy, efficiency and effectiveness).

APPENDIX B: Mapping principles and practices vis-à-vis OECD recommendations for promotion of integrity in public procurement

Sl. No.	OECD Recommendations	Relevant provisions of PRR 2009 and existing practices	Gap
Transparency			
1	Provide an adequate degree of transparency in the entire procurement cycle in order to promote fair and equitable treatment for potential suppliers	<ul style="list-style-type: none"> ✓ PRR adequately provides for transparency and fair and equal treatment of potential suppliers. ✓ Clause 1.1.1 of the PRR provides: <ul style="list-style-type: none"> a. to ensure transparency of the government procurement through the application of standard procurement procedures b. ensure fair and equal access to the suppliers, consultants and contractors for award of contracts for supply of goods and services or works ✓ Clause 2.4 of PRR requires information on rejection of bids to be disseminated to the bidders <p>Minimum time limits for submission of bids:</p> <ul style="list-style-type: none"> ✓ The time limits for submission of bids shall be reasonable, taking into account the nature of goods, services or works to be procured and give adequate and equal time for preparation of bids (PRR 5.1.3) <p>Transparency of the process:</p> <ul style="list-style-type: none"> ✓ Receiving, recording and opening shall carried out in a manner that ensures and reflects complete transparency and integrity (PRR 5.3.1) ✓ As far as practicable all public procurements shall be conducted through an open and fair competitive bidding process (5.1.1.1) 	<ul style="list-style-type: none"> • However, there are still issues of apparent favouritism of certain parties in practice.

2	Maximize transparency in competitive tendering and take precautionary measures to enhance integrity, in particular for exceptions to competitive tendering	<ul style="list-style-type: none"> ✓ PRR adequately provides for transparency and fair and equal treatment of potential suppliers ✓ Requirement for dissemination of Notice Inviting Tender through mass media in detail (PRR 5.1.2) ✓ There are threshold values prescribed for adoption of different methods of procurement (PRR 4.1.1) <p>Direct contracting:</p> <ul style="list-style-type: none"> ✓ Various precautionary measures are recommended including, negotiations and considering consistency of rates with current market prices when there is urgency (PRR 4.2.5.2 & 3) 	<ul style="list-style-type: none"> • However issues still persist during implementations. • Non-conformity to provisions of PRR
Good Management			
3	Ensure that public funds are used in procurement according to the purposes intended (emphasizes on procurement planning and implementation of the plan. Emphasis must be placed on linking public procurement with PFM)	<ul style="list-style-type: none"> ✓ PRR does not provide for carrying out needs assessment and preparation of procurement plans. ✓ There is also no clear linkages between the strategic plans and public procurement 	<ul style="list-style-type: none"> • No needs assessment carried out. • There are also inadequacies in the budgeting process resulting in purchases based on budget availability and not based on need.
4	Ensure that procurement officials meet high professional standards of knowledge, skills and integrity	<ul style="list-style-type: none"> ✓ PRR or existing authorities does not explicitly recognize the human resource capacity and their integrity for the purpose of procurement except for conflict of interest to be declared in the PRR (3.1.2.2 (d), 5.1.4.1 (b)) 	<ul style="list-style-type: none"> • Professional standards of the procurement officials are one key area of concern with which needs to be addressed including developing code of conduct to raise awareness and preempt integrity issues. • There is a need for integrity screening

Prevention of misconduct, compliance and monitoring			
5	Put mechanisms in place to prevent risks to integrity in public procurement	<ul style="list-style-type: none"> ✓ PRR does not explicitly mention the need for mechanisms for integrity preventions, except for formation of committees depending on the threshold limits 	<ul style="list-style-type: none"> • Mechanism need to be put in place to prevent risks to integrity such as creating risk maps of organizations and official positions which are vulnerable to corruption
6	Encourage close co-operation between government and the private sector to maintain high standards of integrity, particularly in contract management	<ul style="list-style-type: none"> ✓ PRR does not require rigorous identification of contractors and sub-contractors. ✓ Debarment list is also not maintained. ✓ Rules and authority does not mention anything about contractor integrity programs. ✓ Except for direct contracting there is no explicit requirement for market studies Procurement rules also does not talk about debriefing. 	<ul style="list-style-type: none"> • There is a need for debarment list, integrity programs for contractors and suppliers. • Procuring agencies should regularly conduct market surveys and dialogue with the private sector to keep abreast of suppliers, products and prevailing prices for goods and services. • Debriefing should be provided to unsuccessful tenderers on request so that they understand why their proposal fell short in relative terms of other tenders provided this does not lead to breach of trade secrets.
7	Provide specific mechanisms to monitor public procurement as well as to detect misconduct and apply sanctions accordingly	<ul style="list-style-type: none"> ✓ Although GPPMD is broadly mandated to study and monitor public procurement (PRR 8.2.2), Regular Research and training on types of corruption in procurement and how to detect them is not spelt out in the rules and procedures of public procurement. ✓ Rules do not prescribe procedures of reporting misconduct and protection of the informer. ✓ Rules also do not specify sanctions on breach of duty by the responsible officials of the government officials. 	<ul style="list-style-type: none"> • There is a need for research and studies into corruptions in procurement. • Proper procedures for reporting of misconduct needed to be instituted. • It is also timely to specify sanctions on responsible officials for breach of duty.

Accountability and Control			
8	Establish a clear chain of responsibility together with effective control mechanisms	<ul style="list-style-type: none"> ✓ PRR does not specify a clear chain of responsibility except for tender committees. However financial controls are generally prescribed by FRR. ✓ Administrative controls are generally in place. ✓ There are also external audit mechanism but internal auditing may not be robust. ✓ Other internal control mechanisms are also mandatory through FRR but effectiveness varies from agency to agency depending apparently on the kind of leadership and monitoring. ✓ The ACC also has a strong presence to deal with corruption cases in procurement. 	<ul style="list-style-type: none"> • Accountability and control systems are in place generally. • However, there are issues of lack of due diligence and prudence while working within the broader framework of the controls.
9	Handle complaints from potential suppliers in a fair and timely manner	<ul style="list-style-type: none"> ✓ PRR has adequate provision for redressal of supplier's grievances (PRR 8.1), ✓ The Independent review body is yet gain momentum, given that it has reviewed only 4 cases so far. ✓ There is Arbitral tribunal established in accordance with Alternate dispute resolution Act 2013 for resolution of contractual disputes arising out of procurement of works. 	<ul style="list-style-type: none"> • The IRB needs to gain momentum to make grievance redressal mechanism robust and effective. • There is a need to review why too few cases get reported to IRB.
10	Empower civil society organisations, media and the wider public to scrutinise public procurement	<ul style="list-style-type: none"> ✓ PRR has not envisaged engagement of CSO, media and public scrutiny for public procurement. 	<ul style="list-style-type: none"> • There is a need to empower civil society organizations, media and public for scrutiny of public procurement to complement the existing accountability mechanism. • This could be effectively done through enactment of right to information legislations and specific stipulations in the procurement rules.

APPENDIX C: Inconsistent application of Cost Index

Dzongkhag	Distance from Base Town (in Kms)				Cost Index Used in Practice				
					2013-2014	2014-2015	2015-2016	2016-2017	2017-2018
	Gelephu	S/Jongkhar	P/ling	Thimphu					
Punakha			242	71	20% on BSR 2013	20% on BSR 2013	20% on BSR 2013	As per BSR 2017	NA
Paro			165	54	NA	NA	22% on BSR 2013	BSR 2015	BSR 2017
Thimphu			171	0	NA	NA	5% over BSR 2015	5% over BSR 2015	BSR 2017 base rates
							Rate analysis carried out for Lingzhi and Soe case-wise		
HAA			223	112	NA	NA	Civil: 35.10%	Civil: 35.10%	Civil: 30.67%
							Electrical: 12.95%	Electrical: 12.95%	Electrical : 11.79%
Gasa			269	98					
Khatoed Gewog					34.20%	34.20%	34.20%	NA	NA
Kharmoed Gewog					25.36%	25.36%	25.36%	NA	NA
Laya Gewog					71.34%	71.34%	71.34%	NA	NA
Lunana Gewog					100.55%	100.55%	100.55%	NA	NA
Chukha			82		NA	NA	NA	NA	Civil 13.01% on BSR 2017
Sarpang	33			NA	NA	NA	Civil As per BSR 2013	As per BSR 2015	Civil (-)8.38% on BSR 2017

									Electrical 2.51% on BSR 2017
							Electrical 4.20 % on BSR 2013		Road Base Course: 5.8% on BSR 2017
									Road Bitumen Sealing: 9.03% on BSR 2017
Dagana	198			238	21.9% on BSR 2013	NA	26.87% on BSR 2015	NA	28.54% on BSR 2017
Zhemgang	133				17.43% on BSR 2012 for Roads			Roads 22.28% on BSR 2017	NA
					Civil 20.50% on BSR 2012		Civil 20.50% on BSR 2015	Civil 9.94% on BSR 2017	NA
								electrical 21.65% on BSR 2017	NA
Tsirang	93				Brick masonry & timber truss- 16% on BSR 2012 till Damphu	Brick masonry & steel truss- 22.50% on BSR 2013 till Damphu	NA	Brick masonry & steel truss- 12.46% on BSR 2015 till Damphu	NA
					Stone Masonry & timber truss- 18% on BSR 2012 till Damphu	Brick masonry & timber truss- 13.16% on BSR 2013 till Damphu	NA	Brick masonry & timber truss- 23 % on BSR 2015 till Damphu	NA
					For Geogs add transportation cost	Stone Masonry & timber truss- 26% on BSR 2013 till Damphu	NA	Stone Masonry & timber truss- 14.08% on BSR 2015 till Damphu	NA

						Road works Bitumen sealing- 18.50 % on BSR 2013 till Damphu	NA	Road works Bitumen sealing- 13.30 % on BSR 2015 till Damphu	NA
						Road works- Permanent works - 38% on BSR 2013 till Damphu	NA	Road works- Permanent works - 30.29% on BSR 2015 till Damphu	NA
						Road works Base course- 42%	NA	Road works Base course- 24.92% on BSR 2015 till Damphu	NA
Mongar		271			NA	Civil 22.04% on BSR 2012	Civil 26.57% on BSR 2012	Civil 21.17% on BSR 2015	Civil 15.45% on BSR 2017
					NA	Site Develpoment 15.37% on BSR 2012	Site Develpoment 18.62% on BSR 2012	Site Develpoment 17.92% on BSR 2015	Site Develpoment 1.61% on BSR 2017
					NA	Electrical 10.59% on BSR 2012	Electrical 8.32% on BSR 2012	Electrical 9.12% on BSR 2015	Electrical 13.16% on BSR 2017
Pemagatshel		100			19.80% on BSR 2013	19.80% on BSR 2013	24.27% on BSR 2015	24.27% on BSR 2015	25.28% on BSR 2017
Samdruocholing Dungkhag					Electrical 9.55% on BSR 2012	Electrical 9.55% on BSR 2012	Electrical 9.55% on BSR 2012	Electrical 9.55% on BSR 2012	NA
Serthi Gewog					Electrical 9.97% on BSR 2012	Electrical 9.97% on BSR 2012	Electrical 9.97% on BSR 2012	Electrical 9.97% on BSR 2012	NA
Pemathang Gewog					Electrical 9.60% on BSR 2012	Electrical 9.60% on BSR 2012	Electrical 9.60% on BSR 2012	Electrical 9.60% on BSR 2012	NA
Martshala Gewog					Electrical 9.68% on BSR 2012	Electrical 9.68% on BSR 2012	Electrical 9.68% on BSR 2012	Electrical 9.68% on BSR 2012	NA
Jomotsangkha Dungkhag					Stone Masonry works: 12.03%	Stone Masonry works: 12.03%	Stone Masonry works: 12.03%	Stone Masonry works: 12.03%	NA

					Brick works: 5.53%	Brick works: 5.53%	Brick works: 5.53%	Brick works: 5.53%	NA
					Road works : 32.60%	Road works : 32.60%	Road works : 32.60%	Road works: 32.60%	NA
					Electrical 9.86% on BSR 2012	Electrical 9.86% on BSR 2012	Electrical 9.86% on BSR 2012	Electrical 9.86% on BSR 2012	NA
Dewangthang Gewog					Stone Masonry 7.39% on BSR 2012	Stone Masonry 7.39% on BSR 2012	Stone Masonry 7.39% on BSR 2012	Stone Masonry 7.39% on BSR 2012	NA
					Brick13..49% on BSR 2012	Brick13..49% on BSR 2012	Brick13..49% on BSR 2012	Brick13..49% on BSR 2012	NA
					Road 13.99% on BSR 2012	Road 13.99% on BSR 2012	Road 13.99% on BSR 2012	Road 13.99% on BSR 2012	NA
					Electrical 9.25% on BSR 2012	Electrical 9.25% on BSR 2012	Electrical 9.25% on BSR 2012	Electrical 9.25% on BSR 2012	NA
Orong Gewog					Stone Masonry 13.48% on BSR 2012	Stone Masonry 13.48% on BSR 2012	Stone Masonry 13.48% on BSR 2012	Stone Masonry 13.48% on BSR 2012	NA
					Brick 14.09% on BSR 2012	Brick 14.09% on BSR 2012	Brick 14.09% on BSR 2012	Brick 14.09% on BSR 2012	NA
					Road 20.73% on BSR 2012	Road 20.73% on BSR 2012	Road 20.73% on BSR 2012	Road 20.73% on BSR 2012	NA
					Electrical 9.52% on BSR 2012	Electrical 9.52% on BSR 2012	Electrical 9.52% on BSR 2012	Electrical 9.52% on BSR 2012	NA
Gomdar Gewog					Stone Masonry 12.80% on BSR 2012	Stone Masonry 12.80% on BSR 2012	Stone Masonry 12.80% on BSR 2012	Stone Masonry 12.80% on BSR 2012	NA
					Brick 15.93% on BSR 2012	Brick 15.93% on BSR 2012	Brick 15.93% on BSR 2012	Brick 15.93% on BSR 2012	NA
					Road 16.94% on BSR 2012	Road 16.94% on BSR 2012	Road 16.94% on BSR 2012	Road 16.94% on BSR 2012	NA
					Electrical 9.55% on BSR 2012	Electrical 9.55% on BSR 2012	Electrical 9.55% on BSR 2012	Electrical 9.55% on BSR 2012	NA
Wangphu Gewog				Stone Masonry 17.15% on BSR 2012	Stone Masonry 17.15% on BSR 2012	Stone Masonry 17.15% on BSR 2012	Stone Masonry 17.15% on BSR 2012	NA	

					Bricks 14.96% on BSR 2012	Bricks 14.96% on BSR 2012	Bricks 14.96% on BSR 2012	Bricks 14.96% on BSR 2012	NA
					Road 32.79% on BSR 2012	Road 32.79% on BSR 2012	Road 32.79% on BSR 2012	Road 32.79% on BSR 2012	NA
Lhuntse		346			Civil 34.22% on BSR 2013	Civil 34.22% on BSR 2013	Civil 34.22% on BSR 2015	Civil 34.22% on BSR 2015	Civil 34.22% on BSR 2017
					Electrical 3.61% on BSR 2013	Electrical 3.61% on BSR 2013	Electrical 3.61% on BSR 2015	Electrical 3.61% on BSR 2015	Electrical 3.61% on BSR 2017
Tashigang		180			NA	NA	Building Works 22.84% on BSR 2015	NA	Building Works 19.84% on BSR 2017
					NA	NA	Bitumen Works 23.79% on BSR 2015	NA	Bitumen Works 20.79% on BSR 2017
					NA	NA	Road Works 21.82% on BSR 2015	NA	Road Works 10.38% on BSR 2017
					NA	NA	Base Course Works 20.35% on BSR 2015	NA	Base Course Works 14.88% on BSR 2017

Note: Table above indicates overall inconsistencies in the application of cost index while preparing project estimates. For instance, cost index applied for Paro is 22% which is higher than the index applied at Punakha (20%) on BSR 2013 in the year 2015-16. Similarly, Mongar Dzongkhag had applied cost index of 15.45% (civil works) on BSR 2017 whereas Pemagatshel Dzongkhag which is closer to base town (Samdrupjongkhar) had applied 25.28% on BSR 2017.

EXHIBITS

EXHIBIT I: Sample procuring agencies selected for review

SL No.	Account No.	Agency Name
1	103.01/1001	National Assembly of Bhutan, Thimphu
2	104.01/1001	National Council Secretariat, Thimphu
3	105.01/1001	Central Monastic Secretariat, Thimphu
4	106.01/1037	Supreme Court
5	107.01/1001	Royal Civil Service Commission, Thimphu
6	108.01/1001	Anti-Corruption Commission
	108.01/2001	Anti-Corruption Commission
7	109.01/1001	Election Commissioner Office, Thimphu
8	111.01/1001	Cabinet Secretariat, Thimphu
9	112.01/1001	Office of Legal Affairs, Thimphu
10	113.01/1001	Bhutan Olympic Committee, Thimphu
11	114.01/1001	Dzongkha Development Commission, Thimphu
12	115.01/1001	National Land Commission, Thimphu
13	116.01/1001	Centre for Bhutan Studies, Thimphu
14	117.01/1001	GNH Commission Secretariat, Thimphu
15	118.01/1001	National Environment Commission, Thimphu.
16	119.01/1001	Royal Institute of Management, Semtokha
	119.01/2004	Royal Institute of Management, Semtokha
17	120.01/1001	Royal University of Bhutan , Thimphu
18	121.01/1001	National Statistical Bureau, Thimphu
	121.01/1002	Population and Housing Census of Bhutan (PHCB), NSB
	121.01/2001	National Statistical Bureau, Thimphu
19	122.01/1001	Bhutan Narcotic Control Agency, Thimphu
20	123.01/1001	Bhutan InfoComm & Media Authority, Thimphu
21	124.01/1001	Thimphu Thromdey Schools, City Corporation, Thimphu
22	125.01/1001	Drug Regulatory Authority
23	126.01/1001	Tourism Council of Bhutan
	126.01/1002	HTMTI-Construction Project
	126.01/1003	Royal Institute for Tourism & Hospitality
24	127.01/1001	National Commission for Women & Children
25	128.01/1001	Royal Education Council
26	129.01/1001	Bhutan Council for School Examination and Assessment
27	130.01/1001	Royal Privy Council, Thimphu.
28	131.01/1001	Bhutan Standards Bureau
29	132.01/1002	University of Medical Sciences
30	133.01/1001	Jigme Singye Wangchuck School of Law, Taba, Thimphu
	134.01/1001	Bhutan National Legal Institute
31	135.01/1001	Civil Society Organization Authority
32	136.01/1001	Jigme Dorji Wangchuck National Referral Hospital
33	201.01/1001	Ministry of Home and Cultural Affairs, Thimphu
	201.01/1002	Department of Civil Registration & Census, MoHCA, Thimphu
	201.01/1003	Department of Culture, MoHCA, Thimphu
	201.01/1004	Department of Local Governance, MoHCA

	201.01/1005	Department of Immigration, MoHCA, Thimphu
	201.01/1006	Department of Disaster Management, MoHCA, Thimphu
	201.01/1010	Ministry of Home and Cultural Affairs, Thimphu
	201.01/2007	Department of Disaster Management, MoHCA, Thimphu
	201.01/2015	Local Governance Sustainable Development Program, MOHCA
	201.01/1007	Royal Bhutan Police, HQ
	201.01/1022	Jail Services, Royal Bhutan Police
	201.01/1023	Fire Fighting Services, Royal Bhutan Police
34	202.01/1001	Ministry of Finance Secretariat, Thimphu
	202.01/1002	Department of Public Accounts
	202.01/1003	Department of National Budget, Ministry of Finance, Thimphu
	202.01/1004	Department of Revenue and Customs, Ministry of Finance, Thimphu
	202.01/1005	Department of National Properties, MoF, Thimphu
	202.01/1007	Regional Revenue & Customs Office, Thimphu
35	203.01/1001	Ministry of Foreign Affairs, Thimphu
36	204.01/1001	Ministry of Agriculture and Forests Secretariat
	204.01/1002	Department of Agriculture, MoA, Thimphu
	204.01/1003	Department of Livestock, MoA, Thimphu
	204.01/1004	Department of Forests and Park Services, MOA, Thimphu
	204.01/1005	Council of RNR Research of Bhutan, CoRRB
	204.01/1006	Bhutan Agriculture & Food Regulatory Authority (BAFRA), MoA, Thimphu
	204.01/1007	National Biodiversity Centre, Serbithang
	204.01/1011	National Plant Protection Center, Semtokha
	204.01/1012	National Soil Service Centre, Semtokha
	204.01/1013	National Center for Animal Health, Serbithang
	204.01/1014	National Centre for Aquaculture (NCA)
	204.01/1016	National Livestock Breeding Programme, Yusipang
	204.01/1018	Regional Livestock Development Centre
	204.01/1020	National Pig Breeding Centre, Wangchutaba
	204.01/2038	Wildlife Conservation Division, MoAF, Thimphu
	204.01/2039	AFD, Ministry of Agriculture and FOREST.
204.01/2042	AFD, MoAF (REDD + Readiness Project)	
37	205.01/1001	Ministry of Trade & Economics Affairs, Thimphu
	205.01/1002	Department of Trade, MTEA, Thimphu
	205.01/1003	Department of Geology & Mines, MTEA, Thimphu
	205.01/1005	Department of Industry, MTEA, Thimphu
	205.01/1012	Department of Cottage & Small Industries, MoEA
	205.01/1013	Department of HydroPower & Power Systems
	205.01/1014	Department of Renewable Energy
	205.01/1015	Department of HydroMet Services
	205.01/1016	Consumer Protection Office, Ministry of Economic Affairs, Tjhimphu
	205.01/2001	EIT, Department of Trade, MoEA, Thimphu
	205.01/2008	Flood Warning Services, Dept. of Hydro Met Services (FIC 0212)
38	206.01/1001	Secretariat, Ministry of Works & Human Settlement, Thimphu
	206.01/1002	Department of Roads, Thimphu

	206.01/1003	Department of Engineering Services
	206.01/1011	Field Roads Maintenance Division, DOR, Thimphu
	206.01/1017	Department of Human Settlement, MoWHS
	206.01/2001	Project Coordination Unit, RAP- II, DoR, Thimphu
	206.01/2018	Second Bhutan Urban Development Project
	206.01/2020	Road Network Project II, under Department of Roads,
	206.01/2021	Second Bhutan Urban Development Project, City Corporation, Thimphu
	206.01/2023	Department of Engineering Section, MoWHS
	206.01/2026	Department of Road (Project# SASEC Project BHU-L/3149, G-004)
39	207.01/1001	Ministry of Information & Communications Secretariat, Thimphu
	207.01/1003	Roads Safety and Transport Authority, MOIC
	207.01/1007	Department of Information & Technology
	207.01/1008	Department of Information & Media
	207.01/2002	DIT, Ministry of Information and Communicaitons
	207.01/2003	AFD, Ministry of Information and Communications, Thimphu
	207.01/2004	Department of Information Technology and Telecom, MoIC
40	208.01/1001	Ministry of Health Secretariat, Thimphu
	208.01/1002	Department of Public Health Services, MoH, Thimphu
	208.01/1003	Department of Medical Services, MoH, Thimphu
	208.01/1011	Department of Traditional Medicine Services (DTMS), MoH
	208.01/1012	Department of Medical Supply and Health Infrastructure (DMSHI)
	208.01/2002	Ministry of Health
41	209.01/1001	Ministry Of Education Secretariat, Thimphu
	209.01/1002	Department Of Adult and Higher Education, MOE, Thimphu
	209.01/1003	Department of School Education, MoE, Thimphu
	209.01/1004	Department of Youth, Culture & Sports, MoE, Thimphu
	209.01/2001	International Assistance, Ministry of Education, Thimphu
	209.01/2002	UNICEF Assisted Project, Ministry of Education, Thimphu
	209.01/2007	Save the Children Fund-USA assisted Project
42	210.01/1001	Ministry of Labour & Human Resources Secretariat, Thimphu
	210.01/1002	Department of Human Resources, Thimphu
	210.01/1004	Department of Labour, MoLHR
	210.01/1005	Department of Employment, MoLHR
	210.01/2006	Department of Human Resources

EXHIBIT II: RGoB's expenditure on Goods, Works and Services
in million Nu.

OBC	Particulars	2012-13	2013-14	2014-15	2015-16	2016-17	Total
GOODS:							
14.01	S & M - Office Supplies, Printing, Publications	324.46	266.06	293.39	357.76	292.21	1533.88
14.02	S & M - Medicines & Laboratory Consumables	385.42	442.95	490.57	549.38	582.92	2451.25
14.03	S & M - Fertilizers, Chemicals, Manures, Inoculants	8.49	7.97	10.20	14.34	14.05	55.04
14.04	S & M - Seeds, Seedlings	44.14	47.44	63.08	30.81	34.66	220.12
14.05	S & M - Animal Feeds	55.17	72.86	71.41	77.67	114.46	391.57
14.06	S & M - Uniforms, Extension Kits, Linens	105.56	111.29	237.21	116.79	102.35	673.19
14.07	S & M - Text Books, Library Books, Stationeries & Sports Item	195.67	216.46	213.10	191.30	181.95	998.48
14.09	S & M - Patient Diet	19.53	21.64	22.49	20.59	21.21	105.45
14.10	S & M - Diet	108.68	117.92	127.92	135.41	145.33	635.26
52.01	Plant & Equip. - Roads	0.00	50.99	21.82	5.22	7.96	85.98
52.02	Plant & Equip. - Power Generation	9.19	29.47	44.73	26.99	15.65	126.03
52.03	Plant & Equip. - Power Trans. & Dist.	50.67	28.28	7.05	16.39	46.16	148.56
52.04	Plant & Equip. - Telecommunications	140.27	42.36	59.17	64.41	183.09	489.30
52.05	Plant & Equip. - Agricultural Machineries	68.57	76.02	125.21	201.46	95.29	566.55
52.06	Plant & Equip. - Livestock	56.49	71.78	81.26	108.36	138.49	456.39
52.07	Plant & Equip. - Hospital/Lab. Equipment	162.72	173.32	217.98	218.51	223.78	996.31
52.08	Plant & Equip. - General Tools, Instruments	919.48	582.06	529.85	696.33	944.47	3672.19
53.01	Purchase of Vehicles	135.30	66.58	205.03	304.41	746.57	1457.89
54.01	Furniture	223.33	153.86	129.15	129.71	224.21	860.25
54.02	Office Equipment	105.06	162.80	112.84	146.38	191.83	718.91
54.03	Computers & Peripherals	125.56	143.72	105.05	158.28	210.64	743.24
Sub-Total (A)		3243.75	2885.83	3168.51	3570.48	4517.26	17385.83
WORKS:							
15.01	Maintenance of Property - Buildings	91.657	126.061	126.057	153.264	174.727	671.77
15.03	Maintenance of Property - Roads	189.074	193.838	200.677	272.752	303.033	1159.37
15.04	Maintenance of Property - Bridges	3.769	6.247	6.229	7.434	7.059	30.74

15.06	Maintenance of Property - Plantations	18.16	20.40	23.04	31.03	31.62	124.25
15.09	Maintenance of Property - Water supply, Sewerage, Playfield	6.63	7.61	5.20	9.02	8.84	37.30
51.01	Exp. on Structure - Buildings	5286.85	2900.73	3806.81	5137.75	6501.51	23633.65
51.02	Exp. on Structure - Roads (incl.culverts,drns)	5025.66	3724.36	3821.84	6102.50	6283.23	24957.58
51.03	Exp. on Structure - Bridges	680.45	394.66	362.53	278.10	416.35	2132.10
51.04	Exp. on Structure - Irrigation Channels	258.75	279.62	180.40	423.02	574.80	1716.57
51.05	Exp. on Structure - Drainage Systems	15.35	39.33	17.90	91.69	49.13	213.40
51.06	Exp. on Structure - Water Supply & Sanitation	512.08	443.33	421.56	474.28	600.48	2451.72
51.07	Exp. on Structure - Plantations	45.49	85.01	106.19	176.97	281.93	695.59
51.08	Exp. on Structure - Others	894.97	1075.70	775.05	1284.78	1902.76	5933.25
Sub-Total (B)		13028.89	9296.88	9853.48	14442.59	17135.45	63757.29
SERVICES:							
13.01	Rental of Properties - Buildings	150.16	164.38	176.34	183.70	183.27	857.84
13.02	Rental of Properties - Vehicles	10.88	14.20	16.33	10.86	21.55	73.81
13.03	Rental of Properties - Others	3.79	0.93	2.38	2.40	3.44	12.93
13.04	Rental of Properties - Furniture, Equipment & Land	3.09	0.42	0.57	2.98	3.20	10.26
15.02	Maintenance of Property - Vehicles	334.957	366.753	369.335	360.439	327.842	1759.33
15.05	Maintenance of Property - Equipment	106.10	95.74	102.77	97.85	104.45	506.91
15.07	Maintenance of Property - Computers	1.57	14.75	18.02	20.43	21.96	76.72
17.03	Op. Exp. - Transportation	92.66	65.64	70.71	70.65	95.08	394.74
55.01	Professional Services	708.49	630.15	701.70	1002.89	857.29	3900.52
Sub-Total (B)		1411.70	1352.94	1458.14	1752.20	1618.07	7593.05
Total Procurement Expenditure(A+B+C)		17,684.34	13,535.65	14,480.13	19,765.27	23,270.78	88,736.17
Total government expenditure (overall)		36,527.82	34,609.90	36,475.85	44,688.45	49,565.13	201,867.14
% of total expenditure		48.41%	39.11%	39.70%	44.23%	46.95%	43.96%

Source: PEMS, MoF

EXHIBIT III: Score obtained on Public Procurement Regulatory Systems⁴

Sl. No.	Countries	Needs Assessment, call for tender, and bid preparation score	Bid Submission Score	Bid opening, evaluation and award score	Content and management of procurement contract score	Performance guarantee score	Payment of suppliers score	Score
1	Spain	68	94	64	73	86	100	485
2	Kazakhstan	70	90	86	91	90	50	477
3	Italy	70	82	64	82	78	100	476
4	Denmark	88	75	64	59	74	100	460
5	Austria	78	83	64	73	74	85	457
6	Romania	67	94	64	82	82	67	456
7	Costa Rica	70	94	79	64	90	57	454
8	Bulgaria	88	67	43	82	94	75	449
9	China	56	94	79	82	70	67	448
10	Hungary	80	71	79	77	62	76	445
11	Ecuador	78	100	50	82	86	48	444
12	Taiwan, China	78	71	64	82	70	75	440
13	Canada	98	78	57	73	58	75	439
14	Poland	87	81	57	64	74	75	438
15	Kosovo	76	81	71	59	70	75	432
16	United States	98	57	57	64	54	100	430
17	Albania	70	78	86	68	78	48	428
18	Ethiopia	71	94	71	64	78	48	426
19	Korea, Rep	60	59	57	77	66	100	419
20	Macedonia, FYR	78	84	64	73	50	67	416
21	Mexico	80	71	64	64	70	67	416
22	Germany	76	29	79	82	78	67	411
23	Malta	68	51	86	82	66	57	410
24	Cabo Verde	65	69	71	45	82	76	408
25	Russia	100	78	64	82	50	33	407
26	Philippines	60	100	64	73	66	42	405
27	Brazil	68	82	50	73	74	57	404
28	Sierra Leone	62	60	71	73	70	67	403
29	Belgium	66	71	50	59	86	67	399
30	Georgia	70	59	71	77	54	67	398
31	Turkey	68	67	79	73	74	37	398
32	Bhutan	58	85	57	73	74	50	397
33	Morocco	69	67	86	73	54	48	397
34	Panama	78	82	57	68	82	30	397

⁴ Benchmarking Public Procurement 2017, World Bank Group

35	Argentina	70	90	57	64	78	37	396
36	Senegal	56	60	71	64	94	48	393
37	Estonia	70	82	64	73	14	88	391
38	Burkina Faso	68	81	57	68	74	42	390
39	Slovenia	68	69	43	73	62	75	390
40	Cameroon	49	73	71	73	74	48	388
41	Yemen	54	73	57	73	74	57	388
42	Congo, Dem. Rep	57	73	71	64	54	67	386
43	France	69	71	64	73	58	50	385
44	Moldova	70	69	71	68	70	37	385
45	Mozambique	54	81	43	64	82	61	385
46	Bosnia and Herzegovina	58	77	57	73	85	33	383
47	Guatemala	58	78	43	77	58	67	381
48	El Salvador	70	77	57	73	66	37	380
49	Japan	70	67	50	68	58	67	380
50	Paraguay	70	67	71	68	54	48	378
51	Tanzania	58	58	71	68	86	37	378
52	Nigeria	68	60	50	68	74	57	377
53	Vietnam	55	90	64	73	58	37	377
54	Sao Tome and Principe	47	83	71	73	78	24	376
55	Cyprus	70	57	86	73	30	59	375
56	Peru	80	100	43	64	38	50	375
57	Nepal	72	61	71	73	30	67	374
58	Colombia	80	52	43	73	58	67	373
59	Rwanda	68	65	57	68	78	37	373
60	Ukraine	70	59	86	70	50	37	372
61	Botswana	69	73	43	73	38	75	371
62	Kyrgyz Republic	70	84	71	55	58	33	371
63	Latvia	68	71	57	50	50	75	371
64	Haiti	68	65	71	59	58	48	369
65	India	63	75	50	68	54	59	369
66	Greece	63	78	71	64	34	57	367
67	Iran, Islamic Rep	60	78	57	73	62	37	367
68	Portugal	58	29	57	73	82	67	366
69	Slovakia	90	78	50	73	0	75	366
70	Australia	78	39	71	77	0	100	365
71	Kenya	57	69	71	73	58	37	365
72	South Africa	62	52	71	73	58	48	364
73	Chile	56	60	29	64	78	76	363
74	Singapore	73	100	64	59	0	67	363

75	Afghanistan	56	83	43	73	74	33	362
76	Burundi	55	60	57	68	74	48	362
77	Cote d'Ivoire	58	65	57	73	58	51	362
78	Jamaica	56	96	64	77	62	7	362
79	Serbia	70	52	71	68	42	57	360
80	Cambodia	60	79	71	82	30	37	359
81	Lithuania	70	39	79	82	14	75	359
82	Ghana	56	44	71	68	62	57	358
83	Uruguay	67	71	64	64	54	37	357
84	Czech Republic	78	78	64	60	0	75	355
85	Zambia	64	63	71	73	46	37	354
86	Croatia	70	67	79	40	30	67	353
87	Bangladesh	60	75	71	73	30	42	351
88	Tajikistan	69	48	71	68	62	33	351
89	Tunisia	60	47	64	73	54	51	349
90	Sweden	66	75	64	68	0	75	348
91	Togo	51	63	43	68	54	67	346
92	Indonesia	64	67	50	73	58	33	345
93	Luxembourg	67	71	64	68	0	75	345
94	Mauritius	65	57	79	73	34	37	345
95	Finland	66	50	64	59	0	100	339
96	New Zealand	88	75	64	45	0	67	339
97	Tonga	74	79	71	50	50	15	339
98	Egypt, Arab Rep.	63	78	29	64	74	30	338
99	Switzerland	68	67	57	50	20	75	337
100	Malaysia	39	75	36	59	78	48	335
101	Montenegro	70	50	64	68	50	33	335
102	Gambia, The	46	83	57	73	42	33	334
103	Suriname	39	100	29	68	50	48	334
104	Thailand	47	78	36	73	70	30	334
105	Uganda	68	67	71	64	34	30	334
106	Israel	83	40	43	59	48	59	332
107	Seychelles	49	71	71	64	42	33	330
108	Nicaragua	80	65	57	64	30	33	329
109	Guinea	49	51	71	73	54	30	328
110	Netherlands	78	39	64	50	22	75	328
111	Mongolia	54	63	57	50	54	48	326
112	Belarus	70	67	64	40	34	50	325
113	Ireland	73	43	64	60	0	85	325
114	Malawi	42	54	57	73	66	33	325
115	United Kingdom	66	50	64	59	34	50	323
116	Norway	61	71	64	59	0	67	322

117	Solomon Islands	65	67	57	68	50	15	322
118	Gabon	62	73	57	73	10	45	320
119	Oman	51	63	50	68	58	30	320
120	Angola	43	69	57	59	58	33	319
121	Bahrain	57	61	29	59	54	59	319
122	Pakistan	58	44	57	59	30	67	315
123	Bolivia	65	65	43	77	34	30	314
124	Liberia	66	65	71	59	38	15	314
125	United Arab Emirates	45	65	50	73	14	67	314
126	Comoros	62	0	57	59	74	61	313
127	Puerto Rico	53	69	43	73	42	33	313
128	South Sudan	56	52	71	59	38	37	313
129	Dominican Republic	70	77	71	59	34	0	311
130	Saudi Arabia	34	60	29	64	74	50	311
131	Iceland	58	71	64	50	0	67	310
132	Azerbaijan	64	65	43	64	42	30	308
133	Honduras	54	65	43	64	42	39	307
134	Armenia	60	39	64	59	50	33	305
135	Iraq	59	60	57	68	38	22	304
136	Kuwait	53	65	43	64	62	15	302
137	Niger	61	60	57	50	34	39	301
138	Madagascar	38	59	43	59	34	67	300
139	Venezuela	48	59	43	55	50	42	297
140	Mali	59	48	57	73	10	48	295
141	Zimbabwe	50	40	57	59	82	7	295
142	Swaziland	46	0	71	64	70	42	293
143	Hong Kong SAR, China	63	71	57	68	0	33	292
144	Equatorial Guinea	29	73	29	68	70	22	291
145	Chad	32	77	43	64	34	39	289
146	Lebanon	49	52	29	73	70	15	288
147	Central African Republic	49	44	57	59	30	48	287
148	Grenada	34	75	57	27	58	33	284
149	Algeria	42	23	43	73	34	67	282
150	Mauritania	28	73	0	68	74	37	280
151	Qatar	38	60	43	55	74	7	277
152	Sudan	27	48	43	59	50	48	275
153	Guinea-Bissau	40	44	43	59	50	36	272
154	Bahamas, The	50	24	43	68	50	33	268
155	Timor-Leste	41	52	43	64	58	7	265
156	Micronesia	55	31	57	50	54	15	262

157	Sri Lanka	40	69	57	59	30	7	262
158	San Marino	32	80	14	32	58	37	253
159	Lao PDR	32	52	71	77	0	15	247
160	Uzbekistan	42	65	14	59	30	37	247
161	West Bank and Gaza	38	48	43	68	34	15	246
162	Belize	40	40	29	68	34	33	244
163	St.Lucia	47	27	57	64	38	7	240
164	Marshall Islands	43	23	57	50	34	15	222
165	Djibouti	15	48	57	50	34	15	219
166	Namibia	37	19	43	50	54	15	218
167	Papua New Guinea	42	23	57	64	0	30	216
168	Trinidad and Tobago	42	31	43	59	38	0	213
169	Jordan	49	35	43	50	14	15	206
170	Dominica	35	0	71	59	38	0	203
171	Barbados	31	58	14	40	58	0	201
172	Samoa	0	0	71	59	58	0	188
173	Antigua and Barbuda	38	39	43	50	0	15	185
174	St.Kitts and Nevis	47	0	43	45	40	0	175
175	Myanmar	14	35	29	41	34	7	160
176	Eritrea	30	57	0	55	0	15	157
177	Lesotho	21	0	71	59	0	0	151
178	Vanuatu	20	43	14	32	0	0	109
179	Kiribati	31	35	0	10	20	0	96
180	Fiji	0	0	57	0	0	0	57



AIN: 001-01-14886