Procurement Audit Directives

Office of the Auditor General
Anamnagar, Kathmandu, Nepal
2023

PROCUREMENT AUDIT DIRECTIVES

OFFICE OF THE AUDITOR GENERAL
ANAMNAGAR, KATHMANDU, NEPAL
2023

Foreword

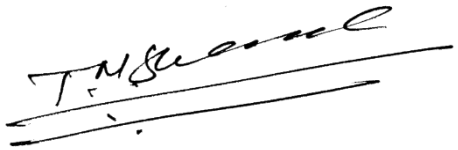
It is my immense pleasure to release the Procurement Audit Directives of the Office of the Auditor General of Nepal. This directives will be applicable in undertaking respective financial, compliance, performance audits of the entities as per the Audit Act, 2075.

This directives provides a clear picture of methods and approaches to audit that the audit staff is required to comply with in imparting their duties. It has been built around the prevailing Audit Act, Nepal Government Auditing Standards (NGASs), and office policies that require conducting a high-quality audit. Since NGASs are based on INTOSAI framework for Professional Pronouncement (IFPP), this directives seeks to incorporate the Nepal audit practices at par with the international best practices.

This directives provides guidance and direction in all phases of the audit from pre-panning to follow-up including common consideration for procurement, construction works, goods and other services, consulting services, special circumstances, contract management with necessary annexures which encourages professional judgment where it requires. The directives does not override the legal requirements and conditions of NGASs. Likely, it shall not limit the professionalism of the officials entrusted with the responsibility of conducting audits.

Our knowledge, skill, and experience with auditing practices continue to evolve, and so will this directives. This directives is expected to be updated for the continuous improvement of audit practices to meet legal provisions, audit standards, and practices to address emerging risks.

My special thanks to all staffs who prepared the directives and provided their valuable feedback and comments to make this directives implementable which, I do hope, will be of use to conduct audits efficiently and effectively.



April 26, 2023

Tankamani Sharma, Dangal
Auditor General

List of Abbreviations

Abbreviation	Full form
3Es	Economy, Efficiency and Effectiveness
BOQ	Bill of Quantities
BTP	Bio data Technical Proposal
CIP	Carriage and Insurance Paid to
CMP	Contract Management Plan
CQS	Consultant's Qualification based Selection
CV	Curriculum Vitae
DP	Development Partners
DPR	Detailed Project Report
EOI	Expression of Interest
EXW	Ex-Works
FBS	Fixed Budget Selection
FTP	Full Technical Proposal
GCC	General Conditions of Contract
GON	Government of Nepal
ICB	International Competitive Bidding
JV	Joint Venture
LC	Letter of Credit
LCS	Least Cost Selection
MOF	Ministry of Finance
NCB	National-level Competitive Bidding
NGO	Non-Governmental Organisation
NPR	Nepalese Rupees
OAGN	Office of Auditor General of Nepal
OCB	Open Competitive Bidding
PAN	Permanent Account Number
PPA	Public Procurement Act
PPMO	Public Procurement Management Office
PPR	Public Procurement Regulation
QBS	Quality Based Selection
QCBS	Quality and Cost Based Selection
REOI	Request for Expression of Interest
RFP	Request for Proposal
RFQ	Request for Quotation
SAI	Supreme Audit Institution

Abbreviation	Full form
SBD	Standard Bidding Document
SCC	Special Condition of Contract
SSS	Single Source Selection
STP	Simplified Technical Proposal
TDS	Tax Deduction at Source
TOR	Terms of Reference
USD	United States Dollar
VAT	Value Added Tax
VfM	Value for Money
WHO	World Health Organisation

Table of Contents

Part - I
Introduction

1. Background

Procurement of goods and services is a major public sector activity thus this is an important aspect public sector auditing. The scope of procurement for public sector audit is very broad and impacts all three streams of SAI audits.

- Procurement impacts financial reporting and consequently forms the part of the financial audit.
- Procurement is directly related with the government's function on economy, efficiency and effectiveness thus can have major impact on performance audit as well.
- All public sector procurements have to comply with the public procurement laws and regulations thus is a major compliance audit subject matter as well.

The audit of procurements carried Office out by the Auditor General of Nepal (OAGN) will be rigorous. This audit directives will enable OAGN auditors to assess the entire procurement process.

1.1. Concept

The procurement process in public sector is dynamic and evolves with every change in the legislations and regulatory requirements. Therefore, the auditors have to remain alert and updated on the changes relevant with public procurement.

Procurement starts with need identification, specification preparing, identifying the supplier, tendering, receipt, accounting, storage, issues and disposal of scrape and surplus. These exercises are carried out so as to optimise the use of resources, namely the public funds. It attempts to get the right goods and services at right place, at right price, right time, with right quality and right quantity. And procurement enters another phase, the phase of contracting, contract management and payment.

In this whole exercise of the procurement process the responsible authorities may have major influence on selection and evaluation of proposals of consultants, contractors and suppliers.

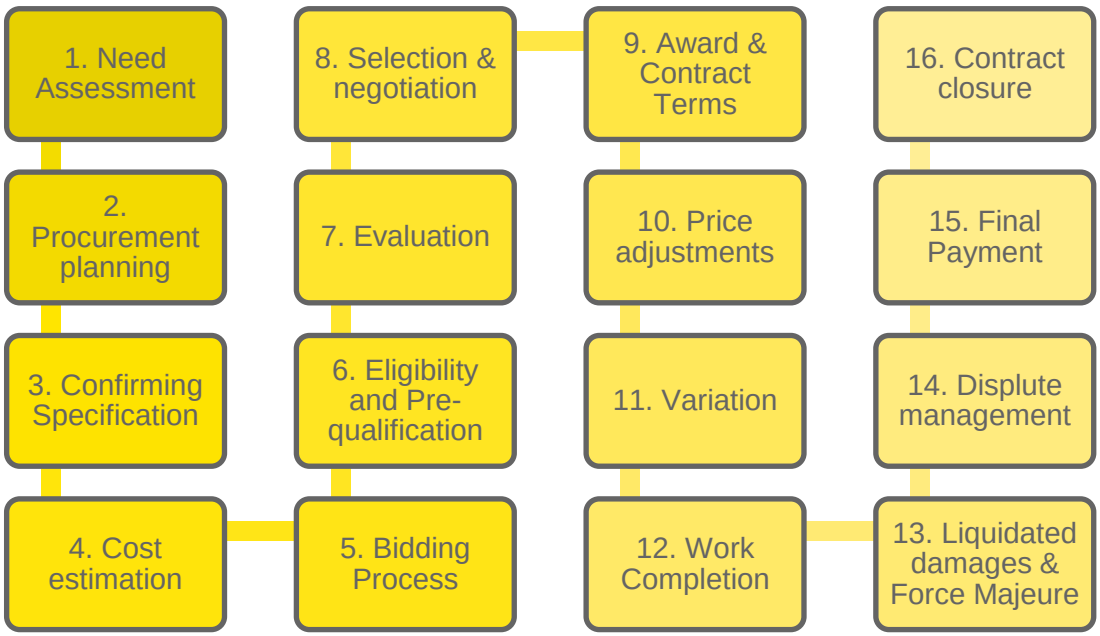
It is the responsibility of the auditors to verify the sampled procurement activities to ensure that they are in conformity laws and regulations and are within the principle of economy efficiency and effectiveness.

1.2. Understanding Public Procurement

Based on the nature of procurement, it can be divided into categories as stated below:

- **Contracts for Supply of Goods** - Agreement made for purchase of commodities, equipment, stationery and other supplies (raw material, food or rations etc.).
- **Construction contract**s - Agreement entered into for construction (new), demolition, repairs & maintenance or renovation of structure or works etc.
- **Consulting Service contracts** - Agreement signed for preparation of design and detail engineering, supervision of construction work, consultancy for advisory services or activities having intellectual nature.
- **Supply and Installation contract** – Agreement signed for supply and installation of plant and Equipment.
- **Management contract** – Agreement entered into for providing management services.

The procurement process / activities can be explained by the following diagram



1. Need Assessment

Public procurement begins with the assessment of the need to make the procurement in relation with the operation and activity of the public sector entity. Need Assessment has to specifically identify and define the requirements.

2. Procurement Planning

Procurement planning is done to ensure efficient procurement and value for money. This also includes operational plan determining the type of the procurement procedures to be followed, timeframe and budget management.

3. Confirming Specifications

According to the procurement plan specification are confirmed. This is more relevant where the value is high and/or procurement is complex. The specifications may contain detailed delivery, contract terms, period, warranty, payment terms and minute details of procurement.

4. Cost Estimation

Generally, a cost-committee determines the estimated cost of the procurement. The estimate is prepared based on the past-experience, cost of the similar procurement in another public body, market price and the quality and quantity of the procurement. This may consist of drawings and bill of quantity and cost (BoQ).

5. Eligibility & Pre-qualification

Procuring office may determine the eligibility criteria / pre-qualification for the prospection provider of construction-works, goods or services. This is intended to ensure competition among the comparable bidders. However, care should be taken to ensure that this does not limit competition compromise of principle of value for money.

6. Procurement Process (e.g., Bidding Process)

Procurement process depends on the nature, size and the value of the procurement. It's important to select appropriate method for the intended procurement. The procurement process should be transparent, accountable, efficient and fair competition.

7. Evaluation

Unbiased and independent evaluation of bids for procurement is key for the procurement to be fair and equitable. Some bids have to be evaluated by technical and financial evaluation methods. The competency of the evaluators of the tenders/ bids is also essential prerequisite for fair evaluation.

8. Selection and Negotiation

Most suitable supplier (of goods / services / construction works) is selected based on the evaluation process. The supplier may be called to negotiate on the terms of the procurement contract.

9. Award and Contract

The procurement contract contains prescription for norms and principles to be followed including conditions to be adhered to. All conditions mutually agreed during the bidding process are to be included in the contract. Contract shall also contain provisions required by the laws and regulations.

10. Price Adjustments

Bidding document and the contract may provide for the changes in the price of the contract both upward and downward subject to the changes in the future events and conditions such as changes in the prices of materials, labour, components, fuel etc. Price adjustments should be in accordance with the formula previously agreed.

11. Contract Variation (Alteration, Additions and Omissions)

This is altering the conditions of the procurement contract that entails changes in the original scope is included in the variation order. This may include addition, omission or substitution of the scope of work. This must be mutually agreed and permitted by the initial contract and the legal provisions. Further this should be legal, reasonable and justifiable.

12. Work Completion

The procurement completion should be evidenced by proper documentation and approvals. Work completion, except for smaller procurement, is generally evidenced by the completion report. This forms the basis for making the final payment to the contractor.

13. Liquidated Damages and Force Measures

The procurement contract may provide for conditions for liquidated damages and force measures. Liquidated damages are claimed from the contractors when they fail to perform in accordance with the contract. Force measures are special conditions stipulated in the contract to deal with unforeseen events that are beyond the control of the parties to the contract.

14. Dispute Management

Contract should provide ways to deal with the dispute situation between the contractor and the employer. The disputes are resolved in multiple ways like mutual discussion, use of arbitration clauses or though legal means through the designated courts of law.

15. Final Payment

Terms & conditions and methods of payment should be provided in the contract. Final payment is made on satisfactory delivery of the goods or services, or construction works by the supplier / contactor. However, mobilisation payments, intermediate payment may have to be made during the contract period which along with the

liquidated damages and price adjustments if any have to be adjusted at the time of making final payments.

16. Contract Closure

Contract is closed at the end of the contract when the terms of the procurement contract have been fulfilled. Sometimes the contract can be terminated earlier for the conditions within the contract such as non-fulfilment of the contract obligation by the contractor.

1.3. Procurement and Public Sector Audit

Public sector audit under the constitution of Nepal has to be subjected to the principles or regularity, economy, efficiency, effectiveness and purpose. Similarly, public procurement is also guided by

- the applicable procurement legislation and regulation **(REGULARITY)**;
- the principles of Economy Efficiency and Effectiveness **(3 E s)**; and
- the propriety and probity **(PURPOSE)**.

The objectives of audit of public procurement in public audit

- As financial audit focus - to ensure that public procurements are truly and fairly reflected in the financial statements
- As performance audit aspect – whether the public procurements have been efficient and effective and whether the norms of economy have been followed to ensure value for money
- As compliance audit aspect – whether the laws, regulations, directives, norms and standards have been followed and complied in public procurement.

1.4. Objective of this audit directives

This Procurement Audit Directives sets out good practices to facilitate auditing of procurements made by the public sector entity / offices (or branches where applicable). This directives is predominantly based on the public procurement legislation and related regulation. Its primary purpose is to provide guidance while auditing procurements made by the auditees. This directives will also be a useful tool to audit procurements made under projects supported by the development partners.

Audit of procurement is carried out as a regular activity within the financial audit to examine and verify expenses made by the offices. Subject matter for the performance audit may be public procurement related where the audit is carried out to evaluate economy, efficiency and effectiveness of the procurement process or an aspect of procurement process. Or the subject matter for compliance audit may be procurement related where audit is carried out to evaluate compliance of procurement relevant laws and regulations

The main purpose of this directives is to:

- Make a basis for the audit of procurement of goods and services including public works and consulting services.
- Assist auditor in conducting audit and evaluating the procurement process and public works in an effective manner.
- Assess that procurement was completed within stipulated cost, time and achievement of intended target.

The main audit objective is to ensure that the procurement of goods and services including public works have been done efficiently, economically, and effectively within the provision public procurement legislations, relevant contract agreement and other relevant guidelines. The objective of the audit is however dependent on the type of audit being conducted namely, Financial Audit, Performance Audit and Compliance Audit.

This directives should be taken as a generic guide only, as it does not consider specific problems or prescribe specific solutions. This directives should be read and applied in conjunction with applicable audit guide.

1.5. Coverage

The directives covers the procurements made by the public sector that includes the general governments and the public corporations. This directives is intended to support the auditor of the government and government's extra budgetary units (collectively known as general government) and the public corporations.

1.6. Definitions

Bid, tender	A set of documents submitted by a prospective contractor or supplier to a project office containing a description of works or goods to be provided and the proposed price. It may contain information about the bidder's qualifications to undertake the work. The terms 'bid' and 'tender' are interchangeable.
Consultant	A person or a firm appointed by the office to provide specific any technical or specialised services.
Contractor	A firm contracted by the office to construct works, install plant/machinery or supply materials according to the design, drawings and specifications provided by the office. In some contracts the Contractor may be required to design all or part of the works and plant/machinery. A users' committee is a special form of contractor.

Non-Government Organisation	An organisation, other than government, registered under the prevalent laws for the specified purpose and objectives generally not for profit motive.
Office	The responsible office for the procurement of goods and services.
Pre-qualification	An assessment made by the office for the experience and technical and financial capacity of prospective contractors and suppliers expressing interest in undertaking a particular contract. This is done for the purpose of excluding companies which do not meet the minimum criteria set by the procuring office. Prequalification is undertaken before inviting bids.
Post-qualification	Post qualification is undertaken after bids have been received, and usually before the proposed price is considered.
Public Procurement:	Procurement means procurement of Goods and Services including public works by the public sector office.
Standard Bidding Documents:	A set of documents used in the procurement of works, goods and consulting services, normally comprising instructions to bidders, bid data sheet, general conditions of contract, conditions of particular application, specifications, drawings, bill of quantities, bid evaluation criteria, qualification form, and bid and performance security forms.
Supplier	A person, which can be an individual, company, firm or organisation that supplies goods and or services.
User's Committee	A committee set up locally, registered or otherwise, who are the user or the beneficiary of the public works or services that is being carried out.

1.7. Type of Procurement Contracts / Agreements

Procurement of Goods and Other Services

Unit rate contract:	Unit rate contract is used to procure specified goods (or other services) with specified quantity. Unit-rate contract will, generally, be applicable for one year. Lowest evaluated bid will be the sum of product of each quantity and rate against each item of bill of quantity.

Framework contract:	Framework contract is used to procure specified goods (or other services) having general specification, where the quantity may or may not be pre-determinable; the goods (or other service) is available with many suppliers. In this type of contract, procuring entity will award the contract to the party having lowest rate of each item under procurement. Framework contract will, generally, be applicable for one year. Lowest evaluated bid will be lowest rate of each item.
Multi-year contract:	This type of contract is used, where the goods (or other services) are required for longer period with specified technical risk in the same specification or design. Lowest evaluated bid will be the sum of product of each quantity and rate against each item of bill of quantity.
Design, Supply and Installation:	This is used for the supply of goods, generally in form of plant and machinery, having none or minor element of construction with major portion of supply and installation. This type is applicable where the design of plant and machinery or installation is required as per the supply from the supplier. Lowest evaluated bid will be the sum of whole project of the plant.
Design, Supply, Installation and Maintenance:	This form is used for Design, Supply and Installation followed by operation and maintenance by the supplier. Lowest evaluated bid will be the sum of whole project of the plant and annual maintenance cost or life-cycle cost.
Turnkey:	This is used for highly technical installations (e.g., fertilizer plant, dairy plant or similar plants) with new and high technological needs. In this type, the procuring entity fixes the performance requirement only. Lowest evaluated bid will be the sum of whole project of the plant.

Civil works

Unit rate contract:	Unit rate contract is used to procure civil works with specified estimated quantity of individually measurable units of construction. Procuring entity will design the works in this case (employer's design). Lowest evaluated bid will be the sum of product of each measurable estimated quantity and rate against each item of bill of quantity.

Lump sum contract:	Lump sum contract is applicable for complex civil works, where employer designs the works. Measurement will be done on completion of each task of the contract. Lowest evaluated bid will be lowest rate of individual works.
Cost Plus Contract:	In this type of contract, the payment to the contractor will be the real cost of works plus the agreed overhead and margin (profit). In the case where goods / materials supplied by the employer, the payment will be the agreed overhead and margin (profit) on the basis of employer's real cost of supplies.
Rate Contract:	This is generally applicable for renovation and repair works, where the amount of works cannot be predetermined, or an estimation will not be reliable. For the goods / materials and labour, the rate will be negotiated. Procuring entity will pay the actual work done and / or actual supplies to the works.
Design and Build Contract:	In this model, the contractor will design the works, determines the cost estimates. The employer will have to approve the design of the construction. This model is applicable where procuring entity has not expertise on design or technology applicable to the works.
Management Contract:	In this model, contractor is responsible to manage and supervise the sub-contractors.
Performance Based Maintenance and Management Contract:	In this model, the procuring entity agrees with the contractor for the minimum performance (output) from the works or maintenance of works. The contractor will be responsible for construction, mobilisation of sub-contractors, supply of goods and quality of works.
Piecemeal Contract:	This is equivalent to framework contract applicable for goods and services.
Construction and Maintenance:	This is equivalent to Design, Supply and Installation followed by operational maintenance. Main difference between two is the proportion of civil works.
Turnkey:	This is highly technical civil works like fast-track roads, hydro-dam, pumping station or similar civil works, with new and high technology for Nepal. In this type, the procuring entity fixes the performance requirement only.

1.8. Basis of the Procurement Audit Directives

This procurement audit directives is based on the requirements of public sector to comply with the prevalent legal provisions in Nepal

- Public Procurement Act. 2063
  - Includes provisions covered under 3rd Amendments
- Public Procurement Regulation, 2064
  - Includes provisions covered under 12th Amendments

1.9. Common procurement contract Issues

For Goods, Works, Plant, and Related Services [1]

(i) Misuse of mobilisation advance (used for purposes not related to contract).
(ii) Delays in handing over possession of an encumbrance-free site.
(iii) Resettlement issues or local disturbances at site.
(iv) Non-submission of work program.
(v) Delay in submission of insurance documents.
(vi) Late or non-submission of a quality assurance plan.
(vii) Unofficial selling or subletting of the whole contract to another unskilled contractor who has no capacity to manage the contract.
(viii) Use of unauthorised subcontractors.
(ix) Delay in mobilisation of construction materials due to non-availability of materials or a sudden increase in the price of materials in the market.
(x) Delay in mobilisation of key personnel and equipment.
(xi) Poor quality or non-conformance of deliverables produced by contractor.
(xii) Lack of proper pre delivery or post-delivery inspection of goods.
(xiii) Non-payment by contractors to subcontractors or material suppliers.
(xiv) Non-compliance with environmental protection and safety.
(xv) Non submission of technical test reports.
(xvi) Lack of communication and/or non-submission of periodic reports.
(xvii) Variations and extension of time are granted without justification.
(xviii) Disagreement on claims or rates of new items.
(xix) Incomplete or delayed submission and/or processing of variation requests.
(xx) Late processing of interim billing and final payments by the procuring office
(xxi) Delay in defects correction.
(xxii) Ensuring proper application of contractual-based termination provisions.
(xxiii) Delays in carrying out dispute resolution mechanism (e.g., dispute resolution board).

[1] ADB Contract Management, Guidance note on procurement, July 2018

For Consulting Services[2]

(i) Key personnel lack practical experience of the specific field of expertise.
(ii) Practical knowledge and experience of the consultants in the areas of expertise are found to be inconsistent with their curriculum vitae.
(iii) Team leader fails to maintain good relations with the procuring office contract team, other officials, or with the team members.
(iv) Delays in mobilisation of the consultant team.
(v) Variation claims with cost impacts.
(vi) Frequent replacement of personnel.
(vii) Lack of capacity of the procuring office to handle the consultant, wherein the consultant delays the timely delivery of the agreed-on deliverables by increasing expert inputs, in case of a time-based contract.
(viii) Substandard quality of deliverables.
(ix) Deviations from agreed terms of reference.
(x) Late processing of interim and final payments by the procuring office.
(xi) Delays in implementing dispute resolution mechanisms.

1.10. Structure of this guide

The directives is structured as follows:

1. Background

The background covered the concept of public procurements, objective of this audit guide, the scope and coverage of this audit guide and the basis of preparation of this guide.

2. Audit Consideration

Audit consideration includes checklist guidelines for public sector auditors to use in audit of procurements under the prevalent legal requirements.

2.1. Common Considerations`

This section includes checklists for the audit of common activities such as planning and initiation of the procurement proceedings, cost estimate determination, prequalification, setting eligibility of the contractors / suppliers / consultants and specific requirements for International Competitive bidding.

2.2. Construction Works, Supply of Goods and Other Services

This section includes a set of checklists covering national-level competitive bidding for construction works, supply of goods and other services, two stage bidding process,

[2] ADB Contract Management, Guidance note on procurement, July 2018

procurement by using sealed quotation for goods, construction works and other services, provisions related with direct purchase, construction works using users' committee / beneficiary community, force account, procurements under various methods such as lump sum rate, catalogue shopping, limited tendering and buyback methods, renting land and building, procurement of ration and using non-governmental organisation for particular services.

2.3. Consulting Services

This section includes specific checklists for general requirements for procurement of consulting services, procuring consulting services by competitive proposals or by direct negotiation, from standing list and by applying other methods.

2.4. Special Circumstances

This section includes checklist to audit procurements under special circumstances and conditions where procurements are exempted from the application of procurement act and regulation.

2.5. Contract Management

This section of the audit guide includes checklists for aspects of contract management such as entering into contract, providing settling advances, issuing variation order to the contract, adjustment for price changes, charging liquidated damages, payments under the procurement contract, work completion, code of conduct for the officials and contractors, suppliers, service providers and consultants and other related matters.

Part - II
Procurement Audit

2. Audit considerations

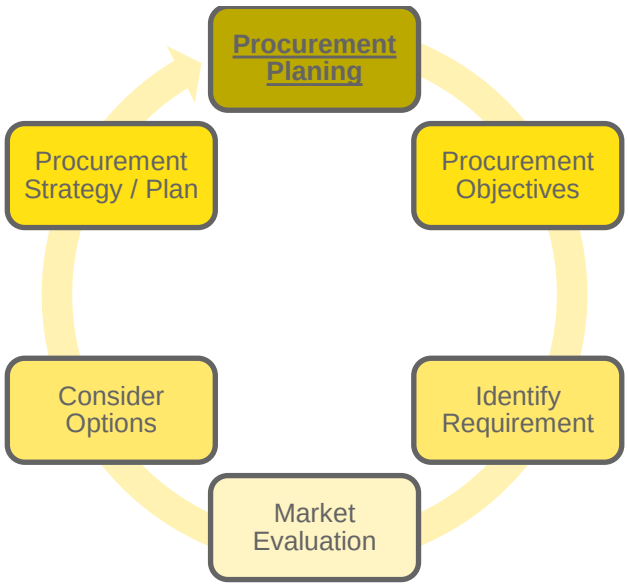
2.1 Common Considerations for Procurement

This includes commonly applicable processes for procurement activities:

2.1.1 Planning and initiations

The preparation of a realistic procurement plan is critical for its successful monitoring and implementation. The office prepares a procurement plan giving details of procurement activities including all contracts. [3]

Procurement planning cycle will be as follows:



[4]

Procurement Objectives

Procuring office needs to set down its objectives for the period under consideration that may require procurement activities. This is also determined by the scope of the office, existing activities and project and tentative budget allocation.

Identify Requirements

[3] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

[4] ADB Strategic Procurement Planning – Guidance note on Procurement June 2018

Based on the objective, the procuring office will identify the requirements for procurements. This must be aligned with the budget and resources available. The requirements shall include the quality and quantity of the goods, services and public works that needs to be procured.

Market Evaluation

Market information must be analysed for the availability of the goods and services, pricing prevalent in the market, the logistics requirements, geography, domestic and/or local availability, prevalent market trend and practices etc. needs to be analysed.

Consider Options

Based on the analysis as above the procurement office needs to make choices on matters such as i) Contract packaging, ii) Scheduling of the procurement, iii) Procurement methods to be employed and bidding processes, iv) Specifications of the procurement, v) Forms of the contract, vi) Pricing method, vii) Qualification criteria and evaluation methods, vii) Performance indicators and ix) Contract management

Procurement Strategy / Plan

A Procurement Strategy

Once procuring office has determined whether it has capacity to procure, it should continue with developing the procurement strategy. The office should also consider the procurement strategic directions and ensure that the plan is consistent with the strategic directions, such as:[5]

- Ensure value for money is achieved;
- Encourage competition for supplying to government;
- Provide a strategic and agile procurement practice;
- Reduce red tape;
- Engage with industry;
- Innovate and ensure that the plan is in line with policy matters;
- Application of relevant sustainability policy (where applicable);
- Align with government/activity needs established through effective internal engagement;
- Inclusion of small and medium enterprises;
- Method of engagement;
- Promote of competition;
- Contract period limits;
- Any future matters for consideration.

[5] ASEAN-SAI Guidelines on Public Procurement

B Procurement Plan

Procurement planning is the operating plan for the time period ranging from tendering to signing contracts that will be prepared after the budget has been approved. Procurement plan is about timeframe and budget management to meet goals and objectives.[6]

The procurement planning among other things generally include:[7]

- Procurement packaging and Scheduling
- Procurement Methods
- Prequalification
- Bidding Procedures
- Specifications
- Standard Bidding Documents and Contract Forms
- Pricing and Costing Methods
- Key Performance Indicators
- Evaluation Methods
- Contract Management Approach.

Objective of the Audit:

- Planning and initiation are done in compliance with the laws.

Associated Risks:

- Not preparing procurement plans and conducting proceedings as required.

SN	Particulars - Audit considerations	Basis of Checking
1	**Details of procurement prepared:** Auditor needs to verify whether specification, plan, drawing, design, special requirements or other required information have been prepared before procurement of goods or services: [Sec 4 and Rule 5A] • Technical and qualitative specialities should be identified, without indicating specific brand, trademark patent, design or manufacturer. [Sec 4(2) and Sec 4(3)] • Specifications in the tender document or prequalification document should not limit competition or disqualify otherwise qualified party to be included in the process. [Sec 4(4)]	• Detailed Project Report (DPR) is prepared – where required • Cost estimate prepared based on the DPR – cross verify DPR and cost estimate • Verify specifications preparation to identify clues that limits competition or is brand specific
2	**Procurement Proceedings**: Auditor needs to verify whether • Identify procurement requirements and relevant details; [Rule 3] • Procurement undertaken by competent authority; [Rule 4]	• Details of projects included in the project bank • Proposed procurements are justified and within the

[6] ASEAN-SAI Guidelines on Public Procurement

[7] ADB Strategic Procurement Planning – Guidance note on Procurement June 2018

SN	Particulars - Audit considerations	Basis of Checking
	• Procurement requisition is received prior to the initiation of the proceedings. [Rule 5]	scope and activity of the office • Level of authority required to approve procurements
3	**Budget and site arrangements:** Auditor shall verify to ensure that procurement proceeding is not initiated; [Rule 6] • without availability of budget for procurement (except for multiyear project and for emergency purchases) • for construction work unless construction site is arranged	• Verify prerequisites such as site preparation soil test, land acquisition, environmental clearance has been completed before bidding process
4	**Procurement unit / division:** Whether the office has set up a procurement unit or division considering the workload and work nature. [Rule 16]	• Formation order of the procurement unit • Meeting minutes
5	**Procurement Plan:** Whether the office has prepared procurement plan as prescribed: [Sec 6] • Master Procurement Plan is prepared as prescribed for multi-year project or procurement exceeding NPR 10 Cr; [Rule 7] • Annual Procurement Plan is prepared for procurement exceeding NPR 10 Lac. [Rule 8]	• Review of procurement master plan (if applicable) • Review of annual procurement plan • Check whether the plans have met the minimum criteria given in PPMO planning template • Cross verify whether procurements outside the procurement plan has been made
6	**Packaging and Slicing:** Auditor needs to verify that packaging and slicing is not done in contrary to the procurement master plan. [Rule 3A] • Procurement is divided into more convenient package or slices, to be invited separately for ensuring maximum competition • Except for the interrelated works that requires to be included in the single package larger package is not made to limit competition	• Whether basis for packaging and slicing has been specifically determined or not • Whether slicing and packaging is done to favour particular contractor/supplier or to limit competition • Packaging and slicing are in agreement with the procurement master plan. • Packaging not done for procurements that can be done separately – just increasing the size of the procurement • Whether interrelated works are sliced

2.1.2 Cost Estimation

The estimation of contract values must be realistic, credible and must take into account the total amount, including any form of option and any renewals of the contract. [8]

Cost estimates are prepared based on the following among other things such as.

- Past-experience
- Cost to the similar procurement of another public entity
- Market analysis
- Publicly available price lists
- Locally prevalent prices

The calculation of the cost estimate or procurement's estimated value is made according to legal framework. The following matters are to be considered: [9]

- The estimation is made before or at the moment at which the call for competition is sent or at which the contracting authority commences the procurement procedure (depending on cases).
- The estimation is net of value-added tax (VAT).
- Any form of option and any renewals thereof, as explicitly set out in the procurement documents, shall be taken into account.
- The method used to estimate the value of a procurement should not be selected with the intention of excluding the procurement from the scope of the directive;
- The estimation can be based on a subdivision of the procurement only where justified by objective reasons;
- When a proposed work or service may result in contracts being awarded in the form of separate lots, account should be taken of the total estimated value of all such lots.

Objective of the Audit:

- To make cost estimate for the procurement activity

Associated Risks:

- Cost estimates not prepared or not appropriately prepared
- Absence of supporting documents required for preparation of estimates
- Estimates prepared based on the information from the provider's price.

[8] ASEAN-SAI Guidelines on Public Procurement

[9] The Contact Committee of the SAI of the European Union, Public Procurement Audit, 2018

SN	Particulars - Audit considerations	Basis of Testing
1	**Cost estimate prepared:** Auditor needs to verify whether cost estimate of procurement is prepared by the office for the following: [Sec 5] • over the value of NPR 1 Lac. (<NPR 1 Lac value does not require cost estimates except for the construction works)	• Cost estimate is prepared and documented for procurement above specified limit
2	**Cost Estimate Considerations:** Auditor needs to verify whether following matters have been considered while making the cost estimate: [Rule 9] • whether procurement can be single or multiple contracts • contract to be renewed or not • Maximum time and cost required to complete the procurement contract	• Review the cost estimate for each contract • Whether time consideration is relevant or not
3	**Itemised detail in cost estimated:** Whether separate item for cost estimate is prepared for: [Rule 9(2)] • Mobilisation and demobilisation, Insurance, Facilities to the consultants, Quality testing, Professional Health and Safety, As-Built Drawing, Performance Guarantee etc	• Cost estimate is prepared in detail for separate items / components to the extent possible.
4	**Cost estimate for construction work**: Whether special consideration for cost estimate for construction work is considered: [Rule 10] • cost estimate shall be prepared as per the set norms concerning construction work, archaeological excavation, underground works • fix the time period to be required to complete construction work • fix the rate of construction materials, the rent of machine and equipment or the wages of labourers based on the rates fixed by the Rate Fixation Committee / Chamber of commerce / Department chief as applicable • Estimate is prepared in the format given under Schedule 1 of the Regulation	• Approved design and specification • Approved Norms and District rate • Prevalent market rate and availability of goods and resources • Analysis of transportation costs of goods and machinery • Itemised estimated according to the design and conditions • Site details (chain age etc) • Time consideration • Whether the estimate could result in variation or contract or price adjustments • Analysis of OAGN form no 507 • Rates used by other public offices for similar works
5	**Cost Estimate of Goods:** Whether cost estimate is made considering the following: [Rule 11] • Actual cost incurred by the office or other public sector office(s) in the district • Prevalent local market rate and in case of other market, market rate plus transportation costs • Rates issued by chamber of commerce	• Prevalent market rate and availability of goods and resources • Analysis of transportation costs of goods • Estimate is done in accordance with specification and requirements

SN	Particulars - Audit considerations	Basis of Testing
		• Rates used by other public offices for similar goods

6	**Cost estimate of Consulting Services:** Whether cost estimate is made considering: [Rule 12]
	• Available norms on consulting services of the controlling entity, e.g., ministry (if any)
	• Actual cost incurred on similar nature made in the current or previous years by the office or other public entity
	• Terms of reference and specify
	  ○ Remuneration of key and other persons
	  ○ Travel, accommodation and other expenses
	  ○ Training, seminars and travels that consultant has to organise
		• Basis of estimated cost of consulting services is justified
		• Appropriate norms have been followed
		• Prevalent rates of the consultants analysed
		• Rates of international and national consultants analysed
		• Time inputs considered for the consulting services

7	**Cost estimate of Other Services:** Auditor needs to verify [Rule 13]
	• Rent of the vehicles, machinery tools, equipment or goods is done by considering:
	  ○ Use of skilled technical knowledge, Description of item of be hired, Period to be hired, Market rate prevalent, Fuel consumption etc.
	• Carriage is contracted considering
	  ○ Rate determined by the price fixation committee, rate fixed by the central agency, prevailing market rate
	• Repair and maintenance of any goods is done considering
	  ○ Opinion of expert or skilled person from within the office or if not available by an individual, firm, company or organization carrying out such a work.
	• House rent and other service contract is done considering:
	  ○ The prevalent market rate or the prescribed norms
		• Approved norms and rates considered for estimating the cost
		• Prevalent market rates analysed (District rates if available)
		• Rates given by rate determination committee is considered (if applicable)
		• Technical support is sought if the rates require such expertise
		• Rates used by other public sector offices for similar services considered (if required)

8	**Approval of the cost estimate:** Auditor should verify whether the cost estimates have been approved. [Sec 5A] • The authority for approval of estimate is in accordance with [Rule 14] • The approved cost estimate should be maintained up to date [Rule 15]	• Costs estimate approved by appropriate competent authority

2.1.3 Pre-qualification

Prequalification is a process of qualification assessment undertaken prior to bid submission. Prequalification is used for Procurement as follows:

- Selection of Providers of Consulting Services;
- Selection of Providers of complex Goods / Civil Works / Other Services through Competitive Bidding; or
- Selection of Providers of Goods / Civil Works / Other Services using a Direct Appointment Method, except for emergency response.

A prequalification process shall produce: 1) List of potential Providers of Goods/Civil Works/Other Services; or 2) Shortlist of potential Providers of Consulting Services.

Prequalification provides procuring office with more confidence that only providers who have the required experience, technical, financial resources and capability to supply goods will be invited to offer. [10]

Advantages of Prequalification:[11]

- Screens potential bidders for contract specific requirements and capability
- Prospective bidders avoid the expense of bidding if not sufficiently qualified
- Reduces or eliminates the need to evaluate bids from unqualified bidders
- Enables prospective bidders to understand minimum requirements, providing them with the opportunity to join with other prequalified bidders to bid for the contract
- Builds confidence that unqualified competitors will be excluded from submitting unrealistically low bids
- Enables the sourcing strategy to be altered in response to the level of interest from qualified prospective bidders
- Exposes potential conflicts of interest of prospective bidders with other parties involved in the prequalification
- Enables identification of prospective bidders eligible for a domestic preference, where this is applicable

Disadvantages of Prequalification:[12]

- it may limit competition;
- it may increase the total procurement process time;
- it may facilitate corruption and collusion among applicants, since the identification of prequalified applicants will be made public.
- Risks[13]
    - Providers not meeting the prescribed evaluation criteria might get approved due to unprofessional conduct or corrupt practices.
    - The persons assigned the job of evaluating and pre-qualifying the providers may lack technical expertise to evaluate the provider against the laid down criteria
    - Provider may take more orders than his capacity to supply.
    - Inadequate competition due to insufficient number of pre-qualified providers.
    - Provider may furnish incorrect information to get them pre-qualified or registered.

[10] ASEAN-SAI Guidelines on Public Procurement

[11] ADB Prequalification – Guidance note on Procurement June 2018

[12] ADB Prequalification – Guidance note on Procurement June 2018

[13] ASEAN-SAI Guidelines on Public Procurement

Objective of the Audit:

- The suppliers, consultants, contractors meet the prequalification criteria.

Associated Risks:

- Procurement from suppliers, contractors or consultant who do not meet the prequalification requirements.

SN	Particulars - Audit considerations	Basis of Testing

1	**Prequalification**: Auditor needs to verify whether:
	• Prequalification has been determined for the following instances or not: [Sec 12]
	  ○ To execute works specified as large and complex
	  ○ As determined by the office for prequalification
	• Documentation is prepared as required by the law and made available to the interested bidder; [Rule 32 and Rule 34]
	• The basis of prequalification is approved by the department chief; [Rule 33]
	• Evaluation committee has appropriately examined the fulfilment of the requirements of prequalification by the applicants; [Rule 35]
	  ○ Evaluation committee has submitted a detailed report within 15 days from the date of the opening of the prequalification applications disclosing matters required by law; [Rule 36].
		• Basis of determining prequalification criteria does not limit competition and prefers limited or particular bidding – preparation and approval
		• Prequalification requirements set by the office for the particular procurement
		• Evaluation under the prequalification criteria – review the evaluation report

2.1.4 Eligibility criteria

Specified criteria are used to determine whether applicants are eligible to participate in the procurement process.

Any conditions for participation in the procurement process (eligibility criteria) shall be limited to those that are essential to ensure the firm's capability to fulfil the contract in question. However, procuring office should not permit a provider which (i) does not have capability and resources to successfully perform the contract; or (ii) for the conflict-of-interest situations.[14]

The typical prequalification eligibility criteria comprise of the following:[15]

[14] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

[15] ADB Prequalification – Guidance note on Procurement June 2018

Objective of the Audit:

- The suppliers, consultants, contractors meet the eligibility criteria.

Associated Risks:

- Procurement from suppliers, contractors or consultant who do not meet the eligibility requirements.
- May appear to be a process undertaken to limit or stifle competition.

SN	Particulars - Audit considerations	Basis of Testing
1	**Qualification for supply of goods and equipment**: Whether office has based the qualifying criteria considering the following: [Rule 25] • E.g., Technical capacity, Manufacturing record, technical specification, economic and financial capacity, guarantee on quality of goods supplied, repair and maintenance, availability of spares, skills for installation (if required) etc. as relevant • If the supplier is not the manufacturer certification of authorisation from the manufacturer; • For non-resident supplier – authorised after sale services	• Qualification criteria does not limit competition and favour any particular bidder • Qualification criteria prepared under the SBD of PPMO • Minimum legally required criteria considered and included • For new kind of goods or equipment prior approval of basis is sought from PPMO

SN	Particulars - Audit considerations	Basis of Testing
2	**Qualification for construction works:** For construction work with value more than NPR 20 Lac, whether the qualification criteria is as follows for not: [Rule 26] • E.g. general experience solely or as a JV partner, minimum annual construction work turnover, execution of construction experience, economic and financial capacity, skilled resources, machinery and equipment available in operational condition etc. • Turnover calculated excluding VAT and adjusted for NRB price index • Supporting documents indicating compliance with the qualifying criteria [Qualification for construction work is not prescribed with cost estimate less than NPR 2 Cr unless the office requires such ascertainment: [Sec 10(5)]	• Qualification criteria does not limit competition and favour any particular bidder • Qualification criteria prepared under the SBD of PPMO • Minimum legally required criteria considered and included • For new kind of works prior approval of basis is sought from PPMO
3	**Qualification for consulting services:** Whether the criteria for proposer for consulting services are based on the following: [Rule 27] • E.g. work experience of the individual or the firm, qualification of key personnel, methodology, managerial and financial capacity etc.	• Qualification criteria does not limit competition and favour any particular bidder • Qualification criteria prepared under the SBD of PPMO • Minimum legally required criteria considered and included • For new kind of services prior approval of basis is sought from PPMO
4	**Joint venture**: Auditor needs to verify whether bidder has submitted only one bid either as a partner of the joint venture or individually. [Rule 28] • Share of the principal partner of the bid and other partners shall be as specified; • Qualification of the joint venture and individual joint venture partners shall be as specified; • All joint venture partner should bear the liability	• Joint venture allowed in the bidding documents • Evaluation criteria for JV lead and JV partners specified • Required documentation and undertakings submitted by all JV members
5	**Economic and Financial Capacity:** Office may seek the documentation certifying the economic and financial capacity of the bidders. [Rule 29]	• Certified / authenticated economic and financial capacity of the bidders is considered for evaluation
6	**Eligibility criteria:** Auditor needs to verify whether eligibility criteria are mentioned in the bidding documents; [Rule 40] • The documents to be furnished to support such eligibility have also been specifically mentioned. • Such criteria are as mentioned in Rule 40	• Bidding documents should clearly mention eligibility criteria • The evaluation of eligibility under the specified criteria should be documented for audit verification

2.1.5 Others

Rejection of All bids

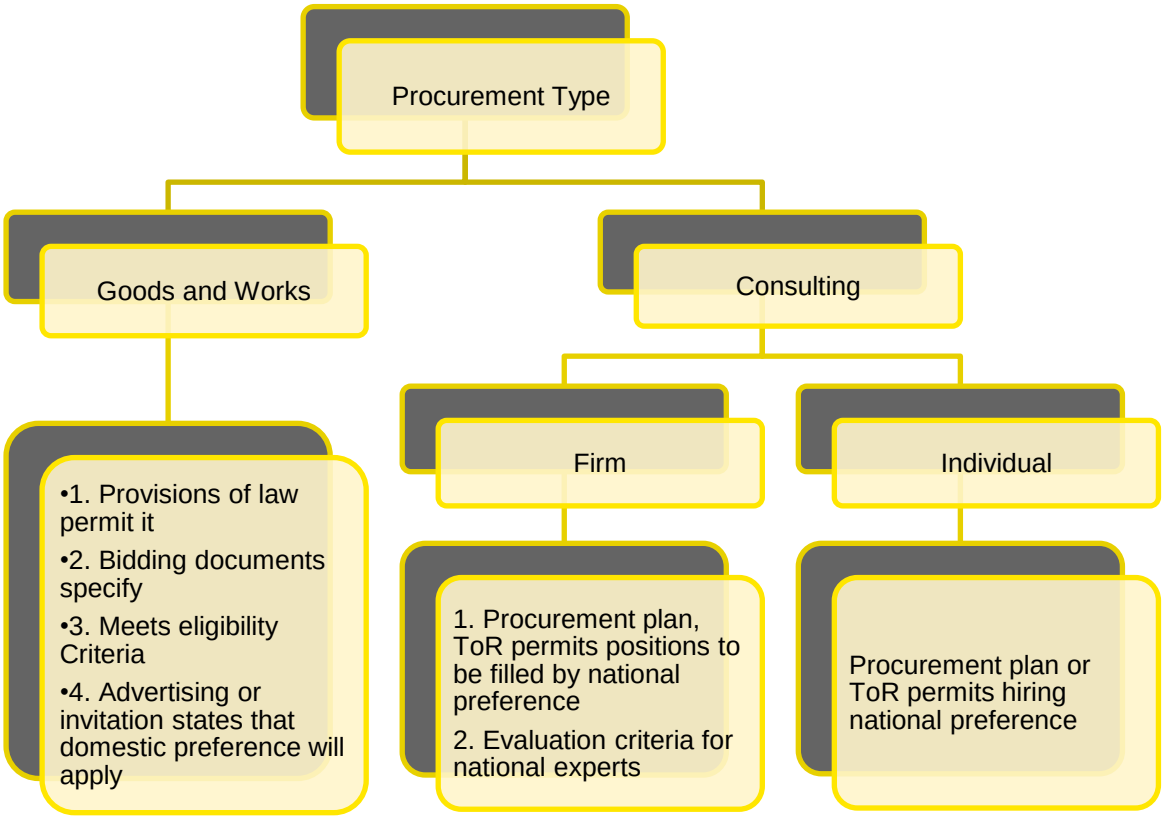
Procuring office will be justified in rejecting all proposals only if: [16]

(i) all proposals are substantially non-responsive; or
(ii) no bidder meets the specified qualification criteria; or
(iii) all proposals fail to achieve the minimum technical score specified in the RFP; or
(iv) if the offered price of the successful proposal is substantially higher than the available budget or a recently updated cost estimate.

All bids shall not be rejected, and new bids invited on the same bidding and contract documents solely for the purpose of obtaining lower prices.

Domestic Preference

Though domestic preference is considered to be practiced in procurement of goods, works or consulting services in international competitive bidding (ICB) it is also applicable for national competitive bidding (NCB). Application of preference can be summarised as below.[17]



[16] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

[17] ADB Domestic Preference – Guidance note on Procurement June 2018

Objective of the Audit:

- Other legal matters are considered for procurements.

Associated Risks:

- Other legal matters relating to procurements are overlooked or not complied.

SN	Particulars - Audit considerations	Basis of Testing
1	**Standing List:** Auditor needs to verify whether standing list is prepared for suppliers, contractors, consultants, NGOs or service provider for: [Sec 6A, Rule 18] • Consulting service less than NPR 20 Lac; [Sec 30(6) and Rule 72] • Direct purchase of construction work, goods and consulting services less than NPR 5 lac [Sec 41(1), Rule 85] • NGOs for training, awareness, orientations [Sec 46]	• Office has maintained standing list of service providers / suppliers / contractors / NGO / consultants • Verify the process of collecting and maintaining the standing list • Check the interval of renewal of such standing list
2	**Procurement from VAT registered:** Whether the bidder, sealed quotation proposer, consultant, service provider is duly registered for PAN. / VAT with the tax authorities. [Rule 19] • Exceptions (not requiring VAT): ○ Procurement less than NPR 20 thousand ○ Goods, consulting service or other service not attracting VAT ○ Rent of a building ○ Construction work by user committee / beneficiary group ○ Rural area – certified supplier (up to NPR 10 Lac)	• VAT registration of the supplier / consultant / contractor is obtained and documented by the office
3	**Preference to goods produced in Nepal:** Auditor needs to verify that preference is given to goods manufactured in Nepal and they are procured even if it is more expensive by up to 15%. [Rule 17]	• Domestic Preference provision of the law is included in the SBD • Domestic Preference condition is considered for BID evaluation • Domestic Preference clause is clearly mentioned in the SBD
4	**Subcontracting**: Auditor needs to verify that subcontract is undertaken only where it is specifically provided in the bidding document. [Rule 30] • Percentage of work that can be subcontracted • Bidder has submitted documents indicating required qualification of subcontractor.	• SBD provisions for subcontracting to be reviewed • Qualification of the sub-contractors • Sub-contractor related documents • Percentage of work subcontracted

SN	Particulars - Audit considerations	Basis of Testing
5	**Special Consideration for bid evaluation:** Whether or not corruption case has been filed against any bidder, sealed quotation proposer, consultant, service provider, supplier, construction entrepreneur or other person, firm, organisation or director of a company who submits a proposal singly or in joint venture, and if it appears that such a case has been filed, the committee shall write to the Government of Nepal, through the concerned body. [Rule 65A]	• Undertaking from the bidders that they (singly or jointly) have not be charged of any wrongdoing is taken • Any reports to and from the oversight authorities
6	**Rejection of bids and cancellation of proceedings**: Auditor verify that the bids are rejected or proceeding cancelled only on the following circumstances. [Sec 26] • None of the bids are substantially responsive • Contract cannot be entered as a result the selected bidder does not contract nor does the next bidder respectively • Bid price of the lowest among the substantially responsive bidder is higher than the estimate • When goods, construction work, consulting services or other services is no longer required by the office • No bid may be rejected, or re-bidding invited for the sole reason that only a few bids are or only one bid is substantially responsive.	• Conditions for cancellation of procurement proceedings or rejection of all bids have been met with supporting documents • Cancellation of procurement proceedings or rejection of all bids have not been done to select a particular bidder • Minutes of the meeting cancelling the proceedings
7	**Approval:** Bid is approved in accordance with the approval schedule considering the value of the procurement. [Rule 67] • Secretary or Administrative Chief of constitutional bodies, ministries, secretariats or similar office can approve procurements of any limit	• Only competent authority as indicated by the law has approved the procurement proceedings including the bids.

2.1.6 International Open Competitive Bidding (ICB)

The objective of International Competitive Bidding (ICB), is to provide all eligible prospective bidders with timely and adequate notification of a procuring office's requirements and an equal opportunity to bid for the required goods, works, consulting and non-consulting services.

International Competitive Bidding (ICB), properly administered, and with the allowance for preferences for domestically manufactured goods and, where appropriate, for domestic contractors for works under prescribed conditions is the most appropriate method for procurement. [18]

Public Procurement Law in Nepal specifically provides for the conditions where ICB need to be used for procurement.

Objective of the Audit:

[18] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

- ICB provisions are complied with

Associated Risks:

- ICB fails to comply with the applicable legal provisions while procuring construction works, goods, other services or consulting services.

SN	Particulars - Audit considerations	Basis of Testing
1	**International Bidding**: Auditor needs to verify whether international bidding has been invited for following circumstances: [Sec 15] • Goods and Construction work is not available at competitive price in Nepal; • No bid was submitted in national bidding invitation; • Required as per agreement with development partner; • For goods and construction work of complex nature.	• ICB procurement method has been used for the procurements as required by the law
2	**Language**: Whether notice for invitation for international bid is made in English. [Sec 15] • Tender and Prequalification documents prepared in English • For consulting services in English [Sec30(4)]	• Standard bidding document (SBD) applicable for ICB and as provided by PPMO has been used for international bidding
3	**Notice**: Auditor needs to verify whether • Notice is published in an international media [Sec 14(1) and Rule 40(3)] • Notice for invitation should allow minimum 45 days. (21 days for re-invitation) [Sec 14] • Notice is put in the office's website. [Sec 15(3)]	• Verify the adequacy of the notice period • The minimum notice period has been complied • Evidence of publication of notice accessible to the international bidder as required by the law
4	**Pre-Bid meeting**: Whether pre-bid meeting is organised 15 days prior to the deadline for submission of the bid: [Rule 52] • 7 days in case of re-bidding process	• Review the pre-bidding meeting minutes • Verify whether the agreements of the Pre bid meeting has been shared with all the bidders
5	**Expression of Interest (EOI) approval:** Whether approval from one level higher is obtained for inviting international EOI: [Rule 70(4)]	• Verify the competency of the authority for approval of international EOI
6	**Notice:** Auditor needs to verify whether 15 days' notice is given • For opening financial proposal to the proposers selected from technical evaluation. Rule 78(2) • For inviting selected proposer for negotiation [Rule 81(6)]	• Verify the adequacy of the notice period • The minimum notice period has been complied
7	**Evaluation of bids**: Whether the bid price expressed in various currencies are converting into single currency specified for evaluation. [Rule 61(1)]	• Verify the currency of the bids, exchange rates applied and conversion to the single currency as prescribed in the SBD
8	**Domestic preference**: When domestic preference is given in the international invitation for bid such matter is disclosed in the bidding document. [Sec 14(8) and Rule 31F]	• Domestic Preference provision of the law is included in the SBD

SN	Particulars - Audit considerations	Basis of Testing
		• Domestic Preference condition is considered for BID evaluation • Domestic Preference clause is clearly mentioned in the SBD

9	**Specific Consulting Services matters:** Auditor needs to verify whether
	• International invitation for EOI is called for consulting services: [Sec 30 and Rule 70(2)]
	  ○ Cost estimate more than NPR 10 Cr
	  ○ Not available locally at competitive price
	  ○ No bidder bids when invited domestically
	  ○ Required under foreign assistance agreement
	• Involvement of native human resource [Sec 31(3)e and Rule 27(1)(f)]
	• Approval of one level higher authority. [Rule 70(4)]
	• The office while selecting an international EOI, select a firm / company from various countries, background and a local firm/company. [Rule 70(6)]
		• Verify ICB for consulting services sought for conditions listed down in the law
		• Verify the involvement of local human resource
		• ICB – Consulting service SBD as prescribed by PPMO has been used
		• Approval by competent authority (one level higher)

10	**Local Agent**: Auditor needs to verify whether or not the international bidder has appointed a local agent; [Sec 14(9)] • Details of the agent (if appointed) should be included in the bid in accordance with [Sec 14(10) and Rule 39]	• Requirement for local agent and their details included in SBD • Local agent proposed in the bid with all required documentation
11	**Bidding /Tendering process:** Tendering process in international open bidding is similar to the Open Competitive Bidding except for the specific requirements, as included in this checklist. • **Auditors are to refer to the national open bidding checklist for rest of the tendering / bidding procedures**	Refer Checklist for Open Competitive Bidding 2.2.1
12	**Consulting Service Procurement**: The procurement of consulting services in international open bidding is similar to procurement of consulting services through competitive proposals nationally except for the specific requirements as included in this checklist. • **Auditors are to refer to the competitive proposals for consulting services checklist for rest of the consultant selection procedures**	Refer Checklist for Competitive Proposals 2.3.2

2.2 Construction works, Goods and Other Services

This is applicable for procurement of construction works, goods and other services.

Methods of procurement that may be used for procurement of construction works, goods and other services may be as follows

a. Direct Purchase
b. Quotation

c. Open Bidding (Tender)

2.2.1 Open Competitive Bidding (OCB)

Open competitive bidding is one of the most preferred public procurement methods because it[19]:

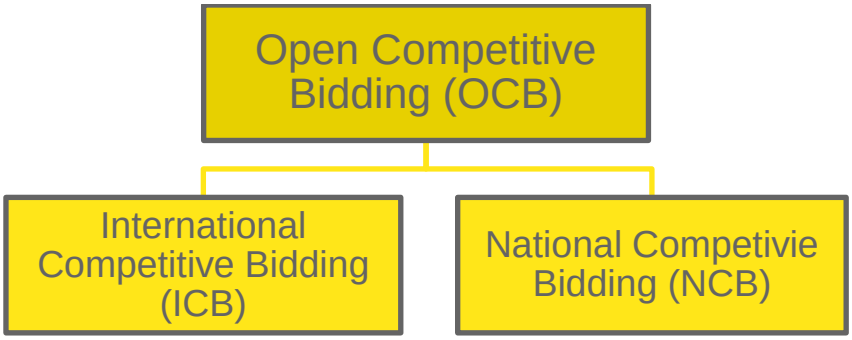
a. Increases efficiency and reduce procurement time
   - Bidding documents will be more appropriate for contracts being procured and ensure efficient contract implementation
   - Takes into account market supply conditions to ensure effective competition

b. Reduce risk
   - Minimise risks for non-responsive bids
   - Mitigates procurement supply risks

c. Deliver value for money
   - Open equally to national (or international) bidders OCB is likely to result in value for money (VfM)

d. Improve fitness of purpose.
   - Reflects strategic needs and circumstances of the contract to be procured
   - The arrangements can be customised

Types of Open Competitive Bidding



International Competitive Bidding (ICB)

Covered in section 2.1.6

National Competitive Bidding (NCB)

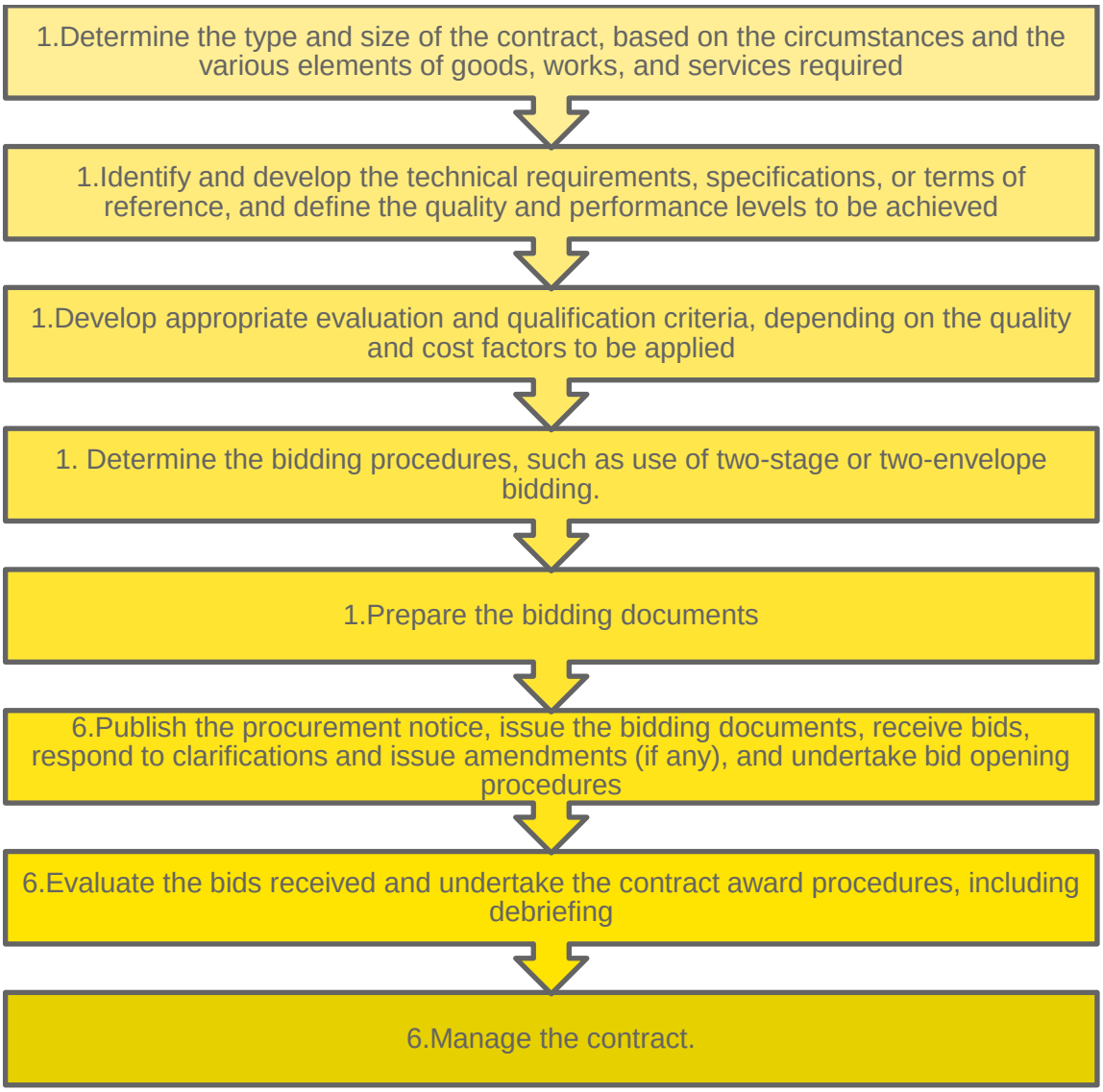
National Competitive Bidding (NCB) is the competitive bidding procedure normally used for public procurement within the country, and NCB may be the most appropriate method of procurement of goods, works, and non-consulting services which, by their nature or scope, are unlikely to attract foreign competition. However,

[19] ADB Open Competitive Bidding – Guidance note on Procurement June 2018

NCB procedures may also be used where the advantages of ICB are clearly outweighed by the administrative or financial burden involved. [20]

Steps in Open Competitive Biding

The key steps in developing and undertaking OCB are as follows[21]



Type and size of the contracts

The bidding documents shall clearly state the type of contract to be entered into and contain the proposed contract provisions appropriate thereof. The most common types of contracts provide for payments on the basis of [22]:

[20] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

[21] ADB Open Competitive Bidding – Guidance note on Procurement June 2018

[22] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

- a lump-sum,
- unit prices,
- reimbursable cost-plus fees,
- or combinations of the above types

The size and scope of individual contracts will depend on the magnitude, nature, and location of the procurement.

Specifications

Specifications or terms of reference for OCB goods, works, and services contracts should adhere to the following principles: [23]

(i) The specifications should
   (a) define the technical and quality requirements of the contract;
   (b) be formulated in terms of performance or functional requirements, where possible, and define the minimum performance requirements and any warranty and maintenance requirements;
   (c) promote the broadest possible competition, while assuring the critical performance or other requirements for the goods, works, and/or services under procurement; and
   (d) define the nature and scope of the contract that will be required to satisfy the needs, quality, and standards to be met.

(ii) As much as possible, the specified equipment, materials, or techniques shall comply with accepted standards and technical requirements (national or international standards if available or are inappropriate). In all cases, the bidding documents shall state that equipment, material, or techniques meeting other, substantially equivalent standards will also be accepted.

(iii) When appropriate, the technical specifications should define any tests, standards, and methods that will be employed to assess the conformity of equipment as delivered, or the works or services provided.

(iv) Specifications shall be based on relevant characteristics and/or performance requirements and must avoid any references to brand names, catalogue numbers, or similar classifications. If it is necessary to quote a brand name or catalogue number of a particular manufacturer to clarify an otherwise incomplete specification, the words “or equivalent” must be added after such reference.

(v) Offers for goods that have similar characteristics and that provide performance at least substantially equivalent to those specified shall be accepted.

(vi) Specifications should be prepared on the basis of, and be consistent with, the form of contract to be used. The respective responsibilities of the employer and contractor should be consistently described in and between the specification and the contract. The form of contract should not be an afterthought, to avoid risks of incompatibility between the specification and

[23] ADB Open Competitive Bidding – Guidance note on Procurement June 2018

the contract, or the need to customize contract conditions to fit the specification.

(vii) Sufficient information to enable bidders and evaluators to determine if a bidder's previous contract(s) will meet any qualification requirement for experience in similar contracts should be included.

(viii) Wherever possible, the range of sizes or values for specific components should be prepared to fit in the overall performance standards and meet the requirements or purpose of those goods, like computers, vehicles, etc.

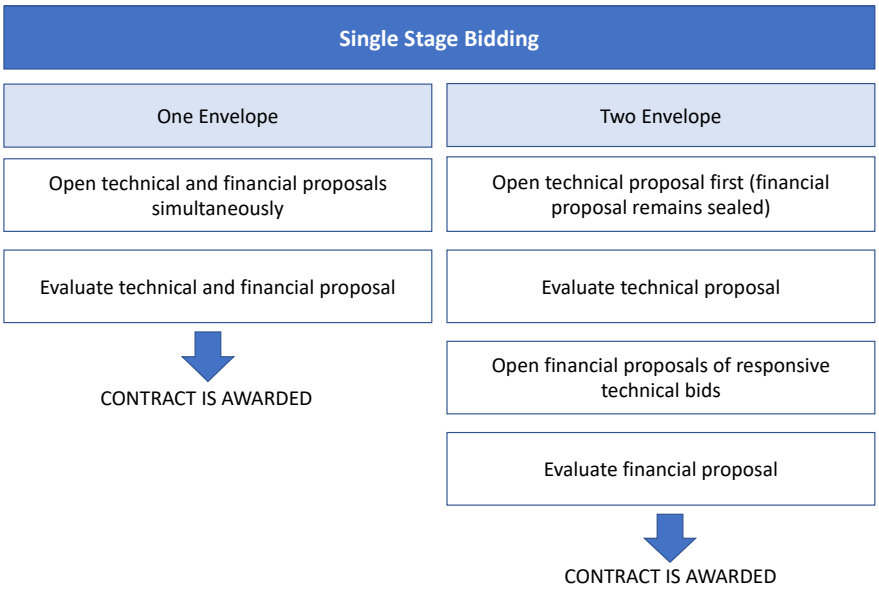
Evaluation Criteria

The purpose of qualification criteria for goods, works, and non-consulting service contracts is to ensure that the contract is awarded only to the bidder that has the professional, financial, and technical capacity to successfully perform it. The qualification requirements should be limited to those necessary to establish that a bidder has such capacity. [24]

Determine Bidding Procedures

Determination of the bidding procedures such as

- One envelope or Two envelopes
- Single Stage or Two Stage



Open Competitive Bidding / Tendering can be done in the following two processes

1 Open bidding process after determination of prequalification

2 Open bidding process without determination of prequalification

[24] ADB Open Competitive Bidding – Guidance note on Procurement June 2018

Open Competitive Bidding / tendering process can be single stage or double stage invitation process. Office shall not discriminate among the bidders in procurement proceeding on the basis of nationality.

Preparation of Bid Documents

The bidding documents shall be prepared by the procuring office following the standard forms (also known as Standard Bidding Document (SBD)) prescribed by PPMO. The Bidding Documents generally include the following: [25]

- Approved Budget for the Contract;
- Invitation to Bid or Request for Expression of Interest;
- Eligibility Requirements;
- Instructions to Bidders, including scope of bid, documents comprising the bid, criteria for eligibility, bid evaluation methodology/criteria in accordance with the Act, and post-qualification, as well as the date, time and place of the pre-bidding conference (where applicable), submission of bids and opening of bids;
- Terms of Reference (TOR) and/or Scope of work, as applicable;
- Technical Requirements
- Plans/drawings and technical specifications;
- Form of bid, price form, and list of goods or bill of quantities;
- Delivery time or completion schedule;
- Form, amount, and validity period of bid security;
- Form, amount, and validity of performance security and warranty;
- Form of contract and general and special conditions of contract.

The specifications and other terms in the Bidding Documents shall reflect minimum requirements or specifications required to meet the needs of the procuring entity in clear and unambiguous terms.

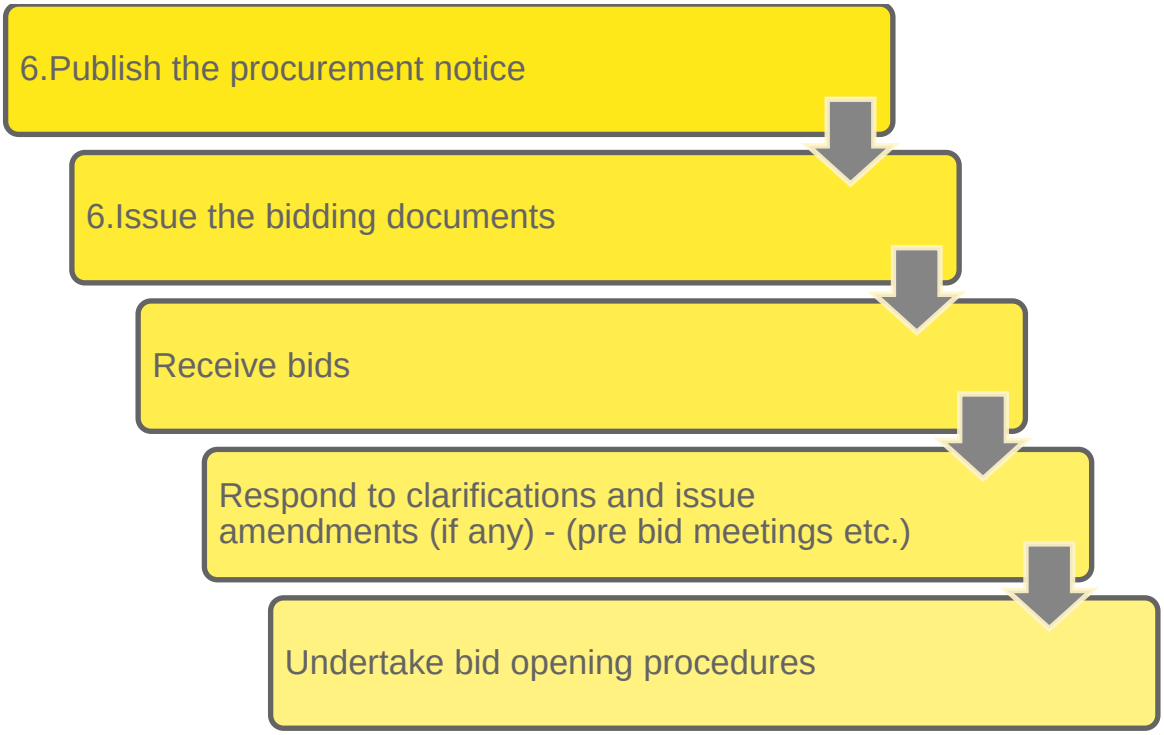
Advertisement and Notification to Bid Opening Procedures

Law provides for the timeline for the bid notification as well as how wider the advertisement & notification should be depending on the size and complexity of the bud, such as local, national or international. Advertisement and notification given on timely basis ensures competitive bidding and provides reasonable bidding opportunities to the prospective bidders.

The process of the bid advertisement up to the bid opening can be summarised as follows. [26]

[25] ASEAN-SAI Guidelines on Public Procurement

[26] ADB Open Competitive Bidding – Guidance note on Procurement June 2018



Examination and Evaluation of Bids

Examination

The procuring office shall ascertain whether the bids:

(a) meet the specified eligibility requirements
(b) have been properly signed,
(c) are accompanied by the required securities or required declaration signed as specified
(d) are substantially responsive to the bidding documents, and
(e) are otherwise generally in order.

If a bid, including with regard to the required bid security, is not substantially responsive, that is if it contains material deviations from or reservations to the terms, conditions, and specifications in the bidding documents, it shall not be considered further. The bidder shall neither be permitted nor invited by the procuring office to correct or withdraw material deviations or reservations once bids have been opened.[27]

Evaluation

Evaluation of bidders and tenders should be carried out by a suitably competent team which may include independent representation. The evaluation and award process must be demonstrably objective, transparent and based solely on the published

[27] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

criteria. This is best achieved by the use of a scoring system based on all the relevant and weighted criteria, indicating a comparative assessment of tenders under each criterion. Tenders who do not comply with the requirements specified in the contract notice or the tender documentation should be rejected. The contract should be awarded to the lowest priced bid or most economically advantageous that meets the relevant criteria. [28]

Others Matters relevant to bid evaluation are as under: [29]

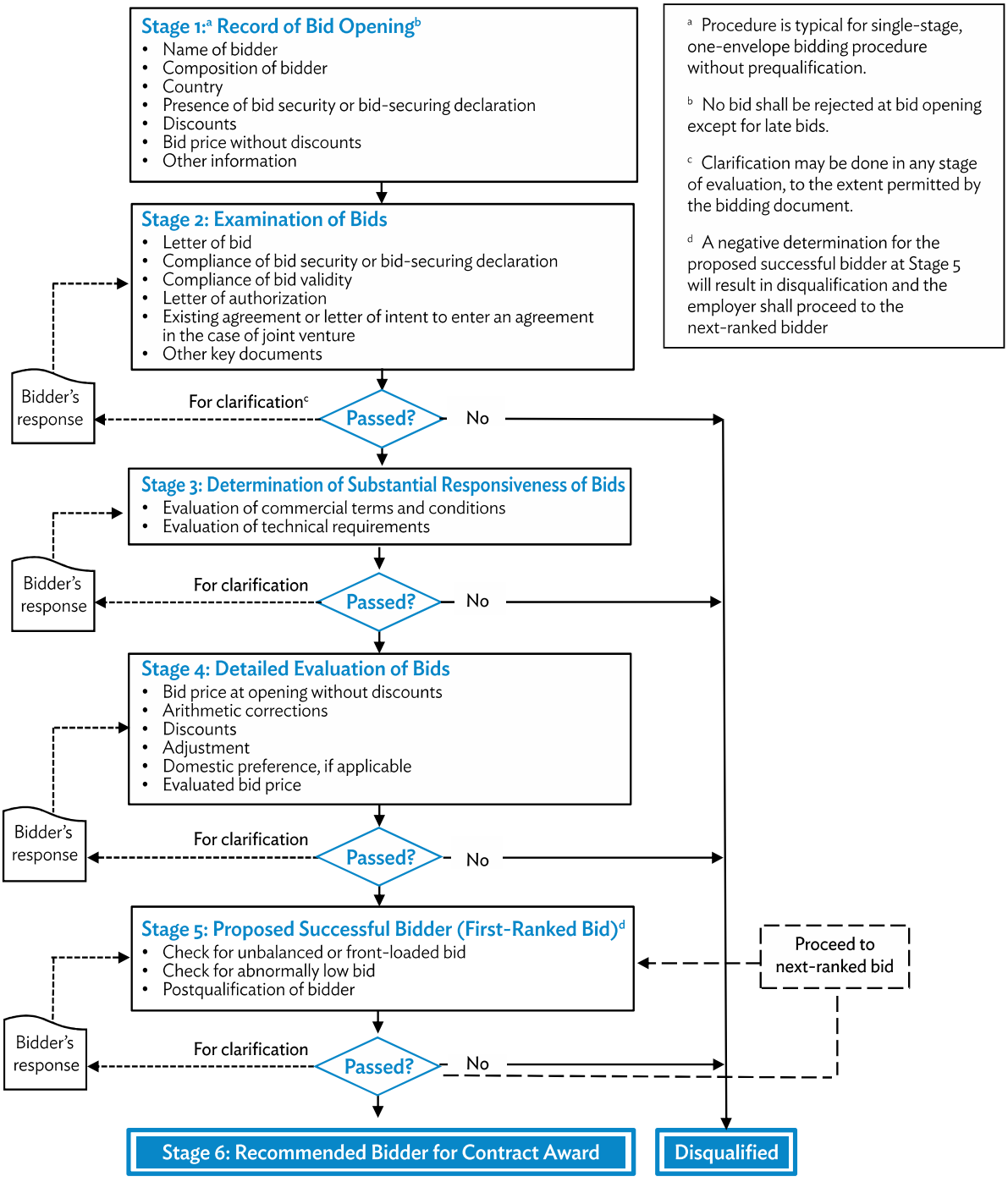
- The purpose of bid evaluation is to determine the cost to the procuring office of each bid in a manner that permits a comparison on the basis of their evaluated cost. The bid with the lowest evaluated cost, but not necessarily the lowest submitted price, shall be selected for award.
- The bid price read out at the bid opening shall be adjusted to correct any arithmetical errors. Also, for the purpose of evaluation, adjustments shall be made for any quantifiable non-material deviations or reservations. Price adjustment provisions applying to the period of implementation of the contract shall not be taken into account in the evaluation.
- The evaluation and comparison of bids shall be on CIP (place of destination) prices for the supply of imported goods and EXW prices, plus cost of inland transportation and insurance to the place of destination, for goods manufactured within the country, together with prices for any required installation, training, commissioning, and other similar non-consulting services.
- Bidding documents shall also specify the relevant factors in addition to price to be considered in bid evaluation and the manner in which they will be applied for the purpose of determining the lowest evaluated bid. For goods and equipment, other factors may be taken into consideration including, among others, payment schedule, delivery time, operating costs, efficiency and compatibility of the equipment, availability of service and spare parts, and related training, safety, and environmental benefits. The factors other than price to be used for determining the lowest evaluated bid shall be, to the extent practicable, expressed in monetary terms in the evaluation provisions in the bidding documents.
- Under works and turnkey contracts, contractors are responsible for all duties, taxes, and other levies and bidders shall take these factors into account in preparing their bids. The evaluation and comparison of bids shall be on this basis. Bid evaluation for works shall be strictly in monetary terms. Any procedure under which bids above or below a predetermined assessment of bid values are automatically disqualified is not acceptable. If time is a critical factor, the value of early completion to the procuring office may be taken into account according to criteria presented in the bidding documents, only if the conditions of contract provide for commensurate penalties for noncompliance.

[28] ASEAN-SAI Guidelines on Public Procurement

[29] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

- The procuring office shall prepare a detailed report on the evaluation and comparison of bids setting forth the specific reasons on which the recommendation is based for the award of contract.

Typical bid evaluation procedure is given as under: [30]



[30] ADB Open Competitive Bidding – Guidance note on Procurement June 2018

Award of contract

The procuring office shall award the contract, within the period of the validity of bids, to the bidder who meets the appropriate standards of capability and resources and whose bid has been determined. [31]

(i) to be substantially responsive to the bidding documents and
(ii) to offer the lowest evaluated cost.

A bidder shall neither be required nor permitted, as a condition of award, to undertake responsibilities for work not stipulated in the bidding documents or otherwise to modify the bid as originally submitted. [32]

Objective of the Audit:

- Open bidding process is compliant with the applicable legal provision.

Associated Risks:

- Possibility of non-compliance or circumvention of legal provisions.

SN	Particulars - Audit considerations	Basis of Testing
1	**Open biding:** Office must procure construction work, goods or any kind of services with value more than NPR 20 Lac through open biding method: [Rule 31]	• Analyse whether procurement has been sliced to avoid open competitive bidding • All procurements follow open bidding above limit given by the law
2	**Preparation of Bidding documentation**: Whether the office has prepared bid documentation prior to the invitation of the bid. [Sec 13] • Auditor needs to verify whether matters to be included the bid documentation are as per the requirement of [Sec 13(2) and Rule 37] • Matters to be specified in the technical documents of goods: [Rule 42] • Matters to be specified in the technical documents of construction works: [Rule 43] • Matters to be specified in the technical documents of other services: [Rule 44] • Documents to be included in bidding documents: [Rule 45] • Instruction for preparation and submission of bids: [Rule 46]	• Verify by review of minutes that bidding documents are completed before the invitation for the bid • Bid documents have been prepared in accordance with the prescribes SBD of PPMO • All matters required by the law are incorporated in the bidding documents • Bidding document is not designed to limit competitive or to favour a particular bidder(s)

[31] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

[32] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

SN	Particulars - Audit considerations	Basis of Testing
3	**Approval of bid documents:** Whether documents related with the bid (tender) have been approved by the office chief before the invitation to bid [Rule 47]	• Review approval document to ensure that Bid documents are approved duly by the competent authority before the bid invitation

4	**Invitation of Bid**: Auditor needs to verify the following whether:
	• The notice for bid or prequalification is published in the national daily (or in international media as appropriate) and PPMO website or office's website. [Sec 14]
	  ○ Matters to be disclosed in the notice for invitation to bid [Rule 49A]
	• Cost estimate of the bid (up to NPR 2 Cr) [Rule 49]
	• Invitation for bid or prequalification must contain information required by the law Sec 14(3) and may include
	  ○ Site visit [Rule 51]
	  ○ Pre bid meeting [Rule 52]
	• Notice for invitation should allow minimum 30 days (15 days for re-invitation) [Sec 14]
	• Adequate time is given to the bidder to prepare and submit the bid or pre-qualification proposal. [Sec 17]
		• Evidence of the notices published
		• Adequate period is allowed to all the bidders to respond
		• Notice period is not intended to restrict competition
		• Matters to be disclosed in the invitation as required by the law is included in the notice

5	**Bid Document Fee:** Whether bidding document was available from the office for the payment of specified fees, depending on the value of the estimated cost. [Rule 48]	• Verify records of bid document fee collected and deposited
6	**Clarification on the bidding documents**: Whether the office has provided clarification prior to the deadline for submission of the bid or pre-qualification proposal; [Sec 16] • Amended to the bidding or prequalification document or if justified the extension timeframe has to intimated to all of the bidders / applicants within the deadline.	• Clarification circulated to all the bidders • Any amendments to the bidding or prequalification documents reviewed from the comparative chart, also review the justification of such amendments

7	**Submission of the bids:** Auditor needs to verify whether the Bid is submitted in the specified format signed certified by authorised person, sealed deliver in person, by courier within the stipulated deadline: [Sec 18]
	• Electronic bidding submitted under the system approved by PPMO shall also be valid
	• Bids should be submitted preferably in Nepal or in English language (English language for ICB). All supporting documents can be either in Nepali or in English. [Rule 41]
	• Validity of the bid is as mentioned in the bidding document and starts from the last day of the submission deadline of the bid. [Sec 20, Rule 54]
	  ○ Estimated Cost up to 10 Cr - 90 days
	  ○ Estimated Cost more than 10 Cr - 120 days
	• Bid or prequalification proposal should be submitted in the number of copies specified in the bid document. [Rule 55]
		• Review the records evidencing bids submitted by the bidders
		• All required conditions for bid submissions have been made such as meeting the deadline for submission, bid validity, number of copies required to be submitted as per the invitation documents

SN	Particulars - Audit considerations	Basis of Testing
	• A separate record and register of bidding documents or prequalification documents is maintained. A certified receipt given to the bidder or proposer or the authorised representative submitting the bid or proposal. [Rule 56] • Office takes the responsible for the safekeeping of the bid or the proposal.	
8	**Bid withdrawal or modification:** Auditor needs to verify whether withdrawal or modification of the bid or proposal is done on application at least 24 hrs prior to the submission deadline, except for the electronically submitted bidding. [Sec 19] • Can only be modified once: [Rule 58] • In case of electronic bidding the bid or proposal may be modified until the deadline of submission [Rule 58]	• Verify that the bid document is modified by the bidder within stipulated timeframe and such modification is done once only
9	**Bid Guarantee / security:** Auditor needs to verify whether bid guarantee / security (bid security) is obtained from the bidders 2-3% of the cost estimate in the form of cash or bank guarantee by local bank. [Sec 21 and Rule 53] • Validity of the bid guarantee / security is 30 days more than the validity of the bid • Bid guarantee / security is confiscated for the circumstances mentioned in [Sec 21(2) and Rule 53] • Such guarantee / security should be returned after the contract is entered except for the bidder whose guarantee / security is confiscated.	• Verify the bid guarantee either in cash or in the form of bank guarantee lodged by the bidder • The deposit of the guarantee amount is designated deposit accounts • Validity period of the bid guarantee covers stipulated period
10	**Bid Opening**: Whether the bid or proposal is opened at the time and place specified in the bidding documents on the same day immediately after the expiry of the deadline for the submission of bids. [Sec 22 and Rule 59] • Subcommittee is formed for the opening of the bid with at least two officials • Bid or proposal received after the stipulated the deadline is returned. • Every submitted bid is opened one by one, and read out the contents of such a bid, prepare a record (*Muchulka)* under Rule 59 • Financial proposals are segregated and safely kept. [Rule 59(6)]	• Bid opening documents and records such as minutes of the opening meeting should be reviewed • Any matter raised (if any) are addressed as per the requirements of the law
11	**Examination of the bids:** Whether the bids are examined for completeness before being submitted to the evaluation committee. [Sec 23] • The bidders meet the eligibility criteria • The bid is complete in accordance with the instructions to bidders • Bid security submitted • Whether the bid is substantially responsive • Other matters mentioned in [Sec 23 and Rule 60] • Bid is not to be considered: [Sec 24] ○ Not sealed	• Examination of bid document is not evaluation of the bid • Review whether all bid documents have been examined for completeness as required by the law and SBD • Records should indicate that all documents are prima-facie in order

SN	Particulars - Audit considerations	Basis of Testing
	○ Received after due date and time ○ Recalled bid ○ Substantially non-responsive or ineligible ○ In case of collusion among the bidders	• Bids not to be considered are discarded for valid reason(s) and not to stifle competition
12	**Evaluation of the Bids:** Whether all the bids or proposal selected though the examination process is subject to evaluation. Auditor shall also verify whether: [Sec 25] • Those with 'minor deviation' are included (minor deviation in excess of 15% of the bid price is considered non-responsive.) • Bids and proposals shall be evaluated on the criteria and methodology indicated in the bidding document. [Sec 25 and Rule 61] • Where an invitation to bid has been made after the determination of prequalification the qualification of the bidder with the lowest bid price is ascertained • Evaluation committee has prepared an evaluation report	• Evaluation committee has sufficient competency to evaluate the bid proposals • Evaluation is done in accordance with the criteria given in the bid document • Analyse the evaluation report in conjunction with the bid document
13	**Specific Evaluations Considerations:** Auditor needs to verify whether the office has considered the following during bid evaluation, consistent with the documents furnished: • Technical aspect Evaluation: [Rule 62] ○ Scope of supply of goods, construction work or other services ○ Technical specifications and operating and specialities ○ Warranty period • Commercial (business) aspect Evaluation: [Rule 63] ○ Completion period ○ Payment terms and conditions ○ Liquidated damaged ○ Warranty and other liabilities of the bidder ○ Any other specific conditions • Financial aspect Evaluation: [Rule 64] ○ Inland transport ○ Technical characteristics - evaluate only the minimum rate, capacity or output ○ Preferential benefit adjustment to domestic bidder if provided in the bid document ○ Exclude spare parts • Additional evaluation requirements for Construction work bids: [Rule 65] ○ Work plan, performance schedule and mobilisation time as per the bid document ○ Reliability of per unit rate in bill of quantities (BOQ) ○ Imbalanced quoted price (unusually higher) – front loading ○ Bidder lacks technical capacity to complete the construction work as proposed ○ Bidder has quoted ▪ low price in the circumstance in such a manner that it cannot complete the work satisfactorily; or	• Evaluation criteria are preapproved by competent authority • All eligible bidders are considered for evaluation • Technical evaluation is done by the person(s) having required competency to evaluate such bids • Evaluation is done on transparent manner where all substantially responsive bids are considered and evaluated • For construction works review whether the evaluation team has considered the following: ○ Work plan and schedule confirms with bid document ○ Whether front loading of cost is done or not ○ Reasonableness of the rates quoted in the BOQ ○ Rates quoted is too low to complete the work satisfactorily

SN	Particulars - Audit considerations	Basis of Testing
	▪ low price whether or not wrongly understanding the scope or technical specifications of the construction work; or ▪ high rate for the work to be executed at the preliminary stage (front loading) o Other requirements of Rule 65	
14	**Evaluation report**: Whether the evaluation committee has submitted an evaluation report of all substantially responsive bid including the method of evaluation. [Sec 25(8) and Rule 66]	• Review the documentation of the evaluation report (including evaluation committee minutes if applicable)
15	**Selection and Approval:** Whether the office has selected for acceptance, only the lowest price among the evaluated substantially responsive bids. [Sec 27] • Notice to the selected bidder and other bidders within 7 days • If not objected by any other bidder notify the selected bidder to be ready to contract within 15 days with performance guarantee o Bid price up to <15% less than estimate – 5% o Bid price more than 15% less – 5% + 50% of difference • If the selected bidder does not contract, select the next bidder or next bidder respectively according to the evaluation score.	• Review that whether generally lowest price quoted among the substantially responsive bids is selected • Verify the performance guarantee of 5% given by the successful bidder o Including the additional guarantee amount for larger variance with the cost estimate • If any other bidder other than lowest price bid is selected adequate and appropriate justification and documentation under the law is maintained. • The selected bidder not contracting for other than reasonable reason is recommended for blacklisting or not

2.2.2 Two stage bidding

Two Stage bidding is applied in the case of contracts for[33]:

(a) large complex facilities awarded as single responsibility (including as turnkey) contracts for the design, supply and installation, or single responsibility contracts for the supply and installation of a facility or plant;
(b) works of a complex and special nature; or

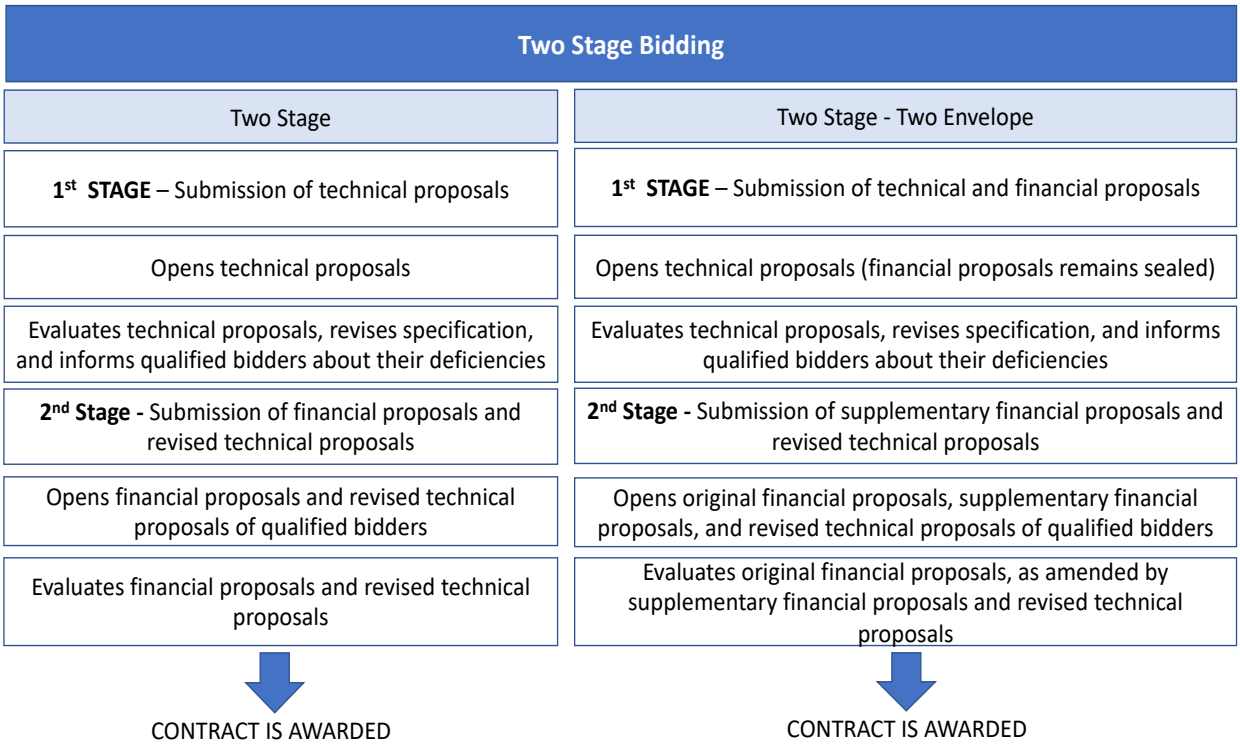
[33] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

(c) complex information and communication technology that are subject to rapid technology advances, it may be undesirable or impractical to prepare complete technical specifications in advance.

Due to the complex nature of such contracts and in order to avoid deviations from the procuring office's specifications, the two-stage bidding procedure may be used.

1. FIRST STAGE - unpriced technical proposals on the basis of a conceptual design or performance specifications are invited, subject to technical as well as commercial clarifications and adjustments,
2. SECOND STAGE – first stage followed by amended bidding documents and the submission of final technical and priced bids in the second stage.

Two stage bidding process is summarised in the following diagram: [34]



Objective of the Audit:

- Due process is followed.

Associated Risks:

- Due process for two stage bidding not being followed

[34] ADB Open Competitive Bidding – Guidance note on Procurement June 2018

SN	Particulars - Audit considerations	Basis of Testing
1	**Selection of two stage bidding:** Auditor needs to verify whether two stage bidding is invited in following circumstances: [Sec 28] • not feasible to define fully the technical aspects of the goods or construction work or service • complex nature of the goods, construction work or service make it necessary to discuss with the bidders to resolve technical aspects	• Conditions / circumstances for two stage bidding documented and justified • Review decision for selecting two stage biding
2	**First stage:** Auditor needs to verify whether in the first stage purpose of procurement, expected performance, tentative specifications, other broad features and the qualification of bidders is called for and: [Sec 28] • not required to quote the price • submit only technical proposal and comment on the terms & conditions of the procurement	• Only technical proposals reviewed and evaluated • Technically competent personnel involved in the evaluation • Financial proposal is not sought
3	**Result of the first stage**: Auditor needs to verify whether basic requirement or minimum performance or time period is determined as the outcome of the first stage: [Sec 28(4)] • if not, the proceeding is cancelled • if yes, technical specification, evaluation method and contract terms are amended / improved to further enhance competition ○ options provided by the bidders have been considered and incorporated	• Verify whether proceedings are cancelled for non-fulfilment for the outcome requirements in the first stage • Second stage bidding initiated for the bidders
4	**Second stage:** Auditor needs to verify whether office has made invitation for the second stage bid to the bidders (not cancelled in first stage) along with the revised bidding documents. [Sec 28(5) & (6)]	• Review the revised bidding documents seeking revised technical proposal and financial proposal

2.2.3 Sealed Quotation for goods, construction work or other services

Quotation is the method of procurement whereby price is sought from the provider of goods and services. This is applied for low value procurement.

Sealed Quotation (also known as shopping) is a procurement method based on comparing price quotations obtained from

- several suppliers (in the case of goods),
- several contractors (in the case of civil works), or
- service providers (in the case of non-consulting services)

with a minimum of three, to assure competitive prices, and is an appropriate method for procuring limited quantities of readily available off-the-shelf goods or standard specification commodities of small value, or simple civil works of small value when more competitive methods are not justified on the basis of cost and efficiency. [35]

[35] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

Requests for quotations shall indicate the description and quantity of the goods or specifications of works, as well as desired delivery (or completion) time and place. Quotations may be submitted by letter, facsimile, or by electronic means. The evaluation of quotations shall follow the same principles as of open bidding. The terms of the accepted offer shall be incorporated in a purchase order or brief contract. [36]

A formal statement of promise (submitted usually in response to a request for quotation) by potential supplier to supply the goods or services required by a buyer, at specified prices, and within a specified period. A quotation may also contain terms of sale and payment, and warranties. Acceptance of quotation by the buyer constitutes an agreement binding on both parties. A request for quotation (RFQ) is a standard process whose purpose is to invite suppliers into a bidding process to bid on specific products or services. An RFQ typically involves more than the price per item. Information like payment terms, quality level per item or contract length are possible to be requested during the bidding process. A formal statement of promise is sought.[37]

Objective of the Audit:

- Process is compliant with the applicable legal provision.

Associated Risks:

- Possibility of non-compliance or circumvention of legal provisions.

SN	Particulars - Audit considerations	Basis of Testing

1	**Procurement Limit:** Auditor needs to verify whether the sealed quotation method used for procurement of goods, construction works and other services with value up to NPR 20 Lakh: [Sec 40 and Rule 84]
	• Exception: NPR 50 lac for
	  ○ X-ray, ECG, Medical equipment and goods, equipment for diagnostic and treatment of diseases,
		• Verify whether the sealed quotation method is applied by splitting the purchases to avoid open competition
		• Verify whether specified limits for sealed quotation has been adhered to
		  ○ Note: specific medical equipment and goods have higher limit for applying sealed quotation

2	**Preparation:** Auditor needs to verify whether description specification, quality, quantity, supply terms, period and other necessary details have been prepared in the format of a "form" prior to initiating procurement proceedings: [Sec 40(2) and Rule 84] • The form to include ○ Qualification of the quotation bidder (except for construction work)	• Verify whether the office has made preparation for sealed quotation with details as required by the law in the "form"

[36] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

[37] ASEAN-SAI Guidelines on Public Procurement

SN	Particulars - Audit considerations	Basis of Testing
	○ Performance guarantee (if required) ○ Validity of the quotation ○ Methodology for evaluation	
3	**Notice:** Whether notice for sealed quotation is published in the national or local newspaper with at least 15 days timeline to submit [Sec 40(3)] • The notice to include: [Rule 84(3)] ○ Bid security amount (if required), ○ Manner of submission of quotation ○ Time, date and place of submission • If less than three quotations are submitted or no quotations are submitted, then republish the notice. [Rule 84(3A)]	• Verify the evidence of the public notice for quotation • Notice period is as stipulated in the law • All received quotations have been recorded • Justification for republishing the notice (if any) is documented
4	**Submission:** Auditor needs to verify whether the sealed quotation is submitted in the prescribed Form purchased from the office. [Rule 84] • Form submitted should be the one that is signed and stamped by the office • Submit prescribed security amount or bank guarantee valid for 75 days • Validity of the quotation shall be at least 45 days	• Certification of the quotations are in accordance with the legal requirements • Valid bid security / bank guarantee is furnished • Validity of the quotation is also included • All required documents have been furnished along with the quotation
5	**Opening of the Sealed Quotations:** Auditor needs to verify whether the sealed quotation forms are opened immediately after the expiry of the deadline for submission of sealed quotations at the place specified in the notice.	• Verify the opening procedures for sealed quotation immediately upon expiry of the deadline
6	**Evaluation:** Auditor needs to verify whether evaluation committee has examined and evaluated the sealed quotations or not. [Rule 84(9)] • All responsive quotations (minimum three quotations) are evaluated or in case of re-invitation the number of quotations received are evaluated. [84(3B)]	• Verify whether quotations deemed non-responsive to limit competition • Evaluation includes verification of the required minimum criteria as notified • Submitted sealed quotation from different suppliers and / service providers are not from the same party
7	**Selection and Approval:** Auditor needs to verify whether the lowest quoted sealed quotation is selected and approved. [Sec 40(5)] • Approval is done within 15 days of the opening of the quotations and all sealed quotation bidders are notified of the approval. [Rule 84(10)]	• Competent authority has approved the selection from the sealed quotation
8	**Contract:** Auditor needs to verify whether • 7 days' notice is given to the selected quotation bidder to contract [Rule 84(11)] • The selected quotation bidder contacts within 7 days from the receipt of the notice after furnishing required performance guarantee. [Rule 84(12)]	• Contract is entered with the selected bidder within stipulated time

SN	Particulars - Audit considerations	Basis of Testing
9	**Confiscation of the bid security:** Auditor needs to verify whether bid security is confiscated in the following circumstances. [Rule 84(13)] • Selected quotation bidder does not contract • Unable to provide performance guarantee within stipulated time • Acts contrary to the specified conduct	• Whether office has confiscated the bid security for circumstances indicated in the law
10	**Other provisions:** • Auditor needs to verify that other provisions specifically not provided for sealed quotation shall be as applicable to open competitive bidding process. [Rule 84(14)]	• Whether fair competition is allowed or not in the procurement using sealed quotation

2.2.4 Direct Purchases

Direct Purchase

Direct Purchases is made without following the competitive procurement procedures such as quotations or open bidding (tendering). This method of procuring goods, services or construction work is done due to the lesser value of procurement or for administrative ease or strategic reasons. [38]

Direct contracting without competition (single source) and may be an appropriate method under the following circumstances: [39]

- An existing contract for goods, works, and non-consulting services exists and may be extended for additional goods, works, and non-consulting services of a similar nature.
- For standardisation of equipment or spare parts, to be compatible with existing equipment, may justify additional purchases from the original Supplier. For such purchases to be justified, the original equipment shall be suitable, the number of new items shall generally be less than the existing number, the price shall be reasonable, and the advantages of another make or source of equipment shall have been considered and rejected
- The required equipment is proprietary and obtainable only from one source
- The procurement of certain goods from a particular supplier is essential to achieve the required performance or functional guarantee of an equipment or plant or facility;
- In exceptional cases, such as, but not limited to, in response to natural disasters and emergency situations;

Procurement of goods, services and works up to certain value or under certain conditions is allowed by the law to be procured by using direct purchase.

[38] ASEAN-SAI Guidelines on Public Procurement

[39] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

Framework Contract

Framework contract is the specific systems of procurement applicable to continuous purchases during a certain period. Through "framework agreements", the procuring office enters into arrangements with suppliers or service providers to supply goods or services under agreed conditions for a given period of time. This is a a tool that is recommended for established and repetitive needs when the procuring office does not know in advance either the contract amount or exactly when their need will occur. Frameworks may be agreed between one or more procuring offices and one or more economic operators through competitive processes. The different cases will determine differences on the process to award contracts based in the framework agreements. Procuring offices have to follow the procedures laid down under the law for all phases up to that award. [40]

Framework Agreement is a long-term agreement with suppliers, contractors and providers of non-consulting services which sets out terms and conditions under which specific procurements (call-offs) can be made throughout the term of the agreement. Framework agreements are generally based on prices that are either pre-agreed, or determined at the call-off stage through competition or a process allowing their revision without further competition. Framework agreements are generally used for: [41]

(a) goods that can be procured off-the-shelf, or are of common use with standard specifications;
(b) non-consulting services that are of a simple and non-complex nature and may be required from time to time by the same office (or multiple offices); or
(c) small value contracts for works under emergency operations.

Objective of the Audit:

- Direct purchase provisions are not misused.

Associated Risks:

- Direct purchase procedures are illegitimately used to circumvent legal provisions.

SN	Particulars - Audit considerations	Basis of Testing
1	**Conditions for direct purchase:** Auditor needs to verify that only for the following circumstances that the office has undertaken direct purchase method for procurement of goods, construction works or services including consulting services. [Sec 41(1)] • Low value procurement within specified limit [Rule 85]	• Direct negotiation (direct purchase) method is applied in public procurement only for the conditions and circumstances specified in the law

[40] The Contact Committee of the SAI of the European Union, Public Procurement Audit, 2018

[41] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

SN	Particulars - Audit considerations	Basis of Testing
	○ Construction work, goods or consulting service up to NPR 5 Lac ○ Medicinal goods up to NPR 20 Lac (NO limit for WHO prequalified sole manufacturer of medicinal goods) ○ Goods manufactured in Nepal, with Nepal Standard Mark, up to NPR 15 Lac selling price published by the manufacturer in the national daily) ○ From listed cottage industry up to NPR 25 Lac [Rule 85(3D)] • only one supplier, contractor, consultant or service provider has the technical efficiency or capacity to fulfil the procurement requirements • only one supplier has the right to supply the goods and no appropriate alternative is available ○ proprietary good or medicinal goods can be procured from the importer, authorised seller or agent [Rule 85(3)] ○ Sole manufacturer in Nepal – office chief can make direct purchase after documenting the fact of lack of alternatives • goods or service of proprietary nature within the prescribed limit from the existing supplier ○ maximum 30% of the original contract [Rule 85(5)] ○ Approval of one level higher [Rule 85(7)] • procurement from another public entity, ○ at price determined by the producer public entity chief [Rule 85(5A)] ○ no security required [Rule 85(5C)] • procurement of goods or service from any international inter-governmental organization at the rate/price specified by that organisation, ○ no security required [Rule 85(5C)] • procurement in a special circumstance, • not foreseen in initial contract OR difficult to complete separating from the initial contract ○ limit not prescribed • service of a particular consultant having any unique qualification is immediately required	• Limit of the procurement allowed under direct negotiation is adhered to • Procurement is not split into smaller sizes to avoid / limit competition • Decision to make procurement under direct negotiation is recorded and documented
2	**Special approval:** Auditor needs to verify whether special approval from the cabinet or supreme executive body (as applicable) is obtain in direct purchases as specified by the law. [Sec41(2)]	• Approval is obtained for from competent and recorded
3	**Limit not to be exceed:** Auditor needs to verify that direct purchase limit is not exceed in one financial year for single or multiple purchases from the same person, firm or company. [Rule 85(1B)]	• Limit of the procurement allowed under direct negotiation is adhered to
4	**Other direct purchase limits:** Auditor needs to verify whether direct purchase limits exceed [Rule 85(1C) & 85(1D)] • NPR 50 lakh for hotel accommodation and hospitality for visiting VVIP foreign dignitaries	• Special limits for direct purchase are applied for special circumstances only

SN	Particulars - Audit considerations	Basis of Testing
	• USD 25 K for repair of Nepalese embassy or apartments abroad	
5	**Framework Contract or Unit rate contract:** Direct purchase within the specified rate can be undertaken by applying framework contract / unit rate contract. [Rule 85(2)]	• Verify the determination rates under framework contract / unit rate contract • Framework contract / unit rate contract has been established by application of due competitive process
6	**Procedures:** Auditor needs to verify for the procurement of medicinal goods, goods with NS mark, sole manufacturer with no alternative whether following procedures have been followed: [Rule 3B & 3C)] • Dealer price and retail price published in the national daily • Office obtains same discount as the local dealer • Office has right to examine the cost of production	• Procurement of medicinal goods meets the quality standard requirements
7	**Quotation:** Auditor needs to verify that direct purchase exceeding NPR 1 Lac is done by inviting written quotations or proposals from at least three suppliers, contractor, consultants or service providers included in the standing list. [Rule 85(4)]	• Direct purchase above the specified limit has to be supported with at least three quotations (for suppliers, contractors, service providers or consultants)
8	**Public Notice:** Auditor needs to verify that for all direct purchases EXCEPT for low value and not foreseen circumstances public notice is published: [Rule 85(6)] • Nature of purchase, Reason, Basis, Name of the supplier, contractor or service provider	• Public notice is published (and recorded for verification) for direct purchased other than low value purchases and purchases under unforeseen circumstances
9	**Considerations before direct purchase:** Auditor needs to verify that office has made following consideration before making direct purchases: [Rule 86(1) & (2)] • To be procured items are in store • Qualification of the supplier, contractor or service provider • Proposals meet the specification and technical quality • Rate analysis on the basis of market study, previous procurement price and the cost estimate is done and negotiated	• Decision to undertake procurement under direct purchase needs to be reviewed to satisfy the stipulated considerations.
10	**Direct Negotiation:** Auditor needs to verify that whether the office has invited a written rate or proposal from the supplier, contractor, consultant or service provider (the one providing direct purchase) specifying its requirements on quality, quantity, terms and conditions and time of supply, and option for negotiations. [Sec 41(3)] • Such contract can be concluded through correspondence [Rule 86(3)]	• Direct purchase proposals are available for verification.

2.2.5 Users' Committee or Beneficiary community

"Users' committee" means a committee which is formed by the persons who are direct beneficiaries of a construction work from among themselves in order to build, operate and maintain any construction work.[42]

If economy, quality or sustainability is increased in having a construction work executed or obtaining related service from the users' committee or beneficiary community or if the main objective of the work is to generate employment and to have the beneficiary community involved, such a construction work may be executed by or such service may be obtained from a users' committee or beneficiary community in fulfilment of the procedures as prescribed.[43]

Objective of the Audit:

- Users' committee / Beneficiary community are used under specified circumstances for the legitimate objectives

Associated Risks:

- Users' committee / Beneficiary community are used to circumvent the legal provisions.

SN	Particulars - Audit considerations	Basis of Testing
1	**Use of users' committee or beneficiary community:** Auditor needs to verify whether construction work is carried out or services received from users' committee or beneficiary community in one of the two conditions: [Sec 44] • It is economical, ensures quality and sustainability OR • Objective of the project is to create employment and inclusion of local community	• Whether works requiring technical competence is undertaken using user committee or not • Whether or not the user committee or beneficiary community is actually from the related place of work
2	**Limit:** Construction works, or services related with construction works with estimated cost up to NPR 1 Cr can be undertaken by engaging users' committee or beneficiary community; [Rule 97] • Users' committee or beneficiary community consisting only of the inhabitants residing in that place and from the community using such service. • NPR 1 Cr include VAT, overhead, contingencies and local participation	• Verify list of the procurements to check whether size of the procurement is split to remain within the limit to allow procurement from user committee • Whether VAT, overhead, contingencies and local participation is considered for the specified limit

[42] Procurement Regulation Rule 2(k)

[43] Procurement Act Sec 44

SN	Particulars - Audit considerations	Basis of Testing
3	**Notice:** Auditor needs to verify whether office has published a notice, or the committee or community has itself made an application for such works or services. [Rule 97(2)] • The notice or application includes nature, quantity, cost and community participation for such works or services	• Documentation of notice for user committee or beneficiary community to make an application for public works.
4	**Contract:** Whether the office has made negotiation and made a site visit before entering into the procurement contract. [Rule 97(3)] • Contract to include matters indicated under the law • For > NPR 60 Lakh include community contribution	• Whether the incorporation of the user committee is under the prevalent laws or not (review registration documents)
5	**Payment:** Auditor needs to verify that VAT, Contingencies, Overhead, Community Participation included in the cost estimate is not paid to the users' committee or beneficiary community. [Rule 97(4)] • Maximum 1/3 of the contracted amount can be disbursed as advances to be settled with last instalment [Rule 97(5)] • Every instalment claim is submitted on the basis of the certified (by the committee) documents. [Rule 97(6)]	• Verify payments to user committee or beneficiary community to ensure that components such as VAT, Contingencies, Overhead included in the cost estimate is not paid • Test for the amount of advance provided to the user committee or beneficiary community is within the limit • Verify the claims submitted by the user committee is approved

6	**Other matters**: Auditor needs to verify [Rule 97]
	• Publicly display of amount received and amount expended for such works or services.
	• Technical expertise not provided by the office can be contracted by users' committee or beneficiary community from contingencies not exceeding 3% of cost estimate
	• That heavy equipment (e.g., excavator dozer, bitumen boiler/distributer) are not used
	• Works and services are not subcontracted
	• Work or service should be verified and certified by the technical personnel from the office
	• Transfer of ownership to users' committee or beneficiary community specifies their responsibility for care, maintenance and repair
	• Any amount used illegitimately or irregularly are recovered as government recoverable.
	• Users' committee or beneficiary community has
	  ○ Maintained record of receipts and payments
	  ○ Supervision and monitoring
	  ○ Work completion and certification
		• Verify from the invoices and supporting documents whether heavy equipment (e.g., excavator dozer, bitumen boiler/distributer) have been used
		• Verify whether the amount claimed is for labour days and machinery is used for the same works
		• Verify whether work has been subcontracted
		• Verify the contribution by the user committee / beneficiary community from their records and minutes – review the cost sheet provided by the user committee / beneficiary community

2.2.6 Force Account (*Amaanat*)

Force account is a payment method used for extra work when the contractor and the employer (here it is general government) cannot agree on a unit price or lump sum amount, or if either of those methods are impracticable. Force account payments are based on established hourly rates and the quantities of labour, materials, and equipment that are used to complete the work. This method reimburses the contractor the actual costs of labour, equipment and materials incurred in the performance of the work including allowable overhead and mark-up.

Force Account, where works such as construction and installation of equipment and non-consulting services carried out by the procuring office using its own material and equipment when this may be the only practical method of procurement under specific circumstances. The use of Force Account requires rigorous quality checks and inspection as for contracts awarded to third parties. Force Account shall be justified and may only be used under any of the following circumstances: [44]

(a) quantities of construction and installation works that are involved cannot be defined in advance;
(b) construction and installation works are small or scattered or in remote locations for which qualified construction firms are unlikely to bid at reasonable prices;
(c) construction and installation works are required to be carried out without disrupting ongoing operations;
(d) risks of unavoidable work interruption are better borne by the procuring office than by a contractor;
(e) specialized non-consulting services such as aerial surveys and mapping, as a matter of law or regulations and national security, can only be carried out by specialised branches of the government; or
(f) urgent repairs to prevent further damages, requiring prompt attention, or works to be carried out in areas where private firms may not be interested.

Objective of the Audit:

- This method is used for specific circumstances as mentioned in the law.

Associated Risks:

- Inappropriate use of the method

SN	Particulars - Audit considerations	Basis of Testing
1	**Scope:** Auditor needs to verify that only works such as repair and maintenance of ordinary nature, regular petty work or sanitation are executed by force account. [Sec 45]	• Analyse the nature of the work to ensure that such work qualify to be carried out using force account

[44] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

SN	Particulars - Audit considerations	Basis of Testing
2	**Approval:** Auditor needs to verify that construction work undertaken by way of force account is executed after approval of one level higher. [Rule 98]	• Approval by the competent authority to approve force account procurement (one level higher)
3	**Purchases:** Auditor needs to verify that while executing works though force account on wage basis the procurements of construction material and technical services is done in accordance with the provisions of procurement laws.	• Analyse the expenditure and work procedures to ensure that material, equipment, technical services required for the works to be undertaken are procured under procurement laws
4	**Method**: Auditor needs to verify that construction work carried out under force account is executed in either of the following two methods: [Rule 98(3)] • through negotiation after breaking it into pieces not exceeding NPR 1 lac OR • awarded on wage basis by making available the necessary construction materials	• Verify muster roll for labour used • Rates applied are in accordance with the prevalent norms • Supporting documents for materials, equipment and technical services maintained

2.2.7 Lump Sum Rate

'Lump sum rate method' means the method of submitting bids by undertaking to perform the act by what percent less or more than the quantity of each unit and total figure of the cost estimate.

Objective of the Audit:

- This method is used for specific circumstances as mentioned in the law.

Associated Risks:

- Inappropriate use of the method

SN	Particulars - Audit considerations	Basis of Testing
1	**Procurement through lump sum rate method:** Auditor needs to verify whether lump sum rate method is used to procure construction works fulfilling the following conditions: [Sec 8 and Rule 31A] • Nature of work does not require any qualification AND • Cost estimate do not exceed NPR 2 Cr	• Verify justification of the use of lump sum rate by analysing the nature of the work and the procurement limit
2	**Procedure:** Auditor needs to verify whether the procurement for construction work meeting the conditions for lump sum rate method is made through competitive national bidding process. [Rule 31A(1) • Cost estimate is published	• Verify whether competitive bidding procedures is applied for lump sum rate contract • The notice to the bidder indicates the estimate of the costs

SN	Particulars - Audit considerations	Basis of Testing
3	**Bid price:** Auditor needs to verify whether the bidder has submitted the bid offering the lump sum rate which is less or more by a certain percent than the total cost estimate. [Rule 31A(2)] • Certain percentage as specified in the bid document.	• Verify the evaluation of the financial bid for variation from the estimated cost in accordance with the bid document
4	**Multi-year contract:** Auditor needs to verify that multiyear contract is not entered based on the lump sum rate method.	• Review the nature of the work to ensure that the contract entered under lump sum rate is not for multi-year contract

2.2.8 Catalogue Shopping

'Catalogue shopping' means the method of procurement through price competition among the manufacturers of similar product who publish their price based on characteristics, quality and facilities of the product on the website or brochure.

Objective of the Audit:

- This method is used for specific circumstances as mentioned in the law.

Associated Risks:

- Inappropriate use of the method

SN	Particulars - Audit considerations	Basis of Testing
1	**Catalogue Shopping items:** Auditor needs to verify that Catalogue Shipping is applied for procurement of: [Rule 31B] • Heavy equipment, motor vehicles, tools, machineries, equipment, medical devices required for health services such as X-ray and MRI or similar other mechanical goods	• Verify that catalogue shopping method is applied only for the specified goods, equipment or machinery under the law.
2	**Notice:** Auditor needs to verify procurement from the manufacturer or authorised dealer at the specified rate can be done with a written notice of 7 to 15 days [Rule 31B] • The purchase has to be competitive among manufacturers and dealers	• Verify whether appropriate notice period had been given or not
3	**Submission:** Auditor needs to verify whether the manufacture or authorised dealers on receipt of the notice apply to the office with a brochure (catalogue) specifying: • Submission of details ○ Specification, Quality, Price and Facilities • Bid Security is not necessary for such bid	• Review procurement file to identify whether the manufacturer or the authorised dealer has registered catalogue or brochure indicating specification, quality standard, price and benefits
4	**Listing:** Auditor needs to verify whether the office has made listing of specification, quality, price and facilities, based applications received.	• Review the file for the listing procedure considering the price, discount, other facilities etc

SN	Particulars - Audit considerations	Basis of Testing

	• Based on the list whether call for financial proposals from the manufacturers or authorised dealers was made asking for
	  ○ Price for the required quantity
	  ○ Possible discounts
	  ○ Additional facilities
		• Listing is not done in a manner that limits fair competition

5	**Evaluation and selection:** Auditor needs to verify the financial proposal from the substantially responsive financial have been evaluated and lowest evaluated proposer is selected.	• Financial proposal is called from all of the substantially responsive listed manufacturer / authorised dealers
6	**Other matters:** Auditor needs to verify whether following other matters are complied with; • Performance guarantee is obtained before entering into contract • The method is not used for multiyear contract	• Valid performance guarantee is documented • Contract entered under catalogue shopping is not for multi-year contract

2.2.9 Limited Bidding

'Limited Biding' is the method of procurement where limited bidders participate. That is, if there are limited producers, suppliers or service providers of any goods, construction works or services, procurement is done by way of competition among such producers, suppliers or service providers.

Limited Bidding is essentially by direct invitation without open advertisement. Under limited bidding procuring office seeks bids from a list of potential suppliers broad enough to assure competitive prices, such list to include all suppliers when there are only a limited number. It may be an appropriate method of procurement where:[45]

(a) there is only a limited number of suppliers, or
(b) other exceptional reasons may justify departure from full competitive bidding

Domestic preferences may not be applicable in the evaluation of bids under Limited Bidding and International Competitive Bidding ICB procedures shall be applied.

Objective of the Audit:

- This method is used for specific circumstances as mentioned in the law.

Associated Risks:

- Inappropriate use of the method

[45] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

SN	Particulars - Audit considerations	Basis of Testing
1	**Limited bidding:** Auditor needs to verify that the method of limited bidding is applied only where there is limited availability of supplier/providers for goods, construction works or services. [Sec 8 and Rule 31C]	• Limited availability of the supplier / provider or goods, construction work is justified from the decision file
2	**Notice:** Auditor needs to verify that notice of 15 days is given to such limited available supplier/provider of goods, construction works or services with the bid (tender) invitation. [Rule 31C]	• Adequate notice is provided for the bidding as stipulated
3	**Approval:** Auditor needs to verify that procurement of goods, construction works or services by way of limited bidding is executed only after approval of one level higher. [Rule 31C]	• Competent authority has approved the procurement process (one level higher)
4	**Multi-year contract:** Auditor needs to verify that multiyear contract is not entered based on the limited bidding method. [Rule 31C]	• Review the contract entered under limited bidding to ensure that it is not for a multi-year contract

2.2.10 Buy-back Method

Method of procurement whereby the new one is procured by returning the old one is called 'buy-back method'. In this method goods, machinery or equipment which has become of no use even after maintenance or cannot be auctioned or stored or used from the point of view of public health and environment and the new one is procured by returning such goods, machineries or equipment, upon making their valuation as prescribed, to the concerned manufacturer or supplier.

Objective of the Audit:

- This method is used for specific circumstances as mentioned in the law.

Associated Risks:

- Inappropriate use of the method

SN	Particulars - Audit considerations	Basis of Testing
1	**Buy-back method application conditions:** Auditor needs to verify that buy back method is used only for the result of following circumstances for good, machinery and equipment; [Rule 31D] • It will not be cost effective to repair, maintain and try to bring into use • Expiry of the guarantee and warrantee period specified by the manufacturer; • Would not yield results conforming to standards specified by the manufacturer • Cannot be reused purposefully • Would not be appropriate to keep them storing from the public health and environmental concerns • Cannot be auctioned	• Verify the procurement document (file) to ensure that the conditions are met for application of buy-back method of procurement

SN	Particulars - Audit considerations	Basis of Testing
2	**Exchange valuation:** Auditor needs to verify the appropriateness of the valuation of the asset being exchanged and the sales price of the new assets. [Rule 31D]	• Check the basis of valuation for its appropriateness
3	**Quality Standard certification:** Auditor needs to verify that the good, machinery or equipment exchanged for is certified for standard from appropriate agency. [Rule 31D]	• Quality standards certificates have been documented and machinery / equipment / good justify under normal circumstances
4	**Buy back procurement contract:** Auditor needs to verify that the procurement contract under buy-back method must indicates whether the newly procured good, machinery or equipment can be exchanged at the end of its lifecycle. [Rule 31D]	• Review the contract for the buy-back clause allowing exchange at the end of its lifecycle
5	**Multi-year contract:** Auditor needs to verify that multiyear contract is not entered based on the buy-back procurement method. [Rule 31D]	• Review the contract entered under buy-back method to ensure that it is not for a multi-year contract

2.2.11 Renting Land & Building

Objective of the Audit:

- Due process is followed in renting land and building.

Associated Risks:

- Legal requirements not followed for renting land and building.

SN	Particulars - Audit considerations	Basis of Testing
1	**Notice:** Auditor needs to verify whether the office has rented land and building by: [Sec 43 and Rule 94(1)] • Issuing public notice in national newspaper giving 15 days' notice – in case of central agencies within Kathmandu Valley • Putting notice in the designated offices' noticeboards giving 7 days' notice – in case of regional and district offices	• Review justification for the requirement to rent land and building • Analyse with the available infrastructure to check whether renting is actually required or not • Verify the adequacy of the notice for rent
2	**Information required:** Auditor needs to verify whether the notice seeking rent of land and building details information [Rule 94(2)] • E.g., Location, nature, area, and other requirements, rates set by rent determination committee etc. and other matters required by the law [Rule 94(3)]	• Whether the rent of the location, area is collected or analysed or not considering the specific requirements
3	**Rent determination committee:** Auditor needs to verify whether rent determination committee has been formed and has evaluated the proposals for renting land and building considering: E.g., area, accessibility, physical facility, proposed rent, prevalent rate etc. [Rule 94(4)-(6)]	• Decision of the rent determination committee has to be reviewed

SN	Particulars - Audit considerations	Basis of Testing
	• The rent determined by the committee is intimated to the office	
4	**Award and Contract:** Auditor needs to verify whether the office has contracted in accordance with the rate determined by the rent determination committee [Rule 94(8)-(10)] • Renewal of such contract can be done on mutual agreement with the landlord • Any increase in rent is done after approval from MoF and submission to the rent committee	• Decision of the rent determination committee and the available market rates are analysed • Withholding of tax is done at the time of paying rent
5	**Direct Negotiation:** Auditor needs to verify that land and building is taken on rent by direct negotiation among the proposer subject to the notice seeking such rent within the prescribed limit [Rule 94(11)] • Within Kathmandu valley up to NPR 15 lac per annum • Outside Kathmandu valley up to NPR 5 lac per annum	• The limit for direct negotiation is adhered to

2.2.12 Ration

"Ration" means the goods in-kind specified by the Government of Nepal in respect of foods for the Nepal Army, Nepal Police, Armed Police Force or for such government employees, patients at hospitals, detainees in prisons, animals and birds etc. as specified by the Government of Nepal.[46]

The Standard Bidding Document published by Public Procurement Monitoring Office (PPMO) for procurement of ration has the following sections.

1 Invitation to Bid
2 Instruction to Bidder
3 Bid Data Sheet
4 Format of Forms
- Documents to be submitted along with the bid
- Bidder's information
- Joint venture details (if applicable)
- Annual Turnover
- Contract / Agreement
- Bid approval

5 General Conditions of Contract
6 Special Conditions of Contract
7 Technical requirements (specification)
8 Schedule of Requirements of Ration
9 Price List with quantity
10 Guarantee forms

[46] Public Procurement Act, Sec 2(t)

Objective of the Audit:

- Due processes are followed for procuring ration.

Associated Risks:

- Legal provisions are compromised or circumvented while procuring ration.

SN	Particulars - Audit considerations	Basis of Testing
1	**Procedure:** Auditor needs to verify that following procedure is followed as specified for the procurement of ration. [Sec 42] • Cost estimate and its approval • Price escalation • Bidders eligibility • Bid security • Submission of the bid • Other matters specified in the law	• Review ration procurement file to ensure that due procedures have been followed and matters as required in the law addressed appropriately
2	**Cost estimate:** Auditor needs to verify that the office based on the approved quota of ration has made cost estimate by Bhadra end: [Rule 88(1)] • Based on NRB consumer price index, Government price list, local market rate and PPMO directive (if any)	• Verify the basis of cost estimate applying NRB price index, government price list, local market rate and PPMO directives • Also verify that the date of cost estimate is within the stipulated period
3	**Approval:** Auditor needs to verify whether the cost estimate for ration has been approved by the committee established under the law for such approval: [Rule 88(1)] • The approval format given in Annexe-6 have been taken into account • Approval should be sent to the controlling office and PPMO within 7 days	• Verify approval by the component authority
4	**Ration arrangement:** Auditor needs to verify whether office has made arrangement for supplier to provide ration from 1st Magh. [Rule 89(1)] • By way of open bid (tender) or Sealed quotation as applicable	• Ration arranged by due date • Ration procured by applying open bidding process or sealed quotation as application
5	**Invitation:** Auditor needs to verify whether the office has made invitation for bid(tender) or sealed quotation seeking matters such as: [Rule 89(2)] • Nature and quality of ration, daily requirement • No price escalation during the contract period • Contract entered only with Nepalese citizen	• Verify the bid document or notice for sealed quotation

6	**Considerations for security offices:** Auditor needs to verify the following [Rule 89(3)]
	• Invitation:
	  ○ Bid / Quotation documents for ration available at the office, DAO and DTCO
	  ○ Describes place and time of opening the bid / quotation
		• Due process has been followed for ration procurement for security offices

SN	Particulars - Audit considerations	Basis of Testing
	○ Documentation of bid / quotation document sold • Bid: ○ Bidder / quotation proposer should duly fill the bid / quotation and submit to the office • Opening: ○ Immediately after the deadline to submit the bid / quotation	
7	**Examination and Evaluation:** Auditor needs to verify that comparative list of sealed quotations or bids is prepared: [Rule 89(4)] • Lowest bidder / proposer meeting the criteria is selected and called for contract • Contract including comparative list is submitted to the controlling office and PPMO • If the price of two or more item is more than 100% than the market disqualifies such bid/quotation	• Lowest bidder / sealed quotation meeting the requirement criteria is selected from the due evaluation process • Evaluation process does not discriminate against eligible bidder / quotation provider
8	**Other matters:** Auditor needs to verify that • Other provisions of the procurement laws have been applied in procuring ration apart for matters specifically provided relating to ration [Rule 89(10)] • Where contract could not be entered or the supplier is in breach of contract or the office has rescinded the contract new procurement proceeding should begin within 15 days ○ Interim arrangement is as directed by the controlling office [Rule 90] ○ Recover unsettled advance with interest [Rule 91(2)] • Chief of office has inspected the quality of ration supplied [Rule 91(1)]	• Inspection report of the ration procured is document to ensure quality and quantity • Upon cancellation of contract or no contract with the selected bidder / quotation provider interim arrangement is made, new procurement process initiated and recovery of advance with interest is made
9	**Advance disbursement:** Auditor needs to verify the following relating to advances to supplier of ration [Rule 92] • Advance disbursement is supported by bank guarantee valid for at least 7 months • Max advance payable is 25% of the bid / quoted amount • Advance deducted at the rate of 50% from every monthly invoice (to be settled by the end of financial year) • Supplies worth equivalent to advance is maintained in the store stock	• Advance to the ration provider does not exceed the stipulated limit and is backed by a bank guarantee • Deduction of advance amount from monthly payments • Verify store for adequacy of ration stock

2.2.13 NGOs

Non-governmental Organisations (NGOs) are not for profit organisations that may be uniquely qualified to assist in the preparation, management, and implementation of programme activities, essentially because of their involvement and knowledge of local issues, community needs, and/or participatory approaches. NGOs may be included in the shortlist if they express interest and provided that the procuring office is satisfied with their qualifications. For assignments that emphasize participation and considerable local knowledge, the short list may entirely comprise NGOs. If so, an appropriate selection method (QCBS, FBS, LCS, or CQS), based on the nature,

complexity, and size of the assignment, shall be followed, and the evaluation criteria shall reflect the unique qualifications of NGOs, such as local knowledge, scale of operation, and prior relevant experience. Procuring office may select the NGO on a single-source basis, provided the legal criteria are fulfilled. [47]

Objective of the Audit:

- NGOs have been used only on specified circumstances for the specified objectives.

Associated Risks:

- NGOs being used to circumvent normal procurement procedures

SN	Particulars - Audit considerations	Basis of Testing
1	**Scope:** Auditor needs to verify that the office has procured ONLY the following services from a non-governmental organisational. [Sec 46] • Public awareness training, orientation, empowerment, main streaming programmes though NGO ○ If it is efficient, effective and economical to do so	• Procurement from NGO is only done for public awareness training, orientation, empowerment, main streaming programmes
2	**Planning:** Auditor needs to verify whether the office has prepared tentative cost considering: [Rule 99(1)] • The requirement, type, time period, quality, human resource, operational modality.	• Verify justification that it is effective and economical to do the programme using and NGO • Verify the basis for cost estimate

3	**Notice:** Auditor needs to verify whether the office has published a public notice in national/local newspaper calling invitation from NGOs listed in the standing list. [Rule 99(2)]
	• Maximum service amount is NPR 10 Lac
	  ○ (For amount more than NPR 10 Lac process open letter of intent applicable for consulting services should be followed) [Rule 99(8)]
	• Notice period 15 days
	  ○ Calling for information required by the law [Rule 99(3)]
		• Procurement has been split to avoid competitive process
		• Adequate notice is given as stipulated calling for proposals
		• Standing list of NGOs maintained following due process

4	**Opening of proposals:** Auditor needs to verify whether the proposal received have been opened in presence of the proposers and maintain a record (*muchulka*). [Rule 99(4)]	• Verify the file recording the opening procedures of the proposals
5	**Evaluation:** Auditor needs to verify whether the evaluation committee should select and recommend the lowest bidder/proposer from among the proposers fulfilling the specified minimum requirements. [Rule 99(5)]	• Evaluation of proposal is carried out in accordance with pre-determined criteria and does not discriminate against eligible proposer
6	**Approval and contract:** The approved selected proposer is called specifying a date for contract.	• Verify the contract with the selected NGO

[47] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014

SN	Particulars - Audit considerations	Basis of Testing
	• If the proposer fails to contract, then the next lowest proposer should be invited	•
7	**Documentation:** A separate record and register of Consulting Service Proposal sales bidding documents, prequalification documents should be maintained. [Rule 56]	• Verify documentary evidence of the programmes conducted • Make field visit to reconfirm the programmes

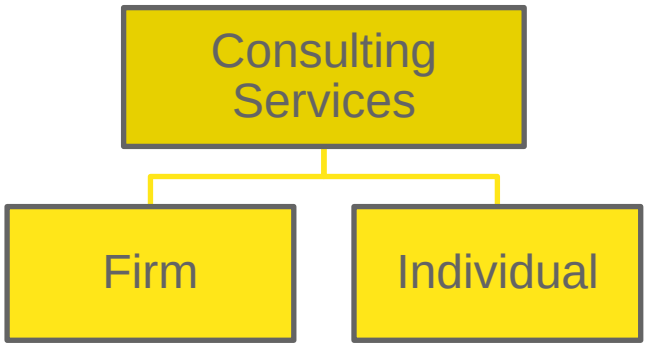
2.3 Consulting services

Consulting services are professional services with specific expertise in a wide range of sciences giving priority to the presence of brain-ware. [48]

This section includes compliance of legal provisions for procuring consulting services.

2.3.1 General requirements – consulting services

Consultant recruitment can be firms and/or individual experts collectively referred to as “consultants”.



Firms are normally engaged for more complex assignments with higher impact that require a team of experts to provide a broad range of technical expertise. Usually firm engagements span over longer periods of time, where the risk of loss of continuity is comparatively higher.

Individual consultants are typically more suitable for assignments that can be carried out independently. In some cases, individual consultants are more appropriate because of needed flexibility in urgency of mobilization, geographic dispersion, and/or timing of deployment. [49]

The main consideration for selection of consultants are as follows.[50]

a) the need for high-quality services,
b) the need for economy and efficiency,
c) the need to give all eligible consultants an opportunity to compete in providing the services,
d) encouraging the development and use of national consultants, and
e) the need for transparency in the selection process.

[48] ASEAN-SAI Guidelines on Public Procurement
[49] ADB Consulting Services, Guidance note on procurement, July 2018
[50] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014

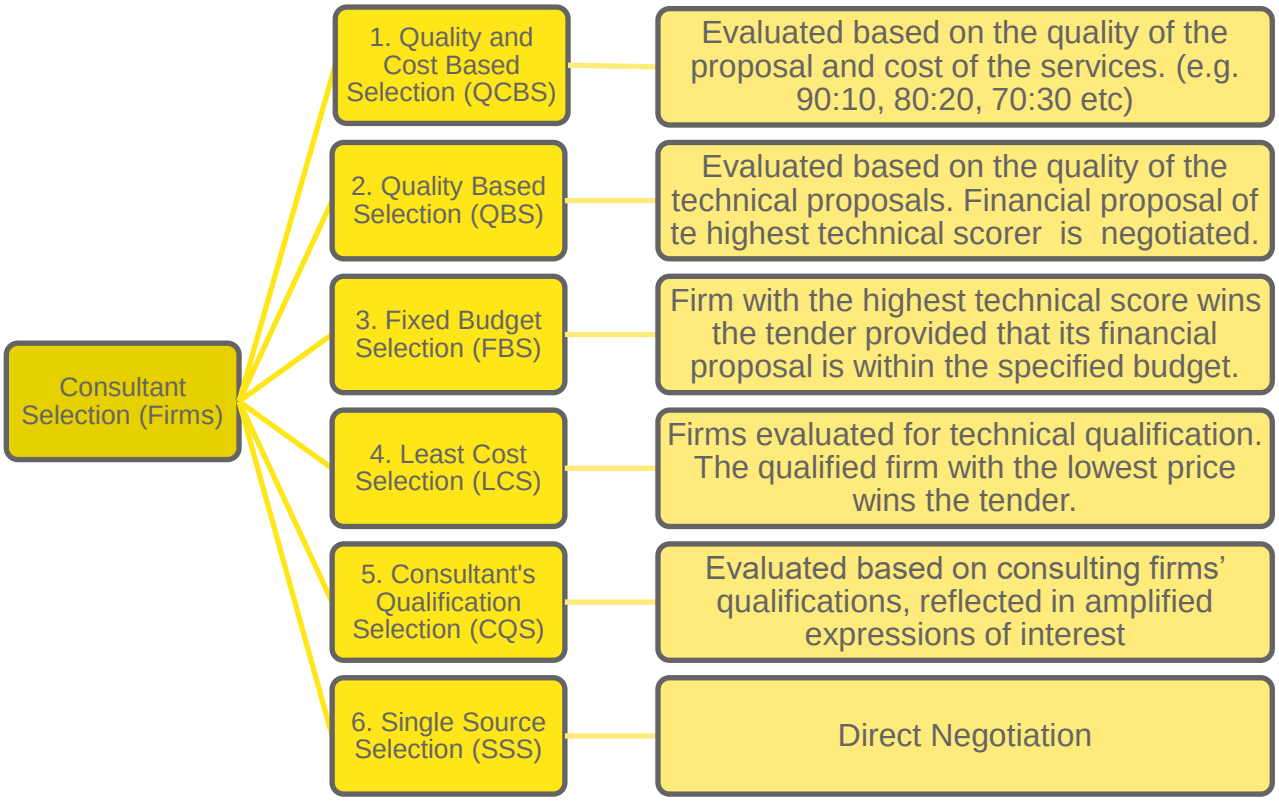
Planning for Procuring Consulting Services

Procurement Planning involve following steps. (Detail of these steps in Section 2.1.1)

- Procurement Objectives
- Identify Requirements
- Market Evaluation
- Consider Options
- Procurement Strategy / Plan

A. Selection Methods

Selection Methods of Consulting Firms [51]



1 Quality and Cost-Based Selection (QCBS) [52]

This is a competitive method requiring shortlisting and submission of separate technical and financial proposals at the same time ("two envelopes" or, in case of use of electronic procurement, the financial proposal is encrypted and digitally locked). Quality and cost-based selection (QCBS) considers both quality and cost in determining

[51] ADB Consulting Services, Guidance note on procurement, July 2018

[52] ADB Consulting Services, Guidance note on procurement, July 2018

proposal ranking, based on chosen proportions or weightings that depend on the nature of the assignment.

QCBS is appropriate if

(i) the scope of work can be precisely defined,
(ii) the terms of reference (TOR) are well-specified and clear, and (
(iii) the personnel time and other required inputs can be estimated with reasonable precision.

The request for proposal (RFP) document sets out the procedure for evaluation of responsive proposals.

Evaluation	Selection
Quality and cost weightings are chosen based on complexity and impact of the assignment and typically range from 90% to 70% for quality. There may be exceptional circumstances where quality and cost weightings justify a 50:50 split, where services are relatively standardised and quality and cost are equally important Under QCBS, the technical evaluation is undertaken based on the type of technical proposal used and application of a minimum qualifying mark (for example 750 out of 1,000 points). The three main types of technical proposal evaluation criteria may be used (or customized criteria): bio data technical proposal (BTP), simplified technical proposal (STP), or full technical proposal (FTP). Financial proposals are opened publicly after technical evaluation for all firms receiving the minimum qualifying mark and overall scores are computed.	The proposal of the firm with the highest quality-cost weighted score is considered first-ranked.

2 Quality-Based Selection (QBS) [53]

Under QBS, shortlisted firms submit technical proposals. If the RFP requires submission of financial proposals in addition to technical proposals, this may be done in separate sealed envelopes and only the financial proposal of the highest ranking, technically qualified firm is opened and negotiated. Requesting submission of both proposals at once may shorten recruitment time. Alternatively, the RFP may require only the submission of technical proposals. In that case, the firm with the first-ranked technical proposal is requested to submit a financial proposal for negotiation.

QBS is appropriate if

(i) the assignment is complex or highly specialized and precise TOR and consultant inputs are difficult to define,
(ii) the downstream impact of the assignment is large, and

[53] ADB Consulting Services, Guidance note on procurement, July 2018

(iii) the assignment can be carried out in substantially different ways such that corresponding financial proposals are potentially difficult to compare.

Evaluation	Selection
Under quality-based selection (QBS), only the quality of the technical proposals is evaluated. The procuring office will evaluate the submitted technical proposals, applying the relevant FTP, STP, or BTP (or customized) evaluation criteria, as appropriate. The first-ranked firm, technically, will then be invited for contract negotiations, which will cover both technical and financial aspects.	First-ranked technical proposal is selected

3 Fixed Budget Selection[54]

This selection method is substantially similar to QCBS. However, under fixed budget selection (FBS), the total budget for the services is specified in the RFP and cannot be exceeded. The RFP specifies the applicable minimum technical score (usually 750 points out of a possible 1,000 points), and also sets out the procedure for evaluation of responsive proposals. FBS is appropriate if

(i) the TOR is precisely defined,
(ii) the time and personnel inputs can be accurately assessed, and
(iii) the cost estimates are considered reasonably accurate and sufficient to perform the assignment.

Evaluation	Selection
Similar to QCBS, under FBS, shortlisted firms submit technical and financial proposals in separate envelopes at the same time. There is first a technical evaluation, using the FTP, STP, or BTP (or customized) evaluation criteria, as applicable, and application of a minimum qualifying mark (normally 750 out of 1,000 points). The financial proposals of all qualifying firms will then be opened. The firm with the highest technical score above the minimum qualifying mark and within the specified budget will be called to negotiate a consulting contract.	The proposal of the firm with the highest technical score within the fixed budget is considered first-ranked.

4 Least-Cost Selection[55]

This selection method is similar to QCBS, in that competitive technical and financial proposals are sought from shortlisted firms. The RFP specifies the applicable minimum technical score (usually 750 points out of a possible 1,000 points) and sets out the procedure for evaluation of responsive proposals.

Least-cost selection is appropriate if

[54] ADB Consulting Services, Guidance note on procurement, July 2018

[55] ADB Consulting Services, Guidance note on procurement, July 2018

(i) the value of the assignment is small and
(ii) the assignment is of a standard or routine nature in cases where well-established practices and standards exist (e.g., audit or inspection services).

Evaluation	Selection
Evaluation. Similar to FBS, shortlisted firms submit technical and financial proposals in separate envelopes at the same time. There is a technical evaluation, using the FTP, STP, or BTP (or customised) evaluation criteria, as appropriate, and application of a minimum qualifying mark (normally 750 out of 1,000 points). The financial proposals of all firms with technical points over the minimum qualifying mark are opened and the firm with the lowest price will be called to negotiate a consulting contract.	The proposal of the firm with the lowest cost (within the applicable budget) out of the responsive proposals meeting the minimum technical score is considered first-ranked.

5 Consultants' Qualifications Selection[56]

Similar to QBS, consultants' qualifications selection (CQS) does not focus on cost as part of the evaluation process, but only on quality as reflected in submissions of amplified expressions of interest (EOIs) responding to a request for such EOIs. Based on EOI submissions that cover qualifications, experience, geographic exposure, and any other relevant factors set out in the request for such EOIs.

CQS is appropriate if shortlisting and preparation, submission, and evaluation of multiple technical and financial proposals is not justified and
(i) highly specialized or "boutique" consulting firms are contemplated for the assignment because of depth of expertise in specific areas;
(ii) few consulting firms are qualified;
(iii) the value of the assignment is small; and
(iv) the assignment is, typically, short-term.

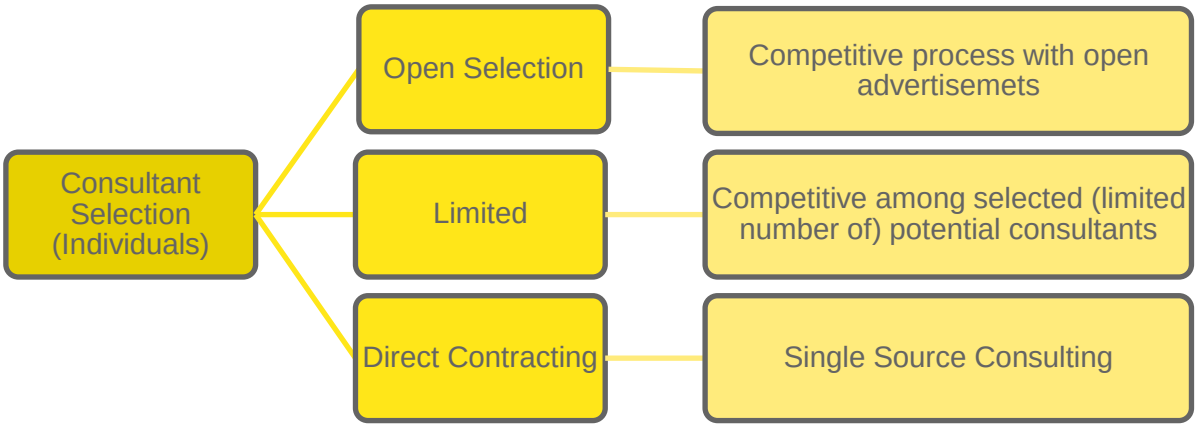
Evaluation	Selection
Evaluation. Under CQS, the firm assessed to have the most appropriate qualifications and references, meeting the stated requirements of experience and competence, as determined from the EOIs submitted, is called to submit a combined technical-financial proposal and negotiate a consulting contract. The technical portion of the proposal usually focuses on consultant's bio data, similar to a BTP.	The first-ranked firm is invited to submit a technical and financial proposal.

6 Single Source Selection (or Direct Negotiation)

Direct Negotiation (or Single Source Selection) is considered in Section 2.3.3

[56] ADB Consulting Services, Guidance note on procurement, July 2018

Selection Methods of Individuals



REOIs advertised for recruitment of individual consultants will include detailed TOR and specify the criteria that will be applied for shortlisting and selection of final candidates. The successful consultant will be selected from those that have filed an expression of interest (EOI) in response to the REOI, whether issued through advertisement or by invitation. [57]

Evaluation	Selection
Evaluation procedures for selection of individual consultants are simpler and quicker than those applicable for consulting firms.	An individual consultant is recruited based on his or her qualifications and experience for the assignment.

B. Types of Consulting Contract

Selection of the type of the contract for consulting services

There are different contracting options available for the selection methods summarised above, including time-based, lump sum, framework, retainer or contingency fee, and performance-based contracts. The procuring office selects the most appropriate form of contract to be used, based on the specifics of a particular assignment. Selection of the proper form of contract must consider factors such as: [58]

(i) nature and duration of the assignment,
(ii) the extent to which the nature and quality of outputs can be clearly defined and quantified,
(iii) distribution of risks between the parties, and
(iv) the need for providing particular types of incentives or penalties for issues such as performance quality or timeliness of deliverables.

[57] ADB Consulting Services, Guidance note on procurement, July 2018
[58] ADB Consulting Services, Guidance note on procurement, July 2018

1 Lump-Sum Contract

This type of contract is used mainly for assignments in which the scope and the duration of the services and the required output of the consultants are clearly defined. It is widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, and so forth. Payments are linked to outputs (deliverables) such as reports, drawings, bills of quantities, bidding documents, and software programs. The contract shall include a fixed price for the activities to be carried out by the consultant and shall not be subject to any price adjustment, except if specifically provided for. Lump-sum contracts are easy to administer because they operate on the principle of fixed price for a fixed scope and payments are due on clearly specified outputs and milestones. [59]

2 Time-Based Contract

This type of contract is appropriate when it is difficult to define or fix the scope and the duration of the services, either because they are related to activities carried out by others for which the completion period may vary, or because the input of the consultants required for attaining the objectives of the assignment is difficult to assess. It is widely used for complex studies, supervision of construction, advisory services, and most training assignments. Payments are based on agreed hourly, daily, weekly, or monthly rates for experts (who are normally named in the contract) and on reimbursable items using actual expenses and/or agreed unit prices. The rates for experts include remuneration, social costs, overhead, profit, and, where appropriate, special allowances. The contract shall include a ceiling amount of total payments to be made to the consultants. This ceiling amount should include a contingency allowance for unforeseen services and duration, and a provision for price adjustment for inflation if specifically provided for. Time-based contracts need to be closely monitored and administered by the procuring office to ensure satisfactory progress of the assignment and that payments claimed by the consultants are appropriate. [60]

3 Retainer and/or Contingency (Success) Fee Contract.

Retainer and contingency fee contracts are widely used when consultants are preparing companies for sales or mergers of firms, notably in privatisation operations.

[59] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014

[60] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014

The remuneration of the consultant includes a retainer and a success fee, the latter being normally expressed as a percentage of the sale price of the assets. [61]

4 Percentage Contract

These contracts are commonly used for procurement and inspection service providers. Percentage contracts directly relate the fees paid to the consultant to the estimated or actual project construction cost, or the cost of the goods procured or inspected. The contracts are negotiated on the basis of market norms for the services and / or estimated person-month costs for the services, or competitively bid. It should be borne in mind that in the case of architectural or engineering services, percentage contracts implicitly lack incentive for economic design and are hence discouraged. Therefore, the use of such a contract for architectural services is recommended only if it is based on a fixed target cost and covers precisely defined services (but not, for example, works supervision). [62]

5 Price Agreement or Indefinite Delivery Contract (IDCs)

IDCs are used when procuring office needs to have quick and continuing access to "on call" specialized advisory services for a particular activity, the extent and timing of which cannot be defined in advance. IDCs are commonly used to retain "advisers", expert adjudicators, members of panels, or experts to participate in the design or implementation of sub-projects or complex tasks (for example, dam panel, dispute resolution boards, institutional reforms, procurement advice, technical troubleshooting, evaluation of safeguard issues, and so forth), normally for a period of at least a year. The services are offered by qualified firms through a list of proposed experts they commit to make available in letters of intent in response to an REOI setting selection criteria focusing on the relevant qualifications and expertise of the required experts. Procuring office shall then establish a long list of qualified experts. Procuring office and the firms agree on pre- established fee rates to be paid for the experts and on standard conditions of contract, and payments are made on the basis of the time actually spent. Experts (consultants) shall be selected from the long list on the basis of a "call off" request with specific TOR for the assignment, based on the qualitative evaluation/comparison of the CVs of the proposed experts or the fees level, and a specific contract is signed for each assignment. [63]

C. Personnel and Staffing Schedule[64]

For input-based TORs, time estimates for completion of the work tasks set out in the TOR should be made, taking into account the logical sequencing of such tasks. The time required may be expressed in days, weeks, months, or years, depending on the overall length of the consulting services. A preliminary schedule of personnel or

[61] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014

[62] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014

[63] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014

[64] ADB Consulting Services, Guidance note on procurement, July 2018

staffing for the planned consulting services can be developed by considering the identified work tasks with their estimated sequencing and duration.

This effort may not be required for output- based TORs, though procuring office should still develop some estimates that they can use to assess the schedules proposed by consultants. The preliminary schedule will be refined so that the timing for the contemplated TOR deliverables, either overall or for each relevant expert, can also be plotted into the finalized schedule. Once finalized, the procuring office and the first-ranked consultants will agree on the personnel or staffing schedule during contract negotiations.

Objective of the Audit:

- General requirements for procuring services have been followed.

Associated Risks:

- Consultants procured for services that the resources within the office can undertake and due legal process not complied

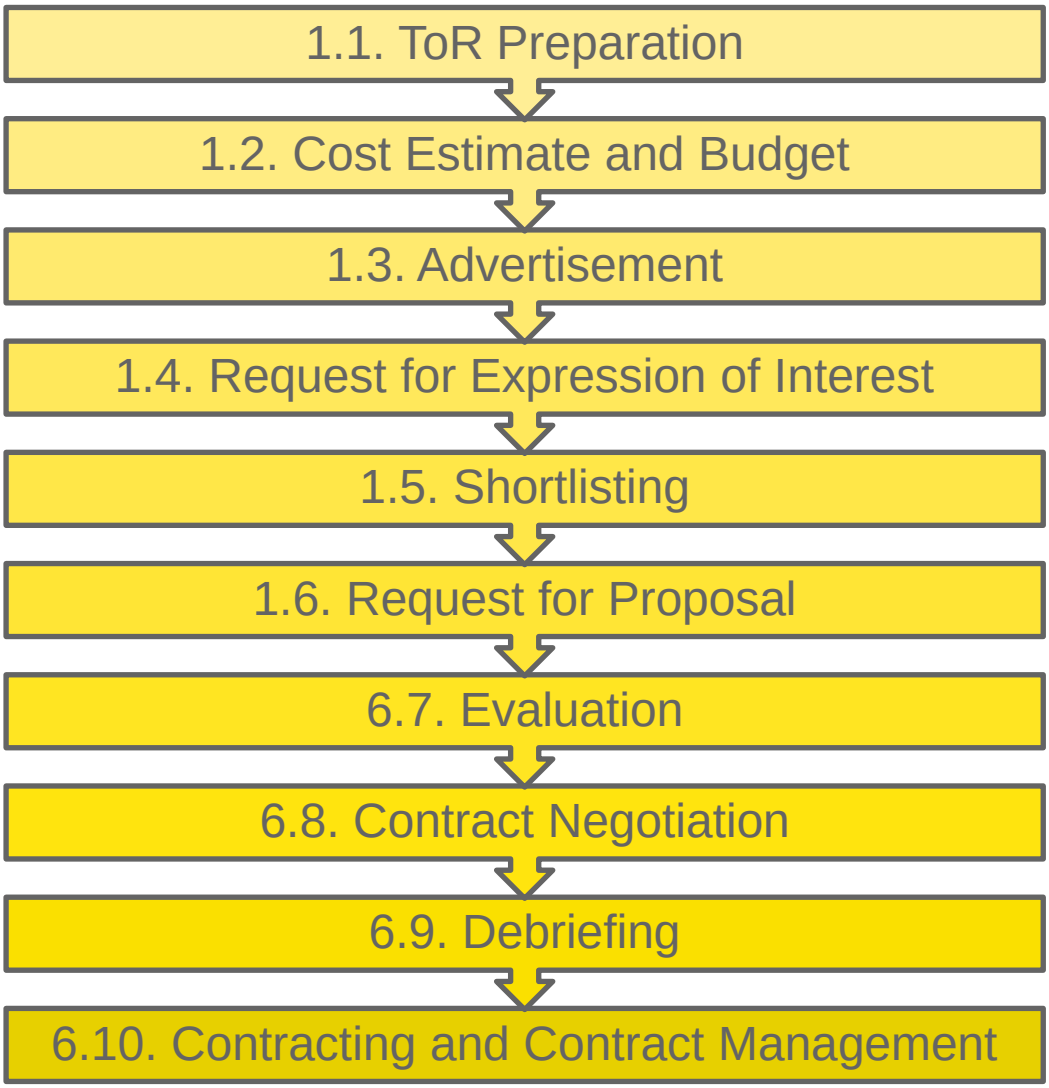
SN	Particulars - Audit considerations	Basis of Testing
1	**General condition:** Auditor needs to verify whether consulting services has been procured for: [Sec 29] • Work cannot be performed by human resource available within the office • Under agreement with a development partner to be paid out of foreign assistance source	• Analyse the need for the consulting services • Reconfirm the available resources with the office and the scope of the work of the consultant
2	**Terms of Reference:** Auditor needs to verify whether the office has prepared Terms of Reference (TOR) for the consulting services it requires. [Rule 69] • Matters to be included in ToR (E.g. background, objectives, scope of work, deliverables, available research and data, transfer of knowledge, training details, qualification of the consultant team, key personnel are unchangeable (except for exceptional circumstances), time period, physical and logistic support from the office etc.)	• Verify the ToR to confirm whether matters required by the law (e.g. Rule 69) are included or not
3	**Recording:** A separate record and register of Consulting Service Proposal sales bidding documents, prequalification documents should be maintained [Rule 56]	• Review register for recording consulting services procurement

2.3.2 Competitive proposals

Competitive process among short-listed firms that considers the quality of the proposal and the cost of the services in the selection of the successful firm. Cost factor of selection shall be used judiciously. The relative weight given to the quality and cost shall be determined for each case depending on the nature of the assignment. [65]

[65] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014

The selection process of shall include the following steps (Firms):



1. ToR Preparation

Terms of Reference (ToR) is the most important component of consulting services assignment. It is derived from the consulting services needs assessment undertaken as part of procurement planning. The TOR defines the nature and scope of the assignment, guides the work of the consultant, and gives the basis against which the performance of the consultant will be assessed. The TOR should also list any necessary services and surveys for the assignment, and the expected outputs (e.g., reports or datasets). The TOR should be sufficiently flexible, when the circumstances justify, to allow consultants to propose their own methodology and work program, particularly when the assignment is complex. A typical TOR will, at a minimum, include: [66]

(i) purpose of the assignment;
(ii) background;

[66] ADB Consulting Services, Guidance note on procurement, July 2018

(iii) objectives of the assignment;
(iv) scope of services;
(v) detailed outputs of the assignment (and applicable quality standards is any);
(vi) key timelines or milestones, and reporting requirements;
(vii) relevant background information and material for the assignment;
(viii) preliminary team composition and qualification requirements for key experts, to be replaced with team composition and qualification requirements for key experts as accepted by the client prior to contract award;
(ix) counterpart support, personnel, and facilities to be provided by the procuring office (if any); and
(x) duration and location of the assignment, and other relevant information.

If, for instance, the transfer of knowledge or training is included in the scope of work, then the TOR should indicate the level of effort required, the estimated number of trainees, the length of the training program, and other related requirements (such as the need for customized training materials) to enable consultants to estimate the required resources. [67]

Performance or Output Based ToR

In an output-based TOR, the procuring office defines the expected outputs or deliverables, but does not instruct the consultant on methods and inputs of achieving them. This type of TOR focuses on outputs or results, rather than specifying each required position, to allow the invited firms flexibility in preparing proposals for the assignment and in determining the optimal team composition. [68]

Conformance or Input Based ToR

In a time-based TOR, the procuring office instructs the consultant on methods of achieving the outputs. These are applicable when the procuring office is able to precisely define the nature of the assignment and the expected deliverables, and provides the detailed breakdown of inputs—the nature and number of experts required and the person-month allocation for each. [69]

2. Cost Estimate and Budget

A well-thought-through cost estimate is essential if realistic budgetary resources are to be earmarked. The cost estimate shall be based on the procuring office's assessment of the resources needed to carry out the assignment: experts' time, logistical support, and physical inputs (for example, vehicles, laboratory equipment). Costs shall be divided into two broad categories: [70]

[67] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014
[68] ADB Consulting Services, Guidance note on procurement, July 2018
[69] ADB Consulting Services, Guidance note on procurement, July 2018
[70] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014

(a) fee or remuneration (according to the type of contract used);
(b) reimbursable items (foreign and local costs);
(c) Provisional sums

The cost of experts' time inputs shall be estimated based on a realistic assessment of required international and national expertise. The RFP shall indicate the estimated level of experts' time inputs or the estimated total cost of the contract, but not detailed estimates such as fees. [71]

3. Advertisement

All open competitive bidding for consulting assignments for firms must be publicly advertised with adequate visibility to inform the prospective bidders by way of publishing in national newspaper (if ICB in English language), on websites of the procuring office. The advertisement may be in the national press, official gazette, or a free and publicly accessible website. For limited competitive bidding and direct contracting or SSS, advertising may not be required and the designated firm(s) may be requested to submit EOIs by invitation. [72]

4. Request for Expression of Interest

Prequalification of bidders through REOIs and shortlisting may be used and is generally recommended for consulting services selections. REOIs should be clear and precise. They should include, at a minimum, an outline TOR for the assignment, either input- or output-based depending on the circumstances, and, generally, an allocated budget for consulting services. The selection process must allow sufficient time for interested consultants to submit EOIs. A standard template is typically used.

Any clarifications or addenda must be documented in writing, electronically or otherwise. The procuring office may exercise discretion in accepting late EOIs in case an insufficient number of qualified EOIs were submitted prior to the deadline. The procuring office may extend the period notice or re advertise the assignment if necessary.

The REOI must set out the key objective criteria to be applied to determine an appropriate shortlist of firms from EOIs submitted for the assignment at hand. Such criteria include technical competence, country and/or sector experience, managerial and organizational capabilities, and any other criterion (e.g., past performance on similar consulting contracts).

If a joint venture submits an EOI, they must submit a memo of Intent to form a Joint Venture that explicitly identifies the lead entity entitled to conduct all business on

[71] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014

[72] ADB Consulting Services, Guidance note on procurement, July 2018

behalf of the joint venture and commits to submitting a joint venture agreement on required terms and conditions if shortlisted. [73]

The information requested shall be the minimum required to make a judgment on the firm's suitability and not be so complex as to discourage consultants from expressing interest. REOIs shall at a minimum include the following information applicable to the assignment: [74]

- required qualifications
- experience of the firm, but not individual experts' bio data;
- short-listing criteria; and
- conflict of interest provisions.

5. Shortlisting

Procuring office sets out the criteria to be applied to select the shortlist of bidders. Shortlisted firms are invited to bid through RFPs. RFPs will contain all required documents and forms. The shortlist may be limited to a reasonable number of firms in the circumstances, as specified in the REOI provided that the limit does not undermine fair competition. In undertaking the shortlisting process, the procuring office must first conduct a preliminary review of EOIs to screen entities that do not meet the basic requirements of the assignment—i.e., entities not eligible or without any background or experience in the subject matter. The outcome of this first screening is referred to as the "refined" long-list. The procuring office must then conduct a more detailed assessment of the refined long-list using the key criteria detailed in the REOI, to develop the shortlist. [75]

The short list should normally comprise consultants of the same category with similar business objectives, corporate capacity, experience and field of expertise, and that have undertaken assignments of a similar nature and complexity. The short list shall not include Individual Consultants. If the same firm is considered for inclusion in short lists for concurrent assignments, the procuring office shall assess the firm's overall capacity to perform multiple contracts before including it in more than one short list. [76]

6. Request for Proposal (RFP)

A standard RFP issued by PPMO is used for procuring consulting that includes:[77]

- instructions to consultants,
- assignment-specific datasheet,

[73] ADB Consulting Services, Guidance note on procurement, July 2018

[74] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014

[75] ADB Consulting Services, Guidance note on procurement, July 2018

[76] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014

[77] ADB Consulting Services, Guidance note on procurement, July 2018

- finalized TOR,
- general conditions of contract,
- special conditions of contract, and
- forms to be completed by shortlisted firms.

The RFP shall include evaluation criteria for technical proposals and related summary evaluation and personnel evaluation sheets. The shortlisted firms are invited to respond to the RFP document under the applicable selection method. The RFP documents specify the procedures relating to obtaining clarifications, issuing addenda, submission of technical and financial proposals, receiving and opening of proposals, handling late or incomplete proposals, and evaluation and ranking of proposals. [78]

The procuring office shall allow enough time for the consultants to prepare their proposals. The time allowed shall depend on the legal requirements. During this interval, the firms may request clarifications about the information provided in the RFP. The procuring office shall provide these clarifications in writing and copy them to all firms on the short list (who intend to submit proposals). If necessary, the procuring office may extend the deadline for submission of proposals. The technical and financial proposals shall be submitted at the same time. No amendments to the technical or financial proposal shall be accepted after the deadline, although amended proposals may be submitted before such deadline. To safeguard the integrity of the process, the technical and financial proposals shall be submitted in separate sealed envelopes. A committee shall open all technical proposals received by the deadline for the submission of proposals at the designated place stipulated in the RFP irrespective of the number of proposals received by such deadline. At the opening of technical proposals, in the presence of consultants wishing to attend. [79]

All proposals received after the deadline shall be declared late and rejected and promptly returned unopened. The committee shall read aloud the names of the consultants that submitted proposals, the presence or absence of duly sealed financial envelopes, and any other information deemed appropriate. The financial proposals shall remain sealed until they are opened after the technical proposals are evaluated in presence of the bidders wishing to attend. [80]

7. Evaluation

After RFP submissions have been made, the procuring office undertakes its evaluation by applying the narrative and summary evaluation criteria applicable to the particular selection, which were circulated to shortlisted bidders as part of the RFP. The evaluation process may be one- or two-step, depending on the selection method. Quality- and cost-based selection is two-step: evaluation of the technical proposals, followed by evaluation of the financial proposals, and then computing a combined

[78] ADB Consulting Services, Guidance note on procurement, July 2018

[79] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014

[80] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014

final score for each bidder, with applicable weightings. In other cases, such as quality-based selection (QBS), there is only evaluation of the technical proposal and the financial proposal of the first-ranked firm is then opened and negotiated. [81]

Evaluation of Proposals: Consideration of Quality and Cost

The evaluation of the proposals shall be carried out in two stages: first the quality, and then the cost. Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation is concluded. Financial proposals shall be opened only thereafter. The evaluation shall be carried out in full conformity with the provisions of the RFP. [82]

Evaluation of the Quality

Given the need for high quality services, the quality of the evaluation of technical proposals is paramount. The technical evaluation shall take into account the criteria indicated in the RFP. The maximum score for each criterion and the minimum overall technical score shall be determined based on the nature and complexity of the specific assignment. The criteria shall generally include: [83]

a) the consultant's relevant experience for the assignment,
b) the quality of the methodology proposed,
c) the qualifications of the key experts proposed,
d) the transfer of knowledge, if required in the TOR, and
e) the extent of the participation of nationals among key experts in the performance of the assignment.

The procuring office normally divides these criteria into sub-criteria. Each criterion shall then be scored on the basis of the weights assigned to respective sub-criteria. Only the key experts should be evaluated. Since they ultimately determine the quality of performance, more weight shall be assigned to this criterion if the proposed assignment is complex. Procuring office shall evaluate each proposal on the basis of its responsiveness to the TOR. A proposal shall be considered unsuitable and shall be rejected at this stage if it fails to comply with important aspects described in the RFP. Technical proposals containing any material financial information shall be declared nonresponsive. [84]

Opening of Financial Proposals and Evaluation of Cost

After the Technical Evaluation Report is completed, the procuring office shall inform consultants whose proposals did not meet the minimum qualifying technical score or were considered nonresponsive to the RFP and TOR that their financial proposals will

[81] ADB Consulting Services, Guidance note on procurement, July 2018

[82] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014

[83] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014

[84] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014

be returned unopened after the signature of the contract. In addition, the procuring office shall inform each of the above consultants of their overall technical score as well as scores obtained for each criterion and sub-criterion if any and simultaneously notify the consultants that have secured the minimum overall technical score of the date, time, and place set for opening the financial proposals. [85]

The financial proposals shall be opened in the presence of representatives of the consultants who choose to attend (in person or online). The name of the consultant, the technical scores, including the break-down by criterion, and the offered total prices shall be read aloud (and posted online when electronic submission of proposals is used) and recorded when the financial proposals are opened. The proposal with the lowest offered total price may be given a financial score of 100 (one hundred) and other proposals given financial scores that are inversely proportional to their prices. Alternatively, a directly proportional or other methodology may be used in allocating the scores to the financial proposals. The methodology to be used shall be described in the RFP. [86]

Combined Quality and Cost Evaluation

The total score shall be obtained by weighting the quality and cost scores and adding them. The weight for the "cost" shall be chosen, taking into account the complexity of the assignment and the relative importance of quality. The proposed weightings for quality and cost shall be specified in the RFP. The firm obtaining the highest total score shall be invited for negotiations. [87]

8. Contract Negotiation

The procuring office then issues the letter of invitation to negotiations to the first-ranked bidder. The letter of invitation must stipulate the key conditions to be met for negotiations to proceed. The main areas to be covered during contract negotiations are: [88]

a. Confirming and Replacing personnel;
b. Clarification and Correction; and
c. Documentation

Negotiations shall include discussions of the TOR, the methodology, procuring office's inputs, and special conditions of the contract. These discussions shall not substantially alter the original scope of services under the TOR or the terms of the contract not to affect the quality of the final product, its price, and the relevance of the initial evaluation. [89]

[85] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014
[86] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014
[87] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014
[88] ADB Consulting Services, Guidance note on procurement, July 2018
[89] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014

9. Debriefing

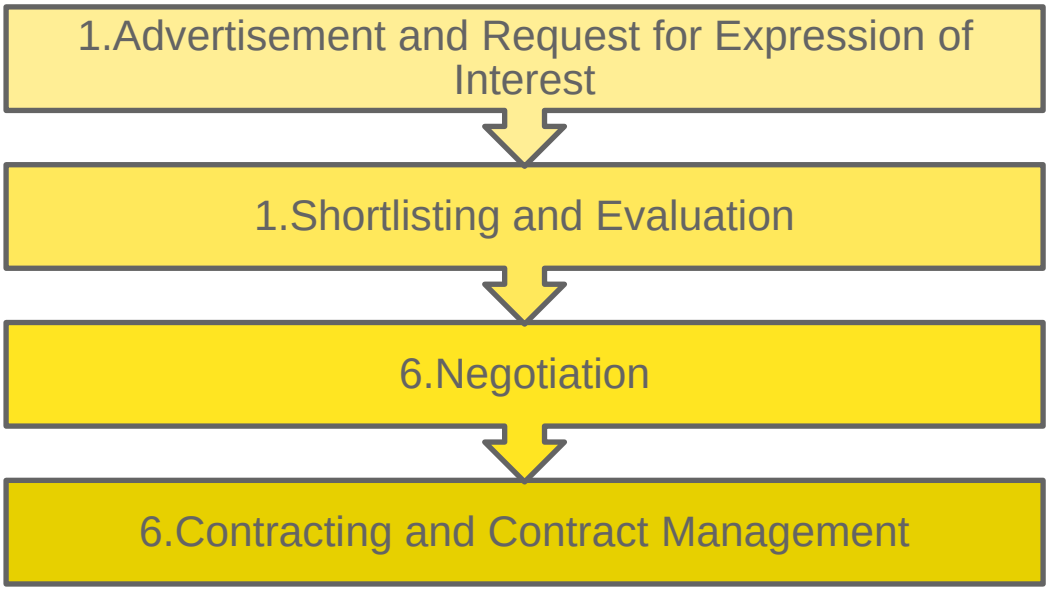
Procuring office have to respond to any requests for debriefing made by unsuccessful consultants that submitted a proposal in response to an RFP. Debriefings must cover only the substance of the requesting bidder's proposal, and under no circumstance should the detail of other bidders' proposals or their scoring be discussed. The procuring office will conduct such debriefings in person, in writing, or by phone or video link at a time mutually convenient for both parties. There is no debriefing for parties that were not shortlisted. [90]

10. Contracting and Contract Management

After the contract is awarded, it is essential that the procuring office takes a proactive role in managing the contract to deliver successful results, with related oversight. This includes developing and implementing a contract management plan, and effectively and efficiently supervising consultant outputs, timing, payments, variations, and issues of suspension or termination, among others. The procuring office must actively manage consulting contracts throughout their duration to ensure that consultant performance is satisfactory, that stakeholders concerned are adequately engaged, and that all contract requirements fulfilled. For higher-value consulting contracts, there needs to be continuing focus by the procuring office on effective and efficient contract management under the framework set out in the applicable contract management plan. [91]

Contract management is dealt in detail in Section 2.5.1

The selection process of shall include the following steps (Individuals):



[90] ADB Consulting Services, Guidance note on procurement, July 2018

[91] ADB Consulting Services, Guidance note on procurement, July 2018

Individual consultants are employed on assignments for which: [92]

(a) a team of experts is not required,
(b) no additional outside professional support is required, and
(c) experience and qualifications of the individual are the paramount requirement.

Advertisement and Request for Expression of Interest (REOI)

Advertisement for seeking expressions of interest (EOI) is used, particularly when the procuring office does not have knowledge of experienced and qualified individuals or of their availability, or the services are complex, or there is potential benefits from wider advertising, or if it is mandatory under national law. It may not, however, be required in all cases and should not take place for small value contracts. All invitations for EOI should specify selection criteria that are solely based on experience and qualifications. [93]

Shortlisting and Evaluation

For competitive selection, the procuring office prepares a shortlist of qualified candidates, based on an initial review of credentials and screening of those that do not meet the basic requirements of the assignment. The procuring office then evaluates those shortlisted in more detail, with a final ranking based on qualifications, experience, country and/or regional exposure, and any other factors listed in the applicable criteria for shortlisting and evaluation. Shortlisting may be supported by a formal interview process. [94]

Negotiation

After identification of the first-ranked individual consultant, the procuring office will negotiate a contract with that candidate. [95]

Contracting and Contract Management

Individual consultants may be contracted as freelancers or through the firms that employ them. When contracted as freelancers, the procuring office and the individual will negotiate and sign the contract between themselves. When contracted through firms, the contract is entered into between the relevant firm and the procuring office, but it is conditioned on the availability of the specified individual for the assignment.[96]

Objective of the Audit:

- Competitive proposal process is compliant with the applicable legal provision.

[92] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014
[93] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014
[94] ADB Consulting Services, Guidance note on procurement, July 2018
[95] ADB Consulting Services, Guidance note on procurement, July 2018
[96] ADB Consulting Services, Guidance note on procurement, July 2018

Associated Risks:

- Possibility of non-compliance or circumvention of legal provisions.

SN	Particulars - Audit considerations	Basis of Testing
1	**Invitation of EOI:** Auditor needs to verify whether the office has made open invitation soliciting from persons, firms, companies or organisations for the purpose of shortlisting consultants. [sec 30 and Rule 70] • At least 15 days' notice in a national newspaper • For consulting services of more than NPR 20 Lac (more than NPR 10 Cr ICB) • Matters to be included ○ As required under Rule 70(3)	• Verify the EOI process for shortlisting of consultants. • Due notice has been given for consultants to respond • All matters required under the law have been included in the invitation of EOI
2	**Shortlisting:** Auditor needs to verify whether the consultant is shortlisted based on the pre-determined evaluation criteria such as qualification, experience, capacity. [Sec 30(5) and Rule 70(5)] • 3 to 6 consultants are shortlisted [Sec 30(5)] • Office can include in the shortlist additionally a consultant of good repute [Rule 70(7)] • The EOI process has to be repeated with re-invitation if fewer than 3 proposers are/can be shortlisted. Shortlist may be < 3 in case of re-invitation [Rule 70(8) & (9)] • All proposers are notified of the shortlisting decision. • International consultant JV with domestic consultant is given preference. However, there should not be double proposal [Rule 70(11)]	• Evaluation criteria are predetermined • Criteria not set to favour a particular consultant or to discriminate against a particular consultant

3	**Soliciting proposals:** Auditor needs to verify that proposals are sought from only shortlisted consultants [Sec 31 and Rule 71]
	• Allowing minimum 30 days to propose
	• Matters to be included as required by Sec 31(2) & (3) and Rule 71(2) such as
	  ○ E.g. Nature, period, place, scope, expected outputs, instruction to bidders under Rule 73, two envelopes, technical and financial weightage, evaluation criteria, CV certification, time and place for submission, minimum technical score, cost of proposal preparation for etc. (refer Rule 73 also)
		• Proposals are solicited from the shortlisted consultant
		• SBD as prescribed by PPMO is used
		  ○ Required matters are included in the solicitation document
		  ○ All matters are clearly indicated

4	**Use of selection method:** Auditor needs to verify that the one of the following section methods is used (the method is clarified in the invitation document) [Sec 31(4)] and Rule 71
	• Quality and cost-based selection
	  ○ Weightage – based on nature & complexity
	  - Technical 70 to 90%,
	  - Financial 30 to 10%
	• Quality based selection,
	  ○ Technical 100%
	  ○ Quality based selection is applied for technical and complex services mentioned in Rule 74
		• Selection method is clearly mentioned in the invitation document
		• Weightage for technical and financial (wherever applicable) is clearly mentioned
		• The method used should be justified for the nature of the consulting services sought

SN	Particulars - Audit considerations	Basis of Testing

	• Fixed budget method, or
	  ○ Technical 100%
	  ○ Also include budget in soliciting document
	• Least cost method
	  ○ Technical 100%	

5	**Technical scoring:** Auditor needs to verify the technical weight breakdown is as follows (Total 100%): [Rule 71(6)] • Related experience maximum 25% • Methodology and responsiveness 20-35% • Key Persons' Qualification & experience 30-60% • Technology transfer max 10% • Domestic persons' participation max 10% (not applicable to NCB)	• Approved evaluation criteria is applied for scoring on the proposals
6	**Opening proposals**: Auditor needs to verify that outer envelope of the proposals received within the stipulated date and time are opened and technical and financial proposals are segregated: [Sec 32 and Rule 75] • Technical proposal should be opened immediately and recorded (with *muchulka*) • Financial proposals are opened only after technical evaluation • Proposals are opened in presence of the proposers or the authorised representatives	• Minutes of the proposal opening meeting has to be reviewed to ensure that due process has been followed and recorded

7	**Technical Evaluation:** Auditor needs to verify whether evaluation has been done as mentioned in the soliciting document. [Sec 33]
	• Matters to be considered for evaluation [Rule 76]
	  ○ Technical proposals are sent for evaluation as early as possible after opening
	  ○ Evaluation committee does the evaluation (it also can take support from technical subcommittee)
	  ○ List of evaluated proposals is be prepared from highest to lowest technical scoring
	  ○ Evaluation committee prepares the evaluation report [Rule 77]
		• Proposals are evaluated using the approved evaluation criteria
		• Competent team evaluates the proposals
		• Evaluation report is to be reviewed
		• Same marking principles are applied in evaluating all the proposals

8	**Opening financial proposal:** Auditor needs to verify that only technically eligible proposers considered for opening their financial proposal [Sec 34] • Bidders are notified for date and time for opening the financial proposal [Rule 78] • Proposals are opened in presence of the proposers or the authorised representatives and the committee reads out the technical scores and proposed amounts for each of the proposals. This is recorded (with *muchulka*) [Rule 79]	• Minutes of the financial proposal opening has to be reviewed
9	**Financial Evaluation:** Auditor needs to verify that amount exclusive of VAT including consultant's taxes, travel, translation printing and other overhead costs. [Rule 80] • Amount written in words prevail • Unit rates prevail over total amount	• Financial proposal is evaluated in accordance with the legal provisions and as indicated in the SBD

SN	Particulars - Audit considerations	Basis of Testing

10	**Selection:** Auditor needs to verify whether the financial proposal is evaluated based on the method of selection adopted. [Sec 35 and Rule 81]
	• Quality and cost-based selection [Sec 35(1)(a) and Rule 81(1)]
	  ○ Proposal scoring maximum score while combining the technical and financial score
	• Quality based selection, [Sec 35(1)(b) and Rule 81(2)]
	  ○ Proposer securing highest score in technical evaluation is selected
	• Fixed budget method: [Sec 35(1)(c) and Rule 81(3)]
	  ○ Highest scoring proposal within the stipulated budget is selected.
	  ○ Proposal exceeding budget is rejected
	• Least cost method; [Sec 35(1)(d) and Rule 81(4)]
	  ○ Proposal with the lowest quoted amount from among the technically qualified proposals shall be selected
		• Consultant is selected using the appropriate selection method as indicated in the SBD (soliciting document)

11	**Negotiation:** Auditor needs to verify whether the selected proposer is called for negotiation on matters except for the remuneration of the professionals. [Sec 37] • Call for negotiation is made within 7 days (15 days for ICB) [Rule 81(6)]	• Negotiation document has to be reviewed

12	**Approval and Contracting:** Auditor needs to verify the following whether: [Sec 38]
	• Approval of the proposal is done by the appropriate authority [Rule 81A]
	• The selected proposal after negotiation is forwarded for approval and the decision is notified to all proposers
	  ○ Approved with 7 days of notice
	  - Approving authority under Rule 81A
	  ○ Called to contract within 15 days of approval
	• The proposer has submitted professional liability insurance within 30 days of contract [Rule 81(7)]
	• On failure of the selected proposer to contract net highest scorer is called to contract [Sec 38(4)]
		• Competent authority approves the selection process
		• Contract is entered within the time stipulated in the law
		• Professional indemnity insurance from the consultant is documented

2.3.3 Direct negotiation

Direct contracting (also referred to as single-source selection or SSS) may be considered in special circumstances, and only if fit for purpose and justified by VfM considerations including: [97]

(i) when only one consultant is qualified or has experience of exceptional worth for the relevant assignment;
(ii) when the relevant consulting service tasks represent a natural continuation of previous work carried out by the consultant, provided such continuity in

[97] ADB Consulting Services, Guidance note on procurement, July 2018

downstream work is considered essential and offers a clear advantage over renewed competition;

(iii) or very small consulting assignments that generally do not exceed specified amount and/or

(iv) in exceptional circumstances, such as in response to disasters when immediate or urgently required consultant mobilisation is necessary.

For any direct contracting, the procuring office must ensure fairness and transparency and have procedures in place to ensure that[98]

(i) the prices paid are reasonable and consistent with market rates for similar assignments, and

(ii) the consulting contract values are not split into smaller-sized engagements to circumvent a competitive process.

Firms selected through use of SSS will normally be required to submit a bio data technical proposal to ensure that adequate information is provided to the procuring office in relation to the staffing schedule and the profile of proposed experts, upon which the financial aspects of the contract can be accurately negotiated. [99]

Objective of the Audit:

- Direct negotiation provisions are not misused.

Associated Risks:

- Direct negotiation procedures are used to circumvent legal provisions.

SN	Particulars - Audit considerations	Basis of Testing
1	**Direct negotiation**: Auditor needs to verify whether the office procured consulting services by direct negotiation for: [Rule 82] • Training, workshop, seminar and similar activities useful and required for the office within the stipulated limit: ○ Approved by office chief up to NPR 5 Lac ○ Approved by one level higher up to NPR 20 Lakh - 3 proposals invited and most useful and least costing proposal selected based on cost and quality	• Verify the list of consulting services procured by using negotiations and review whether the conditions given for direct negotiation has been fulfilled or not

2.3.4 Consulting services from standing list

Objective of the Audit:

- Standing list is used in accordance with the law.

[98] ADB Consulting Services, Guidance note on procurement, July 2018

[99] ADB Consulting Services, Guidance note on procurement, July 2018

Associated Risks:

- Standing list method is used for circumstances other than specified to circumvent due procurement process.

SN	Particulars - Audit considerations	Basis of Testing
1	**Consulting services from standing list**: Auditor needs to verify whether consulting services procured from the standing list under Sec 6A meets the following condition. [Rule 72] • Limit: less than NPR 20 Lac • Proposal sought from the standing list of consultants • Min 3 to Max 6 invitations sought from the consultants in the standing list • Separate technical and financial proposals are invited • Consultant selected by evaluating under quality and cost-based selection	• Verify the list of consulting services procured by using standing list for consulting services and • review whether the conditions given for direct negotiation has been fulfilled or not

2.3.5 Other matters – consulting services

Objective of the Audit:

- Other methods are is used in accordance with the law.

Associated Risks:

- Other methods are used for circumstances other than specified to circumvent due procurement process.

SN	Particulars - Audit considerations	Basis of Testing
1	**Other methods for consulting services:** Auditor needs to verify that other method applied for procuring consulting services is according to the legal provisions [Sec 39]	• Verify consulting services procured using other methods
2	**Other methods:** Auditor needs to verify whether consultant is selected based on the expertise and qualifications in following circumstances: [Rule 83] • High level expertise is required; or • Services required for short duration and less availability of time; or • Only limited number of consultants are available for perform such services; or • Paucity of time to select a consultant.	• Verify the list of consulting services procured by using other methods and • review whether the conditions given for direct negotiation has been fulfilled or not
3	**Procurement of design:** Auditor needs to verify that architectural design or urban planning design together with detailed description relating to such design is procured by having competition for such document. [Rule 87]	• Verify the competition of the procurement process that it does not favour or discriminate against any possible consulting service provider

SN	Particulars - Audit considerations	Basis of Testing
4	**Office Preparing Project Account**	• Analyse the proportion of consulting service expenses with the total project cost
5	**Survey, drawing, design, supervision by consultants**	• Review implementation details for effectiveness
6	**Vehicles, office equipment and other amenities to consultants**	• Whether handed over at the end of the contract
7	**Defective survey, drawing, design etc**	• Ways to make the consultants accountable

2.4 Special circumstances

This includes procurement provisions in special circumstances including circumstances where application of public procurement laws are exempted.

2.4.1 Procurement in special circumstances

Objective of the Audit:

- Due process is followed, and special circumstances justified.

Associated Risks:

- Special circumstances provisions are used to circumvent due legal proceedings.

SN	Particulars - Audit considerations	Basis of Testing

1	**Procurement in special circumstances:** Auditor needs to verify whether procurement in special circumstances is justified to mandate the immediate procurement. [Sec 66(1)]
	• Following is documented [Rule 145]
	  ○ Description of the special circumstances
	  ○ Necessity of the immediate procurement for community heath, public security and benefit
	  ○ Reasons why normal procedures cannot be followed
		• Review whether the conditions justify to be special circumstances
		• Assess whether more adverse situation is likely if not procured using

2	**Approval:** Auditor needs to verify that procurement in such circumstances is done with the approval of the one level higher authority. [Sec 66(2)]	• Approval by the competent authority (one level higher)
3	**Procurement:** Auditor needs to verify the procurement is for the required quantity for the limited period and to the extent possible written quotation or proposals have been obtained from the supplier, contractor, consultant or service provider [Rule 145(1)] • Details of such procurement, that exceeds more than NPR 10 Lac should be made public and PPMO notified	• Verify the file to review whether competition to the extent possible has been employed

2.4.2 Exemption from Public Procurement Act

Objective of the Audit:

- The exemption cases and circumstances are duly justified

Associated Risks:

- Exemptions are used as pretext to circumvent due legal proceedings.

SN	Particulars - Audit considerations	Basis of Testing

1	**Exemptions**: Auditor needs to verify whether only under following circumstances procurement by the office is exempt from application of Public Procurement Act.
	• GoN decides that it will be not be appropriate to follow normal procedure for security, strategic and defence related procurement
	  ○ To be approved by GoN decisions
	• Under agreement entered by GoN to follow Development Partner's procurement guidelines
	  ○ Matters not covered in DP's guideline swill be as per the Public Procurement Act [Rule 87A]
	• Office carries out business transactions in competition with the private sector the operation of their business
	  ○ Entities/Offices mentioned in Annexure 5A of the Public Procurement Regulation [Rule 87A]
	• Procurements to be made in the foreign country for social and cultural programmes or promoting industrial, economic, technology exhibitions.
	• Goods and services to be procured by embassies and missions in foreign county
	• Procurement of aviation related goods and equipment by public sector aviation entity
	  ○ Should include business plan, life cycle, NPV etc [Sec 67(4)]
		• Procurements by the office not applying public procurement act meets the exemption conditions given in the law
		• Approval by competent authority

2	**Procedures:** Auditor needs to verify that except for the security procurement and procurement under agreement with Development Partner (DP) all the other exempted procurements should be under the procedures after in principle agreement with PPMO. [Sec 67(3)] • Procedures should be substantially in agreement with procurement principles. [Rule 87A]	• Exempted procurements other that security related and under agreement with DP are in conformity with the procurement principles provided by PPMO

2.5 Contract Management

This section deals with contracting and managing procurement contracts.

2.5.1 Contract Management

The contract management process from the perspective of the procuring office comprises three stages: pre contract award, contract administration, and contract closure depicted as below. [100]

Precontract Award	Contract Administration	Contract Closure
• Risk Assessment • Contract management strategy • Contract management plan	• Record management • Performance management • Managing Payments • Managing Changes • Claims and Dispute Management	• Contract closeout • Post contract review • Documenting contract records

A. Pre contract Award

Contract management needs to be considered early in the procurement process for it to be effective. [101]

1. Risk Assessment

To develop the contract and to prepare its implementation, a risk assessment should be conducted at an early stage of the procurement process. [102]

(i) The first aspect of risk assessment is to identify the contract risks
(ii) The second aspect of the risk assessment aims at addressing the risks. For the identified risks (e.g., delays in granting the contractor right of access to the site, payment delays, etc.), an action plan needs to be prepared for their mitigation

2. Contract management strategy

The contract management strategy is the approach to be adopted to ensure the proper management by the procuring office of contractor performance during contract implementation. This involves the following steps: [103]

[100] ADB Contract Management, Guidance note on procurement, July 2018
[101] ADB Contract Management, Guidance note on procurement, July 2018
[102] ADB Contract Management, Guidance note on procurement, July 2018
[103] ADB Contract Management, Guidance note on procurement, July 2018

(i) calibrating the relevant resources needed to conduct contract administration activities and to manage the risk management plan;
(ii) identifying the key performance indicators that will be monitored during contract implementation; and
(iii) defining how to communicate with the contractor during contract implementation (meetings, performance monitoring and reporting, etc.).

3. Contract management plan

The contract management plan is the primary tool that monitors contractor performance. It is the procuring office's internal document (not a contract document). It comprises a set of documents, tables, graphs, or flowcharts that illustrate the contract's key figures, roles, responsibilities, and objectives. [104]

(i) key roles and responsibilities,
(ii) key contractual dates and delivery milestones,
(iii) budget and payment milestones, and
(iv) record-keeping requirements.

B. Contract Administration

Contract administration starts at contract award and continues throughout the contract implementation period. It refers to the management of the day-to-day practicalities and administrative requirements under the contract. It makes up the bulk of contract management activities. [105]

1. Record Management

Records management is an important part of contract administration. Key contract information should always be kept up-to-date in the records to provide a comprehensive source of information. Common records to be maintained through records Management [106]

a) Key stakeholders
b) Contract documents
c) Insurance policies
d) Bank guarantees and indemnities
e) Sourcing documents
f) Plans and schedules
g) Safety management plans
h) Environmental management plans
i) Variations schedules
j) Correspondence (in and out)

[104] ADB Contract Management, Guidance note on procurement, July 2018
[105] ADB Contract Management, Guidance note on procurement, July 2018
[106] ADB Contract Management, Guidance note on procurement, July 2018

k) Performance reviews (including contract performance reviews and reports)
l) Meeting minutes
m) Financial documents (invoices, purchase orders)
n) Communication on claims

2. Performance Management

The procurement management requires monitoring of the performance and progress of awarded contracts. The procuring office should proactively manage each contract in accordance with the contract management plan (CMP) throughout the contract duration. This can be done either by the procuring office's staff or it can be done by engaging third parties with oversight by the procuring office. For works contracts, monitoring of progress will usually be carried out by engineer(s) or officials conducting regular site inspections and tests (including tests on completion and, as the case may apply, tests after completion). [107]

Performance management also involved monitoring of contractors' obligation to implement actions agreed in the safeguard management plans (environmental management plan, resettlement plan, and indigenous people's plan, as applicable). [108]

3. Managing Payments

Payments must be carefully managed under the relevant contract provisions. Proper management of payments means not only making (timely) payments as and when required under the contract, but also monitoring actual against planned payments (retrospective view) and assessing payments that will be due (prospective view). [109]

4. Managing Changes

The contract should set out the process for handling variations. Such provisions should cover those with authority to approve changes depending on value and significance (in terms of quality, cost, and timing), and how initiation and implementation of approved changes will take place. Contract variations can occur for a variety of reasons, including but not limited to: [110]

(i) changes in the scope of the work;
(ii) unforeseen events, e.g., ground conditions, climatic conditions; and
(iii) settlement of a claim arising from the contract.

In handling a variation claim, the procuring office should: [111]

[107] ADB Contract Management, Guidance note on procurement, July 2018
[108] ADB Contract Management, Guidance note on procurement, July 2018
[109] ADB Contract Management, Guidance note on procurement, July 2018
[110] ADB Contract Management, Guidance note on procurement, July 2018
[111] ADB Contract Management, Guidance note on procurement, July 2018

(i) assess the reasons for the variation, and whether this may show an emerging or actual performance problem;
(ii) assess the impact of the variation on the contract deliverables;
(iii) determine the effect the variation will have on the overall contract price and schedule; and
(iv) follow the terms and conditions stated in the contract for review and approval of variations.

5. Claims and Dispute Management

Things can go wrong on projects despite regular monitoring, leading to disputes. In the first instance, the procuring office and contractor should endeavour to resolve disputes amicably. Amicable resolution is sometimes not possible. Therefore, it is essential that a dispute resolution mechanism is specified in the contract at the time of drafting. This dispute resolution mechanism can then be used where disputes cannot be resolved amicably. For contracts involving a foreign contractor, international commercial arbitration is recommended. [112]

The conditions of contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. [113]

In case of works contracts, supply and installation contracts, and single responsibility (including turnkey) contracts, the dispute settlement provision shall include mechanisms such as dispute review boards or adjudicators, which are designed to permit a speedier dispute settlement. [114]

C. Contract Closure

1. Contract Closeout

The last stage of contract management is contract closure. Contract closure is often overlooked or handled poorly, since the main deliverables have been completed and parties to the contract focus on other priorities. However, contract closure is important because it provides a clear end to the contract with the contractor and minimizes the risks to the procuring office of: [115]

(i) potential contractual claims,
(ii) financial exposure, and
(iii) operational impact of a poor transition.

After the parties agree that the contract has been completed, the closure process (particularly for more complex works) typically requires the parties to: [116]

[112] ADB Contract Management, Guidance note on procurement, July 2018
[113] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014
[114] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014
[115] ADB Contract Management, Guidance note on procurement, July 2018
[116] ADB Contract Management, Guidance note on procurement, July 2018

(i) complete all administrative matters;
(ii) confirm that all the goods, services, and technical inputs have been received, including as-built drawings for works, operating manuals, user training, and guarantees or warranties;
(iii) test, install, inspect, commission, and hand over the works, goods, and, where appropriate, services;
(iv) prepare a final defects list;
(v) determine the extent of any liquidated damages to be deducted from the contract price;
(vi) prepare the completion certificate;
(vii) finalise payments;
(viii) during the liability period, follow up remedial works on the defects list;
(ix) record the date and details of the final inspection and issuance of the performance certificate;
(x) record the end of the retention and guarantee periods, and the date of release of retention monies and/or guarantees;
(xi) handle warranties, indemnities, and insurance;
(xii) summarise any claims made against or received from the contractor by the procuring office;
(xiii) record final contract payments, and reconcile all payments; and
(xiv) record any transfer of assets, asset verification, and disposals.

2. Post contract review

Best practice contract closure includes a post closure review consisting of: [117]

(i) safety and environmental performance, details of any significant incidents;
(ii) the financial outcome of the contract, i.e.,
    (a) the initial accepted contract amount,
    (b) the impact on the initial contract amount of changes to quantities (for unit price contracts),
    (c) price adjustments,
    (d) exchange rate fluctuations (for contracts payable in one or several foreign currencies), and
    (e) the impact on the contract cost of variations, claims, and disputes;
(iii) a comparison between the baseline program and actual/final time schedule;
(iv) an overall performance evaluation based on key performance indicators;
(v) any lessons learned and recommendations for future, similar projects.

3. Documenting Contract Records

The last task that needs to be carried out is the retention and secure housing of contract documentation and records. Such records as the as-built documents may be necessary to allow future works to be done. [118]

[117] ADB Contract Management, Guidance note on procurement, July 2018

[118] ADB Contract Management, Guidance note on procurement, July 2018

Objective of the Audit:

- Contracts have been entered for procurement in accordance with the law.

Associated Risks:

- All mandatory provisions of the acts and regulation not included or considered for the contract

SN	Particulars - Audit considerations	Basis of Testing
1	**Contract requirement:** Auditor needs to verify that contract exists for all procurement except petty purchases. [Sec 52(1)] • The content of the purchase contract is as per the requirements of law [Sec 52(2)] • The budget code is mentioned in the contract [Rule 109]	• Verify the list of the procurements made during the period (e.g OAG Form no 507 for construction works) • Content of the contract should be as per the law and as recommended by PPMO

2	**Selection of type of contract:** Auditor needs to verify whether type of contract is selected according to the nature of the procurement. [Rule 20]
	• Contract to procure goods and other services [Rule 21]
	  ○ PPR Schedue-3
	• Contract for construction work [Rule 22]
	  ○ PPR Schedue-4
	• Contract for consulting services [Rule 23]
	  ○ PPR Schedue-5
	The contract may have additional conditions other than specifically provided in the format without substantially deviating from the given conditions. [Rule 24]
		• Verify whether appropriate type of contract is entered into or not considering the nature of the procurement

3	**Performance Guarantee:** Auditor needs to verify whether performance guarantee is furnished before entering into a purchase contract. • Amount of guarantee and period is as per the law [Sec 27 and Rule 110]	• Performance guarantee is taken before entering into contract • Valid unexpired performance guarantee exists for all live procurement contracts of the office
4	**Contract Implementation:** Auditor needs to verify whether the office has followed following procedures for contract implementation: [Rule 111] • Post bid conference • Contract implementation plan and timetable • Progress monitoring and quality examination • Handing over the project site to the contractor • Budget and financial management including cost accounting • Contractor has put information board at the site • Systematic documentation of contract progress • Certification or approval of work completed	• Review the contract and related file and supporting documents to ensure that the contract procedure as envisaged under the law has been followed

SN	Particulars - Audit considerations	Basis of Testing
	• Periodic progress report prepared and reported to one level higher	
5	**Insurance:** Auditor needs to verify that insurance is done under the law [Rule 112]: • Contraction works more than NPR 10 Lakh • Contractors bears the liabilities for the losses, accidents and errors • Details such as coverage, amount, period will be as per Rule 112	• Review insurance documents • Verify the coverage amount and period of the insurance required under the law and under the contract

2.5.2 Advances

Advances for - Goods, works and other non-consulting services

In major contracts, sometime provisions are made for suitable advances/advance payments. The advance payment should be secured by a bank guarantee or performance bond from the supplier in accordance with the rules and regulations of the stipulated contract. [119]

Any advance payment for mobilization and similar expenses made upon the signature of a contract for goods, works and non-consulting services shall be related to the an estimated amount of these expenses and be specified in the bidding documents. Amounts and timing of other advances to be made, such as for materials delivered to the site for incorporation in the works, shall also be specified. The bidding documents shall specify the arrangements for any security required for advance payments. [120]

Advances for - Consulting Services

Payments for all advances (for example, for mobilisation costs) shall be secured by an advance payment security or guarantee.

Objective of the Audit:

- Advances have been disbursed within the limit and duly settled.

Associated Risks:

- Advances disbursed over authorised limit and not settled in accordance with the law and the contract.

SN	Particulars - Audit considerations	Basis of Testing
1	**Limit:** Auditor needs to verify that advance is approved to the supplier, contractor or service provider up to 20% of the contract value. [Sec 52A]	• There is the provision for advance (including for mobilisation) in the contract

[119] ASEAN-SAI Guidelines on Public Procurement

[120] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

SN	Particulars - Audit considerations	Basis of Testing
	• The advance is disbursed only after receipt of the advance bank guarantee (including counter grantee as applicable) ○ Guarantee period should be 1 month more than the period under contract within which the advance is to be settled. [Rule 113] • Initial advance does not exceed 50% of the approved advance	• Advance given against valid bank guarantee • Subsequent advances given based on the work progress
2	**Start of the work:** Auditor needs to verify that work is commenced within 30 days of receipt of the initial advance. [Sec 52A(4)]	• Evidence of commencement of work to be verified
1	**Utilisation of advance:** Auditor needs to verify that contractor/ supplier/ service provider submits to the office the information on utilisation of advanced amount. [Sec 52A(5) and Rule 113(2)] • If advance is used for other purpose than for execution of the contract, then the guarantee is forfeited. [Sec 52A(6)] ○ For supply of goods under letter of credit if goods are not supplied within stipulated time, LC is cancelled, and advance is settled. [Rule 113(8)]	• Documentary evidences are available for utilisation of advances to ensure that the amount is not used for any other purpose other than the advance was disbursed for
2	**Advance Settlement:** Auditor needs to verify that advance amount is settled with the each of the running bill or other invoice payments as mentioned in the contract. [Rule 113(5)] • For import of goods under letter of credit the advance is settled within 30 days of receipt of such goods. [Rule 113(7)]	• Outstanding advance settlement of current and previous contracts verified from the advance register
3	**Advance recovery:** Auditor needs to verify that if the advance could not be settled due to non-performance under the contract recovery is made by way of forfeiting the guarantee and charging 10% interest. [Rule 113(6)]	• Whether interest is charged on recovery of advance made by way of forfeiting the bank guarantee

2.5.3 Variation Order

Variation order is an alteration to the scope of works in a construction contract in the form of an addition, substitution or omission from the original scope of works upon request by the contractor and it must be reasonable and justifiable. [121]

The need for a modification to a contract during its implementation or the need for additional works, supplies or services may be avoided by good planning, by comprehensive specifications and by a well-designed contract. Even though flexibility to modify performance during its execution or additional deliveries, without the need to disrupt and going through a new procurement procedure, might be necessary to fulfil needs and achieve savings. [122]

However, it might also be a means of disrespecting the rules, favouring or rewarding a supplier, avoiding an open procurement or overcoming budgetary constraints. Therefore, modifications or additions to contracts should only be admissible in

[121] ASEAN-SAI Guidelines on Public Procurement

[122] The Contact Committee of the SAI of the European Union, Public Procurement Audit, 2018

exceptional cases. Modifications of contracts or direct award of additional tasks to the same contractor is a recurrent error in public procurement procedures. [123]

In principle, a new procurement procedure is required in cases of material or substantial changes to the initial contract, in particular to the scope and content of the mutual rights and obligations of the parties. This is particularly the case if the amended conditions would have had an influence on the outcome of the procedure, had they been part of the initial procedure. Thus, modification to a contract, without the need to carry out a new procurement procedure, is not acceptable where it results in an alteration of the nature of the overall procurement, for instance by replacing the works, supplies or services to be procured by something different or by fundamentally changing the type of procurement. [124]

Objective of the Audit:

- Variation order is issued only if stipulated under the contract and for justifiable reason

Associated Risks:

- Variation order is used as making excess payment.

SN	Particulars - Audit considerations	Basis of Testing

1	**Condition and limits for variation order:** Auditor needs to verify that variation order is issued for circumstances that could not be foreseen at the time of the contract. [Sec 54(1)]
	• Authority for approval variation order is as per the law. [Sec 54(2)]
	  ○ Variation order is not approved by authority lower than the one approving the cost estimate [Sec 54(3)]
	  ○ Chief of office can approve any variation order up to 15% of the procurement not exceeding NPR 60 Lac [Sec 54(4)]
	• Variation order for General Government in excess of 25% upon approval of the cabinet is to be supported by the investigation committee comprising experts. [Sec 54(2)]
		• Enquire with the management to find any contract variation has happened during the period. Also analyse OAG Form no 507.
		• Analyse to see that variation on item that could have been foreseen during planning & cost estimation has been done.
		• See whether conditions required for variation under the law has been met.
		• Approval of variation by the competent authority
		• Item decreased or removed by way of variation is contracted differently

2	**Procedure:** Auditor needs to verify whether the following details are put up to the authority approving the variation order: [Rule 118]	• Analyse with the cost estimation sheet to see whether high costing item

[123] The Contact Committee of the SAI of the European Union, Public Procurement Audit, 2018

[124] The Contact Committee of the SAI of the European Union, Public Procurement Audit, 2018

SN	Particulars - Audit considerations	Basis of Testing
	• Construction work, supply of goods and other services ○ Drawing, design or specification of the that requires or does not require change ○ Basic nature and scope will not be altered ○ Technical justification for variation ○ Effect on the cost estimate including the % ○ Included in approved budget and programme	has been increased and lower costing item has been decreased • Analyse original and revised cost estimate proportionately to see if the office has suffered any losses • Payment has not be made for increased quantity as compared with original cost estimate and BOQ before variation is approved • Justification for the new item included in variation and analyse the rate used whether different from original contract
3	**Procedure:** Auditor needs to verify whether the following details are put up to the authority approving the variation order: [Rule 118] • Consulting services ○ Scope, requirement, qualification, expertise for the consulting services requires changes or not ○ Technical justification for variation ○ Effect on the cost estimate including the % ○ Included in approved budget and programme	• Verify the necessity to engage consultant for services beyond what was contracted and its justification • Verify the dependency (e.g. contractor's delay) on consultant's services that has resulted in requirement for time extension • Any replacement of the consultants proposed in the proposals should be equally or more competent than initially proposed (by applying the same evaluation criteria)
4	**Expert vetting:** Auditor needs to verify whether variation order is issued after examination by the experts. [Rule 118(5)]	• Record or document of expert's vetting of the contract variation

2.5.4 Price adjustments

Bidding documents should state either that (a) bid prices will be fixed or (b) that price adjustments will be made to reflect any changes (upwards or downwards) in major cost components of the contract, such as labour, equipment, materials, and fuel. Price adjustment provisions are usually not necessary in simple contracts involving delivery of goods or completion of works within one year but can be included in longer term contracts. The bidding documents for contracts of shorter duration may also include a similar provision for price adjustment when future inflation is expected to be high. However, it is a standard practice to obtain firm prices for some types of equipment

regardless of the delivery time and, in such cases, price adjustment provisions are not needed. [125]

Prices shall be adjusted by the use of a prescribed formula (or formulae) which breaks down the total price into components that are adjusted by price indices specified for each component The formula(e) and the base date for application shall be clearly defined in the bidding documents. If the payment currency is different from the source of the input and corresponding index, a correction factor shall be applied in the formulae, to avoid incorrect adjustment. Under exceptional circumstances, bidding documents may provide for price adjustment on the basis of documentary evidence (including actual invoices) provided by the Supplier or Contractor. [126]

When to apply Price Adjustment[127]

(i) for goods contracts with long delivery periods;
(ii) for works contracts with long completion periods;
(iii) for major civil works contracts;
(iv) for contracts that contain supplies or commodities whose prices fluctuate significantly over a short period;
(v) for time-based consulting services, such as construction supervision services; and
(vi) due to any unusual circumstances in the market in question.

When not to apply price adjustment[128]

(i) simple supply contracts (i.e., not involving components that are usually affected by escalating or fluctuating prices) with short delivery periods;
(ii) the procurement of certain types of equipment where normal commercial practice requires bidders to submit firm prices regardless of the delivery time, which may be the case for
    (a) engineering, procurement, and construction contracting arrangements; and
    (b) fixed-price contracts that are common in projects financed by private sector financiers, who are generally reluctant to accept the risk of cost overruns, as it increases credit risk rating and reduces financial viability of the project.
(iii) Contracts for the supply, installation, and construction of facilities where in the value of the permanent works represents the major part of the estimated cost of the contract. All major equipment is usually supplied from fixed production lines; thus, an experienced manufacturer should be able to mitigate the risk of price fluctuations.

[125] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014
[126] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014
[127] ADB Price Adjustment – Guidance note on Procurement June 2018
[128] ADB Price Adjustment – Guidance note on Procurement June 2018

Three components of price adjustment formula

A non-adjustable component

The fixed portion of a price adjustment formula is calculated based on estimates of overhead costs, profit level, and price contingencies. It may also include [129]

(i) other cost components over which the contractor has reasonable control;
(ii) a stable price trend, such as costs for rental equipment and miscellaneous materials; and
(iii) those cost components that are regulated.

An adjustable component

The adjustable component covers major cost components of the contract such as labour, equipment, and materials, over which the contractor has no control. The components subject to price adjustment will be set out in tables of adjustment data included in the bidding documents and submitted as part of the bids. The bidding documents will specify how information in "Tables of Adjustment Data" is to be provided. Bidders will provide coefficients for an adjustable portion for payment in local currency. For payments in foreign currency, bidders will also provide a fixed portion as well as coefficients and indexes for an adjustable portion in their bids. [130]

In a civil works contract, costs of materials such as reinforced steel, bitumen, cement, labour, and fuel are significant and subject to prevailing market conditions; hence, they are commonly included in the adjustable portion of the contract. Many of these are indirect costs and will not appear as items in the bill of quantities, such as labour and fuel. Each of these costs will be given a coefficient or weight in the price adjustment formula, calculated based on its estimated portion out of the total cost estimate. [131]

A price index to measure adjustment

The identified adjustable components will be adjusted according to their objective price indexes. The choice of price index will depend on what is being measured. The cost of labour, for instance, may be affected by various factors including, but not limited to, general inflation and exchange rate fluctuation, and can be difficult to predict or control. The same may be true of other components and materials. Indexes are used to show increases in any of these elements that affect the price of the identified component. Potential indexes include [132]

[129] ADB Price Adjustment – Guidance note on Procurement June 2018
[130] ADB Price Adjustment – Guidance note on Procurement June 2018
[131] ADB Price Adjustment – Guidance note on Procurement June 2018
[132] ADB Price Adjustment – Guidance note on Procurement June 2018

(i) Local price indexes, applicable where the site is located, such as retail price index, consumer price index, minimum wages or labour rates, regulated prices, etc., provided by, for example, the state statistics agency. The use of these indexes may be mandated at the national level.

(ii) International indexes, sourced from reputable organisations and widely used by the business community. The sources of indexes must also be related to the source of foreign inputs and currencies of payment.

(iii) Comparable indexes, where acceptable local or international indexes are difficult to find, indexes of similar commodities used internationally or those from neighbouring countries in the region may be taken into consideration.

For the portion of contracts to be paid in the local currency, the procuring office often wants to specify in the bidding document the fixed coefficient and major cost items subject to price adjustment, including their coefficients, indexes, and source(s) of indexes. Sources of indexes should be publicly available for the project site or neighbouring areas. [133]

For the portion of contracts to be paid in foreign currency, indexes should be proposed by bidders and they will also specify in their bids the major cost items subject to price adjustment. If required by the procuring office, bidders need to substantiate their coefficients, indexes, and source(s) of indexes included in its bid prior to contract award. [134]

Objective of the Audit:

- Price adjustment is issued only if stipulated under the contract and for justifiable reason

Associated Risks:

- Price adjustment is used as making excess payment.

SN	Particulars - Audit considerations	Basis of Testing

1	**Condition for price adjustment:** Auditor needs to verify that price adjustment is done during contract execution if it is provided for in the contract: [Sec 55]
	• Price adjustment is done for
	  ○ Procurement contract exceeding 12 months OR
	  ○ If specifically provided in the contract document
	• Price adjustment is not done for
	  ○ Work not completed within stipulated time OR
	  ○ Lump-sum contract
		• Verify price adjustment decision and file in conjunction with the contract to justify price escalation
		• Contract has to be for more than 12 months
		• Price escalation may have been given form delayed performance and lump-sum contract

[133] ADB Price Adjustment – Guidance note on Procurement June 2018

[134] ADB Price Adjustment – Guidance note on Procurement June 2018

SN	Particulars - Audit considerations	Basis of Testing
2	**Construction work under NCB:** Auditor needs to verify that for construction work procured under national competitive bidding method any unexpected changes in prices of materials in excess of 10% are adjusted within the limit after deducting 10%. [Sec 55]	• Adjustments are made as per the legal requirement • Other than specifically provided in the GCC and SCC, Advances deducted from the running bills should be deducted while computing price adjustment
3	**Consulting services:** Auditor needs to verify whether consulting contract has provisions for price adjustment for consulting services more than 12 months	• Adjustments to be made on the provisional sum and the new rates has been done or not during price adjustment computation • Verify whether price adjustment has been done in accordance with the contract or not
4	**Contractual provision:** Auditor needs to verify that contract provides for the price adjustment [Rule 119(2)] • circumstances requiring price adjustment • Adjustment formula ○ Only covers labour, material and equipment • Maximum price adjustment • Component prices to be used in the formula • Indices to be used in the formula & baseline date • Measuring currency exchange rate fluctuation • Interval for applying adjustments • Conditions and restrictions to be fulfilled	• Verify the conditions and terms in the contract • Verify whether the formula, index given in the contract has been used in calculation of price adjustment • Re compute (wherever necessary) the price adjustment claim made by the contractor • Check the base rate, current rate and period for which escalation has been given • For Extended contract or milestone index of the milestone date taken instead that of the payment month • Impact of the changes in currency rates appropriated included in the price adjustments

5	**Limit:** Auditor needs to verify that price adjustment does not exceed 25% of the original contract price. [Rule 119(3)]
	• The price adjustment in excess of the limit office has done either of the following
	  ○ Terminate the contract; or
	  ○ Negotiate with contractor, supplier, consultant or service provider to limit within the approved budget; or
	  ○ Pursue other measures; or
	  ○ Arrange for additional budget
		• Legal limit of price adjustment has been adhered to in computing price adjustment

2.5.5 Time extension

Objective of the Audit:

- To ensure that contract time has been extended for justifiable reasons

Associated Risks:

- Undue benefit is given to the contractor at the cost to the office

SN	Particulars - Audit considerations	Basis of Testing
1	**Conditions for time extension:** Auditor needs to verify that the contract period is extend for the following reasons only [Sec 56(2)] and [Rule 120(2)] • Office is unable to meet it contractual obligations under the procurement contract • Conditions /circumstances beyond the control • Other valid reasons	• Valid justification for the time extension has been documented • Analyse OAG form no 507 for any time extension cases
2	**Procedure:** Auditor needs verify whether the contractor, supplier, service provider or consultant has made an application 21 days prior to deadline of the contract [Rule 120(1)	• Timely submission of application for extension of contract period • Extension of insurance, performance guarantee and advance guarantee done or not
3	**Limit of extension:** Auditor needs to verify that contract is extended within following limits or the original contract period: • 15% by the office chief [Rule 120(3)] • 25% by the department head [Rule 120(3)] • >25% by the chief accounting office [Rule 120(4)] • Cannot be extended beyond 50%	• Whether the legal limit for time extension has been adhered to or not
4	**Consequence of non-completion:** Auditor needs to verify whether contractor, supplier, service provider or consultant not completing the contractual obligation within the extended period is recommended for black-listing and legal actions after confiscating the performance guarantee and any other deposits. [Rule 120(6)]	• Whether proceedings for blacklisting and legal actions initiated or not • Whether performance guarantee and other deposits have been confiscated or not

2.5.6 Liquidated damages

Provisions for liquidated damages or similar provisions in an appropriate amount shall be included in the conditions of contract when delays in the delivery of goods, completion of works, or failure of the goods, works, and non-consulting services to

meet performance requirements would result in extra cost, or loss of revenue, or loss of other benefits to the procuring office. [135]

Provision may also be made for a bonus to be paid to suppliers or contractors for completion of works or delivery of goods ahead of the times specified in the contract when such earlier completion or delivery would be of benefit to the procuring office. [136]

Objective of the Audit:

- Liquidated damage is claimed and recovered on timely manner.

Associated Risks:

- Liquidated damage not claimed and recovered on time.

SN	Particulars - Audit considerations	Basis of Testing

1	**Provision in the contract:** Auditor needs to verify that the provision regarding liquidated damages in included in the procurement contract [Rule 121]
	• Work under the procurement contract could not be completed within the specified time due to the delay on the part of the supplier, consultant, service provider or contractor
	  ○ 0.05% percent of the contract price per day not exceeding ten percent of the contract price
	  ○ Not liable for delays due to *force majeure*
	• Supplier, consultant, service provider or contractor are not absolved from the obligation to complete their performance of the contract by just paying the liquidated damages
		• Legal requirement for liquidated damages claimed or not
		• Relate the test of liquidated damage with time extension, variation, work completion, dispute management and payments
		• Any work not completed under the contract is revived from OAG Form 507 and verify whether recommended for legal action

2.5.7 Inspection and Examination

Pre-shipment Inspection

Pre-shipment inspection and certification of imports is one of the safeguards for the procuring office, particularly where the country has a large import program. The inspection and certification usually covers quality, quantity, and reasonableness of price. Imports procured through ICB procedures shall not be subject to price verification, but only verification for quality and quantity. However, imports not procured through ICB may additionally be subjected to price verification. Physical inspection services may also be included. The inspection service providers are

[135] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

[136] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

ordinarily paid for on a fee basis levied on the value of the goods. Costs for certification of imports shall not be considered in the evaluation of bids under ICB. [137]

Objective of the Audit:

- Other legal matters have been considered and complied

Associated Risks:

- Non-inspection and examination of goods.

SN	Particulars - Audit considerations	Basis of Testing
1	**Pre-shipment Inspection:** Auditor needs to verify whether the office has through its representative to inspect the goods manufactured out of Nepal before they are shipped. [Rule 114] • Such inspection is optional	• Verify if goods or equipment are imported pre-shipment inspections are required under the contract
2	**Examination of goods and approval:** Auditor needs to verify whether the office has inspected and examined the goods to ensure that they are according to the technical specification mentioned in the contract. [Rule 115] • Has assigned to a committee of experts to conduct sample testing • Any dispute, as a result of the inspection or examination conclusion is to be treated as per the provisions of the contract.	• Under the procurement contract which all costs are to be borne by the supplier determine under the contract and incoterms. (**Incoterms: conditions are summarised in the Annexure**) • Verify Bill of lading / airway bill / railway receipt, packaging list, proforma invoice and final invoice • Whether imported goods and equipment meet the technical specification and quality standard requirements and have been inspected as required under the contract

2.5.8 Payment

Goods, works and other non-consulting services

Payment terms shall be in accordance with the contract and the applicable commercial practices applicable to the specific goods, works, and non-consulting services. [138]

(c) Contracts for supply of goods shall provide for full payment on the delivery and inspection, if so required, of the contracted goods except for contracts

[137] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

[138] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

involving installation and commissioning, in which case a portion of the payment may be made after the supplier has complied with all its obligations under the contract. The procuring office may use of letters of credit so as to assure prompt payment to the supplier. In major contracts for equipment and plant, provisions shall be made for suitable advances and, in contracts of long duration, for progress payments during the period of manufacture or assembly.

(d) Contracts for works shall provide, in appropriate cases for mobilisation advances, advances on Contractor's equipment and materials, regular progress payments, and reasonable retention amounts to be released upon compliance with the Contractor's obligations under contract. In contracts of long duration, progress payments will have to be made during the period of construction works based on the work completion and the provisions of the contract.

(e) Bidding documents shall specify the payment method and terms offered, whether alternative payment methods and terms will be allowed, and, if so, how the terms will affect bid evaluation.

Consulting services

Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, shall be agreed upon during contract negotiations. Payments may be made at regular intervals (as under time-based contracts) or for agreed outputs (as under lump-sum contracts). Payments shall be made promptly in accordance with the contract provisions. To that end: [139]

(a) consultants can be paid through cheque payments, direct bank account transfer or a Letter of Credit;

(b) only disputed amounts shall be withheld, with the remainder of the invoice paid in accordance with the contract; and

(c) the contract shall provide for the payment of financing charges if payment is delayed due to the procuring office's fault beyond the time allowed in the contract; the rate of charges shall be specified in the contract.

Objective of the Audit:

- Payments under the procurement contract is made in accordance with the law and provisions of the contract.

Associated Risks:

- Payments being made beyond legal and contractual provisions.

[139] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

SN	Particulars - Audit considerations	Basis of Testing

1	**Billing / Invoicing:** Auditor needs to verify whether payment against the bill/invoices has been in accordance with the procurement contract. [Sec 57]
	• While making running bill or any other bill / invoice compliance of contract terms have been ensured [Rule 123]
	  ○ Monthly basis,
	  ○ Technical measurements in measurement book for work performed
	  ○ Contract indicates performance indicators and payment milestones
	  ○ Works delivered
	  ○ Terms of letter of credit etc.
		• Payments to the contractors, suppliers, service providers and consultants reconciled with other records such as OAG Form no 507

2	**Matters to be included in the bill / invoice:** Auditor needs to verify that the bill / invoice (including running bill) contains information required by the law. [Rule 122] • E.g. date, contract reference, goods delivered (purchase order), services provided, construction measurement, quantity and price, shipment and payment terms etc.	• Valid invoice / bill submitted or not • Supporting documents submitted along with the invoice / bill • Invoice / bill is clear and no overwriting is observed
3	**Payment:** Auditor needs to verify whether payment has been approved and made within 30 days on receipt of running bill or other bill / invoice: [Rule 123(5)] • If they meet the legal conditions and are in order • Payment of interest as stipulated in the contract [Rule 123(7)] • Account payee cheque for amount more than NPR 25K	• While making the payment for running bill or any other bill (invoice) under contract the verify measurement book for technical certification or performance measurement or KPI achievements • Check whether the recipient is the VAT non-filer or not • Check performance guarantee advance guarantee are valid and not expired before making the payment
4	**Retention money:** Auditor needs to verify that retention money is deducted from the running bill or other bill / invoice while making the payment: [Rule 123(4)] • Retention amount 5% of the invoice amount ○ Other than for construction work, if contract does not require retention no amount is withheld as retention	• Retention money required to be withheld under the law and the contract has been deducted while making the payments

5	**Deductions:** Auditor needs to verify whether
	• Early payment discount: [Rule 123(5)
	  ○ If the contract stipulates early payment discount such discount is deducted at the time of making payments
	• Withholding taxes
	  ○ Applicable withholding taxes are made at the time of payments
	• For works not performed or services /goods not delivered amount may be withheld or deducted [Rule 123(6)(b)]
		• Any discount as indicated under the contract has been deducted or not
		• Resources (such as material, equipment or HR) provided by the office deducted or not

SN	Particulars - Audit considerations	Basis of Testing
		• Applicable withholding tax has been deducted or not (TDS) • Applicable VAT withholding has been made or not (under prevalent laws) - 50% VAT
6	**Final Payment:** Auditor needs to verify that final payment is made only after works under the procurement has been completed and accepted by the office. [Rule 124(1)] • 50% of retention money is paid immediately and remaining 50% after receipt of the evidence of tax return submission to IRD ○ For a JV the entire retention money is payable only after the tax return submission.	• Verify the legal requirements for making the final payments • Review the contract terms • Review the quality test certification as required by the QC Plan (also applicable for running bill) • Enquire with contractor if there are any remaining claims under the contract including the justification
7	**Reward:** Auditor needs to verify that reward is paid only if the contract is completed earlier than stipulated time frame: [Rule 126] • Amount depends on the number of days ahead the completion is achieved • Not exceed 10% of the contract price	• Analyse the time taken for work completion and eligibility to receive rewards under the contract terms

8	**Payment for termination on the ground of convenience:** Auditor needs to verify the office has terminated the purchase contract on the ground of convenience in public benefit. [Sec 59(4)]
	• Office pays, after deducting the advance, to the contractor/ supplier / consultant / service provider for termination on ground of convenience as follows: [Rule 127]
	  ○ Acceptable work / supply /service completed
	  ○ Site materials for construction work
	  ○ Equipment removal costs
	  ○ Return travel cost of foreign workers
		• Review the file for termination of the contract on the grounds of convenience
		• Check the computation of the amount to be payable with the work completed and accepted till the date of termination
		• Adjust for site materials, equipment removal costs and return travel as provided under the contract

9	**Payment Consulting services:** Auditor needs to verify whether payment has been approved and made within 30 days on receipt of running bill or other bill / invoice: [Rule 123(5)] • If they meet the legal conditions and are in order • Payment of interest as stipulated in the contract [Rule 123(7)] • Account payee cheque for amount more than NPR 25K	• For Time Based Consulting Contract verify the attendance / timesheet of the individual consultants • For deliverable based payment verify the deliverables completed to the satisfaction of the office as contracted • Payment in foreign currency is as agreed in the contract

SN	Particulars - Audit considerations	Basis of Testing
		and appropriate exchange rate has been applied • Applicable withholding of taxes has been made • Appropriateness has been applied in payment of high value provisional and reimbursement expenses under consulting contracts

2.5.9 Contingencies

Objective of the Audit:

- Contingencies are created and spent in accordance with the procurement principles of purpose and value for money.

Associated Risks:

- Contingencies are used for purpose other than they were created for.

SN	Particulars - Audit considerations	Basis of Testing
1	**Creation of contingencies:** Auditor needs to verify that contingencies are created in the cost estimate up to the following limit: • For construction Works [Rule 10(7) and Schedule 1)] ○ 4% of the cost estimate before contingencies that includes ▪ 2% for Work Charge Staff Expenses ▪ 2% for other petty expenditures • For consulting services [Rule 12(4) and Schedule 1A) ○ 4% of the cost estimate before contingencies that includes ▪ Office management expenditure	• Whether the office as procedural directives to spend contingencies • Detail records of contingent expenditure • Test the possibility of double charging of expenditure i) to contingencies ii) other to the budget headings • Whether legal norms and requirements have been followed for utilising the contingencies
2	**Utilisation of contingencies:** Auditor needs to verify whether contingencies work charge staff expenses, petty expenditures, office management expenditures) have been appropriately utilised in accordance with the legal provisions and requirements	• Whether the contingencies (directly relates with the procurement and the contract • Whether vehicle or heavy equipment purchased from contingency

2.5.10 Payment by Letter of Credit (LC)

Objective of the Audit:

- Payment by Letter of credit are in accordance with the law and LC terms

Associated Risks:

- Non-compliance with LC terms and non-timely settlement of LC

SN	Particulars - Audit considerations	Basis of Testing
1	**Contract for goods:** Auditor needs to verify that payment under the contract for Goods and Other Services has to be done after the supplier has provided evidence of supplied goods under Letter or Credit (LC) or the mode of payment as agreed under the contract. [Rule 21(5)]	• Review the LC documents and the related files for procurement under a LC • Uniform Customs & Practice for Documentary Credits (UCP 600) for LC transactions
2	**Office's responsibility:** Auditor needs to verify that office has make timely arrangement for opening of Letter of Credit (LC) if it has been provided for in the procurement contract. [Rule 111(1)(c)]	• Verify that office has facilitated on the opening of the LC
3	**LC Advance and Settlement:** Auditor needs to verify that goods procured by way of LC hs to settle the advance amount within 30 days of receipt of goods at the agreed premises [Rule 113(7) • **LC Cancellation:** Auditor needs to verify that if goods are not received as agreed and within stipulated period LC has to be cancelled and advance / deposit amount with the bank has to be recovered	• Advance / deposit for opening an LC is settled timely after the receipt of the goods • Review the closure document of the LC • Review whether there is additional cost or liability for non-receipt of goods on time
4	**Bill / Invoice Payment:** Auditor needs to verify that the basis of payment for goods purchased using LC are the terms and conditions agreed under the LC. [Rule 123(1)(e)]	• Verify the commission paid on LC is in accordance with LC documents • Withholding taxes have been deducted and duties and charges paid • Custom documents are verified

2.5.11 Work completion

Objective of the Audit:

- Work completion is duly assessed and reported.

Associated Risks:

- Work completion procedures not completed and reported.

SN	Particulars - Audit considerations	Basis of Testing
1	**Work acceptance report:** Auditor needs to verify whether work acceptance report is prepared for accepting construction work, supply of goods and delivered services. [Rule 117] • The content of the report among other this includes:	• Work acceptance report is issued before making the final payment

SN	Particulars - Audit considerations	Basis of Testing
	○ Contract number ○ Completed construction work, supply of goods or services received ○ the date of completion ○ completion approval date • Payment is processed after the approval of the work completion report • Construction work completion is approved only after its operational appropriateness	• If contract provides for 'substantial completion' verify the nature of the outstanding works to see whether they indicate substantial completion or not • Field visit (as considered essential by the auditor)
2	**Work Completion report**: Auditor needs to verify that whether the contractor for construction work has submitted 'As-Built' drawing to the office within 30 days of completion of the work [Rule 125] • Defects identified within the defect liability period is the obligation of the contractor • Technical staff of the office, after expiry of the defect liability period, examines and conforms the approved drawing, design or specifications and prepare the work completion report • Work completion report is submitted to the authority approving the bid • Work completion report is approved if the construction work conforms with the drawing, design or specifications	• 'As built' Drawing submitted within 30 days from the date of completion • Insurance policy is valid covering the maintenance period of the construction works • Review any payments made to the contractor during the maintenance period • Work completion report is prepared after the expiry of the defect liability period • Field visit (as considered essential by the auditor)

2.5.12 Dispute Management

Objective of the Audit:

- Disputes on contracts are amicably settled

Associated Risks:

- Dispute may lead to cost and many raise questions the credibility of the public entity

SN	Particulars - Audit considerations	Basis of Testing
1	**Amicable Settlement:** Auditor should verify that any dispute arising on implementation of the procurement contract between the office and the contractor / supplier / service provider / consultant should be settled amicably by way of dialogue. [Sec 58(1) and Rule 129]	• Review the effort and actions of the office and the party to settle the dispute amicably
2	**Use of Arbitration:** Auditor needs to verify that whether any dispute that cannot be settled amicably by way of dialogue is being considered for settlement by use of arbitration process under the prevalent laws. This has to be provided for in the procurement contract itself. [Sec 58(2) Rule 135]	• Enquire the circumstances that the contractor does not start the work, or leaves the work incomplete, or does not act in accordance with the procurement contract assess the cost and

SN	Particulars - Audit considerations	Basis of Testing
		obligation to the office to proceed to the arbitration process or to the legal recourse.

2.5.13 Code of conduct

Goods, works and other non-consulting services

A firm participating in a procurement process shall not have a conflict of interest. Any firm found to have a conflict of interest shall be ineligible for award of a contract. A firm shall be considered to have a conflict of interest in a procurement process if: [140]

(a) such firm is providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of a project that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm. This provision does not apply to the various firms (consultants, contractors, or suppliers) which together are performing the Contractor's obligations under a turnkey or design and built contract; or

(b) such firm submits more than one bid, either individually or as a joint venture partner in another bid, except for permitted alternative bids. This will result in the disqualification of all bids in which the Bidder is involved. In certain type of procurements inclusion of a firm as a sub-contractor in more than one bid may be allowed as allowed by the Standard Bidding Documents applicable to such types of procurement: or

(c) such firm (including its personnel) has a close business or family relationship with a professional staff of the procuring office who: (i) are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in an acceptable manner; or

(d) such firm does not comply with any other conflict of interest situation as specified in the Standard Bidding Documents relevant to the specific procurement process.

Consulting services

The consultants should provide professional, objective, and impartial advice and at all times hold the client's interests paramount, without any consideration for future work, and that in providing advice they avoid conflicts with other assignments and their own corporate interests. Consultants shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may

[140] The World Bank – Guidelines for Procurement of Goods, Works and Non-Consulting Services July 2014

place them in a position of being unable to carry out the assignment in the best interest of the procuring office. Without limitation on the generality of the foregoing, consultants shall not be hired under the circumstances set forth below: [141]

(a) Conflict between consulting activities and procurement of goods, works, or non- consulting services (i.e., services other than consulting services): A firm that has been engaged by the procuring office to provide goods, works, or non-consulting services for a project, or any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm, shall be disqualified from providing consulting services resulting from or directly related to those goods, works, or non-consulting services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, or any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm, shall be disqualified from subsequently providing goods, works, or services resulting from or directly related to the consulting services for such preparation or implementation. This provision does not apply to the various firms (consultants, contractors, or suppliers) which together are performing the Contractor's obligations under a turnkey or design and build contract.

(b) Conflict among consulting assignments: Neither consultants (including their personnel and sub-consultants), nor any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm, shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultants. As an example, consultants hired to prepare Terms of Reference (TOR) for an assignment shall not be hired for the assignment in question.

(c) Relationship with procuring office's personnel: Consultants (including their experts and other personnel, and sub-consultants) that have a close business or family relationship with a professional officials of the procuring office who are directly or indirectly involved in any part of: (i) the preparation of the TOR for the assignment, (ii) the selection process for the contract, or (iii) the supervision of such contract may not be awarded a contract, unless the conflict stemming from this relationship has been resolved in an acceptable manner

(d) A consultant shall submit only one proposal, either individually or as a joint venture partner in another proposal. If a consultant, including a joint venture partner, submits or participates in more than one proposal, all such proposals shall be disqualified. This does not, however, preclude a consulting firm to participate as a sub-consultant, or an individual to participate as a team member, in more than one proposal when circumstances justify and if permitted by the RFP.

Unfair Competitive Advantage

[141] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014

Fairness and transparency in the selection process require that consultants or their affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, the procuring office shall make available to all the short-listed consultants, together with the request for proposals, all information that would in that respect give a consultant a competitive advantage. [142]

Objective of the Audit:

- All involved in the procurement process abide by the code of ethical conduct.

Associated Risks:

- Breach of ethical codes specified by the law during and for the procurement proceedings.

SN	Particulars - Audit considerations	Basis of Testing
1	**Code of Conduct of the officials:** Auditor needs to verify the impact of the possible breach of code of conduct by the officials of the office in the procurement proceedings. [Sec 61]	• Fairness, transparency and integrity are observed by the officials • Officials do not favour or discriminate any particular bidder or applicant • Conflict-of-interest are declared disclosed and appropriately dealt
2	**Code of conduct of bidder / proposers:** Auditor needs to verify the impact of the possible breach of code of conduct by the bidder / proposer of the office in the procurement proceedings. [Sec 62]	• Bidders and proposers act in ethical way by disclosing faithfully in their bids and proposals • Ethically execute the contract in performing their duties and fulfilling their obligations
3	**Consultant to avoid conflict of interest:** Auditor needs to verify the impact of the possible conflict to interest by the consultant in the procurement proceedings. [Sec 138]	• Both bidders/proposers and the officials of offices are mindful of the conflict-of interest situation and manage them appropriately and ethically

[142] The World Bank, Guidelines on Selection and Employment of Consultants, July 2014

INCOTERMs, 2020

The Incoterms rules are International Chamber of Commerce trade and transportation definitions relating sale and purchase of goods. They deal the obligation of seller and buyer for the transportation of goods. They are not the sales contract nor dealt with payment, currencies of payment, specification of goods etc.

The Incoterms rules describe following three situations:

a. Obligation between parties i.e., obligation between seller and buyer regarding loading, transportation, insurance, transit formalities, customs formalities, documentation etc.
b. Risk: Place where the seller delivers the goods, i.e., place of transfer of risk
c. Transit cost: cost obligation between seller or buyer for each component of cost

Following are the point of place for transfer of risk, transportation cost and insurance cost in each INCOTERMs 2020:

		Transfer of risk	Transportation cost to the seller up to	Insurance cost to the seller up to
Multi-model transport (land, sea or air)				
EXW	Ex-Works	Seller's warehouse	Seller's warehouse	
FCA	Free Carrier	At inland carrier at named place	Agreed place of seller's country	
CPT	Carriage Paid to	At the first carrier place	Agreed place of buyer's country	
CIP	Carriage and Insurance Paid to	At the first carrier place	Agreed place of buyer's country	Place of destination
DPU	Delivered at Place Unloaded	Agreed place of buyer's country	Agreed place of buyer's country	
DAP	Delivered At Place	Agreed place of buyer's country	Agreed place of buyer's country	
DDP	Delivered Duty Paid	Agreed place of buyer's country	Agreed place of buyer's country	
Sea and inland waterways				
FAS	Free Alongside Ship	Alongside ship at named port	Originating port terminal	
FOB	Free On Board	On board vessel at originating port	Originating port vessel	
CFR	Cost and Freight	On board vessel at named port	Destination port	
CIF	Cost Insurance & Freight	On board vessel at destination port	Destination port	Destination port

महालेखापरीक्षकको कार्यालय
Office of the Auditor General

बबरमहल, काठमाडौं, नेपाल
Babar Mahal, Kathmandu, Nepal
नीति योजना तथा जनशक्ति विकास महानिर्देशनालय

पत्र संख्या २०७७।७८ च नं ०३

मिति २०७७।४।१६

विषय **नेपाल सरकारी लेखापरीक्षण मानको कार्यान्वयन सम्बन्धमा**

श्री सबै विभागहरु

श्री सबै महानिर्देशनालयहरु

श्री सबै निर्देशनालयहरु

महालेखापरीक्षकको कार्यालय ।

उपरोक्त सम्बन्धमा लेखापरीक्षण ऐन, २०७५ को दफा २९ ले दिएको अधिकार प्रयोग गरी महालेखापरीक्षकले गर्ने लेखापरीक्षणलाई वस्तुपरक, विश्वसनीय र भरपर्दो बनाई लेखापरीक्षणको गुणस्तर अभिबृद्दि गर्न साविकमा स्वीकृत भएका सरकारी लेखापरीक्षण मानदण्ड एवं सरकारी लेखापरीक्षण नीति मानदण्ड खारेज गरी सर्वोच्च लेखापरीक्षण संस्थाहरुको अन्तर्राष्ट्रिय संगठनले जारी गरेका अन्तर्राष्ट्रिय लेखापरीक्षण मान (INTOSAI Framework for Professional Pronouncements, IFPP) मा आधारित "नेपाल सरकारी लेखापरीक्षण मान" (Nepal Government Auditing Standards, NGAS) २०७७।४।१६ मा स्वीकृत गरिएको छ । अत कार्यालयबाट यस वर्षदेखि लेखापरीक्षण गर्दा तपसीलका नेपाल सरकारी लेखापरीक्षण मानको कार्यान्वयन गर्नु हुन अनुरोध छ ।

तपसील

NGAS नम्बर	नेपाल सरकारी लेखापरीक्षणमानको नाम
INTOSAI-P 1	The Lima Declaration
INTOSAI-P 10	Mexico Declaration on SAI Independence
INTOSAI-P 12	The Value and Benefits of Supreme Audit Institutions- making a difference in a life of citizens
INTOSAI-P 20	Principles of Transparency and Accountability
ISSAI 100	Fundamental Principles of Public-Sector Auditing
ISSAI 130	Code of Ethics
ISSAI 140	Quality Control for SAIs
ISSAI 200-299	FInancial Audit Principles
ISSAI 300-399	Performance Audit Principles
ISSAI 400-499	Compliance Audit Principles
ISSAI 2000-2899	Financial Audit Standards
ISSAI 3000-3899	Performance Audit Standards
ISSAI 4000-4899	Compliance Audit Standards

जानकारीको लागि

माननीय महालेखापरीक्षकज्यू ।

भवदीय

(घनश्याम पराजुली)
नायव महालेखा परीक्षक

Phone: 4258174, 4266034, 4255707, A.G. Fax: 977-1-4268309, Fax: 977-1-4262798, Post Box: 13328
email: aag.mgmt@oagnep.gov.np Web Page: www.oagnep.gov.np