

Implementing Green Public Procurement in Bhutan:

Recommendations for a revision of the Standard Bidding Documents

October 2016

INTRODUCTION

International Institute for Sustainable Development (IISD) and the Green Public Procurement in Bhutan (GPP Bhutan) Project welcome the opportunity to review the Standard Bidding Documents (SBDs) of the Royal Government of Bhutan (RGoB) on **Goods above Nu. 0.250 Million** (April 2009, revised April 2013) to assess the extent to which they facilitate the implementation of Green Public Procurement. Green public procurement requires that governments seek to:

- Optimize value-for-money across the life cycle of the goods, services and works that they procure. As such they seek to award bids to the lowest price *across the product and asset life cycle* as opposed to the lower price at the time of purchase alone.
- Position public demand or goods, services and works as drivers for environmentally, socially and economically sustainable development. Given that the public procurement is equivalent to 17.4% (in 2014) of the GDP of Bhutan, this scaled-up demand can be an incentive for suppliers to produce and supply sustainable goods and services.

The SBDs require that bids are evaluated and awarded based on the concept of the 'lowest evaluated bid' – the bid that is evaluated to offer the lower price after consideration of all factors including in the technical specifications and tender award criteria pursuant to Clause 33 Responsiveness of Bidders and Clause 39 Evaluation of Bids. This includes costs of major replacement components, availability in Bhutan of spare parts and after sales services, projected operating and maintenance costs and performance and productivity of equipment. Accordingly, the SBDs provide instructions on the practice of green public procurement.

In addition, Clause 21.4 on Documents Establishing the Conformity of the Goods and Related Services provide further clarity on the use of standards and brand names, and their equivalents. This clause provides the space for public procurers to use the knowledge embedded in environmental and social standards and labels to develop technical specifications that include sustainability performance. Environmental and social standards and labels are used to inform markets (buyers, sellers, procurers and consumers) on why a product is more environmentally-friendly and socially-preferable. This intelligence can, in

turn, be used by procurers to understand and identify environmentally and socially preferable products. They can also choose to use this intelligence to develop technical specifications that include environmental and social performance as mandatory or optional criteria. Clause 21.4 also provides the space for suppliers to use standards and labels as indicators of performance and conformity in responding to bids.

Despite this space that the SBDs provide to implement GPP, it is possible to provide **additional guidance** in the SBDs for the Procurement of Goods on the concept of the lowest evaluated tender and on what constitutes an environmentally-friendly and socially-preferable goods and assets. The amendments proposed below are made in this spirit. The comments and suggestions are made in light of the new SBDs of the World Bank (2016) under the New Procurement Framework which places the value-for-money principle at the centre.

There is also the option for the RGoB to use the 2015, Green Public Procurement “Buying Green, A Handbook for Policy Makers and Public Procurers”, Volume 1 on Goods and Services and Volume 2 on Public Works.¹ These handbooks are posted at <http://www.gppbhutan.bt/project-publications>. Both handbooks include listings of environmental and social criteria for all items of frequent public spend. The RGoB may choose to review these listings and refer to them as guidance materials.

Finally, the GPP Bhutan project, in light of earlier policy recommendations, would like to make the following policy recommendations in parallel to the SBD revision:

- A set aside of a percentage of government spend (for example 20%) for green products and/or services. This will help departments dedicate a fixed share of their budget to green products and/or services.
- Similar to the existing domestic price preference that can be used to favour domestic goods and services, a preference for green goods and services can be introduced, if the price difference does not exceed a determined margin of preference. This is already provided for in the SBD clause 38 for local suppliers.
- Pre-qualification of suppliers based on their environmental and social performance is another way of greening public procurement in Bhutan.

The implementation of GPP in Bhutan will help deliver on the Sustainable Development Goals (SDGs), to which all UN Members committed in September 2015. SDG 12 on Sustainable Consumption and Production, Target 7 encourages governments to “Promote public procurement practices that are sustainable, in accordance with national policies and priorities”.

¹These handbooks are posted at <http://www.gppbhutan.bt/project-publications>

PROPOSED AMENDMENTS PART I, SECTION 1: INSTRUCTIONS TO BIDDERS.

1. New section on green public procurement

Add new section 3 on Green Public Procurement (after section 2 of Fraud and Corruption).

Proposed text:

In accordance with the principles on sustainable development that are included in the constitution of Bhutan, the RGoB seeks to optimize value-for-money across product and asset life cycles when procuring goods and services. This requires that tenders are awarded based on the lowest evaluated bid – the bid that is evaluated to offer the lower price after consideration of all factors including in the technical specifications and tender award criteria pursuant to Clause 33 and Clause 39. This includes Costs of major replacement components, availability in Bhutan of spare parts and after sales services, projected operating and maintenance costs and performance and productivity of equipment.

2. Clause 22, Documents Establishing the Qualification of Bidder

Add text requiring bidders to have documented evidence of implementing corporate sustainability policies and environmental and social management plans.

3. Clause 33, Responsiveness of Bids

Add text to 33.1 a definition of lowest evaluated bid.

..... to select the lowest evaluated Bid. *The lowest evaluated Bid is the bid that offers the lower price after consideration of all factors including in the technical specifications and tender award criteria pursuant to Clause 33 and Clause 39.*

4. Clause 39, Evaluation of Bids

Add clause 39.3.(g) Evaluation will take into account the costs of major replacement components, availability in Bhutan of spare parts and after sales services, projected operating and maintenance costs and performance and productivity of equipment. These conditions are pursuant to Section III Evaluation and Qualification Criteria, 2(c).

5. Add a clause on Abnormally Low Bids

Proposed text:

An Abnormally Low Bid is one where the Bid price in combination with other constituent elements of the Bid, appears unreasonably low to the extent that the Bid price raises material concerns with the Purchases as to the capability of the Bidder to perform the Contract for the offered Bid price.

In the event of the identification of a potentially Abnormally Low Bid, the Purchaser shall seek written clarification from the Bidder, including a detailed price analyses of its Bid price in relation to the subject matter of the contract, scope, delivery schedule, allocation of risks and responsibilities and any other requirements of the bidding document.

After evaluation of the price analyses, in the event that the Purchaser determines that the Bidder has failed to demonstrate its capability to perform the contract for the offered Bid price, the Purchaser shall reject the Bid.

This is in line with the revised World Bank SBD

6. Clause 43. Award of Contract

Add text to 43.1 to describe lowest evaluated bid.

..... to select the lowest evaluated Bid. *The lowest evaluated Bid is the bid that offers the lower price after consideration of all factors including in the technical specifications and tender award criteria pursuant to Clause 33 and Clause 39.*

PROPOSED AMENDMENTS PART I, SECTION II: BID DATA SHEET

ITB 38.1 – A margin of preference on green goods can be given here in addition to a margin for domestic preferences.

ITB 39.3 (e) – The list of criteria outlined here includes the criteria that can be used to implement GPP in practice. We suggest to always using criteria (c) to (f) to ensure greener procurement.

- Under criterion (f) specific attention can be given to environmental and social attributes Environmental attributes include: Reusable (contain reusable parts, are reused or refurbished); Recyclable (can be recycled at the end of its useful life); Contain recycled material; Produce fewer pollutants (produce fewer polluting by-products, such as greenhouse gas emissions and air contaminants during manufacture, use or disposal); Have a long service life and/or can be economically and effectively repaired or upgraded; Reduce waste and make efficient use of resources, including water and energy; Reduce the use of toxins and hazardous substances; Use renewable resources; and Use forest goods from sustainably managed forests.
- Further we suggest replacing criterion (e) “projected operating and maintenance costs” with “life cycle costs” Life cycle costs: the costs during the life of the goods or equipment ***[insert Yes or No. If yes, insert the Methodology and criteria in Section III, Evaluation and Qualification Criteria]***

This is in line with the modified World Bank SBD.

PROPOSED AMENDMENTS PART I, SECTION III: EVALUATION AND QUALIFICATION CRITERIA

1. Add a new section on Sustainable Public Procurement

In accordance with the principles on sustainable development that are included in the constitution of Bhutan, the RGoB seeks to optimize value-for-money across product and asset life cycles when procuring goods. This requires that tenders are awarded based on the lowest evaluated bid – the bid that is evaluated to offer the lower price after consideration of all factors including in the technical specifications and tender award criteria pursuant to Clause 33 and Clause 39. This includes Costs of major replacement components, availability in Bhutan of spare parts and after sales services, projected operating and maintenance costs and performance and productivity of equipment.

2. Margin of preference

In addition to a margin of preference for domestic suppliers, a margin of preference for green goods can be awarded (see pg.2 above).

3. Evaluation Criteria (ITB 39.3 (e))

Replace criterion (e) “projected operating and maintenance costs” with “life cycle costs” and add the following under this heading:

If specified in ITB 39.3, an adjustment to take into account the additional life cycle costs for the period specified below, such as the operating and maintenance costs of the Goods, will be added to the Bid price, for evaluation purposes only. The adjustment will be evaluated in accordance with the methodology specified below and the following information:

[Note to Purchaser: Life cycle costing should be used when the costs of operation and/or maintenance over the specified life of the goods are estimated to be considerable in comparison with the initial cost and may vary among different Bids. Life cycle costs shall be evaluated on a net present value basis. If life cycle costs apply, then specify the factors required to determine them for evaluation purposes.]

[Either amend the following text as required, or delete if life cycle cost is not applicable]

- (i) number of years for life cycle cost determination *[insert the number of years]*;
- (ii) the discount rate to be applied to determine the net present value of future operation and maintenance costs (recurrent costs) is *[insert the discount rate]*;

- (iii) the annual operating and maintenance costs (recurrent costs) shall be determined on the basis of the following methodology: *[insert methodology]*;
- (iv) and the following information is required from bidders *[insert any information required from bidders, including prices]*.

This is in line with the modified World Bank SBD.

Second, add an explanatory paragraph under (g) specific additional criteria:

*[Other specific additional criteria to be considered in the evaluation; and the evaluation method shall be detailed in BDS 34.6] [If specific **sustainable procurement technical requirements** have been specified in Section VII- Specification, **either** state that (i) those requirements will be evaluated on a pass/fail (compliance basis) **or** otherwise (ii) in addition to evaluating those requirements on a pass/fail (compliance basis), if applicable, specify the monetary adjustments to be applied to Bid Prices for comparison purposes on account of Bids that exceed the specified minimum sustainable procurement technical requirements.]*

This is in line with the modified World Bank SBD.

PROPOSED AMENDMENTS TO PART II, SECTION VI: SCHEDULE OF SUPPLY

3. Technical Specifications

We suggest adding a bullet point to the introduction to Technical Specifications (TS):

Suggested text:

The TS may also refer to environmental and social characteristics in terms of performance or functionality. Performance and functionality can be based on international and Bhutanese standards (products and performance standards), labels and technical reference systems. TS can also refer to environmentally and social preferable materials and methods of production, even when these aspects are not part of the material substance of the goods, services and works being procured.

Following the modified World Bank SBD we also suggest to include/modify the following:

- *Technical Specifications shall be fully descriptive of the requirements in respect of, but not limited to, the following:*
 - (a) *Standards of materials and workmanship required for the production and manufacturing of the Goods.*
 - (b) *Any sustainable procurement technical requirements shall be clearly specified. Please refer to the Bank's Procurement Regulations and Sustainable procurement guidance notes/tool kit for further information. The requirements to be specified shall be specific enough to not demand evaluation based on rated criteria/merit point system. The sustainable procurement requirements shall be specified to enable evaluation of such a requirement on a pass/fail basis. To encourage bidders' innovation in addressing sustainable procurement requirements, as long as the bid evaluation criteria specify the mechanism for monetary adjustments for the purpose of bid comparisons, bidders may be invited to offer Goods that exceeds the specified minimum sustainable procurement requirements.*
 - (c) *Detailed tests required (type and number).*
 - (d) *Other additional work and/or Related Services required to achieve full delivery/completion.*
 - (e) *Detailed activities to be performed by the Supplier, and participation of the Purchaser therein.*
 - (f) *List of detailed functional and performance guarantees covered by the Warranty and the specification of the liquidated damages to be applied in the event that such guarantees are not met*

PROPOSED AMENDMENTS TO PART II, SECTION VII GENERAL CONDITIONS OF CONTRACT

Clause 22. Subcontractors

Procurers can add clauses to oblige suppliers to submit proof (e.g. self-certification) that their subcontractors comply with the same environmental and social performance obligations as the primary contractor/supplier itself.

Clause 24. Packaging and Documents

Add text relating to producer responsibility and recyclability of packaging. Procurers can add clauses to oblige suppliers to either take back the packaging and re-use or recycle it or deliver in packaging materials that are recyclable or have a certain percentage of recyclable material.

Clause 26. Transportation

Procurers can add clauses to oblige suppliers to adhere to emission standards for the transportation they use in delivering the goods or services. The emission standards are defined in the “Environmental Standards” document by the National Environment Commission (November 2010).

Clause 29. Warranty

We recommend warranty periods of 36 months ideally, but certainly longer than 12 months.

JUSTIFICATIONS FOR ADJUSTMENTS OF THE STANDARD BIDDINGS DOCUMENTS

The justifications for the proposed amendments of the SBDs can among others be found in various Bhutanese laws and regulations as well as in international frameworks. The overview below provides a non-exhaustive list of laws and regulations that support the amendments:

Bhutanese laws and regulations

1. National Environment Protection Act 2007

- Section 19 “Principle of payment for environmental services”

19. A person using or extracting natural resources shall be liable to pay for ecosystem/environmental services.

- Section 53 – 54 “Protection of Environmental Quality”

53. Subject to the provisions of this Act, the Commission may take all such measures as it deems necessary or expedient for the purpose of protecting the environment and preventing, controlling and abating environmental harm or pollution.

54. In particular, and without prejudice to the generality of the provisions of section (53), such measures may include measures with respect to all or any of the following matters, namely:

b) laying down standards for emission or discharge of environmental pollutants (including noise pollution) from various sources whatsoever, provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

- Section 57-59 “Environment Standards for Products: Technologies and Management Practices”

57. Polluting products and technologies that can cause adverse impacts on the environment in the absence of appropriate treatment or design may be regulated under this Act, via environmental standards established by the Commission or certification by recognised international standards organizations, in consultation with other relevant agencies and stakeholders concerned.

58. The Government may encourage voluntary eco-labelling or eco-auditing schemes through fiscal incentives and other means.

59. The Commission may issue regulations, guidelines or codes concerning:

- a) environmental codes of best practices for specific sectors;
- b) standards for environmental auditing and management systems;
- c) environmental labelling in order to encourage production and marketing of environmentally friendly products or services, or to promote environmentally friendly and energy efficiency technologies;

- Section 60-62 “Waste Management”

60. With the aim of achieving a more sustainable approach to resource use and a reduction in the quantity of waste going to disposal, the Commission may require producers to take responsibility for the costs of the management of their products when they become waste, by diverting end of life products to re- use, recycling or other forms of recovery and safe disposal.

61. Producers/industries shall be fully responsible for safe and proper disposal of their waste.

62. It shall be mandatory for any proponent to provide comprehensive information in the project document, on types and quantities of waste including sound management plan for safe and proper disposal.

- Section 70 “Protection of Forest, Biodiversity and Ecosystem Integrity”

70. The Commission shall ensure and promote the use of clean energy and alternative technologies in order to reduce use of fuel wood/timber from primary forest. Such

innovative practices of reducing the burden on natural resources shall be supported with incentives as per section 78.

- Section 78-80 “Financial Incentives and Charges for Environmental Compliance”

78. In order to promote environmentally friendly technologies, code of best practices and eco-labelling, the Government may establish fiscal incentives for environmental protection and compliance, including:

- a) Provision of tax incentives for environmental services and/or manufacture of environmentally friendly products;
- b) Reductions in customs and other duties for the import of environment friendly and energy efficiency technologies;
- c) Grants or co-financing for civil society or public sector environmental protection or nature conservation projects;
- d) Provision of incentives for reducing, recycling and reusing waste.

79. The Government may levy charges, including:

- a) Charges or fees for utilization of natural resources; and
- b) Taxes or charges for raw materials or products posing specific environmental risks.

80. The Commission may establish mechanisms for valuation of natural resources and apply the values established to legal and economic instruments, such as payments for environmental services designed to be shared equitably among resource users, the costs and benefits of conservation and sustainable use of the resource.

2. Waste Prevention and Management Act 2009

- Section 17-20 “Public Responsibility”

17. All persons shall fulfil their civic responsibility and good ethics in waste management.

18. In doing so, all persons whether in urban or rural areas shall manage waste properly and provide for a healthy environment.

19. For proper waste management, all persons shall segregate, reduce, reuse and recycle waste and avoid littering.

20. All persons shall cooperate with the Implementing Agencies in their activities for waste reduction by restricting their waste generation, using recycled products or otherwise contributing towards recycling and re-use of waste and segregation of waste prior to its disposal.

International laws, regulations and policies

UNFCCC Paris Agreement

Sustainable Development Goals

International Environmental Law