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**ROYAL GOVERNMENT OF BHUTAN
ANTI-CORRUPTION COMMISSION**

"NATION'S CONSCIENCE"
THIMPHU, BHUTAN

"Lead by Example"

ACC/PREVENTION-01/2006/126

August 10, 2006

Hon'ble Minister,
Ministry of Works & Human Settlement

Sub: Problems of Quality and Corruption in Construction

Hon'ble *Lyonpo*,

There is a general concern on the quality of construction in the country, which is draining huge government resources. Often repair works have to be undertaken almost immediately after the completion of construction. Given the nature of work and resources involved, construction sector is highly vulnerable to corruption. The Ministry of Works and Human Settlement (MoWHS), as the lead agency in construction, has a vital role to play in bringing about greater professionalism and transparency in this important sector. The ACC recognizes *Lyonpo's* sustained efforts towards improving the quality of construction and curbing corruption.

We understand that revision of bidding document, re-enforcing contract clauses, reviewing technical specifications and schedule of rates, improving bid evaluation procedures and criteria and stringent monitoring are some initiatives that the Ministry has taken. However, we are far from achieving the desired result, as we see construction industry grow year after year. In the next two years, with the whole gamut of government construction in the pipeline we will witness a construction boom. Concerned people, both in the government and private sector, need to be conversant with tender rules, regulations and procedures, for which they have to be trained and re-trained. Such rules, regulation and procedures have to be effectively disseminated to the people, who need to know.

Private sector is a major partner in the construction sector. If a government agency fails to ensure quality of construction, it is also a private contractor's failure. Similarly, if a government officer has taken a bribe and committed an act of corruption, the giver is equally guilty. Therefore, the private sector has to play its part to ensure quality and abstain from corruption in the conduct of their business. In some countries, as a measure to curb corruption and build confidence between the government and the private sector an "Integrity Pact" is signed. It is an essence a commitment not indulge in corruption by the parties concerned. A separate agreement or a contract clause to this effect could be drawn up between a government agency and a private firm. There are international references such as the UN Global Compact, 10th Principle (www.unglobal

compact.org), Transparency International Integrity Pact (www.transparency.org), World Economic Forum's Partnership against Corruption Initiative (www.weforum.org), and Extractive Industry Transparency Initiative (www.eitransparency.org), which we could adapt.

Availability and cost of local materials such as sand, stone and timber are serious constraints in construction. Amongst others, due to uncertainties of location of quarries and accuracy of cost estimates tenders are often grossly affected. This in turn has a bearing on the quality of construction, which could be further aggravated by negligence and poor site supervision or intentional compromises for mutual benefit of a contractor and concerned government official/s. Quarry sites should be clearly identified during pre-construction phase only.

One of the inherent problems at the construction site is poor supervision. While, the reason is always quoted as shortage of manpower, on the other hand, site supervision is not given due importance and adequate attention. Large projects worth millions are very often left in the hands of fresh and inexperienced site engineers, who besides the technical incapability cannot confront powerful and influential contractors. Unless we change this practice of keeping experienced engineers in the office and sending fresh engineers in the field, we will continue to have roads with potholes and buildings with leakages and crumbling walls.

CDB's main role, if we understand correctly, is to promote professionalism in the private sector. This calls for effective monitoring of the performance of the private construction firms to enable promotion of good firms and penalize the bad ones. It may be appropriate to introduce a system of giving incentives in the form of preference (transparent criteria have to be set lest it becomes another tool for manipulations) during evaluation, etc. and severe penalty such as blacklisting or debarment from government tenders. If we continue with the present trend of inaction or at most levying a nominal penalty and treating performers and non-performers on equal footing, CDB's role of promoting professionalism in the construction sector will be defeated. The ACC is in the process of developing rules on blacklisting and debarment. The draft will be discussed with the stakeholders.

Sir, perhaps it is high time that we double our concerted efforts in cleaning the construction sector. ACC looks forward to working closely with the Ministry in combating corruption, which is disconcertingly rampant, in the sector.

With respects,

Yours faithfully,

-SD-
(Neten Zangmo)
Chairperson

Copy to:

- 1) President, Bhutan Chamber of Commerce & Industry.

- 2) Secretary to His Majesty the King, Tashichhodzong.
- 3) Secretary, Ministry of Works & Human Settlement.
- 4) Director, Standard & Quality Control Authority, Ministry of Works & Human Settlement.
- 5) Executive Director, Construction Development Board, Ministry of Works & Human Settlement.

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ACC/PREVENTION-02/2007/1434

April 19, 2007

Hon'ble Minister,
Ministry of Finance,
Tashichodzong

Honorable *Lyonpo*,

As part of our ongoing effort towards addressing systemic flaws, in coordination with a few technical organizations we have been reviewing the procurement procedures. It is an established fact worldwide that public procurement in general and construction in particular, being capital intensive and driven by lengthy procedures is subject to high risk of corruption. In Bhutan, apart from other sources, ACC's experience of over a year on complaints of corruption has reconfirmed it.

We conducted a series of stakeholders' consultative meetings with the government agencies involved in construction as well as with the private sector since October 2006 to discuss the problems faced in public procurement. The last meeting was held on 13 April 2007 to consolidate the issues raised and to formally take up with the Ministry of Finance (MoF), which is the lead agency in public procurement.

We know that the Procurement Manual (PM) has been revised and ready for printing, while the revision Standard Bidding Document (SBD) for construction has been awarded to a consultant. Since the major stakeholders have not been involved in the review process, it is not understood whether the revision has taken care of the grey areas in the tender evaluation procedures and on some critical contract clauses, which cause persistent problems to the procuring agencies as well as to the contractors. In our sincere efforts towards further strengthening the system, the consultative meeting recommended if a core stakeholder group could be given an opportunity to have a re-look at the revised PM and the SBD with a focus on the following areas of concern:

- 1. Tender Evaluation:** The most common and recurring complaint by the contractor is the lack of transparency, consistency and uniformity in the application and interpretation of the tender evaluation procedures. Does revised PM and will the revised SPD address these issues? Our tendering process is fraught with manipulations and last minutes changes. Further, in light of removing unnecessary burden, which adds no value to the process, on the government and the private sector, a need is felt to review the documentation required for tender evaluation. Unnecessary documentation leaves room for manipulations and does not necessarily translate to good performance in the execution

of the works in the field. The meeting recommended if the tender evaluation system could be consolidated and issued as a separate guideline.

1. **Tender Committee:** While the levels, composition, responsibilities and powers of a tender committee are given, due importance is not attached during implementation. There is a need to reinforce the importance of the responsibility, roles and accountability of tender and the evaluation committees. Competencies and minimum qualification requirements of a tender committee member deserve some review. It was understood that this issue was also discussed during one of the meetings of the Committee of Secretaries.
2. **Contractual Clauses:** The need to have contract provisions to give incentives to performing contractors and impose penalty on non-performing contractors was also highlighted. Introduction of appropriate clauses such as debarment/blacklisting, de-registration, etc. should be looked into. It is also timely to introduce “*Integrity Pact*” as part of the tender document that will oblige both the client and the contractor not to indulge in corruption and if found doing so the defaulter would be liable for penalty. The Pact is adopted successfully by many countries.

The present requirement of maintaining field records like measurement book, billing system, etc. which involves voluminous paper works needs to be reviewed. An engineer’s time taken by the paper works can be effectively utilized for supervision and monitoring.

3. **Institutional Arrangement:** The mandate of the Construction Development Board (CDB) under the Ministry of Works and Human Settlement vis-à-vis the Independent Review Board/Procurement Policy Unit proposed in the revised Procurement Manual on addressing grievances and other functions need to be clarified.
4. **Capacity Building:** This is a pertinent issue raised in many fora. Public procurement unfortunately, is not viewed as a specialized professional subject and hence has not received its due recognition from the management of agencies. This has largely attributed to the prevailing problems in the tendering process. It is understood that MoF under the World Bank project has provisions for capacity development. This will be crucial in the overall improvement of the procurement system. Capacity building should incorporate all officials from the top executives to the senior, mid and operational staff in the government as well as in the private sector.

The ACC has endeavored to facilitate the process and therefore would like to submit to MoF to review the issues raised and consider one round of discussion by the core stakeholders’ group with your officials before the documents are published. As always, we look forward to Honorable *Lyonpo*’s persevering support in fulfilling our common goal of a clean and efficient public service. A copy of the synthesis of the problems highlighted in the stakeholders’ meetings is enclosed for ready reference.

With respect,

Yours faithfully,

-SD-

(Neten Zangmo)
Chairperson

Copy to:

1. Honorable Minister, MoWHS
2. Auditor General, RAA
3. Chairperson, Committee of Secretaries, c/o Ministry of Home & Cultural Affairs
4. Secretary to His Majesty the King, Tashichhodzong

“FIGHTING CORRUPTION IS A COLLECTIVE RESPONSIBILITY”

THIMPHU BHUTAN, Post Box NO. 1113, Tel: 975-2-334863/64/66/67/68/69 FAX: 975-2-334865

Construction Issues

The 1st coordination meeting on construction was held on 25 October 2006, attended by representatives from government (represented by CDB, SPBD, BPC, DNP) and private construction firms (Class A: Bhutan Builders, Rinson Construction, Lhojong Construction, Bhutan Engineering Company, East West Construction & Nima Constructon; Class B:K. Gangri Construction, Dekiling Construction & K.C Construction; Class C: R.D. Construction, Phusum Builders & Druk Penden Construction) and BCCI, followed by two core group meetings on technical issues on 2/11/06 (represented by DoE, SPBD & CDB) and financial issues on 1/11/06 (represented by DADM, Dzongkha FO, DPA, DNP, SPBD & CDB).

Difficulties faced by the private sector were:

1. Lack of transparency, consistency and uniformity in the application of the tendering rules and regulations by the government agencies
2. Non-uniformity and subjectivity in the technical evaluation criteria, further aggravated by different tender evaluation criteria and system
3. Clarity on reasons for re-tender
4. Unrealistic completion time of project which the contractors are given no option to change
5. Delay in the payments of bills (no change despite government order to make payment within one month)
6. Inconsistency in the interpretation of Procurement Manual in general and tendering procedure in particular
7. Poor technical competence, diligence and professionalism in government agencies (low level of competence and accountability in tender committee members and engineers)
8. Irrational decision during tender evaluation process on account of a simple procedural requirement, which otherwise has no affect on the contract and can save government huge amount of money
9. Repercussions in reporting

The government agencies are equally constrained by:

1. Low level of commitment, diligence and professionalism from the contractor.
2. Weak enforcement of the contract clauses.
3. The present construction budgeting system, where funds for capital activities like construction is known only after the budget is approved. This puts lot of pressure on time, as the construction work which involves design (survey), estimate, tendering and the actual implementation, all have to be completed within one financial year.
4. Difficulty in getting the fund release in time due to centrally controlled procedures; could be also due to poor understanding of the budgeting procedure.
5. Inflexibility in managing construction fund, especially for large project. The revolving fund which used to be kept with the agency is now centralized under MoF. This causes problems at the project level, not being able to mobilized money in time.
6. Budget release by MoF only on submission of the bills. The accountant has to follow up with the MoF on a daily basis, in the process, delaying the bill payment and it is he contractors who ultimately suffer.
7. Lack of commitment from the agencies (no capacity, low level participation)

A number of initiatives to improve the procurement system are underway:

1. Revision of Procurement Manual by MoF, with the technical assistance from the World Bank
2. Standardization of the Bidding Document, initiative of the MoWHS to address the endemic problems related specifically to tendering procedure and strengthening enforcement clauses
3. CDB's notification on procedure for addressing contractors' grievances
4. Development of service standards on budget release procedure
5. Proposal to introduce three year rolling budget in the 10 year plan

Procurement in general and construction in particular are of great significance to the ACC's corruption prevention strategy. Being capital intensive, these are corruption prone areas and ACC's experience of over a year on complaints has proven adequately. To consolidate the ongoing initiatives and to further strengthen the efforts, the following concerns are presented for collective deliberations and solutions.:

1. The most common and repeated complaint by the private firms is the lack of transparency, consistency and uniformity in the application of the procedures, rules and regulations. Will the revised PM and the SBD address the following pressing issues, among others?
 - Clarity on the documents and information to be submitted with the tender?
 - Are the requirements for the mandatory documents and information clearly specified in the instruction to the bidder?
 - Is it appropriate to ask for detailed work plan, quality assurance plan, environment management plan at the time of tender submission? (what value added by just scrutinizing the papers)
 - Is the tender evaluation system made clear to the bidder?
 - What are the tender evaluation criteria?
 - What are the criteria for bid rejection – before, at the time of opening & after opening?
 - Clear instruction on sealing of envelopes.
 - Clarity on bid security deposit, refund, performance security.
 - Clear instruction on submission of duplicate copy of the tender. Which will be opened, when, the purpose, and which will be taken as the reference in case of discrepancy.
 - Dates for notification, sale, receipt and opening of bids, within reasonable minimum-maximum range.
 - Name and address of the officer responsible to receive and take custody of the tenders.
 - Proper recording on receipt of tenders, tender opening, tender committee meeting, tender evaluation report, tender committee decisions, etc.
 - To ensure transparency and also serve as inbuilt check and balance mechanism, the tender evaluation results should be made public (refer CDB's notification). This will facilitate objective tender evaluation and clear doubts among unsuccessful bidders.

- Clear instruction on joint venture and subcontracts.
 - Additional clauses on introduction of blacklisting/debarment, incentives/bonuses, corruption (to be based on the concept of Integrity Pact applied in other countries)
 - Flexibility in decision making, based on rational and logical reasoning on simple procedural requirement or site condition, which does not affect the contract in terms of fairness or otherwise, but can save the government huge amount of money.
2. Alternatively, is it possible to critically examine the present tender evaluation system?
The present system, in endeavoring to select the most qualified contractor, engages voluminous document exercise in the tender evaluation process. But during the execution state of the work, even important and critical requirements are relaxed and compromised, effecting the efficiency and quality of construction. The system unnecessarily burdens the contractor in participating in the tender, at the same time brings no added value in the contract execution, but only creates room for manipulations and corruption. (Need to review qualification criteria?)
 3. The problems in the construction are not always to do with the engineers or the contractors but the professional capacity of all the officials involved in the tendering process. The role of the tender committee and the tender evaluation committee members, including the chairperson, should first be recognized as important responsibility. The top management must accordingly assign competent and right people with proper responsibility and accountability. How can this important element be instituted in the PM?
 4. Improvement of system in itself is not the answer to the problems. Equally lacking is the technical competence and capability in implementing the procurement procedures. Training on all procedural details in procurement is needed by all public officials as well as private contractors. Above all the officials in the tender committees develop expertise to make professional judgment, particularly for important and complex project.
 5. Review construction budgeting, budget release procedure and flexibility in fund management. Consider three year rolling budget, decentralization, etc. The service standard adopted in budget release procedure may be made more transparent. Capacity building is also needed in this area.
 6. As informed, MoF under the WB project has provisions for capacity development. This will be crucial in the overall improvement of the procurement system. The capacity building should incorporate all level of officials from the top Executives to the senior, mid and operational staff (Secretary, Director/DG, AFD Heads, FO, PO, Project Managers, Engineers, Accountant, Site supervisors, etc.) and also the private sector.



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"NATION'S CONSCIENCE"

THIMPHU, BHUTAN

LEAD BY EXAMPLE

ACC/Prevention-02/2007/

October 22, 2007

The Secretary
Ministry of Home and Cultural Affairs

Dear *Dasho*,

Subject: **General Observations & Steps Recommended for Contract Administration**

Construction involves huge resources. Efficiency, transparency and accountability in the construction sector have to be enhanced. One out of every four cases that we investigate relate to construction works. Documentation and procedures have to be standardized, consolidated, simplified, rationalized and most importantly enforced stringently. ACC in close coordination with few stakeholders have already submitted some recommendations to the Ministry of Finance (April & July 2007). Capacity development of all agencies and in particular *Dzongkhag* Administration in procurement and tendering is a matter of urgency.

We have listed some systemic deficiencies in general contract administration at the *Dzongkhag* level (*source: investigation and complaints*). The list is enclosed for information and for taking corrective measures by all concerned agencies including the *Dzongkhag* Administration.

We would be pleased to discuss our observations, if required.

With regards,

Yours sincerely,

-SD-
(Neten Zangmo)
Chairperson

CC:

1. Honorable Minister, Ministry of Works and Human Settlement.
2. The Secretary, Ministry of Finance, with a request to study our observations vis-à-vis the revision of Procurement Manual and the Standard Bidding Document. This also has relevance to our letter ACC/Prevention-02/2007/1434, April 19 to the former Finance Minister and the multi-sectoral discussions convened in your ministry on July 10, 2007.
3. All *Dzongdas*, for information and necessary actions.

Encl: As above (2 pages)

ACC'S GENERAL OBSERVATIONS ON CONTRACT ADMINISTRATION

1 Dzongkhag Level Tender Committee (DLTC)

- Chair of DLTC has an important role in ensuring transparency & efficiency in contract administration.
- DLTC appears to be unaware of contract rules and regulation.
- Need to standardize composition

Steps/Procedures Recommended

Much of the problem in contract administration can be avoided if DLTC conduct their duties with due diligence & firmness. The DLTC has the authority to administer the work as per the terms and conditions of the contract agreement and must take the full responsibility. The DLTC should be composed of the head of AFD, Finance Officer, Procurement Officer and Sector Heads under the Chair of Dzongda.

2 Notice Inviting Tenders (NIT)

- No clear instructions in the NIT
- Corrigendum and addendum to NIT

Steps/Procedures Recommended

The NIT should be concise and comprehensive, especially on the mandatory requirements. If NIT is concise and comprehensive, there will be minimum need for corrigendum and addendum.

3 Tender Opening

- No page by page scrutiny of the rates
- No authentication of the corrections/over-writing by the Committee members
- No proper record of bid opening (bid opening record sheet)
- Duplicate copies not mandatory
- No signatures on envelopes of the duplicate copy of bids
- Duplicate copy kept with the same person who evaluates the bids

Steps/Procedures Recommended

The BID OPENING RECORD SHEET (BORS) must be in keeping with the format given in the Procurement Manual, but should capture all the above information. The BORS must capture and record, especially the over-writing/mistakes/corrections in the item rates. All these 'anomalies' must be endorsed by the Tender Committee members by putting their initials against them.

Submission of duplicate copies must be made mandatory, especially for big contract works. The duplicate copies should not be opened, but should be signed on the envelopes by the Tender Committee members and kept by the Chair of the Tender Committee, under lock. The minutes of the bid opening meeting with all the decisions must be kept.

4 Bid Evaluation and Award

- Done by few people under the District Engineer (D.E.)
- Write up on bid evaluation does not mention significant changes in positions of firms between opening and award
- Bids normally kept with the D. E.

Steps/Procedures Recommended

The bid evaluation should be done by a Bid Evaluation Committee (BEC), comprising minimum of three officials with D.E. as the team leader. As soon as the bids are opened and recorded, they should be given

to the BEC for safe custody and evaluation. The write up on the bid evaluation should mention any significant changes in positions of firms, if any, between the bid opening and the award. The Tender Committee members should be apprised of such changes during the tender award meeting, so that the committee can deliberate on the changes and reach at informed decisions. The bid evaluation write up should be signed by all the members of BEC. The minutes of the tender award meeting with all the decisions should be kept.

5 Implementation

5.1 Advances

- Mobilization advance without performance bond
- Material at site advance without Bank guarantee
- Material at site advance without material at site

Steps/Procedures Recommended

The mobilization and material at site advances may be allowed as per the terms and conditions of the particular contract agreement. The security against such advances may be required, again, in keeping with the terms and conditions of the particular contract agreement.

The materials at site advance of 75% of the cost of materials may be given only after the materials as per the specifications are stacked/stored at site and duly verified by the Site Engineer.

6 Site Supervision

- No regular site supervision
- No Site Order Book
- No Site Hindrance Register
- No information on site supervision and actions taken
- Poor quality of work

Steps/Procedures Recommended

Regular site supervision through planned site visits is very important to ensure the quality of construction work. By and large, it is observed that regular site supervision is weak or inadequate, leading to poor quality of work. The site order book and the hindrance register are rarely maintained. Without such books of records, information on supervision, like the instruction issued to the contractor and its compliance are absent.

Work quality must be maintained through planned site visits and keeping all necessary records. The Site Engineer must be made fully responsible and accountable for any lapses due to poor supervision.

7 Final Accountability

- No strict reference or adherence to contract agreements
- No clear delineation of Gups' role

Steps/Procedures Recommended

As heads of the Dzongkhag Administrations and Chair of the DLTC, the final administrative and financial accountability rests with the Dzongdas. Dzongdas have to refer to contract agreements and be more vigilant while taking major decisions in contract administration.

The role of the Gups in contract administration needs to be made clear. It is understood that Gups sign the payment vouchers to testify that the work is done in his Geog, but not as the final authority approving the payment. Responsibility, authority and accountability of Geog Administration vis-à-vis Dzongkhag Administration has to be clearly established.

(shared with engineers at the annual conference attended by Com KJ & Chimi and participants at the 1st regional workshop on Financial Rules & Regulation convened in Thimphu by DOB (DYT Hall) – attended by NZ & KT.