

Ministry of Economy and Finance

Prakas No 231/MEF

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Guidelines on Commune/Sangkat Procurement

Unofficial translation

These Guidelines provide instructions for the implementation of procurement rules as established by the Sub-Decree No 26 dated 02 April 2002 on “The Commune/Sangkat Financial Management System”. These Guidelines are integral part of the legal framework of the C/S financial management system.

I. Policy Objective

1. To achieve regularity and uniformity in complying with the requirements and procedures for carrying procurement activities on the part of all public agencies.
2. To ensure that procurement of goods and services and contracting of civil works are done in the most transparent, most efficient and most economical way possible.
3. To give adequate opportunity to suppliers and contractors to participate in the supply of goods or services and works under conditions of fairness and equity.
4. To obviate or at least minimize undesirable acts and practices that may accompany procurement process.

II. Guiding Principles

5. Economy and efficiency are the basic principles that must be considered in carrying out procurement. Economy means that the goods, services or works should be contracted at the lowest possible price while efficiency implies that the delivery of the goods or services or the execution of works is undertaken in a manner that will satisfy the requirements of time, quality and serviceability.

III. Definition of Terms

6. Procurement – the acquiring of goods and services or the hiring of contractors for civil works through any of the methods described in the public procurement.
 - a. Procurement – the acquiring of goods and services or the hiring of contractors of civil works through public procurement method.

- b. Public Procurement – procurement that is carried out by any public agency, national or local, or by any state-owned or controlled institution.
- c. Goods – any object in solid, liquid, or gaseous form that has an economic utility or value such as machinery, equipment, materials, supplies, commodities, products, including electricity.
- d. Civil Works – any activity involving construction, repair, renovation, installation, erection, excavation, dredging and other similar activities which make use of a combination of labour, machinery, equipment and technology.
- e. Services – any activity involving the use of manpower, equipment or technology that is rendered for the benefit of a public agency, but not including civil works and consulting services.
- f. Consulting Services – expert services provided by a consulting firm or individual consultant in connection with a project or for institution strengthening.
- g. Buyer – the public agency that will acquire the goods to be procured.
- h. Employer – the public agency that enters into the contract with the contractor for the execution of civil works or the rendering of services.
- i. Supplier – an individual or firm who contracts to provide the goods to be procured.
- j. Contractor – an individual or firm who contracts to execute the civil works or to render services.
- k. Agency – any instrumentality of the government performing public functions, including ministries, provincial or city administrations and state-own or controlled institutions.
- l. Bidding – the process of competing for the supply or services or the contracting of civil works.
- m. Bid – an offer to supply goods or services or to contract civil works made in accordance with the terms and conditions set by the buyer or employer.
- n. Post qualification – the act of reviewing the technical and financial qualification of the bidders to ascertain whether or not they are capable of executing the contract.
- o. Contract – An agreement entered into between the Buyer and the Supplier for the supply of goods or between the Employer and the Contractor for the

execution of civil works or rendering of services with terms and conditions that are acceptable to the parties.

- p. Technical Supervisor – The person who is assigned by Commune/Sangkat Council chief to certify the quantity, quality of civil works, goods and services.
- q. Technical Support Official – An official selected from a relevant provincial administration department and assigned by the Governor. He has responsibility to monitor the procurement process on behalf of the Governor. Where requested by the commune Chief, he shall also provide, technical and management assistance on the overall administration of the bidding process and execution of contracts and may act as Technical Supervisor, at no cost to the CC.
- r. Local Community Based Organisation – A not-for-profit organisation consisting of members who are residents of the Commune/Sangkat. The Local Community Based Organization has responsibilities as follows:
 - Implement the program contributes to the objectives of the Commune/Sangkat Development Plan;
 - No Commune / Sangkat Councillor is a director of the organisation, or receives any form of remuneration from the organisation;
 - The organisation is recognised as a legitimate Local Community Based Organisation by the Provincial / Municipal Governor.
- s. Capital Expenditures for Local Development Activity - include construction or major repair of civil works, professional services for design or supervision of construction and purchase of goods with a use life of more than one year.
- t. Recurrent Expenditures for Local Development Activity - include provision of services and professional services (other than professional services for design or contract supervision of civil works), and minor repairs and routine maintenance of civil works.

IV. General Principles

- 7. Communes/Sangkats shall carry out procurement of works, goods and services in accordance with the general principles of the Sub-Decree n.60-95 of 31 July 1995 on public procurement and with the provisions of the Sub-Decree # 26 ANKR/BK dated 02nd April 2002 regulating the Commune/Sangkat Financial Management System.
- 8. The Commune/Sangkat Chief shall be responsible for procurement of all works, goods, and services.

9. Procurement of Expenditures for local development (works, services and goods) must be awarded against a written contract (the similar formats of procurement contract of works, services and goods attached to these Guidelines).
10. Pursuant to the provisions of Sub-Decree # 26 ANKR/BK dated 02nd April 2002 on Communes/Sangkats Financial Management System, the C/S chief shall establish a “*Procurement Committee*”. The Procurement Committee shall be responsible for reviewing contractors’ and suppliers’ proposals and recommending to the Commune/Sangkat Chief, the appropriate procurement action. In performing its tasks the Committee shall ensure that:
- Procurement of works, goods, and services is carried over in the most transparent, most economical way possible
 - Suppliers and contractors are given adequate opportunity to participate in the bidding process under conditions of fairness and equality
 - The result of the bidding is made public.
11. The Procurement Committee shall be composed of members as follows:
- a) Commune/Sangkat Chief or his delegate: Chairperson
 - b) Two (2) members of the C/S Council to be selected by the Council.
 - c) The Commune/Sangkat Clerk shall be the Committee Secretary.

The chairperson of procurement committee shall invite:

- A Technical Support Official
- Any other observers.

The C/S Clerk, the Technical Support Official, and invited observers shall not have the right to vote. The committee shall make decision by the majority, and in accordance with the bids evaluation and procurement rules.

12. Deliberations on the Procurement Committee shall be open to the public. The Committee shall make decisions by majority vote. In the event of equal votes, the Chairperson’s vote shall prevail.
13. The C/S Chief must set up the date and place of the procurement committee meetings in coordination with the provincial office of local administration (POLA).
14. For the sake of effectiveness, the C/S must, to the most extent possible, hold a single annual bidding session to award all contracts for local development investments included in the approved budget.

15. The C/S must not make advance payments of any kind to contractors or suppliers. Payments must be made after the goods or works have been delivered or the services rendered in accordance with the specifications and conditions of the contract or purchase order.

V. Procurement Method

16. Generally, the procurement will be carried out in either two ways:
- (1) Through Competitive Bidding, or
 - (2) Through other methods, without Open Competitive Bidding.

V.1 Competitive Bidding Method

Competitive bidding is used where there is a sufficient number of suppliers or contractors (at least 3) who are capable of providing the goods, services or works desired and where it would be to the interest of the Commune/Sangkat if competition is carried out among suppliers and contractors for the purpose of selecting the corrected and lowest bid.

Open Competitive Bidding method shall be applied for:

- Capital Expenditures for Local Development with regardless of contract value,
- Recurrent Expenditures for Local Development when the contract value is equal 2 Million Riel and above and
- Expenditures for other activities when the value of the contract is equal to 2 Million Riel and above, and where there are a sufficient number of potential bidders that provide a broad opportunity to select the best bid.

The threshold may be reviewed if necessary

V.2 Other Methods of Procurement (without Open Competitive Bidding)

The other methods of procurement that do not involve Open Competitive Bidding are

- Domestic canvassing
- Direct purchase or direct contracting

a) Domestic Canvassing

Domestic Canvassing requires obtaining a minimum of three (3) quotations from domestic suppliers. This method is allowed in supply contracts when buying off-the-shelf items, materials or supplies, spare parts, or small machinery that are available from domestic suppliers or through local representatives, dealers or authorized agents of foreign suppliers; it can be used also for works contracts which have small value. Domestic Canvassing may be used for recurrent expenditures of local development when the value of contract is less than 2 Million Riel and for activities other than Local Development that have value from 400,000 Riel to less than 2 Million Riel.

b) Direct Purchase or Direct Contracting

Direct Purchase or Direct Contracting is the method that implies dealing or negotiating directly with a single supplier or contractor and is used in any of the following circumstances:

- The cost of goods or services, civil work and repair does not exceed 400,000 Riel (activities other than Local Development).
- The recurrent expenditures for Local Development Activity, of cost less than 2,000,000 Riel, where the proposed contractor is a Local Community Based Organisation and support to a community development program is a specific objective of the contract.

The C/S Chief may solicit in written the Governor authorization to waive the competitive procurement requirements and use instead the direct purchase or contracting procedure for the following cases (regardless of the transaction amount):

- Procurement of supplies, services and works for which, after completing the standard competitive procedures, no suitable supplier or contractor has been once identified.
- Procurement of supplies, services and works that, for demonstrated technical reasons, can be obtained only from a specific contractor or supplier.
- Procurement of supplies, services and works that, because of the extreme urgency generated by unforeseen circumstances, cannot be subjected to the normal delay imposed by the standard competitive procedures.
- Procurement of supplies services and works to be required for expansion or repair of existing equipment.
- It is a repeat order of an item previously procured through competitive bidding and it is unlikely that lower prices will be obtained through another bidding.
- The purchase is to be made from another Government agency or that works will be done through force account.

In special cases, the use of procurement methods for contract values deviating from those mentioned in this paragraph of this section shall be subject to the Governor decision, on a case-by-case.

VI. Procurement Procedures

VI.1 Procurement of Works

17. All works shall be contracted out to independent contractors. The Governor shall set up a technical committee to register and periodically update a provincial roster of categorized and registered contractors. All contractors engaged by the Communes / Sangkats must be listed in this roster.
18. All works contracts shall be awarded through the domestic competitive bidding (DCB) procedure as outlined below.

(a) Preparation of Bidding Documents:

- The Procurement Committee shall prepare the bidding documents with the assistance of the Technical Support Official.
- Bidding documents must contain all the information required for the prospective bidders to decide on their participation in the bidding and to prepare complete and responsive bids.
- The information supplied to prospective bidders shall include the estimated price that will be used as a guideline in evaluation of bids.

(b) Publicity of the Invitation to Bid:

- At least two weeks in advance of the date of open bids, the invitation to bid should be advertised, by posting it on the Official Bulletin Boards of both the Commune Council and the Provincial Administration.
- The C/S Council may decide to adopt additional measures to publicize the invitation.

(c) Issue of Bidding Documents:

- Before the advertisement of invitation to bid, the bidding documents shall be prepared by CS procurement committee and be available to all interested contractors and sold at a price covering the same cost of their reproduction. ,
- The Procurement Committee's Chairman or his delegate shall organize a conference on technical orientation and, where necessary, inspection of the project site before receipt of bids. In the event that any information has been provided to individual bidders, additional to the information in the bidding documents, this information shall be repeated for the benefit of all bidders at the conference before receipt of bids.

(d) Submission and Receipt of Bids

- Bids shall be submitted in sealed envelopes delivered to the C/S Procurement Committee before the deadline.
- No bids shall be accepted, and no alteration of received bids shall be allowed, after the deadline.

(e) Opening of Bids

- Bids received must be open publicly at the stipulated date, time and place, in the presence of the Procurement Committee (PC) and representatives of the bidders.
- The bids opening shall be postponed and a new date, time and place set, if any of the PC permanent members of the PC (the Chairperson, and the two councillors) is absent.
- To be valid the second bids opening must be attended by at least two (2) permanent members of the PC, one of them being the Chairperson.
- Procurement Committee shall make record of the bid opening, containing, the names of the bidders, the bid prices and any other relevant observations and this record shall be signed by the attending members of the PC and bidders representatives.

(f) Evaluation of Bids and Contract Awarding:

- The PC shall evaluate the bids without disclosing any information until an award is made. The bids evaluation shall be postponed and the new date and place should be define if any of the PC permanent members is absent.
- To be valid the second bids evaluation must be attended by at least two (2) members of the PC, one of them being the Chairperson.
- The evaluation shall first determine the responsiveness of the bids and eliminate those that (i) do not comply with the tendering instructions or (ii) are obviously not responsive to the technical specifications of bids documentations (iii) incorrect bid price. Specific and verifiable reasons must be given in writing to justify the elimination of any bid at this stage.
- Then the evaluation shall proceed to the comparison of the prices proposed in the responsive bids, and recommend the award of the contract to the lowest bidder.
- In the event there are two or more tied equal lowest prices, the PC shall use the equal lowest price as a reference for re-bidding; only bidders with tied lowest prices can submit new bids in sealed envelop to the procurement committee. The procurement committee shall open new bids immediately to determine the winner of the bidding with the lowest price.
- PC shall submit a record of bid opening and evaluation report to award contract to C/S chief for review and approval. The decision of contract awarding by the C/S chief shall be made public and posted in the CC Official Bulletin Board. The C/S chief shall submit a copy of the decision of contract awarding accompanied with a record of bid opening and evaluation report, to POLA-

- Any bidder who feels that he was unfairly treated during the bidding process have the right to bring the matter in written before the Governor not later than two days after the results of the bids evaluation have been made public. The bidder must provide sound evidence to support his claim. The claiming bidder must ensure that copy of the protest filed with the Governor is sent to the C/S chief for his information.
 - The Governor shall decide on the bidder's claim within five (5) days from receiving the protest. The governor decision shall be final and binding on all parties.
 - If the Governor has not opposed in written, within seven (7) days after receiving the bids evaluation report, the award of the contract to the bidder recommended in the report, the C/S chief shall finalize contract documents with the assistance of the Technical Support Official and shall award a contract to the successful bidder recommended in the PC report.
 - Comune/Sangkat chief shall prepare and sign on 3 (original) sets of Form and Contract Condition. Commune/Sangkat chief shall submit a signed Form and Contract Condition (original) and the decision letter to select contractor to CS accountant at Provincial/Municipal treasury.
19. Where this is deemed suitable to allow maximum of contractors to take part in the bidding process, the C/S Chief may decide to conduct the tasks of
- technical orientation
 - bids submission,
 - bids opening
 - and bids evaluation together, during a single half-day session.
20. The administration of all works contracts shall require that the technical supervision of the works be carried out by a “*Technical Supervisor*” who shall be responsible for:
- The on-site supervision of the execution of the contract, and the issuance of related instructions to the Contractor.
 - The certification of the quantities and quality of the work performed by the Contractor.
 - The verification of bills submitted by the Contactor under the contract.

VI.2 Procurement of Services and Consulting Services

21. The selection by the C/S of service providers shall be public and transparent. Requests for services shall be posted in the Official Bulletin Boards of both the

- provincial administration and the CC at least 2 weeks in advance of the selection date. All proposals for services shall be submitted in standard formats, to allow a comparative evaluation of professional qualifications, experience and fees. All proposals shall be reviewed by the Procurement Committee, which shall recommend the selected service provider to the C/S Chief for contracting.
22. The C/S Chief may, subject to authorization by the C/S council, appoint a qualified professional from the private or non-profit sector to be the Technical Supervisor for a works contract. Technical Supervisors engaged by the C/S shall be listed and registered by PLOA. The contracting of Technical Supervisors required in the implementation of works contracts shall be made in the same manner as other services.
23. All payments due to independent Technical Supervisors shall be budgeted and accounted for by the C/S as part of the total cost of the investment to which the contract relates.

VI.3 Procurement of Goods

24. Purchase of goods shall be made through Competitive Bidding, Domestic Canvassing (DC) and Direct Purchase methods in accordance with threshold defined in V.2.

Competitive Bidding Method

This method has the same procedure as Competitive Bidding for Civil Works.

Domestic Canvassing Method

This method has the same procedure as Competitive Bidding for Civil Works but without open public and has the procedures below:

- (a) Preparation and issue of Invitation for quotations
- The C/S Chief or his delegate shall prepare and issue invitation for at least three (3) suppliers to fill quotation price specifying the nature and delivery conditions of the required goods.
- (b) Evaluation of quotations
- Evaluation of quotations shall be conducted following the same procedure as the evaluation of Competitive Bidding with assistant of Technical Officer.
 - Evaluation shall take into account the conformity of the proposed goods with the invitation for quotation as well as prices and delivery conditions. The quotations received and minutes of the evaluation shall be attached to any request for payment addressed, upon delivery of the goods, to the C/S Accountant.

(c) Issue of purchase order

- The C/S Chief or his delegate shall issue all purchase orders to the suppliers retained through the quotations evaluation process.

Direct Purchase Method:

This method as procedures as follows:

a. Preparation and issue of Invitation for quotations

The C/S Chief or his delegate, with assistance from the Technical Official shall prepare an invitation for quotation, specifying the nature and delivery conditions of the required goods.

b. Evaluation of quotations and negotiation of price

- If the price proposal reflects the specifications and delivery terms and conditions of the invitation for quotation, the price is negotiated with the supplier to bring it in line with the C/S administration estimate.
- If the negotiation is not successful, the same process may be repeated with another supplier.

c. Issue of purchase order

- The C/S Chief or his delegate shall issue all purchase orders.

This Praskas replaces Prakas # 172/MEF dated 28th march 2003 on Commune/Sangkat Procurement.

These Guidelines summarize the key principles and methodology and procedures governing the procurement process of C/S budget expenditures countrywide. Any issues relating to the implementation of these Guidelines can be referred to the Ministry of Economy and Finance for solution.

29th April 2005

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Minster of Economy and Finance
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