Compliance audit

PUBLIC PROCUREMENT

Road infrastructure 2016

November 2018
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EXECUTIVE SUMMARY

The Supreme Audit Institutions of eleven countries, all members of the Caribbean Organization of Supreme Audit Institutions (hereinafter to be referred to as: CAROSAI), conducted a cooperative audit on the public procurement practice of their country. The Secretariat of CAROSAI supported by the Inter-American Development Bank coordinated the execution of these cooperative audits. The results of the audits will be submitted to CAROSAI within the context of knowledge sharing between the member countries.

As part of this cooperative audit the Supreme Audit Institution of Curaçao (hereinafter to be referred to as: the Supreme Audit Institution) audited the public procurement practice by the Department of Public Works (hereinafter to be referred to as: the Department) of the Ministry of Traffic, Transport and Urban Planning (hereinafter to be referred to as: the Ministry). The Department spent about NAf 38.9 million in 2016 on road infrastructure. This amount represented 11% of the capital expenditures of the government of Curaçao which is more than the 1% materiality criterion that the Supreme Audit Institution uses for the auditing of the annual financial statement of the government.

There are laws and regulations that the government should adhere to when executing a public procurement.

We performed this audit to provide the Parliament, taxpayers and the public in general, assurance that the funds entrusted to the government were spent legitimately. The objective of this audit was:

To determine if the public procurement practice of road infrastructure followed by the Department of Public Works of the Ministry of Traffic, Transport and Urban Planning complies with the laws, regulations, procedures and generally required criteria.

Conclusion
We hereby conclude that:

The public procurement practice of road infrastructure by the Department of Public Works of the Ministry of Traffic, Transport and Urban Planning partially complied with the laws, regulations, procedures and generally required criteria regarding the projects paid in 2016.
Our conclusion is based on the following facts:

1. the planning phase partially complied with the laws, regulations, procedures and generally required criteria as:
   - the Department did not procure road infrastructure based on a policy approved by the minister;
   - the relevant year maintenance plans were not formally approved by the minister;
   - the specifications documents of the projects were not formally approved by the minister prior to the public tender event;
   - the Department did not have complete pre-set evaluation criteria;
   - the specifications documents did not include a draft of the contract for the projects.

2. the bidding phase partially complied with the laws, regulations, procedures and generally required criteria, reason being that the Ministry does not have an Internal Controller to report on the public tender process to the Ministry. Although the Ministry of Finance was present at the public tender events, we did not obtain reports of all the events.

3. the evaluation phase partially complied with the laws, regulations, procedures and generally required criteria as:
   - the evaluation commission of the Department evaluated the bids without a predefined system of scoring;
   - the Department did not publish to whom the project was awarded.

4. the contract finalization phase did not comply with the laws, regulations, procedures and generally required criteria as the Ministry did not sign a contract with the contractors.

5. the contract management and implementation phase complied with laws, regulations, procedures and generally required criteria.

Although the public procurement practice did not comply with all the aspects prescribed by the law, we could not establish that the money spent on the procurement of road infrastructure projects was not legitimate. After all, the aspects which were not complied with did not affect the legitimacy of the money spent. The projects that we reviewed complied with the budget regulation and the minister approved the awarding of all these projects.
Furthermore, the legal framework for public procurement audit did not cover all the relevant aspects of the procurement practice. In the recently published laws for public procurement practice some of these aspects are (partially) covered. The aspects that are still not covered are:

- the drafting and including of a contract template in the specifications document;
- execution and monitoring of the work; and
- sanctions for non-compliance.

It is imperative that the public procurement process be designed and carried out in such a manner that it will minimize risks of conflict of interest, fraud and collusion in order to guarantee a transparent, fair and open competition.

**Recommendations**

We recommend the Parliament to make use of its right to question by requesting the minister of Traffic, Transport and Urban Planning to come up with a plan to eliminate all the shortcomings in the various phases of the public procurement practice of the Department.

In this plan the minister has to indicate what actions she will be taken to eliminate the shortcomings. These actions need to address the following issues per phase:

1. For the **planning phase** the minister has to:
   a. formulate a policy for road infrastructure within a reasonable timeframe. This policy should include guidelines and criteria to determine which, when and how the roads are inspected and maintained;
   b. formally approve the year maintenance plan and commit to the execution of this plan;
   c. formally approve the specifications documents prior to the public tender event;
   d. create pre-set evaluation criteria for the bids and include these in the specifications documents; and
   e. draft a contract template and include it in the specifications documents.

2. For the **bidding phase** the minister has to staff the position of Internal Controller or formally request assistance from the Ministry of Finance. The Internal Controller has to report on the public procurement process to the Ministry on a regular basis.

3. For the **evaluation phase** the minister has to enforce the Department to:
   a. use the pre-set evaluation criteria and weighing factors from the specifications
documents to evaluate and score the bids; and

b. publish to whom the project is awarded.

4. For the contract finalization phase the minister has to sign a contract that covers all terms and conditions for the project with the contractors.

In her response on November 28th 2018 the minister indicated that although she could not give a response on the content of our audit findings, she will consider the recommendations of the Supreme Audit Institution while implementing an improvement plan for the public procurement process.

We also recommend the Parliament to make the necessary amendments on the National Decree Procurement Regulations 2018, P.B. 2018 no. 9, to include rules for:

1. the drafting of a contract template and to include it in the specifications documents;
2. the signing of a contract with the contractors;
3. a code of ethics and declaration of side functions and/or activities for the Department;
4. the execution and monitoring of the work; and
5. sanctions for non-compliance with the regulations.
RAPÔRT RESUMÍ

E institushonnan di kontraloria di diesun diferente pais miembro di CAROSAI (Caribbean Organization of Supreme Audit Institutions) a hasi un ouditoria kolaborativo di e manera ku ta tene destaho públiko den nan respektivo paisnan. Sekretariado di CAROSAI a koordiná ehekushon di e ouditorianan kolaborativo akí ku asistensia di Inter-American Development Bank. Resultado di e ouditorianan lo keda presentá na CAROSAI den kuadro di di prinsipo di interkambio di informashon entre e paisnan miembro.


Tin lei, regla i instrukshon ku gobièrnu tin di kumpli kuné ora di hasi destaho públiko. Nos a hasi e ouditoria akí ku e intenshon di duna Parlamento, e pagadó di impuesto i públiko en general siguransa ku e fondonan ku a konfia gobièrnu kuné a ser usá konforme lei. Meta di e ouditoria tabata pa:

_Determiná si e manera ku Departamento di Obranan Públiko di Ministerio di Tráfiko, Transporte i Planifikashon Urbano ta hasi destaho públiko pa infrastruktura di kaminda ta di akuerdo ku e lei-, regla-, prosedimentu- i otro kriterionan general aplikabel._

_Konklushon

Nos ta konkluí ku:

_E manera ku Departamento di Obranan Públiko di Ministerio di Tráfiko, Transporte i Planifikashon Urbano a hasi destaho públiko pa infrastruktura di kaminda a kumpli parsialmente ku e lei- regla-, prosedimentu- i otro kriterionan general aplikabel pa projektonan ku a paga den 2016._
Nos konklushon ta basá riba e siguiente echonan:

1. e fase di planifikashon a kumpli parsialmente ku e lei-, regla-, prosedimentu- i otro kriterionan general ku ta aplikabel, en bista ku:
   - Departamento no a basa su destahonan pa infrastruktura di kaminda riba un maneho aprobah pa minister;
   - e plannan di mantenshon anual konserni no tabatin aprobashon formal di minister;
   - bestèk (dokumento ku lista di spesifikashon) di e proyektonan no a risibí aprobashon formal di minister promé ku e destaho públiko a tuma lugà;
   - Departamento no tabatin un lista kompleto di kriterio pre-estabeli;
   - den bestèk di e proyektonan no tabatin konsepto di e kontrato korespondiente.

2. e fase di oferta a kumpli parsialmente ku e lei-, regla-, prosedimentu- i otro kriterionan general ku ta aplikabel, en bista ku Ministerio no tin un “Internal Controller” pa presentá informe na Ministerio riba e prosedimentu di destaho públiko. Aunke Ministerio di Finansa tabata presente na e eventonan di destaho públiko, nos no a risibí informe di tur e eventonan.

3. e fase di evaluashon a kumpli parsialmente ku e lei-, regla-, prosedimentu- i otro kriterionan general ku ta aplikabel, en bista ku:
   - e komishon di evaluashon di Departamento no a usa un sistema predefini pa evaluá un ofertanan i determiná skor di kada un;
   - Departamento no a publika ta ken a gana e destaho.

4. e fase di finalisashon di kontrato no a kumpli ku e lei-, regla-, prosedimentu- i otro kriterionan general ku ta aplikabel, en bista ku Ministerio no a firma un kontrato ku e kontratistanan.

5. e fase di maneho i implementashon di kontrato a kumpli ku e lei-, regla-, prosedimentu- i otro kriterionan general aplikabel.

Aunke no a kumpli ku tur aspekto fihá den lei den e proseso di tene e destahonan, nos no por a determiná ku e gastunan hasí pa kontratashon di e proyektonan di infrastruktura di kaminda tabata ilegal, ya ku e aspektonan ku no a kumpli kuné no a afektá legalidat di e gastunan. E proyektonan ku nos a evaluá a kumpli ku Ordenansa di Presupuesto, i minister a aprobah otorgamentu di tur e proyektonan.
Procurement of Road Infrastructure by the Department of Public Works

Mas aleu, e quadro húridiko di destaho públiko no a kubri tur aspekto relevante di e manera ku ta hasi destaho públiko. Algun di e aspektonan akí ta kubrí (parsialmente) den e leinan publiká resientemente tokante destaho públiko. E aspektonan ku ainda no ta kubrí den lei ta lo siguiente:

- ku mester konsípiá un kontrato modelo i incluí esaki huntu ku e bestèk;
- ehekushon i monitoreo di e trabou; i
- sanshon den kaso di inkumplimentu.

Mester diseñá i ehekutá e proseso di destaho públiko di tal manera ku ta minimisá e riesgo di konflikto di interes, froude i konspirashon, pa asina garantísá un kompetensia transparente i hustu den kua un i tur por partisipá.

Rekomendashon

Nos ta rekomendá Parlamento usa su derecho di hasi pregunta pa pidi minister di Tráfiko, Transporte i Planifikashon Urbano bini ku un plan pa eliminá tur defisiensia ku tin serka Departamento den e diferent fasenan di e proseso di destaho públiko.

Den e plan, minister tin di indiká kua ta e akshonnan ku lo tuma pa eliminá e defisiensianan. Pa kada fase, e akshonnan akí lo mester ta dirigí riba e siguiente puntonan:

1. Pa e fase di planifikashon, minister tin ku:
   a. formulá, riba un plaso rasonabel, un maneho pa infraestruktura di kaminda. E maneho akí mester ofresé pouta i kriterio pa determiná kua ta e kamindanan ku mester inspekshoná, na ki momento i di ki manera;
   b. duna su aprobashon formal di e plan anual di mantenshon i e compromiso pa ehekutá e plan;
   c. duna su aprobashon formal di e bestèknan, promé ku e evento di destaho públiko tuma lugá;
   d. formulá kriterio pre-establesí pa evaluá oferta i inkluí i kriterionan akí den e bestèknan; i
   e. konsípiá un kontrato modelo i incluí esaki huntu ku e bestèknan.

2. Pa e fase di oferta, minister tin ku yena e funshon di Internal Controller òf hasi un petishon formal di asistensia na Ministerio di Finansa. E Internal Controller tin ku reportá regularmente na Ministerio tokante e proseso di destaho públiko.

3. Pa e fase di evaluashon, minister tin ku sòru pa Departamento:
a. use criterion pre-established to evaluate offers and factors to determine the best, to evaluate and determine scores of offers;
b. publish to announce the award of the project.

4. At the finalization stage of the contract, the minister will sign a contract with the contractor that covers the terms and conditions of the project.

Den su reactionfecha 28 di November 2018 e minister a indicá ku aunke e no a logra reactioná riba e contenido di e rapòrt lo e tene kuenta ku e rekomendashonnan di Kontraloria den e implementashon di e plan di mehorashon di e proseso di destaho público.

Tambe nos ta rekomendá Parlamento hasi e enmiendanan nesesario na Dekreto Nashonal di Regla pa Destaho Públiko 2018, P.B. 2018 no. 9, di manera ku e Dekreto lo inklú regla tokante:
1. tratamiento di konsepto di kontrato modelo ku mester ta inklú den e bestèk;
2. firmamentu di kontrato ku e kontratistanan;
3. un kódigo di kondukta i un deklarashon tokante funshon i/òf aktividat sekundario pa Departamento;
4. ehekushon i monitoreo di e trabou; i
5. sanshon den kaso ku keda sin kumpli ku e reglanan.
1. **PART ONE**

1.1 **Background information**

The Supreme Audit Institutions of eleven countries that are members of the Caribbean Organization of Supreme Audit Institutions (hereinafter to be referred to as: CAROSAI) conducted a cooperative compliance audit on a public procurement subject. The Secretariat of CAROSAI supported by the Inter-American Development Bank coordinated the execution of this cooperative audit. The results of the audits will be submitted to CAROSAI in the context of knowledge sharing between the member countries.

As part of this cooperative audit the Supreme Audit Institution of Curaçao (hereinafter to be referred to as: the Supreme Audit Institution) audited the public procurement practice carried out by the Department of Public Works (hereinafter to be referred to as: the Department) of the Ministry of Traffic, Transport and Urban Planning (hereinafter to be referred to as: the Ministry). Every year the Department procures services from contractors for the maintenance of road infrastructure. According to the financial statement 2016 of the government the Department spent about NAf 38.9 million on road infrastructure. This amount represented 11% of the capital expenditures of the government of Curaçao which is more than the 1% materiality criterion that the Supreme Audit Institution uses for the auditing of the annual financial statement of the government.

The NAf 38.9 million was spent on various types of infrastructural works which we divided into four categories based on the payment description in the financial administration. The majority, about 61%, of the amount went to road maintenance. In the chart of figure 1 we present the amount of money spent on each category and the proportion of each category in relation to the total amount spent.
When outsourcing works to contractors the Ministry must comply with the legal acts and the public procurement procedures. There are laws and regulations that the government should adhere to when executing a public procurement. We performed this audit to provide the Parliament, tax payers and the public in general assurance that the funds entrusted to the government were spent legitimately.

1.2 Organization audited and responsible party

The organization audited is the Ministry of Traffic, Transport and Urban Planning. The Ministry consists of two sectors which are responsible to execute the policy of the Ministry. These are the Sector of Traffic & Transport and the Sector of Infrastructure & Urban Planning. Within the Sector of Infrastructure & Urban Planning, the Department of Public Works is responsible mainly for the maintenance and construction of physical infrastructure, public facilities, public spaces and parks. This Department consists of the following main sections:

1. Project & Development;
2. Management & Maintenance;
3. Public Facility;
4. Business Office; and
5. Support.
The sections ‘Project & Development’ and ‘Management & Maintenance’ are responsible for inspecting road conditions, formulating long-term maintenance plan and drafting specifications documents to procure road infrastructure. The section of Public Facilities is responsible for the illumination of public roads and spaces while ‘Business Office’ formulates the year maintenance plans, calculate the budget for procurements and organizes the public tenders. Finally the section ‘Support’ is in charge of the bookkeeping of the procurement activities.

The Financial Controller of the Ministry is responsible to check that the public tender criteria is complied with. The Secretary General of the Ministry (hereinafter to be referred to as: the Secretary General) carries the ultimate responsibility for the Department while the minister is responsible for the Ministry and the procurement of infrastructure. We included the organization structure of the Department showing its position within the Ministry in appendix one.

1.3 Intended users

The report is first and foremost intended for the Parliament of Curaçao. Other intended users are:

- the general public of Curaçao
- the Ministry of Traffic, Transport and Urban Planning
- the Ministry of Finance
- the internal audit office of the government
- the Financial Supervision Board of Curaçao
- Caribbean Organization of Supreme Audit Institutions

1.4 Audit mandate

This audit is undertaken under article 22 of the National Ordinance Supreme Audit Institution Curaçao, Act A.B. 2010 no. 87 annex H. This Act mandates the Supreme Audit Institution to examine whether the obligations, expenses and revenues have:

- been incurred in accordance with the established budget; and
- complied with statutory regulations to ensure orderly and verifiable financial management.
1.5 Subject matter

The subject matter is the public procurement practice executed by the Ministry. Public procurement is about the purchasing of public services by the government. In order to deliver services to the community, the government needs to acquire the necessary goods and services from external sources. These goods and services have to be appropriate and procured at the best possible cost to meet the needs of the government in terms of quality, quantity and time, while complying with the applicable laws.

The public procurement practice consists of the following phases:

1. Planning
2. Bidding
3. Evaluation
4. Contract finalization
5. Contract management and implementation

For each phase we determined the activities that have to be carried out. In the figure below we present a detailed overview of each phase and related activities.

*Figure 2 Activities of the procurement phases*

- **Planning:**
  1. Execute projects based on road infrastructure policy/procurement plan
  2. Check budget
  3. Determine if public tender is required
  4. Formulate evaluation criteria
  5. Draft specifications document
  6. Draft contract
  7. Announce public tender
  8. Hold information meeting

- **Bidding:**
  1. Initiate the bidding by contractors
  2. Hold public tender event
  3. Submit official report of public tender event
  4. Report on public tender process

- **Evaluation:**
  1. Evaluate bids
  2. Submit bid evaluation report
  3. Issue an award advice
  4. Authorize request for budget allocation
  5. Award the project
  6. Publish the award

- **Contract finalization:**
  1. Sign the contract

- **Contract management & implementation:**
  1. Monitor execution of work
  2. Approve payments based on work delivered
  3. Manage the budget of the project
1.6 Audit objective

The objective of this audit was to:

_Determine if the public procurement practice of road infrastructure followed by the Department of Public Works of the Ministry of Traffic, Transport and Urban Planning complies with the laws, regulations, procedures and generally required criteria._

To achieve this objective we reviewed each phase of the public procurement practice.

1.7 Audit scope

For this audit we used the payments to contractors for infrastructure work as reported in the financial statement of the government in 2016 to select the projects to be audited. As stated before the total amount spent was around NAf 38.9 million divided into four categories. We selected each project of road infrastructure for which the Department spent NAf 250\(^1\) thousand or more in 2016. These were 21 projects that the Department had to tender publicly. These 21 projects consist of 16 road maintenance, 2 road reconstructions and 3 constructions of traffic roundabouts. These projects amounted NAf 30.6 million which represent approximately 78\% of the total amount of NAf 38.9 million spent on infrastructure during 2016. This audit is limited to only the projects above the amount of NAf 250 thousand for which public tender is required. Projects of road infrastructure for which the Department spent less than NAf 250 thousand in 2016 are not included in this audit. This does not necessarily mean that all projects for which the Department spent less than NAf 250 thousand in 2016 did not require a public tender. This is because we did not consider if the costs of a project may have been split in order to avoid the threshold of NAf 250 thousand. We did not assess if the Department deviated from public tender of the projects and whether the reason for deviation was in compliance with the law.

Furthermore, not all projects we selected started and finished in 2016. Some projects started in earlier years while other projects were still in progress by the end of 2016.

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\(^1\) This is the amount for which public tender is required
1.8 Limitations

We could not review the entire public procurement practice for 5 of the 21 projects. The Department could not submit us any further information for three of the projects as the contractor is considering a lawsuit against the government. For two projects we did not receive all the requested information as the projects are still in execution. As a result we were not able to test all aspects of the phases ‘Evaluation’ and ‘Contract management & implementation’ for the three projects involved in the lawsuit. While for the two other projects it was not possible for us to review the last phase completely.

1.9 Audit criteria

The following laws and regulations govern the public procurement practice of infrastructure by the Ministry:

2. National Decree of the coming into effect of article 1 to 44 of the National Ordinance Financial Management, P.B. 2016 no. 2;
5. National Decree on Regulations of Public Tender, A.B. 1958 no. 35 annex D.

The procedures that further guide the procurement practice are:

6. Administrative Organization Procedures for Financial Commitments, annex 3, 4, 7, 8 and 9, Ministry of Finance; and

Based on the abovementioned laws, regulations and procedures we selected the relevant criteria for each phase of the procurement process. For these criteria we refer to appendix two.
1.10 Audit methodology

This audit is a direct reporting engagement as we measured the public procurement practice against the relevant criteria to come to a conclusion. We conducted this audit in accordance with the International Standards of Supreme Audit Institutions\(^2\).

We gathered evidence by interviewing the responsible parties, performed inquiries, reviewed and inspected supporting documents. For each project we selected we used a checklist consisting of the relevant criteria to assess the evidence collected. We analyzed this information to conclude if the procurement practice followed by the Department complies with the laws, regulations, procedures and generally required criteria.

\(^2\) ISSAI 4000 Compliance Audit Standards
2. PART TWO

Before auditing the procurement practice we evaluated the legal framework to determine if it covers all the generally required aspects. In the following paragraphs we will present our findings regarding the legal framework followed by the findings of the audit on the procurement practice.

2.1 The legal framework

Prior to October 10th, 2010, both the Netherlands Antilles and Curaçao had their own set of laws and regulations governing the public procurement practice. The laws and regulations governing the public procurement were not replaced by the dismantling of the Netherlands Antilles and the island of Curaçao in October 2010. Since then the laws and regulations governing the public procurement pertaining to the Island of Curaçao became applicable. The law, National Decree on Regulations of Public Tender, A.B. 1958 no. 35 annex D (National Decree 1958), dated from 1958. As of 2016 the government published a new National Ordinance Financial Management that regulates the procurement of goods and services by the government. Article 11 of this National Ordinance Financial Management 2016 (National Ordinance FM 2016) states that the procedures to follow when the government procures goods or services will be regulated by national decree. The National Decree Procurement Regulations P.B. 2018 no. 9 (National Decree 2018) came into effect on January 1st, 2018 which will replace the law from 1958. For this reason we did not use this Decree for the review of the procurement practice of the 21 projects.

We evaluated the legal framework consisting of both the laws that belong to the period before 2016 as those from 2016 and later. We assessed if these regulations contain the generally required aspects for the procurement process and if they provide sanctions for non-compliance. The legal framework needs to contain rules that:

- are published, accessible and known by all;
- apply to the entire procurement process;
- apply to all parties;
- are clear; and
- are enforced.
We found that the National Decree 1958 does not contain all the generally required aspects for the procurement process. The aspects that were not covered are:

1. integrity and ethics;
2. evaluation criteria;
3. contractual terms;
4. execution and monitoring of the work; and
5. sanctions for non-compliance.

The aspect 'evaluation criteria' has been incorporated in the National Decree 2018, while the other four aspects are still not covered.

Ad.1 Integrity and ethics
The National Decree 1958 contains no regulations that cover integrity and ethics. In the National Ordinance FM 2016 integrity and ethics are partially covered. In this ordinance there is a provision included that covers only conflict of interest. This ordinance does not provide for a code of ethics for the officials related to the procurement process. A declaration of side functions and/or activities are also not mandated in the new ordinance.

Ad.2 Criteria
The National Decree 1958 did not mandate the inclusion of evaluation criteria in the specifications document. As a consequence the participants were not familiar with these criteria and could not have the guarantee that the same criteria were applied to all participants. The National Decree 2018 though prescribed that these criteria together with the weighing factors be included in the specification document. So with the publication of the new law the aspects of a transparent evaluating system is now covered.

Ad.3 Contractual terms
The National Decree 1958 did not provide rules for the drafting and inclusion of a contract template in the specifications document. The National Decree 2018 on the other hand does not mandate the signing of a contract nor the inclusion of a contract template in the specifications document.

Ad.4 Execution and monitoring of work
The legal framework does not provide regulations to monitor the execution of the work. The National Ordinance FM 2016 dictates that the monitoring of the execution of work
must be regulated by a national decree. The prescribed national decree has still not been published. We used the relevant criteria as mentioned in the S.A.A.B to audit the activities of the contract management and implementation phase.

**Ad.5 Sanctions for non-compliance**

Neither the National Decree 1958 nor the National Decree 2018 contain sanctions for non-compliance.

### 2.2 Findings compliance with laws, regulations, procedures and generally required criteria

We verified for each phase if the selected projects complied with the criteria of the phase. In case all criteria related to a phase were met, we rated the overall phase for that project as ‘met’. In case no criteria of a phase was met, we rated the phase for the particular project as ‘not met’. In any other case we rated the phase as ‘partially met’.

Meanwhile for those projects that we did not receive the required information we considered the criteria of the phase as not tested. After reviewing the five phases of the public procurement practice carried out by the Department, we obtained the results presented in table 1.

**Table 1 Overall results of the procurement practice by phase**

<table>
<thead>
<tr>
<th>Phase</th>
<th># Criteria(^3) tested</th>
<th>Result of the phase</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Planning</td>
<td>11</td>
<td>Partially met by all 21 projects</td>
</tr>
<tr>
<td>2 Bidding</td>
<td>5</td>
<td>Partially met by 14 projects. Met by 7 projects</td>
</tr>
<tr>
<td>3 Evaluation</td>
<td>9</td>
<td>Partially met by all 21 projects</td>
</tr>
<tr>
<td>4 Contract finalization</td>
<td>1</td>
<td>Not met by the 21 projects</td>
</tr>
<tr>
<td>5 Contract management &amp;</td>
<td>6</td>
<td>Met by 16 projects, Five projects were not fully tested</td>
</tr>
<tr>
<td>implementation</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

All 21 projects complied partially with the planning and evaluation phases. Regarding the bidding phase seven projects met the criteria while fourteen complied partially. None of the 21 projects complied with the contract finalization phase, whereas 16 projects

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\(^3\) The provisions are considered as criteria
complied with the contract management and implementation phase. We could not assess this last phase for five projects because as mentioned before we did not obtain all the necessary information. The Department decided to stop submitting any further information for three of those projects as the contractor is considering a lawsuit against the government. For two projects we did not receive all the requested information as these projects are still in execution. The total budget for these five projects amounts to nearly Naf 15.8 million which is about 24.5% of the total budget of the selected projects (Naf 64.4 million). In the following paragraphs we elaborate on the findings for each phase.

### 2.2.1 Planning phase

The review of the planning phase of the public procurement practice produced the following results per activity.

#### Table 2 Results of the planning phase

<table>
<thead>
<tr>
<th>Activities</th>
<th># Criteria tested</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Execute projects based on road infrastructure policy/ procurement plan</td>
<td>2</td>
<td>Partially met by all 21 projects</td>
</tr>
<tr>
<td>Check budget</td>
<td>1</td>
<td>Met by all 21 projects</td>
</tr>
<tr>
<td>Determine if public tender is required</td>
<td>1</td>
<td>Met by all 21 projects</td>
</tr>
<tr>
<td>Formulate evaluation criteria</td>
<td>1</td>
<td>Not met by the 21 projects</td>
</tr>
<tr>
<td>Draft specification document</td>
<td>2</td>
<td>Partially met by all 21 projects</td>
</tr>
<tr>
<td>Draft contract</td>
<td>1</td>
<td>Not met by the 21 projects</td>
</tr>
<tr>
<td>Announce public tender</td>
<td>2</td>
<td>Met by all 21 projects</td>
</tr>
<tr>
<td>Hold information meeting</td>
<td>1</td>
<td>Met by all 21 projects</td>
</tr>
<tr>
<td>Conclusion</td>
<td>Partially met</td>
<td></td>
</tr>
</tbody>
</table>

Below we give an explanation of only the activities that were not met by the criteria. They are numbered according to the number mentioned in the table above.

**Ad. 1 Formulate road infrastructure policy/ procurement plan**

The Department did not procure road infrastructure based on an approved policy by the Minister. The Government Accounting National Ordinance dictates that the Ministry’s budget should reflect its underlying policy. Since the dismantling of the Netherlands
Antilles and the establishment of the Ministry of Traffic, Transport and Urban Planning as part of the new administrative organization, no policy has been formulated for road infrastructure. Each year the Ministry prepares a budget for the procurement of goods and services related to road infrastructure. For the year 2016 this budget was NAf 43.8 million according to the financial statement of the government. The Ministry did not have an annual plan for 2016 setting out how the budget of NAf 43.8 million will be spent. The Department procured road infrastructure based on inspections of the roads. They use a standard system to determine the condition of the roads. The damages are categorized based on the type and extent of the damage. This identifies the needs for maintenance of the roads which are translated into long-term and short-term plans. According to the Department until 2016 the year plans were revised but not formally approved by the minister. As indicated by the Department the minister may deviate from the plans by setting other priorities for the roads that need to be maintained.

Essential principles in the procurement process are amongst others: transparency, fair process and accountability. The lack of a formal approved policy and annual plans do not contribute to these principles. This means that the Parliament may not have a reasonable basis to hold the minister accountable for his decisions.

According to the Secretary General they are now drafting a policy which they expect the minister to approve in the third quarter of 2018.

**Ad. 4 Formulate evaluation criteria**
The Department did not have complete pre-set criteria and procedures to evaluate bids. We noted that the specifications documents did not include:

- weighing factors attached to the criteria to rate the bids; or
- criteria based on which a bid will automatically be rejected.

We also noted that the following information was not announced in advance:

- information on the group of officials evaluating the bids;
- procedure on how to act in case there is a draw between bids; and
- procedure on how to act in case of a non-unanimously decision.

The absence of pre-set criteria on how to rate and evaluate bids may raise doubt about the transparency and the objectivity of the group in charge of the evaluation. This may
cause bidders to dispute the awarding of the bid which may result in subsequent processes of reevaluation of the same bids by different groups with different sets of criteria. This may ultimately delay the process of awarding the bid.

**Ad. 5 Draft specification document**

The specifications documents of the projects were not formally approved by the minister prior to the public tender event. According to the National Decree on Regulations of Public Tender the tender specifications document must be approved by or on behalf of the minister. However, none of the specifications documents of the projects we tested were approved by or on behalf of the minister. The specifications document forms the basis for the project execution and budget. Since the minister carries the ultimate responsibility for these procurements, good governance practice requires that these documents be reviewed and approved by the minister prior to the public tender event. This enables the minister to timely address possible deviations from plan that may result in unforeseen financial impact.

**Ad. 6 Draft contract**

The specifications documents did not include a draft of the contract for the projects. Generally accepted practice dictates that the Ministry drafts a contract with all relevant requirements by which the contractor has to commit himself to. The contract must be included in the specifications document. As stated in paragraph 2.1.1 neither the National Decree 1958 nor the National Decree 2018 regulates that the Ministry has to prepare and include a draft of the contract in the specifications document. Contrary to the National Decree 1958 the National Decree 2018 does not mandate the signing of a contract with the contractor.

2.2.2 **Bidding phase**

We conclude from the review of the bidding phase that only the reporting on the progress of the public tender was not met by the 21 projects. The result of the review is shown in table 3. For this reason we scored the bidding phase as partially met.
Table 3 Results of the bidding phase

<table>
<thead>
<tr>
<th>Activities</th>
<th># Criteria tested</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Initiate the bidding by contractors</td>
<td>2</td>
<td>Met by all 21 projects</td>
</tr>
<tr>
<td>2 Hold public tender event</td>
<td>1</td>
<td>Met by all 21 projects</td>
</tr>
<tr>
<td>3 Submit official report of public tender event</td>
<td>1</td>
<td>Met by all 21 projects</td>
</tr>
<tr>
<td>4 Report on public tender process</td>
<td>1</td>
<td>Not met by 14 projects. Partially met by 7 projects</td>
</tr>
</tbody>
</table>

Conclusion: Partially met

The Ministry of Finance requires the Internal Controller of the Ministry of Traffic, Transport and Urban Planning to report on the public tender process. This Ministry however does not have an Internal Control function in place to audit and report on the public tender process. As a consequence the Ministry may not be in control of this process. Besides the audit of this process, the Internal Controller should also be responsible for the review of all phases of the public procurement practice.

Currently it is the Internal Control Department of the Ministry of Finance that audits and reports on the process. According to the official reports of the public tender events the Ministry of Finance was present at fourteen of the public tender events. We obtained the tender reports of seven projects. In these reports the officials concluded that with the exception of some aspects, the public tender process complied with the regulations and procedures. The exceptions are:

1. The box for the biddings did not have two different locks with their corresponding key held by two officials as prescribed by the procedures.
2. The roles indicating the officials that have to carry out the public tender event have not been complied with. Instead of three officials to carry out the public tender event there were only two officials.
3. The proceeds from the sale of the specifications document were not deposited in due time on the account of the government.

We rated the risk of the first exception as high because the box only has one lock that can be opened with one key which is held by one official of the Department. This means that only one official can open the box at any given time. Consequently this may increase the risk that the box can be opened unnoticed before the public tender event.
2.2.3 Evaluation phase

We tested the criteria of the activities of the evaluation phase and took note as shown in table 4 that:

- 3 activities being, ‘submit bid evaluation report’, ‘issue an award advice’ and ‘authorize request for budget allocation’ met the requirements for all the 21 projects;

- the criteria regarding the activity ‘award the project’ were met by eighteen projects. For three projects we could not test all the criteria of this activity; and

- none of the projects met the criteria of the activities ‘evaluate the bids’ and ‘publish the award’.

Based on these findings we scored the ‘Evaluation phase’ as partially met.

Table 4 Results of the evaluation phase

<table>
<thead>
<tr>
<th>Activities</th>
<th># Criteria tested</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Evaluate the bids</td>
<td>1</td>
<td>Not met by 21 projects</td>
</tr>
<tr>
<td>2 Submit bid evaluation report</td>
<td>1</td>
<td>Met by all 21 projects</td>
</tr>
<tr>
<td>3 Issue an award advice</td>
<td>1</td>
<td>Met by all 21 projects</td>
</tr>
<tr>
<td>4 Authorize request for budget allocation</td>
<td>2</td>
<td>Met by all 21 projects</td>
</tr>
<tr>
<td>5 Award of the project</td>
<td>3</td>
<td>Met by 18 projects, 3 projects not fully tested</td>
</tr>
<tr>
<td>6 Publish the award</td>
<td>1</td>
<td>Not met by 21 projects</td>
</tr>
</tbody>
</table>

**Conclusion:** Partially Met

Next we elaborate on those activities that did not meet the criteria or could not be tested. They are numbered according to the sequence mentioned in the table above.

**Ad. 1 Evaluate the bids**

The evaluation commission of the Department evaluated the bids without a system of scoring. The bids were evaluated by a commission consisting of one employee of the Business Office, the Budget Calculator and the Project Manager for the project. The commission basically evaluated the bids on completeness and validity of the submitted documents. Furthermore they judged if the bidding price was within a 15% margin of the pre-calculated budget. However the commission did not use a system to objectively score the extent to which the bidders meet the requirements.
Based on their evaluation the commission issued a report with an advice on the awarding.

**Ad. 5 Award of the project**

Since we did not receive all the corresponding information for three projects we could not assess if these projects complied with the criteria of this activity.

**Ad. 6 Publish the award**

The Department did not publish the award of the project of the 21 public tenders although this is prescribed by the regulations. The Department did not give a reason for not publishing the award. We consider that the nonpublication of the project awarding can raise questions about transparency of the awarding. This may inhibit the other competitors to dispute the award in due time.

### 2.2.4 Contract finalization phase

We conclude that the contract finalization phase of the public procurement practice by the Department did not meet the requirements since the Ministry did not sign a contract with the contractors for none of the projects.

#### Table 5 Result of the contract finalization phase

<table>
<thead>
<tr>
<th>Activity</th>
<th># Criteria tested</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sign a contract</td>
<td>1</td>
<td>Not met by the 21 projects</td>
</tr>
</tbody>
</table>

Agreements signed by the contractors whereby they commit themself to fully comply with the execution of the work did not exist. The Department considers the specifications document of the project, the notes on the information meeting and any amendments on the specifications document as the agreement with the contractor. The contractor needed only to confirm in writing that he accepts the project. However this confirmation did not include a formal commitment by the contractor to comply with the provisions in these documents.

We have gone through the specifications documents and the amendments to the projects and we concluded that these documents did not contain all the relevant aspects that a contract normally covers. The most important aspect is the commitment of the contractor
to execute the project according to the specifications document and amendments. Other aspects that need to be included in a contract are particular conditions that are agreed upon during the negotiation of the contract which were not included in the specifications document. Also how to proceed if one of the parties involved does not adhere to the agreements. Without a contract signed by the Ministry and the contractor there might be no formal (legal) basis to deal with situations where the contractor does not deliver according to the expectations.

2.2.5 Contract management and implementation phase

As a result of the review of the contract management and implementation phase we concluded that the criteria regarding the approval of the payments based on work delivered was met by all 21 projects. The monitoring of the work and managing the budget were met by all the projects we were able to test (see table 6).

For the activity of monitoring we tested three criteria. One of these criteria stipulates that the Department must hold a meeting with the contractor once a month in order to monitor the progress of the work. In practice the Department met with the contractor every two weeks. The first meeting was the kick-off meeting in which the general administrative and technical execution aspects were further agreed upon.

Table 6 Result of the contract management and implementation phase

<table>
<thead>
<tr>
<th>Activities</th>
<th># Criteria tested</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Monitor execution of work</td>
<td>3</td>
<td>Met by 16 projects, 5 not tested</td>
</tr>
<tr>
<td>2 Approve payments based on work delivered</td>
<td>2</td>
<td>Met by all 21 projects</td>
</tr>
<tr>
<td>3 Manage the budget of the project</td>
<td>1</td>
<td>Met by 16 projects, 5 not tested</td>
</tr>
</tbody>
</table>

Conclusion: Met

The Department made minutes for these meetings which are signed by both parties. After completion of the project the Department prepared an official completion report stating that the work was executed according to the specifications. At this stage the Department withheld 10% of the approved budget for 6 months as a guarantee in case of misconstructions. After 6 months the Department issued a final completion official report.
to confirm proper execution of the project and paid the remaining 10% to the contractor.

For the activity of approved payments based on work delivered we tested two criteria. One criterion was the review of the work performed and the invoices to ensure that the work was delivered according to the specification document and the invoices were correctly calculated. According to the law the budget holder of the Ministry is responsible for this review. In practice it was the project manager who revised the invoices and the work delivered on behalf of the budget holder.

The Government Accounting National Ordinance mandates that exceeding of the budget must be avoided as much as possible by taking timely and adequate measures. For the process of budget management we tested if the total cost of the project stayed. Of the projects we tested sixteen stayed within their approved budget, while we did not obtain this information for five projects.

For a more detailed overview of the results per audit criteria, we refer to appendix 3.
3. **PART THREE**

3.1 **Conclusions**

After reviewing the five phases of the public procurement practice of road infrastructure we found that only the phase ‘contract management and implementation’ **complied** with the applicable laws, regulations, procedures and generally required criteria. The phases of ‘planning, bidding and evaluation’ **partially complied** while the ‘contract finalization’ phase **did not comply at all**.

The reasons for non-compliance are:

**The planning phase**

a. The Ministry has not formulated a road infrastructure policy. The identified needs were translated into long-term and short-term plans but the minister did not formally approve these plans.

b. The Department did not have a complete pre-set criteria and procedures to evaluate bids. The criteria used to evaluate bids did not have weighing factors and the conditions based on which a bid will automatically be rejected were not defined and announced in advance.

c. The specifications documents of the projects were not formally approved by the minister prior to the public tender event.

d. The specifications documents did not include a draft of the contract for the projects.

**The bidding phase**

e. The Ministry does not have an Internal Controller that reports on the public tender process to the minister. Currently the Ministry of Finance reports on this process.

**The evaluation phase**

f. The evaluation commission of the Department evaluated the bids without a system of scoring.

g. The Department did not publish to whom the projects were awarded in the local papers.

**The contract finalization phase**

h. The Ministry did not sign a contract with the contractors.

**The contract management and implementation**

i. The execution and monitoring of the projects were according to the relevant criteria.
We determined that the final total costs of the projects stayed within their approved budgets.

We conclude that the legal framework for public procurement audit **partially covers** the relevant aspects of the procurement practice. This conclusion is based on the fact that the following aspects were not covered by the legal framework:

- **Evaluation criteria and weighing factors for the bids**
  The National Decree 1958 did not mandate the inclusion of evaluation criteria in the specifications document. As a consequence the participants may not be familiar with these criteria and do not have the guarantee that the same criteria were applied to all participants. The National Decree 2018 though prescribed that these criteria be included in the specifications document.

- **Drafting and including of a contract template in the specifications document**
  The National Decree 1958 did not provide rules for the drafting and inclusion of a contract model in the specifications document. The National Decree 2018 on the other hand does not mandate the signing of a contract.

- **Integrity and ethics**
  The Ministry does not have measures to reduce the risks of conflict of interest. The signing of a confidentiality agreement and declaration of side jobs/functions and or activities by officials of the Department are not in place. The absence of these measures may increase the risk of integrity violation, such as collusion, fraud and corruption.

- **Execution and monitoring of the work**
  The legal framework does not provide regulations for the execution and monitoring of the work.

- **Sanctions for non-compliance**
  The legal framework does not contain regulations for sanctioning violations of the law.

In the recent published laws for public procurement practice the evaluation criteria and weighing factor is covered. Integrity and ethics are partially covered while drafting and including of a contract template in the specifications document, execution and monitoring of the work and sanctions for non-compliance are still not covered. On the other hand the signing of the contract is not required by law anymore.
3.2 **Recommendations**

Based on our findings we recommend the Parliament to make use of its right to question by requesting the minister to come up with a plan to eliminate all the shortcomings in the various phases of the public procurement practice of the Department. The following aspects must be incorporated in the plan:

1. formulation of a policy for road infrastructure within a reasonable timeframe. This policy should include guidelines and criteria to determine which, when and how the roads are inspected and maintained;
2. formal approval of the year maintenance plan and commitment to the execution of this plan;
3. formal approval of the specifications document prior to the public tender event;
4. creation of pre-set evaluation criteria and weighing factors for the bids and inclusion of these in the specifications document;
5. drafting of a contract template and inclusion in the specifications documents;
6. filling in of the function of Internal Controller or formal request for assistance from the Ministry of Finance;
7. use of pre-set evaluation criteria and weighing factors from the specifications document to evaluate and score the bids;
8. publishing of the award of the projects;
9. implementation of measures to reduce the risk of conflict of interest by preparing a code of ethics for the officials involved with the procurement process and by forcing these officials to declare side jobs/functions and or activities;
10. enforcing of the Department to publish the award of the contract to increase the transparency of the public procurement practice; and
11. signing of a contract that covers all terms and conditions for the project with the contractor.

Furthermore, we recommend the Parliament to make the necessary amendments on the National Decree Procurement Regulations 2018, P.B. 2018 no. 9 to include rules for:

- the drafting of a contract and to include it in the specifications document;
- the signing of a contract with the contractor;
- a code of ethics and declaration of side jobs/functions and or activities for the Department;
3.3 Responses

3.3.1 Management response

The report was presented in draft to the Secretary General on September 26th 2018 with the request to react within a three week period. We stated in our request that if we do not receive a reaction from the Secretary General by the end of this period we assume that he agrees with the content of the report. Since we did not receive any reaction from him within the abovementioned period we hereby conclude that he agrees with the content of the report.

3.3.2 Minister’s response

The draft report was presented to the minister on October 26th 2018. We granted the minister a reaction period of two weeks with the remark that if she does not react within said period, we will conclude that she agrees with the content of the report. We received on November 14th 2018 a request from the Ministry to postpone the reaction period till November 30th 2018. Following this request we agreed with one week extension instead. We finally received the minister’s written response on November 28th 2018.

The minister indicates that as is known she has implemented an improvement trajectory like “Base Line study” for the whole Ministry and a restructuring trajectory for Public Works in particular. She is also supported by UNOPS who provided a report concerning “Construction Contract Benchmark”. This report describes the procurement process and is internally still in deliberation.

In her response the minister stated that because of unforeseen circumstances she could not respond to the content of the report within the period requested by us. In her letter the minister stated that her reaction cannot be considered as an administrative rebuttal on the content of the report.

She furthermore indicated that we can be assured that the trajectory she has initiated will lead to a clear, proper and sharpened procurement process, including clarity about checks & balances. Hereby included is also a learning and training program which provides clarity about responsibilities and competences.

Moreover the minister stated that the recommendations from our report will be also taken
into consideration during the improvement process.

3.4 Postscript of the Supreme Audit Institution

The Supreme Audit Institution regrets that neither the Secretary General nor the minister did react to the content of this report. Although they were granted a total period of almost two months (four weeks for the Secretary General and three weeks for the minister). We can understand that because of unforeseen circumstances the minister could not react, however she has to consider our findings and recommendations due to the relevance of the risks involved with the noncompliance of the criteria mentioned in the report.

The minister indicated that she has set forward a plan for the improvement of the public procurement process. Since the plan has not been yet fully implemented, we recommend her pending the implementation to assure that all criteria are met by the projects that are currently being procured. We will follow the implementation of this improvement plan and we will report on it in due time.
Appendix 1: Partial organization structure of the ministry of Traffic, Transport & Urban Planning with a focus on the department of Public Works

- Minister TT&UP
- Cabinet Minister
- Secretary General
- Ministerial Staff
  - Sector of Traffic & Transport
  - Organization of policy making
  - Sector of Infrastructure & Urban Planning
    - Domain Management
    - Urban Planning
    - Public Works
      - Support
        - Internal Affairs
        - Accounting
          - Project & Development
          - Management & Maintenance
            - Management & Maintenance Road & Water drainage
            - Management & Maintenance Wastewater
            - Management & Maintenance Buildings
          - Public Facilities
            - Steam engineering & Electricity
            - Workshop (Garage)
            - Warehouse & Powderhouse
Appendix 2: Criteria per phases of public procurement

1. PLANNING PHASE

<table>
<thead>
<tr>
<th>Audit Objectives</th>
<th>Audit Criteria</th>
<th>Sources/ Authority</th>
</tr>
</thead>
</table>
| 1.1 Execute projects based on road infrastructure policy/procurement plan | 1. The annual road infrastructure procurement plan is based on a road infrastructure policy formulated and formally approved by the minister.  
2. The project forms part of an annual road infrastructure procurement plan formally approved by the minister. | Government Accounting National Ordinance, A.B. 2010 no. 87, appendix b, art. 14 and 34  
Internal procedures of the Ministry |
| 1.2 Check budget                           | 3. The project budget is within the approved budget by the parliament.                                                                                                                                              | Government Accounting National Ordinance, A.B. 2010 no. 87, appendix b, art. 6    |
| 1.3 Determine if public tender is required | 4. Projects of civil engineering equal to or greater than NAF. 250,000 are publicly tendered.                                                                                                                      | National Ordinance Financial Management, A.B. 1998 no. 46, art. 12  
National Ordinance Financial Management, P.B. 2015 no. 79, art. 10 |
| 1.4 Formulate evaluation criteria          | 5. The evaluation criteria for selecting the bid is formulated in advance of the public tender. The formulation consists of:  
a. the listing and, if necessary, a description of the selection criteria;  
b. the establishing of a weight factor for each criteria;  
c. the criteria on the basis of which bids can automatically be rejected;  
d. the composition of the evaluation commission;  
e. the procedure in case of an equal scoring;  
f. the procedure in case of a non-unanimous advice of the commission. | Administrative Organization Procedures for Financial Commitments, art. 8  
(Ministry of Finance) |
| 1.5 Draft specifications document         | 6. The specifications document includes a description of the work as well as all the requirements related to the implementation and compliance by the contractor;                                         | National Decree on Regulations of public tender, A.B. 1958 no. 35 art. 3         |
### Audit Objectives | Audit Criteria | Sources/ Authority
--- | --- | ---
7. The specifications document is formally approved by or on behalf of the minister. | National Decree on Regulations of public tender, A.B. 1958 no. 35 art. 3

### 1.6 Draft contract
8. A draft contract is included in the specifications document. | Generally required criteria

### 1.7 Announce the public tender
9. The public tender is announced at least fourteen days in advance in local newspapers. | National Decree on Regulations of public tender, A.B. 1958 no. 35 art. 4

10. The announcement contains the place, closing date and time to submit the biddings as well as the place and time on which the tender-opening event will be held. | Administrative Organization Procedures for Financial Commitments, appendix Procedure Public Tender, art. 8

### 1.8 Hold information meeting
11. An information meeting is held with the bidders and a report on the information meeting is issued. | National Decree on Regulations of public tender, A.B. 1958 no. 35 art. 5

### 2. BIDDING PHASE

#### 2.1 Initiate the bidding by contractors
12. The bidding document is in accordance with the model prescribed by regulations and is fully filled out and signed by the bidder. | National Decree on Regulations of public tender, A.B. 1958 no. 35 art. 7

Standard General and Administrative Regulations, appendix 1.

13. The bidder comply with the following requirements:
   a. be a resident or
   b. be in a possession of a resident permit;
   c. statement of bankruptcy;
   d. registration at the Chamber of Commerce;
   e. declaration by the tax authorities and the Social Security Bank regarding past due obligations;
   f. provision for additional work; | National Decree on Regulations of public tender, A.B. 1958 no. 35 art. 7

<table>
<thead>
<tr>
<th>Audit Objectives</th>
<th>Audit Criteria</th>
<th>Sources/ Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Audit Objectives</td>
<td>Audit Criteria</td>
<td>Sources/ Authority</td>
</tr>
<tr>
<td>2.2 Hold public tender event</td>
<td>14. The place and time of the public tender is in accordance with the place and time in the announcement.</td>
<td>National Decree on Regulations of public tender, A.B. 1958 no. 35 art. 6</td>
</tr>
<tr>
<td>2.3 Submit official report of public tender event</td>
<td>15. An official report of the tender is made in accordance with the model prescribed by the regulations. This report is signed by the competent authority, the official in charge of reading the biddings and the two witnesses.</td>
<td>National Decree on Regulations of public tender, A.B. 1958 no. 35 art. 8 Administrative Organization Procedures for Financial Commitments, appendix Procedure Public Tender, art. 24</td>
</tr>
<tr>
<td>2.4 Report on public tender process</td>
<td>16. The Internal Controller (IC) of the Ministry will monitor the proper application and implementation of the public tender procedures. The IC reports his findings in accordance with the model prescribed by the Ministry of Finance.</td>
<td>Administrative Organization Procedures for Financial Commitments, art. 18</td>
</tr>
</tbody>
</table>

**3. EVALUATION PHASE**

<table>
<thead>
<tr>
<th>Audit Objectives</th>
<th>Audit Criteria</th>
<th>Sources/ Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1 Evaluate the bids</td>
<td>17. The Evaluation Commission will assess the bids based on the previously established selection criteria and weighting factors. - the score given per member per tender for each selection criteria; - the total score per bid; - the main reasons for scoring and ranking the bids</td>
<td>Administrative Organization Procedures for Financial Commitments, art. 17</td>
</tr>
<tr>
<td>3.2 Submit bid evaluation report</td>
<td>18. The results of the evaluation is reported by the Evaluation Commission and the report contains: - the score given per member per tender for each selection criteria;</td>
<td>Administrative Organization Procedures for Financial Commitments, art. 9</td>
</tr>
<tr>
<td>Audit Objectives</td>
<td>Audit Criteria</td>
<td>Sources/ Authority</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>-------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>3.3 Issue an award advice</td>
<td>19. The commission issued an advice for the award.</td>
<td>Administrative Organization Procedures for Financial Commitments, art. 9</td>
</tr>
<tr>
<td>3.4 Authorize request for budget allocation</td>
<td>20. The Financial Controller of the Ministry has checked if the public tender criteria was complied with.</td>
<td>Administrative Organization Procedures for authorization request, art. 3</td>
</tr>
<tr>
<td></td>
<td>21. The authorization request is approved by:</td>
<td>Government Accounting National Ordinance, A.B. 2010 n°. 87, art. 39</td>
</tr>
<tr>
<td></td>
<td>a. the Minister of Finance in case of an amount equal or greater than Naf 400,000 or;</td>
<td>Ministerial Decree Ministry of Finance no. 2016/5147</td>
</tr>
<tr>
<td></td>
<td>b. the Sector Director of Financial Policy and Budget Management in case of an amount exceeding Naf 200,000.</td>
<td></td>
</tr>
<tr>
<td>3.5 Award the project</td>
<td>22. The awarding of the project is approved by the Minister.</td>
<td>National Decree on Regulations of public tender, A.B. 1958 no. 35, art. 11</td>
</tr>
<tr>
<td></td>
<td>23. The contractor is informed in writing of the awarding of the contract in accordance with the model prescribed by law.</td>
<td>National Decree on Regulations of public tender, A.B. 1958 no. 35, art. 11</td>
</tr>
<tr>
<td></td>
<td>24. The contractor has confirmed in writing the acceptance of the awarding of the contract.</td>
<td>Standard General and Administrative Provisions, art. 105</td>
</tr>
<tr>
<td>3.6 Publish the award</td>
<td>25. The outcome of the public tender is published in the local newspapers.</td>
<td>Administrative Organization Procedures for Financial Commitments, appendix Procedure Public Tender, art. 26</td>
</tr>
</tbody>
</table>
### 4. CONTRACT FINALIZATION PHASE

<table>
<thead>
<tr>
<th>Audit Objectives</th>
<th>Audit Criteria</th>
<th>Sources/ Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1 Sign a contract</td>
<td>26. A contract is signed by or on behalf of the Minister and the contractor.</td>
<td>National Decree on Regulations of public tender, A.B. 1958 no. 35, art. 11</td>
</tr>
<tr>
<td></td>
<td>The contract will only be signed by the authorizing official on behalf of the minister.</td>
<td>Government Accounting National Ordinance, A.B. 2010 no. 87, art. 40</td>
</tr>
</tbody>
</table>

### 5. CONTRACT MANAGEMENT/IMPLEMENTATION PHASE

<table>
<thead>
<tr>
<th>Audit Objectives</th>
<th>Audit Criteria</th>
<th>Sources/ Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1 Monitor the execution of work</td>
<td>27. Monthly meetings are held with the contractor to discuss the progress of the work execution according to the specifications document and reports are issued.</td>
<td>Standard General and Administrative Procedures, art. 121</td>
</tr>
<tr>
<td></td>
<td>28. An official report of work completion is issued by the Department.</td>
<td>Internal procedure</td>
</tr>
<tr>
<td></td>
<td>29. An official report of final work completion is issued by the Department.</td>
<td>Internal procedure</td>
</tr>
<tr>
<td>5.2 Approve payments based on work delivered</td>
<td>30. The Budget holder has verified that the work has been delivered and that the invoice amount is correctly calculated.</td>
<td>National Ordinance Financial Management, P.B. 2015 no. 79, art. 15</td>
</tr>
<tr>
<td></td>
<td>31. The invoices are made payable by the authorizing official of the Department.</td>
<td>National Ordinance Financial Management, P.B. 2015 no. 79, art. 14</td>
</tr>
<tr>
<td>5.3 Manage the budget of the project</td>
<td>32. The total cost of the project is within the approved project budget by the Ministry of Finance.</td>
<td>Government Accounting National Ordinance, A.B. 2010 no. 87, appendix b, art. 45</td>
</tr>
</tbody>
</table>
### Appendix 3: The number of projects in compliance with the audit criteria

<table>
<thead>
<tr>
<th>No.</th>
<th>Criteria</th>
<th>Comply</th>
<th>Partially comply</th>
<th>Do not comply</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The annual road infrastructure procurement plan is based on a road infrastructure policy formulated and formally approved by the minister.</td>
<td>-</td>
<td>-</td>
<td>21</td>
</tr>
<tr>
<td>2</td>
<td>The project forms part of an annual road infrastructure procurement plan formally approved by the minister.</td>
<td>-</td>
<td>21</td>
<td>-</td>
</tr>
<tr>
<td>3</td>
<td>The project budget is within the approved budget by the parliament.</td>
<td>21</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>4</td>
<td>Projects of civil engineering equal to or greater than NAF 250,000 are publicly tendered.</td>
<td>21</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>5</td>
<td>The evaluation criteria for selecting the bid are formulated in advance of the public tender in accordance with the rules.</td>
<td>-</td>
<td>-</td>
<td>21</td>
</tr>
<tr>
<td>6</td>
<td>The content of the specifications document is in compliance with laws and regulations.</td>
<td>21</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>7</td>
<td>The specifications document is formally approved by or on behalf of the minister.</td>
<td>-</td>
<td>-</td>
<td>21</td>
</tr>
<tr>
<td>8</td>
<td>A draft contract is included in the specifications document.</td>
<td>-</td>
<td>-</td>
<td>21</td>
</tr>
<tr>
<td>9</td>
<td>The public tender is announced at least fourteen days in advance in local newspapers.</td>
<td>21</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>10</td>
<td>The content of the announcement complies with law and regulations.</td>
<td>21</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>11</td>
<td>An information meeting is held with the bidders and a report on the information meeting is issued.</td>
<td>21</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

### Bidding Phase

<table>
<thead>
<tr>
<th>No.</th>
<th>Criteria</th>
<th>Projects that:</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>The bidding document is in accordance with the model prescribed by regulations and is fully filled out and signed by the bidder.</td>
<td>21</td>
</tr>
<tr>
<td>13</td>
<td>The bidder complies with the law and regulations.</td>
<td>21</td>
</tr>
<tr>
<td>14</td>
<td>The place and time of the public tender is in accordance with the place and time in the announcement.</td>
<td>21</td>
</tr>
<tr>
<td>15</td>
<td>An official report of the tender is made in accordance with the model prescribed by the regulations. This report is signed by the competent authority, the official in charge of reading the biddings and the two witnesses.</td>
<td>21</td>
</tr>
<tr>
<td>16</td>
<td>The Internal Controller (IC) of the Ministry will monitor the proper application and implementation of the public tender procedures. The IC reports his findings in accordance with the model prescribed by the Ministry of Finance.</td>
<td>7</td>
</tr>
<tr>
<td>No.</td>
<td>Criteria</td>
<td>Projects that:</td>
</tr>
<tr>
<td>-----</td>
<td>----------</td>
<td>---------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Comply</td>
</tr>
<tr>
<td>Evaluation Phase</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>The Evaluation Commission will assess the bids based on the previously established selection criteria and weighting factors.</td>
<td>-</td>
</tr>
<tr>
<td>18</td>
<td>The Evaluation Commission has issued an evaluation report of the bids and the report complies with the rules.</td>
<td>21</td>
</tr>
<tr>
<td>19</td>
<td>The commission issued an advice for the award.</td>
<td>21</td>
</tr>
<tr>
<td>20</td>
<td>The Financial Controller of the Ministry has checked if the public tender criteria was complied with.</td>
<td>16</td>
</tr>
<tr>
<td>21</td>
<td>The authorization request is approved by the Ministry of Finance.</td>
<td>21</td>
</tr>
<tr>
<td>22</td>
<td>The awarding of the project is approved by the minister.</td>
<td>21</td>
</tr>
<tr>
<td>23</td>
<td>The contractor is informed in writing of the awarding of the project in accordance with the model prescribed by law.</td>
<td>18&lt;sup&gt;4&lt;/sup&gt;</td>
</tr>
<tr>
<td>24</td>
<td>The contractor has confirmed in writing the acceptance of the awarding of the project.</td>
<td>18&lt;sup&gt;5&lt;/sup&gt;</td>
</tr>
<tr>
<td>25</td>
<td>The outcome of the public tender is published in the local newspapers.</td>
<td>-</td>
</tr>
<tr>
<td>Contract Finalization Phase</td>
<td></td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>A contract is signed by or on behalf of the minister and the contractor. The contract will only be signed by the authorizing official on behalf of the minister.</td>
<td>-</td>
</tr>
<tr>
<td>Contract Management &amp; Implementation Phase</td>
<td></td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>Monthly meetings are held with the contractor to discuss the progress of the work execution and reports are issued.</td>
<td>16&lt;sup&gt;6&lt;/sup&gt;</td>
</tr>
<tr>
<td>28</td>
<td>An official report of work completion is issued.</td>
<td>16&lt;sup&gt;7&lt;/sup&gt;</td>
</tr>
<tr>
<td>29</td>
<td>An official report of the final work completion is issued.</td>
<td>16&lt;sup&gt;8&lt;/sup&gt;</td>
</tr>
<tr>
<td>30</td>
<td>The Budget Holder has verified that the work has been delivered and that the invoice amount is correctly calculated.</td>
<td>21</td>
</tr>
<tr>
<td>31</td>
<td>The invoices are made payable by the authorizing official of the Department.</td>
<td>21</td>
</tr>
<tr>
<td>32</td>
<td>The final total cost of the project is within the approved budget by the Ministry of Finance.</td>
<td>16&lt;sup&gt;9&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

<sup>4</sup> No information provided for three projects, see paragraph 2.2.3  
<sup>5</sup> No information provided for three projects, see paragraph 2.2.3  
<sup>6</sup> No information provided for five projects, see paragraph 2.2.5  
<sup>7</sup> No information provided for five projects, see paragraph 2.2.5  
<sup>8</sup> No information provided for five projects, see paragraph 2.2.5  
<sup>9</sup> No information provided for five projects, see paragraph 2.2.5