

# सार्वजनिक खरिद पत्रिका Public Procurement Journal

वर्ष १२

अङ्क १

असार, २०८२



प्रकाशक



नेपाल सरकार

प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय

सार्वजनिक खरिद अनुगमन कार्यालय

केसरमहल, काठमाडौं

**संरक्षक**



श्री मुकुन्द प्रसाद निरौला  
सचिव

**सम्पादन समिति**



संयोजक  
श्री रामचन्द्र दंगाल  
सहसचिव



सल्लाहकार  
श्री रामबन्धु सुवेदी  
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## संरक्षक

सचिव श्री मुकुन्द प्रसाद निरौला

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इन्जिनियर श्री अद्वैत राम भण्डारी - सदस्य सचिव

यस पत्रिकामा प्रकाशित लेख रचनाहरू लेखकका निजी विचार हुन्। लेखकबाट व्यक्त विचारले यस  
कार्यालयको प्रतिनिधित्व गर्दैन।

## प्रकाशक



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प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय

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प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय  
**सार्वजनिक खरिद अनुगमन कार्यालय**  
केसरमहल, काठमाडौं

**मन्तव्य**

सार्वजनिक खरिद सम्बन्धी कार्य सम्पादन गर्दा प्रतिस्पर्धा, पारदर्शिता, निष्पक्षता, जवाफदेहिता, दक्षता, आर्थिक उपयोगिता, र मूल्यको सार्थकता जस्ता सर्वमान्य सिद्धान्तहरूको पालना गर्नु अत्यन्त आवश्यक छ । यी सिद्धान्तहरूको प्रभावकारी कार्यान्वयनबाट मात्र सार्वजनिक सम्पत्तिको उचित उपयोग, सेवाको गुणस्तर तथा सार्वजनिक विश्वास हासिल गर्न सकिने विषयमा यस कार्यालय कटिबद्ध छ ।

सार्वजनिक खरिद प्रणालीलाई प्रभावकारी, आधुनिक र उत्तरदायी बनाउनका लागि खरिद प्रक्रियामा संलग्न सबै पक्षको समन्वय, सुदृढ नीति तथा कार्यान्वयन क्षमताको आवश्यकता रहेको छ । यस सन्दर्भमा खरिद कार्यका विभिन्न चरणमा हुने योजना, प्रस्ताव आह्वान, मूल्याङ्कन, निर्णय, कार्यान्वयनका तथा अनुगमन र मूल्याङ्कन सम्मका हरेक चरणमा पारदर्शिता र प्रतिस्पर्धाको सुनिश्चितता अनिवार्य छ ।

सार्वजनिक खरिदमा देखिने व्यवहारिक समस्याहरू समाधान गर्न, खरिदमा संलग्न कर्मचारीहरूको क्षमता अभिवृद्धि गर्न तथा खरिदसम्बन्धी कानुनी, नीतिगत र प्राविधिक पक्षहरूलाई अद्यावधिक गर्न कार्यालयले निरन्तर पहल गरिरहेको छ । खरिद प्रक्रियामा सूचना प्रवाह, प्राविधिक दक्षता, वित्तीय अनुशासन, र अनुगमन प्रणालीलाई मजबुत बनाउन गरिएका प्रयासहरू दीर्घकालीन सुधारका आधार शिला हुने विश्वास गरिएको छ ।

यस प्रकाशनले सार्वजनिक खरिद प्रणालीसम्बन्धी नीति, सिद्धान्त, अभ्यास र सुधार योजनाहरूलाई समेट्दै खरिद प्रक्रियामा संलग्न सम्पूर्ण सरोकारवालाहरूलाई मार्गदर्शन गर्ने अपेक्षा गरिएको छ ।

अन्त्यमा, यस कार्यमा सहयोग पुऱ्याउने सम्पूर्ण विज्ञ, समर्पित कर्मचारी तथा सम्पादन टोलीलाई धन्यवाद ज्ञापन गर्दछु ।

मुकुन्द प्रसाद निरौला  
सचिव



## सम्पादकीय

सार्वजनिक निकायबाट हुने खरिद कार्यको अनुगमन, नियमन र सार्वजनिक खरिद प्रणालीलाई व्यवस्थित गर्न सार्वजनिक खरिद अनुगमन कार्यालय क्रियाशील रहेको छ । तदनुसार सार्वजनिक कोषको प्रयोग गरी गरिने खरिदलाई दक्षता एवं परिणाममुखी बनाउन यस कार्यालयले सार्वजनिक खरिद कानूनमा सामयिक संशोधन, विभिन्न खरिद कार्यविधि, मार्गदर्शन जारी गर्ने, नमूना बोलपत्र कागजात तयारी, विद्युतीय खरिद प्रणाली सञ्चालन, सार्वजनिक खरिद कार्यमा संलग्न हुने कर्मचारीलाई नियमित प्रशिक्षण प्रदान गर्ने, सार्वजनिक निकायलाई खरिद सम्बन्धमा राय, परामर्श दिने लगायत सार्वजनिक खरिद ऐन, २०६३ र नियमावली, २०६४ ले निर्दिष्ट गरेका काम, कर्तव्य निर्वाह गर्दै आइरहेको छ ।

सार्वजनिक खरिद निकायबाट हुने खरिदमा राजकीय कोषको प्रयोग हुने हुँदा खरिद प्रक्रियामा पारदर्शिता र प्रतिस्पर्धा लाई सीमित नपार्ने हुनु पर्दछ । आम नागरिकको सरोकार रहने र यसबाट सार्वजनिक स्रोतको सदुपयोग भएको नागरिक विश्वास हासिल गर्दै सार्वजनिक जवाफदेहीता सुनिश्चित गरिनु अपरिहार्य हुन्छ ।

यस कार्यालयको जिम्मेवारी मुताबिक सार्वजनिक खरिद सम्बन्धी लेख, रचना सामग्री समावेश गरेर गत, विगत वर्ष जस्तै यस वर्ष पनि यो सार्वजनिक खरिद पत्रिका प्रकाशन गरिएको छ ।

यस पत्रिका भित्र सार्वजनिक खरिद सम्बन्धमा अवलम्बन गरिएका नविनतम् विधि र प्रक्रियाहरू, अन्वेषणात्मक लेखहरू, राष्ट्रिय, अन्तर्राष्ट्रिय अभ्यास लगायत सार्वजनिक खरिद प्रक्रियालाई सुधार गर्ने विषय समेटिएका लेख रचनाहरू समावेश गरिएका छन् । यसबाट सार्वजनिक खरिदमा संलग्न हुने सार्वजनिक पदाधिकारीहरू तथा निजी क्षेत्र, सार्वजनिक खरिदमा चासो राख्ने सरोकारवालाहरूका लागि उपयोगी हुनेछ भन्ने विश्वास लिइएको छ ।

यस पत्रिका प्रकाशनका लागि लेख, रचना उपलब्ध गराउने विद्वान लेखकहरू एवं पत्रिका प्रकाशनमा सहयोग गर्नुहुने सम्पूर्णमा धन्यवाद ज्ञापन गर्दछौं । यस पत्रिकामा प्रकाशित लेख, रचना उपर प्रतिक्रिया दिई आगामी दिनमा पत्रिकालाई थप गुणस्तरीय एवं समस्या समाधानमा योगदान पुऱ्याउने बनाउन अमूल्य सुझावको अपेक्षा गर्दछौं ।

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# नेपालको सार्वजनिक खरिद: विश्लेषणात्मक समीक्षा



- मुकुन्द प्रसाद निरौला\*

## विषय प्रवेश

नेपालको सार्वजनिक खरिद प्रक्रिया सरकारी निकायहरूले आवश्यक मालसामान, निर्माण कार्य, परामर्श सेवा वा अन्य सेवाहरू प्राप्त गर्न अपनाइने कानूनी र प्रशासनिक विधि हो। यो प्रक्रिया सरकारी कार्यक्रम र विकास आयोजना समयमै कार्यान्वयन गर्न र सार्वजनिक स्रोतहरूको पारदर्शी र दिगो उपयोगमा सहयोग पुर्याउन महत्वपूर्ण हुन्छ। सार्वजनिक खरिद ऐन, २०६३ र सार्वजनिक खरिद नियमावली, २०६४ ले यसलाई कानूनी आधारमा राखी समग्र खरिद व्यवस्थालाई एकीकृत र सुव्यवस्थित बनाउने उद्देश्य राखेका छन्। प्रदेश र स्थानीय तहका निकायहरूले पनि ऐनअनुसार आफ्नो खरिद नियमावली बनाउने अधिकार पाएका छन्, जसले नेपालभरिका सबै सरकारी निकाय, स्वायत्त संस्था, आयोग, प्राधिकरण र विश्वविद्यालयहरूलाई एउटै कानूनी संरचनामा आबद्ध गराएको छ। सार्वजनिक खरिदमा कागजात व्यवस्थापन, प्रतिस्पर्धी बोलपत्र प्रणाली, प्राविधिक मूल्याङ्कन, सम्झौता कार्यान्वयन र बजेटको खर्च अनुगमन विशेष महत्वका छन्।

प्रभावकारी खरिद व्यवस्थाले यी पक्षहरू पारदर्शी र जवाफदेही बनाउने मात्र होइन, बजेटको दिगो र उचित उपयोग गरी ठूला आयोजना समयमै सम्पन्न गर्न र निजी क्षेत्रसँगको विश्वास बलियो बनाउन पनि सहयोग पुर्याउँछ। यद्यपि व्यवहारमा यी आदर्शहरू कार्यान्वयनमा ल्याउन चुनौतीहरू छन्। सबै सार्वजनिक निकायहरूले अनिवार्य खरिद योजना नबनाउने, प्राविधिक दक्षता र स्रोतको अभाव, कानूनी अस्पष्टता, मिलेमतो र स्थानीय हस्तक्षेप जस्ता समस्याले खरिद प्रक्रियामा अवरोध ल्याएका छन्। यी कमजोरीहरूले बजेट खर्चमा ढिलाइ, आयोजना समयमा सम्पन्न नहुनु र सेवा प्रवाह कमजोर पार्ने अवस्था सिर्जना गरेका छन्।

हालैको **Public Expenditure and Financial Accountability (PEFA)** मूल्याङ्कन (2024) ले पनि यस्तै कमजोरी औँल्याउँदै सार्वजनिक खरिदमा पारदर्शिता, प्रतिस्पर्धा र सार्वजनिक पहुँचको सुधार अत्यावश्यक रहेको देखाएको छ। यस्तै चुनौतीपूर्ण परिदृश्यमा नेपालका सार्वजनिक खरिद प्रक्रियाको

\* सचिव, सार्वजनिक खरिद अनुगमन कार्यालय

बलियो पक्ष (Strengths), कमजोरीहरू (Weaknesses), अवसरहरू (Opportunities) र चुनौतीहरू (Threats) को विश्लेषण (SWOT Analysis) गर्नु अपरिहार्य छ। यसले सार्वजनिक खरिद व्यवस्थालाई अझ प्रभावकारी बनाउन आवश्यक सुधार र मार्गनिर्देशन प्रदान गर्दै पारदर्शी र जवाफदेही शासनको जग बलियो पार्ने अपेक्षा गरिएको छ। तसर्थ, यस आलेख मार्फत खरिद प्रशासनको समीक्षा गरी सुधारको मार्गचित्र प्रस्तुत गर्ने जमर्को गरेको छु ।

## Public Expenditure and Financial Accountability (PEFA) को मूल्याङ्कन र यसको अन्तर्य

PEFA (Public Expenditure and Financial Accountability) भन्नाले सार्वजनिक खर्च र वित्तीय जवाफदेहिताको मूल्याङ्कन गर्ने एउटा अन्तर्राष्ट्रिय फ्रेमवर्क हो। यो प्रणालीले कुनै पनि देशको सार्वजनिक वित्त व्यवस्थापन (PFM) को प्रभावकारिता र पारदर्शितालाई मूल्याङ्कन गर्छ। यसले सरकारी खर्च र राजस्व सङ्कलन प्रणालीको अवस्थालाई मापन गरी कमजोर पक्ष पहिचान गर्छ र सुधारको सन्दर्भमा सिफारिस दिन्छ। PEFA मूल्याङ्कन प्रायः सरकारको वार्षिक वित्तीय व्यवस्थापन सुधार प्रयासको लागि मार्गनिर्देशनको रूपमा उपयोग हुन्छ।

नेपालमा हालै गरिएको PEFA मूल्याङ्कनले सार्वजनिक खरिद व्यवस्थापन (PI-24) लाई समेटेको छ। यो खरिद सूचकले मुख्यतया चारवटा आयाम (dimensions) मा आधारित भएर सार्वजनिक खरिद प्रणालीको कार्यसम्पादन मूल्याङ्कन गर्दछ।

**Summary table of scores:**

Indicator/Dimension	Assessment of performance	Score
<b>PI-24. Procurement (M2)</b>		<b>C</b>
24.1. Procurement monitoring	Procuring agencies maintain contract records in individual files, which include information on what was procured, the value of the procurement, and who was awarded the contract. The only procurement database is maintained by the PPMO in e-GP, which is incomplete.	D
24.2. Procurement methods	A reliable database for procurement is currently unavailable, which limits the ability to accurately determine the degree of performance for this dimension.	D*
24.3. Public access to procurement information	Government units representing most procurement activities ensure that complete and accurate information for at least four key procurement information elements is made available to the public on time.	B
24.4. Procurement complaints management	The procurement complaints system meets five of the six prescribed criteria. Since a 1 percent deposit of the bid value is necessary to make a complaint, the criterion of not charging fees that prohibit access by concerned parties is considered unmet.	B

*Fig: PUBLIC EXPENDITURE AND FINANCIAL ACCOUNTABILITY ASSESSMENT's indicator for Procurement in Nepal*

## १. खरिद अनुगमन (२४.१)

सरकारी निकायहरूले व्यक्तिगत रूपमा खरिद सम्बन्धी अभिलेख राख्ने गरेका छन्, तर खरिद डाटाबेस (PPMO ले eGP मा राख्ने) अपूर्ण छ । यसले खरिद अनुगमनमा अवरोध ल्याएको छ । स्कोर: D

## २. खरिद विधिहरू (२४.२)

खरिद ऐन र नियमावलीले विभिन्न खरिद विधिहरूको सीमा निर्धारण गरेको छ । यद्यपि, एकीकृत डाटाबेसको अभावले खरिद विधिको प्रदर्शनको सटीक मूल्याङ्कन गर्न गाह्रो बनाएको छ । स्कोर: D\*

## ३. खरिद सूचनामा सार्वजनिक पहुँच (२४.३)

धेरै जसो खरिद क्रियाकलापका महत्वपूर्ण सूचना तत्वहरू समयमै सार्वजनिक गरिएका छन् । यद्यपि, वार्षिक खरिद योजना र सम्पूर्ण खरिद तथ्याङ्क पूर्ण रूपमा उपलब्ध छैनन् । स्कोर: B

## ४. खरिद उजुरी व्यवस्थापन (२४.४)

सार्वजनिक खरिद उजुरी समिति स्वतन्त्र रूपमा उजुरी समाधान गर्ने निकाय हो । उजुरी व्यवस्थापनका छ मध्ये पाँच मापदण्ड पूरा भएका छन् । तर, उजुरी दर्ता गर्दा १ प्रतिशत धरौटी राख्नुपर्ने प्रावधानले पहुँचमा अवरोध ल्याएको छ । स्कोर: B

नेपालको सार्वजनिक खरिद व्यवस्थापनमा पछिल्लो PEFA मूल्याङ्कनले केही महत्वपूर्ण निहितार्थहरू औल्याएको छ । यद्यपि कानुनी र नीतिगत संरचना पारदर्शिता र प्रतिस्पर्धा प्रवर्द्धन गर्ने किसिमको बनेको छ, कार्यान्वयन पक्षमा अझै पनि कमजोरी छ । विशेष गरी, एकीकृत र भरपर्दो खरिद डाटाबेसको अभावले गर्दा खरिद अनुगमन र नतिजाको विश्लेषणमा समस्या आएको छ । यसले नीतिनिर्माणमा अवरोध सिर्जना गर्दै सुधार पहलमा पनि चुनौती थपेको छ ।

त्यस्तै, उजुरी व्यवस्थापनमा १ प्रतिशत धरौटीको प्रावधानका कारण पहुँचमा अवरोध र उजुरी सङ्ख्या सीमित देखिएको छ । यसले खरिद प्रक्रियामा सरोकारवालाको सहभागितामा कमी ल्याउने सम्भावना देखाउँछ । यद्यपि कानुनी संरचनाले खरिद सूचना सार्वजनिक पहुँचका चारवटा मुख्य

पक्षहरूमा राम्रो प्रगति देखाएको छ, तर अझै पनि सम्पूर्ण खरिद योजना र तथ्याङ्क समयमै उपलब्ध नहुनुले समग्र पारदर्शितामा असर पारिरहेको छ।

यी निहितार्थहरूले सुधारका लागि स्पष्ट बाटो देखाउँछन् – e-GP प्रणालीलाई थप बलियो बनाउने, सम्पूर्ण खरिद डेटाबेस निर्माण गर्ने, र उजुरी व्यवस्थापनलाई सबैका लागि पहुँचयोग्य बनाउने पहलहरू आवश्यक छन्। यसले सार्वजनिक खरिद प्रणालीलाई अझ पारदर्शी, प्रतिस्पर्धात्मक र जवाफदेही बनाउने दिशामा महत्वपूर्ण योगदान पुर्याउनेछ।

### **समीक्षा (Strength, Weakness, Opportunities, Threat (SWOT) Analysis)**

व्यवहारमा प्राविधिक समस्या, दक्ष जनशक्ति अभाव, कानुनी अस्पष्टता र मिलेमतो जस्ता कमजोरीको पर्याप्तताले सार्वजनिक खरिदको प्रभावकारिता कमजोर बनाएका छन्। पछिल्लो PEFA मूल्याङ्कनले पनि सार्वजनिक खरिद प्रक्रियामा पारदर्शिता र सुधारको खाँचो औँल्याएको छ। यस्तो पृष्ठभूमिमा, सार्वजनिक खरिद व्यवस्थाको सक्षमता, कमजोरी, अवसर र चुनौतीहरूको पहिचान गर्दै SWOT विश्लेषण गर्नु अत्यावश्यक छ, जसले आगामी सुधारका उपायहरू पहिचान र मार्गदर्शन गर्न मद्दत पुर्याउनेछ।

### **सबल पक्षहरू (Strengths):**

- बलियो कानुनी संरचना : सार्वजनिक खरिद ऐन, २०६३ सा सार्वजनिक खरिद व्यवस्थापन गर्ने स्वतन्त्र र तीनै तहका सरकार तथा अन्य निकायहरूको छाता ऐनको रूपमा रहेको छ ।
- स्वतन्त्र नियमनकारी निकायको रूपमा सार्वजनिक खरिद अनुगमन कार्यालय (PPMO) को व्यवस्था रहेको छ।
- PEFA मूल्याङ्कनमा सहभागिता जनाइ सार्वजनिक वित्त व्यवस्थापनमा पारदर्शिता र जवाफदेहिता अभिवृद्धि गर्ने मापदण्ड सिर्जना भएको छ।
- खरिद व्यवस्थामा हुने त्रुटिलाई समयमै सच्याउने, सरोकारवालाले पुनरावलोकन गर्न पाउने अधिकारको रक्षाको लागि स्वतन्त्र पुनरावलोकन समितिको व्यवस्था रहेको छ ।
- सार्वजनिक खरिद सम्बन्धी कार्य प्रतिस्पर्धी, पारदर्शी, समान व्यवहार, समान पहुँच, तटस्थ

र पारदर्शी स्पेशिफिकेशन, सूचनाको सार्वजनिकीकरण जस्ता लोकतान्त्रिक मूल्य मान्यतामा आधारित सिद्धान्तको अनुसरण गरिएको छ।

#### **कमजोरीहरू (Weaknesses):**

- दुर्गम स्थानमा भएका सार्वजनिक निकाय र विकट स्थानीय तहहरूमा प्राविधिक जनशक्ति र खरिद प्रक्रियामा दक्षता भएका कर्मचारीको अभाव छ।
- लागत अनुमान, स्पेशिफिकेशन र प्याकेजिङमा कर्मचारी र पदाधिकारीको व्यक्तिगत स्वार्थले स्रोतको दुरुपयोग भइरहेको गुनासो छ।
- निजी क्षेत्रको व्यवसायिकतामा बारम्बार प्रश्न उठ्ने गरेको छ।
- कानूनमा अस्पष्टता र विरोधाभाषले कार्यान्वयनमा अन्यौलता ल्याएको छ।
- योजना र रणनीतिक सोचको अभावले खरिद प्रक्रियामा कमजोरी देखिएको छ।
- सम्झौतामा ५०% भन्दा बढी समय थप हुँदा पनि काम सम्पन्न नहुने र कारबाहीमा ढिलाइ हुने समस्या रहेको छ।
- मिलेमतो र स्पेशिफिकेशनको सीमितता (ब्रान्डसँग मिलाउने प्रवृत्ति) का कारण प्रतिस्पर्धा सीमित भएको गुनासो दोहोरिरहेको छ।
- प्राविधिक कर्मचारी र उपकरणको अभावले कामको गुणस्तर कमजोर पारेको छ।
- आयोजना स्थलका स्थानीय माग र हस्तक्षेपले लागत र समयसीमा प्रभावित बनाएको छ।
- सार्वजनिक कर्मचारीको नैतिकता बारे जनगुनासो व्याप्त छ।

#### **अवसरहरू (Opportunities):**

- Training Academy को निर्माण गरी कर्मचारी र व्यवसायीलाई तालिम दिने सम्भावना रहेको छ।
- सूचना प्रविधिमा आधारित खरिद प्रणालीको विकासले पारदर्शिता र दक्षता अभिवृद्धि गर्ने सम्भावना छ।
- प्रदेश, स्थानीय तह, स्वायत्त संस्था, आयोग, प्राधिकरण र विश्वविद्यालयहरूलाई ऐनसँग

नवाझिने गरी कार्यप्रकृति अनुसारको अनुकूलित कानून निर्माण गर्ने अवसर रहेको छ।

- सूचना प्रविधि र तेस्रो पक्षको प्रयोगबाट अनुगमनलाई प्रभावकारी बनाउन सकिने सम्भावना छ।
- निजी क्षेत्रको व्यवसायिकता विस्तारका लागि विशेष कार्यक्रम सञ्चालन गर्न सकिने देखिन्छ।
- आयोजना स्थलका स्थानीय नागरिकको समेत सहभागिता गराउने उपायले विश्वास निर्माण गर्न सक्ने सम्भावना छ।

### चुनौतीहरू / खतरा (Threats):

- निजी क्षेत्रका व्यवसायीको मिलेमतो र व्यक्तिगत स्वार्थका कारण हुने Bid rigging (bid नहाल्ने), Bid Rotation (पालै पाको ठेक्का हाल्ने), Complementary Bidding (निश्चित bidder लाई जिताउन अन्यले धेरै bid गरिदिने) प्रवृत्तिले सार्वजनिक सम्पत्तिको हानिनोक्सानी हुने खतरा छ।
- नैतिक पूर्वाधार अभावका कारण सार्वजनिक खरिदमा संलग्न कर्मचारीको नैतिकता वृद्धि गर्न चुनौती छ।
- राजनीतिक अस्थिरता र नीतिगत परिवर्तनले सुधारको प्रक्रिया कमजोर पार्ने सम्भावना छ।
- स्रोत र जनशक्ति अभावले सुधारको कार्यान्वयनमा चुनौती खडा गरेको छ।
- आयोजनास्थलका स्थानीय माग र हस्तक्षेपले अतिरिक्त लागत र समय बढाउने सम्भावना छ।
- Data Breach (sensitive information मा unauthorized access), Hacking, SQL Injection / Code Injection (website मा malicious code हालिदिने) जस्ता Cyber Crime को खतरा रहेको छ।

### निष्कर्ष

नेपालको सार्वजनिक खरिद व्यवस्थापनमा कानुनी संरचना सबल भए पनि व्यवहारमा अझै सुधारको खाँचो छ। मिलेमतो, प्राविधिक दक्षता अभाव, नीतिगत अस्पष्टता र स्रोतको सीमितता जस्ता कमजोरीहरूले खरिद प्रक्रियाको प्रभावकारिता घटाएका छन्। यद्यपि, Training Academy, सूचना



प्रविधिमा आधारित खरिद प्रणाली र कानुनी परिपालन सुदृढ पार्ने सम्भावना नेपालका लागि ठूला अवसर हुन्। त्यसैले, यी अवसरहरूको भरपूर उपयोग गरी सुधारको प्रक्रिया अघि बढाउन सकेमा सार्वजनिक सेवा प्रवाह अझ पारदर्शी, दिगो र प्रभावकारी बन्नेछ। सार्वजनिक खरिद प्रक्रियाको निरन्तर समीक्षा र सुधारले पारदर्शी शासन र विकास आयोजनाको सफल कार्यान्वयनमा महत्वपूर्ण भूमिका खेल्नेछ।

## नेपालमा सार्वजनिक खरिद ऐन कार्यान्वयनका दुई दशक : व्यावहारिक विवेचना



-मणिराम गेलाल\*

सारांश : नेपालको सार्वजनिक खरिद ऐन, २०६३ लागू भएको दुई दशकमा पारदर्शिता र प्रतिस्पर्धा बढाउन मद्दत गरेको छ, तर केही व्यावहारिक समस्याहरू अझै छन्। असामान्य रूपमा न्यून कबोल अङ्कले गुणस्तर र समयमै काम पूरा गर्न असर पार्छ भने विशेष परिस्थितिमा छोटो प्रक्रियाले खरिद गर्दा पारदर्शिताको कमी देखिन्छ। सोझै खरिद प्रक्रिया जटिल छ र निर्णय लिन धेरै समय लाग्छ। यसैगरी, धेरै आयोजनाहरू रुग्ण अवस्थामा छन् तर सम्झौता अन्त्य गर्न गाह्रो हुन्छ। लागत अनुमानभन्दा बढी बोलपत्र स्वीकृत गर्न डराइन्छ। यी समस्याहरू हटाउन कानूनमा सुधार, निर्णयकर्ताहरूले विवेक प्रयोग गर्ने, र प्रक्रियालाई पारदर्शी बनाउन आवश्यक छ। यसरी सुधार गर्न सके नेपालको सार्वजनिक खरिद प्रणाली अझ प्रभावकारी हुनेछ।

### १. पृष्ठभूमि :

लोकतान्त्रिक शासन व्यवस्थामा सरकारले आफ्नो जिम्मेवारी पूरा गर्न, जनहित एवं देश विकासका लागि आवश्यक पर्ने वस्तु तथा सेवा खरिद गर्न र निर्माण कार्य गर्नको लागि सरकारी कोषको प्रयोग गरी निश्चित विधि र प्रक्रिया अवलम्बन गरी गरिने खरिद नै सार्वजनिक खरिद हो।

सार्वजनिक खरिद सम्बन्धी कार्यविधि, प्रक्रिया र निर्णयलाई अझ बढी खुल्ला, पारदर्शी, वस्तुनिष्ठ र विश्वसनीय बनाउँदै सार्वजनिक खरिद प्रक्रियामा प्रतिस्पर्धा, स्वच्छता, इमान्दारीता र जवाफदेहीता प्रवर्द्धन गरी मितव्ययी र प्रभावकारी ढङ्गबाट सार्वजनिक खर्चको अधिकतम प्रतिफल हासिल गर्न र सबैलाई खरिद कारवाहीमा सहभागिताका लागि समान अवसर सृजना गरी स्वदेशी फर्म र संस्थाहरूको प्रवर्द्धन समेतको उद्देश्य राखी जारी भएको सार्वजनिक खरिद ऐन, २०६३ ले कार्यान्वयनको दुई दशक पार गर्ने क्रममा रहेको छ।

सार्वजनिक खरिद ऐन लागू भएपछि सार्वजनिक खरिदका विविध पक्षहरूमा उल्लेख्य सुधार भएको महसुस गर्न सकिन्छ। तर पनि खरिदका कतिपय प्रावधानहरूमा अझै केही अन्यौलता र अस्पष्टताहरू

\* पूर्व सचिव, नेपाल सरकार

विद्यमान रहेको अवस्था छ । कतिपय सवालहरूमा ऐन र नियमावलीले प्रदान गरेको अधिकार प्रयोग गर्न सार्वजनिक निकायका प्रमुखहरूमा अझै हिचकिचाहट देखिन्छ ।

देश विकासका लागि गरिने सार्वजनिक खरिद र सरकारी कोषको खर्चको लागि सार्वजनिक खरिद ऐन मात्र आफैंमा पूर्ण हुन सक्दैन । अन्य ऐन/नियम र कार्यविधिसँग अन्तर सम्बन्धित हुन्छ । विगत केही वर्षयता देखिएको न्यून पुँजीगत खर्च, बढ्दो बेरुजु, रुग्ण आयोजनाहरूको सङ्ख्यामा वृद्धि, खरिद प्रक्रिया र व्यवस्थापनसँग सम्बन्धित बढ्दो उजुरी र विवाद समाधानमा संलग्नता मध्यस्थकर्ताको संलग्नता आदि विषयले नेपालमा सार्वजनिक खरिदको समग्र प्रणालीमा अझै थप सुधारको आवश्यकता बोध भएको छ । सार्वजनिक खरिद ऐन र नियमावली एवं अन्य सम्बन्धित कानूनले प्रदान गरेको अधिकारको समुचित प्रयोग नगरी खरिद र सो को व्यवस्थापनसँग सम्बन्धित निर्णयकर्ताको अकर्मण्यतालाई समेत खरिद ऐनको कमजोरी देखाउँदै पन्छिनु खोज्ने प्रवृत्ति एकातिर देखिन्छ भने मौजुदा खरिद ऐन, नियमावलीलाई नै पूर्ण छ भनेर दावी गर्न सकिने अवस्था पनि छैन । कुनै पनि ऐन, कानूनलाई व्यावहारिकताको कसीमा राखेर त्यसका सबल पक्ष र दुर्बल पक्षको पहिचान गर्ने र दुर्बल पक्षहरूमा सुधार गर्दै जानु पर्दछ । ऐन, कानून समयक्रम र कार्यान्वयनको अनुभवको आधारमा सुधार हुँदै जाने विषय हुन् । सार्वजनिक खरिद ऐन लागु भएको एक दशक पछि २०७३।०३।३० मा पहिलो पटक समय सापेक्ष सुधार सहित संशोधन भयो । हाल कार्यान्वयनको अर्को दशकको अन्तिमतिर दोस्रो पटक संशोधनको गृहकार्य भईरहेको छ । सार्वजनिक खरिद ऐन कार्यान्वयनको दोस्रो दशकको अन्त्यतिर आइपुग्दा सार्वजनिक खरिद प्रणाली र खरिद कानूनमा देखिएका अहम् सवालहरू मध्ये उल्लेख गर्न योग्य लागेका पाँच वटा सवालहरूमा मेरा आफ्ना अनुभव सहित विचार राख्दैछु । सार्वजनिक खरिदमा समस्याका रूपमा रहेका र संशोधनमा सम्बोधन गर्नुपर्ने विषयहरू पनि छन् । तर यो लेखको सीमा भित्र ती सबै विषयहरू चर्चा गर्नु व्यावहारिक हुँदैन । तसर्थ, यी महत्त्वपूर्ण पाँच वटा सवालहरूमा आफ्नै अनुभव समेतका आधारमा विवेचना गर्ने प्रयास गरेको छु ।

## २. असामान्य न्यून कबोल अङ्क

मौजुदा खरिद कानूनमा “न्यूनतम मूल्याङ्कित सारभुतरूपमा प्रभावग्राही” बोलपत्रलाई स्वीकृत गर्ने व्यवस्था गरिएको छ । निर्माण व्यवसायीहरूलाई कतिपय अवस्थामा असामान्य रूपले न्यून अङ्क कबोल गरेरै भए पनि अनुभव आर्जन गर्न, भएका मेशिनरी औजार उपकरणको उपयोग गर्न र

निर्माण क्षेत्रमा आफ्नो उपस्थिति कायम राख्न बोलपत्र प्राप्त गर्नुपर्ने अवस्था देखिन्छ । असामान्य रूपले न्यून अङ्क कबोल गरेको बोलपत्रदातासँग दररेट विश्लेषण सहितको स्पष्टीकरण माग गरी चित्तबुझ्दो स्पष्टीकरण नआएमा अस्वीकृत गर्न सक्ने सार्वजनिक खरिद नियमावली २०६४ नियम ६५ को उपनियम २ र ३ मा कानूनी प्रावधान समेत छ । तर पनि सार्वजनिक निकायका प्रमुखहरू त्यस प्रकारको बोलपत्र अस्वीकृत गर्न चाहँदैनन् । फलतः निर्माण व्यवसायीले न्यून लागतको सो कार्य समयमा सम्पन्न गर्न नसक्ने र कतिपय अवस्थामा गुणस्तरमा समेत प्रश्न उठ्ने गर्दछ । अझ आम मानिसको यस सम्बन्धी बुझाइ फरक रहेको छ । यसमा प्राविधिकहरूले बढी मूल्यको लागत अनुमान तयार गर्ने गरेकोले धेरै असामान्य रूपले निर्माण व्यवसायीहरूले कबोल अङ्क घटाउने गरेको भनी लागत अनुमान तयार गर्ने प्राविधिकहरूलाई लाञ्छना लगाइने गरिन्छ । तर विभिन्न अन्य देशहरूको समेत प्रचलनलाई दृष्टिगत गरी नेपाल सरकारले स्वीकृत गरेको नर्मस् (Norms) मा प्रमुख जिल्ला अधिकारीको अध्यक्षताको सर्वपक्षीय समिति वा स्थानीय तहले निर्धारण गरेको दररेट राखी तयार गरिएका लागत अनुमानमा त्यसरी बढी लागत देखाउन मिल्ने कुरै हुँदैन । त्यसमाथि खरिद ऐनको दफा ५क(२) मा अस्वाभाविक लागत अनुमान तयार गर्ने प्राविधिकलाई कारबाहीको व्यवस्था समेत छ । धेरै वर्ष अगाडि लागतको अनुमानको ३०% भन्दा बढी कबोल गर्ने बोलपत्रदाताको बोलपत्र अस्वीकृत गर्ने कानूनी व्यवस्था थियो । त्यसैले सोको अन्तिम सीमा (२९.९९९९...%) कबोल गर्ने बोलपत्रदाताहरू धेरै जना हुने गर्दथे । निर्माण व्यवसायीको विगतको कार्य सम्पादन इतिहास र फर्मको विश्वसनीयता समेत दृष्टिगत गरी ती मध्ये कुनै एउटा बोलपत्रदातालाई छनौट गर्न सक्ने तजबिजी अधिकार सार्वजनिक निकायको प्रमुखलाई दिइएको थियो । तर तजबिजी अधिकारको दुरुपयोग भएको गुनासो आएकाले सो व्यवस्था हटाइयो । अब लागत अनुमान भन्दा कति प्रतिशतसम्म घट्न पाउने भन्ने न्यूनतम सीमा छैन । असामान्य रूपले कम अङ्क कबोल गर्ने परिपाटीलाई निरुत्साहन गर्न बोलपत्रदातासँग सम्झौताका बखत लिइने कार्यसम्पादन जमानतसँग कबोल अङ्कलाई आबद्ध गरिएको छ । जसअनुसार लागत अनुमानको १५% सम्म कम अङ्क कबोल गरेमा कार्यसम्पादन जमानत ५% र सो भन्दा बढी घटेर कबोल गरेमा कबोल गरेको न्यून प्रतिशत र पन्ध्र प्रतिशतको फरकको आधा रकम सो ५% मा थप गरी कार्यसम्पादन जमानत लिने र फ्रन्ट लोडिङ्ग समेत भएमा थप ८% समेत थप गरी कार्यसम्पादन जमानत लिनुपर्ने व्यवस्था राखिएको छ । यसबाट पनि असामान्य न्यून अङ्क कबोल गर्ने परिपाटी कायमै रह्यो । अन्य गर्न सकिएको छैन । यसको समाधानको लागि देहायको विकल्प उपयुक्त हुन सक्छ ।

- लागत अनुमान तयार गर्दा १५% ओभरहेड समावेश गरिएकोले सो भन्दा बढी न्यून कबोल गर्ने बोलपत्र अस्वीकृत गर्ने ।
- पुरानो अनुभवको आधारमा समान १४,९९९९.....% कम कबोल गर्ने बोलपत्रदाताहरू मध्ये कुनै एक बोलपत्रदाताको बोलपत्र स्वीकृत नगरी प्राविधिक रूपमा प्रभावग्राही बोलपत्रहरूको औसत (Average) निकाली सो औसतसँग सबैभन्दा नजिक रहेको बोलपत्र स्वीकृत गर्ने । Average Bid विधिको अवलम्बन गर्ने ।

### ३. विशेष परिस्थितिमा गरिने खरिद :

कहिलेकाहीँ अप्रत्याशित परिस्थिति उत्पन्न भई तत्काल खरिद गर्नुपर्ने र सोका लागि खरिद कानूनमा निर्दिष्ट प्रक्रिया अवलम्बन गर्दा खरिद गर्न ढिलाइ हुने र सार्वजनिक निकायलाई थप हानी नोक्सानी हुने अवस्था आइपरेमा छोटो प्रक्रिया अवलम्बन गरी खरिद गर्न सकिने प्रावधान खरिद ऐनको दफा ६६ र नियमावलीको नियम १४५ मा राखिएको छ । तर यसको दुरुपयोगलाई रोक्न केही प्रावधानहरू राखिएका छन् । पहिलो, “विशेष परिस्थिति” उत्पन्न भएको कुरालाई पुष्ट्याई गर्नुपर्छ । उक्त अवस्था विशेष परिस्थिति हो र त्यसरी तत्काल खरिद नगर्दा सार्वजनिक सुरक्षा, हित तथा सामुदायिक स्वास्थ्यमा सङ्कट उत्पन्न हुन जाने र खरिदका अन्य विधि अवलम्बन गर्न नसकिने कारण र आधार पुष्ट्याई गरी सोको जानकारी एक तह माथिको अधिकारीलाई दिनुपर्नेछ । दोस्रो, यस प्रकारको खरिद आकस्मिक परिस्थितिको सामना गर्न आवश्यक परिमाण र समयावधिका लागि मात्र गर्नु पर्दछ । तेस्रो, यथासम्भव प्रतिस्पर्धा गराइ निर्माण व्यवसायी, आपूर्तिकर्ता, परामर्श सेवाप्रदायकसँग लिखित दरभाउ वा प्रस्ताव लिई उचित मूल्यका लागि वार्ता गरी खरिद गर्नु पर्दछ । अझ परिस्थितिको गाम्भीर्यतालाई मनन गरी कहिलेकाहीँ एउटा मात्र फर्मसँग दररेट लिई वार्ता गरी खरिद गर्न सकिने प्रावधान पनि नभएको होइन । तर एउटा मात्र फर्मसँग दररेट लिई खरिद गर्दा प्रतिस्पर्धा नहुने, खरिद कार्य महँगो हुनसक्ने र विवादित हुन सक्दछ । लेखक शहरी विकास तथा भवन निर्माण विभागको महानिर्देशक हुँदा कोभिड-१९ का सुरुवाती दिनहरूमा कोभिड उत्पन्न भएको स्थान चीनको बुआनवाट नेपाली विद्यार्थीहरूलाई नेपालमा ल्याइ “आइसोलेसन सेन्टर” मा राख्नुपर्ने भयो । कोभिडको खतरालाई दृष्टिगत गरी तत्काल नेपाल ल्याइ कम्तीमा ३ हप्ता आइसोलेसनमा राख्न २३५ हाराहारीको सङ्ख्यालाई बेड, पलङ्ग, अन्य स्यानिटरी सामान, खाना लगायत व्यवस्था गर्न खरिदको नियमित प्रक्रिया अपनाइ आपूर्तिकर्ता छनौट गर्न सम्भव थिएन ।

विभागबाट “विशेष परिस्थितिमा” गरिने खरिद सम्बन्धी प्रक्रिया अवलम्बन गरी एक हप्ता भन्दा कम अवधिको सार्वजनिक सूचना दिई यथासम्भव प्रतिस्पर्धा गराइ खरिद गरिएको थियो । कोभिड-19 फैलिँदै जाँदा अन्य केही सङ्ख्यामा आइसोलेसन र होलिडिङ सेन्टरहरू पनि यही प्रक्रिया अपनाइ निर्माण र व्यवस्थापन गरियो ।

नेपालले चर्को लोडसेडिङको सामना गरिरहेको बेला विशिष्ट महानुभावहरूको सरकारी निवासमा (डेडिकेटेड फिडर नभएकोले) सुरक्षा संवेदनशीलतालाई दृष्टिगत गरी ठुलो क्षमताको जेनेरेटर राख्न खरिद गर्नुपर्ने अवस्था आयो । सोको लागि विशेष परिस्थितिमा गरिने खरिद विधि अपनाउने बारे छलफल भएको थियो । तर नेपालमा लोडसेडिङ धेरै अगाडिदेखि हुँदै आएको, यो आकस्मिक परिस्थिति नभएकाले सो विधि अवलम्बन गर्न नसकिने निष्कर्ष निकालियो । सरकार मातहतकै कुनै निकायमा मौजुदा जेनेरेटरलाई उपयोग गरी तत्कालको अवस्था सम्बोधन गरिएको थियो ।

काठमाडौँ उपत्यकाको फोहोर व्यवस्थापन हुँदै आएको नुवाकोटको सिसडोल पूर्ण क्षमतामा उपयोग भइसकेकोले अब त्यहाँ फोहोर व्यवस्थापन गर्न सम्भव थिएन । काठमाडौँको फोहोर उठ्न बन्द भइसकेको अवस्थामा तत्काल बन्चरेडाँडामा नयाँ फोहोरमैला व्यवस्थापन केन्द्र निर्माण गर्न छोटो अवधिको बोलपत्र (शायद ७ दिन) प्रकाशन गर्नुपर्ने भयो । तर सोका लागि सार्वजनिक खरिद अनुगमन कार्यालयबाट मज्जुरी लिन धेरै सम्झाई बुझाई गर्नुपर्‍यो र अन्त्यमा सम्भव भयो । तर दुर्भाग्यवस छिटो निर्माण होस् भन्ने उद्देश्यले खरिद प्रक्रियामा समय बचाउन गरिएको त्यो मेहनत खासै उपलब्धिमूलक हुन सकेन । निर्माण कार्य तोकिएको मितिमा सम्पन्न हुन सकेन । पटक पटक म्याद थप गर्न पर्यो । हाल काठमाडौँ उपत्यकाको फोहोर व्यवस्थापन सोही केन्द्रमा भइरहेको छ ।

सारांशमा काबू बाहिरको विशेष परिस्थितिमा छोटो प्रक्रिया अपनाइ यथासम्भव प्रतिस्पर्धा गराइ खरिद गर्न सकिने खरिद कानूनको प्रावधान उपयोग गर्नुपर्दा आकस्मिक परिस्थितिको सम्बोधन गर्ने गरी निश्चित समयावधिको लागि आवश्यक परिमाण मात्र खरिद गर्न यस प्रकारको खरिद दस लाखभन्दा बढीको भए खरिद गरिएको विवरणको सूचना सार्वजनिक गर्नुपर्दछ । यस प्रकारको खरिद गर्दा यथासम्भव प्रतिस्पर्धा गराउन उपयुक्त हुन्छ । अन्यथा उजुरी र मुद्दा मामिलाको सम्भावना रहन्छ । सम्बत् २०७३ साल वैशाख १२ गतेको भूकम्प पछि भूकम्प प्रभावितहरूलाई



राहत उपलब्ध गराउन खरिद गरिएको “त्रिपाल” लाई लिएर विभिन्न मुद्दा मामिलाको सामाना गर्नुपर्यो र त्रिपालको भुक्तानीको विषय अझै पूर्ण रूपमा भइसकेको छैन ।

## १. सोझै खरिद सम्बन्धी व्यवस्था :

सार्वजनिक खरिद ऐनको दफा ४१ र नियमावलीको नियम ८५ मा कुनै खास अवस्थामा मालसामान, परामर्श वा अन्य सेवा सोझै खरिद गर्न वा निर्माण कार्य सोझै गराउन सकिने व्यवस्था राखिएको छ ।

## ती अवस्थाहरू देहाय अनुसारका छन्:

- क. तोकिएको रकमसम्मको फुटकर खरिदमा
- ख. खरिद सम्बन्धी योग्यता र शर्त पूरा गर्न सक्ने एउटा मात्र फर्म/कम्पनी भएमा
- ग. खरिद गरिने मालसामानको आपूर्ति गर्ने अधिकार एउटा मात्र आपूर्तिकर्तासँग रहेकोमा
- घ. प्रोपाईटरी स्वरूपको अतिरिक्त मालसामान वा सेवा खरिद गर्नुपरेमा
- ङ. एउटा सार्वजनिक निकायले अर्को सार्वजनिक निकायसँग खरिदगर्नु परेमा
- च. पूर्वानुमान गर्न नसकिएको कारणले शुरू सम्झौतामा छुट्न गै सम्झौताबाट अलग गरी कुनै काम सम्पन्न गर्न कठिनाई भएमा
- छ. सम्बन्धित कामको लागि कुनै विशिष्ट (यूनिक) योग्यता भएको परामर्शदाताको सेवा अत्यावश्यक भएमा ।

यसरी सोझै खरिद गर्नुपर्दा एकमात्र आपूर्तिकर्ता, परामर्शदाता वा निर्माण व्यवसायीसँग दररेट वा प्रस्ताव लिइ आवश्यकता अनुसार वार्ता गरी खरिद गर्न सकिने व्यवस्था ऐनमा भएता पनि माथि बुँदा नं. (ख), (च) र (छ) मा उल्लिखित अवस्थामा खरिद गर्नुपर्दा मन्त्रालय, विभाग र आयोजना कार्यालयहरूको हकमा मुख्य सचिवको संयोजकत्वमा अर्थ मन्त्रालय र सम्बन्धित मन्त्रालयको सचिव एवं महालेखा नियन्त्रक सम्मिलित चार सदस्यीय उच्चस्तरीय समितिको सिफारिसमा नेपाल सरकार मन्त्रपरिषद्बाट निर्णय भए बमोजिम खरिद गर्नुपर्ने र अन्य सार्वजनिक निकायहरूको हकमा सो निकायको सर्वोच्च कार्यकारी निकायबाट निर्णय गर्नुपर्ने व्यवस्था ऐनले गरेको छ । सोझै खरिद सम्बन्धी व्यवस्थालाई पारदर्शी र वस्तुनिष्ठ बनाई यसको नियमन गर्न र दुरुपयोग

रोकन ऐनमा गरिएको व्यवस्था सरसर्ती हेर्दा ठिकै देखिएला । तर यसको कार्यान्वयनको पाटो भने जटिल रहेको मेरो अनुभव छ । मेलम्चीको सुरुङ्ग निर्माणमा संलग्न इटालियन निर्माण व्यवसायीसँगको ठेक्का सम्झौता सरकारले सन् २०१९ मा अन्त्य गरेको थियो । त्यसको करिब चार वर्षपछि निर्माण व्यवसायी CMC DI Ravenna सम्झौतामा तोकिए बमोजिम सिंगापुरको मध्यस्थ गर्ने निकायमा मध्यस्थताका लागि उजुरी गर्न पुग्यो । सोको प्रतिरक्षा गर्न FIDIC र Contract Management मा राम्रो दखल राख्ने विज्ञ कानून व्यवसायी नियुक्त गर्नुपर्ने अवस्था सिर्जना भयो । खरिद कानूनमा व्यवस्था भएको पाँच लाख सम्मको सोझै खरिद प्रक्रियाबाट कानून व्यवसायी नियुक्त गर्न सम्भव थिएन । फेरी कानून व्यवसायीको पारिश्रमिक र खर्च हाम्रो लागि निर्माण व्यवसायीले दावी गरेको क्षतिपूर्ति करिब ७ अरब रुपैयाको तुलनामा गौण थियो । मुद्दा जित्ने गरी प्रतिरक्षा गर्न विशिष्ट क्षमता भएको विज्ञ कानून व्यवसायीको आवश्यकता पर्ने र सो प्रकारको सेवाका लागि लाग्ने शुल्क खरिद कानूनको सोझै खरिदको सीमामा नपर्ने भएको अवस्थामा हामीले माथि बुँदा नं. (छ) अनुसार खरिद गर्ने गरी तयारी गर्यौं । तर खरिद कार्यमा निर्णय गर्ने कुरा जटिल विषय भएको र विषयवस्तु राम्ररी नबुझेको अवस्थामा वा बुझेर पनि पछि कुनै प्रक्रियागत त्रुटिका कारण अनावश्यक झन्झट व्यहोर्न पर्ने आशंकामा सम्बन्धित बाध्यकारी जिम्मेवार पदाधिकारी बाहेक अन्य पदाधिकारी सो प्रक्रियामा समावेश हुन नचाहने हाम्रो परिपाटी छ । हाम्रो हकमा पनि सोही भयो । समितिबाट सिफारिस गराउन शुरुमा कठिन भयो । शुरुमा सार्वजनिक खरिद ऐनको दफा ६७ को उपदफा १(ड) बमोजिम सिंगापुर समेत हेर्ने बैंकक स्थित नेपाली राजदूतावासबाट सेवा खरिद गर्ने कुरा भएता पनि राजदूतावासबाट सो प्रकृतिको कामका लागि राजदूतावासमा दक्ष/विज्ञ कर्मचारी नभएकोले र आफ्नो कार्यक्षेत्रमा पर्ने विषय नभएकोले खरिद गर्न नसकिने जानकारी पाएपछि अन्ततोगत्वा माथि उल्लिखित समितिको सिफारिसमा नेपाल सरकार, मन्त्रिपरिषद्बाट निर्णय गराइ कानून व्यवसायी नियुक्ति गरियो ।

यो प्रसंग किन उठाइयो भने यस प्रकारको सोझै खरिद गर्दा सार्वजनिक खरिदसँगको सम्बन्धित मन्त्रालयबाटै सिफारिस लिई मन्त्रिपरिषद्बाट निर्णय गराउने वा सम्बन्धित मन्त्रालयको मन्त्रीस्तरीय निर्णयबाट यस्ता प्रकृतिका खरिद गर्ने व्यवस्था राख्न सकिएमा सोसँग सम्बन्ध नभएका पदाधिकारीलाई जबरजस्ती निर्णयमा सहभागी गराउनु पर्दैन र खरिद प्रक्रिया छिटो हुन्छ । समिति/बोर्डको बैठकमा भाग लिएको मात्र कारणबाट पनि असम्बन्धित कर्मचारी/पदाधिकारीले झन्झट व्यहोर्न परेको गुनासो आइरहेको सन्दर्भमा यसलाई अलि व्यावहारिक बनाउन उपयुक्त हुन्छ ।

## ५. रुग्ण आयोजनाहरूमा खरिद सम्झौताको अन्त्य :

निर्माणस्थल उपलब्ध गराउनमा ढिलाइ वा डिजाइन ड्रइङ्ग परिवर्तन वा समयमा भुक्तानी दिन नसकिएको जस्ता सार्वजनिक निकायतर्फका कारणबाट उत्पन्न परिस्थितिले होस् वा निर्माण व्यवसायी वा परामर्शदाताको हेलचेक्र्याइका कारण होस् नेपालमा कतिपय निर्माण कार्य समयमा सम्पन्न हुन सकेका छैनन् । पटक-पटक म्याद थप गर्दा पनि आयोजना सम्पन्न हुन नसकी रुग्ण अवस्थामा रहेका आयोजनाहरूको सङ्ख्या उल्लेख्य रहेका छन् । साना र मध्यम साइजका आयोजनाहरूमा मात्र होइन ठूला प्राथमिकता प्राप्त र राष्ट्रिय गौरवको आयोजनामा समेत निर्माण कार्यमा प्रशस्त ढिलाइ हुने गरेको छ । सार्वजनिक निकायसँग सम्बन्धित कारणहरू र दुवै पक्षको काबु बाहिरको परिस्थितिले सिर्जित कारण बाहेक निर्माण व्यवसायीको ढिलासुस्तीका कारण आयोजना सम्पन्न गर्न ढिलाइ भएमा निर्माण व्यवसायीलाई पूर्व निर्धारित क्षतिपूर्ति तिराउने व्यवस्था खरिद ऐन तथा नियमावलीमा रहेको छ । यस्तो जरिवाना प्रतिदिन कूल ठेक्का रकमको ०.०५% का दरले लिने र यसको अधिकतम हद १०% भन्दा बढी हुन नहुने कानूनी व्यवस्था छ । यसको अर्थ पूर्व निर्धारित क्षतिपूर्ति लागू गरेको दिनदेखि दुई सय दिनसम्ममा जरिवानाको अधिकतम हद पूरा हुन्छ । त्यसपछि पनि निर्माण कार्य वा परामर्श सेवा सम्पन्न हुन नसकेमा ठेक्का सम्झौताको अन्त्य गर्नुपर्नेछ भन्ने ऐनको मनसाय रहेको छ । तर व्यवहारमा ठेक्का सम्झौताको अन्त्य गर्ने तर्फ भन्दा दुई सय दिनपछि पनि हाल कायम रहेको पूर्व निर्धारित क्षतिपूर्तिको निरन्तरता सहित म्याद थप गरी ठेक्का सम्झौतालाई जीवित राखिन्छ । वास्तवमा यस्ता रुग्ण आयोजनाहरूलाई ठेक्का तोडि पुनः ठेक्का लगाउनेतर्फ सार्वजनिक निकायहरू किन उदासीन छन् भन्ने कारण पहिल्याउनु पर्ने देखिन्छ । यसका पछाडि मुख्यतः दुई वटा कारणहरू देखिन्छन् । पहिलो, ठेक्का सम्झौता अन्त्य गरी नयाँ ठेक्का लगाउँदा समयक्रमले निर्माण लागत बढ्न जाने र सोको स्रोत व्यवस्थापनमा पर्ने जटिलता हो । दोस्रो कारण, पर्याप्त अभिलेख (Documentation) को अभावमा निर्माण व्यवसायी वा परामर्शदाताले अदालती प्रक्रियामा प्रवेश गरी स्टे अर्डर ल्याउन सक्ने अवस्था पनि हुन्छ । तेस्रो कारण, सार्वजनिक खरिद ऐनको दफा ५९ को उपदफा (८) मा भएको अव्यावहारिक व्यवस्था पनि हो । ऐनको उक्त व्यवस्थामा निर्माण व्यवसायी वा परामर्शदाताको ढिलाइ वा खरिद सम्झौताको उलङ्घन गरेको कारणबाट ठेक्का सम्झौता अन्त्य गर्नुपरेमा सम्झौता बमोजिम बाँकी रहेको कार्य पूरा गर्न जे, जति रकम आवश्यक पर्छ, सो रकम त्यसरी सम्झौता बमोजिमको कार्य नगर्ने बोलपत्रदाताबाट सरकारी बाँकी सरह असुल उपर गरिने उल्लेख छ ।

अर्थात् एक करोड रुपैयाँको सम्झौता भएकोमा साठी लाखको काम सम्पन्न भै बाँकी चालिस लाखको काम नयाँ ठेक्का प्रक्रियाबाट गराउनु पर्दा नयाँ दररेट अनुसार मूल्यवृद्धि भै पचपन्न लाखमा ठेक्का सम्झौता गर्नुपर्ने भएमा सबै पचपन्न लाख पुरानो निर्माण व्यवसायीबाट असुल गर्ने नभई थप लाग्न गएको लागत १५ लाख मात्र असुल गरी कालोसूचीमा लैजाने कारवाही गर्नुपर्नेमा पुरै पचपन्न लाख नै पुरानो निर्माण व्यवसायीबाट तिराउने व्यवस्था पक्कै पनि व्यवहारिक हुदैन । यसमा सुधार हुनु जरुरी छ । माथिको उदारहणमा सानो रकमको सम्झौताको बारे चर्चा भएता पनि कहिलेकाहीँ ठुलो रकमको ठेक्का सम्झौता अन्त्य गरी नयाँ ठेक्कामा जाँदा नयाँ लागत उल्लेख्य मात्रामा बढ्न गइ कसका कारण सो लागत बढ्न गएको भनी सोधखोज गरिने आशङ्कामा सकेसम्म झमेलामा पर्न नपरोस् भनी साविक निर्माण व्यवसायी वा परामर्शदातालाई सम्झाई बुझाइ सहजीकरण गर्ने तर्फ लाग्ने परिपाटीले रुग्ण आयोजनाहरूको सङ्ख्या बढ्न गएको अवस्था छ ।

#### ६. न्यूनतम मूल्याङ्कित रकम लागत अनुमान भन्दा सारभूत रूपमा बढी भएको अवस्था :

सार्वजनिक खरिद ऐनको दफा २६ को उपदफा १(ख) मा पर्न आएका बोलपत्रहरू मध्ये न्यूनतम मूल्याङ्कित सारभूत रूपमा प्रभावग्राही बोलपत्रको कबोल अङ्क सारभूत रूपमा बढी भएमा बोलपत्र अस्वीकृत गर्न वा खरिद कारवाही रद्द गर्न सकिने व्यवस्था छ । तर लागत अनुमानभन्दा कति रकम बढी भएमा “सारभूत रूपमा बढी” हुन्छ भन्ने तयारी उत्तर नहुँदा लागत अनुमानभन्दा थोरै मात्र बढी कबोल अङ्क भएपनि रद्द गर्ने प्रवृत्ति छ । पुरानो आर्थिक प्रशासन सम्बन्धी नियमावली, २०५६ अनुसार खरिद गर्दा लागत अनुमानको १०% सम्म उच्च दर कबोल गरेको ठेक्का एकतह माथिको अधिकारी (साधारणतया विभागीय प्रमुख) वाट स्वीकृत गराउने चलन थियो । खरिद ऐन लागू भएपछि सार्वजनिक निकायको प्रमुख वा बोलपत्र स्वीकृत गर्ने अधिकारीलाई विवेक प्रयोग गरी आफै निर्णय गर्न सक्षम बनाउने असल नियतले लागत अनुमान भन्दा बढी रकमको सीमा निर्धारण नगरिएको हो । तर आफूलाई प्राप्त अधिकारको प्रयोग गर्नबाट पछि हट्ने प्रवृत्ति देखा पर्यो । वास्तवमा कामको प्रकृति, ठेक्का रद्द गरी नयाँ प्रक्रियामा जाँदा लाग्ने समय, सो अवधिमा सो कामको उपयोग गर्नबाट वञ्चित हुँदा पर्न जाने असुविधा र नोक्सानी, नयाँ ठेक्का प्रक्रियामा जाँदा नयाँ दररेट आइसक्ने अवस्था भए सोको कारण लागतमा हुन सक्ने वृद्धि र पुनः गरिएको ठेक्का प्रक्रियामा सोभन्दा कम कबोल अङ्क आउन सक्ने/नसक्ने स्थिति सबैको आँकलन गरी सार्वजनिक निकायको प्रमुखले विवेक पुर्याइ निर्णय गर्न सहज होस् भन्ने ऐनको मनसाय हो । तर सबै कुरा

ऐन/नियम र खरिद सम्बन्धी कागजातमा उल्लेख भैदिए निर्णय गर्न सहज मात्रै र स्वविवेक प्रयोग गर्दा फसिने काल्पनिक त्रासले यो व्यवस्थाको उचित प्रयोग भएन ।

## ७. निष्कर्ष :

सार्वजनिक खरिद ऐन/नियमावली कार्यान्वयनमा आएको अवधिमा करिब दुई दशकको प्राप्त अनुभवका आधारमा के भन्न सकिन्छ भने हाम्रो समग्र खरिद प्रणालीमा धेरै सुधार भएको छ । खरिद ऐनले परिकल्पना गरेको सार्वजनिक खर्चको सार्थकता र प्रभावकारिता, पारदर्शिता, खरिद प्रक्रियामा सबैको समान सहभागिताको सुनिश्चिता र घरेलु व्यवसायीको प्रवर्धन जस्ता विषयमा धेरै हदसम्म योगदान पुगेको छ । तर पनि कतिपय विषयमा अझै विद्यमान अन्यौलताले सार्वजनिक खरिदलाई जटिल र प्रक्रियामुखी बनाएको तथ्यलाई नकार्न सकिदैन । निर्माण क्षेत्रमा कार्यरत निर्माण व्यवसायी र परामर्शदाताको योग्यता, आर्थिक क्षमता, बोलपत्र क्षमता, मुद्दा मामिलाको विवरण, हाल सञ्चालनमा रहेका कामहरूको अवस्था, भुक्तानी भएको र बाँकी भुक्तानीको विवरण सार्वजनिक खरिद अनुगमन कार्यालयको वेब पोर्टलमा देखिने गरी अभिलेख राख्न सके बोलपत्र मूल्याङ्कन सहज र पेश भएका विवरणको विश्वसनीयता वृद्धि हुन जान्छ । माथि चर्चा गरिए बाहेक पनि केही थप सुधार गर्नुपर्ने क्षेत्रहरू छन् । जसको विस्तृत चर्चा यो छोटो लेखमा अटाउन सकिएन । ऐन, नियमावली र खरिद कार्यविधिमा आवश्यक सुधार गर्दै निर्णयकर्ताले विवेक प्रयोग गरी खरिद कार्यमा आइपर्ने जटिलता समाधान गर्ने गरी सुधार गर्न सक्ने लचकता प्रदान गर्न सके खरिद कार्य आगामी दिनमा अझ व्यवस्थित हुने निश्चित छ ।

## सन्दर्भ सामग्रीहरू :

सार्वजनिक खरिद ऐन २०६३ तथा नियमावली, २०६४

सार्वजनिक खरिद अनुगमन कार्यालयबाट प्रकाशित खरिद सम्बन्धी कागजात, खरिद पत्रिका र बुलेटिनहरू

# Life Cycle Costing in Nepal's Public Procurement: Assessing Progress, Gaps, and the Road Ahead



**Ramchandra Dangal\***



**Ashish Dangal\***

## Abstract

*Procurement based on the principle of value is gaining momentum and acceptance worldwide. The increasing demand for value-based public procurement, sustainability, and long-term asset performance for projects in developing economies has brought a gradual shift in attention towards the Life Cycle Cost (LCC) approach as an alternative to conventional lowest price procurement methods. Life cycle cost incorporates initial capital expenditures, operating expenditures and end of life costs while evaluating the tender bids. In Nepal, while LCC is recognized conceptually, its practical application especially in the procurement of goods remains limited. In the Nepalese context, there is a provision for submitting alternative bids within a bidding document. However, lacking the standard reference manual to prepare the qualification criteria as well as evaluation methods for alternative bids, the practice of alternative bidding has not effectively materialized. Even though there are some provisions for value-based procurement in Public Procurement Act (PPA 2063), Public Procurement Regulation (PPR 2064) and Standard Bidding Documents (SBDs), the practice in real ground is found nominal due to absence of long-term vision in policy making, lacking clear templates for bid evaluation, lack of staff trained in LCC approach, systemic resistance from lawmakers and suppliers and a plethora of other reasons. This article examines the current legal provisions, standard bidding documents, and institutional practices to evaluate the practice of LCC based procurement in Nepal. It identifies systemic gaps, challenges, and opportunities for integrating life cycle cost approaches into the national government procurement process.*

## 1. Introduction

Public procurement is a key instrument for delivering government services, infrastructure, and goods efficiently through effective purchase of goods and services.

\* Joint Secretary, Public Procurement Monitoring Office

\* M.Sc. Infrastructure Planning, University of Stuttgart



In Nepal, procurement accounts for a large chunk of the national development budget, signifying its role in shaping public service delivery outcomes. Traditionally, the evaluation of bids, especially for goods, has heavily relied on the lowest evaluated price criterion. However, this method has often failed to ensure long-term value, especially in high-value, technically complex, or service-dependent procurement. Today, Nepal is facing challenges in sustainable and economic procurement of goods and services; the main reason being the sole focus during procurement bid evaluation on initial financial valuation only while ignoring the long-term economic performance and cost criteria.

Life Cycle Costing is a procurement evaluation technique that goes beyond initial acquisition costs and incorporates the total cost of ownership (TCO), including maintenance, operation, downtime, energy or fuel, licensing fees, insurance, residual value and disposal incorporating the whole life span of the item of procurement. Consideration of economic criteria in procurement of goods e.g. energy consumption, functional guarantee, future operating costs, projected operation and maintenance cost during the life of the equipment ensures that the procured goods deliver their utility in the most cost-effective manner over their lifetime. This approach aligns with sustainable procurement and value-for-money principles.

The relevance of LCC is growing globally, but its adoption in Nepal remains slow and inconsistent. Due to absence of long-term vision in policy making, lacking clear templates for bid evaluation, lack of staff trained in LCC approach, systemic resistance from lawmakers and suppliers and other reasons, adoption and consistent practice of LCC in procurement is seen to be challenging in the Nepalese context.

This article explores the present practice of LCC based procurement in Nepal, focusing on existing procurement laws, standard bidding documents, and institutional practices. It further offers a road map for embedding LCC systematically into the public procurement framework.

## **2. Basic Concept of Life Cycle Costing**

### **2.1 Definition**

"Life cycle costing is a technique to establish the total cost of ownership of an asset by assessing all significant costs over its life cycle" (International Organization for Standardization [ISO], 2008). "Life-cycle costing allows public buyers to consider not only the initial purchase price but also costs related to use, maintenance, and disposal, supporting sustainability and value for money in procurement decisions" (Organization for Economic Co-operation and Development [OECD], 2021).

Life Cycle Costing refers to the process of identifying and evaluating all significant costs of a product or system over its entire lifespan from acquisition through use, maintenance, and disposal. The cost of the mandatory spare parts as well as major replacement components are also accounted for over the complete lifetime of the product or system.

## **2.2 Key Components**

The following are the major cost components which must be compulsorily incorporated during the preparation of documents for setting evaluation criteria and procuring the goods so that it reflects the full essence of value-based procurement.

1. Initial Costs – Purchase price, transportation, installation, customization
2. Operating Costs – Energy, fuel, utilities, licensing, staffing, insurance
3. Maintenance and Repair Costs – Scheduled servicing, spare parts, repairs
4. Downtime Costs – Productivity loss due to failure or repair
5. Disposal/End-of-life Costs – Disposal, Decommissioning or recycling, residual value

## **2.3 Advantages**

There are many advantages of value-based procurement in the value for money principle. Procurement through this method utilizes scarce public resources in the most effective way not just during upfront purchase but over the lifetime of the product or system. The procured goods will serve their purpose efficiently and in a cost effective manner. Value based public procurement ensures and promotes sustainability and innovation in public administration. The following are the major advantages of the value-based procurement over conventional lowest bid procurement approach.

- Promotes long-term fiscal efficiency
- Encourages sustainability and energy efficiency
- Reduces operational disruptions
- Encourages innovation among suppliers

## **3. Existing Provision of Public Procurement System in Nepal**

### **3.1 Legislative Framework**

The public procurement system in Nepal is governed by the Public Procurement Act, 2063 (2007), and the Public Procurement Regulations, 2064 (2007), supported by standard bidding documents and directives issued by the Public Procurement Monitoring Office (PPMO) (Government of Nepal, 2007a, 2007b).

The procurement laws mainly emphasize competitiveness, fairness, honesty, accountability and reliability. However, economic advantage is mostly interpreted as lowest evaluated upfront price, with limited legal articulation of LCC or value-based evaluation. The provision of alternative bids, life time of goods, spare parts functioning period, major replacement components, projected operation and maintenance period, performance and productivity of equipment are partially covered in the present procurement laws and relevant documents. However, the application of these progressive concepts in procurement in the Nepalese context have been limited due to reasons discussed in the subsequent sections.

## **4. Life Cycle Costing Provision in the Existing Legal Framework**

### **4.1 Public Procurement Act, 2063**

While the PPA aims for cost-effectiveness and value for money, it does not explicitly mandate or define LCC. As per the provision of PPA, procurement planning, methods and procedure consider the quality as well as cost stream which supports LCC. The major focus points are:

- **Section 27:** Acceptance of Bid and Procurement Contract: (1) The Public Entity shall select for acceptance only the lowest evaluated substantially responsive bid in accordance with Section 25. (Government of Nepal, 2007a)

Here, the focus is on the lowest evaluated “substantially responsive bid” which attempts to ensure quality as well as value for money. However, strict points for enforcement are found lacking.

### **4.2 Public Procurement Regulations, 2064**

While examining the PPR on the aspect of value-based procurement, the PPR provides slightly more operational guidance:

- **Rule 25 and 42:** In these rules, there are some provisions of adopting value for money principles of evaluation but the rules fail to provide clear methodology for incorporating LCC components in the procurement process. Regulations also incorporate the ‘cost of operation, maintenance’ for goods but do not provide calculation templates or enforce consistent use. (Government of Nepal, 2007b)

Both PPA and PPR provide discretionary space for using LCC but no mandatory directions or standards are available to foster and promote value-based procurement.

## 5. Examination of Standard Bidding Documents (SBDs)

### 5.1 SBDs for Procurement of Goods

The SBDs offers the following relevant clauses:

- Instructions to Bidders (ITB):
  - Evaluation Criteria - purchase price including other elements such as warranty, operation, maintenance, performance and spare parts etc.
- Bid Data Sheet (BDS):
  - Leave the decision to procuring entities - whether to include LCC type costs parameters in the evaluation or not.
- Technical Specifications and Evaluation Forms:
  - Offer flexibility but no mandatory structure for life cycle cost breakdowns.

### 5.2 Issues Observed

- Most procuring entities fill optional parameters as **not applicable**.
- No standard formula for Net Present Value (NPV) or guidance for discount rate is available.
- Officials in the Evaluation Committee often lack expertise to appropriately assess Operation and Maintenance (O&M) costs, warranty costs, spare parts costs, performance evaluation etc.

## 6. Existing Practice: Empirical Observations

### 6.1 ICT Equipment Procurement

In several ICT (Information Communication Technology) procurement (e.g. servers, networking hardware, computers, laptops, software applications, telecommunication systems, multimedia tools) low-cost bids have been awarded despite lacking warranties or spare parts support. Short term savings, due to low bid awards, led to high life time cost as well as long term operational system failures.

### 6.2 Medical Equipment Procurement

Hospitals suffer from the problem of frequent breakdowns of X-ray and dialysis machines due to low bid methods of procurement ignoring vendor reputation, Annual Maintenance Cost (AMC), or downtime penalties etc. So, it is better to use the LCC approach of procurement evaluation in such types of critical goods procurement.

## 6.3 Energy Equipment (Solar Systems)

In contrast, some donor funded solar projects have applied the LCC method effectively, factoring battery replacement, inverter life, and warranty service, resulting in more reliable systems.

## 7. Institutional and Operational Challenges

### 7.1 Lack of Awareness

A major barrier to the effective implementation of Life Cycle Costing (LCC) in Nepal's public procurement system is the limited awareness and understanding among procurement officers, technical evaluators, and decision-makers. While the Public Procurement Act (PPA) and Public Procurement Regulations (PPR) emphasize principles like value for money and sustainability, in practice, many officials still default to the lowest upfront cost as the primary criterion for evaluation.

This lack of awareness stems from several factors: absence of formal training modules on LCC in existing procurement courses, limited exposure to international best practices, and insufficient discourse on total cost ownership in the policy and academic arenas. Consequently, the potential benefits of LCC—such as reduced operating costs, better asset management, and environmental sustainability—are often overlooked. Without a clear understanding of how LCC works, procurement officials may avoid using it out of fear of non-compliance, complexity, or audit risk.

### 7.2 Absence of Guidelines

Nepal currently lacks an official, standardized methodology for implementing Life Cycle Costing in public procurement. Neither the Public Procurement Monitoring Office (PPMO) nor the Ministry of Finance has issued comprehensive manuals or directives that outline when and how LCC should be applied. As a result, procurement entities operate without a consistent framework, leading to arbitrary or inconsistent application of LCC principles.

The absence of structured guidelines creates confusion regarding critical aspects such as which procurement categories warrant LCC evaluation, how to compute future costs, and what parameters to use for calculating present value. Without uniform templates or formulae, individual procurement officers are left to develop their own methodologies—if they attempt LCC at all—which can compromise fairness, transparency, and comparability. The lack of official direction also weakens the confidence of auditors and other oversight bodies when reviewing LCC based decisions.

### 7.3 Data Constraints

Accurate and reliable data is the backbone of any effective life cycle cost analysis. However, in the Nepalese context, procurement entities often face significant challenges in accessing or validating the necessary information. Data on equipment lifespan, routine and major maintenance costs, energy or fuel consumption, depreciation, spare parts availability, and disposal costs is frequently unavailable, incomplete, or unverified.

These constraints are particularly acute in local-level procurement and for newer technologies such as solar systems or electric vehicles, where historical cost records are scarce. In cases where vendors are the sole source of data, there is a risk of intentional misrepresentation or optimistic projections that skew the evaluation. Additionally, there is limited local bench marking or sector-specific databases to aid in cross-verification, making it difficult for procurement officials to independently validate the life cycle assumptions submitted by suppliers.

### 7.4 Auditor Reluctance

The public procurement system in Nepal is heavily influenced by compliance-oriented audits. Deviations from the lowest-price selection criteria—regardless of long-term value—are often flagged by auditors unless every step is meticulously documented and justified. This has created a risk-averse culture within procurement institutions, where officials fear post-procurement scrutiny more than they value innovation or efficiency.

In the absence of formal legal backing or PPMO endorsed guidelines for LCC, auditors may question any procurement decision that results in the selection of a higher-priced bid, even if it offers better long-term value. This discourages procurement professionals from adopting LCC approaches and reinforces a short-term, price-centric mindset. A more informed and enabling audit framework is essential to shift the system towards life cycle thinking.

### 7.5 Supplier Pushback

Another operational challenge in implementing LCC is resistance from suppliers, many of whom are either unfamiliar with or unwilling to support life cycle-based evaluations. Some vendors lack the technical expertise to provide credible estimates for long-term costs such as maintenance, fuel use, or part replacements. Others may deliberately withhold detailed cost breakdowns or manipulate figures to make their bids appear more competitive under LCC criteria.

This resistance can be especially pronounced among local suppliers who operate in a

highly price-sensitive market and lack exposure to total cost of ownership concepts. Without clear incentives or regulatory requirements, suppliers have little motivation to invest in LCC compliance, training, or transparency. Effective supplier engagement and capacity building are thus critical to successful implementation.

## **8. International Practice**

### **8.1 European Union**

The European Union (EU) is one of the global leaders in institutionalizing Life Cycle Costing within public procurement frameworks (European Commission, 2016). Several EU procurement directives mandate the use of LCC, particularly in the context of energy-related products, vehicles, and infrastructure projects. EU member states are encouraged to consider environmental externalities—such as greenhouse gas emissions, energy efficiency, and end-of-life disposal—in procurement decisions.

To operationalize these directives, the EU has developed online tools and standardized formulas that allow procuring agencies to input cost parameters and obtain life cycle evaluations. For example, the EU Green Public Procurement Toolkit includes tools and LCC calculators to support implementation (European Commission, 2021). It offers detailed LCC calculators for lighting, heating systems, and transportation. This systematic support makes it easier for procurement officials to incorporate LCC and justify their choices during audits. Nepal could draw valuable lessons from the EU's structured approach, particularly in adopting sector-specific tools and building institutional consensus.

### **8.2 World Bank and Asian Development Bank (ADB)**

The World Bank Group and ADB have been influential in promoting the use of Life Cycle Costing in large-scale, donor-funded projects across various countries, including Nepal. Both the World Bank and Asian Development Bank (ADB) advocate for LCC-based evaluation in procurement, especially in donor-funded infrastructure and technology projects (World Bank, 2016; ADB, 2018). A general trend of inclination towards the LCC approach is seen among progressive agencies while considering complex procurement where operational and maintenance costs significantly impact total value.

In Nepal, donor-supported projects in the energy, transportation, and health sectors have already employed LCC based evaluation to some extent. For instance, infrastructure procurement funded by ADB often assess future maintenance liabilities, while World Bank-funded education or health programs consider long-term utility costs when procuring ICT or medical equipment. However, these practices remain confined to

donor projects and have not been fully integrated into government-funded procurement. Expanding LCC from donor models to domestic systems is a logical next step.

### **8.3 India**

India offers a regional example of a progressively evolving LCC approach within public procurement. The country's General Financial Rules (GFR) and procurement manuals from various ministries recommend the use of LCC, especially for capital-intensive sectors like defense, infrastructure, and IT (Government of India, 2017).

Notably, India's Government e-Marketplace (GeM) platform—a centralized digital procurement system—enables LCC scoring in certain product categories (GeM, 2023). GeM facilitates structured price evaluations that include total cost of ownership over the expected life span of the goods. This automated capability improves transparency and reduces manual calculation errors. Nepal, which is also investing in its electronic Government Procurement (e-GP) system, can explore similar technological upgrades to facilitate LCC implementation at scale.

## **9. Recommendations for Mainstreaming LCC in Nepal**

### **9.1 Legal Reform**

To institutionalize Life Cycle Costing in Nepal's public procurement system, legal provisions need to be clear, enforceable, and aligned with best practices. This begins with amending the Public Procurement Act (PPA) and Public Procurement Regulations (PPR) to explicitly recognize LCC as a valid evaluation method for specific categories of procurement.

Such amendments should define the scope of LCC—identifying goods or services for which it is mandatory (e.g., high-value machinery, IT systems, energy-intensive assets)—and require its inclusion in the Standard Bidding Documents (SBDs). Legal reform will provide the necessary legitimacy for procurement officials to deviate from lowest-price evaluations when justified by life cycle analysis, and will also protect them from undue audit scrutiny.

### **9.2 Standardized Templates and Guidelines**

In parallel with legal reform, the PPMO and Ministry of Finance should develop and disseminate detailed LCC templates and user-friendly guidelines. These should include:

- Standard cost categories (e.g., acquisition, operation, maintenance, disposal)
- Commonly used formulas for Net Present Value (NPV) and Discounted Cash



#### Flow (DCF)

- Sample assumptions for useful life, energy consumption, or spare parts frequency
- A recommended discount rate based on government financial norms
- Inclusion of environmental and social costs where applicable
- Such tools will help standardize the application of LCC across sectors and levels of government, while also building confidence among auditors and stakeholders.

### 9.3 Capacity Building

Capacity building is central to mainstreaming LCC. Training programs should target procurement professionals at federal, provincial, and local levels, with tailored content based on their roles and procurement volumes. Key areas of focus should include:

- LCC concepts and benefits
- Methods of calculating long-term costs
- Interpreting vendor-submitted LCC data
- Using LCC templates and tools

The PPMO should embed LCC modules into its regular training curriculum, possibly in collaboration with national training institutes. Additionally, exposure visits, webinars with international experts, and cross-learning from donor-funded LCC projects can be valuable.

### 9.4 Pilot Projects and Case Studies

Before full-scale adoption, it is practical to initiate pilot projects in select categories where LCC is most relevant and feasible. Examples include:

- Procurement of electric vehicles for government fleets
- Solar power systems for schools or health posts
- High-end medical or laboratory equipment for hospitals

These pilot procurements can serve as real-world tests of LCC methodologies, helping refine templates and assumptions. Documenting these experiences in the form of case studies will provide credible, context-specific evidence to support wide scale adoption.

### 9.5 Electronic Government Procurement (e-GP) System Integration

To successfully implement Life Cycle Costing (LCC) in public procurement, Nepal's electronic Government Procurement (e-GP) platform must evolve beyond price-only

evaluation capabilities. Currently, the system is primarily geared toward capturing bid prices, bid security, and procedural compliance, with limited scope for complex cost evaluations that LCC requires.

Upgrading the e-GP system should involve the following enhancements:

- **Multi-Cost Component Input:** The system should be reconfigured to allow bidders to submit detailed breakdowns of life cycle cost elements—such as maintenance schedules, fuel/energy consumption, spare part costs, and estimated disposal fees—within structured fields. This ensures uniform data entry and facilitates comparison.
- **Automated LCC Evaluation Module:** A built-in module should be developed to apply standardized LCC formulas (e.g., Net Present Value or Total Cost of Ownership) across bids. Such automation will reduce the likelihood of human error, increase transparency, and promote consistency across different procuring entities.
- **Audit-Friendly Reporting and Traceability:** Every LCC-based procurement should generate a transparent audit trail within the system. Evaluation sheets, cost breakdowns, formulas used, and rationales for bid selection must be archived and easily retrievable. This feature would reassure both procurement officials and auditors about procedural compliance and facilitate post-award monitoring.

e-GP upgrades should be done in consultation with stakeholders, including the National Information Technology Center (NITC), procurement officers, and vendors. Pilot-testing these features in selected agencies (e.g., Department of Health Services, Nepal Electricity Authority) would allow for gradual scale-up based on feedback and refinements.

## 9.6 Market Engagement

A key enabler of LCC implementation is the active participation and preparedness of the supplier market. Currently, many vendors in Nepal are unaccustomed to providing detailed cost forecasts or justifying the long-term economic and environmental benefits of their products. Therefore, targeted supplier engagement is essential.

Recommended market engagement strategies include:

- **Orientation and Awareness Sessions:** Procurement authorities, possibly in collaboration with chambers of commerce and sectoral associations, should organize regular workshops to educate suppliers on LCC principles,

data requirements, and compliance expectations. Topics may include how to estimate and present operational costs, warranties, and life cycle performance indicators.

- **Total Cost of Ownership (TCO) Requirements in Bidding:** Standard Bidding Documents should require vendors to submit Total Cost of Ownership (TCO) information as part of their technical proposals. This submission could include templates or checklists that help suppliers disclose information systematically—such as energy efficiency ratings, maintenance frequency, or service networks.
- **Technical Assistance and Help desks:** Smaller or local vendors may need additional support to comply with LCC requirements. Establishing regional help desks or online support centers through PPMO or line ministries could assist in interpretation, data generation, and proper documentation.

Market engagement not only improves bid quality but also promotes innovation and competitiveness, as vendors are incentivized to improve product longevity, energy efficiency, and service delivery. Over time, this shift in market behavior will align supply capabilities with the government's long-term procurement goals.

## 10. Conclusion

Nepal's ongoing efforts to strengthen transparency, competitiveness, and value for money in public procurement reflect a genuine commitment to reform. However, the prevailing reliance on lowest-price bidding often undermines long-term efficiency, particularly for goods and services with significant operational, maintenance, or environmental costs. Life Cycle Costing (LCC) offers a robust alternative—one that shifts the focus from short-term savings to total cost-effectiveness over the entire life span of a procured asset.

Despite some recognition of LCC principles in existing procurement laws and donor-supported projects, Nepal's public procurement system lacks the comprehensive legal, technical, and institutional infrastructure needed to mainstream this approach. Challenges such as limited awareness among procurement officials, absence of standardized guidelines, data unavailability, auditor hesitation, and supplier resistance continue to hinder practical adoption.

To overcome these barriers, a coordinated and strategic reform agenda is essential. This includes amending the Public Procurement Act and Regulations to formally mandate LCC where appropriate, developing detailed evaluation templates and guidance documents, and investing in the capacity of procurement officials at all

levels of government. Moreover, the integration of LCC capabilities into the electronic Government Procurement (e-GP) system and structured engagement with the supplier market will be critical for operationalizing the concept.

By institutionalizing Life Cycle Costing, Nepal can significantly improve the quality and sustainability of public spending. This transformation will not only enhance fiscal accountability and procurement performance but also align national practices with international standards and climate-smart development goals. Ultimately, embracing LCC is not just a technical upgrade—it is a strategic imperative for achieving long-term value, service reliability, and sustainable development outcomes in Nepal's public procurement landscape.

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**Ramchandra Dangal<sup>1</sup>** is currently serving as Joint Secretary at the Public Procurement Monitoring Office (PPMO), Government of Nepal. With extensive experience in the public engineering sector, he has served in the Department of Irrigation, Department of Buildings, and the Ministry of Physical Infrastructure Development. His current work focuses on institutional reforms and modernization of Nepal's public procurement systems.

**Ashish Dangal<sup>2</sup>** contributed to this article in the capacity of editor and research assistant. He holds a Master's degree in Infrastructure Planning from the University of Stuttgart, Germany.

# नेपालमा निर्माण सम्झौता व्यवस्थापन



-चक्रवर्ती कंठ\*

सारांश : नेपालमा सार्वजनिक पूर्वाधार निर्माणको सफलताका लागि सम्झौता व्यवस्थापन (Contract Management) अनिवार्य प्रक्रिया हो, जसले निर्धारित समय, गुणस्तर र लागत (TQC) मा पूर्वाधार निर्माण सम्पन्न गर्न मद्दत गर्छ। यद्यपि नेपालको सन्दर्भमा TQC सबै पक्षमा कमजोरी देखिन्छ। सम्झौता व्यवस्थापनका कानूनी, व्यवहारिक र परिस्थितिजन्य पक्षहरूमा थुप्रै चुनौतीहरू छन् जसमा सार्वजनिक निकाय र निर्माण व्यवसायीबीचको गैर-सहकार्य, राजनीतिक हस्तक्षेप, कार्यान्वयन कमजोरी, र वैधानिक प्रक्रिया बेवास्ता प्रमुख हुन्। खासगरी म्याद थप, भेरिएसन, विदेशी साझेदारहरूको औपचारिक उपस्थिति, र कागजात व्यवस्थापन जस्ता विषयमा अनियमितता छ। यस्ता समस्याका समाधानका लागि कानूनी प्रावधानको स्पष्ट कार्यान्वयन, जिम्मेवारी वहन गर्ने वातावरणको सिर्जना, परियोजनाको प्रारम्भदेखि नै ठोस योजना, पोष्टबीड कन्फरेन्स, व्यवस्थापन बैठक, तथा कार्यतालिकाको नियमित अद्यावधिक आवश्यक छ। अन्ततः, विद्यमान कानूनी ढाँचालाई व्यवहारमा उतारेर मात्र सार्वजनिक निर्माण कार्यहरू समय, गुणस्तर र लागतको सीमाभित्र सम्पन्न गर्न सकिन्छ, जसले नेपालको दिगो विकासमा महत्वपूर्ण योगदान पुर्याउनेछ।

## १. पृष्ठभूमि:

कुनै पनि देशको आर्थिक समुन्नतिका लागि सार्वजनिक पूर्वाधारको विकासको महत्वपूर्ण भूमिका रहने गरेको परिप्रेक्ष्यमा नेपाल जस्तो विकासशील देशका लागि यसको योगदान त झन् अपरिहार्य हुन आउँछ। सार्वजनिक पूर्वाधारको निर्माणका लागि सार्वजनिक खरिद गर्नुपर्ने हुन्छ तथा सार्वजनिक खरिदको अभिन्न अङ्गको रूपमा रहेको सम्झौता व्यवस्थापनले निर्धारित पूर्वाधारको

\* सुपरिन्टेन्डेन्ट इन्जिनियर, सङ्घीय सचिवालय निर्माण तथा व्यवस्थापन कार्यालय

विकास निर्धारित समय (Time (T)), निर्धारित गुणस्तर (Quality (Q)) र निर्धारित लागत (Cost (C)) मा सम्पन्न हुनु पर्ने हुन्छ । हाम्रो देशमा TQC को तीनवटै पक्षमा समस्या रहने गरेको कारण यहाँ पूर्वाधार निर्माणमा केन्द्रित रही सम्झौता व्यवस्थापनका विविध पक्षका बारे विश्लेषण गरिएको छ ।

## २. सम्झौता व्यवस्थापन :

सामान्यतया अङ्ग्रेजीमा Contract Management र Contract Administration लाई पर्यायवाची शब्दको रूपमा लिइए पनि समकालीन समयमा Administration भन्दा Management ले बृहत् अर्थ राख्ने भएकोले Contract Management नै प्रयोग हुने गरेको छ । तसर्थ यहाँ पनि Contract Management लाई सम्झौता व्यवस्थापनको रूपमा लिइएको छ । हुन त कानूनी तवरले करार व्यवस्थापन भन्ने गरिए पनि यहाँ सम्झौता व्यवस्थापनको रूपमा प्रस्तुत गरिएको छ ।

सम्झौता व्यवस्थापनलाई परिभाषित गर्ने क्रममा “Contract administration is a process of ensuring the proper performance of each party in meeting their stipulated contractual obligations until the contract is either closed out or terminated.” (Gundus, M. & Elsherbeny, H. A. 2020) ले सम्झौतामा सहभागी प्रत्येक पक्षले सम्झौता अवधिभरि सम्झौता बमोजिमको कार्य सम्पादन सुनिश्चित गर्ने प्रक्रिया हो भन्ने परिभाषाबाट सम्झौता व्यवस्थापन सम्झौताको प्रतिफल प्राप्तिको लागि प्रत्येक पक्षले गर्ने प्रक्रियाको रूपमा लिनुपर्ने हुन्छ । नेपालको महत्वपूर्ण विकास साझेदार रहेको विश्व बैङ्कले “Contract management is the process of actively managing contract implementation to ensure the efficient and effective delivery of the contracted outputs and/or outcomes.” (WB, 2018) सम्झौता व्यवस्थापनलाई सम्झौताको प्रतिफल प्राप्तिका लागि कुशलतापूर्वक प्रभावकारी ढङ्गले सक्रिय रूपमा सम्झौता कार्यान्वयन गर्ने प्रक्रियाको रूपमा परिभाषित गरेको छ । अर्को महत्वपूर्ण विकास साझेदार एशियाली विकास बैङ्कको परिभाषा “Contract management is the monitoring and control of contractor performance to ensure optimal outcomes from a contract.” (ADB, 2018) ले यसलाई सम्झौताको उच्चतम प्रतिफल प्राप्तिका लागि कार्यान्वयन गर्ने प्रक्रियाभन्दा पनि निर्माण व्यवसायीको कार्यसम्पादनलाई अनुगमन र नियन्त्रण गर्ने प्रक्रियामा जोड दिएको छ । सम्झौता व्यवस्थापनले सम्झौतादेखिको सम्पन्न अवधि सम्मको व्यवस्थापनलाई

प्रधानता दिने भए पनि बोलपत्र स्वीकृति चरणको प्रक्रियाको सहजता र जटिलता (उजुरी, न्यायिक परीक्षण इत्यादि) ले समेत प्रभाव पार्ने भएकोले प्रभावकारी सम्झौता व्यवस्थापनका लागि बोलपत्र स्वीकृति पूर्व र पश्चातको अवस्थाको विश्लेषणको आधारमा योजना तर्जुमादेखि कार्यान्वयन चरणमा व्यवस्थापकीय सम्पूर्ण कार्य तथा सम्झौता समापनसम्मको कार्यलाई समेटिनु पर्छ।

### ३. सम्झौता व्यवस्थापनको कानूनी पक्ष :

सार्वजनिक खरिदलाई नियमन गर्न जारी भएको सार्वजनिक खरिद ऐन, २०६३ को परिच्छेद ७ र सार्वजनिक खरिद नियमावली, २०६४ को परिच्छेद ११ मा रहेका प्रावधानहरू सम्झौता व्यवस्थापनका लागि मुख्य भए पनि कार्यान्वयन तहमा सार्वजनिक खरिद अनुगमन कार्यालयले जारी गरेको नमूना बोलपत्र कागजातमा रहेको सम्झौताका सामान्य शर्तहरू (GCC: General Conditions of Contract) तथा सोको परिधिभित्र आयोजना विशेषसँग केन्द्रित रही सम्झौताको अभिन्न अङ्गको रूपमा रहेको सम्झौताका विशेष शर्तहरू (SCC: Special Conditions of Contract) ले दिशानिर्देश गरेको हुन्छ। सम्झौता व्यवस्थापनको मुख्य जिम्मेवारी सार्वजनिक निकायको प्रमुखलाई भए पनि म्याद थप बोलपत्र स्वीकृति गर्ने अधिकारीको अधिकारक्षेत्र भित्र रहेको र निर्धारित प्रतिशतभन्दा माथिको भेरिएशन आदेश स्वीकृति राजपत्राङ्कित श्रेणीको प्रथम श्रेणीको कार्यालय प्रमुख, विभागीय प्रमुख र विशिष्ट श्रेणीको सचिवदेखि नेपाल सरकार (मन्त्रिपरिषद्) सम्म रहेको छ।

### ४. सम्झौता व्यवस्थापनको व्यवहारिक पक्ष :

सभ्य र सुसंस्कृत समाजको परिकल्पनामा नेपालमा कानून तर्जुमा हुने गरेको भए पनि कार्यान्वयनको क्रममा व्यवहारिक पक्षले प्रधानता पाएको देखिन्छ। सम्झौता व्यवस्थापनको परिभाषाको क्रममा दुवै पक्षको जिम्मेवारी उतिकै रहेको भनिए पनि हाम्रो सन्दर्भमा कता कता निर्माणव्यवसायीले सम्झौता व्यवस्थापन गर्ने र सार्वजनिक निकायले भुक्तानी गर्ने, म्याद थप गर्ने तथा भेरिएसन गर्ने बाहेक सक्रिय भूमिका नखेलेको पाइन्छ। अर्को तर्फ केही सार्वजनिक निकाय वा सार्वजनिक निकायका केही पदाधिकारीबाट सम्झौताको मर्म र भावना अनुसार सम्झौताको व्यवस्थापन गर्ने प्रयास गर्दा सम्बन्धित निर्माण व्यवसायीले पनि सोही बमोजिम कार्य गर्नुको सट्टा माथिल्लो तहको पदाधिकारी वा राजनीतिक नेतृत्वसँग सम्पर्क गरी दबाब र प्रभावमार्फत सम्झौता व्यवस्थापनलाई



जटिल बनाइएको प्रशस्त उदाहरणहरू भेटिन्छन्। सम्झौता व्यवस्थापनमा केही समस्या देखिए सम्झौताको प्रावधान बमोजिम समाधान खोजिनुको सट्टा सुविस्ताको बाटो अपनाइने गरेको देखिन्छ। हाम्रो जस्तो देशमा एकै व्यक्ति विभिन्न पेशा र राजनीतिमा संलग्न हुने गरेको साथै राजनीतिले प्रधानता पाइरहेको सन्दर्भमा निर्माण व्यवसायीहरू राजनीतिक पहुँचको आधारमा सम्झौता व्यवस्थापनलाई प्रभावित पार्ने गरेका हुन्छन्। विगत केही वर्षदेखि म्याद थपको प्रक्रियाको विशेष प्रावधान पटक पटक संशोधन हुने गरेकोले यो पक्ष जटिल हुने गरेको साथै निर्माणव्यवसायीले म्याद थपको प्रावधानमा अर्को संशोधन भइहाल्छ भनेर काम नगरी बस्ने तथा सार्वजनिक निकायका केही पदाधिकारीहरूबाट समेत म्याद थपको अवधि व्यतित भइसके पश्चात पनि सम्झौताको प्रावधान बमोजिम कारवाही गर्नुको सट्टा अर्को संशोधनलाई कुरेर बस्ने प्रवृत्ति हावी हुँदै गएको देखिन्छ। सारमा सम्झौताको प्रावधान बमोजिम आ-आफ्नो जिम्मेवारी पुरा गर्नुको सट्टा विशेष गरी सार्वजनिक निकायको तर्फबाट कारवाही गरेर व्यक्तिगत सम्बन्ध किन बिगार्ने, पछि अरूले केही निर्णय गर्ला भनेर पन्छाउने प्रवृत्ति हावी हुँदै गएको देखिन्छ।

## ५. सम्झौता व्यवस्थापनको परिस्थितिजन्य पक्ष :

सम्झौता व्यवस्थापनको क्रममा 3C (Client, Contractor, Consultant) वा 2C (Client (Client नै Consultant को रूपमा काम गर्ने), Contractor) को भूमिका रहे पनि तीनै वा दुवै पक्ष सम्झौताको शर्त बमोजिम काम गर्ने भन्दा पनि सक्रिय रूपमा काम गर्नुको सट्टा परिस्थितिको आधारमा प्रतिक्रियात्मक हिसाबले काम गर्ने गरेका हुन्छन्। स्वदेशी बोलपत्रदातालाई निर्धारित सीमाभन्दा माथिको निर्माण कार्यका लागि संयुक्त उपक्रमको रूपमा सहभागी भएका विदेशी बोलपत्रदाता सम्मिलित सम्झौताहरूमा केही अपवाद बाहेक अधिकांश सम्झौतामा विदेशी बोलपत्रदाताको उपस्थिति कागजी प्रोफाइलमा मात्र सिमित हुने गरेको छ। स्वदेशी बोलपत्रदाताले विदेशी बोलपत्रदाताको प्रोफाइल प्रयोग गरेर काम पाए वापत कमिशन दिएर सम्झौता व्यवस्थापनको चरणमा विदेशी निर्माणव्यवसायीलाई उन्मुक्ति दिने वा सार्वजनिक निकायबाट समेत विदेशी निर्माणव्यवसायीको उपस्थिति नखोजिने गरेको परिस्थिति छ। विदेशी निर्माणव्यवसायीको उपस्थिति कागजमा मात्र हुँदा जे जुन अनुभव र प्रविधि हस्तान्तरणको लागि विदेशी निर्माणव्यवसायी

आवश्यक परेको हो उक्त अनुभव र प्रविधि हस्तान्तरण हुने परिस्थिति नै रहँदैन। सम्झौता व्यवस्थापनलाई सार्वजनिक खरिदको सैद्धान्तिक धरातलमा कार्यान्वयन गर्नुको सट्टा सार्वजनिक निकायमा रहेको पद र पहुँचको आधारमा विश्लेषण वा व्याख्या गर्ने गरेको पाइन्छ। यसका अतिरिक्त सार्वजनिक वित्त व्यवस्थापनको अभिन्न अङ्ग रहेको लेखापरीक्षणमा संलग्न कतिपय पदाधिकारीबाट सार्वजनिक खरिदको मर्म र भावना अनुकूल विश्लेषण गर्नुको सट्टा कतिपय अवस्थामा मनोगत विश्लेषणले प्रधानता पाएको देखिन्छ। सम्झौताका पक्षहरूको आन्तरिक परिस्थितिसँगै निर्माण उद्योगको परिस्थितिले पनि सार्वजनिक निर्माण कार्यको सम्झौता व्यवस्थापनलाई चुनौतीपूर्ण बनाएको छ। बजारमा उपलब्ध निर्माण सामग्रीहरूको गुणस्तरको अवस्था, अन्य उत्पादनकर्ताबाट निर्माणव्यवसायीले खरिद गरी निर्माणस्थलमा आपूर्ति र जडान गर्ने कार्यमा उत्पादनकर्ताको अस्वभाविक प्रतिस्पर्धाले समेत जटिलता उत्पन्न गरेको छ। नेपालको सन्दर्भमा अधिकांश परियोजना निर्धारित समय, लागत र गुणस्तरमा सम्पन्न नहुँदा सम्झौता व्यवस्थापन As Usual परिस्थितिमा भइरहेको भन्दा अतिशयोक्ति नहोला। सम्झौता कार्यान्वयनको क्रममा केही विवाद वा जटिलता आइ मध्यस्थतामा गएका अधिकांश विवादको निरूपण विश्लेषण गर्ने हो भने सार्वजनिक निकायको विपक्षमा निर्णय आउने गरेको हुन्छ। यस्तो परिस्थिति सिर्जना हुनुमा सार्वजनिक निकायका पदाधिकारीबाट सम्बन्धित अभिलेख व्यवस्थित तवरले नराखिनु त हो नै तर मध्यस्तकर्ताबाट समेत तथ्यपरक विश्लेषण भएको हो होइन, प्रश्न गर्न सकिने प्रशस्त उदाहरणहरू भेट्न सकिन्छ।

## ६. सम्झौता व्यवस्थापनको आगामी कार्यदिशा :

प्रचलित खरिद कानूनको आधारमा सार्वजनिक खरिद गर्नु तथा सोको सम्झौता व्यवस्थापन गर्नु सार्वजनिक निकायको जिम्मेवारी रहेकोले सम्झौताका साझेदार पक्षले प्रभावकारी सम्झौता व्यवस्थापनका लागि तपसिल बमोजिम कार्य गर्नु अपरिहार्य हुन आउँछ :

- खरिद प्रक्रिया शुरू गर्दा नै सम्पूर्णतामा खरिद योजना वा गुरुयोजना तर्जुमामा विशेष ध्यान दिनुका साथै खरिद प्रक्रियाको सम्पूर्ण चरणको पूर्व तयारी र सो बमोजिम कार्यान्वयन हुने तवरले स्रोत व्यवस्थापन गरी व्यवहारमा नै तथ्यपरक ढङ्गले आग्रह पूर्वाग्रहबाट टाढा भएर सम्झौता व्यवस्थापनलाई मूर्तरूप दिनु पर्छ।

- सार्वजनिक खरिद नियमावलीको नियम १११ को उपनियम (१) को खण्ड (क) मा आवश्यक भए पोष्टबीड कन्फरेन्स गर्ने उल्लेख भए पनि सम्झौता व्यवस्थापनलाई प्रभाव पार्न सक्ने बोलपत्र स्वीकृति र तत्पश्चातको अवस्थाको यथार्थपरक विश्लेषण गरी हरेक सम्झौताको हकमा सम्झौता लगत्तै सार्वजनिक निकायबाट निर्माणव्यवसायी र सुपरिवेक्षण परामर्शदाता रहेको हकमा निजको सहभागिता समेतमा व्यवस्था गरिए अनुसार पोष्टबीड कन्फरेन्स वा किक अफ मिटिङ्ग गरी सम्झौता व्यवस्थापनको Agenda Setting गर्नुपर्दछ ।
- सार्वजनिक खरिद नियमावलीको नियम १११ को उपनियम (१) को खण्ड (घ) मा आवश्यक भए सम्झौता कार्यान्वयन टोली गठन गर्ने व्यवस्था भए अनुसार सार्वजनिक निकायबाट हरेक सम्झौताको आफ्नै विशिष्टतालाई विश्लेषण गरी सम्झौता कार्यान्वयन टोली गठन गरी उक्त टोलीलाई परिचालन गर्नु उत्तम हुन्छ ।
- सार्वजनिक खरिद अनुगमन कार्यालयबाट जारी नमूना बोलपत्र कागजातको GCC को दफा ९ मा संयुक्त उपक्रमका सबै साझेदार Jointly and Severally liable to the employer हुने व्यवस्था उल्लेख भएको साथै सोही दफामा “The contractor shall not handover the responsibility of the contract to any one member or some members of joint venture or any other parties, not involved in the contract. The composition or constitution of the joint venture shall not be altered without prior consent to the employer” उल्लेख भए बमोजिमको व्यवस्था सोही मर्म अनुसार कार्यान्वयन गर्नुपर्दछ ।
- सम्झौताको क्रममा स्वीकृत कार्यतालिका बमोजिम कार्य सम्पादन नहुँदा कार्यतालिका संशोधन नहुने अभ्यास देखिएकोले GCC को दफा 34.2 मा उल्लेख भए बमोजिम SCC मा निर्धारित अवधिभित्र निर्माणव्यवसायीले संशोधित कार्यतालिका पेश गर्ने र सो बमोजिम निर्माणव्यवसायीबाट पेश नभए SCC मा उल्लेख भए बमोजिमको रकम आगामी बीलबाट कट्टा हुने गरी withhold गर्ने व्यवस्था कार्यान्वयनमा ल्याउनु पर्दछ ।
- सम्झौताको प्रभावकारी कार्यान्वयनका लागि GCC को दफा 38 मा उल्लेख भए बमोजिम

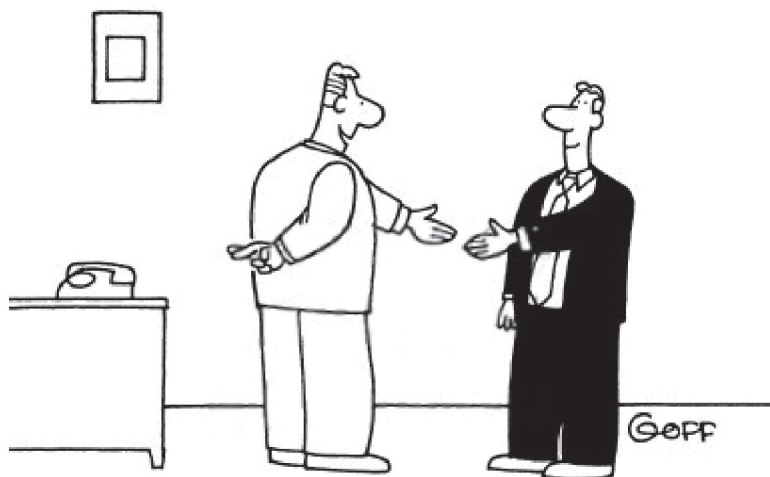
व्यवस्थापन बैठक (Management Meeting) को आयोजना गरी बैठकको निर्णय कार्यान्वयन गर्नु श्रेयस्कर हुन्छ ।

- सम्झौताको प्रावधान कार्यान्वयन नभई GCC को दफा 72 मा उल्लेख भए बमोजिम 72.1 अनुसार सार्वजनिक निकायले र दफा 72.2 बमोजिम Fundamental breach भएको अवस्थामा सार्वजनिक निकाय वा निर्माणव्यवसायी मध्ये कुनै पक्षले सम्झौता अन्त्यको प्रावधानको प्रभावकारी कार्यान्वयन गरिनु पर्दछ ।
- प्रचलित खरिद कानूनमा के कस्तो परिवर्तन हुन्छ भनेर पखिनुको सट्टा विद्यमान कानूनी प्रावधानलाई व्यवहारमा उतार्नु पर्छ । यसो गर्दा विगतमा विशेषतः समयमा म्याद थपको प्रक्रिया टुङ्ग्याउने निर्माणव्यवसायीले पूर्व निर्धारित क्षतिपूर्ति (हर्जाना) तिर्ने परिस्थिति सिर्जना हुने र कुरेर बस्ने निर्माण व्यवसायीले सोबाट उन्मुक्ति पाउने अवस्थाको अन्त्य हुने सुनिश्चितता हुनुपर्दछ ।
- सम्झौताको प्रावधान बमोजिम कार्य गर्ने पदाधिकारीलाई चारैतिरबाट दबाव आउने तर पन्छाउने प्रवृत्ति भएका पदाधिकारी जहिले पनि हाइसञ्चोमा बस्ने विद्यमान परिस्थितिको निराकरण गरिनु पर्दछ ।

## ७. निष्कर्ष :

नेपालमा सार्वजनिक पूर्वाधार निर्माण निर्धारित समय, गुणस्तर र लागतमा सम्पन्न हुन नसकी देशले समयमा उक्त पूर्वाधारबाट अपेक्षित लाभ प्राप्त गर्न नसकेको विद्यमान अवस्थामा सम्झौता व्यवस्थापन चुनौतीपूर्ण हुँदै गएको छ । प्रचलित खरिद कानूनलाई प्रशासनिक आधारमा व्याख्या वा संशोधन गर्नुको सट्टा विश्वव्यापी मान्यताका प्रचलित खरिदको सैद्धान्तिक धरातलमा परीक्षण गरी सो अनुसार व्याख्या वा संशोधन गरिनु पर्दछ । विद्यमान कानूनको प्रभावकारी कार्यान्वयनबाट मात्र पनि सम्झौता व्यवस्थापनको कार्यान्वयनमा सुधार गर्न सकिने प्रशस्त सम्भावना रहेका छन् । यसो गर्दा सार्वजनिक निकायका सम्बद्ध पादधिकारीहरूलाई आउने चुनौतीलाई निराकरण गर्नुका साथै हतोत्साहितभन्दा पनि प्रोत्साहित हुने वातावरण निर्माण हुनुपर्दछ । कानूनी सुधारको पक्ष नेपाल

सरकार र संसदको भएको तथ्यलाई हृदयङ्गम गरी तलको कार्टुनलाई झुठा ठहर्ने गरी प्रचलित कानूनको प्रभावकारी कार्यान्वयनको जिम्मेवारी सम्झौताका साझेदारहरूको हो भन्ने यथार्थलाई मात्र पनि व्यवहारमा उतार्ने हो भने सम्झौता व्यवस्थापनलाई सहज बनाउन सकिन्छ। तसर्थ खरिद सम्झौताका जिम्मेवार पक्षहरूले विद्यमान खरिद सम्झौताका शर्त र व्यवस्थालाई पेशागत हिसाबले विश्लेषण गरी सो अनुसार कार्यान्वयन गरेर नेपालको समुन्नत विकासका लागि निर्धारित समय, गुणस्तर र लागतमा सम्पन्न गर्नु आजको अपरिहार्यता हो।



**"Let's just forget a contract. A handshake is the only agreement I've ever needed."**

चित्र १ – Management Cartoon (Tedd Goff Cartoon)

# Role of Punctuation in Contract Management

Er. Prabhat Kumar Jha\*



## 1. Overview of role of Punctuation in Contract Management

Punctuation refers to the marks and symbols used in writing to separate sentences and clarify meaning. It ensures that written language is clear, structured, and easy to understand. Proper punctuation helps avoid ambiguity and misinterpretation.

Punctuation plays a critical role in contract management, as it ensures clarity, precision, and enforceability of contractual terms. Misuse or omission of punctuation can lead to ambiguity, disputes, and even legal challenges.

The role of punctuation in contract management:

### 1. Clarity and Precision

- Punctuation ensures that contract terms are clearly defined, reducing ambiguity.
- Misplaced commas or missing punctuation can change the meaning of clauses.

### 2. Legal Interpretation

- Courts may rely on punctuation to determine the intent of the parties.
- Example: The placement of a comma can affect obligations:
  - "The contractor shall complete the project, free of defects, and damages shall be paid." (Implies that damages must always be paid.)
  - "The contractor shall complete the project free of defects and damages shall be paid." (Implies that damages are only paid if defects exist.)

### 3. Avoiding Ambiguity

- Lack of punctuation can lead to multiple interpretations.
- Example: *"The contractor shall deliver materials, labor and equipment."*
  - Without a comma after "labor," it's unclear whether "labor and equipment" are one item or separate.

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\* Joint Secretary, Ministry of Physical Infrastructure and Transport

#### 4. Contract Enforceability

- Poorly punctuated contracts may be challenged in court or lead to disputes.
- Ambiguous clauses could render a contract void or unenforceable.

#### 5. Hierarchy of Contractual Terms

- Colons, semicolons, and bullet points help in structuring obligations and responsibilities.
- Example: Using semicolons in a list clarifies distinct obligations.

#### 6. Case Law Implications

- Legal history shows cases where missing or misplaced punctuation altered contractual obligations.
  - Example: The “Comma Case” in Canada (Rogers Communications v. Bell Aliant) resulted in a million-dollar dispute due to the placement of a single comma.
- The “Comma Case” in Canada (Rogers Communications Inc. v. Bell Aliant) is a famous legal dispute where the placement of a single comma in a contract led to a multi-million-dollar disagreement over contract termination rights. The dispute involved Rogers Communications Inc. and Bell Aliant regarding a contract for the placement of utility poles in Canada. The contract had a five-year term, but the key issue was whether Bell Aliant could terminate the contract early, without waiting for the full five years.

The Problematic Contract Clause:

The contract stated:

*“This Agreement shall be effective from the date it is made and shall continue in force for a period of five (5) years from the date it is made, and thereafter for successive five (5) year terms, unless and until terminated by one-year prior notice in writing by either party.”*

The Dispute Over the Comma:

- Rogers Communications argued that the agreement could not be terminated within the initial five-year period—only after the first five years had ended.
- Bell Aliant, however, argued that the comma before “unless” meant that the contract could be terminated at any time, including within the first five years, as long as one year’s notice was given.

Court Ruling and Impact:

- Initially, the Canadian telecommunications regulator sided with Bell Aliant, ruling that the comma allowed for early termination.
- This cost Rogers over \$1 million, as they lost the contract earlier than expected.
- However, on appeal, Rogers provided evidence that the original French version of the contract (which had no ambiguity) supported their interpretation, and the decision was reversed in their favor.

## 2. Common Punctuation used in Contract Management

Punctuation Mark	Role in Contracts
Comma ( , )	Separates items in a list, clauses, or conditions.
Semicolon ( ; )	Links closely related independent clauses or separates complex list items.
Colon ( : )	Introduces a list, explanation, or quotation.
Period ( . )	Marks the end of a sentence or clause.
Parentheses ( ( ) )	Encloses additional information or clarifications.
Quotation Marks ( " " )	Indicates direct quotes or specific terms.

## 3. Role of Comma ( , )

The comma (,) is a fundamental punctuation mark in contract agreements, serving a variety of critical roles to ensure clarity, precision, and readability. While it may seem minor, the comma helps separate elements in a sentence, ensuring that the contract is clearly structured and easy to interpret. When used properly, commas contribute to a contract's legal validity by preventing ambiguity or misinterpretation.

### 1. Separating Items in a List

Purpose:

- Commas are used to separate items in a list, helping to organize multiple conditions, obligations, or rights within a contract.

#### ✓ Correct Use (List of Items):

- *The buyer shall provide the following documents: proof of identity, proof of address, and a signed contract.*
  - (Commas separate the items clearly in a list.)
- *The contractor agrees to provide the following services: project management, material procurement, labor, and final inspection.*
  - (Commas organize the various services being provided.)

#### ✗ Incorrect Use (Missing Comma):



- *The buyer shall provide the following documents: proof of identity proof of address and a signed contract.*
  - Issue: The absence of commas creates confusion and makes the list unclear.

## 2. Separating Clauses in Complex Sentences

Purpose:

- Commas are used to separate dependent clauses or introductory phrases from the main sentence, helping to organize complex clauses and make them more understandable.

### ✓ Correct Use (Separate Clauses):

- *If the goods are not delivered on time, the buyer may request a refund.*
  - (The comma separates the dependent clause "If the goods are not delivered on time" from the main clause, making the sentence easier to follow.)
- *The seller shall deliver the goods within 30 days, provided that the buyer has made full payment.*
  - (The comma separates the conditional clause "provided that the buyer has made full payment" from the main clause.)

### ✗ Incorrect Use (Missing Comma):

- *If the goods are not delivered on time the buyer may request a refund.*
  - Issue: The lack of comma causes the sentence to feel like a run-on, making it harder to understand the relationship between the clauses.

## 3. Clarifying Meaning by Adding Non-Essential Information

Purpose:

- Commas are used to set off non-essential or non-restrictive clauses that provide additional information but do not change the core meaning of the sentence. This ensures legal precision and prevents confusion about the meaning of the statement.

### ✓ Correct Use (Non-Essential Information):

- *The contractor, who has been in business for over 20 years, agrees to complete the project by December 31, 2025.*
  - (The phrase "who has been in business for over 20 years" is extra

information, not essential to the main statement, so it is set off with commas.)

- *The payment will be made in full, in U.S. dollars, upon receipt of the goods.*
  - (The phrase "in U.S. dollars" adds extra detail, so it is separated with commas.)

#### ✗ Incorrect Use (Missing Comma):

- *The contractor who has been in business for over 20 years agrees to complete the project by December 31, 2025.*
  - Issue: Without commas, the sentence might suggest that the contractor's experience is a requirement for the contract rather than additional information.

### 4. Indicating Direct Address

#### Purpose:

- Commas are used to set off names or terms of direct address, ensuring clarity when a contract directly refers to the parties involved.

#### ✓ Correct Use (Direct Address):

- *Seller, you are required to deliver the goods within 30 days of the agreement date.*
  - (The comma separates "Seller" as a direct address to the party involved.)
- *Buyer, you are obligated to make payment within 15 days after receipt of the invoice.*
  - (The comma clarifies that the contractor is addressing the buyer directly.)

#### ✗ Incorrect Use (Missing Comma):

- *Seller you are required to deliver the goods within 30 days of the agreement date.*
  - Issue: The missing comma makes it unclear whether "Seller" is being directly addressed or is part of the subject.

### 5. Separating Dates, Addresses, and Numbers

#### Purpose:

- Commas are used to separate elements in dates, addresses, and large numbers, helping to keep these elements organized and easy to read.

✓ Correct Use (Dates and Addresses):

- *The agreement is effective as of January 15, 2025.*
  - (Commas separate the date for readability and precision.)
- *The contract will be signed at 123 Main Street, Suite 400, Los Angeles, California, on February 15, 2025.*
  - (Commas help clarify address elements and date structure.)

✗ Incorrect Use (Missing Commas):

- *The agreement is effective as of January 15 2025.*
  - Issue: The lack of a comma can lead to confusion about the exact date of the agreement.

## 6. After Introductory Elements

### Purpose:

- A comma is used after introductory phrases or words to indicate the start of the main part of the sentence, making it easier to follow and reducing the chance of misunderstanding.

✓ Correct Use (Introductory Elements):

- *In the event of a breach, the non-breaching party may terminate the contract.*
  - (The comma separates the introductory phrase “In the event of a breach” from the main clause.)
- *Upon completion of the project, the final payment will be due.*
  - (The comma separates the introductory clause “Upon completion of the project” from the main statement.)

✗ Incorrect Use (Missing Comma):

- *In the event of a breach the non-breaching party may terminate the contract.*
  - Issue: The lack of a comma makes it harder to distinguish the introductory phrase from the rest of the sentence, leading to potential confusion.

### Best Practices for Using Commas in Contracts

- ✓ Use commas to separate items in lists, making obligations and rights easy to identify.
- ✓ always use the Oxford comma to ensure clarity and avoid legal disputes.
- ✓ Separate clauses and phrases to avoid confusion, especially when dealing with

complex, multi-part sentences.

- ✓ Use commas for non-essential information, ensuring that additional clauses or phrases don't alter the meaning of the main statement.
- ✓ Be cautious with introductory phrases, ensuring they are clearly separated from the main clause to improve readability.
- ✓ Maintain consistency in your use of commas to ensure a uniform and professional tone throughout the document.

### Oxford comma

The Oxford comma, also known as the serial comma, is the comma placed before the conjunction (usually *and* or *or*) in a list of three or more items. It helps clarify meaning and avoid ambiguity.

Example of Oxford Comma:

✓ With Oxford comma:

*"I would like to thank my parents, Oprah, and God."*

- This clearly refers to three separate entities: *parents, Oprah, and God*.

✗ Without Oxford comma:

*"I would like to thank my parents, Oprah and God."*

- This makes it seem like *Oprah and God* are the speaker's parents, which is not the intended meaning.

## **4. Role of Semicolon ( ; )**

The semicolon ( ; ) is an often-overlooked but highly effective punctuation mark in contract agreements. It is used to separate related but distinct ideas, clauses, or elements within a sentence. In contracts, where clarity and precision are paramount, the semicolon plays an important role in organizing complex information and separating related but independent clauses without creating disjointed or overly long sentences.

### **1. Separating Independent Clauses in Complex Sentences**

Purpose:

- A semicolon is used to separate two independent clauses that are closely related but could stand as separate sentences. This helps maintain the flow of thought without overusing periods or commas.

✓ Correct Use (Independent Clauses):

- *The contractor shall complete the project by December 31, 2025; the buyer shall inspect the work within 10 days of completion.*
  - (The semicolon separates two independent clauses with closely related legal obligations.)
- *The parties agree to settle disputes through arbitration; both agree to comply with the arbitrator's decision.*
  - (The semicolon is used to join two related but independent clauses.)

✗ Incorrect Use (Comma Instead of Semicolon):

- *The contractor shall complete the project by December 31, 2025, the buyer shall inspect the work within 10 days of completion.*
  - Issue: The comma incorrectly joins the independent clauses, creating a run-on sentence.

## 2. Separating Items in a Complex List

### Purpose:

- A semicolon is used to separate items in a list when those items themselves contain commas, ensuring that the list is clear and the individual items are distinguished properly.

✓ Correct Use (List of Complex Items):

- \*The parties agree to the following terms:
  1. Payment shall be made within 30 days of delivery, unless otherwise specified in writing;
  2. The project shall be completed in two phases, with the first phase due by March 15, 2025;
  3. Any breach of the agreement will result in penalties as outlined in section 4 of this contract.
  - (The semicolons clearly separate complex items in the list, each with its own set of details and conditions.)

✗ Incorrect Use (Comma Instead of Semicolon):

- \*The parties agree to the following terms:
  1. Payment shall be made within 30 days of delivery, unless otherwise

specified in writing,

2. The project shall be completed in two phases, with the first phase due by March 15, 2025,
3. Any breach of the agreement will result in penalties as outlined in section 4 of this contract.
  - Issue: Using commas here would lead to confusion, as it could be difficult to distinguish between the separate terms or obligations.

### 3. Clarifying Relationships Between Clauses or Sentences

Purpose:

- The semicolon can be used to clarify the relationship between closely related ideas or clauses, making it easier for readers to understand how each part of the contract is connected.

#### ✓ Correct Use (Clarifying Relationships):

- *The seller will deliver the goods by April 1, 2025; however, the buyer must confirm receipt within 5 business days.*
  - (The semicolon separates two related but distinct legal obligations: delivery and confirmation of receipt.)
- *The contract will remain in effect for 5 years; renewal terms will be discussed annually.*
  - (The semicolon clearly connects the contract term with the renewal process.)

#### ✗ Incorrect Use (Comma Instead of Semicolon):

- *The seller will deliver the goods by April 1, 2025, however, the buyer must confirm receipt within 5 business days.*
  - Issue: A comma would incorrectly separate these clauses, potentially confusing the relationship between them.

### 4. Providing Balance in Lengthy Sentences

Purpose:

- A semicolon can help in balancing long, complex sentences, especially in legal documents where multiple ideas need to be presented in a single, coherent statement. This avoids overly long sentences or overuse of commas.

✓ Correct Use (Balancing Ideas):

- *The buyer shall make an initial payment of \$100,000 upon signing the agreement; a second payment of \$200,000 will be due upon the completion of the first phase of the project; the remaining balance shall be paid upon final inspection and approval.*
  - (The semicolons help break up long, related clauses, making it easier to read and understand the obligations in sequence.)

✗ Incorrect Use (Overuse of Commas):

- *The buyer shall make an initial payment of \$100,000 upon signing the agreement, a second payment of \$200,000 will be due upon the completion of the first phase of the project, the remaining balance shall be paid upon final inspection and approval.*
  - Issue: Without the semicolon, the sentence becomes too long and difficult to follow, reducing readability and clarity.

## 5. Separating Multiple Clauses in Paragraphs or Provisions

### Purpose:

- In longer paragraphs or provisions of a contract, the semicolon is used to separate clauses that are closely related but still deserve individual emphasis. This helps break down lengthy sections into more manageable parts.

✓ Correct Use (Long Provisions):

- The seller agrees to the following terms:
  1. Delivery of goods will occur within 30 days;
  2. The goods shall meet quality standards as outlined in Exhibit A;
  3. Payment must be received in full prior to delivery;
  4. Any disputes shall be resolved through arbitration, as specified in section 7.

(Semicolons are used to separate closely related yet distinct obligations and clauses, helping each point stand on its own.)

✗ Incorrect Use (Using Comma Instead of Semicolon):

- The seller agrees to the following terms:

1. Delivery of goods will occur within 30 days,
2. The goods shall meet quality standards as outlined in Exhibit A,
3. Payment must be received in full prior to delivery,
4. Any disputes shall be resolved through arbitration, as specified in section 7.

Issue: Using commas in a list like this can blur the lines between separate provisions, making the contract harder to read and understand.

### Best Practices for Using Semicolons in Contracts

- ✓ Use semicolons to separate independent clauses that are closely related but stand as separate thoughts.
- ✓ Use semicolons in complex lists, especially when items in the list already contain commas.
- ✓ Use semicolons to clarify relationships between clauses that should be read together but remain distinct.
- ✓ Ensure the sentence is clear and coherent—semicolons should help, not hinder, understanding.
- ✓ Avoid overuse—semicolons are useful in complex structures, but their excessive use can complicate rather than simplify.

### Key Differences Between a Comma and a Semicolon

Feature	Comma ( , )	Semicolon ( ; )
Function	Separates elements in a list; introduces clauses	Separates independent clauses or complex lists
Use in Lists	Separates simple items in a list	Separates items in a list that contain commas
Use in Clauses	Introduces conditions, exceptions, and explanations	Connects independent clauses without conjunctions
Example	"The contractor shall supply bricks, cement, and steel."	"The contractor shall supply bricks, which are red; cement, which must be waterproof; and steel, which meets industry standards."
Common Errors	Misused in long clauses, creating ambiguity	Misused when a comma is sufficient, making sentences awkward

#### ✓ Correct Use (Separating Obligations):

*The supplier shall deliver the goods by June 30, 2025; provide a 12-month warranty; and offer customer support."*

- Ensures each obligation is distinct.

#### ✗ Incorrect Use (Using a Comma Instead of a Semicolon):



*"The supplier shall deliver the goods by June 30, 2025, provide a 12-month warranty, and offer customer support."*

- The sentence may imply that all conditions must be met together, causing confusion.

## 5. Role of Colon ( : )

The colon ( : ) is a powerful punctuation mark in contract agreements. It serves to introduce lists, explanations, definitions, or clarifications within a document, making the contract clearer and more precise. When used correctly, it organizes and structures information, preventing potential ambiguity and enhancing legal precision.

### 1. Introducing Lists or Enumerations

Purpose:

- A colon is often used to introduce lists or enumerations in contracts, ensuring that the items are clearly identified and easy to follow.

#### ✓ Correct Use (List Introduction):

- \*The contractor is responsible for the following tasks:
  1. Providing materials
  2. Hiring labor
  3. Completing the project within the stipulated time frame.
    - (The colon introduces the list of responsibilities clearly.)
- \*The following terms and conditions apply to this agreement:
  - Delivery schedule
  - Payment terms
  - Penalties for late delivery
  - (The colon helps introduce the key contract terms.)

#### ✗ Incorrect Use (Without Colon):

- \*The contractor is responsible for the following tasks,
  1. Providing materials
  2. Hiring labor.
  - Issue: The colon is missing, making it feel like a run-on sentence rather than an introduction to a specific list.

## 2. Introducing Explanations or Clarifications

Purpose:

- A colon can be used to introduce an explanation, clarification, or elaboration of the preceding clause or idea.

### ✓ Correct Use (Explanation or Clarification):

- *The parties agree to the following payment terms: all invoices must be paid within 30 days of receipt.*
  - (The colon introduces the specific payment terms.)
- *The seller is obligated to deliver the goods on or before December 31, 2025: any delay will incur a penalty of 1% per day.*
  - (The colon leads into the clarification of the penalty for delay.)

### ✗ Incorrect Use (Without Colon):

- *The seller is obligated to deliver the goods on or before December 31, 2025, any delay will incur a penalty of 1% per day.*
  - Issue: The comma is used instead of the colon, which causes the second part of the sentence to run too loosely with the rest of the clause.

## 3. Introducing Definitions or Key Terms

Purpose:

- In legal contracts, colons are frequently used to introduce definitions or specific terms that are given special meaning within the document.

### ✓ Correct Use (Definitions):

- *The term “Effective Date” shall mean: the date on which both parties sign this Agreement.*
  - (The colon introduces the specific definition of “Effective Date.”)
- *“Confidential Information” refers to: Any non-public business data shared between the parties in connection with this agreement.*
  - (The colon introduces the precise definition of “Confidential Information.”)

### ✗ Incorrect Use (Without Colon):

- *The term “Effective Date” shall mean, the date on which both parties sign this Agreement.*

- Issue: The comma is used instead of the colon, which doesn't introduce the definition clearly.

#### 4. Emphasizing a Key Point

Purpose:

- A colon can be used to emphasize an important point, showing that what follows is critical or will further explain the idea.

##### ✓ Correct Use (Emphasis):

- *The following will happen in case of default: a. The buyer shall forfeit their deposit. b. The seller shall initiate legal action.*
  - (The colon emphasizes the consequences of default.)
- \*The buyer has the following rights:
  0. Right to inspect the goods before purchase
  1. Right to a full refund if goods are defective
  - (The colon sets up an emphasis on the buyer's key rights.)

##### ✗ Incorrect Use (Without Colon):

- \*The buyer has the following rights,
  1. Right to inspect the goods before purchase.
  - Issue: Without the colon, the introductory sentence feels incomplete and lacks proper structure.

#### 5. In Reference to Time or Periods

Purpose:

- A colon can help present specific times, periods, or intervals in contracts, especially when introducing time-based obligations.

##### ✓ Correct Use (Time Periods):

- The parties agree to the following deadlines:
  - Initial review due within 15 days
  - Final approval due within 30 days
  - (The colon introduces specific time-related obligations.)
- *The contract shall be valid for a period of: 5 years from the date of execution.*
  - (The colon introduces the time frame for the contract.)

## ✗ Incorrect Use (Without Colon):

- *The contract shall be valid for a period of 5 years from the date of execution.*
  - Issue: Without the colon, the phrasing is less structured, and the legal significance of the time frame can be lost.

## Best Practices for Using Colons in Contracts

- ✓ Use a colon to introduce lists or enumerations that follow from an introductory statement.
- ✓ Use a colon to introduce explanations, definitions, or clarifications that elaborate on the preceding clause.
- ✓ Ensure the preceding statement is a complete sentence before using a colon to introduce additional information.
- ✓ Avoid overusing the colon—ensure its use is always for clarity, organization, or emphasis.
- ✓ Be mindful of the context—the colon should be used only where it improves the structure or understanding of the document.

## 6. Role of Period ( . )

The period ( . ) is one of the most fundamental punctuation marks in contract agreements. It plays a critical role in ensuring that the contract is structured and clear, helping to define boundaries between statements and clauses. The period serves to signal the end of a thought, giving the document its necessary structure and helping readers clearly distinguish between distinct legal concepts.

### 1. Marking the End of Sentences

#### Purpose:

- The primary function of the period is to indicate the end of a declarative sentence. In contracts, this ensures that each legal obligation, condition, or statement is clearly separated.

#### ✓ Correct Use (End of a Statement):

- *The contractor will complete the project by December 31, 2025.*
  - (The period clearly ends the sentence, indicating a complete legal obligation.)
- *The payment for the first installment is due upon delivery of the goods.*
  - (Each sentence is clearly separated, ensuring clarity of each term.)

#### ✗ Incorrect Use (Missing Period):

- *The contractor will complete the project by December 31, 2025*

- Issue: Without the period, the statement seems incomplete or might be misinterpreted as a continuation of another clause.

## 2. Separating Multiple Sentences in Complex Clauses

Purpose:

- In contracts with multiple clauses or complex legal structures, periods separate individual sentences, preventing confusion and ensuring that each point is understood as a distinct legal obligation or statement.

### ✓ Correct Use (Multiple Sentences):

- *The buyer agrees to inspect the goods upon delivery. If any defects are found, the buyer must notify the seller within 10 days of delivery.*
  - (Each part of the agreement is separated by periods, which helps break down the contract into manageable, distinct terms.)
- *The seller shall not be responsible for damages caused by third-party actions. All warranties are limited to those explicitly stated in this agreement.*
  - (Two separate sentences, each containing an independent legal statement.)

### ✗ Incorrect Use (Comma Instead of Period):

- *The buyer agrees to inspect the goods upon delivery, if any defects are found, the buyer must notify the seller within 10 days of delivery.*
  - Issue: Using commas instead of periods makes the sentence too long and confusing, diluting the distinctness of each legal obligation.

## 3. Ensuring Contractual Precision

Purpose:

- A period helps to ensure legal precision by clearly delineating obligations, rights, and terms. In legal writing, precision is key to avoiding misinterpretation.

### ✓ Correct Use (Precision):

- *The parties shall meet at the designated location. The buyer will be responsible for travel costs.*
  - (The period clearly indicates that each sentence represents a separate and distinct obligation.)
- *All payments under this contract shall be made in U.S. Dollars. Payments should be received no later than the 15th of each month.*

- (The period indicates the end of each obligation, making it clear and precise.)

#### ✗ Incorrect Use (Ambiguity):

- *All payments under this contract shall be made in U.S. Dollars, payments should be received no later than the 15th of each month.*
  - Issue: Without the period, the second part of the sentence can be misread or confused with the first part, which reduces clarity.

### 4. Avoiding Run-On Sentences

#### Purpose:

- The period prevents the creation of run-on sentences, which can make contracts confusing and difficult to read. Legal documents require clear separation of ideas to ensure that obligations and conditions are not lost in long, tangled sentences.

#### ✓ Correct Use (Preventing Run-On Sentences):

- *The contractor shall provide monthly reports. The buyer will review these reports within 5 business days.*
  - (Each idea is separated by a period, ensuring both sentences are clear and distinct.)

#### ✗ Incorrect Use (Run-On Sentence):

- *The contractor shall provide monthly reports the buyer will review these reports within 5 business days.*
  - Issue: This creates a run-on sentence that could be misinterpreted or cause confusion about the responsibilities of both parties.

### 5. Ensuring Clear and Professional Tone

#### Purpose:

- Periods are essential in maintaining a formal, professional tone in legal writing. In contracts, the precision and clarity of language are paramount, and the period helps maintain that formality.

#### ✓ Correct Use (Maintaining Formal Tone):

- *This Agreement shall remain in effect until terminated in accordance with the*

*terms herein.*

- (The period ensures the statement is formal and complete.)
- *The undersigned parties agree to the terms outlined above.*
  - (The use of the period clarifies the end of the formal agreement.)

#### ✗ Incorrect Use (Informal Tone):

- *This Agreement shall remain in effect until terminated in accordance with the terms herein, the undersigned parties agree to the terms outlined above*
  - Issue: The lack of a period creates a run-on sentence, diminishing the formality of the contract and potentially causing ambiguity.

#### Best Practices for Using Periods in Contracts

- ✓ Use periods to end all declarative sentences.
- ✓ Ensure periods are placed at the end of clear, complete statements that represent distinct obligations, rights, or clauses.
- ✓ Avoid run-on sentences—separate long, complex sentences into shorter, more manageable statements.
- ✓ Ensure each sentence is self-contained, making sure its legal meaning is clear without the need for additional explanation.
- ✓ Maintain consistency and professionalism throughout the document, ensuring that periods are correctly used to mark the end of ideas and clauses.

### 7. Role of Parentheses ( )

Parentheses ( ) play a crucial role in clarifying, supplementing, and organizing information in contract agreements. However, improper use can lead to ambiguity, misinterpretation, or even legal disputes.

#### 1. Clarifying or Providing Additional Information

##### Purpose:

- Used to add non-essential details that help explain but do not change the legal meaning of the clause.

#### ✓ Correct Use:

- *The lease term shall be for one year (12 months) from the effective date.*
  - (Clarifies that “one year” equals 12 months.)

- *The parties shall meet at a mutually agreed location (e.g., the company's headquarters or an alternative site).*
  - (Provides an example but does not limit flexibility.)

✗ **Incorrect Use (Ambiguous or Misleading):**

- *The contract shall be valid for one year (subject to renewal).*
  - Issue: Does the renewal apply only if the one-year period is completed, or can renewal happen earlier?

## 2. Defining Legal Terms

### Purpose:

- Parentheses help define abbreviations or specify legal references in contracts.

✓ **Correct Use:**

- *This Agreement is entered into by ABC Constructions Ltd. (the “Contractor”) and XYZ Developers Inc. (the “Client”).*
  - (Clearly assigns defined terms for reference throughout the contract.)
- *All payments shall be made in United States Dollars (USD).*
  - (Defines the currency abbreviation.)

✗ **Incorrect Use (Changing Legal Meaning):**

- *The employee shall be entitled to severance pay (if applicable).*
  - Issue: The phrase “if applicable” is vague—who determines if it applies?

## 3. Listing Optional Elements or Exclusions

### Purpose:

- Parentheses can indicate that certain words or clauses are optional.

✓ **Correct Use:**

- *The seller shall deliver the goods on or before March 15, 2025 (unless otherwise agreed in writing).*
  - (Allows for flexibility without altering the contract's core obligation.)

✗ **Incorrect Use (Creating Uncertainty):**

- *The buyer shall make payments within 30 days (including weekends and holidays).*



- Issue: Does this mean payments are required on weekends, or just that weekends count toward the 30 days?

#### 4. Referring to Laws, Regulations, or Sections

Purpose:

- Helps cite legal provisions without disrupting readability.

#### ✓ Correct Use:

- *All disputes shall be resolved in accordance with the Arbitration Act (2020).*
  - (Clearly references the year of the law.)
- *As stated in Clause 5.2 (Termination for Breach), failure to comply will result in contract termination.*
  - (Provides a specific reference for clarity.)

#### 5. Avoid Overuse or Unclear Parentheses

Incorrect Use:

- *The supplier shall provide materials (including, but not limited to, wood, steel, and concrete) within 30 days (subject to availability).*
  - Issue: The phrase "subject to availability" makes the obligation unclear—can the supplier refuse to deliver if materials are unavailable?

#### ✓ Better Alternative:

- *The supplier shall provide materials, including wood, steel, and concrete, within 30 days. If any material is unavailable, the supplier must notify the buyer in writing within 10 days.*
  - (Removes uncertainty and adds a clear requirement.)

#### Best Practices for Using Parentheses in Contracts

- ✓ Use parentheses only for supplemental, non-essential information.
- ✓ Ensure parentheses do not create ambiguity in contractual obligations.
- ✓ Use them for abbreviations, legal references, or clarifications.
- ✓ Avoid placing key obligations inside parentheses—this may weaken enforceability.
- ✓ If clarity is an issue, rewrite the sentence instead of relying on parentheses.

### 8. Role of Hyphen ( - )

The hyphen ( - ) is a crucial punctuation mark in contract agreements. It helps with

clarifying meaning, avoiding ambiguity, and ensuring accurate descriptions in legal language. When used correctly, hyphens contribute to the precision and legality of the document.

## 1. Connecting Compound Adjectives (Descriptive Terms)

Purpose:

- A hyphen is used to connect words that work together to form a single compound adjective modifying a noun. This helps avoid confusion and makes the meaning clear.

### ✓ Correct Use (Compound Adjectives):

- *The contractor must ensure that the well-built structure meets all safety regulations.*
  - ("Well-built" describes the structure and is hyphenated for clarity.)
- *The high-quality materials must be delivered within the specified timeline.*
  - ("High-quality" describes the materials and is hyphenated.)

### ✗ Incorrect Use (Without Hyphen):

- *The contractor must ensure that the well built structure meets all safety regulations.*
  - (Without the hyphen, the reader might misinterpret the phrase as a disjointed description of the structure.)

## 2. Clarifying Meaning in Compound Nouns

Purpose:

- Hyphens are used to connect words that together form a compound noun, ensuring the legal meaning is clear.

### ✓ Correct Use (Compound Nouns):

- *The buyer must submit the pre-sale inspection report before finalizing the purchase.*
  - ("Pre-sale" refers to the inspection report before the sale, and the hyphen is essential.)
- *The parties agree to a five-year contract term.*
  - ("Five-year" is a single unit of time describing the contract duration.)

### ✗ Incorrect Use (Without Hyphen):

- *The buyer must submit the pre sale inspection report before finalizing the purchase.*
  - (Without the hyphen, it could cause confusion as "pre sale" might be misread as a two-part phrase.)

### 3. Avoiding Confusion with Numbers and Words

Purpose:

- When a number is part of a compound adjective or compound noun, a hyphen helps prevent misreading or confusion.
- ✓ **Correct Use (Numbers and Compound Descriptions):**
  - *The 10-day notice period is required before contract termination.*
    - ("10-day" is a time frame, and the hyphen makes it clear it's a single descriptive unit.)
  - *The 20-foot shipping container will be delivered on Tuesday.*
    - ("20-foot" describes the container's size and should be hyphenated.)

#### ✗ **Incorrect Use (Without Hyphen):**

- *The 10 day notice period is required before contract termination.*
  - (Without the hyphen, the phrase could be misread as separate parts, not a single time period unit.)

### 4. Using Hyphens in Certain Legal Terms

Purpose:

- Some legal terms and formal phrases require hyphenation to maintain consistency and standardize usage.
- ✓ **Correct Use (Legal Terms):**
  - *The anti-bribery policy must be enforced at all times.*
    - ("Anti-bribery" is a standard legal term used to describe policies related to corruption.)
  - *The contract contains an all-inclusive price for the project.*
    - ("All-inclusive" describes the total price, and hyphenation clarifies that it's a single concept.)

#### ✗ **Incorrect Use (Without Hyphen):**

- *The anti bribery policy must be enforced at all times.*
  - (Without the hyphen, it could confuse the reader or make it look like two separate concepts.)

## 5. Avoiding Misinterpretation of Plural Forms

### Purpose:

- Hyphens can also be used to make sure plural forms are not misinterpreted, especially in compound terms.

### ✓ Correct Use (Plural Forms):

- *The members-only areas are designated for authorized users only.*
  - ("Members-only" refers to areas that are accessible to members of a group, not multiple areas.)
- *The in-house attorneys handle all legal matters for the company.*
  - ("In-house" refers to employees working within the company.)

### ✗ Incorrect Use (Without Hyphen):

- *The members only areas are designated for authorized users only.*
  - (Without the hyphen, the meaning may shift to imply areas for members only rather than areas that belong to a specific group of members.)

## 6. Avoiding Overuse of Hyphens

### Issue:

While hyphens are important, overusing them can make the contract seem cluttered or hard to read. Too many hyphenated terms can create confusion or unnecessary complexity.

### ✓ Best Practice:

- *Use hyphens only where necessary to ensure clarity and avoid ambiguity.*
- Limit the use of compound adjectives or terms to those that are needed for precise descriptions in the contract.

### Best Practices for Using Hyphens in Contracts

- ✓ Use hyphens to form clear, unambiguous compound adjectives or nouns.
- ✓ Always hyphenate numbers and descriptive terms (e.g., 10-day, high-quality).
- ✓ Be cautious of overuse—only use hyphens where they enhance clarity.

✓ Avoid unnecessary hyphens in terms that are already commonly understood without them (e.g., email, website).

✓ Use hyphens for clarity when combining words into a single, descriptive entity.

## 9. Role of Quotation Marks ( " " )

Quotation marks (“ ”) play a crucial role in contract agreements by ensuring clarity, defining terms, and preventing misinterpretation. Their correct use enhances legal precision and prevents disputes.

### 1. Defining Key Terms in a Contract

Purpose:

- Quotation marks clearly define legal or contractual terms to ensure they have a specific meaning within the agreement.

#### ✓ Correct Use:

- *“Completion Date” means the date on which all construction activities are finished and approved by the project manager.*
- *The term “Confidential Information” includes any business data disclosed under this agreement.*

#### ✗ Incorrect Use (Without Quotation Marks):

- *Completion Date means the date on which all construction activities are finished.*
  - Issue: Without quotation marks, "Completion Date" may not be interpreted as a specifically defined term.

### 2. Citing Laws, Regulations, and Precedents

Purpose:

- Used to directly quote laws, clauses, or contractual provisions within the document.

#### ✓ Correct Use:

- *As per Section 12 of the Employment Act, “an employee is entitled to severance pay upon termination without cause.”*
- *The parties must comply with the “General Data Protection Regulation (GDPR)” for data processing activities.*

#### ✗ Incorrect Use (Without Quotation Marks):

- *As per Section 12 of the Employment Act, an employee is entitled to severance pay upon termination without cause.*
  - Issue: It is unclear whether the clause is an official excerpt or just a paraphrase.

### 3. Indicating Directly Quoted Language

Purpose:

- When directly quoting another document, statement, or contractual obligation, quotation marks are required.

#### ✓ Correct Use:

- *The supplier agrees that “all materials provided shall meet industry safety standards” as stated in the procurement guidelines.*
- *According to Clause 5, “the buyer shall provide written notice at least 30 days before termination.”*

#### ✗ Incorrect Use (Without Quotation Marks):

- *The supplier agrees that all materials provided shall meet industry safety standards as stated in the procurement guidelines.*
  - Issue: Without quotation marks, it's unclear whether the wording is a legal requirement or a general statement.

### 4. Identifying Contractual Rights and Obligations

Purpose:

- Ensures that specific rights, duties, or clauses are explicitly recognized within the contract.

#### ✓ Correct Use:

- *The contractor shall have a “Right to Terminate” in case of non-payment beyond 60 days.*
- *The lessee shall maintain the premises in a “good and habitable condition” throughout the lease term.*

#### ✗ Incorrect Use:

- *The contractor shall have a Right to Terminate in case of non-payment beyond 60 days.*
  - Issue: Without quotation marks, "Right to Terminate" may not be read as a formal contractual right.

## 5. Caution: Avoid Unnecessary or Misleading Quotation Marks

Using quotation marks incorrectly can cause confusion or alter the intended meaning.

### ✗ Incorrect or Misleading Use:

- *The contractor shall provide “adequate” materials for construction.*
  - Issue: The word "adequate" in quotes suggests ambiguity or subjectivity, which could lead to disputes.
- *The supplier guarantees “on-time” delivery.*
  - Issue: Implies doubt about whether the delivery will actually be on time.

### ✓ Better Alternative:

- *The contractor shall provide adequate materials for construction as per industry standards.*
- *The supplier guarantees delivery within the agreed timeframe.*

## Best Practices for Using Quotation Marks in Contracts

- ✓ Use quotation marks when defining specific contractual terms.
- ✓ Use them to directly quote laws, regulations, or legal provisions.
- ✓ Ensure that quoted text is accurate and not misleading.
- ✓ Avoid unnecessary quotation marks that might create ambiguity.

## 10. Role of Single quotation marks ( ' ')

In contract management, single quotation marks ( ' ') are used more sparingly than double quotation marks. However, they still play a key role in certain contexts within contracts, legal documents, and formal agreements. The use of single quotation marks is mainly to indicate nested quotes, specific definitions, or clarifications within a larger quote. Here's a breakdown of their role and usage in contract management:

### 1. Nested Quotes (Quotes within Quotes)

Single quotation marks are primarily used to quote something within a larger quote. This is common when the contract references another statement or agreement that already contains a quotation.

- Example:  
*The client agreed to the terms and said, "The agreement shall be finalized upon receipt of the payment, with the 'Effective Date' being the first day of the month following full payment."*

In this example:

- The larger quote is about the agreement being finalized.
- The term 'Effective Date' is quoted within the larger statement, so single quotation marks are used.

## 2. Clarifying Specific Terms within Definitions

Single quotation marks can be used to highlight specific terms or phrases that need clarification or emphasis within a larger quote or definition.

- Example:  
*For the purposes of this contract, the term "Product" refers to the goods described in 'Schedule A' of the Agreement.*

In this case:

- 'Schedule A' is a specific reference to a document or section of the contract. Using single quotation marks ensures clarity and helps emphasize this specific term within a defined context.

## 3. Indicating Special Legal Terms or Clauses

Sometimes, in certain legal jurisdictions, single quotation marks may be used to highlight special legal terms or clauses within a contract, especially when they are being defined or referenced in a specific way.

- Example:  
*The clause entitled 'Force Majeure' addresses circumstances beyond the control of the parties, such as natural disasters or government action.*

This highlights the title of a specific clause within the contract and helps draw attention to its particular meaning.

## 4. Quotation within a Quote (Secondary Context)

Single quotation marks may be used in cases where a quote or phrase needs to be included within a direct quote. This is often seen when the contract is discussing legal terms or specific provisions that are part of a larger quoted statement.

- Example:  
*The judge ruled, "The clause entitled 'Indemnity' shall apply in all cases of breach, unless otherwise stated by the parties."*

Here, 'Indemnity' is a quoted term within the larger quote that references the legal ruling.



## Why Single Quotation Marks Are Used in Contract Management:

1. To Avoid Confusion in Nested Quotes: Single quotation marks help avoid confusion when a quotation appears inside another quotation. In legal contracts, where precision is crucial, this distinction ensures that the text is clear.
2. To Emphasize Specific Terms or Provisions: Single quotation marks can help highlight specific terms or clauses that need further attention or definition. They may be used to draw attention to terms like 'Payment Terms,' 'Contractual Obligations,' or 'Termination Clause,' which can be referenced later in the document.
3. To Follow Jurisdictional or Style Guidelines: In some legal jurisdictions or contract management systems, single quotation marks are used more frequently. For example, in British or Australian legal writing, single quotation marks are often preferred for defining or highlighting legal terms or phrases. In American legal writing, double quotation marks are more common, but single quotes may still be used in specific contexts.

## Best Practices for Using Single Quotation Marks ( ' ') in Contracts:

1. Use Single Quotation Marks for Nested or Secondary Quotes: Always use single quotation marks when quoting a quote within a quote in the contract language to keep the text clear and organized.
2. Be Consistent: If your contract or legal document follows a particular style guide (e.g., British vs. American style), make sure the use of single quotation marks is consistent throughout the document.
3. Clarify Definitions or Key Terms: Single quotation marks can be used when you need to define or explain terms that will be significant to the contract's execution, ensuring they are easy to reference or interpret.
4. Avoid Overuse: While single quotation marks are useful, avoid overusing them. Too many quotations or definitions within the text can clutter the document and make it harder to read. Use them only when necessary.
5. Check Jurisdictional Preferences: Be aware of jurisdictional variations in punctuation rules. Different regions may have different preferences regarding quotation marks, so it's important to follow the standards for the legal jurisdiction governing the contract.

## Key Differences in Usage:

Aspect	Double Quotation Marks (" ")	Single Quotation Marks (' ')
Primary Use	Direct quotes, defined terms, titles	Nested quotes, clarifications within quotes
Clarity	Clear and formal for primary references	Used for secondary or internal quoting
Legal Convention	Standard in American legal writing	More common in British or Australian legal writing
Example 1	"The payment is due by the end of the month."	'The contract must be executed by both parties.'
Example 2	"This document outlines the 'Terms and Conditions' of the agreement."	"The lawyer said, 'The clause is enforceable under the contract.'"

## 11. Role of Apostrophe ( ' )

The apostrophe ( ' ) plays an important role in contract management, primarily in ensuring clarity, precision, and legal accuracy in contract language. Here are the key areas where apostrophes are relevant in contract drafting and interpretation:

### 1. Indicating Possession

Apostrophes show ownership or association between contract parties and obligations.

- Example:
  - *The contractor's obligations include timely project completion.* (Obligations of the contractor)
  - *The employer's rights to terminate the contract.* (Rights belonging to the employer)
  - *The parties' agreement shall remain in force for five years.* (Agreement belonging to both parties)

### 2. Clarifying Plural vs. Singular Meaning

Contracts often involve multiple parties, entities, or obligations, and the apostrophe helps distinguish singular from plural forms.

- Example:

Phrase	Meaning
Contractor's obligations	Obligations of one contractor
Contractors' obligations	Obligations of multiple contractors
Buyer's consent	Consent of one buyer
Buyers' consent	Consent of multiple buyers

### 3. Avoiding Misinterpretation in Contractual Terms

Incorrect apostrophe use can lead to misinterpretation of contract clauses, potentially leading to disputes.

- Incorrect:
  - *All employees must submit there timesheets by Friday.* (Incorrect use of "there" instead of "their")
- Correct:
  - *All employees must submit their timesheets by Friday.*

#### 4. Abbreviations and Omissions

Although contractions (e.g., don't, can't, it's) use apostrophes, they are not recommended in legal contracts.

- Instead of: *It's agreed that the supplier will deliver materials by June 1st.*
- Use: *It is agreed that the supplier will deliver materials by June 1st.*

#### 5. Protecting Contract Integrity

Errors in apostrophe usage can lead to contractual disputes or misinterpretation. Minor punctuation mistakes can alter ownership, obligations, or responsibilities, potentially affecting enforcement.

- Example of Risk:
  - *The contractor's performance bond is required before the commencement date.*
  - If miswritten as *The contractors' performance bond is required...*, it may suggest multiple contractors are responsible instead of one.

#### Best Practices for Using Apostrophe ( ' ) in Contracts:

- ✓ Ensure the correct placement of apostrophes to avoid ambiguity in contract clauses.
- ✓ If misused, an apostrophe can change the intended legal meaning, so review carefully.
- ✓ Contracts should undergo legal review to ensure proper punctuation and wording.
- ✓ Always use formal, unambiguous language in contracts—avoid contractions.
- ✓ Conduct a thorough review of contract language to ensure clarity and enforceability.

#### 12. Role of Forward Slash ( / )

The forward slash ( / ) is a punctuation mark that has specific uses in contract

management, but its application is somewhat limited compared to other punctuation marks. It is typically used in contexts where alternatives, shortened forms, or technical terms are involved. However, it should be used with care in formal contract language to avoid any ambiguity or confusion.

### 1. Indicating Alternatives or Choices

One of the most common uses of the forward slash in contracts is to show alternatives or choices between two options. This can occur when the contract allows for multiple choices or flexibility in a particular provision.

- Example:

*The contract shall be executed by the buyer and/or seller, as applicable.*

- The use of "and/or" shows that either one or both parties could be involved in the action.

- Example:

*The services may be provided by the contractor/subcontractor, depending on availability.*

- Here, "contractor/subcontractor" suggests either party may perform the services, depending on the situation.

### 2. Shortened or Combined Terms

The forward slash is often used in shortened forms or to combine terms that are commonly understood to be interchangeable or linked. This use is more common in legal or technical language.

- Example:

*The parties acknowledge that they are bound by the terms of this agreement and/or any amendments thereto.*

- The slash is used to combine "and" and "or," indicating that the agreement could be modified by amendments, either in part or whole.

- Example:

*The contractor shall deliver the goods in accordance with the project's schedule/timeline.*

- The slash combines "schedule" and "timeline," treating them as interchangeable terms.

### 3. Denoting Ratios or Proportions

In some cases, the forward slash is used to express ratios, proportions, or divisions

related to payment schedules, performance metrics, or other contract-related data.

- Example:

*The payment will be made in installments of \$1,000/month for the first six months, then \$2,000/month thereafter.*

- If using a ratio structure: *The total cost is \$1,000/month for 6 months, then \$2,000/month thereafter (1/2 ratio of cost).*

- Example:

*The contractor must complete 10% of the work per month/quarter.*

- This shows a rate of performance (10% per month or per quarter) and helps define the expected pace of work completion.

#### 4. Dates and Time Periods

The slash is sometimes used in expressing dates or time periods, particularly when showing different potential start and end dates or possible timelines.

- Example:

*The contract is valid from January 1/2, 2025 to December 31/January 2026.*

- This could indicate potential options for when the contract is valid, depending on agreement details.

- Example:

*The payment is due on the 15th/30th of each month.*

- The slash here indicates alternative dates for payment.

#### 5. Identifying Jurisdictions or Legal Terms

In some legal contexts, the forward slash is used to indicate different jurisdictions, legal entities, or documents that could apply to the contract. It is used to clarify which laws, agreements, or entities are involved.

- Example:

*This contract is governed by the laws of the State of California/U.S. federal law.*

- This could mean the contract may fall under either state law or federal law, depending on the circumstances.

- Example:

*The goods are subject to a warranty from the manufacturer/supplier.*

- This suggests that either the manufacturer or the supplier could be responsible for the warranty, depending on the contract terms.

## 6. Combining Similar Terms or Units

When working with units of measurement, pricing, or similar quantities, the forward slash may be used to combine related terms or units.

- Example:

*The price is quoted as \$100/hour of labor.*

- Here, the forward slash separates price from the unit of time, providing a clear measurement for charges.

- Example:

*The shipment should arrive within 7-10 days of the contract's effective date.*

- The slash here represents a range of days in which the goods should arrive.

### Best Practices for Using the Forward Slash in Contracts

- Use sparingly: While the forward slash has specific uses, it should not be overused. Excessive use can make the contract appear cluttered and less formal. If the choices or combinations can be made clearer without the slash, avoid it.
- Avoid ambiguity: Ensure that the use of the slash does not introduce any confusion. When indicating alternatives, make sure the meaning is clear to both parties.
- Clarity over brevity: In some cases, it might be better to spell out alternatives or combine terms explicitly instead of using the slash. This is especially important in legal documents, where precision is critical.
- Formal tone: As a formal document, the contract language should remain precise and professional. The slash is typically acceptable in situations where it enhances understanding or simplifies terms without sacrificing clarity.

## 13. Role of Backward slash ( \ )

The backward slash ( \ ) is not commonly used in contract management or legal contracts. Unlike the forward slash ( / ), which is used in specific contexts to indicate alternatives, ratios, or combined terms, the backward slash serves very few practical functions in formal legal writing, especially within contract documents.

In fact, the backward slash is generally avoided in contract management, except in certain very specific technical or formatting cases.

### 1. Escaping Characters in Programming or Digital Systems

In certain digital systems or automated contract management tools, the

backward slash may be used as an escape character to represent special characters in data input (such as in coding or software development related to contract management systems). This is not typically relevant to the text of a contract itself but may be seen in systems that store or process contract data.

- Example (in programming):

In a contract database, the backward slash might be used to escape certain characters so they can be processed properly. For example, in computer code that interacts with contract data:

- *Contract Title: "Agreement for 12-month Term" is input as "Agreement for 12-month Term" to handle special characters properly in the system.*

However, this is not something typically encountered in the content of the contract itself; it's more relevant to the technical aspects of managing contracts digitally.

## 2. In File Paths or URLs in Digital Contract Systems

The backward slash is frequently used in file paths on Windows operating systems to define directories or folders. In the context of electronic contract management, you may encounter the backward slash when specifying file paths or linking documents, but again, this is related to the storage or organization of contract files, not the contract language.

- Example:

*Please ensure that the finalized contract is saved in the folder: C:\Contracts\Signed\Agreement\_2025.pdf.*

### Why the Backward Slash is Rarely Used in Contract Text:

#### 1. Lack of Formal Usage

In legal drafting and contract management, the focus is on clarity, formality, and precision. The backward slash does not contribute to clear communication in the contract's provisions. It doesn't have a standard, widely accepted legal or contractual meaning.

#### 2. Possible Confusion

The backward slash might cause confusion in formal writing since it is not commonly understood to convey anything specific within the context of contracts. Using it could make a document seem more technical than necessary, and could lead to misunderstandings if not used carefully.

### 3. Legal Consistency

Legal language relies on established punctuation marks such as periods, commas, semicolons, and colons to structure the document in a way that makes the meaning clear to all parties. The backward slash is not part of this standard, which is why it is rarely used in contracts themselves.

While the backward slash ( \ ) has its place in computing, programming, and file management, it plays no meaningful role in contract management or legal contract drafting. It is not used in contract language, as it doesn't add clarity or precision to contractual terms.

For contract management, focus on using standard punctuation like commas, periods, semicolons, and colons for clarity. If you're dealing with technical aspects such as file management or contract databases, the backward slash may appear in file paths, but not in the contract text itself.

## 14. Role of Question mark ( ? )

The question mark ( ? ) punctuation plays a distinct and important role in contract management, although its use is typically more limited compared to other punctuation marks like commas, periods, or semicolons. In contract management, question marks are used to seek clarification, request responses, or address ambiguities in contract terms, communication, or ongoing project details.

### 1. Seeking Clarification or Additional Information

When there's a need to clarify terms or details in a contract, a question mark can be used in contract negotiations or correspondence to obtain further information. This can help ensure both parties fully understand the terms, preventing future disputes or misunderstandings.

- Example:

*Does the contract cover additional services beyond the specified scope?*

- This query asks for clarity on whether there are additional obligations or services included.

### 2. Requesting Confirmation

A question mark can be used to request confirmation or a response from the other party about the fulfillment of certain conditions or details. It is commonly seen in follow-up letters or contract amendments.

- Example:



*Can you confirm if the payment will be made on the agreed-upon date of April 1, 2025?*

- This question seeks confirmation about an important aspect of the contract—the payment date.

### 3. Negotiation and Amendments

During contract negotiations, a question mark is often used to ask for changes or propose terms. The phrasing of these requests is critical in contract discussions, as it invites discussion or further negotiation.

- Example:

*Would it be possible to extend the delivery deadline by an additional 30 days?*

- In this case, the question mark invites further negotiation and potential amendment to the original contract terms.

### 4. Addressing Uncertainties or Ambiguities

If a contract clause is unclear or has multiple interpretations, a question mark can signal that ambiguity needs to be resolved. It's a way of highlighting that the meaning or scope of a term is not fully understood and requires clarification.

- Example:

*Does the term "reasonable effort" in Section 5 refer to timeframes or overall performance?*

- This question helps eliminate ambiguity in the contract language, seeking clarification on a vague or unclear term.

### 5. Formal Requests for Action or Information

Question marks can be used in formal requests to prompt the other party to take action or provide information. For example, a contract manager might use a question mark when requesting documents, approvals, or status updates during the course of a project.

- Example:

*Will you be able to submit the required reports by the end of the month?*

- This asks for confirmation or a response about the timing of a required deliverable.

### 6. Prompting Compliance or Performance

Sometimes, contract managers use questions to ensure that specific actions are taken according to the terms of the agreement. A question may be posed to check if a particular obligation has been met or to ask about compliance.

- Example:  
*Has the project been completed in accordance with the specified standards?*
  - This is an inquiry into whether the terms regarding project completion have been fulfilled.

## 7. Legal Inquiry or Dispute Resolution

In cases where there's a legal dispute or a need to understand different interpretations of a contract clause, question marks can be used in letters or formal requests to clarify terms before initiating dispute resolution processes.

- Example:  
*Is the indemnity clause in Section 10 enforceable in the event of a third-party claim?*
  - This question seeks clarification on the enforceability of a clause under certain circumstances, which can influence potential legal actions.

## Best Practices for Using Question Marks in Contract Management

- Limit Use in Formal Contract Text: Question marks should not be used in the core provisions of the contract itself, as the language should be assertive and clear. Use them primarily in correspondence or negotiation discussions.
- Be Direct and Specific: When using a question mark, ensure that the question is clear and directly related to an aspect of the contract or relationship that requires a response.
- Maintain Formal Tone: While it's acceptable to use question marks, the tone of the inquiry should remain professional and formal.
- Follow Up for Clarification: In case of ambiguous answers or delayed responses, follow up with further inquiries, especially in relation to ongoing contract performance or compliance.

## Example of a Well-Constructed Question in a Contract Letter:

*Dear [Recipient's Name],*

*I would like to confirm that the delivery of the goods is scheduled for March 15, 2025. Could you kindly provide an update on the status of the shipping arrangements?*

*Please let me know if any additional information is required to facilitate this process.*

*Best*

*regards,*

[Your Name]

In this example, the question is politely phrased to ask for an update or confirmation,

which is appropriate in the context of a formal contract letter exchange.

## 15. Role of Hyphen ( - )

A hyphen (-) is a small but powerful punctuation mark in contract management. It helps ensure clarity, precision, and accuracy in legal and contractual documents. Misuse or omission of a hyphen can lead to ambiguity, misinterpretation, and potential disputes.

### 1. Creating Clear Compound Modifiers

Hyphens are used to connect words that function together as a single adjective before a noun.

◆ Example:

- *The contractor shall provide a cost-effective solution.* (A solution that is effective in terms of cost)
- *The contractor must follow well-defined procedures.* (Procedures that are clearly defined)
- *The employer must ensure a high-quality workforce.* (A workforce of high quality)

✗ Without the hyphen, the meaning can be unclear or misleading.

- *The contractor must follow well defined procedures.* (Does "well" describe "defined" or something else?)

### 2. Distinguishing Different Contractual Terms

Some contract terms require hyphens to differentiate meanings.

◆ Example:

- *A "three-year contract" means a contract lasting three years.*
- *A "three year contract" (without hyphens) could be misread as three separate contracts for a year each.*

### 3. Clarifying Numerical Ranges & Units

Hyphens help avoid confusion when specifying quantities, dates, or measurements.

◆ Example:

- *The subcontractor must complete a 10-day inspection period.* (A period of 10 days)
- *The contract includes a 5-percent retention clause.* (A clause with 5% retention)
- *The project requires a 20-meter-long steel beam.* (A beam that is 20 meters)

long)

#### 4. Ensuring Legal Consistency in Defined Terms

Contracts often include defined terms that use hyphens for uniformity.

##### ◆ Example:

- *“Force-Majeure Event” shall mean an unforeseen event beyond the control of the parties.*
- *“Turn-Key Project” refers to a project where the contractor is responsible for the entire process until handover.*

#### 5. Avoiding Misinterpretation in Liability & Obligations

A missing hyphen can completely change the scope of responsibility in a contract.

##### ◆ Example:

- *The contractor is responsible for third-party claims.* (Claims made by an external party)
- *The contractor is responsible for third party claims.* (Unclear—does "third" modify "party" or "claims"?)

#### Best Practices for Using Hyphen ( - ) in Contract Management

- ✓ Use hyphens to prevent misinterpretation in contract language.
- ✓ Hyphenate compound words where necessary to preserve the intended meaning.
- ✓ Use hyphens with compound numbers and unit descriptions to ensure accuracy.
- ✓ If a contract defines a hyphenated term, use it consistently throughout the document.
- ✓ Ensure proper hyphenation in liability clauses to avoid disputes.

#### **16. Role of Exclamation Mark ( ! )**

The exclamation mark ( ! ) plays almost no role in formal contract management because contracts require clarity, precision, and neutrality. Legal documents must be free from emotional expressions, urgency, or ambiguity, which exclamation marks can introduce.

## 1. Contracts Must Be Formal and Legally Precise

Civil contracts are legally binding agreements that establish clear obligations, rights, and penalties. Using an exclamation mark can make clauses appear emotional, exaggerated, or informal, which can create confusion.

### ◆ Example (Incorrect Usage):

- *The contractor must complete the project by June 30th! Failure to comply will result in penalties!*
  - ✗ Sounds aggressive or urgent rather than a clear legal obligation.

### ◆ Revised (Correct Usage):

- *The contractor shall complete the project by June 30th. Failure to comply will result in penalties as per Clause 5.2.*
  - ✓ Uses neutral, enforceable language.

## 2. Avoids Misinterpretation in Contractual Obligations

Exclamation marks can make obligations appear vague or exaggerated, potentially leading to legal disputes.

### ◆ Example (Incorrect Usage):

- *The work must meet high-quality standards!*
  - ✗ What does "high-quality" mean? The phrase is subjective and could cause disagreements.

### ◆ Revised (Correct Usage):

- *The contractor shall ensure that all work complies with the quality standards specified in Section 10.2.*
  - ✓ Provides clear, measurable obligations.


## 3. Prevents Legal Risks in Dispute Resolution

If an exclamation mark appears in a contract clause, it might suggest urgency, emotional bias, or subjective intent, which could weaken legal enforceability.

### ◆ Example (Incorrect Usage):

- *The employer has the right to terminate the contract immediately if the safety rules are violated!*
  - ✗ The phrase “immediately” combined with “!” could be seen as harsh or improperly enforced.

◆ Revised (Correct Usage):

- *The employer may terminate the contract upon written notice if safety rules are violated, as per Clause 8.4.*
  -  Clearly defines process and conditions for termination.

### When (If Ever) Can an Exclamation Mark Be Used?

While generally avoided in contracts, exclamation marks may occasionally appear in:

- Marketing Agreements (e.g., advertising contracts)
- Informal Contract-Related Communications (e.g., emails, memos, or letters of intent)
- Non-Legal Sections (e.g., motivational statements in project charters or agreements)

◆ Example:

- *"We look forward to a successful project together!" (Acceptable in a cover letter, not in the contract itself.)*

## 17. Conclusion

Punctuation in contract agreements affects legal interpretation, clarity, and enforceability. Misplaced punctuation can change the meaning of a clause, leading to financial loss and legal disputes. By using commas, semicolons, colons, and other punctuation correctly, contracts remain precise and enforceable.

# New Strategy and Emerging Focus in Procurement: Use of Merit Point Criteria and Rated Criteria for Procurement of Works, Goods, Non-Consulting Services



**Dharmendra Kumar Jha\***

## Historical Approach

Procurement for Works projects specified minimum requirements in bidding documents, awarding contracts to the lowest-priced bidder meeting those standards.

### Set-backs

- Brings low quality contractors
- Awards to abnormally low bids
- Poor quality of works/deliverables
- Subpar contractor performance
- Implementing issues
- Delay in Procurement and disbursement
- Time Overrun and Cost Overrun

## Value for Money (VfM) Solutions

- ADB's 2017 Procurement Policy introduces flexibility, enabling Merit Point Criteria Proposal (MPC) to address these weaknesses.
- ADB procurement reforms intend to ensure VFM by improving flexibility, fairness, quality, and efficiency throughout the procurement cycle.
- VFM is part of a holistic procurement structure with three support pillars: efficiency, quality, and flexibility.
- The two key principles of transparency and fairness weave across all elements of the structure.
- In VFM, the effective, efficient, and economic use of resources, which requires an evaluation of relevant costs and benefits along with an assessment of risks, non-price attributes, and/or total cost of ownership as appropriate
- When considering VFM in the context of procurement, pay attention to anything that (i) shortens the procurement cycle time frame or (ii) accelerates delivery of the development project resulting greater value creation for all stakeholders.

## Merit Point Criteria (MPC): Definition and Benefits

Merit point criteria contribute to fit-for-purpose procurement outcomes that achieve value for money and project's development objectives. MPC in public procurement are crucial for ensuring fairness, transparency, and value for money. They help to select the most qualified bidders based on predefined, objective standards, such as technical expertise, past performance, and price.

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\* *Director, Public Procurement Monitoring Office*

This process reduces the risk of corruption and favoritism, leading to better outcomes for public projects. It fosters competition and innovation, driving suppliers to improve their offerings. Furthermore, the use of clearly defined merit point criteria supports accountability, making it easier to monitor and evaluate the procurement process.

MPC are supplementary criteria that use merit points in assessing non price attributes of bids to determine the substantially responsive bid that is most advantageous, i.e., offers the optimum Value for Money (VFM). Generally, MPC are used to assess relative merits of a bidder's technical bid that meets the qualification requirements to perform the contract, rather than the bidder's historical performance. However, there may be cases where bidders' previous experience and performance may be relevant to quality of works to be delivered; in which case such elements can be evaluated through MPC.

As with other Evaluation and Qualification Criteria, MPC and the method by which bids will be evaluated against them must be clearly stated in the bidding document. These non-price criteria may be used to assess the following features, among others:

- (i) the degree to which the performance, capacity, innovative features or functionality features offered by bidders meet or exceed the levels specified in the performance and/or functional requirements and/or influence the life cycle cost defined in the Employer's Requirements;
- (ii) quality of bids in terms of methodology or method statement, work plan, project team, key personnel, access to key equipment, site organization, safety, quality assurance, mobilization schedule, implementation schedule, community management, sustainability aspects, occupational and health safety (OCHS), environmental and social safeguard issues management, net zero/carbon reduction, supply chain management, cyber security and any other specific activities as indicated in the Employer's Requirements; and
- (iii) ability of bidders to meet and exceed any sustainable procurement requirements specified in the Employer's Requirements.
- (iv) assign scores to technical / qualitative aspects of bids and used to compare how bidders intend to address key technical aspects of a project
- (v) effective for addressing project-specific risks and opportunities and combined with financial scores for achieving Value for Money

### **Effective use of Merit point criteria may:**

- (I) Increase Efficiency and Reduce Procurement Time
  - Use of Merit point criteria increases the likelihood of participation by and award of contract to reputable contractors and suppliers, contributing to the efficient implementation of the contract.
- (II) Reduce Risk and Improve Quality
  - Merit point criteria place greater emphasis on quality and successful procurement outcomes, increasing the level of attractiveness to reputable contractors and suppliers.
  - Use of evaluation and qualification criteria that are suitable to the specifications will reduce contract implementation risks.
- (III) Deliver Value for Money



- Use of evaluation and qualification criteria that are well designed and fit-for-purpose will deliver better value for money.
- Merit point criteria allow better consideration of trade-offs between costs and quality.
- Consideration of sustainability, both environmental and social factors, and of a healthy supply chain.

(IV) Improve Fairness and Transparency

- Use of clearly defined evaluation and qualification criteria that are appropriate to the complexity of the contract give reputable contractors and suppliers confidence that they will be treated fairly and transparently.

(V) Encourages Innovation

- Small firms with strong technical capabilities or innovative solutions can compete effectively if criteria favor quality and innovation.

(VI) Level Playing Field

- Clear, transparent evaluation and qualification criteria can reduce favoritism, giving small businesses a fair chance if they meet the standards.

(VII) Focus on Capabilities

- Small businesses that excel in specialized skills or sustainability practices might stand out more based on merit rather than just price.

The Procurement Regulations state that the aim of the evaluation is to identify the substantially responsive bid offering the optimum value for money. This provides flexibility for the use of Merit point criteria in evaluating technical aspects of bids, either to supplement a lowest evaluated price assessment or to determine a combined technical and price score for each bidder.

### **BOX 1 Notable Results of FIDIC Survey on Its Worldwide Member Associations and Multilateral Development Banks**

- Low bids are causing a problem.
- Nearly 40% of countries award contracts based on quality and price method.
- Nearly 40% of countries award contracts based on least cost.
- About 20% apply average rule/alternative selection method.

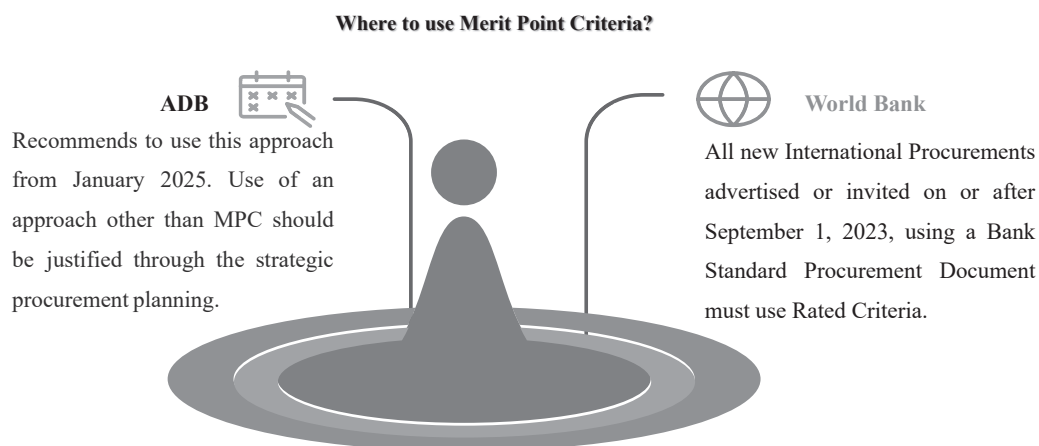
*Source: FIDIC Selection of Contractors (Proposed Alternative Mechanism to Award Construction Works Contracts), 1st edition 2017.*

### **Circumstances for Using Merit Point Criteria (MPC)**

Merit point criteria may be considered as part of the evaluation criteria in the following circumstances:

- where price should not be the sole determining factor, e.g., the assessment of the balance between cost and quality is desired to achieve value for money;
- when the scope of the contract is complex, e.g., information and communication technology, textbooks, custom-designed equipment or plant, or sophisticated infrastructure such as water supply conveyance tunnel, road and railway tunnels, elevated railway, via ducts, high rise bridges,

- mega hydropower projects and desalination plant;
- (iii) to enable the ranking of technical bids, e.g., for purposes of comparing and identifying the differences between technical proposals;
  - (iv) when there is a need to evaluate solutions that exceed the requirements or when alternative or innovative solutions are allowed;
  - (v) where certain aspects of bids are not quantifiable or cannot be expressed in monetary terms;
  - (vi) where the borrower has identified value-add in using Merit point criteria over lowest evaluated bid; and
  - (vii) for certain non-routine, non-consulting services, e.g., delivery of health care services that are best procured through a procedure similar to the quality- and cost-based selection procedure used for the recruitment of consulting firms.



## Options for Applying Merit Point Criteria (MPC)

There are two options for applying MPC in bid evaluation:

- (I) **Option 1.** Bids are evaluated and scored based on the Merit point criteria indicated in the bidding document. Bidders must achieve a prescribed minimum technical score in order to be assessed as substantially responsive. Prices of substantially responsive bidders are evaluated using adjusted bid prices and/or life-cycle costs as the total costs of ownership.
- (II) **Option 2.** This option is similar to Option 1 except prices are instead scored using a prescribed formula, and a combined technical and price score is determined for each substantially responsive bid.

The bid with the highest combined technical and price score will be assessed as the most advantageous bid, i.e., the bid offering the optimum Value for Money (VFM), and awarded the contract.

## Benefits and Risks of Using Merit Point Criteria

The following are the benefits and risks of using MPC in bid evaluation:

### (I) Benefits

- (a) enables the borrower to rank technical bids in order of merit;
- (b) rewards technical bids that exceed the minimum requirements;
- (c) determines the most advantageous substantially responsive bid
- (d) encourages participation from (potentially new) highly qualified bidders and motivating them to offer better solutions
- (e) communicates a strong change signal to the market, particularly those who seek to ‘game’ the process by winning on a low initial price
- (f) discouraging low-bidding and increasing project performance and
- (g) facilitates the evaluation of technical merit and quality, and allows objective comparison of solutions or methodologies offered by the bidders
- (h) enables the borrower to allow premium for technical bids that minimize or improve the environmental and social impact, and that propose higher standards for occupational health and safety management; and
- (i) achieving Value for Money and reduces the risk of collusion

### (II) Risks

- (a) subjectivity is introduced into the bid evaluation process when MPC are formulated in an abstract manner, and
- (b) the borrower may evaluate technical bids in an arbitrary or manipulative manner when scores given to each bid are not accompanied by narratives that clarify the basis for such scores.

## Way of Structuring Merit Point Criteria

The borrower has broad discretion in structuring MPC to determine the bid offering the optimum value for money. Different approaches are available depending on the nature of procurement and technical complexity of the Employer’s Requirements.

Key to formulating the criteria and sub criteria to be scored is understanding the nature and complexities of the Employer’s Requirements, available technical solutions, and the best procurement practices in the sector. Based on this understanding, qualified borrower’s staff or consultants who have experience in the particular field and who are fully informed of the details of the Employer’s Requirements will establish the criteria, features, and sub criteria to be used to assess each bidder’s ability to meet or exceed the requirements and provide the optimum VFM.

The weights for each criterion and sub criteria are determined according to their relative importance in meeting the Employer’s Requirements. Table 1 provides a sample set of criteria for a works contract. The weights of individual criteria, in the aggregate of 100, in this example are set as the maximum score for that criterion.

**Table 1: Example of Merit Point Criteria and Weightings**

<b>Criteria</b>	<b>S (max)</b>
1. Overall Project Management	20
2. Implementation Methodology and Work Plan	40
3. Programming and Mobilization	10
4. Quality, Safety and Environment	30
<b>Total</b>	<b>100</b>

S (max) = maximum score.

Source: Asian Development Bank.

### **Technical Factors Considered to Assess Bids during Evaluation**

#### ▣ **Site Organization and Project Management**

- Resources, logistics, communication and co-ordination

#### ▣ **Work Plan**

- Critical issues, milestones, project management system

#### ▣ **Method Statement**

- Understanding, approach, employer's requirement and specifications, construction methodology and technology and risk management

#### ▣ **Quality, Health, Safety and Environment Management**

- Reporting method for site registration and accounting for people on the site at any one time
- Staff induction and Incident response plans
- Additional machinery and equipment operators' qualifications to be undertaken in order to work on site
- Occupational and Health Safety System (OCHS) management systems, promotion and training provision

#### ▣ **Social and Community Management**

- Community engagement, socio-economic benefits, local impact mitigation, social and environmental safeguards

#### ▣ **Sustainability Aspects**

- Technical capability and past experience of the bidder
- Compliance & certifications
- Use of local labor, small and medium enterprises(SME) and Sustainably sourced materials
- Waste reduction, elimination, resource efficiency and verification of recycled content
- Environmental and Social impact Assessment
- Sustainable design and methods and Life-cycle consideration

## ■ Experiences and Qualifications

### ➤ Performance

- References for equivalent size and type of projects and services
- Quality management systems
- To what extent the proposal adds value in terms of functionality

### ➤ Capacity

- Current capacity of company

### ➤ Functionality

- To what extent does the Proposal enhance the quality of the project in terms of the specification
- Detail construction materials that will enhance final product (value engineering)
- Durability of construction materials and Innovative processes used

### ➤ Project Team / Key Personnel

- Team committing to the project
- Team's experience and Contract personnel resource schedule
- Organizational chart and Key personnel resourcing
- Subcontractors and suppliers that will be relied upon for delivery and Key trades

### ➤ Net Zero / Carbon Reduction

- Net Zero commitment
- Carbon reduction initiative, targets, strategies and opportunities

### ➤ Supply Chain Management

- Supply risk management process/approach
- Code of conduct
- Supplier/contractor social and environmental performance
- Supply chain visibility and Proficiency in supply chain risk management
- Proficiency in delivering against environmental and social objectives

## Technical and Price Ratio for Bid Evaluation

The borrower may use the technical scores derived from use of MPC to calculate a combined technical and price score for each bid to identify the substantially responsive bid offering the optimum VFM (refer to the Various Examples as prescribed below for various scenarios of the combined scores based on different technical and price ratios). BOX 2 presents the technical-price ratio used by various institutions. The appropriate technical-price ratio, to be specified in the bidding document, depends on the weight the borrower puts on technical versus price, as follows:

### (I) Higher technical-price ratio (90:10 to 60:40)

- (a) The borrower puts more premium on quality rather than price.
- (b) Bidders are likely to propose more than the borrower's technical requirements.

### (II) Lower technical to price ratio (50:50 to 10:90)

- (a) The borrower puts equal or more premium on price rather than quality.
- (b) The borrower's national legislation mandates contract award to the lowest evaluated bidder.
- (c) Bidders are likely to structure their bid just to meet the minimum requirements.

## BOX 2 Technical–Price Ratio Used by Various Institutions

- Asian Development Bank: neither restriction nor prescription on technical–price ratio.
- International Federation of Consulting Engineers: 80/20 in identifying the most economically advantageous tender (FIDIC Procurement Procedures Guide, 1st Edition 2011). At least 80% of the total score to truly value the technical aspect (Proposed Alternative Mechanism to Award Construction Works Contracts), 1st Edition 2017).
- World Bank: the relative weight to be assigned to rated criteria should generally not exceed 30%, but it may be set as high as 50% if justified to achieve value for money.
- European Union: no restriction or prescription on technical–price ratio.

## Rating of Merit

Merit points are assigned to all bids that have passed the qualification criteria, and applied consistently according to the criteria and sub criteria. This facilitates the evaluation of technical merit, quality, risk, and other relevant factors, and allows objective comparison of the bids or the different solutions offered by the bidders. Objectivity will be improved through a scoring system using score descriptors that provide a benchmark against which borrower’s evaluators can rank or score bids.

**Table 2** provides a sample scale of grading or rating from 0 to 5, or 0 to 100% (0–20–50–70–80–100), which may be considered in rating or ranking the sub criteria. Depending on the nature of the procurement, the scale of grading may only be 1 to 4 instead of 0 to 5.

There should be a separate Scale of Grading or Rating for each criterion. This will allow evaluators to make a reasonable judgment on the scores to be given for each criterion, and thus mitigate the possibility of undue discretion in giving full scores or 100% for a poor submission. To the extent possible, there should be uniformity in the Scale of Grading or Rating for all the criteria in a particular procurement.

**Table 2: Sample Score Descriptors**

**Table 2: Sample Score Descriptors**

Rating	Score or Rank	Description of Rating of Scores
Excellent submission (100%)	5	Significantly exceeds the requirements
Good submission (80%)	4	Marginally exceeds the requirements
Acceptable submission (70%)	3	Satisfies the requirements
Some reservations (50%)	2	Does not fully meet the requirements
Serious reservations (20%)	1	Significantly below the requirements
Unacceptable submission (0%)	0	Feature is absent

Source: Asian Development Bank.

## Combined Technical and Price Evaluation

A combined technical and price score will be calculated for each substantially responsive bid using the weights or ratio and formula indicated in the evaluation and qualification criteria. The bid with the highest combined technical and price score will be determined as the most advantageous bid. Below are two sample formulas to calculate a bidder's price score that is inversely proportional to its price, i.e., the lower the price, the higher the score.

(i) The first sample formula for computing the combined technical and price score is presented in equation (1):

$$B = \frac{C_{\text{low}}}{C} X + \frac{T}{T_{\text{high}}} (100-X) \quad (1)$$

Where,

B = combined technical and price score

C = evaluated bid price

C<sub>low</sub> = lowest of all evaluated price among responsive bids

T = total technical score awarded to the bid

T<sub>high</sub> = technical score achieved by the bid that was scored highest among all responsive bids

X = weight for price

(ii) The second sample formula for computing the combined technical and price score is presented in equation (2):

$$B = (C_{\text{low}} / C) X + T (100-X) \quad (2)$$

## Merit Point Criteria for Quantifying and Weighing

Merit point criteria are quantified and weighted through a systematic process to ensure fairness and objectivity in evaluating bids. Here's how it typically works:

- 1. Define Clear Criteria:** Establish specific, measurable factors such as technical capability, experience, quality, sustainability, and price.
- 2. Assign Weights:** Allocate a percentage or points to each criterion based on its importance to the project. For example, technical quality might be 40%, price 30%, and sustainability 20%.
- 3. Develop Scoring Scales:** Create scales (e.g., 0-10 or 0-100 points) for each criterion, with detailed descriptions for different performance levels.
- 4. Evaluation:** During review, assess each bid against the criteria and assign scores accordingly.
- 5. Calculate Total Score:** Multiply each criterion's score by its weight and sum these to get the bid's total score.

This approach promotes transparency, allowing bidders to understand how their proposals will be judged. It also ensures that the evaluation aligns with the project's strategic priorities.

### Example A

Criterion	Weight	Bidder's Score	Weighted Score
Technical Quality	40%	8/10	0.40 * 8 = 3.2

Price	30%	7/10	$0.30 * 7 = 2.1$
Sustainability	20%	9/10	$0.20 * 9 = 1.8$
Delivery Time	10%	8/10	$0.10 * 8 = 0.8$

**Total Score = 3.2 + 2.1 + 1.8 + 0.8 = 7.9/10**

### Challenges in implementing Merit point criteria based procurement

Implementing merit-based procurement can face several challenges, including:

1. **Subjectivity in Evaluation:** Despite clear criteria, evaluators might introduce personal biases, affecting fairness.
2. **Complexity in Criteria Design:** Developing comprehensive and measurable criteria that accurately reflect project priorities can be difficult.
3. **Transparency and Accountability:** Ensuring transparency throughout the process to prevent favoritism or corruption requires robust systems and oversight.
4. **Capacity and Training:** Evaluators and procurement officials need proper training to assess bids objectively and consistently.
5. **Resistance from Stakeholders:** Bidders or internal stakeholders may prefer uneven playing fields or resist changes from traditional price-based awarding.
6. **Balancing Price and Quality:** Finding the right mix between cost and non-price factors often involves trade-offs, and misjudging this balance can lead to suboptimal outcomes.
7. **Potential for Litigation:** Disagreements over evaluation criteria or scoring can lead to legal disputes, delaying projects.
8. **Resource Intensiveness:** A merit-based process often demands more time, effort, and resources to evaluate non-price factors thoroughly.
9. **Stringent Criteria:** High technical or administrative requirements might be difficult for small businesses to meet, limiting their opportunities.
10. **Competition with Larger Firms:** Larger companies often have more resources to craft comprehensive bids, potentially overshadowing small businesses.
11. **Legal Constraints:** Provisions for applying Merit point criteria under existing procurement legislation.

### Balance:

To foster small business participation, procurement processes should include measures like capacity-building support, simplified criteria where appropriate, and outreach programs.

### Rated Criteria

Globally more countries using Rated Criteria, some for 30 years +. Increasingly used to support wider social, economic, cultural and environmental outcomes. Many others are modernizing to allow Rated Criteria, recently India and Croatia updated procurement laws to permit Rated Criteria (now Croatia uses for 90% of all procurements). Encourages participation from (potentially new) highly-qualified



suppliers and motivates them to offer better solutions, because they know their efforts will be given importance. Rated Criteria Sends a strong change signal to the market (particularly any who try to win bids with a low initial price).It's the right thing for development and the project.

Since 2016, the World Bank's Procurement Framework has enabled Borrowers to use Rated Criteria to evaluate non price factors such as technical matters, quality, sustainability, environmental, social, innovative aspects of Bids, and so on, when determining an award decision.

Rated Criteria are used to evaluate non-price attributes of Bids/Proposals, including quality, risks/mitigations, opportunities, sustainability, and other technical aspects. Rated Criteria Assign scores to technical / qualitative aspects of bids or proposals and can be used to compare how bidders intend to address key technical aspects of a project. Rated Criteria are effective for addressing project-specific risks and opportunities and are combined with financial scores to award contracts based on Value for Money (VFM).

**Rated Criteria are:**

- A subset of Evaluation Criteria, used as part of an overall Evaluation Approach
- Used to differentiate between quality aspects of different Bids/Proposals
- Prioritized and focused on critical technical matters e.g., credibility of Works methodology and related plans, risk assessments, achievement of environmental and social objectives etc.
- Weighted according to importance
- Tailored to specific project needs (avoiding a cookie cutter approach)
- Used as part of a two-envelope approach, assessing quality first before conducting the financial evaluation

When Rated Criteria are used, the Most Advantageous Bid/Proposal is the Bid/Proposal of the Bidder/Proposer that meets the qualification criteria and whose Bid/Proposal has been determined to be:

- (a) substantially responsive to the Request for Bids/Request for Proposals document; and
- (b) the highest ranked Bid/Proposal.

**Rated Criteria may:**

- Be a statement of qualitative aspects of a requirement (e.g. the timber must be sourced from independently certified sustainable sources)
- Specify the minimum standard where requirements are mandatory (e.g. the road must be at least 5 meters wide)
- Seek solutions (e.g. design a flood defense to protect from a 1 in 200-year flood event)
- Specify the minimum quality by setting a Minimum Quality Threshold score (e.g. Bidder/Proposer's Labor Management Plan must score at least 3 out of 4 to proceed)
- Be input, outcome or performance based

**Rated Criteria should be:**

- Scorable and able to be rated to justifiably differentiate Bids/Proposals

- Specific and proportionate - designed to address project objectives, risks and issues

Rated Criteria provides a mechanism to identify and reward suppliers that:

- Design assets that deliver efficiency improvements
- Demonstrate an understanding of environmental and social risks and put forward a sound methodology to addresses them
- Assign key personnel with relevant expertise and experience
- Use locally sourced, sustainable materials
- Proactively manage supply chain risks
- Seek to reduce carbon emissions from their supply-chain

#### Rated Criteria – Example B

Technical Factor	Weight (%)
➤ Extent the technical proposal exceeds the requirements of the Specification	
➤ Method Statement for construction activities (and design, if any) corresponding to the requirements as stated in the Specifications and ESHS framework	
➤ Site Organization	
➤ Work Program and completeness of allocated resources	
➤ Management strategies and implementation plans (MSIPs) for ES	
➤ Qualifications and Experience of Contractor's Representative and Key Personnel	
➤ Deployment schedule of Key equipment & utilization strategy	
➤ Any other technical factors as appropriate	
<b>Total</b>	<b>100%</b>

#### Example C: Final - Technical vs Financial Cost

Score	Proposal A	Proposal B	Proposal C	Proposal D
<b>Quality Score</b>	31.66	33.33	30.00	40.0
<b>Financial Cost Score</b>	50.76	52.80	60.00	55.02
<b>Combined Score</b>	82.42	86.13	<b>90.00</b>	<b>95.02</b>

#### Example D – Airport Terminal Reconstruction Project, Sint Maarten

Recommended  
for Award

1. Site Organization, Team Composition and Qualifications and Experience of Contractor's Representative and Key Personnel (20%):

- Project Management Team composition including proposed sub-contractors (15)
  - Organizational set up including proposed subcontractors (5)
- 2. Work Program (25%)**
- Work Program and a statement clearly indicating the strategy of execution (15)
  - How lessons learnt from similar projects will be implemented (5)
  - Measures to avoid potential delays (5)
- 3. Method Statement for Construction Activities (25%):**
- Quality control and assurance (5)
  - Approach and method statement for logistics, phasing, overcoming challenges of building on an island (5)
  - Approach and method statement for coordination and integration with other contractors (5)
  - Project specific risks and mitigation measures (10)
- 4. Value Engineering in cost reduction/saving/efficiency suggestions (10%)**
- 5. Economic Participation (15%)**
- Economic integration plan e.g. involvement of sub-contractors, suppliers, personnel (10)
  - Plan for technical knowledge transfer to local staff enabling future maintenance and operation activities (5)
- 6. Management Strategies and Implementation Plans for ES (5%)**

### Determining the Weighted Technical Score

The Bidder/Proposer with the highest evaluated technical scores is assigned a total score of 100 points (e.g., 100%), other Bidders' evaluated financial costs are then divided into the lowest evaluated financial cost score to arrive at a comparative score (ratio/percentage).

Using the Comparative Scoring Methodology, each Bid/Proposal's total technical score is divided by the highest technical score and then multiplied by the weighting available for technical criteria. See the example below:

#### Initial Technical Score

#### Example technical–financial weighting

#### Example E: Evaluating Technical Aspects of Company's A Bid/Proposal

Criteria	Weighting	Score	Weighted Score (weighting x score)
Overall effectiveness of proposed project in delivering requirements	50%	2	100

Methodology for delivering project	25%	2	50
Quality of team proposed	15%	2	30
Sustainability	10%	1	10
<b>Bidder A score for technical</b>		<b>TOTAL</b>	<b>190</b>

### Calculate the Final Technical Weighted Score

Using a Comparative Scoring Methodology, the final technical score is divided by the highest technical score. In this example, Bidder/Proposer A has an initial technical score of 190. The highest technical score was achieved by Bidder/Proposer D, which scored 240. The technical versus financial cost weighting to be applied is 80% / 20%, respectively.

### Calculation of Final Technical Score

**Weighted Score**  $190W \times 100 = 79.16 \times \text{Technical Weighting (80\%)} = 63.33 \text{ points}$   
**Highest Technical Score 240**

Figure I is an illustrative example of the application of the overall technical weighting to each Bidder/Proposer's technical score:

FIGURE I Example technical score matrix

Results of Technical Evaluation All Bids			
Bidder/ Proposer	Total Evaluated Technical Score	Comparative Technical Score	Weighted Technical Score (80%)
A	190	79.16	63.33
B	200	83.33	66.66
<b>C</b>	<b>205</b>	<b>85.42</b>	<b>68.33</b>
D	240	100.00	80.00
E	145	60.42	48.33

### Determining the Weighted Financial Cost Score

The Bidder/Proposer with the lowest evaluated financial cost is assigned a score of 100 points (e.g., 100%); other Bidders' evaluated financial costs are then divided into the lowest evaluated financial cost score to arrive at a comparative score (ratio/percentage).

In this illustrative example below Bidder/Proposer A's price is \$5,200,000, whereas the Bid/Proposal with the lowest financial cost was \$4,400,000.

The financial cost score is therefore calculated as follows, example for Company A:

$$\frac{\text{Lowest Cost : \$4,400,000}}{\text{Company A: \$5,200,000}} \times 100 = 84.6 \times \text{Financial Cost Weighting 20\%} \\ = \mathbf{16.92 \text{ Points}}$$

**FIGURE II Example financial cost score matrix**

Bidder/ Proposer	Total Evaluated Financial Cost	Comparative Financial Cost Score	Weighted Financial Cost Score (20%)
A	\$5,200,000	84.6	16.92
B	\$4,999,999	88.0	17.6 0
C	\$4,400,000	100.0	20.00
D	\$4,800,000	91 .7	18.3 4
E	\$1,100,000	Nil, rejected as ALB	Nil, rejected as ALB

#### **Combined Technical & Financial Cost Score for Bidder/Proposer A**

Final Technical score	63.33
Final Financial Cost Score	16.92
Total	80.25 <b>Combined points for Bidder/Proposer A</b>

Figure III illustrates an example where **Bidder/Proposer D with a total combined score of 98.34** is the first-ranked Bid/Proposal and is therefore recommended for award of contract.

**FIGURE III Example combined technical and financial cost score matrix**

Bidder/ Proposer	Weighted Technical Score	Weighted Financial Cost Score	Combined Score	Rank
A	63.33	16.92	80.25	# 4
B	66.66	17.60	84.26	# 3
C	68.34	20.00	88.34	# 2
<b>D</b>	<b>80.00</b>	<b>18.34</b>	<b>98.34</b>	<b># 1</b>
E	48.33	Nil, rejected as ALB	Nil, rejected as ALB	Not Applicable

The Bidder/Proposer D with the highest combined total score is the one recommended for award of contract.

#### **Endnotes**

1. Procurement
2. This Guidance does not replace the Evaluation Criteria and mechanisms specified in the

applicable Procurement Documents.

3. See Thresholds for Procurement Approaches by Country.
4. Guidance Procurement Hands-on Expanded Implementation Support.
5. Guidance, Project Procurement Strategy for Development.
6. Guidance, Competitive Dialogue.
7. World Bank Procurement Policy
8. Guidance, Conflict of Interest
9. Template, Conflict of Interest Declaration.
10. Application, if the substantial responsiveness is applied to Prequalification/Initial Selection.
11. Guidance on Abnormally Low Bids and Proposals.
12. Bob Kwartin bobkwartin@gmail.com
13. Greg Giddens greggiddens12@gmail.com
14. Implementing Rated Criteria and Sustainable Public Procurement 2023 Andy Cochrane, World Bank

# Understanding Major and Minor Deviations in Bid Evaluation

Birendra Kandel\*



## Abstract

*Bid evaluation is a critical step in procurement, where the goal is to identify the lowest evaluated substantially responsive bid, which may not always be the cheapest. Bids often have deviations—classified as major or minor—from the requirements. Major deviations, like non-compliance with bid validity or technical specifications, render a bid non-responsive and lead to rejection. Minor deviations, such as small delays in delivery or missing minor documentation, don't materially affect the bid's compliance and can often be quantified monetarily (up to 15% of the bid price) for fair comparison. Legal provisions, like Nepal's Public Procurement Act, emphasize evaluating minor deviations fairly while rejecting major ones. The key is ensuring fairness, transparency, and competition by carefully distinguishing between major and minor deviations during evaluation.*

## 1. Introduction

Evaluation of the bids is always a crucial step in the procurement process. Bids are very hardly fully compliant to the requirements as set forth by the bidding document issued by the public entity. The main purpose of bid evaluation is to determine the lowest evaluated substantially responsive bid among the bids submitted on or before the bid closing date and time specified in the bidding document. The lowest evaluated substantially responsive bid may or may not necessarily be the lowest priced bid. In the evaluation procedures of the bids, the term “substantially responsive” is widely used. The bids received shall be strictly evaluated according to the terms and conditions of the bidding document. The bid evaluation committee concludes the bid evaluation process by declaring some of the requirements to be a minor deviation from the requirements of the bidding document, hence the term “substantially responsive bid” is used rather than a “perfectly responsive bid”. Deviations from the evaluation requirements may be major or minor, which is briefly described in this article.

## 2. Deviation, Reservation and Omission

The Standard Bidding Document (SBD) issued by the Public Procurement Monitoring Office (PPMO), Nepal describes deviation, reservation and omission as below:

- “Deviation” is a departure from the requirements specified in the Bidding Document.
- “Reservation” is the setting of limiting conditions or withholding from complete

\* Senior Divisional Engineer, Ministry of Water Supply

acceptance of the requirements specified in the Bidding Document; and

- “Omission” is the failure to submit part or all of the information or documentation required in the Bidding Document.

*(Source: Standard Bidding Document, Procurement of Goods, Single Stage Double Envelope, Public Procurement Monitoring Office, Nepal)*

Further, the clause 32 (Determination of the Responsiveness of Technical Bids) of the Instruction to the Bidders (ITB) of the Standard Bidding Document (Procurement of Goods, Single Stage Double Envelope) states:

*"A substantially responsive Technical Bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,*

*(a) if accepted, would:*

- (i) affect in any substantial way the scope, quality, or performance of the Goods and Related Services specified in Section V, Schedule of Requirements; or*
  - (ii) limits in any substantial way, inconsistent with the Bidding Document, the Purchaser's rights or the Bidder's obligations under the proposed Contract;*
- or*

*(b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids."*

ITB clause 33 of the SBD (Goods, 1S2E) states that *"The Purchaser may regard a Bid as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirement set forth in the Bidding Document or if it contains errors or oversights that are capable of being corrected without affecting the substance of the Bid."*

### **3. Major Deviations**

As major deviations may affect the scope, quality or performance of the goods and related services and would unfairly affect the competitive position of other bidders presenting substantially responsive bids, these deviations should be properly identified during the bid evaluation. A major deviation is one which

- Has an effect on the validity of the bid.
- Has been specified in the bidding document as grounds for rejection of the bid.
- Is a deviation from the commercial terms or the technical specifications in the bidding document whose effect on the bid price is substantial but cannot be given a monetary value.

Let us take some examples on major deviations. Consider the following bid evaluation table.



Three bidders submitted their bids and the bid validity period and bid security as submitted by the bidders is tabulated as below.

S.N.	Requirements of the bidding document	Bidder No. 1	Bidder No. 2	Bidder No. 3
1	Bid Validity period (120 days)	100 days	125 days	120 days
2	Bid Security Amount : NRs. 15 Mlns.  (Validity Period 150 days; upto Feb. 21, 2023)	Bid security 15 mlns (valid upto Feb. 25, 2023)	Bid security 15 mlns (valid upto Feb. 22, 2023)	Bid security 14 mlns (valid upto Feb. 21, 2023)

Bidder no. 1 is non-compliant to the requirement of bid validity period while bidder No. 2 & 3 are compliant to the bid validity period. As the bidder no. 1 is non-compliant to the bid validity period of the bid, which has major effect in the bid validity of the bid, this bid is declared as non-responsive because this is the major deviation. On the other hand, bidder no. 3 is not compliant to the bid security amount as stated by the bidding document and hence this is also declared as a major deviation. Thus, from the table above, it can be said that bidder no. 2 is only the compliant bidder without the major deviations. Bidder no. 1 and 3 are rejected considering it as “non-responsive”.

Let us take another example.

Consider the following example on the evaluation of technical specification. Three bidders submitted the technical specification of a 4WD jeep as stated in the table below.

S.N.	Requirements of the bidding document	Bidder No. 1	Bidder No. 2	Bidder No. 3
1	4WD Jeep, Right Hand Drive	4WD Jeep, Right Hand Drive	4WD Jeep, Left Hand Drive	4WD Jeep, Right Hand Drive
Remarks		Responsive	Non-responsive	Responsive

As the bidder no. 2 submitted a technical specification of 4WD jeep “left hand drive” which is in contrast to the requirement “right hand drive”, this bid shall be considered as a major deviation. As this deviation cannot be given a monetary value and further, if it is in the context of Nepal, “left hand drive” is not permitted hence the bid has been deviated materially from the scope of the requirements. Therefore, such bid shall be declared as “non-responsive” having a major technical deviation.

Let us take another example of a photocopier machine. Three bidders submitted the technical specification of the photocopier machine as below.

S.N.	Requirements of the bidding document	Bidder No. 1	Bidder No. 2	Bidder No. 3
1	A photocopier machine with a minimum copying speed of 25 A4 size papers per minute	Offered a copy speed of 24 pages per minute	Offered a copy speed of 25 pages per minute	Offered a copy speed of 33 pages per minute
Remarks		Non-responsive	Responsive	Responsive

In this case, bidder no 1 submitted the technical specification of a photocopier machine with a copy speed of 24 pages per minute which does not meet the minimum requirement of the bidding document. Hence this bid is considered as “non-responsive” because it is a material deviation from the technical requirement. Bidder no.2 and 3 are considered as the responsive bidders as they meet the minimum requirement of the technical specification of the photocopier machine.

#### 4. Minor Deviations

A minor deviation would be one which either:- has no effect on the validity of the bid; or has no effect in substantial way to the scope, quality, functionality or performance; or has no effect on the price, quality or delivery of the goods or services offered; or will not limit in any substantial way the Procuring Entity's rights or bidders obligations: or has such effect but the difference from the commercial terms or technical specifications in the bidding documents is such that it can be given a monetary value; or has not been specified in the bidding documents as grounds for rejection of the bid, provided that the total amount of adjustments for such deviations does not exceed fifteen percentage of the bid price. The Purchaser may regard a Bid as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirement set forth in the Bidding Document or if it contains errors or oversights that are capable of being corrected without affecting the substance of the Bid.

Let us take some examples on minor deviations. Consider the following bid evaluation table. The requirement of the bidding document is 4WD jeep. Three bidders submitted their bids as below.

S.N.	Requirements of the bidding document	Bidder No. 1	Bidder No. 2	Bidder No. 3
1	4WD Jeep with the set of maintenance tools	Complies with the technical specification	Complies with the specification of 4WD jeep but is silent on the set of maintenance tools	Complies with the technical specification
Remarks		Responsive	Responsive	Responsive

In this case, bidder no. 1 & 3 comply with the requirements of the bidding document. Bidder no. 2 also complies with the specification of the 4WD jeep but is silent on the set of the maintenance tools. In such case, if the majority of the specifications comply with the requirements of the bidding document, such bidder shall not be merely declared as the “non-responsive” bidder. Instead, it is checked whether such deviations can be quantified in the monetary terms. If such deviations can be quantified in monetary terms, the value of such deviations should be calculated. Normally, such value is calculated based on the basis of the average price quoted by other bidders and it is added in the bid price of such bidder for bid comparison purpose only. A monetary quantification of up to 15% of the bid price can be made. Not quoting or not submitting the specification of the maintenance tools is not a major deviation because it does not materially affect the scope, quality and functionality of the 4WD jeep as required. Thus,

such deviations shall be treated as “minor deviations” and hence the bid submitted by the bidder no. 2 shall be further evaluated.

For the above example, let us consider the bid price submitted by the bidders were as below.

S.N.	Item	Bid Price (NPR.)		
		Bidder No. 1	Bidder No. 2	Bidder No. 3
1	4WD Jeep	51,30,000.00	51,00,000.00	51,50,000.00
2	Set of maintenance tools	1,10,000.00	-	1,00,000.00
	Amount to be adjusted	-	1,05,000.00	-
Evaluated bid price		52,40,000.00	52,05,000.00	52,50,000.00

Let us take another example. Three bidders submitted their bids as below.

S.N.	Requirements of the bidding document	Bidder No. 1	Bidder No. 2	Bidder No. 3
1	Delivery of the goods within 150 days from the date of effectiveness of the contract.	Complies (Delivery Schedule 150 days)	Complies (Delivery Schedule 150 days)	Delivery schedule (155 days)
Remarks		Responsive	Responsive	Responsive

In this case, bidder no. 1 & 2 comply the delivery schedule as mentioned by the bidding document. But bidder no. 3 offers a marginally different delivery schedule with a delay of 5 days. In such case, bidder no. 3 shall not be rejected as “non-responsive” because such delay can easily be converted to monetary terms. A monetary quantification shall be made for such deviations and shall be added in the bid price for bid evaluation purpose only. For this, the deviations shall be calculated taking the rate of the liquidated damage which is generally 0.05% per day. Hence, such deviations shall be treated as minor deviations as they do not materially affect the acceptance of the bid. But, However, the bidding document should specify the time limits which are acceptable to the public entity and the manner in which any price adjustment will be applied.

Thus, for promoting fairness and equal treatment of all participating bidders “minor deviations” must be quantified in monetary terms and the cost of such deviations shall be charged to the respective deviating bids.

## 5. Legal Provisions on Major and Minor Deviations

Public Procurement Act, 2063 in its section 25, sub-section (2) states that a bid containing minor deviations in the matters such as technical specifications, descriptions and characteristics etc. shall not be rejected rather the value of such deviations shall be quantified, to the extent possible, and included in the bid evaluation. Further sub-section (3) emphasizes that if the value of such deviations exceeds 15% of the bid price of the bidder, such bid shall be deemed to be substantially non-responsive and shall not be included in bid evaluation. In the explanatory note, it is stated that the words “minor deviations” mean such deviations that do not materially depart from the matters such as the technical specifications and descriptions set forth in the bidding documents. On the other hand, the Public Procurement Regulations 2064 in its rule 61, sub-rule (6) states that

“Bids having minor deviations without any material deviation from and serious effect on the scope, quality, characteristics, conditions, performance or any other requirements set out in the bidding documents and acceptable to the public entity shall be deemed to be substantially responsive bids, and if, in evaluating such bids, the cost is affected in any way, the evaluated price of the bid shall be drawn by ascertaining the price of such effect on an equal basis and then by adjusting the same to the quoted price of the bid.” Sub-rule (7) states that the price of the minor deviations shall be included only for bid evaluation propose and shall not be included in the procurement contract. Sub-rule (9) elucidates that while fixing the price of the minor deviations, the evaluation committee shall fix the price on the basis of the cost estimate of the concerned work or prevailing market price or interest rate and if the cost estimate, prevailing market price or interest rate is not definite, the committee shall determine the price on the basis of average price of the same item stated in another substantially responsive bid.

## 6. Conclusion

In practice, few tenders are perfect, and the key test is therefore whether a tender is “substantially responsive”. A substantially responsive tender is defined as a tender that conforms to all the instructions, requirements, terms and conditions of the bidding document without material deviation, reservation, or omission. In other words, minor (or “non-material”) errors or problems can be accepted by the evaluator(s) or corrected by the bidder, while tenders with major (or “material”) errors or problems must be rejected.

It is near to impossible to find a fully compliant bid. Therefore, the concept of the “substantially responsiveness” is used. This term shall be very judiciously used in the bid evaluation. Because, a minor mistake in bid evaluation may exclude a potential bidder from the bid evaluation and there will be the possibility of limited competition. The bid evaluation committee shall carefully examine the bids received and should find out whether the deviations are major or minor. Those deviations which are material and substantially affect the scope and quality of the requirement of the employer shall be treated as “major deviations” and bids with the “major deviations” shall be declared as “non-responsive” and shall not be evaluated further. But the bids those contain “minor deviation” in terms of technical specifications, scope, document, quality, characteristics and conditions as set in the bidding document, shall not be treated “non-responsive” and shall be included in the bid evaluation. As far as possible, the value of such deviations shall be calculated and shall be quantified in monetary terms. If the value of such deviation does not exceed 15% of the bid price of the particular bid under evaluation, such bid shall be considered responsive. The price of such deviations shall be added to the bid price of the bid under evaluation to compensate the deviation and for equal treatment with the other bidders which do not contain material deviations. Further, if a bid is substantially responsive, the bid evaluation committee may waive, clarify or correct any nonconformity, error or omission that does not constitute a material deviation.

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# Exploring Possibilities Through the Integration of Alliance Contracting with HAM for Mega Projects Implementation in Nepal

Anil Pokhrel<sup>1\*</sup>



## Abstract:

*Nepal's current infrastructure development practices, primarily reliant on traditional item rate, DB and EPC contracts, are increasingly proving inadequate in managing the complexities, risks, and uncertainties of large-scale public projects. Chronic delays, adversarial contractor relationships, and fragmented project responsibilities highlight the need for a more collaborative and accountable delivery model. This paper explores the potential of integrating Alliance Contracting with the Hybrid Annuity Model (HAM) to address persistent challenges in Nepal's public infrastructure delivery. Drawing from global best practices, it argues that this collaborative, performance-based approach can improve efficiency, transparency, and stakeholder trust in mega projects. The study presents legal, financial, and institutional frameworks for adoption, supported by pilot project proposals tailored to Nepal's unique development context.*

**Keywords:** Alliance contracting, HAM

## 1. Introduction

Nepal frequently undertakes complex infrastructure and development projects where traditional contracting methods, particularly the commonly used item rate contracts and newly adopted DB, EPC, and Turnkey contracts, often fall short in effectively managing risks, uncertainties, and rapidly changing site conditions. The chronic contracts up to F/Y 2075/76 numbered as 1848, with the value worth 118.01 Arba (CIAA, 2076) [1], and the Talley is increasing day by day. With this current scenario and the use of these contracting models, project delivery is frequently delayed due to poor communication, adversarial relationships, frequent change orders, requests for extensions of time, and disputes over measurements and payment certifications (PPMO, 2020) [12].

Moreover, item rate contracts in Nepal have often been linked to poor quality control, delayed completion, corruption vulnerabilities, and inadequate consideration for lifecycle performance (Transparency International Nepal, 2021) [13]. These challenges are intensified in mega projects that span multiple years, involve uncertain geotechnical conditions, or require innovative and adaptive responses during implementation. In such an environment, rigid contractual boundaries hinder collaboration, and the focus on lowest bid pricing often sacrifices long-term value.

Although Nepal always aspires to implement increasingly ambitious infrastructure initiatives, the rising number of chronic contracts and the growing trend of arbitration make it imperative to explore alternative delivery models that can address these structural inefficiencies (Nepal Investment Board, 2022) [14]. Alliance Contracting, with its collaborative philosophy and risk-sharing mechanisms, offers

\* Director (Research & Development), PPMO

a compelling alternative, especially when integrated with hybrid financial structures like the Hybrid Annuity Model (HAM) (Ministry of Finance, India, 2016) [11].

Alliance Contracting has been increasingly adopted in countries like Australia, New Zealand, UK to deliver complex infrastructure more efficiently by fostering a culture of openness, joint problem-solving, and shared success. This article explores and seeks possibilities through Alliance Contracting, in combination with HAM, as a strategic shift toward delivering infrastructure projects that are more timely, efficient, and resilient.

## 2. The Alliance Contracting

Alliance Contracting is a collaborative procurement and project delivery model in which the client (usually a government entity) and private sector parties (designers, contractors, consultants, specialists) form a unified, integrated team called the *Alliance*. The alliance works as a single unit with shared goals, risks, and rewards under a “no-blame, no-dispute” structure to deliver a project. All parties share both risks and rewards based on project outcomes, and decisions are made unanimously.

It is characterized by high levels of trust, transparency, and consensus-based decision-making, aimed at removing the adversarial aspects of traditional contracting (Nepal Investment Board, 2022) [14]. This model emphasizes alignment of interests among parties, collaborative behavior, open-book financial arrangements, and real-time risk management. The success of Alliance Contracting in countries such as Australia and New Zealand has demonstrated its potential to deliver complex and uncertain infrastructure projects more effectively compared to traditional delivery models (Productivity Commission Australia, 2014) [6].

### Core Principles:

- No-blame, no-dispute culture.
- Shared risks and rewards among all members.
- Open-book financial transparency.
- Consensus-driven decision-making.
- Integrated multidisciplinary project team.

**Table-01: Typical alliance structure:**

Role	Participants	Responsibilities
Owner	Government agency or public entity	Sets project objectives, shares risks and costs.
Non-Owner Participants (NOPs)	Contractor, Designer, Specialist, Consultant	Deliver design, construction, Supervision, operation (sometimes maintenance).
Alliance Leadership Team (ALT)	Senior leaders from all parties	Strategic decision-making.
Alliance Management Team (AMT)	Project managers from all parties	Day-to-day management and operations.

**Table-02: Comparative View of Different Procurement Models**

Feature	Traditional Models	PPP/BOT Models	Alliance Contracting
Risk Allocation	Mostly borne by the client	Shifted to private party	Equitably shared
Innovation Incentive	Low	Moderate	High

Collaboration Level	Siloed	Contractual partnerships	Integrated single team
Conflict Resolution	Litigation/Arbitration	Contractual clauses	Consensus-based
Transparency	Limited	Moderate	Open-book
Adaptability to Change	Low	Moderate	High

### 3. Why Alliance Contracting?

Alliance Contracting fosters collaboration and shared responsibility in infrastructure projects, leading to improved outcomes, reduced risks, and enhanced delivery efficiency. Unlike traditional contracting models, this approach ensures that all parties, clients, contractors, and consultants work toward common objectives and are jointly accountable for the project's success or failure (Australian Government Department of Infrastructure, 2015) [2].

This model is particularly effective for complex, high-risk, or fast-track projects that demand innovation, adaptability, and mutual trust between stakeholders (Nepal Investment Board, 2022) [14]. In such environments, traditional adversarial practices often lead to misalignment of interests, disputes, and inefficiencies. In contrast, Alliance Contracting promotes a *no-blame culture*, open-book financial transparency, real-time risk sharing, and integrated decision making all of which enhance project agility and resilience (Productivity Commission Australia, 2014) [6].

Here are some reasons that why we could adopt the alliance contracting methods in public procurement.

- Stronger Collaboration: No contractual adversaries; everyone works toward project success.
- Innovation and Flexibility: Teams can propose and adopt innovative solutions without formal variations.
- Faster Decision-Making: No need for long change-order negotiations, unanimous decisions enable agility.
- Reduced Disputes: "No-blame" culture minimizes legal battles and claim management.
- Risk Mitigation: Risks are tackled early and collectively, reducing surprises.
- High Performance Culture: Alliance targets high standards in safety, quality, environment, and cost-efficiency.
- Enhanced Stakeholder Management: Because of collective ownership, communication with external stakeholders (communities, utilities) is smoother.

### 4. Possible Implications and Suitability for Nepal

Nepal's infrastructure development landscape is riddled with recurring challenges that limit the effectiveness of conventional project delivery models. Many of these issues stem from structural inefficiencies, fragmented responsibilities, and a reactive approach to risk and stakeholder management (PPMO, 2020) [12]. As Nepal looks to scale up its efforts in delivering transformative projects such as cross-country transmission lines, expressways, international airports, and large hydropower plants, Alliance Contracting offers a compelling alternative (Nepal Investment Board, 2022) [14].

One of the most prevalent challenges in Nepal is the fragmentation of project teams. Typically, government agencies appoint separate consultants for design, contractors for construction, and other firms for supervision. This segmented approach often leads to miscommunication, scope conflicts, and accountability gaps. Design errors go unnoticed until construction begins, resulting in change orders,



delays, and disputes (Transparency International Nepal, 2021) [13].

In addition, Nepal's construction sector frequently suffers from adversarial relationships between public entities and contractors. Disagreements over payments, design variations, and construction timelines often escalate into protracted legal battles, stalling critical national projects (FIDIC, 2017) [3]. Furthermore, poor integration between design, construction, and operation phases results in inefficient handovers and lower asset performance over time.

- **Managing Complex and High-Risk Infrastructure Projects:**

Alliance Contracting is particularly well-suited to the kinds of infrastructure Nepal needs most projects that are technically complex, exposed to environmental risks, and subject to multiple stakeholder interests. Whether constructing high-altitude highways, underground metro lines in the Kathmandu Valley, or multi-phase hydropower facilities, alliance models enable shared risk-taking and real-time collaboration.

- **Navigating Political Sensitivity and Public Inspection:**

Major infrastructure projects in Nepal often attract political attention, community activism, and media scrutiny. In such environments, any delays or controversies can quickly become politically charged. Alliance Contracting's consensus-based decision-making and inclusive stakeholder engagement approach allow for greater transparency, trust, and responsiveness (Australian Government Department of Infrastructure, 2015) [2].

- **Enhancing Institutional Capacity and Skill Transfer:**

One of the most promising aspects of Alliance Contracting is its potential for capacity building. Because contractors, designers, and government representatives work side-by-side as one integrated team, there is a natural transfer of knowledge and skills and ultimately leads towards the collaborative governance (World Bank, 2020) [8].

- **Improving Cost Transparency and Financial Accountability:**

In Nepal, cost escalation, corruption, and collusion have long undermined public confidence in infrastructure projects. Alliance Contracting's open-book approach, where all financial records are visible to all members of the alliance, drastically reduces room for financial manipulation (Transparency International Nepal, 2021) [13].

- **Suitability for Strategic National Projects:**

Large-scale projects like East West Highway extension, the Nijgadh International Airport, Railway corridors, Integrated water basin Projects and Large Hydropower Project require not only large capital investments but also seamless integration of environmental clearances, international financing, and long-term community engagement. Alliance Contracting is inherently designed to handle such multi-faceted challenges with joint ownership, international partners, and local agencies can work as a unified team to deliver projects of national significance (Asian Development Bank, 2022) [10].

- **Aligning with Donor and Multilateral Agency Objectives:**

Development partners like the World Bank and ADB increasingly emphasize transparency, participatory governance, and sustainability. Alliance Contracting naturally aligns with these principles and can be



tailored to meet donor requirements (World Bank, 2020) [8].

## 5. Legal and Regulatory Frameworks

For successful implementation, alliance contracting requires enabling legal provisions. Countries like Australia and the UK have adapted procurement and public finance laws to permit collaborative models. Nepal, on the other hand, may need to revise sections of the Public Procurement Act (PPA) to support:

- Performance-based payment structures
- Shared risk mechanisms
- Early contractor involvement (ECI)
- Multilateral partnership definitions

A pilot program under a special regulatory sandbox or Infrastructure Commission-led guideline could offer the initial legal foothold for alliance projects.

## 6. Financial Structures and Integration with HAM

One of the most innovative opportunities in implementing alliance contracting in Nepal lies in its synergy with the Hybrid Annuity Model (HAM), a financing structure that has proven effective in balancing fiscal responsibility and private sector participation, especially in large infrastructure projects in developing economies like India (Ministry of Finance, Government of India, 2016; ADB, 2022). By blending the collaborative nature of Alliance Contracting with the phased funding mechanism of HAM, Nepal can create a powerful project delivery model that is both financially sustainable and operationally accountable.

### Understanding the Alliance-HAM Structure

In a conventional public-private partnership (PPP) model, the private party often assumes full construction and operational risk, financing nearly the entire capital expenditure upfront. In contrast, the Alliance-HAM model introduces a more equitable and collaborative risk-sharing approach. Here's how it works:

#### Shared Construction Financing:

Under HAM, the total project cost during the construction phase is divided between the government and the private investor. Although this ratio can vary based on the specific project's feasibility and risk profile, the most commonly implemented format has the government funding 40% of the construction cost as a Construction Assistance Grant. This amount is released in five or more equal installments, each tied to the achievement of clearly defined construction milestones (ADB, 2022). The remaining 60% of the project cost is financed by the private sector consortium, using a mix of equity (typically 20–25%) and debt (75–80%) (Ministry of Finance, Government of India, 2016).

#### Post-Construction Annuity Payments:

Once the construction is completed and the project is operational, the private investor starts receiving annual/semi-annual annuity payments from the government. These payments reimburse the investor for the 60% construction cost they financed and include a pre-agreed interest on the reducing principal balance. Importantly, the interest clock starts only after commercial operations commence, offering relief to the private sector during the construction phase.

### Adjustable Cost and Scope Mechanism:

The Alliance-HAM framework allows for adjustments in the total project cost to account for:

- Inflation (e.g., based on WPI or CPI indices),
- Change in scope (approved variation orders),
- Changes in law and taxation,
- Force majeure events such as natural disasters.

This flexibility is critical in countries like Nepal, where terrain, weather, regulatory changes, and unforeseen delays are common, and rigid financial structures often lead to project failure or renegotiation.

## 7. Risk Mitigation Strategies

Alliance projects proactively address risks through collaborative identification and joint ownership. Key risks during the project execution could include land acquisition delays, design errors, cost overruns, and construction delays risks that have historically crippled many projects in Nepal (CIAA, 2076; PPMO, 2020).

In Alliance Contracting, risks are identified collectively during the early phases of project planning and distributed equitably based on each party's capability to manage that risk. This early identification and mutual accountability reduce the likelihood of disputes and improve the project's resilience to unforeseen issues. A typical risk sharing strategies on alliance contracting is shared herewith.

Table-03 Risk sharing matrix

Risk Type	Primary Owner	Shared By	Mitigation Mechanism
Land acquisition delays	Government	All Alliance Members	Early engagement with local bodies
Design complexity	Designers	Contractors, Client	Iterative design reviews
Construction risk	Contractors	Client, Subcontractors	Shared insurance pool
Cost overrun	All members jointly		Open-book audit and shared ceiling

## 8. Global Case Studies in Alliance Contracting

### A. Southern Regional Water Pipeline Project, Australia

The Southern Regional Water Pipeline in Queensland, Australia, was a 100-kilometer emergency water infrastructure project developed to enhance water security during one of the region's most severe droughts. This Mega Project includes pipeline, four balance tanks, 2.2 km of tunnels, 126 road and river crossings and five pump stations giving it the ability to transport up to 130ML per day. This Project is a fully integrated alliance delivery approach was adopted to ensure a collaborative relationship was maintained. Delivered through an alliance contracting model, the project brought together to all parties into a unified team. The project was completed four months ahead of schedule and under budget, showcasing the effectiveness of alliance delivery in high-pressure environments (Australian Government Department of Infrastructure, 2015 [2]).

### B. Network Rail (Thameslink and Crossrail Projects), UK

The Thameslink and Crossrail projects are landmark rail infrastructure initiatives in the UK, implemented in one of the most densely populated and technically constrained urban environments in Europe. This

project includes 118km long railway with 42km of new tunnels under central London, connecting Reading and Heathrow in the west to Shenfield and Abbey Wood in the east. The alliance contracting model used in these projects allowed for seamless coordination among Network Rail, contractors, designers, and public authorities, fostering early risk identification, integrated planning, and stakeholder engagement (Infrastructure and Projects Authority, 2017) [7].

### **C. Waterview Connection Tunnel (Auckland), New Zealand**

The Waterview Connection Tunnel in Auckland, a 5-kilometer dual motorway tunnel project, stands as a leading example of successful alliance delivery in a complex urban setting. Executed under a formal alliance contract, the project brought together the New Zealand Transport Agency, Fletcher Construction, and Beca Infrastructure. Key benefits included transparent cost management, risk sharing, and strong emphasis on real-time technical collaboration and problem-solving.

### **D. Mumbai Metro Line 3 (Colaba–Bandra–SEEPZ), India**

The Mumbai Metro Line 3 is a 33.5 km fully underground metro system designed to decongest Mumbai's surface transport corridors. Despite being developed under a Design-Build (DB) model, the project adopted alliance-like practices in key areas such as early contractor involvement (ECI), joint risk workshops, and flexible design adaptation. The collaboration between the Mumbai Metro Rail Corporation and international contractors such as L&T, STEC and Dogus Soma enabled improved coordination, faster response to geological surprises, and reduced disputes (ADB, 2022) [5].

### **Lessons Learned from International Practice**

International experience demonstrates that the success of alliance contracting is as dependent on the behavior and alignment of project participants as on the contractual framework itself. Equally vital are strong governance structures, such as an empowered Alliance Leadership Team (ALT) and Alliance Board, which guide strategic decisions, mediate disputes, and ensure project goals remain aligned.

A well-structured pain/gain share mechanism, with clearly defined and measurable performance metrics, is essential for maintaining shared incentives and ensuring joint ownership of outcomes (Infrastructure Australia, 2018). Finally, cost transparency through open-book accounting and third-party audits proved to be a cornerstone of trust. When all parties shared financial data openly and welcomed independent scrutiny, opportunistic behavior declined, and collaborative behavior flourished. These international experiences offer Nepal valuable insights into adapting alliance contracting within its own institutional, geographic, and project delivery contexts.

## **9. Suggested Pilot Project in Nepal Using Alliance Contracting**

Given Nepal's unique topography, economic limitations, and social fabric, several infrastructure projects can be designed as pilot alliance ventures to build confidence in this collaborative procurement model. These pilots should ideally combine technical complexity with high community interface, enabling real-time testing of integrated approaches and trust-building mechanisms. Here are some suggested pilot projects that can be implemented through alliance contracting.

### **Kathmandu Valley Integrated Transport and Metro System**

This proposed project aims to develop an integrated urban mobility network including metro rail, electric buses, and smart mobility infrastructure in Kathmandu Valley. Due to high population density,

jurisdictional overlaps, frequent political interference, and community sensitivities, traditional procurement methods have historically struggled to deliver results (PPMO, 2020 [12]).

Alliance Contracting offers a more adaptive model by fostering early and sustained collaboration among engineers, planners, contractors, local governments, and citizens. If paired with the Hybrid Annuity Model (HAM), the alliance framework also reduces the financial burden on the government by structuring payments over time while ensuring accountability and maintenance (ADB, 2022) [5].

### **East-West Railway Project**

Spanning multiple provinces and ecological zones, the East-West Railway is a nationally strategic project that faces serious challenges like land acquisition, inter-agency fragmentation, and variable site conditions. The traditional DBB or EPC methods are not sufficiently flexible to handle the evolving risks and stakeholder dynamics of such a mega initiative (Nepal Planning Commission, 2020; CIAA, 2076) [15][1]. Alliance Contracting is better suited for this type of risk-intensive, multi-jurisdictional project.

### **Nijgadh International Airport**

The proposed Nijgadh International Airport is one of Nepal's most ambitious and politically sensitive aviation and logistics projects. It requires large-scale land development, environmental clearances, and integration with regional transportation and trade networks. Historically, these elements have triggered delays, legal challenges, and social resistance (Nepal Investment Board, 2022) [14]. Alliance Contracting provides a trust-based, transparent process that could transform adversarial dynamics into collaborative problem-solving. The early involvement of local communities, environmental experts, and regulators would help to mitigate conflict and align project goals with broader development priorities.

Each of these proposed pilots can serve as a foundational testbed for scaling Nepal's institutional and legal capacity for alliance-based mega project delivery.

## **10. Conclusion**

Nepal is at a crossroads in infrastructure development. As the nation prepares for transformative mega projects and the urgency to adopt smarter, more accountable delivery models has never been greater. This paper has made the case for integrating Alliance Contracting with the Hybrid Annuity Model (HAM) as a transformative framework for Nepal. Alliance Contracting fosters trust, transparency, and co-ownership among all project participants, while HAM provides a sustainable financing pathway that aligns short-term government capacity with long-term asset performance. The adaptation of alliance contracting and its best results in international practice, Nepal now has a unique opportunity to adapt this model to suit its national priorities and development challenges. Leveraging lessons from international best practices and tailoring them to Nepal's political, legal, and social realities can lead to a generational leap in infrastructure governance.

## **11. Recommendation for Implementing Alliance contracting in Nepal:**

- Initiate a legislative sandbox or pilot clause within the Public Procurement Act to allow alliance-based procurement on selected national priority projects.
- Launch a demonstration project, through a phased Alliance-HAM structure to test collaborative contracting with scalable learnings.

- Establish a dedicated Alliance Procurement and Delivery Unit under the National Planning Commission or Office of the Prime Minister to build capacity and institutionalize best practices.
- Engage international development partners (e.g., ADB, World Bank, IFC) to support capacity building, guarantee instruments, and technical assistance.

Nepal must seize this moment not only to build roads, airports, and energy corridors but also to modernize how we build. Alliance Contracting with HAM is not just a technical choice; it is a strategic pivot toward accountability, innovation, and long-term national resilience.

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# Revisiting the Dispute Resolution Clause in the Public Procurement Contracts of Nepal

- Anil Kumar Shrestha, MCIArb\*



## Abstract

*Dispute resolution clauses are crucial for promoting competition, fairness, integrity, accountability, and reliability in public procurement processes. In Nepal, procurement contracts are primarily governed by the Public Procurement Act (“PPA”), 2063, along with the Public Procurement Regulation (“PPR”), 2064. The landscape of dispute resolution in public procurement contracts in Nepal has undergone significant transformation, particularly due to the frequent amendments made to the Act and its associated regulations.*

*Initially, the Act provided for both adjudication and Arbitration as mechanisms for dispute resolution. However, the elimination of the adjudication process through the Act's first amendment has created considerable procedural ambiguity and inconsistency, especially when compared to internationally recognized models such as those advocated by FIDIC in donor-funded projects. While Arbitration is mandated, it often encounters challenges stemming from a lack of an institutionalized framework, difficulties in appointing arbitrators, and unforeseen legal costs—factors that undermine its fundamental principles of cost-effectiveness, party autonomy, flexibility, and efficiency.*

*This article aims to reexamine the rationale behind dispute resolution mechanisms within Nepal's public procurement framework by critically assessing the evolving challenges, practical implementation issues, and institutional limitations. It explores the implications of removing adjudication from the Public Procurement Act and Regulations despite its continued relevance in alignment with internationally recognized standards, such as those outlined by FIDIC. By conducting a competitive analysis of legal evolution, practical gaps, and procedural inefficiencies, the article aims to inspire institutional innovations that clarify procedures while aligning with global standards. Only through such a thoughtful evolution can Nepal ensure a robust, transparent, and future-ready procurement dispute resolution framework.*

**Key Words:** Procurement, Dispute Resolution, Adjudication, Arbitration, FIDIC, PPA, PPR

## 1. Introduction

“With public Procurement expanding at an unprecedented pace, the real challenge emerges when contractual disputes surface. Do we have the tools to resolve it, and how well-equipped

\* Associate Professor at Kathmandu School of Law, Ph.D. Scholar at TU, Faculty of Law on ‘Arbitration Regime of Nepal: In Special Reference to Construction Disputes’



are our existing resolution mechanisms to deliver fairness, efficiency, and certainty?” However, first, what is public Procurement? “Procurement” or “Public Procurement” means the acquisition of goods, construction, or services by a procuring entity.<sup>1</sup> using a procurement contract.<sup>2</sup> Public Procurement means the acquisition of any goods, consultancy services, or other services or carrying out or causing to be carried out any construction works by a public entity.<sup>3</sup> In other words, Public Procurement refers to the process by which public authorities, such as government departments or local authorities, purchase goods, services, or works from suppliers. In Nepal, this process is predominantly governed by the Public Procurement Act, (“PPA”) 2063 and Public Procurement Regulation, (“PPR”) 2064, regulated by the Public Procurement Monitoring Office (“PPMO”) with the purpose of enhancing transparency, objectivity, and reliability in public Procurement of Nepal. Additionally, to maximize the value of public spending by promoting competition, fairness, honesty, and accountability while improving procurement capabilities and ensuring equal opportunities without discrimination, all in support of good governance and efficient public spending.<sup>4</sup>

For developing nations, where public Procurement often represents a substantial proportion of total government expenditure, the importance of a well-regulated system is amplified. Approximately 60% of Nepal’s annual government budget is allocated to construction services, consultancy, and goods Procurement, with similar expenditures at local government levels and public institutions.<sup>5</sup> For governments, Public Procurement is an essential pillar of service delivery. Governments are obligated to manage public finances effectively and with utmost integrity, as they represent a significant portion of taxpayers’ money, protecting the public interest and ensuring the provision of high-quality services.<sup>6</sup> Building an efficient procurement system is a crucial and challenging task, as it often involves technically complex, highly customized, and politically sensitive projects. It becomes more complex when it is utilized as a policy instrument in: 1. Managing the conflicting demands of (a) diverse socioeconomic goals, (b) national economic priorities, and (c) global competitive pressures as dictated by regional and international trade agreements. 2. Meeting standards of fairness, equity, and transparency. 3. Keeping a central emphasis on promoting competition. 4. Leveraging new technologies to improve procurement efficiency, such as the e-procurement system.

Internationally, legal frameworks such as the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Public Procurement, the World Trade Organization (WTO) Agreement on Government Procurement (GPA), and the World Bank’s Procurement

1 Art 1(n) of the UNCITRAL Model Law on Public Procurement: “Procuring entity” means: Option I(i) Any governmental department, agency, organ, or other unit, or any subdivision or multiplicity thereof, that engages in Procurement, except ...; [and] Option II (i) Any department, agency, organ or other unit, or any subdivision or multiplicity thereof, of the [Government] [other term used to refer to the national Government of the enacting State] that engages in Procurement, except ...; [and] (ii) [The enacting State may insert in this subparagraph and, if necessary, in subsequent subparagraphs other entities or enterprises, or categories thereof, to be included in the definition of “procuring entity”];

2 UNCITRAL Model Law on Public Procurement, July 1, 2011, Article-1.

3 Sarbajanik Kharid Ain, (2063). (Ashar 30, 2073) (Public Procurement Act, 2063), Nepal, Section-58.

4 Public Procurement Act, 2963, Preamble.

5 ‘About the Electronic Procurement,’ Public Procurement Monitoring Office.

6 ‘*Size of Public Procurement*,’ in Government at a Glance 2023, Organization for Economic Co-operation and Development, Paris, 2023.

Regulations establish guiding principles for fairness, transparency, and accountability.<sup>7</sup> Many donor agencies, including the World Bank, require recipient States to implement procurement systems that conform to these international standards as a precondition for funding disbursement, ensuring the efficient and lawful use of development aid. According to World Bank data (2018), public procurement accounts for approximately 12% of the global Gross Domestic Product (GDP), underscoring its significant legal and economic impact on a global scale.<sup>8</sup>

Public procurement contracts are often high-value, complex, time-sensitive, and involve high uncertainty. Characterized by unavoidable design changes, unforeseeable ground conditions, limitations of site investigation, environmental impact, significant initial investment, diversity of stakeholders, long time for completion, concurrent work with other contractors, between stakeholders, including bidders, and government entities, etc. because of complexity and uncertainty in a project and opposing objectives of the contracting parties, an unavoidable situation may occur from which a dispute may ensue.<sup>9</sup> A dispute, as characterized in standard contract frameworks like FIDIC, is a situation where (a) a party makes a claim, (b) the other Party (or the Engineer) rejects it, and (c) the first Party does not acquiesce.<sup>10</sup> The construction dispute arises if there are some loopholes in the Contract, site conditions differ significantly from what is depicted in the Contract, the Contractor is unable to provide momentum to works by providing sufficient resources, changes in the scope of the works after commencing payment issues, delay in the releases of drawings design and specifications and force majeure, etc. but are not only limited to those points. Hence, timely resolution and management of construction disputes are essential for maintaining the good health of any construction project.<sup>11</sup>

Dispute settlement refers to the legal framework and institutional processes by which conflicts arising from procurement activities are resolved. These mechanisms may take the form of administrative review by a designated procurement authority, independent judicial review, arbitration under specified rules, or other forms of Appropriate Dispute Resolution (ADR) processes, such as negotiation or mediation. The goal of such mechanisms is not merely to resolve individual disputes but to uphold the rule of Law, promote equitable treatment of stakeholders, and preserve the legitimacy of public Procurement as a public governance function.<sup>12</sup>

Disputes are unavoidable in construction projects; therefore, construction contracts should include provisions that provide an opportunity for the parties to present a claim and settle a dispute fairly.<sup>13</sup> Given this inevitability, it becomes imperative that procurement contracts

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7 Claire Methven O'Brien, Nicole Vander Meulen & Amol Mehra, 'Public Procurement and Human Rights: A Survey of Twenty Jurisdictions', International Learning Lab on Public Procurement and Human Rights, 2016.

8 Otilia Manta et al., 'Public Procurement, a Tool for Achieving the Goals of Sustainable Development,' *Amfiteatru Economic* p. 861, volume 24:61, 2022.

9 Rabindra Niraula, "Issue on Dispute settlement provision in construction contracts: A study of small works contract under ADB and WB Standard Bidding Documents," NEPCA HALF YEAR BULLETIN, volume 20, April 2014, p. 13

10 FIDIC Red Book (2017). Clause 1.1. 29.

11 Abhushan Neupane, "Dispute Adjudication method as ADR method in Fidic Suites-Comparison of Fidic 1999 and Fidic 2017 suites", NEPCA YEARLY BULLETIN, volume 31, Sept 2023, p. 1.

12 'OECD Principles for Integrity in Public Procurement,' OECD, 2009

13 Rabindra Niraula, "Issue on Dispute settlement provision in construction contracts: A study of minor works contract under ADB



include structured mechanisms for the fair and timely resolution of disputes, offering both parties a straightforward process for presenting claims and seeking resolution before matters escalate. Therefore, this article critically revisits the dispute resolution clause embedded in Nepal's Public Procurement Act and its Rules, evaluates its practical effectiveness, and contrasts it with international best practices, particularly the UNCITRAL Model Law on Public Procurement and the FIDIC Conditions of Contract. It further aims to identify systemic gaps and propose reforms that strengthen Nepal's dispute resolution framework, ensuring it is better aligned with principles of efficiency, impartiality, and access to justice.

## 2. Existing Mechanisms for Procurement Dispute Settlement in Nepal

Recognizing the inevitability of such disputes, Nepal's Constitution, under Article 56(1), establishes a three-tier federal structure comprising Federation, State, and Local levels, each with procurement authority tailored to its specific needs.<sup>14</sup> The procurement system comprises a procurement organizational structure, procurement law, procurement processes, methods, techniques, procurement professionalism, and procurement Workforce.<sup>15</sup> In Nepal, the Procurement Act, 2063 and the Public Procurement Regulation 2064 have been enacted by the Government to improve the procurement environment through legislative initiatives. Besides, the Right to Information Act, 2064, the Public Procurement By-law, 2080, and the Electronic Procurement System Operation Guidelines, 2080, are other laws that support the procurement system. While all provincial governments and local governments are sovereign and autonomous to enact respective procurement legislation. Laws alone are insufficient; effective dispute-resolution mechanisms are equally critical. The establishment of the PPMO under the Office of the Prime Minister, along with standardized bidding documents and blacklisting mechanisms, represents a step toward addressing disputes and ensuring accountability. Effective dispute resolution frameworks, such as arbitration or specialized tribunals, could further streamline the process, ensuring timely and fair resolution of conflicts while maintaining public trust and project continuity.

- **National Mechanism**

- a) **Public Procurement Act ("PPA"), 2063**

In Nepal, procurement contracts are predominantly governed by the Public Procurement Act ("PPA"), 2063, to enhance transparency, objectivity, and reliability in public Procurement of Nepal. Additionally, to maximize the value of public spending by promoting competition, fairness, honesty, and accountability while improving procurement capabilities and ensuring equal opportunities without discrimination, all in support of good governance and efficient public spending. Disputes shall be anticipated in all three stages i.e., pre-bid/bid stage, Contract signing and execution and post-contract completion period.

The following are mechanisms provided by the PPA:

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*and WB Standard Bidding Documents," NEPCA HALF YEAR BULLETIN, volume 20, April 2014, p. 13*

14 Nepal ko Sambidhan, (Constitution of Nepal), Article 56.

15 Khi V. Thai, International Handbook of Public Procurement, Auerbach Publications Taylor & Francis Group, USA, p. 2,

## **I. Application to the Chief of the Public Body<sup>16</sup>**

A bidder may request that the chief of the public entity review any procurement error or decision within seven days of becoming aware of it. If a breach is found, the chief must suspend proceedings and issue a written decision within five days. For procurements below a set threshold, the chief's decision is final and not subject to further review.

## **II. Application Before the Review Committee<sup>17</sup>**

A bidder or proponent may file an application for review before the Public Procurement Review Committee under two conditions: if the chief of the Public Entity fails to decide within the specified complaint filed regarding Procurement or if the applicant is dissatisfied with the chief's decision and in matters related to a procurement contract concluded.

## **III. Dispute Settlement**

The Public Procurement Act, 2063 (2007) Further states, *“Any dispute arising between the public entity and the construction entrepreneur, supplier, service provider or consultant in connection with the implementation of the procurement contract shall be settled through mutual consent.”*<sup>18</sup> Moreover, it mandates that if a dispute cannot be settled through mutual consent, the dispute shall be settled by Arbitration under the prevailing Law.<sup>19</sup>

### **b) Public Procurement Regulation (“PPR”), 2024**

In alignment with the Act, Public Procurement Rules, 2064 (2007) further states:

#### **I. Application to the Chief of the Public Body**

To request a review under Section 47 of the PPA, the bidder must submit a signed application to the head of the public body, which should include their contact details, bid number, factual and legal grounds, supporting documents, and, if applicable, an authorization letter from their institution. However, to request a review, the Contract must be worth at least two crores.<sup>20</sup>

#### **II. Application to the Chief of the Public Body**

A review application under Section 49 must include contact details, authorization (if applicable), procurement summary, contract details (if signed), factual and legal grounds, harm caused, and any confidentiality concerns. Supporting documents should be attached or requested, and hearing reasons should be stated if sought. Once the public body is informed of a review application, it must suspend the procurement contract until the Review Committee delivers its decision.<sup>21</sup>

#### **III. Dispute Settlement**

*“If a dispute arises between a public entity and a contractor, consultant, or service provider regarding the implementation of a procurement contract and such dispute cannot be resolved*

16 Public Procurement Act, Section- 47.

17 Public Procurement Act, Section- 49.

18 Public Procurement Act, Section- 58(1).

19 Ibid, Section- 58(1)(a).

20 *Sarbjani Kharid Niyamawali* (2007). (Public Procurement Regulation, 2064), Nepal, rule 129.

21 Public Procurement Regulation, 2064, Rule 101.

through mutual agreement, then proceedings must be initiated to resolve the dispute through arbitration in accordance with prevailing laws.”<sup>22</sup> Hence, in the context of national bidding, if a dispute is submitted for Arbitration, the Arbitration Act of 2055 governs the overall arbitration process in Nepal.

A key precedent reinforcing the role of procedural integrity and internal dispute mechanisms in public Procurement is found in *Hari Narayan Prasad Rauniyar on behalf of Pappu Lumbini J.V. v. Ministry of Physical Planning and Construction*.<sup>23</sup> In this case, the petitioner challenged their disqualification from a bridge construction tender, alleging that the action was arbitrary on the part of the Public Procurement Monitoring Office (PPMO). However, the Supreme Court upheld the disqualification because the bidder had submitted falsified documents, affirming that mere bid acceptance does not create enforceable contractual rights. Crucially, the Court emphasized that procurement disputes should first be addressed through administrative and statutory remedies, not directly through writ jurisdiction. This ruling highlights the judiciary's expectation that contracting parties exhaust available internal mechanisms, such as mutual resolution, review committees, or adjudication, before seeking judicial intervention. In the context of Nepal's public procurement framework, the case underscores the value of structured, multi-tiered dispute resolution processes. Had adjudication still been available under the Procurement Regulations (prior to its repeal in the Fourth Amendment), such disputes could have been handled more efficiently without escalating to the courts, demonstrating the practical need for reinstating such mechanisms in the legal framework.

Together, “PPA” and “PPR” highlight Nepal's commitment to resolving procurement-related disputes efficiently and fairly, primarily by encouraging amicable settlement and, when necessary, resorting to Arbitration as a formal and binding mechanism.

- **International Mechanism**

#### **a) UNCITRAL Model Law on Public Procurement, 2011**

The UNCITRAL, a subsidiary body of the UN General Assembly, develops legal frameworks and standards to facilitate international trade. It has made significant contributions in the field of public Procurement, notably through the development of two model laws on public procurement contracts.<sup>24</sup>

Internationally, UNCITRAL Model Law on Public Procurement, 2011 establishes a robust legal framework to ensure that suppliers or contractors have the right to challenge decisions or actions of the procuring entity that they consider to breach the Law. It requires States to establish an independent and impartial review body capable of granting interim and final remedies, such as suspension of Procurement or nullification of unlawful decisions.<sup>25</sup> Also, Parties must first seek review by the procuring entity before approaching a higher-level body, enabling resolution through administrative review and minimizing litigation.<sup>26</sup> It also provides

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22 Public Procurement Regulation, 2064, Rule 135.

23 Hari Narayan Prasad Rauniyar, on behalf of Pappu Lumbini J.V. v. Ministry of Physical Planning and Construction, NKP 2068, Decision No. 8657

24 *UNCITRAL Model Law on Public Procurement*, United Nations, 2014.

25 UNCITRAL Model Law on Public Procurement, Article 66.

26 Ibid, Article 67.

for an impartial and independent review body to hear challenges that are not resolved by the procuring entity.<sup>27</sup> This Model Law promotes administrative efficiency by requiring parties to first seek review by the procuring entity before escalating the matter, thereby encouraging early resolution and minimizing unnecessary litigation.

## **b) FIDIC Standard Contracts**

The Fédération Internationale des Ingénieurs-Conseils (FIDIC), established in 1957 by the national associations of France, Belgium, and Switzerland, has grown to represent over 85 countries worldwide. It is best known for its standardized model contracts, which have become a cornerstone of the global construction industry. Endorsed by leading international financial institutions, such as the World Bank, these contracts are frequently required for financing infrastructure and development projects.

While not a procurement law, FIDIC, Conditions of Contract is widely used in infrastructure projects, including those funded by public authorities. FIDIC provides a structured dispute resolution process involving the Dispute Avoidance/Adjudication Board (DAAB), followed by an amicable settlement phase and, ultimately, international Arbitration if the dispute remains unresolved.<sup>28</sup> to foster proactive dispute prevention and resolution. These mechanisms are designed to reduce litigation costs, promote amicable settlements, and ensure project continuity by offering non-adversarial and efficient means of resolving disputes.

Specifically, Clause 21 A claim involves a formal request for entitlements, whereas a dispute arises only after the rejection of a claim and the issuance of a Notice of Dissatisfaction (NOD). The revised procedure is neutral and uniformly applicable to both Employer and Contractor, requiring timely notifications within 28 days and detailed particulars within 84 days. The engineer is expected to facilitate a resolution through a binding determination within 42 days, which becomes final if not challenged within 30 days of receiving the determination.<sup>29</sup>

Clause 21.6 (FIDIC 2017 edition) stipulates that if a party is dissatisfied with the DAAB's decision and issues a valid Notice of Dissatisfaction (NOD) within the prescribed time (typically 28 days), the dispute may be referred to Arbitration, commonly under the ICC Arbitration Rules. Arbitration under this clause serves as the final and binding mechanism for resolving disputes, empowering the arbitral tribunal to review, affirm, or override the DAAB's decision and grant appropriate remedies.<sup>30</sup>

Together, these international instruments underscore the importance of effective, impartial, and enforceable dispute-resolution mechanisms in public Procurement.

## **3. Revisiting Nepal's Public Procurement: The Exit of Adjudication**

Starting with amicable settlement, followed by adjudication, and concluding with Arbitration. The original Public Procurement Act 2063 (2007) adopted this multi-tiered dispute resolution mechanism, allowing parties to a procurement contract to resolve conflicts progressively, first by mutual consent, then through a neutral adjudicator, and finally, if necessary, by

27 Ibid, Article-68.

28 FIDIC, Clause 21.

29 Ibid.

30 FIDIC, Clause 21.6.

Arbitration. According to the original text, “Any dispute arising between the Public Entity and the construction entrepreneur, supplier, service provider or consultant in connection with the implementation of the procurement contract shall be settled amicably.”<sup>31</sup> A procurement contract may provide a mechanism for resolving disputes that cannot be settled amicably. “In providing mechanism under Sub-section (2), the procurement contract may provide that disputes relating to construction work shall be resolved as follows:- (a) By an adjudicator for an amount, as prescribed, (b) By a three-member dispute resolution committee, in the case of the amount exceeding that of clause (a). (c) The provision that if a person is not satisfied with the decision made under clause (a) or (b), such dispute shall be resolved through Arbitration pursuant to prevailing Law. (5) The appointment of adjudicator and formation of dispute resolution committee under Sub-section (4), and their functions, duties and power and procedure for resolution of dispute shall be as prescribed”.<sup>32</sup> Moreover, Specifically, Rule 129(2) allowed disputes under NRs. 100 million to be settled by a single adjudicator, while those exceeding that amount was to be handled by a three-member dispute settlement committee. The procedures for appointment, eligibility (including five years of relevant technical experience), duties, remuneration (shared equally by both parties), and timelines, including provisions for site visits every six months, were all laid out comprehensively in Rules 130 through 134. These mechanisms allowed parties to avoid costly Arbitration by resolving disputes efficiently through technically capable and mutually agreed-upon adjudicators. This approach reflected a recognition of the complexity and sensitivity of procurement disputes, as well as the need for a staged approach to resolve them without immediately resorting to costly Arbitration.

However, following the First Amendment to the Act, this structure underwent significant alterations. The amended provision removed adjudication entirely from the dispute resolution chain. Now, the Law provides that “Any dispute arising between the public entity and the construction entrepreneur, supplier, service provider or consultant in connection with the implementation of the procurement contract shall be settled through mutual consent. (1a) The procurement contract shall provide that if a dispute cannot be settled through mutual consent by subsection (1), the dispute shall be settled by Arbitration under the prevailing law”.<sup>33</sup> This change reverberates in the Fourth Amendment to the Public Procurement Regulation 2064, which similarly states that “If a dispute arises between a public entity and a contractor, consultant, or service provider regarding the implementation of a procurement contract and such dispute cannot be resolved through mutual agreement, then proceedings must be initiated to resolve the dispute through arbitration in accordance with prevailing laws.”<sup>34</sup> This Amendment to the Public Procurement Regulation repealed rules 130 to 134<sup>35</sup> In their entirety, effectively removing adjudication from the dispute resolution process. This amendment simplified the system to a two-step process: mutual agreement and, if that fails, Arbitration. The international framework emphasizes the importance of a structured and tiered dispute resolution process. The FIDIC Conditions of Contract advocate for a Dispute Avoidance/

31 Sarbajanik Kharid Ain (2063). (Public Procurement Act, 30 Poush, 2063), Nepal, Section- 58.

32 Sarbajanik Kharid Ain (2063). (Public Procurement Act, 30 poush, 2063), Nepal, Section- 58(4).

33 Public Procurement Act, Section- 58.

34 Public Procurement Regulation, rule 135.

35 Government of Nepal, Ministry of Law, Justice and Parliamentary Affairs, *Nepal Gazette*, 2073/03/31 B.S.

Adjudication Board (DAAB) as a mandatory first step before Arbitration to encourage efficient and expert-based resolution.<sup>36</sup> Similarly, the UNCITRAL Model Law on Public Procurement (2011) places particular emphasis on the importance of initial administrative review mechanisms in reducing litigation and promoting timely conflict resolution.<sup>37</sup> While intended for efficient dispute settlement, this elimination of a multi-layer dispute resolution mechanism has reduced flexibility and early resolution opportunities, especially in technically complex or high-stakes procurement projects.

#### 4. Implication of Amendment

The removal of adjudication from Nepal's public procurement dispute resolution framework carries several practical and legal implications. First, it eliminates an intermediate, less adversarial stage where a neutral third party with relevant technical or contractual expertise could assess disputes. Adjudication is a specific form of dispute resolution process that is confidential, quicker, and less expensive and is applied mainly in the construction engineering sector. Adjudication would help maintain rapport between the parties as decisions are made and executed during the Contract's progress. Promptly, they are usually an industry expert appointed at the start of the project, who decides on the disputed issues referred to them by the parties, which, in most cases, become final and binding and take immediate effect.<sup>38</sup> The adjudicator to be appointed should have sufficient knowledge and experience in the field related to the dispute. Initially, the Act stated that a person who becomes the adjudicator or a member of the dispute settlement committee upon the mutual consent of the contracting party should be a technical person with the expertise settlement committee upon the mutual consent of the contracting parties, shall be a technical person with expertise in works similar to the nature of the dispute and should have at 5 years of experience.<sup>39</sup> The adjudicator acts in an intermediate capacity between an expert and an arbitrator. An adjudicator is different from that of a certifier in that he is not involved in the day-to-day administration of the Contract. The adjudicator's role is to decide disputes between the parties. However, like the contract administrator, an adjudicator must apply the terms of the Contract.<sup>40</sup>

Second, by narrowing the dispute resolution options to mutual agreement and Arbitration, the amendment inadvertently increases the likelihood that unresolved disputes will escalate directly to Arbitration. The removal of intermediate mechanisms, such as adjudication or Dispute Boards, leads to a higher rate of disputes being referred directly to Arbitration, which is often more expensive, formal, and slower.<sup>41</sup> Dispute Resolution Board Foundation reports that 98% of disputes referred to Dispute Boards are resolved without recourse to Arbitration or litigation.<sup>42</sup> From the FIDIC context, Notably, only 2% of DAAB decisions are escalated to Arbitration, and the average cost of employing a DAAB is less than 1% of the total contract value. This makes the DAAB process both cost-effective and reliable. Its

36 FIDIC, Clause 21.

37 UNCITRAL Model Law on Public Procurement, Article- 66.

38 Prof. Khem Dallakoti, "How to make Adjudication more useful in construction contracts in Nepal – perspective and challenges," NEPCA HALF YEAR BULLETIN, volume 21, Nov 2014, p. 13.

39 Ibid.

40 KNS Industrial Services (Birmingham) Ltd v Sindall Ltd (2001) 75 (Con LR 71).

41 Lukasklee, International Construction Contract Law, 2nd edition 2018, p. 463.

42 The Dispute Board Federation (Geneva) International Survey, 2008.



members' expertise in construction law and contractual matters gives parties confidence in the fairness and enforceability of their decisions, further contributing to dispute resolution without prolonged litigation.<sup>43</sup> Similarly, according to the World Bank's Procurement Framework 2016, "*All international competitive procurement contracts are required to include appropriate mechanisms for independent dispute resolution, either Dispute Review Experts or Dispute Review Boards.*"<sup>44</sup> which highlights the efficiency gained from multi-tiered dispute resolution mechanisms, recommending such layers to minimize unnecessary Arbitration.

"Unlike large multinational firms, local contractors often lack the financial or legal capacity to endure prolonged arbitration proceedings. The absence of an intermediate step like adjudication puts them at a procedural disadvantage, discouraging them from raising legitimate claims or defending themselves effectively."<sup>45</sup> According to the OECD (2016), limited access to dispute mechanisms is one of the significant barriers for SMEs in public Procurement. Without adjudication or a similar tiered approach, mutual agreement becomes a hurdle, particularly when power asymmetries exist between the state and private parties. Therefore, this elimination of a multi-layer dispute resolution mechanism has reduced flexibility and early resolution opportunities, especially in technically complex or high-stakes procurement projects.

The importance of structured dispute resolution mechanisms can be found in the Supreme Court Decision on *Government of Nepal v. Damodar Ropeways and Construction Company*,<sup>46</sup> Where the Court annulled an arbitral award because the parties had failed to follow the dispute resolution procedure outlined in their Contract; in that case, the Contract between the Government of Nepal and Damodar Ropeways and Construction Company required the parties to attempt settlement through mutual consent prior to initiating Arbitration. However, the parties bypassed this step and proceeded directly to Arbitration. The Supreme Court held that this omission violated the dispute resolution clause and rendered the arbitral award invalid under Section 21(2)(f) and (g) of the then Arbitration Act, 2038. This judgment highlights the crucial role of multi-tiered mechanisms, including intermediate steps such as adjudication, which provide both procedural safeguards and opportunities for early resolution. This precedent highlight that the removal of adjudication from Nepal's public procurement rules through the Fourth Amendment to the PPR raises concerns not only about efficiency and fairness but also about legal enforceability and judicial scrutiny of disputes escalated prematurely to Arbitration.

## 5. Reimagination of Adjudication in Donor Funded Procurement

Despite the removal of adjudication from Nepal's Public Procurement Act, 2063, and the Public Procurement Regulation, 2064, through the early amendments, section 67 of the PPA still holds on to the spirit of adjudication it states, "*If, under an agreement made between the Government of Nepal and a donor party, procurement is to be made in accordance with the procurement guidelines of the donor party.*"<sup>47</sup> This provision enables Nepal to adhere to

43 Amer Mohammad Hdaib, *Dispute Resolution Mechanism under the 2017 FIDIC Red Book*, Master's Degree, The British University in Dubai, 2019, p. 4.

44 World Bank's Procurement Framework 2016, clause 2.24.

45 World Bank. (2021). *Enhancing Government Effectiveness and Transparency: The Fight Against Corruption*.

46 Government of Nepal v. Damodar Ropeways and Construction Company, NKP 2067, Decision No. 8368 (Full Bench, Supreme Court of Nepal).

47 Public Procurement Act, Section- 67(b).

donor-specific procurement guidelines, many of which mandate or prefer dispute resolution structures in accordance with the FIDIC 1999 Red Book. Clause 20 of the FIDIC 1999 edition states that the standard dispute resolution process involves initial adjudication by a Dispute Adjudication Board (DAB), followed by attempts at an amicable settlement, and finally, Arbitration. Clause 21 of the FIDIC 2017 edition states that the standard dispute resolution process involves initial adjudication by a Dispute Avoidance and Adjudication Board (DAB or DAAB), followed by attempts at amicable settlement, and finally, Arbitration as the mechanism for dispute settlement.

Donors such as the Asian Development Bank (ADB), World Bank, and International Monetary Fund (IMF) generally require the adoption of FIDIC-based contracts, which differ in their dispute resolution sequencing from Nepal's current framework. Although adjudication is not recognized in the PPA and PPR or even in National Competitive Bidding (NCB) documents, it remains a pivotal mechanism in international contracting. Known under various nomenclatures, including Dispute Resolution Committee (DRC), Dispute Resolution Board (DRB), Dispute Board (DB), and Dispute Adjudication Board (DAB), the concept has evolved further. In the FIDIC 2017 edition, the body is renamed the Dispute Avoidance and Adjudication Board (DAAB), reflecting its proactive role in both dispute prevention and resolution.

The Supreme Court Decision on *Bakhtawar Singh v. Kankai Irrigation Project* further illustrates this misalignment.<sup>48</sup> In this case, the petitioner challenged the decision of the Patan Appellate Court, which annulled an arbitral award rendered under ICC Rules. The project was conducted under a donor-funded arrangement that adopted FIDIC-style international dispute resolution clauses, including provisions for ICC arbitration. However, the Supreme Court upheld the decision of the Appellate Court on the ground that Nepali arbitration law (specifically Section 11 of the Arbitration Act, 2038) takes precedence over international rules like those of the ICC. The Court ruled that claims made beyond the statutory time limit, even if allowed under ICC Rules, could not override the mandatory provisions of national Law. This judgment reinforces the legal reality that, despite Section 67 of the PPA allowing for donor guidelines, any procedural deviation from the Arbitration Act must still conform to Nepalese statutory limits. The contradiction between FIDIC-required adjudication and the absence of such a mechanism in domestic Law presents a systemic challenge for projects governed by both international and national frameworks. Thus, the Bakhtawar Singh case serves as a judicial warning about the risks of legal fragmentation and underscores the need for legal harmonization in Nepal's procurement regime. Nepal's failure to institutionalize adjudication through legislation or policy, despite its international reliance, raises important questions of harmonization and functionality. The absence of adjudication mechanisms can lead to delays, increased arbitration costs, and prolonged uncertainty, particularly in projects that would benefit from swift interim determinations.

## 6. Arbitration as a Key Dispute Resolution Mechanism in Public Procurement

Arbitration has been vital to dispute resolution in today's commercial society. It has been discussed, presented, and conceived as one of the prominent methods of alternative now termed as appropriate dispute settlement mechanisms. "Arbitration is the settlement of a

48 Bakhtawar Singh v. Kankai Irrigation Project, NKP (2067). Decision No. 8397.



dispute by the decision not of the court of law but of one or more person called Arbitrators which is executable as a decree of the court.”<sup>49</sup> “Arbitrator” means an arbitrator appointed for the settlement of a dispute, and the term also includes a panel of arbitrators.”<sup>50</sup> Arbitration is defined as “arbitration, the act of arbitrating, the putting an end to a difference using arbitration.”<sup>51</sup> Arbitration is the procedure whereby parties to a dispute agree to refer their disagreement to a third party for a binding decision instead of litigating in Court.<sup>52</sup>

In Nepal, Arbitration has roots in the traditional panchayat system, which existed long before the establishment of a formal judicial framework. The panchayat was an informal tribunal made up of five respected villagers who were selected to resolve disputes impartially”.<sup>53</sup> The decisions made by panchayat were widely accepted and binding on the involved parties”.<sup>54</sup> The practice of modern Arbitration in Nepal is relatively recent. Prior to the enactment of a general commercial arbitration law in 1981, Arbitration-related provisions were scattered across various legislations. The Arbitration Act of 2038 B.S. (1981) was the first comprehensive legal framework that regulated voluntary Arbitration in the country. Later, the Arbitration Act of 1999 (2055 B.S.) was enacted and came into effect on April 15, 1999, consolidating international standards and principles of Arbitration.<sup>55</sup> Therefore, In Nepal, the Arbitration Act of 2055 (1999) provides the governing legal framework for Arbitration.

The central feature of Arbitration is the alternative to national courts, utilizing private and confidential means of dispute settlement within a speedy and inexpensive process, whose entire process is controlled by the parties in dispute.<sup>56</sup> The primary advantages of Arbitration over national judicial systems are that it is faster, less expensive, and more confidential.<sup>57</sup> Arbitration is grounded in the principle of Autonomy, allowing the parties to retain control over their dispute and determine the specifics of how the resolution process unfolds. In Arbitration, the arbitrator chosen by the parties gives a binding award. Section 3 of the Arbitration Act, 1999 recognizes Arbitration as a means for settling disputes arising from contractual relationships. Under Section 30, arbitral awards may only be challenged on limited grounds, which affirms the finality and binding nature of Arbitration as a dispute resolution mechanism.

A landmark example that reinforces Arbitration as a core mechanism for dispute settlement in public Procurement is found in Supreme Court Decision *Bakhtawar Singh v. Kankai Irrigation Project*<sup>58</sup>. In this case, the dispute arose from a construction contract under the Kankai Irrigation Project. When the Contractor submitted an additional claim during Arbitration well beyond the

49 Rajkumar S. Adukia, *A PRACTICAL GUIDE ON THE CONCEPT AND PRACTICE OF ARBITRATION*, Rishabh Academy Private Limited, India, 1<sup>st</sup> edition, 2016, P.3.

50 Madhyasthata Ain, (2055). (Arbitration Act 1999), Nepal, Section- 2(h).

51 Vijayakumar Raju v. IndusInd Bank Ltd, (2010). (3) RAJ 11.

52 Black's Law Dictionary, 11th ed. (2019).

53 Bed prasad Uprety, *Evolution of Commercial Arbitration in Nepal: Issue and challenges*, NJA Law Journal, 2:1, 2008, p.208.

54 Ibid.

55 Baliram Kumar Chauhan, *A Brief Analysis on Incorporation of Principle of Arbitration in Arbitration Act of Nepal*, NEP-CA Bi-Annual Magazine, volume:34, January 2025, P.37.

56 Julian D. M. Lew, Loukas A. Mistelis, Stefan Michael Kroll, *Comparative International Commercial Arbitration*, Kluwer Law International, The Hague, 2003, p. 12.

57 Stefania Bondurant, “*A Practitioner's Guide: An Overview of the Major International View of the Major International Arbitration Tribunals*”, South Carolina Journal of International Law and Business, volume 3: 1, 2006, p. 22.

58 Bakhtawar Singh v. Kankai Irrigation Project, NKP (2067). Decision No. 8397.

time limit prescribed under Section 11 of the Arbitration Act, 2038, the Patan Appellate Court annulled the arbitral award. The Supreme Court upheld this annulment, stating that Arbitration must strictly follow statutory procedures and that international arbitration rules (such as the ICC Rules) cannot override national Law. Notably, the Court reaffirmed that appellate courts cannot revise arbitral awards on merits under Section 192 of the Muluki Ain. However, it may only intervene on limited legal grounds under Section 21 of the Arbitration Act. This case confirms both the finality and centrality of Arbitration in public procurement disputes, as well as the importance of procedural compliance in preserving the legitimacy of the arbitration process.

## **7. Arbitration in Nepal Challenge of Arbitration Practice<sup>59</sup>**

The Law makes it mandatory for arbitrators to settle the dispute within 120 days; however, it does not specify the implications to be faced by an arbitrator if they fail to settle the dispute within the given timeframe.

The time taken for dispute settlement is more extended than estimated in days. The reasons for this are

- The parties do not follow the directive given by the tribunal regarding the submission of Claim, Defense, Rejoinder, Evidence, the arbitrator's fee, and other matters.
- Incompetency of respective party appointed lawyers/counsels on knowledge and expertise of the issue
- Arbitration is an expensive process. (Fee and expensive venue as the Law has not prescribed administrative fees as well as consultancy fee of an arbitrator.) Lack of Public Platform or Secretariat. There is no provision in Law for the same.
- NEPCA is found to be used by less and is not in reach of every individual—busy Schedule of Lawyer and Arbitrator.
- The lack of voluntary enforcement of the Arbitral Award by parties and the fear of a psychic impact on a government officer against the CIAA leads them to seek appellate jurisdiction.
- In practice, it is observed that the High Court accepts every Application related to Arbitration, even though the Arbitration Act, 2055, Section 30 provides four plus two bases for the Applicability of the High Court's jurisdiction for setting aside of the arbitral awards.

## **8. Arbitration Procedural Rules for Dispute Settlement in Public Procurement**

In Nepal's public procurement framework, Arbitration has emerged as the primary mechanism for dispute resolution, particularly following the Fourth Amendment to the Public Procurement Rules, which removed adjudication as an option for dispute resolution. Arbitration, governed by the Arbitration Act, 2055 (1999), serves as a legal process where disputes between contracting parties, including the Government (referred to as the Employer) and a private contractor, are settled by a neutral third party, known as an arbitrator, whose decision is

<sup>59</sup> Kamal Chhetri Upreti, "Arbitration in Nepal and practical challenges in its practices" 57 kanoons, 25, 25-7(2007).

binding. This mechanism is used in the Standard Bidding Documents (SBDs) issued by the Public Procurement Monitoring Office (PPMO), which standardizes the bidding process and contract terms across different projects and sectors. These documents are structured around General Conditions of Contract (GCC) and Special Conditions of Contract (SCC). The GCC outlines general legal and procedural standards applicable to all contracts, while the SCC allows for specific customizations, such as designating the place of Arbitration or adjusting procedural timelines.

Under the Procurement of Works (EPC Contract) using the Single-Stage: Two-Envelope Bidding Procedure through National Competitive Bidding (NCB), which limits participation to domestic bidders to promote local competition, the dispute resolution process is explicitly outlined in GCC Clauses 36 and 37. Clause 36 states, *“The Employer and the Contractor shall attempt to settle Settlement amicably by direct negotiation any disagreement or dispute arising between them under or in connection with the Contract.”*<sup>60</sup> Moreover, *Any dispute between the Parties as to matters arising under this Contract that cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be referred to Arbitration within 30 days after the expiration of amicable settlement period.”*<sup>61</sup> This emphasizes amicable settlement, requiring the Employer and Contractor to attempt resolution through direct negotiation within thirty (30) days of a written request state. If the dispute remains unresolved, Clause 37 states, *“Unless settled amicably, any dispute shall be finally settled by Arbitration. The Arbitration shall be conducted in accordance with the arbitration procedures at the place given in the SCC. The Arbitration Act 2055 (1999) shall be the governing Law for the arbitration process.”*<sup>62</sup> Moreover, *the arbitrator(s) shall have full power to open up, review, and revise any certificate, determination, instruction, and opinion or valuation of (or on behalf of) the Employer, relevant to the dispute.”*<sup>63</sup> This mandates that the matter be referred to Arbitration within the next thirty (30) days. The Arbitration is then conducted as per procedures stated in the SCC and accordance with the Arbitration Act 2055. Moreover, the arbitrator is empowered under Clause 37.2 to “open up, review and revise” any certificates, instructions, or determinations issued by or on behalf of the Employer, meaning they have full authority to reexamine previous decisions of the dispute.

The same procedural logic applies to International Competitive Bidding (ICB) contracts, which open Procurement to global bidders and are used for complex or high-value projects. In ICB-based EPC contracts, which also employ the Single-Stage, Two-Envelope method, the dispute resolution clauses in the GCC and SCC are the same as those in NCB contracts. However, due to the international context, ICB contracts often incorporate the UNCITRAL Arbitration Rules or refer to international arbitration institutions, thereby aligning the procedure more closely with global practices. Despite this, the governing Law remains the Arbitration Act, 2055 (1999) unless otherwise specified.

60 Procurement of Works (EPC Contract) National Competitive Bidding (NCB) Single-Stage: Two-Envelope Bidding Procedure, clause 36.1.

61 Procurement of Works (EPC Contract) National Competitive Bidding (NCB), clause 36.2.

62 Procurement of Works (EPC Contract) National Competitive Bidding (NCB), clause 37.1.

63 Procurement of Works (EPC Contract) National Competitive Bidding (NCB), clause 37.2.

In practice, the procedural clarity and enforceability of Arbitration in public Procurement largely hinge on the proper drafting of the SCC and the contracting parties' adherence to the timelines and procedures laid out in the SBDs. A sound procurement system is based on four major elements or pillars: legislative and regulatory framework, institutional framework and management capacity, procurement operations market practices, and integrity of procurement system. Procurement laws and regulations are a double-edged sword: a procurement regulatory system establishes standards and codes of ethics that guide buyers and sellers but may create red tape that jeopardizes procurement efficiency.<sup>64</sup> "Every year, public procurement drains millions from state coffers, yet when disputes arise, the system often goes silent." Many NCB contracts refer to the Nepal Council of Arbitration (NEPCA) Rules, established under the Nepal Council of Arbitration Rules on Arbitration, 2016, for the conduct of proceedings. The SCC must still clearly specify the arbitration venue and administrative details. Where such details are left blank or ambiguous ("the place of arbitration shall be: [insert place]"), disputes over procedure can themselves become a new source of conflict, undermining the system's efficiency.

Ultimately, a well-functioning arbitration mechanism within public Procurement not only upholds contractual integrity but also safeguards public resources. By embedding a clear legislative and regulatory framework, as well as an institutional framework for dispute resolution, both in national and international bidding documents, and ensuring alignment with Nepal's arbitration law and institutions, public Procurement can be made more effective, efficient, transparent, and accountable. However, this system requires not just well-drafted contracts but also institutional commitment, trained arbitrators, and prompt enforcement of arbitral awards to prevent the silence that often follows procurement disputes.

## 9. Analysis and conclusion

Infrastructural construction projects are vital for national development, involving the creation of essential facilities such as roads, bridges, airports, and other critical structures. According to the Economic Survey 2021/22 report from Nepal's Ministry of Finance, the construction industry is estimated to contribute 6.17% to the nation's GDP. As the construction industry continues to grow, disputes within this sector are also increasing. Public resources or significant private investments often fund infrastructure projects, and any delays or failures in these projects can have extensive economic and social repercussions. Nepal, like many developing countries, faces significant challenges in managing infrastructural construction projects. The country's diverse geographic and socio-economic landscape presents unique challenges, including logistical difficulties in remote areas, as well as regulatory compliance and stakeholder management issues.

Despite the establishment of a legal and institutional framework for public procurement dispute resolution in Nepal through the Public Procurement Act (PPA) of 2063 and the Public Procurement Regulations (PPR) of 2064, the practical application of these mechanisms

64 Thai, K. V., & Piga, G. (2007). *Advancing public Procurement: Practices, innovation, and knowledge sharing*. Aruajo, 2003; Agaba & Shipman.

remains evolving and changing. Although procedural avenues such as administrative review and arbitration are formally available, their actual usage and effectiveness are yet to be justified. Key institutional actors—most notably the Public Procurement Review Committee (PPRC) and the Public Procurement Monitoring Office (PPMO)—face challenges that include limited operational autonomy, insufficient financial and human resources, and weak enforcement capabilities.

Consequently, procurement disputes often bypass administrative remedies and escalate directly to litigation. This not only places a heavy burden on the judiciary but also leads to unnecessary delays in the execution of public infrastructure and development projects. The underutilization of appropriate dispute resolution (ADR) mechanisms, along with the lack of binding force in administrative determinations, further undermines confidence in the procurement process. Small and medium-sized enterprises (SMEs) are particularly disadvantaged by procedural complexities and institutional opacity, which limit their ability to access timely and fair redress.

A comparative evaluation against international standards—such as the UNCITRAL Model Law on Public Procurement, the World Trade Organization's Government Procurement Agreement (WTO GPA), and the FIDIC contractual framework—reveals that Nepal's procurement dispute resolution mechanisms are not yet aligned with globally accepted best practices. Significant gaps include the absence of Dispute Avoidance and Adjudication Boards (DAABs), limited digital access to grievance redress platforms, and non-binding timelines for dispute resolution.

This emphasizes the urgent need for comprehensive reform of Nepal's procurement dispute resolution framework. Reforms must be both structural and procedural, encompassing legal harmonization, institutional capacity building, and the creation of a more coherent and accessible remedial framework. The removal of adjudication, once a crucial intermediate mechanism under the original Public Procurement Act and Regulations, has left Arbitration as the only formal mechanism after the failure of mutual agreement. While this two-tiered system may appear simplified, it strips procurement contracts of a pragmatic stage where disputes can be resolved quickly by technically qualified adjudicators before escalation.

As seen in international frameworks like FIDIC and UNCITRAL, adjudication and administrative reviews serve as efficient in filtering disputes before they incur the high costs and procedural burdens of Arbitration. Nepal's exit from such tiered models not only undermines global best practices but also limits accessibility for local contractors who may lack the financial or legal capacity to engage in prolonged Arbitration. The legal framework for Arbitration, though formally enacted in the Arbitration Act, 2055 (1999), still faces procedural ambiguity. Standard Bidding Documents (SBDs) routinely defer to 'prevailing laws' without specifying procedural detail, the General Conditions of Contract (GCC) and Special Conditions of Contract (SCC) leave critical blanks such as the "Insert place of arbitration," and the role of institutions like NEPCA remains underutilized and poorly institutionalized.

The absence of a centralized arbitration or regulatory oversight body contributes to inconsistencies in procedure. At the same time, the enforcement of arbitral awards, especially

against public entities, remains anxious with delays, hesitancy, and a fear of political or legal repercussions. While Section 67 of the PPA technically allows donor-specific guidelines, courts continue to prioritize domestic Law in procedural matters, causing legal uncertainty for international contractors and potential friction in Nepal's donor-funded projects.

From a policy standpoint, this fragmented approach risks undermining the trust of international partners, discouraging small and medium contractors, and perpetuating procedural delays in contract implementation. It is imperative to reintroduce adjudication as an intermediate, cost-effective, and expert-based layer of dispute resolution, especially for technically complex projects. International experience shows that Dispute Adjudication Boards (DABs) or Dispute Avoidance and Adjudication Boards (DAABs) resolve over 60-70% of disputes without requiring Arbitration, reducing litigation costs and minimizing disruption to ongoing projects.

Furthermore, Nepal should institutionalize Arbitration by establishing a dedicated arbitration secretariat or a public procurement dispute board equipped with trained arbitrators, standardized procedures, and effective case management systems. SBDs should be revised to include mandatory procedural templates, such as predefined arbitration venues, panel composition rules, and timelines, thereby eliminating the current vagueness that often leads to delays and additional conflicts.

In conclusion, Nepal's procurement dispute resolution framework, though legally grounded, remains structurally inadequate to meet the demands of its rapidly growing public procurement ecosystem. Arbitration alone, without a supporting ecosystem of staged resolution mechanisms, institutional infrastructure, and procedural clarity, cannot guarantee fairness, efficiency, or certainty. Therefore, a comprehensive reimagining of dispute resolution is essential, one that reintroduces adjudication strengthens arbitration infrastructure, harmonizes national and international legal standards, and ensures that every Party to a public contract, regardless of size or origin, has meaningful access to justice. Only then can Nepal's procurement system truly embody the principles of transparency, accountability, and value for money.



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## संरचनात्मक सम्झौता: परिचय



इ. आशिष श्रेष्ठ •

सारांश : संरचनात्मक सम्झौता (Framework Agreement) सार्वजनिक निकायले आवश्यक परेको बेला मालसामान खरिद गर्नका लागि आपूर्तिकर्ताहरूको संक्षिप्त सूची तयार गरी उनीहरूसँग दर र सर्त निर्धारण गरेर गरिने दीर्घकालीन सम्झौता हो। सार्वजनिक खरिद नियमावली, २०६४ को चौधौँ संशोधनले यसलाई औपचारिक रूपमा समेटेको हो। यो सम्झौता दुई चरणमा सम्पन्न हुन्छ, पहिलो चरणमा योग्य आपूर्तिकर्ताहरू छनोट गरिन्छ, र दोस्रो चरणमा आवश्यकताअनुसार 'Call-off Contract' गरिन्छ। संरचनात्मक सम्झौताले समय, लागत, र स्रोतको बचत गर्दै लचिलो र दिगो आपूर्ति सुनिश्चित गर्छ। तर, यसमा पारदर्शिता, प्रतिस्पर्धा, मूल्य सार्थकता र कार्य दक्षता कायम राख्ने चुनौती रहन्छ, साथै मूल्य समायोजन र कानूनी व्यवस्थाको स्पष्टता आवश्यक हुन्छ। प्रभावकारी कार्यान्वयनका लागि नमूना बोलपत्र र स्पष्ट कार्यविधिको खाँचो छ।

### १. पृष्ठभूमि :

यस अघि अनुसूची -३ को मालसमान वा अन्य सेवा खरिद सम्झौतामा मात्रै रहेको संरचनात्मक वा एकार्ड दर सम्झौतालार्इ सार्वजनिक खरिद नियमावली, २०६४ को चौधौँ संशोधनले मूल नियमावलीमा नियम २१क मा थप गरेको छ। सार्वजनिक खरिद नियमावली, २०६४ को नियम १४५क(१) को नियम ३क (तेस्रो संशोधनबाट थप) ले व्यवस्था गरेबमोजिम केन्द्रीयस्तरमा एक सरकारी खरिद सेवा कार्यालय स्थापना भर्इ नसकेको अवस्थामा ऐनको दफा २ को खण्ड (ख) को उपखण्ड (१) बमोजिमको केन्द्रीयस्तरका सार्वजनिक निकायले खुला बोलपत्र माध्यमद्वारा संरचनात्मक सम्झौता (Framework Agreement) गरी अत्यावश्यक औषधिजन्य मालसमान तथा कार्यालय सञ्चालनको लागि आवश्यक पर्ने मसलन्द तथा स्टेशनरी खरिद गर्न सकिने व्यवस्था गरेको छ। तर कुनै पनि सार्वजनिक निकायले यो सम्झौता प्रयोग गरेको देखिँदैन।

\* इन्जिनियर, सार्वजनिक खरिद अनुगमन कार्यालय



## २. परिभाषा :

सार्वजनिक खरिद नियमावली, २०६४ को अनुसूची -३ मा खरिद सम्झौतामा उल्लिखित मालसमान वा अन्य सेवा सार्वजनिक निकायले माग गरेको समयमा खरिद सम्झौतामा उल्लिखित दर वा सर्तबमोजिम एक वा एक भन्दा बढी आपूर्तिकर्ताबाट प्राप्त गर्ने व्यवस्था गर्नको लागि संरचनात्मक वा एकार्ड दर सम्झौता गर्न सकिनेछ भनी उल्लेख गरेको छ ।

विश्व बैंकद्वारा जारी गरेको Request for Bids Framework Agreement (s) Goods (2023) मा “Framework Agreement (FA) means the agreement between the Procuring Agency and Supplier (s) (the successful Bidder(s)) to establish the terms and procedures governing the award of Call-off contracts under the agreement.” भनी परिभाषित गरेको छ ।

संरचनात्मक सम्झौता भन्नाले सार्वजनिक निकायले आवश्यक परेको बेला मालसमान खरिद गर्न खरिद करार गर्ने गरी एक वा एक भन्दा बढी मालसमान आपूर्तिकर्ताहरूको कबोल भएको मुल्य सूची सहितको संक्षिप्त सूची तयार गरी त्यस्ता आपूर्तिकर्ताहरूसँग गरिने सम्झौता हो । संरचनात्मक सम्झौतालार्इ सार्वजनिक निकाय र आपूर्तिकर्ताहरूको सहभागिता अनुसार तीन प्रकारमा वर्गीकरण गर्न सकिन्छ:

१. बहु निकाय, बहु आपूर्तिकर्ता (Multi User Multi supplier) - यो सम्झौतामा मालसमान खरिदको लागि सार्वजनिक निकायहरूले एउटै बोलपत्रको सूचनाको आधारमा तयार भएको सूचीमा रहेका आपूर्तिकर्ताहरूसँग आफ्नो आवश्यकता अनुसार खरिद सम्झौता गर्नसक्छन् ।
२. एकल निकाय, बहु आपूर्तिकर्ता (Single User Multi Supplier) - यो सम्झौतामा मालसमान खरिदको लागि कुनै एक सार्वजनिक निकायले बोलपत्रको सूचनाको आधारमा तयार भएको सूचीमा रहेका आपूर्तिकर्ताहरूसँग आफ्नो आवश्यकता अनुसार खरिद सम्झौता गर्नसक्छन् ।
३. एकल निकाय एकल आपूर्तिकर्ता (Single User Single Supplier) - यो सम्झौतामा मालसमान खरिदको लागि कुनै एक सार्वजनिक निकायले बोलपत्रको सूचनाको आधारमा छनौट भएको एक आपूर्तिकर्तासँग आफ्नो आवश्यकता अनुसार खरिद सम्झौता गर्नसक्छन् ।

संरचनात्मक सम्झौतालार्इ प्रक्रियाका आधारमा दुई प्रकारमा वर्गीकरण गर्न सकिन्छ :

१. बन्द सूची संरचनात्मक सम्झौता (Closed Framework Agreement): सूचीमा रहेका आपूर्तिकर्ताहरूसँग मात्रै खरिद सम्झौता गर्नसक्ने,

२. खुला सूची संरचनात्मक सम्झौता (Open Framework Agreement): सूचीमा नरहेका आपूर्तिकर्ताहरूसँग पनि दोस्रो चरणमा खरिद सम्झौता गर्नसक्ने

### ३. संरचनात्मक सम्झौताको प्रक्रिया :

संरचनात्मक सम्झौता दुरइ चरणमा सम्पन्न हुन्छ: पहिलो चरणमा आपूर्तिकर्ताहरूको संक्षिप्त सूची तयार गरिन्छ र दोस्रो चरणमा उक्त सूचीमा रहेको वा नरहेको आपूर्तिकर्ताहरूसँग पनि आवश्यकता अनुसार खरिद सम्झौता गरिन्छ ।

सार्वजनिक खरिद नियमावली, २०६४ को चौधौँ संशोधनमा “संरचनात्मक वा एकाइ दर सम्झौताको लागि राष्ट्रियस्तरको बोलपत्रका हकमा कम्तीमा तीस दिनको अवधि दिई पहिलो चरणमा सार्वजनिक निकायले मालसामान आपूर्तिको लागि बोलपत्र आह्वान गरी योग्यताका आधारमा सफल हुने बोलपत्रदाताको संक्षिप्त सूची तयार गर्नु पर्छ । पहिलो चरणमा संक्षिप्त सूचीमा समावेश हुने बोलपत्रदातासँग संरचनात्मक वा एकाइ दर सम्झौता गर्नु पर्छ र त्यस्तो सम्झौता गर्नका लागि बोलपत्र जमानत आवश्यक नपर्ने व्यवस्था गरिएको छ ।

दोस्रो चरणमा सार्वजनिक निकायले प्रथम चरणमा छनोट भई संरचनात्मक वा एकाइ दर सम्झौता गरिएका आपूर्तिकर्ताहरूबाट बन्द सूचीका आधारमा वा अन्य आपूर्तिकर्तालाई समेत प्रतिस्पर्धा गराउने कल अफ कन्ट्र्याक्ट (Call off Contract) गरी सार्वजनिक निकायले आवश्यकताको आधारमा खरिद सम्झौता गर्न सक्नेछ । यसरी दोस्रो चरणमा सार्वजनिक निकायले कल अफ कन्ट्र्याक्ट गर्दा निश्चित, अनिश्चित वा आवश्यकता अनुरूपको परिमाणमा तोकिएको समयमा आपूर्ति गर्ने सर्तहरू उल्लेख गरी कल अफ कन्ट्र्याक्ट गर्न सकिने प्रावधान नियमावलीले समावेश गरेको छ ।

### ४. फाइदा र चुनौती :

#### फाइदा

संरचनात्मक सम्झौताको मुख्य फाइदा यसले सार्वजनिक निकाय र आपूर्तिकर्ताहरू बीच दिर्घकालीन सहकार्य स्थापना गर्दछ । सार्वजनिक खरिद नियमावली, २०६४ को चौधौँ संशोधनले संरचनात्मक वा एकाइ दर सम्झौता पाँच वर्षसम्मको लागि गर्न सक्ने व्यवस्था गरेकोले एक पटक बोलपत्र आह्वान गरी योग्यताका आधारमा सफल हुने बोलपत्रदाताहरूको संक्षिप्त सूची तयार गरिसकेपछि ,सार्वजनिक निकायले आवश्यकताको आधारमा उक्त सूचीमा रहेका बोलपत्रदाताहरूसँग खरिद सम्झौता गर्न सक्दछ ।

यो सम्झौताले समय र स्रोतको बचत गर्दछ । एक पटक बोलपत्र आह्वान गरी सकेपछि एकै

प्रकारको मालसमान खरिद गर्न पुनः बोलपत्र आह्वान गर्न नपर्ने हुन्छ । सार्वजनिक निकायको आवश्यकताको आधारमा खरिद सम्झौता गर्न सकिने भएकोले लचिलो हुन्छ र अनावश्यक दायित्व सिर्जना हुँदैन ।

## चुनौती

संरचनात्मक वा एकाइ दर सम्झौताको मुख्य चुनौती प्रथम चरणमा बोलपत्र आह्वान गरी योग्यताका आधारमा सफल हुने बोलपत्रदाताको संक्षिप्त सूची तयार गर्दा अधिकतम प्रतिस्पर्धा, मूल्य सार्थकता (Value for Money) तथा कार्य दक्षता सुनिश्चित गर्नु हो । दोस्रो चरणमा खरिद सम्झौता (Call off Contract) गर्दा पारदर्शी र मूल्य सार्थकता (Value for Money) बनाउनु हो । सो सम्बन्धमा क्रमशः बोलपत्र कागजातमा खरिद प्रक्रिया मान्य हुनको लागि आवश्यक बोलपत्रदाताहरूको न्युनतम सङ्ख्या तथा संक्षिप्त सूचीमा समावेश गरिने बोलपत्रदाताहरूको अधिकतम सङ्ख्या र प्रथम चरणबाट छनौट भएका बोलपत्रदाताहरूलाई दोस्रो चरणमा कसरी छनौट गर्ने भन्ने प्रक्रिया बोलपत्र कागजातमा स्पष्ट रूपमा खुलाउनु पर्ने हुन्छ ।

पहिलो चरणबाट छनौट भएका बोलपत्रदाताहरूसँग बोलपत्र जमानत नलिने भएकाले दोस्रो चरणमा खरिद सम्झौता (Call off Contract) गर्न पर्ने बाध्यात्मक अवस्था नरहने र सो सम्बन्धमा बोलपत्र कागजातमा अन्य कानूनी व्यवस्था उल्लेख गर्नु पर्ने हुन्छ ।

सार्वजनिक खरिद नियमावली, २०६४ को चौधौँ संशोधनले संरचनात्मक वा एकाइ दर सम्झौता पाँच वर्षका लागि गर्न सक्ने व्यवस्था गरेको छ । बोलपत्र आह्वान हुँदा कबोल गरेको दरमा पाँच वर्षसम्म नै मालसमान प्रदान गर्न अव्यवहारिक तथा कठिन हुने र सो सम्बन्धमा मूल्य समायोजन सम्बन्धी आधार र तरिका बारे स्पष्ट व्यवस्था बोलपत्र कागजातमा खुलाउनु पर्ने हुन्छ ।

## निष्कर्ष

संरचनात्मक सम्झौता बारम्बार आवश्यक पर्ने मालसमान, कार्यालय सञ्चालनको लागि आवश्यक पर्ने मसलन्द तथा स्टेशनरी खरिद गर्न, अत्यावश्यक औषधीजन्य मालसमान आपतकालीन अवस्थामा तुरुन्त खरिद गर्नको लागि प्रभावकारी र लचिलो व्यवस्था हो । तर यसको प्रभावकारी कार्यान्वयनका लागि सुस्पष्ट कार्यविधि तथा नमूना बोलपत्र कागजात तयार गर्नु अपरिहार्य छ ।

# सार्वजनिक खरिदमा फर्म दर्ता र व्यवसाय दर्ता इजाजतको विश्लेषण



राम बहादुर बस्नेत\*

## १. विषय प्रवेश

व्यवसाय दर्ता तथा इजाजतमा अति नियमनको अभ्यास उदार अर्थनीति अवलम्बन तथा राज्यको पुनसंरचनासँगै कम भएको भनिएपनि पछिल्लो Doing Business Report-२०२० मा नेपालको व्यवसाय शुरू गर्ने सूचकमा आठ प्रकारका प्रक्रिया पूरा गर्नुपर्ने देखिनुले यसमा झन्झट कायमै रहेको स्वीकार्नुपर्छ ।<sup>१</sup> सङ्घीय संरचनामा राज्यको पुनर्संरचना पछि बहुतहका सरकारको शासनमा एउटै व्यवसाय तिन तहका निकायको नियमनको क्षेत्राधिकारमा पर्दा व्यावसायिक झन्झट बढाएको गुनासो सुनिएकै छन् । राजनीतिक र उच्च प्रशासनिक तहमा व्यवसायका प्रक्रियागत झन्झट हटाउने उद्घोषहरू बारम्बार आइरहन्छ (Nagarik, २०७७) । अर्कोतिर सार्वजनिक खरिद ऐन, २०६३ बमोजिम सार्वजनिक निकायले सार्वजनिक खरिद गर्दा वा जुनसुकै अन्य संस्थाले सार्वजनिक स्रोतको प्रयोग गरी खरिद गर्दा त्यस्तो खरिद प्रक्रियामा सहभागी हुने कुनै पनि व्यक्ति, फर्म, संस्था वा कम्पनीको फर्म दर्ता प्रमाणपत्र र व्यवसाय दर्ता इजाजतपत्र अनिवार्य रूपमा हुनुपर्ने व्यवस्था छ । तर सार्वजनिक खरिदका क्रममा खरिद गर्ने निकाय तथा आपूर्ति गर्ने व्यावसायीहरू उक्त अनिवार्य भनिएका कुन कागजात कुन निकायले जारी गर्न सक्ने हो ? के यि दुई कागजात सबै अवस्थामा दुइटै हुन्छन् वा कुनै अवस्थामा एउटै दर्ताको कागजातले दुबैको काम गर्न सक्छ ?, यदि सक्छ भने कस्तो अवस्थामा सक्छ ?, कुन-कुन निकायले कस्ता-कस्ता व्यवसाय दर्ताका लागि स्वीकृति दिने व्यवस्था छ ? भन्ने विषयमा अलमलिने गरेको पाइएको छ । यस आलेखमा फर्म दर्ता र व्यवसाय दर्ता सम्बन्धी विद्यमान कानूनी तथा संरचनागत व्यवस्थाको संक्षेपीकरण गरीएको छ ।

\* लेखा अधिकृत, सार्वजनिक खरिद अनुगमन कार्यालय

<sup>१</sup> Doing Business 2020, Economic Profile of Nepal, retrieved from “NPL.pdf” on 4th June, 2025

खरिद प्रक्रियालाई व्यवस्थित र पारदर्शी बनाउन सार्वजनिक खरिद अनुगमन कार्यालयले नमुना कागजातहरू तयार गर्ने र सार्वजनिक निकायहरूले सोही नमुना कागजातमा तात्त्विक रूपमा फरक नपर्ने गरी बोलपत्र तथा प्रस्ताव सम्बन्धी कागजात तयार गरी खरिद कारवाही गर्नुपर्ने व्यवस्था सार्वजनिक खरिद ऐनमा गरीएको छ । यस्ता नमुना कागजातहरूले प्रचलित कानूनमा भएका सकेसम्म धेरै व्यवस्थाहरूलाई एकै ठाउँमा आवश्यकता अनुसार समेटि बोलपत्रदातालाई बोलपत्रको प्रक्रिया र सर्तहरू खरिद सम्झौताका सर्तहरूको बारेमा जानकारी दिएको हुन्छ । नमुना बोलपत्र सम्बन्धी कागजातमा सार्वजनिक खरिद अनुगमन कार्यालयले कतिपय कानूनी विषयलाई लचक विकल्प नदिएर कठोर प्रावधानहरू राख्दा कागजी दौडमा सार्वजनिक खरिद ढिलो, खर्चिलो र अन्योलपूर्ण समेत बनेको तितो यथार्थ विद्यमान छ । नमुना कागजातमा कठोर व्यवस्था भएको यस्तै एउटा विषय हो फर्म दर्ता र व्यवसाय इजाजतपत्र सम्बन्धी व्यवस्था । फर्म दर्ता र व्यवसाय दर्ता अनिवार्य कागजात हुन् भनेर खरिद कानून र नमुना बोलपत्र सम्बन्धी कागजातमा त तोकियो तर ति कागजात दर्ता कुन-कुन निकायमा गरेपछि सबै प्रचलित कानूनमा भएका व्यवस्थाको पूर्ण पालना हुन्छ भन्ने प्रश्नको पूर्ण जवाफ न सार्वजनिक खरिद अनुगमन कार्यालयसँग छ न अन्य कुनै कानून प्रशासनको जिम्मा पाएको एकल निकायसँग । जब कानून कार्यान्वयनको जिम्मा लिएका निकायसँग नै स्पष्ट जवाफ हुँदैन व्यावसायीले दर्ता हुनुपर्ने कहाँ-कहाँ हो र पेस गर्नुपर्ने कागजात कुन-कुन हुन् भनेर व्यावसायी आफूले पनि थाहा पाउने अवस्था रहँदैन ।

सार्वजनिक खरिद अनुगमन कार्यालयकै अति महत्वपूर्ण र जरूरी खरिदको बोलपत्रमा बोलपत्रदाताले व्यवसाय दर्ता प्रमाणपत्र पेस नगरेको भनेर पूर्णताको परीक्षणमा नै बोलपत्र असफल हुँदा अति जरूरी खरिद हुन सकेन र त्यसले कार्यालयको सेवाको गुणस्तर तथा जोखिमका पक्षहरू समेत बढाएको छ । यस पृष्ठभूमिमा धेरै पटक यो कागजात कुन हो, किन मागिएको हो भन्नेमा आफैँसँग र खरिदका जानकारहरूसँग छलफलको अवसर जुट्दा सोध्ने गरेको धेरै भयो । तर बहुमतको जवाफ कम्पनी दर्ता र निर्माण को इजाजतको उदाहरणमा पुगेर टुङ्गिन्छ । सार्वजनिक खरिदमा उदाहरण जति सजिलै भेटिन्छन तिनको अभ्यास त्यति सजह नहुँदो रहेछ भन्ने मेरो व्यक्तिगत बुझाइलाई आफूले पटक-पटक मूल्याङ्कन गर्दा कुन फर्म दर्ता होला र कुन व्यवसाय दर्ता होला भन्ने अन्योलले थप मजबुद बनायो । यस पृष्ठभूमिका प्रचलित कानूनका केही व्यवस्थाहरूको विश्लेषण सुचिवद् गरी यहाँ चर्चा गरीएको छ ।

## २. सार्वजनिक खरिद ऐन नियमावलीको व्यवस्था

सार्वजनिक खरिद नियमावली, २०६४ को नियम १८ मा मौजुदा सूची तयार गर्ने व्यवस्थामा मौजुदा सूचीमा दर्ता हुन वा अध्यावधिक हुन चाहने व्यक्ति, संस्था, आपूर्तिकर्ता, निर्माण व्यावसायी, परामर्शदाता, गैरसकारी संस्था वा सेवा प्रदायकले संलग्न गर्नुपर्ने कागजातमा अन्य कुराका अतिरिक्त संस्था वा फर्म दर्ताको प्रमाणपत्र र आवश्यकता अनुसार व्यावसायिक इजाजतपत्रको प्रतिलिपि सहित निवेदन दिनुपर्ने व्यवस्था छ ।

सोही नियमको नियम ४० मा बोलपत्रदाताको ग्राह्यता सम्बन्धी आधार र कागजात उल्लेख गर्नुपर्ने सम्बन्धी व्यवस्थामा सार्वजनिक निकायले बोलपत्र सम्बन्धी कागजातमा बोलपत्रदाताको ग्राह्यताको आधार तथा त्यस्तो आधार प्रमाणित गर्न बोलपत्रदाताले पेस गर्नुपर्ने कागजातको प्रतिलिपि समेत उल्लेख गर्नुपर्नेछ भन्ने व्यवस्थाले त्यस्ता कागजातमा (क) फर्म, संस्था वा कम्पनी दर्ताको प्रमाणपत्र (ख) व्यवसाय दर्ताको इजाजतपत्र समेत रहेको छ । सोही नियमको स्पष्टीकरण खण्डमा व्यवसाय दर्ताको इजाजतपत्र भन्नाले कुनै व्यवसायीले आफ्नो व्यवसाय सञ्चालन गर्ने उद्देश्यले प्रचलित कानून बमोजिम प्रमाणपत्र वा इजाजतपत्र लिनुपर्ने भए सो बमोजिम प्राप्त गरेको प्रमाणपत्र वा इजाजतपत्र सम्झनु पर्छ भन्ने प्रष्ट व्यवस्था गरेको छ । यस स्पष्टीकरणको मनसाय सबै व्यवसायका लागि इजाजतपत्र अनिवार्य नहुन सक्छ र यदि कुनै कानूनले इजाजत लिनुपर्ने भनेको व्यवसाय छ भने त्यस्तो इजाजतपत्र समेत बोलपत्रदाताको ग्राह्यताको आधारमा रहनुपर्छ भन्ने खुलाएको देखिन्छ ।

कुन व्यवसायको इजाजत कुन निकायले जारी गर्ने व्यवस्था छ भन्ने विषयको ज्ञान कुनै खरिदमा संलग्न कर्मचारीलाई पूर्ण रूपमा नहुन सक्छ । आफ्नो निकायले गर्न लागेको कुनै पनि खरिद सम्बन्धमा बोलपत्रदाताले अनिवार्य रूपमा पेस गर्नुपर्ने भनेर माग गरीएको कागजात यो निकायले जारी गरेको हुनुपर्छ भन्ने सम्बन्धमा खरिदकर्ता निकाय पुर्ववतु रूपमा स्पष्ट हुन जरुरी भने देखिन्छ ।

सार्वजनिक खरिद अनुगमन कार्यालयले सार्वजनिक खरिद प्रक्रियालाई सहजीकरण गर्नका लागि तयार गरेका नमुना बोलपत्र सम्बन्धी कागजातहरूमा व्यवसाय दर्ताको इजाजतपत्रलाई अनिवार्य

रूपमा पेस गर्नुपर्ने कागजातको (Mandatory Document) रूपमा तोकिएको छ ।

केही विशिष्ट प्रकृतिको खरिदमा फर्म दर्ता र व्यवसाय दर्ता फरक हुन भन्ने प्रष्ट छुट्याउन सहज हुन्छ र सोही बमोजिम काम कारवाही भइने रहेको पनि छन् । जस्तै: निर्माण कार्यको खरिदमा फर्म दर्ता कुनै पनि कानून बमोजिम तोकिएको निकायमा संस्था दर्ता भएको प्रमाणपत्र रहन्छ भने व्यवसाय दर्ता निर्माण व्यवसायी ऐन, २०५५ बमोजिम निर्माण व्यवसायीको इजाजतपत्र प्राप्त गर्ने कार्यको रूपमा लिन सहज छ । तर सबै खरिदका विषयमा निर्माण जस्तै प्रष्ट किटानी इजाजतपत्र आउने नहुन सक्छ । विशेष गरी मालसामान खरिदमा यस्तो समस्या आइरहन्छ । जसमा इजाजत कसले जारी गर्ने हो ? एउटै निकायको इजाजत पूर्ण र पर्याप्त हुन्छ कि, एकभन्दा बढी निकायको इजाजत अनिवार्य कागजातको रूपमा रहन सक्ने अवस्था हुन सक्छ भन्ने प्रश्नले नमुना बोलपत्र सम्बन्धी कागजातमा पर्याप्त स्थान पाएको छैनन् । जस्तै: सबैजसो सार्वजनिक निकायमा अनिवार्य रूपमा प्रयोग हुने कार्यालय सामान तथा मसलन्द खरिदमा **व्यवसाय दर्ताको इजाजतपत्र कहाँबाट लिनुपर्ने हो भन्ने प्रष्ट व्यवस्था** नभएको हो वा अभ्यासमा धेरै प्रकारका दर्ता र इजाजतपत्र सम्बन्धी व्यवस्थाले यसलाई कार्यान्वयनमा जटिल मात्र बनाएको हो ? विदेशबाट आयात गरेर औषधी आपूर्ति गर्ने व्यवसायीको इजाजत कुन निकायले जारी गर्नुपर्ने हो ? यस्ता विषयमा विद्यमान कानूनका व्यवस्था विवेचना गरी एउटा साझा निष्कर्षमा पुग्न जरुरी छ ।

### ३. फर्म, संस्था वा कम्पनी दर्ताको प्रमाणपत्र सम्बन्धी विद्यमान सङ्घीय कानूनी व्यवस्था

#### ● कम्पनी ऐन, २०६३

कम्पनीको सस्थापना, सञ्चालन तथा प्रशासनलाई अझ बढी सगम, सरल र पारदर्शी बनाउन कम्पनी सम्बन्धी कानूनलाई सशोधन र एकीकरण गर्न यो ऐन जारी भएको भन्ने यसको प्रस्तावनामा उल्लेख गरीएको छ । कम्पनी ऐनको दफा ३ ले मुनाफाको उद्देश्य लिई कुनै उद्यम गर्न चाहने व्यक्तिले कम्पनी सस्थापना गर्न सक्ने, दफा ४ ले त्यस्तो कम्पनी संस्थापनाको लागि कम्पनी रजिष्ट्रारको कार्यालयमा तोकिएका कागजात सहित निवेदन दिनुपर्ने र दफा ५ ले प्रक्रिया पूरा गरी दर्ता गरी तोकिए बमोजिमको ढाँचामा निवेदकलाई कम्पनी दर्ताको प्रमाणपत्र दिनुपर्ने व्यवस्था गरेको छ । सार्वजनिक खरिदसँग सम्बन्धीत धेरै निकायले खरिद नियमावलीमा तोकिएको फर्म दर्ताको

प्रमाणपत्रमा यो कागजात सहज रूपमा नै बुझ्ने भएकोले यसमा अन्योल कम छ । तैपनि कम्पनी दर्ता गर्नका लागि समेत ऐनको दफा ४ (२) (ड) ले कानून बमोजिम कुनै खास प्रकारको व्यवसायिक कारोबार सञ्चालन गर्ने कम्पनी दर्ता गर्नु अघि कानून बमोजिम कुनै निकायको पूर्व स्वीकृति वा इजाजत लिनुपर्ने व्यवस्था गरीएको भए त्यस्तो स्वीकृति वा इजाजतपत्र समेत पेस गर्नुपर्ने कागजातको रूपमा राखिएकोले कम्पनी दर्ताकै लागि पेस गर्नुपर्ने कागजातलाई असिमित कानुनहरूसँग सम्बन्धित बनाएर Open Ended छाडिएको छ । जसले व्यवसाय दर्ताको इजाजतपत्रको अन्योल अनुत्तरित रहेको देखिन्छ ।

### ● साझेदारी ऐन, २०२०

यस ऐनको दफा २ ले व्यवसायको परिभाषा गर्दै “व्यवसाय भन्नाले उद्योग बाणिज्य पेशा वा वृत्तिलाई समेत जनाउँछ” भनेको छ । यस ऐनको दफा ५ मा साझेदारी खडा भएको ६ महिना भित्र सो साझेदारीलाई यस ऐन बमोजिम सम्बन्धित विभागको लगतमा दर्ता गराउनुपर्छ तर सो बमोजिम दर्ता नभएको अवधिभित्र सो साझेदारीले वा साझेदारीका निमित्त गरेको कुनै काम कारोबारलाई यस ऐन बमोजिम कानूनी मान्यता हुने छैन भन्ने व्यवस्था रहेको छ ।

दफा ८ ले फर्म दर्ताको सम्बन्धमा व्यवस्था गर्दै तोकिएका शर्त पूरा गरी सम्बन्धित विभागको लगत किताबमा फर्मको नाम दर्ता भईसकेपछि साझेदारको नाममा सम्बन्धीत विभागबाट अनुसूची ३ (क) को ढाँचामा निस्सा प्रमाणपत्र दिइनेछ भन्ने व्यवस्था रहेको छ । जसले जुनसुकै प्रकारका उद्योग, व्यापार गर्ने व्यक्तिहरू साझेदारी ऐन अनुसार साझेदारी फर्मको रूपमा दर्ता हुन सक्ने देखिन्छ ।

दर्ता हुनका लागि सम्बन्धित विभाग कुन हुने भन्ने सम्बन्धमा ऐनमा परिभाषित गरीएको छ । जसअनुसार सम्बन्धित विभाग भन्नाले बाणिज्य सम्बन्धी फर्मको विषयको लागि बाणिज्य, आपूर्ति तथा उपभोक्ता हित संरक्षण विभाग र सो बाहेकका अन्य उद्योगको विषयका लागि उद्योग विभाग सम्झनु पर्छ र सो शब्दले बाणिज्य सम्बन्धी विषय र घरेलु तथा साना उद्योगको विषयका लागि प्रदेश सरकारको बाणिज्य तथा उद्योग हेर्ने कार्यालयलाई समेत जनाउँछ भन्ने प्रष्ट पारेको छ । यसले सङ्घीय सरकारका उल्लिखित विभाग तथा प्रदेश सरकारका बाणिज्य तथा उद्योग हेर्ने



कार्यालयलाई साझेदारी फर्म दर्ताको अधिकार रहेकोले ति निकायले जारी गरेका दर्ता प्रमाणपत्र पनि फर्म दर्ताको प्रमाणपत्र हुने देखिन्छ ।

### ● प्राइभेट फर्म रजिष्ट्रेशन ऐन, २०१४

व्यापार र उद्योग व्यवसायमा लागेका प्राइभेट फर्महरूको रजिष्ट्रेशन र तत्सम्बन्धी अरू व्यवस्था गरी सर्वसाधारण जनताको सुविधा र आर्थिक हित कायम राख्ने उद्देश्यका साथ यो ऐन जारी भएको हो । यस ऐनले प्राइभेट फर्म भन्नाले निजी वा कथित नामबाट एक व्यक्तिले उद्योग व्यवसायका निकासी वा पैठारी को व्यापार गर्ने फर्म वा कम्पनी वा कोठि सम्झनुपर्छ भनी परिभाषित गरेको छ । यस ऐनको दफा ४ ले प्राइभेट फर्म रजिष्ट्रेशन गर्नलाई दरखास्त दिने र रजिष्ट्रेशन सम्बन्धी व्यवस्था गर्दै प्राइभेट फर्म रजिष्ट्रर गराउन चाहने व्यक्तिले तोकिएको ढाँचामा तोकिएको दस्तुर सहित सम्बन्धित विभागछेउ निवेदन दिन सक्ने र त्यस्तो निवेदन मनासिव देखिएमा तोकिएबमोजिम रजिष्ट्रर किताबमा प्राइभेट फर्म रजिष्ट्रर गरी त्यसको तोकिएको ढाँचामा प्रमाणपत्र दरखास्तवालालाई दिइनेछ भन्ने व्यवस्था रहेको छ । यसमा समेत सम्बन्धीत विभागको परिभाषामा साझेदारी ऐनमा जस्तै सङ्घका दुई विभाग तथा प्रदेशका सम्बन्धित कार्यालयलाई समेत समेटि बहु निकायले यही ऐनको प्रयोग गरी फर्म दर्ता प्रमाणपत्र जारी गर्न सक्ने व्यवस्था गरेको देखिन्छ । यस ऐनले प्राइभेट फर्मको नवीकरण सम्बन्धी व्यवस्था तोकिएबमोजिम हुने गरी नियमावलीलाई अधिकार दिएको छ भने प्रदेश स्तरमा प्राइभेट फर्म रजिष्ट्रेशन र तत्सम्बन्धी अन्य व्यवस्था यस ऐनको अधीनमा रही प्रदेश कानून बमोजिम हुने भन्ने उल्लेख गरीएको छ ।

### ● स्थानीय सरकार सञ्चालन ऐन, २०७४

स्थानीय सरकार सञ्चालन ऐन, २०७४ को दफा ११ को उपदफा २ को देहाय (ज) ६ ले स्थानीय स्तरका व्यापारिक फर्मको दर्ता, अनुमति, नवीकरण खारेजी, अनुगमन र नियमनको अधिकार स्थानीय तहलाई दिएको छ । साथै सोही दफा को उपदफा (४) को देहाय (ठ) ले सङ्घ संस्था दर्ता तथा नवीकरण र उपदफा (५) को देहाय (घ) ले लघु, घरेलु तथा साना उद्योगको दर्ता नवीकरण, खारेजी, नियमन, विकास, प्रवर्धन र व्यवस्थापनको अधिकार समेत स्थानीय तहलाई दिएको छ । यहि कानून तथा अन्य स्थानीय तहको कार्यविधि कानूनहरूका आधारमा सबै स्थानीय

तहमा सञ्चालन हुने व्यवसायलाई स्थानीय तहमा समेत दर्ता अनिवार्य गरी व्यवसाय दर्ताको प्रमाणपत्र स्थानीय तहले जारी गर्दै पनि आएका छन् । कतिपय स्थानीय तहले स्थानीय कानूनमा कर प्रयोजनका लागि मात्र स्थानीय तहमा दर्ता हुनुपर्ने भनेका छन् भने कतिपय स्थानीय तहले स्थानीय तहभित्र कारोबार गर्नका लागि अनिवार्य रूपमा दर्ता गरेर मात्र कारोबार गर्नुपर्ने व्यवस्था गरेका छन् ।

सार्वजनिक खरिदमा धेरै निकायले स्थानीय तहले जारी गर्ने यो व्यवसाय दर्ताको प्रमाणपत्रलाई व्यवसाय गर्ने इजाजतपत्रको रूपमा मूल्याङ्कन प्रक्रियामा समावेश गर्ने गरेको पाइन्छ । प्रमाणपत्रमा व्यवसाय दर्ता लेखिएपनि वास्तवमा के इजाजतपत्र नभएर स्थानीय तहमा फर्म दर्ताकै प्रमाणपत्र हो । कतिपय स्थानीय तहको कानून जसले कर प्रयोजनका लागि सुचीकरण मात्र हुनुपर्ने भनेका छन् तिनले जारी गरेको प्रमाणपत्र व्यवसाय दर्ता र इजाजत दुवै नभएर सुचीकरणको प्रमाणपत्र हुने देखिन्छ ।

### ● औद्योगिक व्यवसाय ऐन, २०७६

उद्योग दर्ता गर्ने निकाय भन्नाले उद्योग विभाग सम्झनुपर्छ र सो शब्दले प्रदेश सरकारको उद्योग प्रशासन हेर्ने विभाग वा कार्यालयलाई समेत जनाउँछ भनेको छ ।

ऐनको दफा ३ ले उद्योग दर्ता गराउनुपर्ने व्यवस्था गर्दै यस ऐन बमोजिम उद्योगको स्थापना नगराइ उद्योगको स्थापना वा सञ्चालन गर्नु गराउनु हुँदैन भन्ने व्यवस्था गरेको छ । ऐनको दफा ४ मा अनुसूची - १ मा तोकिएका अनुमति लिनुपर्ने उद्योग बाहेक अन्य उद्योगहरूको दर्ता नवीकरण र नियमन लगायत उद्योग प्रशासन सम्बन्धी कार्य सम्बन्धीत प्रदेश सरकारबाट हुनेछ भन्ने व्यवस्था रहेको छ । जसले अनुमती लिनुपर्ने भनी तोकिएका १० प्रकारका उद्योग बाहेक अन्यको दर्ता तथा नवीकरण प्रदेश कानून बमोजिम हुने लचकता दिएको छ । दफा ५ ले उद्योग दर्ता प्रमाणपत्र सम्बन्धी व्यवस्था गरेको छ । ऐनले गरेको उद्योगको परिभाषा बमोजिम सामान्य खरिद विक्री गर्ने व्यापारिक प्रकृतिका बाहेक सबै प्रकारका व्यवसायहरू उद्योगको परिभाषामा पर्ने देखिन्छ । ऐनको अनुसूची- ५ मा तोकेको निर्माण उद्योगको वर्गमा सार्वजनिक खरिद ऐनले वर्गीकरण गरेको

निर्माण कार्य खरिद समेत पर्ने देखिन्छ । त्यस्तै अनुसूची- ८ मा तोकिएका सेवा उद्योगमा खरिद ऐनले वर्गीकरण गरेको परामर्श सेवा र अन्य सेवा खरिदको सबै क्रियाकलाप पर्ने देखिन्छ । यस ऐनलाई आधार मानेर हेर्दा यस्ता व्यवसाय सञ्चालन गर्नेले उद्योगको रूपमा तोकिएको निकायमा दर्ता भएर मात्र व्यवसाय सञ्चालन गर्नुपर्ने हुन्छ । तर सार्वजनिक खरिदमा फर्म दर्ता प्रमाणपत्रको अभ्यासमा उद्योग दर्ताको कागजात माग्ने वा पेस गर्ने गरेको पाइदैन ।

#### ४. फर्म, संस्था वा कम्पनी दर्ताको प्रमाणपत्र सम्बन्धी विद्यमान सङ्घीय कानूनी व्यवस्थाहरू

##### • निजी तथा साझेदारी फर्म दर्ता ऐन, २०७७ (कोशी प्रदेश)

यस ऐनको दफा ५ ले कोशी प्रदेशभित्र फर्म दर्ताको व्यवस्था गरेको छ भने दफा ७ मा दफा ५ बमोजिम फर्मलाई प्रदान गरिएको प्रमाणपत्रमा उल्लिखित उद्देश्य भन्दा फरक प्रकृतिको व्यापार व्यवसाय गर्न वा व्यवसाय सञ्चालन गर्न अनुमति लिनका लागि तोकिएबमोजिमको ढाँचामा तोकेको अधिकारी वा निकाय समक्ष दरखास्त दिनुपर्ने व्यवस्था रहेको छ । यसले प्रष्ट रूपमा फर्म दर्ता प्रमाणपत्रमा उल्लिखित कारोबारका लागि अनुमतिपत्र आवश्यक नपर्ने तथा सो बाहेकका काम, कारोबार गर्न मात्र अनुमतिपत्र आवश्यक पर्ने भन्ने खुलाएको देखिन्छ । फर्म दर्तामा उल्लिखित भन्दा फरक प्रकृतिको व्यवसाय गर्नका लागि प्राप्त दरखास्तमा तोकिए बमोजिमको ढाँचामा ३ वर्षका लागि व्यवसाय सुरु गर्ने अवधि समेत तोकिएको शर्त सहितको अनुमतिको प्रमाणपत्र दिनुपर्नेछ भन्ने व्यवस्था गरेको छ । यसले नमुना बोलपत्र सम्बन्धी कागजातमा दुई अलग भनेर मागिने अनिवार्य कागजातहरू फर्म दर्ता र व्यवसाय दर्ता सामान्य अवस्थामा एउटै प्रमाणपत्र समेत हुन सक्ने समेत देखिन्छ ।

साथै यस ऐनको दफा १२ ले फर्म अभिलेखीकरण सम्बन्धी व्यवस्था गर्दै यो ऐन प्रारम्भ हुनु अगावै सङ्घीय कानून बमोजिम दर्ता भई सञ्चालनमा रहेका फर्मको अभिलेखीकरणका लागि प्रकाशित सार्वजनिक सूचना बमोजिम सोही आर्थिक वर्षको असार मसान्त भित्र मन्त्रालयले तोकेको अधिकारी वा निकायमा फर्मको अभिलेखीकरण गराउन तोकिएको ढाँचामा दस्तुर सहित दरखास्त दिनुपर्ने र सो निकायले अभिलेखीकरणको निस्सा दरखास्तवालालाई दिनुपर्ने भन्ने व्यवस्था गरेको छ । साथै

सोही दफामा अभिलेखीकरण नभएको फर्मबाट कुनै व्यवसाय गर्न पाइने छैन भन्ने व्यवस्था गर्नुले विगतमा सङ्घीय सरकार अन्तरगत दर्ता भएका निजी तथा साझेदारी फर्महरूले कारोबार गर्नका लागि कोशी प्रदेशमा अभिलेखीकरणको निस्सा अनिवार्य भएको छ ।

- **साझेदारी ऐन, २०७६ (साविक प्रदेश नं. ५ हालको लुम्बिनी प्रदेश)**

यस ऐनले सम्बन्धीत प्रदेशभित्र साझेदारी फर्म दर्ता सम्बन्धी कानूनी व्यवस्था गर्दै यो ऐन कायम हुनुअघि प्रचलित कानून बमोजिम दर्ता भएका साझेदारी फर्म यस ऐन बमोजिम एक वर्षभित्रैमा सम्बन्धित निकायमा अभिलेखीकरण हुनुपर्ने समेत व्यवस्था गरेको छ । उद्योग सम्बन्धी फर्म दर्ता र बाणिज्य सम्बन्धी फर्म दर्ताको अलग-अलग दर्ता प्रमाणपत्रको नमुना यस ऐन बमोजिम जारी भएको नियमावलीको अनुसूचीमा संलग्न उल्लेख छ ।

यस ऐनले पनि सङ्घीय निकायमा दर्ता रहेका फर्मको अभिलेखीकरण गराउनुपर्ने व्यवस्था गरेपनि अभिलेखीकरणको प्रमाणपत्र नै जारी गर्ने व्यवस्था नगरी सहज बनाएको देखिन्छ । अनुमतिपत्र वा इजाजतपत्र सम्बन्धमा समेत कम्पनी ऐन, २०६३ बमोजिमकै व्यवस्था गर्दै फर्म दर्ता भएकै आधारमा व्यवसाय सञ्चालन गर्न इजाजतपत्र प्राप्त गरेको मानिने छन् भन्ने व्यवस्था गरेको छ । कोशी प्रदेशको व्यवस्था भन्दा फरक यसमा साझेदारी ऐन, २०७६ बमोजिम दर्ता हुने फर्महरूको फर्म दर्ता र व्यवसाय दर्ता दुई अलग कागजात अनिवार्य भएको देखिन्छ ।

- **प्राइभेट फर्म दर्ता ऐन, २०७६ (लुम्बिनी प्रदेश)**

यस ऐनको दफा ३ ले यो ऐन प्रारम्भ भएपछि यो ऐन बमोजिम दर्ता नगराई कसैले पनि प्राइभेट फर्म खोल्न नहुने र प्रचलित कानून बमोजिम दर्ता भएको फर्मले एक वर्षभित्र सम्बन्धीत निकायमा दर्ता अध्यावधिक गराउनुपर्ने व्यवस्था गरेको छ ।

ऐनको दफा ६ ले स्थानीय तहमा प्राइभेट फर्मको दर्ता, नवीकरण र तत्सम्बन्धी अन्य व्यवस्था तोकिएबमोजिम हुने व्यवस्था गर्दै यस ऐनबमोजिम हुने दर्ता तथा नवीकरण स्थानीय तहमा समेत हुन सक्ने गरेको छ ।

दफा ७ मा अनुमति वा इजाजतपत्र लिनुपर्ने व्यवस्था गर्दै कम्पनी ऐनको जस्तै फर्म दर्ताकै आधारमा व्यवसाय गर्न इजाजत प्राप्त गरेको मानिने छैन भन्ने व्यवस्था गरेको छ ।

- **प्रादेशिक व्यापार तथा व्यवसाय सम्बन्धी ऐन, २०७६ (बागमती प्रदेश)**

यस ऐनको दफा ३ ले प्राइभेट फर्म खोल्न दर्ता गराउन पर्ने व्यवस्था गर्दै व्यापार व्यवसाय सञ्चालन गर्न चाहने व्यक्ति वा व्यक्तिहरूले यस ऐन बमोजिम दर्ता गर्ने निकायमा प्राइभेट फर्म दर्ता गराउन पर्नेछ । दर्ता नगराई कसैले प्राइभेट फर्म खोल्न पाइने छैन भन्ने व्यवस्था गरेको छ । यो ऐन लागू हुनुभन्दा अघि प्रदेशभित्र प्रचलित कानून बमोजिम दर्ता भई सञ्चालनमा रहेका प्राइभेट फर्म यसै ऐनबमोजिम दर्ता भएको मानिने तर एक वर्षभित्र सम्बन्धित निकायमा अभिलेखीकरण भने हुनुपर्ने व्यवस्था गरेको छ ।

कोशी प्रदेशको जस्तै यो ऐनको दफा ३ को उपदफा (३) ले अन्य प्रदेशमा दर्ता भएका कुनै प्राइभेट फर्मले यस प्रदेशमा कारोबार गर्नका लागि दर्ता गर्ने निकायमा अभिलेखीकरण गर्नुपर्नेछ भन्ने व्यवस्था गरेको छ । यो व्यवस्थालाई थप प्रष्ट पाउँदा सोही ऐनको दफा ७ ले यो ऐन प्रारम्भ भएपछि दफा ३ बमोजिम दर्ता र अभिलेखीकरण नभएका प्राइभेट फर्मबाट गरीएको कुनैपनि लेनदेन वा अरू कारोबारलाई मान्यता दिइने छैन भन्ने प्रष्ट पाउँदा कानूनी रूपमा फर्मको कारोबारका लागि प्रादेशिक निकायमा अभिलेखीकरण समेत अनिवार्य कागजातको रूपमा रहने भनेको छ ।

- **प्रदेश व्यापार व्यवसाय दर्ता तथा सञ्चालन ऐन, २०७८ (कर्णाली प्रदेश)**

यस ऐनले निजी फर्म दर्ता तथा सञ्चालन सम्बन्धी व्यवस्था गर्दै ऐनको दफा ३ ले दर्ता नगरी निजी फर्म सञ्चालन गर्न नहुने र यो ऐन जारी हुनुअघि प्रचलित कानून बमोजिम दर्ता भएको फर्मले एक वर्षभित्र सम्बन्धित निकायमा दर्ता अध्यावधिक गर्नुपर्ने व्यवस्था गरेको छ । सम्बन्धित निकायको परिभाषा गर्दै व्यवसायको दर्ता नियमन र सहजीकरण गर्नका लागि पुँजीको सीमा अनुसार तोकिएबमोजिमको निकाय सम्झनुपर्छ भनेको छ । यसरी ऐनले प्रदेशभित्र दर्ता अनिवार्य गरेपनि कहाँ दर्ता हुने भन्ने विषयमा नियमालीमा व्याख्या गर्ने लचकता छाडेको छ जसले दर्ता गर्ने निकाय पुँजीको सीमा अनुसार प्रदेश सरकार अन्तरगतको कुनै कार्यालय हुन सक्ने देखिन्छ ।

यस ऐनको दफा ८ ले अनुमति वा इजाजत लिनुपर्ने सम्बन्धी व्यवस्था गर्दै यस ऐनबमोजिम दर्ता भएको कुनै निजी फर्मले कुनै व्यवसाय सञ्चालन गर्न प्रचलित कानून बमोजिम अनुमतिपत्र वा इजाजतपत्र लिनुपर्ने रहेछ भने त्यस्तो अनुमतिपत्र वा इजाजतपत्र नलिइ जिम्मेवार व्यक्तिले त्यस्तो निजी फर्मको नामबाट व्यापार, व्यवसाय सञ्चालन शुरू गर्न सक्ने छैन र यस ऐनबमोजिम निजी फर्म दर्ता भएकै आधारमा त्यस्तो व्यवसाय सञ्चालन गर्न अनुमति वा इजाजत प्राप्त गरेको मानिने छैन भन्ने व्यवस्था गर्दै यसले पनि फर्म दर्ता बाहेक व्यवसाय दर्ता अन्य कानून बमोजिम अनिवार्य रहेको देखाउछ ।

## ५. व्यवसाय दर्ताको इजाजतपत्र सम्बन्धी विद्यमान कानूनी व्यवस्था

### • निर्माण व्यवसायी ऐन, २०५५

यस ऐनको दफा ३ ले इजाजतपत्र प्राप्त नगरी कसैले पनि सार्वजनिक निर्माण कार्य गर्न, गराउन नहुने भन्ने व्यवस्था गरेको छ भने दफा ४ ले निर्माण कार्यको इजाजतपत्र सम्बन्धी व्यवस्था गरेको छ । यस ऐन बमोजिम जारी भएको इजाजतपत्र एक आर्थिक वर्षसम्म मान्य हुने र त्यस्तो अवधि समाप्त भएको प्रत्येक निर्माण व्यवसायीले इजाजतपत्रको अवधि समाप्त भएको मितिले ३ महिनाभित्र तोकिए बमोजिमको दस्तुर तिरेर तोकिएको अधिकारीबाट तोकिएबमोजिम नवीकरण गराउनुपर्ने व्यवस्था गरेको छ । साथै सोही दफामा म्याद नाघेको छ महिना भित्र पनि तोकिए बमोजिमको दस्तुर तिरि नवीकरण गराउन सकिने व्यवस्था गर्दै इजाजतपत्र नविकरणको व्यवस्थामा लचकता दिएको देखिन्छ ।

यस ऐनको दफा ११ ले निर्माण व्यावसायीबाट गराउन सकिने सार्वजनिक निर्माण कार्यको न्युनतम र अधिकतम रकम समेत तोकेको छ जसअनुसार निम्न बमोजिम रकमको सीमाको काम विभिन्न वर्गका निर्माण व्यावसायीबाट गराउनुपर्ने भनिएको छ ।

(क) दुई करोड रुपैयाभन्दा बढी जतिसुकै रकमको क वर्गको निर्माण व्यावसायीबाट

(ख) साठी लाख रुपैयादेखि ३ करोड रुपैयासम्मको रकमको ख वर्गको निर्माण व्यावसायीबाट

(ग) विस लाख रुपैयादेखी एक करोड रुपैयासम्मको ग वर्गको निर्माण व्यावसायीबाट

(घ) तीस लाख रुपैयासम्मको रकमको घ वर्गको निर्माण व्यावसायीबाट

### • औषधी ऐन, २०३५

यस ऐनको दफा ७ ले औषधी उद्योगको स्थापना गर्न औषधी व्यवस्था विभागको सिफारिसपत्र लिनुपर्ने, दफा ८ ले उद्योग स्थापना पछि उत्पादन गर्न उत्पादन अनुज्ञापत्र (प्रोडक्ट लाइसेन्स) लिनुपर्ने, दफा ८ (क) ले उत्पादन गरेको औषधी विक्री वितरण गर्न विभागमा औषधी दर्ता गरी औषधी दर्ता प्रमाणपत्र लिनुपर्ने, दफा ९ ले औषधीको निकासी पैठारी गर्न सिफारिसपत्र लिनुपर्ने र दफा १० ले औषधीको विक्री वितरण गर्ने व्यक्तिले आफ्नो नाम र पसल वा फर्म विभागमा तोकिएबमोजिम दर्ता गराइ तोकिएको दस्तुर तिरी प्रमाणपत्र लिनुपर्नेछ भन्ने व्यवस्था गरेको छ । यस ऐनको व्यवस्था बमोजिम कारोबारको प्रकृतिले औषधी व्यवस्था विभागमा हुने दर्ता व्यवसाय दर्ताको इजाजतपत्र हो भन्ने लाग्छ तर औषधी विक्री वितरणका लागि औषधी पसल सञ्चालनका लागि कानून बमोजिम औषधी व्यवस्था विभागमा दर्ता हुनका लागि अन्य कुनै निकायमा पुर्ववत रूपमा दर्ता आवश्यक नपर्ने र विभागले जारी गर्ने प्रमाणपत्र समेत ऐनको व्यवस्थाको भाषा बमोजिम फर्म दर्ता नै भएकोले यो व्यवसाय इजाजत नभएर फर्म दर्ताकै रूपमा रहेको छ । यसमा दर्ताको पुर्वशर्तको रूपमा नेपाल फार्मेसी परिषद ऐन, २०५७ को दफा ११ मा नाम दर्ता नगरी फार्मेसी व्यवसाय गर्न नहुने व्यवस्था भए बमोजिम फार्मेसी परिषदमा दर्ता भएको व्यक्तिको प्रमाणपत्र इजाजतपत्रको रूपमा रहेको मान्न सकिन्छ । नेपाल फार्मेसी परिषद ऐनले परिषदमा नाम दर्ता गर्ने, दर्ता प्रमाणपत्र दिने तथा सोको नवीकरण र खारेजी सम्बन्धी व्यवस्था गरेको छ ।

### • बैङ्क तथा वित्तीय संस्था सम्बन्धी ऐन, २०७३

यो ऐनले इजाजतपत्रको परिभाषा गर्दै "इजाजतपत्र" भन्नाले राष्ट्र बैङ्कले यस ऐनबमोजिम बैङ्क तथा वित्तीय कारोबार गर्न बैकिङ्ग वा वित्तीय संस्थानको नाममा जारी गरेको इजाजतपत्र सम्झनु पर्छ भनेको छ । यस ऐनको दफा ३ ले बैङ्क वा वित्तीय संस्थाको संस्थापना गर्न पब्लिक लिमिटेड कम्पनीको रूपमा दर्ता हुनुपर्ने, संस्थापना गर्नुपुर्व नेपाल राष्ट्र बैङ्कको पुर्व स्वीकृति लिनुपर्ने लगायतको

व्यवस्था गरेको छ । यस ऐनको परिच्छेद - ५ अन्तरगत दफा ३३ र ३४ ले बैकिङ् तथा वित्तीय कारोबार गर्न इजाजतपत्र दिने सम्बन्धी व्यवस्था गरेको छ ।

### ● वस्तुको प्रत्यक्ष बिक्री सम्बन्धमा व्यवस्थापन तथा नियमन गर्न बनेको ऐन, २०७४

यस ऐनले कम्पनी भन्नाले प्रचलित कानून बमोजिम संस्थापना भएको कम्पनी सम्झनु पर्छ र सो शब्दले त्यस्तो कम्पनीको संस्थापक तथा सञ्चालक समेतलाई जनाउँछ भनी परिभाषित गरेको छ । इजाजतपत्र भन्नाले दफा ५ बमोजिम प्रदान गरीएको इजाजतपत्र सम्झनुपर्छ भनी परिभाषित गरेको छ । ऐनको दफा ३ ले इजाजतपत्र प्राप्त नगरी वस्तुको प्रत्यक्ष बिक्री वा वितरण सम्बन्धी कार्य गर्न नहुने व्यवस्था गरेको छ । वस्तुको प्रत्यक्ष बिक्री व्यवस्थापन तथा नियमन गर्ने नियमावली, २०७६ को अनुसूची - १ मा तोकिएका प्रत्यक्ष बिक्री वा वितरणका लागि इजाजतपत्र प्रदान नगरीने वस्तु बाहेकमा तोकिएको प्रक्रिया पूरा गरी बाणिज्य विभागले इजाजतपत्र जारी गर्न सक्ने व्यवस्था यस ऐनमा रहेको छ ।

"वस्तुको प्रत्यक्ष बिक्री वा वितरण" भन्नाले इजाजतपत्रवालाले कुनै उत्पादक कम्पनी वा वितरक कम्पनीबाट उपलब्ध वस्तु प्रत्यक्ष रूपमा उपभोक्तालाई बिक्री वा वितरण गर्ने कार्यलाई सम्झनुपर्छ भनेको छ । सार्वजनिक खरिदमा उत्पादकले आफैं बोलपत्र पेश गर्दा वा सार्वजनिक खरिद नियमावलीमा व्यवस्था भएबमोजिम उत्पादकबाट सोझै खरिद गर्दा उत्पादकको लागि समेत यो ऐन बमोजिमको इजाजतपत्र आवश्यक पर्ने देखिन्छ ।

### ● खाद्य स्वच्छता तथा गुणस्तर ऐन, २०८१

यस ऐनले खाद्य व्यवसायलाई परिभाषित गर्दै उत्पादन, प्रशोधन, तयारी, प्याकेजिङ, सञ्चय, बिक्री वितरण, निकासी वा पैठारी वा सडकमा घुमीफिरी वा अनलाइन मार्फत बिक्री वितरण गर्ने कार्यलाई समेत जनाउँछ भनेको छ । दफा ९ ले अनुमतिपत्र लिनुपर्ने व्यवस्था गर्दै कसैले खाद्य व्यवसाय सञ्चालन गर्नुअघि यस ऐनबमोजिम अनुमतिपत्र लिनुपर्नेछ तर तोकिए बमोजिमको खाद्य व्यवसाय सञ्चालन गर्न अनुमतिपत्र अनिवार्य हुने छैन भन्ने समेत व्यवस्था गरेको छ । तर यसमा नियमावली बनिनसकेकोले कस्ता व्यवसाय सञ्चालन गर्न अनुमतिपत्र अनिवार्य नहुने भन्ने प्रष्ट भइनसकेको



अवस्था छ । अनुमतिपत्र लिनका लागि प्रचलित कानून बमोजिम स्थानीय तहमा दर्ता गर्नुपर्ने खाद्य व्यवसाय गर्नका लागि सम्बन्धीत स्थानीय तहको प्रमुख वा निजले तोकेको अधिकृत समक्ष र खाद्य पदार्थको निकासी वा पैठारी गर्नका लागि महानिर्देशक वा कार्यालय प्रमुख समक्ष निवेदन दिनुपर्ने व्यवस्था रहेको छ ।

यस ऐनको परिच्छेद -३ मा खाद्य व्यवसाय दर्ताको सिफारिस तथा अनुमतिपत्र सम्बन्धी व्यवस्था रहेको छ । दफा ८ मा सिफारिस लिनुपर्ने व्यवस्था रही खाद्य पदार्थको उत्पादन, प्रशोधन, प्याकेजिङ र सञ्चय गर्ने तोकिए बमोजिमका उद्योग स्थापना गर्न चाहने व्यक्तिले त्यस्तो उद्योग दर्ता गर्नुअघि खाद्य प्रविधि तथा गुण नियन्त्रण विभाग वा विभागले तोकेको कार्यालयबाट र प्रदेश कानून बमोजिम प्रदेशमा दर्ता भएको उद्योगले प्रदेश सरकारले तोकेको कार्यालय वा निकायबाट सिफारिस लिनुपर्ने व्यवस्था छ ।

रासन खरिद गर्ने सार्वजनिक निकाय तथा कतिपय पौष्टिक आहारा खरिद गर्ने सार्वजनिक निकायहरूले त्यस्ता सामग्री खरिदका लागि बोलपत्र आह्वान गर्दा यो ऐनको व्यवस्था समेतमा ध्यान दिनुपर्ने देखिन्छ । आयात गरेर खाद्य पदार्थ आपूर्ति गर्ने व्यवसायीले खाद्यान्नको बोलपत्र पेस गर्दा नमुना बोलपत्र सम्बन्धी कागजातमा भएको व्यवसाय दर्ता इजाजतपत्र पेस गर्दा बाणिज्य विभागले जारी गरेको आयातको इजाजतपत्र मात्र पर्याप्त नहुने र यस ऐन बमोजिमको खाद्य व्यवसाय सञ्चालनको अनुमतिपत्र समेत अनिवार्य कागजात बन्न सक्ने देखिन्छ ।

## ● फोहोरमैला व्यवस्थापन ऐन, २०६८

यस ऐनको दफा १३ बमोजिम स्थानीय तहको अनुमती नलिइ कसैले पनि फोहोरमैला व्यवस्थापन सम्बन्धी काम गर्न, गराउन सक्ने छैन । फोहोरमैला व्यवस्थापन गर्न चाहने स्वदेशी वा विदेशी कम्पनी, संस्था वा निकायले तोकिएका विवरण सहित स्थानीय तहमा निवेदन दिनुपर्ने र त्यसरी पर्न आएका निवेदन उपर स्थानीय तहले आवश्यक जाँचबुझ गरी अनुमतिपत्र दिन सक्ने व्यवस्था गरेको छ । फोहोरमैला व्यवस्थापनका लागि स्थानीय तहले आह्वान गर्ने बोलपत्रमा व्यवसाय इजाजतको रूपमा यस ऐनबमोजिम जारी भएको अनुमतिपत्र हुन सक्ने देखिन्छ ।

## ● रेडियोधर्मी पदार्थ उपयोग तथा नियमन ऐन २०७७

यस ऐनले इजाजतपत्र भन्नाले कुनै अभ्यास, क्रियाकलाप वा संयन्त्र सम्बन्धमा निश्चित कार्य गर्न दफा ११ बमोजिम जारी इजाजतपत्र सम्झनुपर्छ भनी परिभाषित गरेको छ ।

यस ऐनको दफा ९ ले नियमनकारी निकायबाट इजाजतपत्र प्राप्त नगरी रेडियोधर्मी स्रोत र सोसँग सम्बन्धित अभ्यास क्रियाकलाप वा संयन्त्र सम्बन्धी कुनैपनि कार्य गर्न पाउने छैन भन्ने व्यवस्था गरेको छ । दफा १५ ले इजाजतपत्रको अवधि तथा नवीकरणको व्यवस्था तोकिएबमोजिम हुने भनेको छ । सो बमोजिम रेडियोधर्मी पदार्थ उपयोग तथा नियमन नियमावली, २०७८ को नियम ९ ले दुई प्रकारको इजाजतपत्रको व्यवस्था गर्दै इजाजतको अवधि क्रमश २ वर्ष र ५ वर्ष तोकेको छ भने इजाजतपत्रको नवीकरण इजाजतपत्रको बहाल अवधि समाप्त हुनु अगावै गरीदिनुपर्ने व्यवस्था गरेको छ । स्वास्थ्य, सरसफाइ, हातहतियार लगायतसँग सम्बन्धित खरिदहरू रेडियोधर्मी पदार्थको उपयोगसँग सम्बन्धित हुन सक्छन । त्यस्ता मालसामानको आपूर्तिकर्ताले यस ऐनको दफा ४ बमोजिम स्थापना भएको नियमनकारी निकायबाट इजाजतपत्र लिएको हुनुपर्ने देखिन्छ ।

## ● निकासी पैठारी नियन्त्रण ऐन, २०१३

यस ऐन बमोजिम जारी भएको निकासी पैठारी नियमहरू, २०३४ ले निकासी पैठारी इजाजतपत्र जारी गर्ने अधिकार बाणिज्य विभागको महानिर्देशकलाई हुने व्यवस्था गरेको छ । अन्तराष्ट्रियस्तरको बोलपत्रमा मालसामान (To be imported) आयात गर्न बाँकी भनेर बोलपत्र पेश गर्ने बोलपत्रदाताले यस ऐन बमोजिम निकासी पैठारी इजाजतपत्र समेत लिएको हुनुपर्ने देखिन्छ ।

## ● नेपाल कानून व्यावसायी परिषद ऐन २०५०

यस ऐनको दफा ४ ले कानून व्यवसायीमा दर्ता गरीने व्यवस्था गर्दै तोकिएको योग्यता पुगी कानून व्यवसायी परीक्षा उत्तीर्ण गरेको नेपाली नागरीक अधिवक्ताको रूपमा दर्ता गर्ने व्यवस्था गरेको छ ।

## ● व्यक्तिगत विषय विज्ञतासँग सम्बन्धित अन्य ऐनहरू

- नेपाल कानून व्यवसायी ऐन, २०२०
- नेपाल चार्टर्ड एकाउन्टेन्ट ऐन, २०५३
- नेपाल मेडिकल काउन्सिल ऐन, २०२०
- नेपाल नर्सिङ परिषद् ऐन, २०५२
- नेपाल इन्जिनियरिङ परिषद् ऐन, २०५५

माथि उल्लिखित विषय विज्ञता सम्बन्धी ऐनहरूले त्यससँग सम्बन्धित व्यवसायिक अभ्यास गर्न अनुमति प्रदान गरेका हुन्छन् ।

## ६. फर्म दर्ता सम्बन्धी व्यवस्थाका प्रभावहरू

- कानूनी रूपमा अस्तित्व पाउन व्यवसाय दर्ता आवश्यक हुन्छ । दर्ता भएपछि मात्र सरकारले त्यस व्यवसायलाई औपचारिक रूपमा मान्यता दिन्छ । यसले अर्थतन्त्रको औपचारिकता हुन्छ । कारोबारहरू पारदर्शी र लेखाङ्कित हुने हुँदा कुल ग्राहस्थ उत्पादनमा बढोत्तरी हुनुका साथै करको दायरा समेत विस्तार हुन्छ । कर तिर्ने दायित्व र परिपालना बढ्छ ।
- केही विशेष क्षेत्रका व्यवसाय (जस्तै: बैंकिङ, वित्त, स्वास्थ्य, शिक्षा, निर्माण, होटल, खाद्यान्न उद्योग आदि) मा इजाजतपत्र अनिवार्य हुन सक्छ । यसले ति क्षेत्रको विशेष नियमन तथा राज्यको निकायको क्षमता आँकलनमा सहयोग गर्छ । इजाजतपत्रले व्यवसाय सञ्चालन गर्दा पालना गर्नुपर्ने मापदण्डहरू सुनिश्चित गर्छ । यो उपभोक्ता अधिकार, सार्वजनिक स्वास्थ्य, वातावरण संरक्षण आदि कुराका लागि आवश्यक हुन्छ ।
- यस्ता लाभका बाबजुद दर्ता र इजाजतको प्रक्रियाले प्रशासनिक झन्झट को बढाउँछन् । अझ तीन तहका सरकारको आ आफ्नै कानून बमोजिम बहुल निकायमा एउटै प्रकृतिको कामका लागि चाहार्नुपर्ने व्यवस्थाले समग्र व्यवसायको वातावरण खस्कने अवस्था सृजना हुन्छ । दर्ता र इजाजतपत्र लिने प्रक्रिया झन्झटिलो र ढिलो हुन सक्छ ।
- अनुपालनको दायित्व र दबाव बढ्छ । व्यवसाय दर्ता पछि सरकारका विभिन्न कानून, नियम, मापदण्डहरू पूरा गर्नु पर्छ । जस्तै: कर फाइलिङ्ग, वार्षिक प्रतिवेदन, लेबर कानून, वातावरणीय मापदण्ड तोकिए बमोजिम नवीकरण आदि । यी सबै पालना

गर्न समय, स्रोत र व्यवस्थापन चाहिन्छ । जसले खर्च समेत बढाउछ । यसबाट उम्कन व्यवसायीहरूबाट दर्ता नगरी व्यवसाय सञ्चालन गर्ने जोखिम रहन सक्छ ।

### ७. सार्वजनिक खरिदमा दर्ता तथा इजाजत पत्रको प्रभाव विश्लेषण तथा अबको बाटो

दर्ता तथा इजाजतपत्रका लाभ धेरै छन् । यसको प्रभावकारी कार्यान्वयन असल व्यवसायीक वातावरण प्रवर्धन र व्यवसायीक सुशासनका लागि जरूरी पनि छ । तर सार्वजनिक खरिदमा बोलपत्र पेस गर्दा नै अनिवार्य पेस गर्नुपर्ने थप कागजातको रूपमा पछि माग्न नपाइने गरी यस्ता ऐतिहासिक कागजातहरू तोकिदा खरिद झन्झटिलो र कागजी प्रक्रियाले थप खर्चिलो समेत बनाएको देखिन्छ । यसलाई हटाउन सरकारका कानूनहरूमा व्यवसाय दर्ता र इजाजत/ अनुमति पत्र प्रदान गर्न एक रूपत ल्याई सरल बनाइनु पर्छ । अहिलेको सङ्घात्मक व्यवस्थामा त यो झनै जरूरी भइसकेको छ । कानूनमा एक रूपता ल्याइसकेपछि सार्वजनिक खरिद कानूनमा समेतमा सो व्यवस्था समावेश गरी सार्वजनिक निकायबाट हुने खरिदमा बोलपत्र कागजातमा स्पष्ट खुलाउन सकिने हुनजान्छ ।

### अन्त्यमा

सार्वजनिक खरिद अनुगमन कार्यालयबाट जारी हुने नमुना बोलपत्र कागजातमा यसमा राखिने प्रत्येक व्यवस्थाहरू पढ्दा सार्वजनिक निकाय तथा बोलपत्रदाताहरूले समेत भन्न खोजिएको विषय र पेस गर्नुपर्ने कागजात स्पष्ट हुनुपर्छ । सार्वजनिक खरिद प्रक्रियालाई मार्गदर्शन गर्ने सहजीकरण गर्ने र खरिद सुशासन प्रवर्द्धन गर्ने हुनुपर्छ । यस्ता पक्षमा निरन्तर सुधारमा सार्वजनिक खरिद अनुगमन कार्यालयले सरोकारवालाको खुला सुझावहरू लिएर कानून बमोजिम सुधार गर्दै पनि आएको छ । आवधिक रूपमा नमुना कागजातहरू निरन्तर अध्यावधिक तथा सुधार गरिरहनुपर्छ ।

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- साझेदारी ऐन, २०२० लगायत अन्य सङ्घीय कानूनहरू Nepal Law Commission बाट डाउनलोड गरीएको ।

# Strengthening Public Procurement: A Critical Review of Nepal's 2025 SBD Revisions



Er. Subhash Kumar Khadka Chhetri\*

## Summary

*The June 2025 revision of Nepal's Standard Bidding Document (SBD) for National Competitive Bidding (NCB) – Single Stage Two Envelope (1S2E) introduces critical updates to enhance transparency, efficiency, and compliance in public procurement. Key changes include stricter bidder eligibility criteria—such as disqualifying loan defaulters—and clearer rules on running contracts, bid validity, and performance security. The revision aligns with the Public Procurement Act (PPA), 2063, Public Procurement Regulations (PPR), 2064, and international best practices like the ADB's procurement guidelines. Notable improvements include standardized evaluation of contractor experience, flexible joint venture (JV) qualifications, and stronger accountability measures for both bidders and procuring entities (PEs). The updated SBD also clarifies contract amendments, advance payment guarantees, and blacklisting provisions, ensuring better risk management and legal compliance. By harmonizing national laws with global standards, the 2025 SBD aims to reduce disputes, encourage fair competition, and improve infrastructure project delivery in Nepal.*

## 1. Introduction

Nepal's Public Procurement Monitoring Office (PPMO) has recently revised its **Standard Bidding Document (SBD)** for the Procurement of Works using the **National Competitive Bidding (NCB) – Single Stage Two Envelope (1S2E)** procedure. The **June 2025** version supersedes the previous **September 2022** edition and introduces several important legal, procedural, and technical updates.

This revision aligns the SBD with:

- Public Procurement Act, 2063 (PPA)
- Public Procurement Regulations, 2064 (PPR)
- PPMO's SBD for Procurement of Works using NCB for EPC projects (EPC SBD)
- Best practices from international guidelines such as the Asian Development Bank (ADB) User's Guide for Procurement of Works – Small Contracts (ADB SBD).

This article analyzes the significant changes, their rationale, and implications for stakeholders in Nepal's public procurement landscape.

## 2. Key Revisions in the 2025 SBD: Rationale and Implications

### 2.1 Instruction to Bidders (ITB) & Bid Data Sheet (BDS)

#### ITB 1:

Allows provision for multiple contracts and introduces modern communication tools like e-GP and email.

\* Engineer, Public Procurement Monitoring Office

► **Impact:** Increases transparency and efficiency; encourages broader participation and accountability.  
**ITB 3.4:**

Bidders who have declared blacklisted by a competent authority under the prevailing law for failure to repay a loan disbursed by a bank or financial institution defaulted on loans are now ineligible, added provision as per PPA Clause 63 (3).

► **Impact:** Promotes financial discipline and ensures responsible contractors are selected.

**ITB 4.9 & 4.10:**

Clarifies limits on the number of running contracts a bidder can hold, and specifies that only contracts awarded through open competitive bidding (NCB/ICB) are counted as running contracts, in line with PPR Rule 65 (4d1).

► **Impact:** Prevents over commitment of contractors; improves project delivery outcomes.

**BDS (related clauses):**

The type of contract's that will not be counted is added as per provision of PPR Rule 65 (4d2) and some minor correction done to previous provision in Section III, EQC, Clause 2.1.6.

► **Impact:** Ensures uniform application of contract count rules across PEs.

**ITB 18:**

Changes the Bid Validity Period (BVP) to be calculated from the bid submission deadline date itself (not the next day), in line with PPA Clause 20 (2) and ADB SBD ITB 18.1. Also allows PPMO to extend submission deadlines if any technical issues arise while handling the e-GP system, while keeping the original BVP still be counted from original bid submission deadline, as per the PPMO's circular dated 2079.07.21.

► **Impact:** Reduces ambiguity and aligns deadlines with practical procurement processes.

**ITB 19:**

Updates the timeline for release of bid securities within 3 days after the successful bidder has signed contract agreement, revision done as PPR Rule 53(8).

Also introduces bid security forfeiture if a successful bidder fails to furnish performance security under ITB 35.5 (ITB 35.5 allows PE to request an additional 8% performance security for unbalanced/front loaded bids).

► **Impact:** Discourages careless bidding and enforces bidder responsibility.

**BDS (related clause):**

Adjusts the method for calculating bid security (estimated cost without VAT/contingency, but including provisional sum).

► **Impact:** Enhances consistency and clarity for PEs and bidders alike.

**ITB 37 (Clauses 37.2 & 37.3):**

The provision in PPA Clause 26 (3) & (4) added with the PE must notify all bidders of the rejection

or cancellation of the bidding process with reasons. If any bidder requests further details within 30 days, the PE must provide the specific grounds for the decision. Which will add responsibility and accountability measures for PEs when rejecting all bids or annulling the bidding process.

► **Impact:** Protects bidders from arbitrary decisions and increases procurement transparency.

#### **ITB 40:**

Revises performance security calculation method, now based on bid price and cost estimate excluding VAT and contingency, but including provisional sum.

► **Impact:** Aligns practices between bidder and PE; promotes fairness and uniformity.

#### **ITB 42:**

Updates the term Review Committee to Public Procurement Review Committee (PPRC) as per PPA Clause 48 for terminological clarity and a new clause (ITB 42.11) added which states that if a bidder's appeal is rejected by the PPRC, its security deposit shall be forfeited, in accordance with PPA Clause 50 (7) and EPC SBD.

► **Impact:** Clarifies procedural consequences for failed appeals and reinforces bidder accountability.

## **2.2 Section III: Evaluation and Qualification Criteria (EQC)**

### **Clause 2.1.6 – Bidder's Running Contracts**

Corrected to align with revisions done in ITB 4.9 & 4.10.

### **Clause 2.1.7 – Other Eligibility**

Revised as provision of PPR Rule 40 (2).

### **Clause 2.4.2(a) – Contracts of Similar Size and Nature**

Incorporation of Legal Requirements (PPR Amendments), Rule 26, (1), (c) (14th Amendment):

- Threshold increased from NPR 50 million to 100 million.
- For contracts:
  - ≤ 100 million: Bidder must have completed works of at least 40% of the Employer's Estimate.
  - > 100 million: Requirement remains 60%.
  - Previously, ≤ 50 million, requirement was of at least 40% and > 50 million requirement was of at least 60%.

PPR Rule 26 (2a) (previously in regulations but not reflected in earlier SBDs):

For Joint Ventures (JVs) on estimates > NPR 100 million:

- Experience may be achieved either through:
  - One partner's single contract meeting the threshold, or
  - Two contracts from two JV partners, with combined value meeting the threshold.

Employer now has to mention the similarity based on the physical size, complexity, methods, technology with the proposed work in this clause itself.



#### Clarification on “Substantially Completed” Contracts:

- A contract is considered substantially completed only if a Taking-Over Certificate has been issued.
- This standard applies to:
  - Similar size and nature experience
  - Key activities construction experience

#### ► **Impact:**

- Legal Alignment: Now reflects Public Procurement Regulation (PPR) requirements in the SBD.
- Enhanced Clarity and Fairness: Reduces ambiguity in assessing bidder experience. Ensures all bidders are evaluated based on standardized documentation (i.e., Taking-Over Certificate).
- Increased Competition (Especially for Mid-Scale Works):

Lowering the experience threshold from 60% to 40% for contracts ≤ NPR 100 million may:

  - Encourage more local firms to participate.
  - Increase competition and potentially reduce bid prices.
- Improved JV Flexibility: JVs now have a practical pathway to qualify through combined experience, which was previously not present.

#### **Clause 2.4.2(a) – Construction Experience in Key Activities**

Specifies that experience in key activities should be expressed in **annual production rates**, provision revised as per **PPR Rule 26 (1) (c)**.

For projects with a **construction period of less than one year**, the annual production rate must be calculated taking construction period as one year.

#### ► **Impact:**

- Enhances Clarity in Technical Evaluation: Allows for a standardized and time-bound measure of contractor capacity, improving fairness and comparability.
- Establishes Uniform Practice Among Procuring Entities (PEs):

Previously, many PEs inconsistently:

- Required 80% of total quantities instead of production rates.
- Measured production in monthly terms, leading to confusion and over estimation of production rates.

The revision eliminates such variability, promoting nationwide consistency in bid evaluations.

- More Accurate Reflection of Contractor Capability: Using annual production rates helps assess the actual yearly execution capacity of bidders, rather than just the volume of work completed.

## 2.3 Section IV, VI, and X: Bidding Forms, Requirements, and Contract Forms

These sections were updated to:

- Reflect revision introduced in other Section of the SBD.
- Align with the ADB SBD format.
- Improve grammatical consistency and enhance the document's readability and user-friendliness for both bidders and PEs.

## 2.4 Section VII: General Conditions of Contract (GCC) and Section VIII: Special Conditions of Contract (SCC)

### **GCC 4 – Contract Agreement:**

A new provision (as per EPC SBD, GCC 4.2) now explicitly allows for the Contract to be amended through mutual written consent between the Employer and the Contractor to reflect changes in procurement laws or regulations.

#### **► Impact:**

- Improves Contractual Flexibility: Enables formal, legally recognized modification of contract terms when procurement laws are amended during contract execution (e.g., change in time extension provisions under PPR).
- Formalizes Existing Practice: Although not explicitly mentioned before, such amendments were already being made in practice through mutual agreement in response to legal updates. This revision now codifies that practice, providing legal clarity and consistency.
- Ensures Legal Compliance during Implementation: Helps ensure that ongoing contracts remain aligned with current procurement frameworks, reducing disputes and procedural delays.

### **GCC 12 – Communications:**

Clarifies that all formal communication must be written and sent to designated addresses, taking effect upon delivery or a specified effective date.

#### **► Impact:** Strengthens legal enforceability and reduces dispute risk.

### **GCC 54 – Retention:**

A new provision clarifies that if the retention money retained by the Employer is to be replaced by a bank guarantee, the guarantee must be valid for at least 30 days beyond the Defect Liability Period (DLP).

#### **► Impact:**

- Ensures Alignment with GCC 54.2: Supports the mechanism for the release of retention money through substitution by a bank guarantee, as outlined in GCC 54.2.
- Protects Employer's (PE) Interests: The validity period safeguards the Employer's rights during and slightly beyond the DLP, in case of any post-completion defects or liabilities.
- Enhances Clarity and Risk Management: Reduces ambiguity about the duration of bank guarantees and aligns practices with industry standards and risk mitigation principles.

### **GCC 57 - Advance Payment:**

Clarification of Advance Payment Guarantee Validity: The validity period of the advance payment

guarantee is now clearly defined minimum 30 days beyond the intended completion date.

New provision introduced (per PPR Rule 113(6)): If advance provided is not repaid due to nonperformance of the contractor within the time period specified in the contract:

- The advance guarantee shall be forfeited.
- The amount shall be recovered with interest.

► **Impact:**

- Strengthens Financial Safeguards for the Employer (PE): Ensures that public funds disbursed as advance payments are protected and recoverable in case of non-performance.
- Encourages responsible use of Advances: Creates a stronger accountability mechanism for contractors to either use the advance for project execution or return it with interest if performance obligations are not met.
- Enhances clarity and legal backing: By aligning with PPR Rule 113(6), this revision ensures the clause is legally grounded and enforceable.

**GCC 58. Securities:**

As per provision due to 14<sup>th</sup> amendment of PPR Rule 110(4), new options for Performance Security, when a bidder's price is more than 15% below the Employer's estimate, the bidder can now choose between:

- Single Security Option: One combined performance security calculated as,  $[(0.85 \times \text{Cost Estimate} - \text{Bid Price}) \times 0.5] + 5\% \text{ of Bid Price}$ , with validity of at least 30 days beyond DLP; or
- Split Security option:
  - (i) Performance Security Amount of 5% of Bid Price, with validity of at least 30 days beyond DLP and
  - (ii) Performance Security Amount of  $(0.85 \times \text{Cost Estimate} - \text{Bid Price}) \times 0.5$ , with validity of at least 30 days beyond intended completion date.

Additional performance security (required under ITB 35.5 for unbalanced or front-loaded bids) must now be valid for 30 days beyond the intended completion date.

- This reflects the core purpose of such security: to ensure that the contractor completes the intended works.
- Once the Taking-Over Certificate is issued, release of this security is deemed fair and reasonable.

► **Impact:**

- Reduces financial burden on Contractors: Allows flexibility in structuring guarantees, helping contractors manage cash flow and guarantee costs.
- Protects Employer (PE) interests: Maintains sufficient safeguards until completion and defect liability periods are covered.
- Encourages Competitive Pricing: Fairer and clearer provisions may lead to lower and more realistic bid prices.

**GCC 74. Blacklisting:**

Previous provision applied to "Bidders"; now includes "Contractors" as well.

► **Impact:**

- Ensures accountability throughout the Project Lifecycle: Contractors can now face blacklisting for misconduct or non-performance after contract award, not just for bidding stage violations.
- Strengthens Enforcement Mechanisms: Provides the Procuring Entity (PE) with legal grounds to take action against underperforming or non-compliant contractors.
- Promotes ethical and responsible behavior: Sends a clear message that malpractice or breach of contract at any stage bidding or implementation has serious consequences.

### **3. Conclusion**

The 2025 revision of Nepal's SBD for Procurement of Works under the NCB 1S2E bidding procedure introduces significant improvements. These include harmonization with national laws, integration of international best practices, improved bidder qualification standards, clarified technical requirements, and stronger accountability for both bidders and PEs.

These changes are poised to:

- Harmonize the SBD with updated legal and regulatory frameworks.
- Integrate international best practices, especially from the ADB.
- Enhance fairness, clarity, and consistency in procurement processes.
- Strengthen contractor qualification and PE accountability.
- Minimize risks of misinterpretation, delays, and disputes.

By focusing on transparency, efficiency, and compliance, the revised SBD offers a more robust platform for delivering quality infrastructure projects while fostering trust among bidders, contractors, and government entities alike.

### **References:**

Public Procurement Act, 2063.

Public Procurement Regulations, 2064.

PPMO's SBD for Procurement of Works using NCB – EPC.

ADB User's Guide for Procurement of Works – Small Contracts.

PPMO circular dated 2079.07.21.

# Integrating Social Value Beyond the Bid: Lessons from the UK Procurement Act 2023 for Nepal's Public Procurement Lifecycle

Deepika Upadhaya Subedi\*



## Abstract

*Oriental philosopher Chanakya famously used separate lamps for public and personal work symbolizing an uncompromising ethical standard in the use of public funds. This paper explores Nepal's public procurement system through this lens, identifying deep-rooted ethical and accountability gaps, especially after contract award. While the Public Procurement Act 2007 emphasizes cost efficiency through lowest evaluated bidding, weak compliance, corruption, and lack of post-award oversight often result in poor project outcomes. Drawing from the UK Procurement Act 2023, which incorporates lifecycle monitoring, social value, and performance-based evaluation, the paper argues for reforming Nepal's system into a value-driven, integrity-focused framework. Key recommendations include integrating social and environmental criteria, adopting lifecycle-based contract management, and building stakeholder capacity to ensure sustainable and ethical public spending*

**Keywords:** Public procurement, Nepalese Construction Industry, Ethics, Lifecycle value, Social value, Sustainable public procurement, Aovernance, Accountability, Contract management.

## I. INTRODUCTION

A fundamental question that many of us have not thought about much is what public procurement is. To name a few, it is also known as government procurement, public sector procurement, government purchasing, government contracting, and government acquisition. The majority of us just think of it as buying products and services<sup>1</sup>. In the context of Nepal, the literacy rate among Bidders (specially contractors) remains relatively low, and only a few are fully capable of navigating the formal procedures outlined in procurement guidelines. As a result, many rely on practices that have been informally passed down over time. It is common for any bidders (contractors) to begin the bidding process using template documents, simply filling in blanks or substituting sections with information specific to the current procurement requirement. Over time, this routine becomes mechanical—they continue to complete forms and modify text without a clear understanding of the broader purpose of the documents or the societal impact of their work. This disconnect can lead to a lack of awareness about how public procurement decisions affect communities and public welfare. According to author Robert E. Llyod and Clifford P. McCue “*perspective on what public procurement is or should be vary from routine ordering to sophisticated analysis of*

\* Legal Consultant, Vedanshee Infrastructure Pvt. Ltd., Sanepa

1 Lynch, J. A. T. (2019). *What is public procurement?* The Procurement Classroom. <https://www.procurementclassroom.com>

government spending”<sup>2</sup>. It is also not very difficult to determine that the source of funds is primarily from revenues obtained by the Government through taxes, but the source could also be loans or grants received by the Government from bilateral or multilateral funding arrangements, such as with international financial bodies like the World Bank and or similar institutions, and other governments<sup>3</sup>. As public procurement involves the use of public funds; it is essential to have a clear and shared understanding of what “Public Procurement” means. Without a proper definition, discussions about procurement can become vague or misleading. A working definition ensures that every stakeholders has a common understanding of the term and its implications, especially since it directly affects how public resources are managed and spent. Hence, Public Procurement is the process by which governments and public sector institutions acquire goods, services, and works from private sector entities. Such goods and services include: public transportation and utilities services, medical and educational facilities and services, roads, bridges and other public infrastructure, which can all be classified as either “hard infrastructure<sup>4</sup>” or “soft infrastructure<sup>5</sup>”

Public Procurement consumes a large amount of national GDP and annual budget. Globally, a substantial share of public procurement spending amounts to approximately US\$ 13 trillion, which is around 15% of global GDP<sup>6</sup>. Other estimates indicate that public procurement spending is between 13-20% of national GDP annually on average, and 15-30% of GDP in many countries<sup>7</sup>. For Instance; In Latin America, public procurement accounts for around 20% of a country's GDP on average. Given these extremely high monetary amounts, even small improvements can result in significant savings of scarce public resources. For instance, a one percent reduction on a US\$100 million procurement spend could save US\$1 million<sup>8</sup>.

The Government of Nepal (GoN), like most governments around the world, is the largest buyer of goods, services and works, in the country. Some 60 to 70 % of the annual national budget goes to procurement<sup>9</sup>. Procurement plays a central role in infrastructure development and economic growth

2 Ibid

3 Ibid

4 Hard infrastructure refers to the physical and tangible structures and facilities that are essential for the functioning of a society and economy. These include long-term assets that support transportation, communication, water supply, energy, and public services

5 Soft infrastructure refers to the institutions, systems, and services that support the functioning of a society and economy but are not physical or tangible like roads or buildings. Instead, they consist of rules, policies, human capital, and organizations that enable a country to operate effectively and equitably. Examples of Soft Infrastructure includes Education systems such as Schools, universities, teacher training programs, Healthcare systems such as Hospitals, medical staff, health policies, Legal and judicial systems such as Courts, laws, regulatory bodies, Financial systems such as Banks, insurance services, financial regulations, Governance and public administration such as Government institutions, civil service, transparency mechanisms, Social services such as Welfare programs, labor laws, community development services.

6 Bhatta, J. P., & Sain, M. (2023). Public procurement and project management at transitional context: Analysis of single source contracting practices. A Bi-annual South Asian Journal of Research & Innovation, 10(1), 9. <https://doi.org/>

7 ibid

8 Lynch, J. A. T. (2019). *Public procurement: Principles, categories and methods*. The Procurement Classroom. <https://www.procurementclassroom.com>

9 Public Procurement Monitoring Office. (n.d.). *About*. Government of Nepal. <https://bolpatra.gov.np/>

by creating jobs, enhancing connectivity, and boosting productivity. Further, Public Procurement translates national budgets into tangible outcomes such as schools, hospitals, roads, and water systems by acquiring the necessary goods, services, and works. In countries like Nepal where infrastructure gaps and service delivery challenges persist. It serves as the primary mechanism through which governments translate policy and budget allocations into tangible outcomes; such as roads, schools, hospitals, and water systems by acquiring the necessary goods, services, and works. The significance of public procurement is underscored in Nepal's 16th Five-Year Plan (2081/82–2085/86), which emphasizes integrated infrastructure development and the utilization of information technology to achieve goals of good governance, social justice, and prosperity . The plan sets ambitious targets, including increasing hydropower production from 3,100 MW to 11,769 MW, expanding internet access to 90% of households, and ensuring that 90% of families have a health facility within a half-hour's distance.<sup>10</sup> Moreover, public procurement is directly linked to Sustainable Development Goal 9, which focuses on building resilient infrastructure, promoting inclusive and sustainable industrialization, and fostering innovation. In Nepal, effective procurement practices are essential to address challenges such as limited road connectivity, inadequate access to healthcare and education, and poor-quality public infrastructure. By ensuring the timely and efficient delivery of essential infrastructure and services, public procurement plays a critical role in reducing poverty, enhancing economic growth, and improving the overall quality of life for citizens.

## II. THE PREAMBLE AND PURPOSE OF NEPAL'S PUBLIC PROCUREMENT LAW

The preamble of Nepal's Public Procurement Act 2063 (PPA) sets out clear goals for the country's procurement system, but the reality on the ground, particularly concerning ethical deficiencies and social norms after contract award, often falls short of these aspirations.

The preamble of the Public Procurement Act, 2063 (PPA) states "*Whereas, it is expedient to make legal provisions in order to make the procedures, processes and decisions relating to public procurement much more open, transparent, objective and reliable; obtain the maximum returns of public expenditures in an economical and rational manner by promoting competition, fairness, honesty, accountability and reliability in public procurement processes; and; ensure good governance by enhancing the managerial capacity of procurement of public entities in procuring, or causing to be procured, construction work and procuring goods, consultancy services and other services by such entities and by ensuring the equal opportunity for producers, sellers, suppliers, construction entrepreneurs or service providers to participate in public procurement processes without any discrimination ; Now, therefore, the House of Representatives has enacted this Act in the First Year of the issuance of the Proclamation of the House of Representatives, 2007*"<sup>11</sup> A key translation reflecting these purposes, is: "*To make the procedures, processes, and decisions related to public procurement more open, transparent, objective, and reliable; to promote competition, integrity, honesty, accountability, and trustworthiness in the procurement process;*

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10 [egp/aboutDisclaimerTermsAction?type=ABOUT](https://theannapurnaexpress.com/story/48888/)  
The Annapurna Express. (2024, May 24). *Nepal's 16th plan sets ambitious targets to transform economy*. Retrieved from <https://theannapurnaexpress.com/story/48888/>

11 Public Procurement Act 2063(2007); Nepal Law Commission. <https://lawcommission.gov.np>



to achieve the maximum return on public expenditure in an economical and prudent manner...<sup>12</sup>” These objectives highlight the foundational principles intended to govern public procurement: **transparency, objectivity, reliability, economic and rational expenditure, competition, fairness, honesty, accountability, integrity, and equal opportunity**. Achieving these goals is seen as a key function for the government to meet its development strategy aims and a prerequisite for achieving government development objectives. Public procurement is the mechanism through which significant public funds are channeled for goods, works, and services to fulfill public needs on time, with specified quality, and within budget. However, the preamble does not seem to be followed by neither government or contractors specially after the award of the contract. Specially, the following are the situations of the ethical practices in Nepal;

#### **A. Persistent Overlooking of Intended Procurement Principles: Pre-Award by Employers, Post-Award by Contractors**

**The Employer:** Despite the noble aims articulated in the preamble, ethical deficiencies and a lack of adherence to principles and norms are significant concerns in public procurement, particularly in Nepal. These problems often manifest or become apparent after a contract has been awarded. Both the contractor and government entities face ethical challenges related to upholding the intended values and principles of the contract. These can include issues like corruption, lack of transparency, conflict of interest, and failure to meet contractual obligations.<sup>13</sup>

Government entities in Nepal often grapple with **ethical failures** during the award of contract such as **corruption, lack of transparency, conflict of interest, and post-award non-compliance** that undermine the spirit of the Public Procurement Act’s preamble, which calls for “**maximum returns of public expenditures in an economical and rational manner.**” When these values aren’t upheld, the result is often **inflated costs, resource wastage, and delayed or substandard projects**, directly impairing public welfare, whether in energy, roads, health, or education. The **Jagdulla Hydropower Project** exemplifies this pattern the best. The first tender, opened on January 19, 2025, was declared null and void due to allegations of corruption and conflicted dealings.<sup>14</sup> Although the tender was reissued for a second time, similar issues of irregularities and unethical practices resurfaced, further undermining the integrity of the procurement process.<sup>15</sup> Following is the example how in just one particular tender all principles and ethics has been overlooked:

**Corruption and conflicted dealings:** Allegations emerged that Energy Minister Deepak Khadka orchestrated collusion among bidders reportedly even offering competing contractors 150 million each, or 1% of project cost, to withdraw while allegedly securing a personal 2% kickback<sup>16</sup>

12 Ibid

13 Adnan, H., Hashim, N., Mohd Yusuwan, N., & Ahmad, N. (2012). *Ethical issues in the construction industry: Contractor’s perspective*. *Procedia – Social and Behavioral Sciences*, 35, 719–727. <https://doi.org/10.1016/j.sbspro.2012.02.142>

14 **Fiscal Nepal. (2025, January 7).** *Energy Minister Khadka faces allegations of corruption in Jagdulla Hydropower Project*. Fiscal Nepal. Retrieved June 8, 2025, from <https://www.fiscalnepal.com/2025/01/07/19095/energy-minister-khadka-faces-allegations-of-corruption-in-jagdulla-hydropower-project/>

15 **Giri, A. (2025, May 2).** *Nepal hydro tender hit by fraud claims against Chinese firm*. *The Kathmandu Post*. Retrieved June 8, 2025, from <https://kathmandupost.com/national/2025/05/02/nepal-hydro-tender-hit-by-fraud-claims-against-chinese-firm>

16 **Fiscal Nepal. (2025, January 7).** *Energy Minister Khadka faces allegations of corruption in Jagdulla Hydropower*



**Transparency failures & document forgery:** Three competing bidders complained to the CIAA and Public Procurement Monitoring Office, asserting that the selected Chinese bidder, **Jiangxi Construction (JCE)-ANK JV**, submitted **fake experience certificates** (including a falsified 102 MW project claim using photos of Zambia's Kafue Gorge) to meet technical criteria.<sup>17</sup>

**Regulatory intervention needed:** The Patan High Court issued a **show-cause notice**, while the CIAA, **Central Investigation Bureau**, and the **parliament's Accounts Committee** launched probes into the tender's irregularities<sup>18</sup>

**Financial waste and stalled benefits:** The 23 billion project's tender was canceled and reissued following technical failures and allegations, leaving banks, provincial stakeholders, and public resources in limbo. Meanwhile, villagers and the energy sector continue to await promised electricity and local development; clear evidence of compromised public returns.<sup>19</sup>

This Project illustrates multiple **ethical principal violations** that severely compromised the procurement process. Instances of **non-transparency** were evident when the bid price was reportedly leaked online and technically unqualified contractors were granted a pass based on forged documents. There were clear signs of **conflict of interest**, as allegations surfaced that the Minister exerted undue pressure on the evaluation committee and allegedly sought personal kickbacks. Additionally, there was a **failure to enforce procurement rules**, with evidence of biased tender evaluations and repeated cancellations without credible justification. These ethical lapses collectively led to a significant **wastage of public resources**, as project costs escalated, progress stalled, and both public and private investments remained unproductive.

Another Notable example of ethical concern in public procurement emerged during the bidding process for a major public infrastructure project in 2025. The procuring entity had requested all shortlisted bidders to extend their bid validity and bid security due to delays in the financial evaluation process. While the second- and third-ranked bidders complied with the request, the first-ranked (L1) bidder did not extend their bid validity, which expired on May 18, 2025, nor the bid security as required under the procurement rules. Despite this, the Notice of Intention to Award was issued to the L1 bidder on the same date their bid validity expired, with no public disclosure of any valid extension. The notice was not timely published on the designated government portal, and no alternative communication such as email was sent to the participating bidders. This lack of transparency and failure to communicate procedural issues created confusion and raised questions about the fairness of the process. This incident illustrates how even seemingly technical lapses, if

*Project.* Fiscal Nepal. Retrieved June 8, 2025, from <https://www.fiscalnepal.com/2025/01/07/19095/energy-minister-khadka-faces-allegations-of-corruption-in-jagdulla-hydropower-project/>

17 **Giri, A. (2025, May 2).** *Nepal hydro tender hit by fraud claims against Chinese firm.* *The Kathmandu Post.* Retrieved June 8, 2025, from <https://kathmandupost.com/national/2025/05/02/nepal-hydro-tender-hit-by-fraud-claims-against-chinese-firm>

18 **Post Report. (2025, May 7).** *High court issues showcause notice in Jagadulla hydel tender.* *The Kathmandu Post.* Retrieved June 8, 2025, from <https://kathmandupost.com/national/2025/05/07/high-court-issues-show-cause-notice-in-jagadulla-hydel-tender/>

19 **BiznessNews. (2025, January 7).** *Jagdulla Hydropower Project tender scrapped after Sharma & Company fails technical evaluation.* *Bizness News English.* Retrieved June 8, 2025, from <https://english.biznessnews.com/posts/jagdulla-hydropower-project-tender-scrapped-after-sharma-%26-company-fails-technical-evaluation>

not addressed openly and consistently, can lead to ethical breaches. Proceeding with an award based on an expired bid, in contradiction to the bidding documents and public procurement regulations, undermines equal treatment of bidders and the credibility of the process. Upholding transparency, legal compliance, and timely communication is essential to maintaining ethical standards in public procurement.

**The Contractor:** The first Contractor-related ethical breaches in public procurement often stem from the practice of intentionally submitting **abnormally low bids** with no genuine intent to deliver the project within those constraints. According to Niroula and Nepal (2024)<sup>20</sup>, such bids may be part of a **deliberate strategy** known as *predatory bidding* where the contractor underprices their offer with the intention of recovering costs through **change orders**, use of **inferior materials**, or **payment delays** to workers and subcontractors.

This conduct, while technically within the bounds of submission, is ethically problematic because it misleads the employer, distorts fair competition, and often leads to compromised quality, project delays, and conflicts during execution. The study notes that a majority of industry stakeholders in Nepal are familiar with this tactic, with over 90% of surveyed professionals acknowledging its prevalence. Moreover, when a contractor continues to pursue or accept a contract despite non-compliance with key requirements such as expired bid validity or incomplete documentation it reflects a wilful disregard for procurement rules. Such behavior, coupled with silence or passive acceptance of an irregular award, contributes to a culture of non-transparency and ethical erosion in public procurement. Furthermore, Contractor-side ethical breaches in Nepal's public procurement landscape are deeply rooted in systemic loopholes and protectionist policies. As highlighted in recent assessments, a small circle of contractors repeatedly secures a majority of high-value projects, despite persistent underperformance marked by delays, cost overruns, and substandard quality. This recurring favoritism is not merely a result of weak governance but also of contractors engaging in unethical practices such as collusive bidding, political lobbying, and information manipulation. The widespread submission of unrealistically low bids backed by access to confidential government cost estimates indicates intentional distortion of fair competition. Contractors also exploit merger provisions by formally partnering with small firms only to offload the entire execution to them at a fraction of the contract value, while retaining large profits<sup>21</sup>. These practices defy the spirit of transparency and equal opportunity that public procurement laws aim to uphold, ultimately compromising infrastructure quality and public trust.

## B. Legal Framework vs. Implementation

Nepal's public procurement system is governed by several legal instruments, including the **Public Procurement Act 2007**, **Public Procurement Regulations 2007**, and the **Procurement Guideline 2009** (not for construction) issued by the Ministry of Health and Population. These documents outline a range of procurement methods such as International and national open bidding, Sealed

20 Niroula, B., & Nepal, M. (2024). *Low bidding in Nepal's construction industry: Prevalence, impacts and mitigation*. Institute for Integrated Development Studies (IIDS)

21 Maharjan, A. (2022, August). *How Nepal's public procurement process is hindering quality outcomes*. Samriddhi Foundation. Retrieved from <https://samriddhi.org/news-and-updates/how-nepals-public-procurement-process-is-hindering-quality-outcomes/>

quotations, Direct procurement, Procurement through user committees or beneficiary groups, Single-source procurement (in specific, justifiable circumstances), Direct negotiations, Competitive proposals for consultancy services. Despite having a robust legal framework, **implementation remains a major weakness**. Nepal struggles with **poor compliance** to procurement laws, resulting in widespread malpractice. Among the most common and concerning issues are:

- a. **Frequent use and misuse of single-source procurement and direct negotiations**, often not due to genuine emergencies, but engineered circumstances.
- b. **Corruption and lack of transparency**, especially through bribery and kickbacks, which are cited as common across public procurement processes.
- c. **Intentional delays and institutional inefficiencies** that manipulate the system to favor direct contracting. These delays often result in bypassing competitive bidding altogether.

Ethical deficiencies, therefore, are systemic. They include manipulation of the procurement process, misuse of discretion in awarding contracts, and political interference. These factors not only inflate project costs and compromise quality but also **erode public trust and undermine the principles of good governance**. Furthermore, political influence, external pressure, and poor institutional capacity often contribute to **deliberate failures of competitive bidding**, paving the way for direct contracting. These practices have far-reaching consequences: delays, cost overruns, compromised infrastructure quality, social dissatisfaction, and political instability<sup>22</sup>

### III. ETHICAL RESPONSIBILITIES IN PUBLIC PROCUREMENT

Public procurement in Nepal, as in other countries, is intended to be carried out in a manner that upholds high ethical standards<sup>23</sup>. The proper functioning of the public procurement system is considered a prerequisite for achieving government development objectives<sup>24</sup> and is essential for a capable state.

#### A. Duties of the Employer/Government:

- i. **Follow procedures:** Public procurement in Nepal is governed by legal provisions including the Public Procurement Act 2007, Public Procurement Regulations 2007, and Procurement Guideline 2009 (MoHP). The process involves stages from requirement identification to contract award and close-out. Adherence to these rules, procedures, and methods is obligatory. The legal framework sets out various permitted methods such as open bids (international and national), sealed quotations, direct procurement, user's committee, single source (for special situations), and direct negotiations (consultancy services). Competitive methods like open tendering are considered the first choice and fundamental for trustworthy and value-for-money procurement. The Public Procurement

22 **Bhatta, J. P., & Sain, M. (2023).** Public procurement and project management at transitional context: Analysis of single source contracting practices. *A Bi-annual South Asian Journal of Research & Innovation*, 10(1), 9.

23 Ibid

24 Ibid

Act 2007 Section 25 mentions the process for awarding contracts, typically to the lowest evaluated substantively responsive offer, intended to ensure cost efficiency and prevent fraudulent practices. Despite this, the compliance system to legal provisions in Nepal is weak. Abuse of methods and failure to follow proper processes are noted issues.

- ii. **Ensure fair oversight and payment:** The procurement process should be open to public scrutiny and requires effective monitoring and auditing procedures. Procurement practitioners are accountable for their actions. There is a need for independent bodies to oversee procurement and hold officials accountable. Lack of accountability among those responsible is a concern, as it perpetuates unethical behavior. While not specifically detailed for Nepal in the sources, the importance of proper payment terms and avoiding payment delays is highlighted in the context of project outcomes and effects on subcontractors. Payment difficulties are also listed as a cause of delays in construction projects in Nepal.
- iii. **Maintain accountability and transparency:** Transparency, along with accountability, effectiveness, competition, and efficiency, are key functions and principles of public procurement. A strong procurement system requires transparency and competition. Conversely, a system lacking these is an ideal breeding ground for corruption. Lack of transparency is a significant ethical deficiency in Nepal, making it difficult to track funds and identify wrongdoing. Promoting transparency and accountability, possibly through online portals, is seen as crucial to address these issues. The system is intended to be open to public scrutiny, and practitioners are accountable to the public.

## **B. Duties of the Contractor:**

- i. **Deliver work with integrity:** Integrity is a core principle expected in public procurement. This implies delivering goods, works, and services honestly and to the required standards. However, corruption, including bribery and kickbacks, is described as rampant in Nepal, leading to inflated costs and projects that do not meet standards. Using inferior quality materials is identified as a common strategy for executing low-bid contracts. Delivering goods and services in poor quality is a noted consequence of certain procurement practices.
- ii. **Avoid bribes, shortcuts, or collusion:** Bribery and kickbacks are explicitly mentioned as rampant issues in Nepal. Collusion among bidders is identified as a factor motivating single-source or direct contracting decisions. Contractors aiming to win contracts based solely on the lowest bid may focus on immediate gains over long-term quality, potentially leading to shortcuts. Abnormally low bids can originate from deliberate manipulation, where contractors underprice bids expecting to recover costs through change orders or claims by exploiting errors or ambiguities. Practices such as delaying subcontractor payments, using inferior quality materials, and delaying staff payments are reported strategies for executing low-bid contracts.
- iii. **Avoiding the cultural trend: “Working just to complete the formality” which leads to decay of integrity:** The concept of "working just to complete the formality" in Nepalese public procurement is strongly supported by findings indicating a **weak compliance system to legal provisions**<sup>25</sup>. Instead of genuinely adhering to the *principles* and *intent* of the

procurement laws and regulations, the focus can shift to merely going through the motions of the required administrative procedures. This is manifested in practices like **creating situations for emergency procurement** or making **intentional delays on procurement activities** which lead to competitive processes shifting to single-source procurement. Such delays and deviations occur despite procurement laws requiring specific methods and justifications for using non-open tendering. When procedures are followed without the underlying principles of transparency, competition, and achieving value for money, the integrity of the system decays. This formalistic approach, divorced from the substance of ethical and efficient procurement, results in the negative consequences observed: inflated costs, substandard projects, inefficient allocation of funds, poor and late delivery, and ultimately undermines good governance and damages public trust<sup>26</sup>. It represents putting reforms on paper without the necessary political commitment or behavioral change for them to be sustainable.

- iv. **Ending “moral fatigue” in the system; people stop caring because there are no consequences:** The notion of "moral fatigue" within the Nepalese public procurement system is closely tied to the prominent issue of **lack of accountability**. The sources highlight that **"Those responsible for procurement often face little consequences for unethical behavior, which perpetuates the problem"**. When individuals within the system perceive that corrupt practices, lack of transparency, favoritism, or failure to follow proper procedures do not result in meaningful repercussions, there is little incentive to uphold ethical standards or challenge the status quo. This environment can lead to a sense of disillusionment or apathy, where procurement officials, contractors, and potentially other stakeholders may stop prioritizing integrity, transparency, or fair competition simply because the system appears to tolerate or fail to punish unethical conduct<sup>27</sup>. This perpetuates the cycle of corruption and inefficiency, making it harder to achieve the intended goals of public procurement and further eroding public confidence. Addressing this requires strengthening enforcement mechanisms and ensuring that unethical actions have predictable and significant consequences.

## IV. THE UK PROCUREMENT ACT 2023: A NEW PARADIGM

### A. UK Integration of Social Value Across the Procurement Lifecycle:

The UK Procurement Act 2023 introduces a modern procurement framework that embeds social value as a core principle across the entire lifecycle of public contracts. The Act shifts away from a narrow focus on the lowest price and toward maximizing public benefit and value for money, as outlined in Section 76(1)(a) and 76(1)(b)<sup>28</sup>. Social value considerations begin at the earliest stage of procurement, influencing how needs are defined, suppliers are engaged, and tenders are structured.

At the *pre-tender stage*, the Act empowers contracting authorities to engage in preliminary market consultations to design socially beneficial outcomes. Under Section 84(1), authorities may

26 **Mario. (2020).** Systematic corruption at Ministry of Finance and Planning in South Sudan: Mismanagement of public funds and procurement scandals.

27 *ibid*

28 UK Parliament. (2023). Procurement Act 2023.

engage with suppliers and others for the purpose of shaping requirements and identifying potential providers, while Section 85(1)(f) allows for building supplier capacity. Authorities are also required to consider whether a procurement could reasonably be divided into multiple contracts under Section 89(1), which is especially beneficial for small and medium-sized enterprises (SMEs) and social enterprises<sup>29</sup>. Additionally, Sections 79(9), 81(8), and 81(9) mandate that contracting authorities take into account national or Welsh procurement policy statements, which can include social or environmental priorities<sup>30</sup>.

During the *tendering phase*, the Act adopts the “most advantageous tender” (MAT) as the standard for contract award under Section 90(1)<sup>31</sup>. This moves beyond simply selecting the lowest bid and requires contracting authorities to consider both whether the bid meets the authority’s requirements (Section 91(2)(a)<sup>32</sup>) and how well it satisfies the award criteria (Section 91(2)(b))<sup>33</sup>. According to Section 107(2)<sup>34</sup>, these award criteria must be related to the subject matter of the procurement and can include both price (Section 107(2)(a)<sup>35</sup>) and non-price factors such as social impact, provided they are relevant and, where possible, objectively quantifiable (Section 107(5)<sup>36</sup>). This opens up public contracts to ethical, community-based, or environmentally conscious suppliers who can deliver broader public value alongside cost efficiency.

The *post-award stage* is equally strengthened. For contracts valued above £5 million, Section 178(1) mandates the inclusion of at least three key performance indicators (KPIs). Authorities must assess contract performance against these KPIs at least annually and upon contract termination, and publish assessment results as outlined in Section 219(2). These measures help ensure that the promises made by suppliers during bidding including those related to social value are monitored and upheld. Additionally, prompt payment requirements are reinforced through implied terms mandating 30-day payment timelines for both public contracts and subcontractors (Section 54(1) (a)), supporting cash flow and financial sustainability, particularly for SMEs and voluntary, community, and social enterprises (VCSEs). Through this comprehensive legal structure, the UK Procurement Act 2023 ensures that social value is integrated not as a peripheral goal, but as a formal and enforceable objective throughout the procurement lifecycle. By codifying expectations at each stage from design and evaluation to monitoring and enforcement the Act establishes a high standard for ethical, inclusive, and outcome-oriented public procurement.

## B. Comparing the UK Procurement Act 2023 with Nepal’s Public Procurement System:

### Gaps and Lessons

While Nepal and the United Kingdom differ in economic size and administrative capacity, a comparison of their public procurement frameworks is both relevant and instructive. Nepal’s legal and governance systems have long been influenced by the British model. From the codification of

- 29        *ibid*
- 30        *ibid*
- 31        *ibid*
- 32        *ibid*
- 33        *ibid*
- 34        *ibid*
- 35        *ibid*
- 36        *ibid*



Nepal's first Muluki Ain in 1910 BS by Junga Bahadur Rana after visiting the UK, to the adoption of common law principles in its judiciary and legislative structures, Nepal has historically drawn inspiration from the British legal tradition. This shared lineage makes the UK's public sector reforms not only comparable, but also adaptable for the Nepali context.

The **UK Procurement Act 2023**, which came into force in February 2025, offers valuable lessons for Nepal. The Act shifts the focus of procurement from merely awarding contracts at the lowest price to maximizing **public benefit, social value, and value for money** throughout the procurement lifecycle [76(1)(a), 76(1)(b)]<sup>37</sup>. It introduces strategic market engagement [84(1)]<sup>38</sup>, socially conscious evaluation criteria [90(1), 107(2)]<sup>39</sup>, and strong post-award performance monitoring through mandatory KPIs [178(1), 219(2)]<sup>40</sup>. It also contains provisions to support **SMEs, social enterprises, and supported employment providers**, removing barriers and enhancing access to public contracts.

In contrast, **Nepal's Public Procurement Act 2007** and its Regulations largely maintain a **lowest bidder selection approach**, often resulting in quality compromises, cost overruns, and frequent project delays. While the law allows for alternative methods such as single-source procurement, these are widely misused often without proper justification especially in politically influenced or delayed projects. **Corruption, lack of transparency, and weak enforcement** remain major challenges. Unlike the UK system, Nepal lacks meaningful mechanisms for supplier development, social value integration, or post-contract performance monitoring.

A comparative lens helps reveal critical gaps. For instance, the UK's emphasis on "the most advantageous tender" encourages a balance between cost and social impact, whereas Nepal's rigid focus on lowest price encourages opportunistic bidding and undermines fair competition. Similarly, the UK's legal obligation to consider SME participation and ensure prompt payments across the supply chain stands in sharp contrast to the absence of equivalent protections in Nepal, where local and small contractors often face procedural and financial exclusion.

Nepal can and should continue to learn from the UK. The UK Procurement Act demonstrates how procurement laws can be restructured to enhance not only efficiency and competition but also equity and public trust. By moving toward a more **value-driven, socially responsible procurement model**, Nepal could reduce long-standing issues such as elite capture, ethical breaches, and exclusion of marginalized suppliers. Aligning reforms with these globally emerging standards would also help Nepal meet its sustainable development and good governance goals.

## V. WHY NEPAL NEEDS LIFECYCLE-BASED SOCIAL VALUE INTEGRATION

Integrating social value; an approach often embedded within the broader framework of **Sustainable Public Procurement (SPP)** offers a meaningful opportunity to address longstanding challenges in Nepal's public procurement system. By going beyond purely economic considerations, social value integration introduces a more holistic framework that promotes transparency, inclusivity,

37        ibid

38        ibid

39        ibid

40        ibid

sustainability, and public accountability. One of the core advantages of integrating social value is its potential to **enhance transparency and accountability**<sup>41</sup>.

Nepal's procurement environment, often marred by political interference, corruption, and collusion, thrives in opaque and uncompetitive conditions. Embedding social and environmental criteria within procurement processes not only broadens the basis for evaluation but also reduces opportunities for manipulation. A more open and criteria-rich process diminishes the space for unethical practices and encourages fairer competition. Social value integration also aligns procurement with the goals of **sustainable and inclusive development**<sup>42</sup>. By incorporating social and environmental factors alongside economic ones, procurement becomes a tool to support wider societal objectives such as employment generation, equitable economic growth, and climate resilience. This is in direct alignment with the **Sustainable Development Goals (SDGs)**, which explicitly promote sustainable public procurement. Leveraging public contracts to support small and medium-sized enterprises (SMEs), social enterprises, or "triple bottom line" businesses can help reduce inequality, strengthen local economies, and tackle environmental degradation. In contrast, prevailing practices like abnormally low bidding often result in substandard work, wasted resources, and development inefficiencies. Moreover, integrating social value contributes to **restoring public trust and improving long-term efficiency**. Repeated instances of procurement-related corruption and poor-quality project outcomes have eroded public confidence. A procurement system that transparently accounts for lifecycle costs and non-price qualitative factors such as environmental impact and social contribution can help reverse this trend<sup>43</sup>. Shifting from a "lowest price wins" mentality to a **value-for-money** approach fosters better performance outcomes, reduces delays and cost overruns, and delivers higher-quality infrastructure and services<sup>44</sup>.

Finally, Nepal is not alone in its journey toward reform. International standards and best practices increasingly emphasize SPP and the integration of social value. The International Trade Centre (ITC), World Bank, OECD, and Asian Development Bank (ADB) all advocate for procurement systems that support transparency, SME participation, and social goals. The UNCITRAL Model Law on Public Procurement sets a global standard for promoting integrity, fairness, and socio-economic policy integration. Similarly, regional platforms such as the Inter-American Government Procurement Network (RICG), led by the OAS and IDB, offer valuable lessons on efficiency and transparency that Nepal can adapt. By embracing these principles and aligning with international trends, Nepal has the opportunity to reform its public procurement system into a more ethical, inclusive, and development-oriented mechanism one that delivers not just infrastructure, but public value.

## VI. POLICY RECOMMENDATIONS

Nepal's public procurement system faces persistent ethical deficiencies corruption, favoritism, lack of transparency, and poor accountability that undermine development outcomes and public

41 Bhatta, J. P. (2023, October 28). *Ethics in utilising public purse*. The Kathmandu Post. <https://kathmandupost.com/columns/2023/10/28/ethics-in-utilising-public-purse>

42 ibid

43 Niroula, Y. R., & Nepal, S. (2024, February). *Low bidding in Nepal's construction industry: Prevalence, impacts and mitigation*. PM World Journal, 13(2). <https://pmworldjournal.com>

44 Ibid



trust. One promising reform pathway is the integration of lifecycle-based social value, aligning procurement with principles of Sustainable Public Procurement (SPP).

Amending the Procurement Act to incorporate social and environmental criteria is essential. Current laws focus primarily on cost, often encouraging low bids at the expense of quality and ethics. Reforms should mandate the inclusion of SPP principles across the procurement cycle design, evaluation, and implementation. This could involve recognizing SPP and the development of an “impact economy” as matters of national interest.

A key shift must occur in bid evaluation, moving beyond the “lowest price wins” approach to one that reflects value for money over the lifecycle. This means assigning meaningful weight to social and environmental performance criteria, such as fair labor practices, ethical sourcing, and environmental sustainability. The World Bank’s Rated Criteria model offers a useful benchmark allowing evaluators to score bids on qualitative aspects like technical soundness, innovation, and social impact, not just price. Adopting a similar approach in Nepal can help ensure sustainable suppliers are not excluded solely on cost grounds.

To address weak accountability, independent monitoring mechanisms should be introduced. Drawing from models like the UK Procurement Act 2023, Nepal could require periodic performance reviews, including the use of KPIs, to ensure contractors deliver on promised social value and project outcomes. Additionally, capacity building for procurement officials and contractors is crucial. Training programs should focus on SPP principles, ethical evaluation methods, and the use of e-procurement tools. Contractors also need support to improve their ethical and technical competencies, reducing reliance on opportunistic bidding.

Finally, promoting ethics and values education across the procurement ecosystem is key. Awareness campaigns and training on the hidden costs of low bidding and unethical practices can shift mindsets. Embedding integrity, transparency, and social responsibility into procurement education will support a culture of ethical decision-making.

Together, these reforms can help transform Nepal’s procurement system from one vulnerable to misuse into a transparent, inclusive, and sustainable mechanism that delivers long-term public value.

## VII. CONCLUSION

Integrating lifecycle-based social value into Nepal’s public procurement system is essential for overcoming entrenched ethical deficiencies and aligning procurement with the nation’s sustainable development goals.

Good governance in procurement must extend beyond the initial contract award to encompass the entire project lifecycle, including execution, completion, and handover. While Nepal’s procurement processes emphasize formal compliance up to the point of contract award, the true effectiveness of procurement lies in what follows how contracts are implemented, monitored, and completed. Ethical shortcomings such as lack of accountability, political interference, and inefficient fund

allocation continue to hamper development outcomes. Over-reliance on the lowest bid, without regard for long-term consequences, frequently results in poor-quality outputs, delays, and cost overruns. International practices, such as the UK Procurement Act 2023, offer valuable examples by requiring the use of Key Performance Indicators (KPIs) to assess contractor performance during the lifecycle and allowing for contract termination in cases of underperformance. These provisions reflect a governance model that values outcomes over mere process.

Nepal's legal framework must therefore evolve from its current focus on procedural formality to a more substantive, value-driven model. Traditional procurement systems have prioritized administrative compliance and minimum cost as indicators of success. However, modern global standards emphasize value for money a concept that incorporates not only cost but also social, environmental, and long-term performance considerations. Sustainable Public Procurement (SPP) embodies this shift, embedding sustainability principles throughout the procurement cycle. Legal reforms that explicitly integrate social and environmental impact criteria into awarding decisions, alongside price and technical responsiveness, would signal Nepal's commitment to responsible consumption, inclusive development, and ethical governance.

Although Nepal's Public Procurement Act 2007 provides the legal foundation for transparency and competition, its implementation remains weak. While the law offers various procurement methods and aims to award contracts to the lowest evaluated substantively responsive bidder, systemic issues persist—including the misuse of single-source procurement, direct negotiations without sufficient justification, and the creation of artificial emergency conditions. These practices expose a significant disconnect between legal intent and operational reality. The emphasis on the lowest bid, despite its well-documented impact on quality and efficiency, further underscores the need for reform.

To bridge this gap, Nepal must take concrete, systemic steps. These include enhancing bid evaluation criteria to incorporate Rated Criteria as recommended by institutions like the World Bank which allows bids to be assessed on a broader set of qualitative and value-based indicators. Additionally, implementing stronger post-award monitoring systems, building institutional capacity among officials and contractors, and embedding ethics education and awareness across all levels of the procurement ecosystem are vital. Only by aligning operations with the values enshrined in its laws can Nepal move towards a procurement system that truly delivers transparency, accountability, and lasting public value.



