

Overview of Public Procurement

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What is Procurement ?

- Simply buying some thing expending money
- Means the acquisition of goods, consultancy services or other services, procurement or causing procurement of an construction work

Types

- Private Procurement
- Public Procurement

Public Procurement

- Procurement made by spending public money
- Public procurement does not permit subjective or unrestrained buying.
- This may be with regard to,
 - Item
 - Quality
 - Quantity
 - Methodology
- All procurements have to undergo scrutiny, and there are well laid norms.

Public Procurement cont...

- Mistakes and lapses in Public Buying can cause grief to the organization or individuals
- Audit /Vigilance reviews
- Penalty and punishments

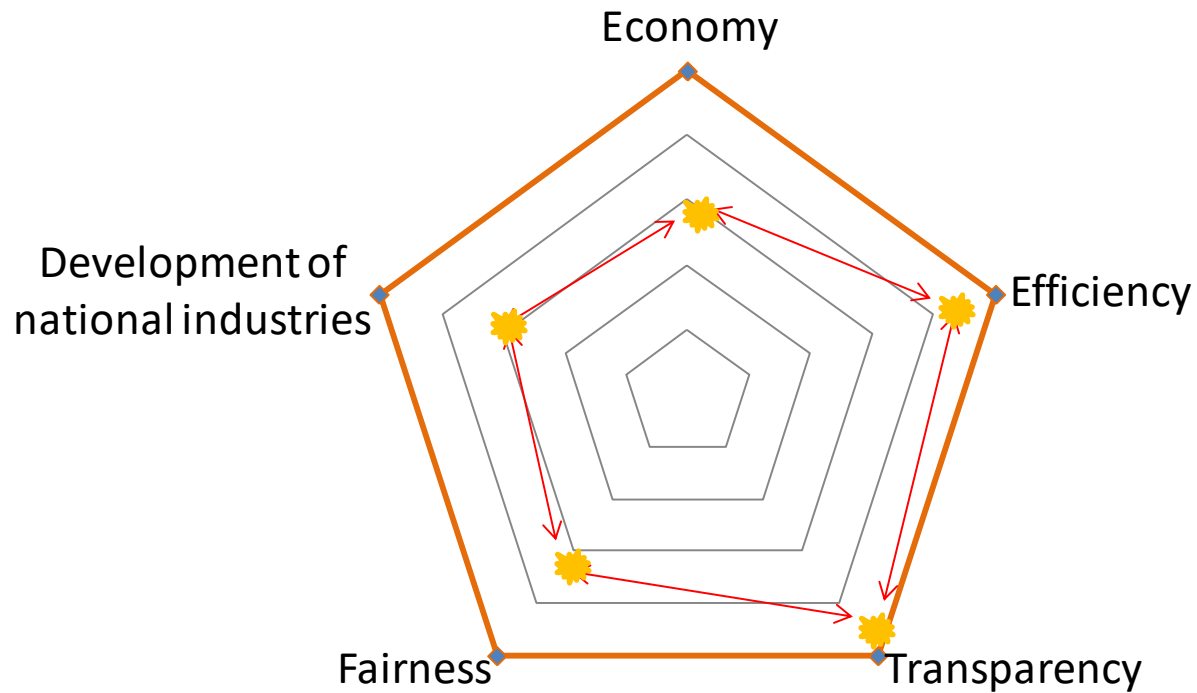
Why Public Procurement important ?

- It influences economic growth
- Efficiency in public procurement releases funds for development
- It is a tool to meet social and economic objectives
- It affects quality of life of the citizens
- The public servant is accountable

Principles in Public Procurement

- Accountability
- Ethics
- Reliability
- Impartiality
- Transparency
- Open competition
- Efficient and effectiveness
- Professionalism
- Service
- Justice
- Environmental friendly

Sound Principles of Public Procurement



Objectives of Public Procurement

➤ 3 R's.

- Right item,
 - Right price
 - Right time
- Efficiency
 - Value for money

Special Objectives of Public Procurement

- Equal access and non-discrimination
- Transparency of process and decisions
- Accountability of process and officials
- Social Objectives

Important Provisions of Public Procurement Act 2063

- Umbrella Act
- Establishment of Public Procurement Monitoring Office (PPMO)
- Responsibility of Public Procurement to Procurement Unit/branch
- Master procurement plan and Annual Procurement plan
- Procurement proceedings or review of decisions
- Open call for tender and equal access to bidders
- Neutral Specification

Important Provisions of PPA...

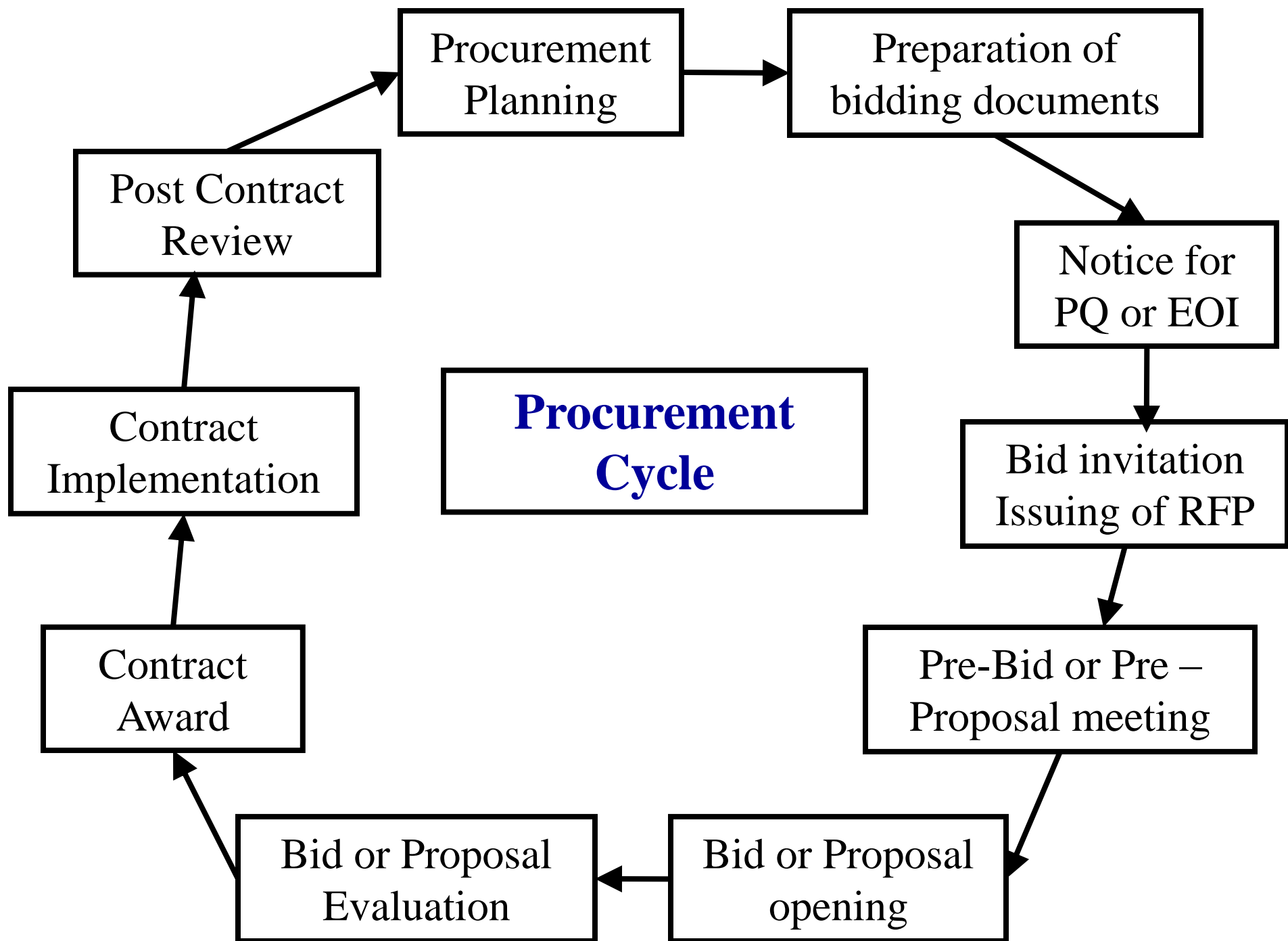
- Code of conduct for the persons involved in procurement
- Contract award to lowest substantially responsive bids
- Shall not be rejected even if one bid is substantially responsive or only one bid is registered
- Public notice shall be published incase of emergency procurement
- Public notice of contract agreement shall be published
- Blacklisting right to PPMO

Important Provisions of PPA...

- Situations in which Procedures of Procurement Act need not to follow
 - ✓ Procurement relating to security, strategic or defense
 - ✓ Procurement is to be made in accordance with the Procurement Guidelines of a donor agency.
 - ✓ In procurement of goods and services when it is required to compete with privates sector for the purpose of trade.
 - ✓ When it is required to procure in foreign countries for works such as trade fair, exhibition etc.

Important Provisions of PPA ...

- Situations in which Procedures of Procurement Act need not to follow
 - ✓ To procure goods and services by Nepali Embassy and consular office in foreign countries.
 - ✓ To procure equipment related to aviation of aircraft.
- For last four options, separate guidelines shall be prepared by concerned public entity and procurement shall be carried out using this guideline only after acceptance and approval from PPMO.



Preparedness of procurement

Procurement Plan

1) Master Procurement Plan

- Multi year project
- For procurement greater than 100 Million rupees annually

2) Annual Procurement Plan

- For procurement greater than 1 Million rupees annually

Cost Estimate

- To be prepared for any type of procurement such as Goods, Works, Consulting Services, Other Services and Ration.
- Cost Estimate is not required for procurement costing **up to 1 Lakh Rupees**.
- Cost estimate shall be approved by competent authority

Approval Of Cost Estimate

For works, Goods and Other services

- ✓ Up to 50 Million : 3rd class officer (Chief of PE)
- ✓ Up to 100 Million : 2nd class officer (Chief of PE)
- ✓ Up to 200 Million : 1st class officer (Chief of PE)
- ✓ Above 200 Million : Department Head

Cost Estimate ...

For Consulting services

- ✓ *Up to 2 Million : 3rd class officer (Chief of PE)*
- ✓ *Up to 5 Million : 2nd class officer (Chief of PE)*
- ✓ *Up to 10 Million : 1st class officer (Chief of PE)*
- ✓ *Above 10 Million : Department Head*

- Estimates should be realistic
- Shall be used standard norms to calculate quantities.
- District rates to be used as far as possible
- Estimate shall be consistent with provisions of contract documents (ToR/ Specification/ Terms of payment etc.)
- Incase of cancellation of procurement proceedings cost estimates shall be updated.

Procurement Methods

Depends on situation and procurement price

- Open Bidding
- Limited bidding

(A) Goods, works and other services

- Open Bidding
 - International Competitive Bidding (ICB)
 - National Competitive Bidding (NCB)
 - One stage
 - ✓ With prequalification
 - ✓ Without prequalification
 - Two stage

Procurement Methods...

- One envelop and two envelop
- Sealed Quotation
- Direct purchase
- Community participation
- Force account
- Emergency procurement
- Lump sum rate method
- Catalog Shopping
- Limited Bidding
- Buy Back Method

Procurement Methods...

(B) Consultancy Service

- Competitive Proposal
 - Normally international level (above 150 million)
 - National level (above 2 million)
- Direct Procurement (up to 0.5 Million)
- Proposal from standing list if any (0.5-2 Million)
- Direct negotiation
 - ✓ Chief of PE : up to 0.5 Million
 - ✓ After approval from pertinent higher level :above 0.5 Million
 - ✓ Only training, seminar etc.

Procurement Methods

(A) Goods, construction and other services

(1) International Competitive Bidding (ICB)

- Depends on situations

(2) National Competitive bidding

- Goods, works and other service : Above 2 Million
- Medicine/medical equipment: Above 5 Million

(3) Sealed Quotation

- Goods, works and other service : Up to 2 Million
- Medicine/medical equipment: Up to 5 Million

Procurement Methods...

(4) Direct Procurement

- Goods and works : Up to 1 Million
- Other services : Up to 0.5 Million
- Medicine/medical equipment: Up to 2.5 Million
- Goods manufactured in Nepal of any amount if manufacturer is only one in Nepal with specified conditions
- Goods or services of propriety nature up to 30 % of contract price with approval of one level higher authority
- As per decision of cabinet on the recommendation of a committee chaired by chief secretary
- Goods manufactured in Nepal can be purchased directly up to 2.5 Million in published price

Procurement Methods...

Direct procurement...

- Medicine/Medical equipments can be purchased with manufacturer directly up to 2.5 Million in published price
- Goods produced in domestic industry can be purchased directly up to 2.5 Million
- Hotel expenditure of VIP guests invited by Nepal government up to 5 Million can be procured directly.
- Building maintenance of embassy situated in foreign countries can be procured directly up to 25 thousand US\$.
- Procurement by one public entity with other public entity
- Procurement with international inter Government agency
- Medicine procurement with medicine manufacturer pre qualified by WHO if the pre qualified manufacturer is only one

Procurement Methods...

- Generally no qualification required for construction work up to 20 Million in NCB
- Domestic Preference for ICB contract and goods manufactured in Nepal.
- Only Nepali bidders may participate in bidding process up to 5 Billion in NCB
- 5 % domestic preference for domestic bidders in ICB (Works)

Bidding Procedure

Bidding Procedure

- Preparation of Bidding Document
- Invitation of Bid
- Sale of Bid documents
- Registration of Bids
- Opening of Bids
- Evaluation of bids
- Letter of intent
- Letter of Acceptance
- Contract agreement

Bidding document preparation

- During bid document preparation standard bid document shall be used with no substantial changes

Frequently used standard bid documents in Nepal

- Standard bid documents prepared by PPMO
 - ✓ These documents are mostly used in procurement process especially when procurement is under the funding of government or procurement under donor funding when procurement is not so large.
- Other standard bid documents
 - ✓ Standard bid documents of donor agencies
 - Used in large procurement; preferably ICB or when donor has condition to use their own documents.

Bid document preparation

Standard bid documents issued by PPMO

- [Procurement of goods \(NCB\)](#)
- Procurement of goods (ICB)
- [Procurement of Works for Above 20 Million \(NCB\)](#)
- Procurement of Works for without qualification (NCB)
- Procurement of Works Single stage post qualification (ICB)
- Procurement of works prequalification document
- Procurement of Goods/Works, Direct Purchase
- Procurement of Goods/Works, Sealed Quotation

Bid invitation

- For NCB or PQ proposal : Minimum 30 days
- For ICB or PQ Proposal : Minimum 45 days
- For sealed quotation : Minimum 15 days
- Notice shall be published in National Daily Newspaper in case of NCB or ICB and in local newspaper incase of sealed quotation.

To be published in Web Site;

- For central level public entity website of public entity or of Website PPMO
- For district level public entity website of PPMO
www.ppmo.gov.np

Bid invitation...

Duration of Bid Invitation in case of re-bidding

- If procurement process is required to be cancelled and re-invitation of bidding is required, in publishing bid invitation notice for second time, a period of at least 15 days for NCB and 21 days for ICB shall be given, provided that no change is made in bid document.
- If procurement process is required to be cancelled in second time of bid invitation also, then bid invitation notice can be published third time with a period of at least 7 days for NCB after sufficient justification and with approval from pertinent higher level.
- If procurement process is failed in third time also and if procurement is emergency, procurement process can be completed using other procurement methods as per PPA.

Sale and registration of Bid

- Sale from two or more PEs
- Registration in one PE
- E-Bidding also possible
- ✓ *For Works above 6 Million provision of E- bidding is compulsory and above 20 Million only E-bidding is allowed*
- ✓ *For goods above 20 Million E-bidding is compulsory*
- ✓ *For consultancy service above 2 Million E-bidding is compulsory*
- Single Portal System (EGP System) has been initiated by PPMO

Cost of Bidding Documents

- 2 to 20 million Rupees : Rs 3000
- > 20 million to 100 million Rupees : Rs 5000
- > 100 million to 250 million Rupees : Rs 10000
- > 250 million Rupees : Rs 20000
- Sealed Quotation : Rs 1000

Cost of PQ Document

- 20 million to 100 million Rupees : Rs 5000
- > 100 million to 250 million Rupees : Rs 10000
- > 250 million Rupees : Rs 15000

Withdrawal and Modification of Bid

- Within 24 hour before of last submission date of bid in sealed envelop in case of hard copy and within last date of submission of bid in case of e-bidding

Pre-bid meeting

- For NCB at least 10 days before of last submission date
- For ICB at least 15 days before of last submission date
- To be informed to bidders if any amendment within 5 days pre bid meeting

Bid Security

Bid Security

- 2 to 3 % of estimated amount
- Validity of bid security 30 days more than bid validity period
- Validity period of bid security to be extended if bid validity is extended
- Needs counter guarantee of commercial bank in Nepal for bid security of foreign bank

Bid security will be forfeited if

- If the bidder does not accept the correction of arithmetic error
- If the selected bidder rejects for agreement

Bid Security...

- If requested for withdrawal or modification within 24 hour before of last submission date of bid and last date of bid validity in case of hard copy and within the period of last bid submission date and last date of bid validity in case of e-bidding.
- If the selected bidder fail to submit performance bond within due date of contract agreement
- If clarification submitted by bidder makes substantial change to the bid
- If the bidder violates the code of conduct as per clause 62 of PPA.

Bid validity Period

- For bid having estimated cost within 100 million : 90 days
- For bid having estimated cost above 100 million : 120 days
- Period to be counted from last date of bid submission Can be increased with justified reasons
- Who agrees to extend bid validity shall extend validity of bid security also
- Bid bond amount shall be returned to bidder if he disagrees to extend bid validity

Bid Opening

- Immediately after last date and time of bid submission
- In presence of bidders as far as possible (Absence of bidders does not disturb the opening process)
- First of all envelop of letter of withdrawn and then modified bid shall be opened and read
- Bids obtained electronically shall be opened first and then bids obtained in sealed envelop shall be opened
- Then remaining bids shall be opened and matters like bid security, discount if any etc. shall be read, noted and signed
- No bid shall be rejected at the time of opening

Bid Evaluation Procedure

Logical Evaluation Procedure shall be adopted.

Four distinct stages in the bid evaluation process which should be followed in a logical sequence.

Stage 1: Collection of information

- a) Basic data
- b) Record of bid opening

Stage 2: Determination of substantial responsiveness of bids

- a) Examination
 - Eligibility & Completeness
- b) Determination of responsiveness to commercial terms and conditions

Bid Evaluation Procedure

- c) Determination of responsiveness to technical terms and conditions

Stage 3: Detailed evaluation of bids

- a) Evaluation of commercial aspect
- b) Evaluation of technical aspect
- c) Evaluation of economic aspect
- d) Special evaluation

Stage 4: Determination of the lowest evaluated substantially responsive bid

- a) Evaluation of qualifications
- b) Preparation of bid evaluation report
- c) Award of contract

Bid Evaluation Report: Contents

- Summary
- Number of bids received and opened
- Bids disqualified in preliminary examination and declared unresponsive, giving reasons.
- List of substantially responsive bids and prices
- Evaluation criteria specified in the bid documents
- Evaluation table with detailed calculations in annexure
- Lowest Evaluated Bid
- Post qualification criteria specified in bid documents

Award of Contract

Award of Contract

Lowest evaluated substantially responsive bid is selected

- Letter of intent within seven days of bid selection & information should be given to unsuccessful bidders also.
- Letter of acceptance after seven days of issuing of letter of intent requesting to submit performance security within 15 days if no complaint.
- Debriefing if any bidder applies within 30 days of issuing of letter of intent
- If lowest evaluated bidder does not sign the agreement, bid bond is forfeited as well as PPMO on the recommendation of PE blacklist the bidder and second lowest evaluated bidder is called to sign agreement.

Performance Security

- If bid price of the bidder selected for acceptance is up to 15 (fifteen) percent less than the approved cost estimate, the performance security amount shall be 5 (five) percent of the bid price.
- For the bid price less than 15 percent of the cost estimate, the performance security amount shall be determined as follows:

Performance Security Amount = $(0.85 \times \text{Cost Estimate} - \text{Bid Price}) \times 0.5 + 5\% \text{ of Bid Price}$.

- The Bid Price and Cost Estimate shall be inclusive of Value Added Tax.

Cancellation of procurement proceedings

- Where non of the tenders is substantial responsive
 - Where the bid price of the lowest evaluated substantially responsive bid is substantially higher than cost estimate
 - Where the goods, construction works, consultancy service or other services as required are no longer required.
- No tender shall be rejected or re tendering shall be invited only by the reason that only a few tenders or only one tender is substantial responsive.
- A public entity shall communicate a notice along with the reason for the rejection of tenders or the cancellation of procurement proceedings to all bidders.

Contract Implementation

Implementation of Contract

- Post bid conference
- Work plan & schedule
- Progress & quality monitoring
- Reporting
- Interim payment
- Insurance
- Variation Order
- Cost price adjustment
- Time extension
- Conflict management
- Liquidated damage (@ 0.05 % per day but not more than 10 % of contract amount)

Implementation of Contract

- Bonus (@ 0.05 % per day but not more than 10 % of contract amount)
- Contract termination
- Taking over certificate
- Defect liability period
- Work completion report (As built drawing)
- Final payment
- Work completion certificate

Variation Order

- Up to 5 % second class officer (chief of PE)
- Up to 10 % first class officer (chief of PE)
- Up to 15 % Department Head.
- 15 to 25 % variation by secretary of ministry

Variation Order

- Above 25 % cabinet on recommendation from ministry
- Variation can not be issued by authority lower level than who had approved cost estimate
- But for contract having contract amount within 6 million, variation order can be issued by Department Head even if more than 15 %

Price Adjustment

- For contract having contract period more than 12 months

$$P_n = A + b \times L_n / L_0 + c \times M_n / M_0 + d \times E_n / E_0 + \text{etc.}$$

- For unexpected increase in price of construction materials in NCB contract

$$P = [R1 - (R0 \times 1.10)] \times Q \rightarrow \text{For unexpected increase}$$

$$P = [R1 - (R0 \times 0.9)] \times Q \rightarrow \text{For unexpected decrease}$$

P = Price adjustment amount,

Q = Quantity

R1 = Present price,

R0 = Base price

- No price adjustment if delay is due to contractor

Time Extension

- Application from Contractor prior to 21 days of the expiry of contract duration
- Decision within 21 days after receiving the application
- Alternative to time extension (Priced acceleration proposal from contractor)
- If accepted, they are incorporated in contract & treated as variation

Insurance

- For risk transfer to third party
- Insurance mandatory for project value more than 2 million NRs
- Policy to be approved by Project Manager (Employer)
- Period: Start Date to End of DLP
- Loss of or damage to the **Works, Plants and Materials (115 % for works and 110 % for goods)**
- Loss of or damage to **Equipment**
- Loss of or damage to **Property** (except the works, Plant, Materials and Equipment) in connection with the Contract
- **Personal Injury or death**
 - ✓ For Contractor's employees is that specified in the Labor Act of Nepal
 - ✓ For other people with an unlimited number of occurrence:

Closing Contract

Closing of contract

- Closing contract means execution of various activities just before ending the contract after the project is completed. Major steps to be followed for closing contract are :
 - ✓ Preparation of snag list (or punch list) of activities
 - ✓ Achieving substantial completion
 - ✓ Issuing taking over certificate (Starts defect liability period)
 - ✓ Completion of activities in punch list
 - ✓ Inspect and verify that the outstanding works have been satisfactorily completed
 - ✓ Remedy detected defects

Closing of contract...

- ✓ Final taking-over of project at end of defects liability period
- ✓ Issuance of defects liability certificate
- ✓ Final statement submittal after issuance of defects liability certificate
- ✓ Submission of recoded drawings (as built drawing, maintenance manuals & Warranties)
- ✓ Final payment
- ✓ Work completion report
- ✓ Final acceptance of work
- ✓ Issuing of work completion certificate
- ✓ Final Report

Work Completion Report

- No later than 30 days after completion of a construction work the contractor shall submit an as built drawing.
- After expiry of DLP, the chief of public entity shall have a technical employee to examine and inspect whether the construction work is in compliance with agreement or not.
- The technical employee shall submit a report to chief of public entity.
- The concerned public entity shall submit the as build design and the submitted work completion certificate to tender approving authority, and to the one level higher authority if chief and chief of PE is same person.
- After examining the work by technical expert if required, such authority shall accept work within 45 days of submission of the report

Review of Procurement Proceedings

Review of decision

- Within **seven days** after the date when became aware, complaint to the chief of the concerned public entity
- Chief of public entity should give decision within **five days** after the receipt of that application.
- Within 7 days of decision of PE, application to review committee for the procurement having value **twenty million or more**, a bidder or proponent may make an application with guarantee equal to 1 % of amount he quoted (cash or bank guarantee having validity 90 days) and 10 % of bid bond for proposals, when quoted amount is not known,

Review of decision...

- No later than **three days** after the receipt of application review committee shall send a notice with a copy of such application and documents, if any, accompanied with application to the concerned public entity to provide information of proceedings made in that respect and comments on that matter.
- No later than **three days** after the receipt of notice the public entity shall provide information and comments on that matter.
- Review committee shall make decision within 30 days after the receiving the application.

Procurement of Consultancy Service

Process

- Preparation of TOR
- Call for EOI
- Short list (3 to 6)
- Call for proposal (RFP)

Proposal selection method

- Quality and cost method
- Quality method
- Fixed budget method
- Lowest cost method

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Any Questions?