

Annex 6a: Governance and Accountability Arrangements

1. The efficiency of public expenditure depends highly on the governance environment and practices. Any effort to improve resource allocation must be accompanied by an enabling governance framework (agenda) to enhance efficiency and reduce/eradicate corruption. In recent years, DOR has been receiving substantial budgetary allocation for construction, rehabilitation and maintenance of roads. Improved efficiency in the use of these resources is essential for improving the overall public expenditure of Nepal Government. Nepal was ranked 121st out of 159 nations surveyed for the Transparency International's 2006 Corruption Perception Index of 2.5 and against this backdrop the donor community including the World Bank, is supporting government reform programs for improving governance and procurement quality and enhancing transparency.

2. Governance reforms in Nepal have been considered essential for sectoral interventions supported by the Bank. The Government's efforts towards reforms include revision of the Anti-corruption Act, enactment of the Public Procurement Act 2007 and Right to Information (RTI) Act 2007, and initiation of the process of amendment to the Financial Administration Regulations. However, laws and policies alone are not sufficient, their implementation is the key to success. Therefore, RSDP will support the implementation of these Acts in the execution of the Project. GON and the implementing agency DOR have agreed to take specific actions on the following aspects:

- **Disclosure of Information:** Ensure full implementation of the recently enacted Procurement Act 2007 and Right To Information Act 2007
- **External Complaints:** Develop and make effective a functioning and credible system to deal with external complaints on procurement and fraud/corruption.
- **Monitoring:** Strengthen monitoring mechanism to help GON monitor compliance with the agreements and assess impact on outcomes.

A. Disclosure of Information

3. The following disclosure policy has been drafted as part of project preparation. It will be further improved and details worked out during implementation, based on the experience to be gained. The intent is to enhance transparency in the decision making processes during the implementation phase, including for procurement, financial and safeguards. The disclosure policy will be further developed to be in line with the new RTI Act.

4. **Disclosure of Procurement Information:** Using a variety of media including the existing DOR website, DOR will:

- (i) make publicly available promptly upon finalization of all annual procurement plans and schedules;
- (ii) make available to any member of the public promptly upon request all bidding documents and requests for proposals issued in accordance with the procurement provisions of the financing agreement, subject to payment of a reasonable fee to cover the cost of printing

and delivery. Each such document will continue to be available until a year after completion of the contract entered into for the goods, works or services in question;

(iii) make available to any member of the public promptly upon request all short lists of consultants and, in cases of prequalification, lists of pre-qualified contractors and suppliers;

(iv) within two weeks of receiving the Bank's "no objection" and in accordance with the provisions of the Procurement Act to the recommendation of contract award, wherever applicable, or on issue of "notification of award of contract" in other cases publish in UNDB on-line, in dgMarket and on the DOR website the results identifying the bid and lot numbers with the following information:

- *For Goods/Works (Direct Contracting)*: The name of the contractor who is awarded the contract, contract price, contract completion time and summary scope of the contract. This publication may be done quarterly and in the format of a summarized table covering the previous period.
- *For Goods/Works (Other than Direct Contracting)*: (a) name of each bidder who submitted a bid; (b) bid prices as read out at bid opening; (c) name and evaluated price of each bid that was evaluated; (d) name of bidders whose bids were rejected and the reasons for their rejection; and (e) name of the winning bidder, and the price it offered, as well as the duration and summary scope of the contract awarded.
- *For Consulting Services (Selection Based on Consultants' Qualifications and Single Source)*: The name of the consultant to which the contract was awarded, and the price, duration, and scope of the contract. This publication may be quarterly and in the format of a summarized table covering the previous period.
- *For Consulting Services (Other than Selection Based on the Consultants' Qualifications and Single Source)*: (a) the names of all consultants who submitted proposals; (b) the technical points assigned to each consultant; (c) the evaluated price of each consultant; (d) the final point ranking of the consultants; (e) the name of the winning consultant and the price, duration, and summary scope of the contract. The same information shall be sent to all consultants who have submitted proposals.

(v) allow representatives of stakeholders to attend the public bid openings;

(vi) make publicly available and publish widely contract award information for all contracts for goods and works in accordance with Clause 60 of the Public Procurement Act 2007; and

(vii) make available promptly upon request by any person or company, a list of all contracts awarded in the three months preceding the date of such request in respect of a project, including the name of the contractor/consultant, the contract amount, the number of bidders/makers of proposals, the procurement method followed and the purpose of the contract.

5. Disclosure of Mid-Term Review Findings: Promptly after completion of the project's mid-term review, information on the project restructuring if applicable, will be disclosed in accordance with the disclosure procedure.

6. **Disclosure of Audited Project Financial Statements:** As soon as the final audited project financial statements is approved and submitted, DOR will make necessary arrangements for public disclosure by posting it in the DOR website.

B. Dealing with External Complaints on Procurement, Fraud/Corruption and Construction Quality

7. **General Set Up:** DOR will establish with assistance from the Bank a system dealing with external complaints on procurement, fraud/corruption and construction quality. This system will be publicized on the DOR and other appropriate website with a project log and filing to monitor status of follow up of all comments, suggestions and grievances received. The mechanisms will include provision for follow up investigations of substantial complaints by Internal Auditors, or third party audit to ensure independency and reliability of the system. The implementation of the system will be monitored by the Bank.

8. If as a result of any such information provided by members of the public, cost savings are achieved or charges of misconduct and misappropriation are proven, such members of the public will be awarded some recognition (e.g., a certificate of excellence or felicitation at a public ceremony) with or without a monetary reward. Simultaneously strict Departmental actions will be announced for the erring members of the departments. DOR will establish the remedial actions and sanctions for cases of fraud and corruption that are reported and for which evidence is found and charges established after due process of investigation. This will include sanctions to government staff proven to be involved in such cases.

9. Any entity that is found to have misused funds, or not effectively carried out key elements of the provisions of the World Bank's anti-corruption guidelines, may be excluded from subsequent participation in the project being implemented under the Bank funding as well as for other works being carried out by the DOR. Information regarding such cases, where lessons are learned and funds are retrieved, will be widely published for information of the members of public. Strict procedures to ensure anonymity of informants will be enforced.

10. **Responding to Procurement Complaints:** Procurement related inquiries and complaints from suppliers, contractors or consultants occurring from time to time shall be efficiently disposed of in accordance with the provisions of the Public Procurement Act 2007.

11. General inquiries about DOR procurement policy, procedures and guidelines will be dealt with by the Program Coordinator (PC) within 20 working days of receipt.

12. Filing and disposal of complaints directly by the bidders relating to a specific procurement shall be in accordance with the Public Procurement Act and the Procurement Regulations, 2007.

13. **Responding to Allegations of Fraud or Corruption:** In the event that an allegation refers to fraud or corruption of bidders, the procedure established by GON, in accordance with related laws and regulations, shall be followed. Where the allegations are shown to be valid, sanctions shall be imposed as per the relevant law.

14. In the event the allegation refers to the public servant, the case may be referred to the competent entity in order to conduct investigations and take legal action

15. Individuals who choose to report allegations of fraud or corruption may remain anonymous or request that their identity not be disclosed outside of any investigating team.

16. Responding to Complaints on Construction Quality: Complaints received directly from the public relating to the quality of a specific work, goods or service shall be in writing. They are to be received and then reviewed by Regional Director (RD)/ (Director General) DG, DOR concerned or if applicable by PC.

17. The RD/DG shall record all complaints, whether they are referred from other recipients or directly, in a register to be maintained in a secure location in his own office. The email and physical address of the RD/DG is to be made public.

18. The RD/DG shall, within five working days of receipt of complaint, acknowledge receipt in writing to the complainant indicating that the DOR is considering the issues raised and will discuss them with the concerned officers of the DOR.

19. The RD/DG shall then consult with the relevant officers of the DOR and, after thorough review of the facts as well as interviewing of officers concerned as necessary, shall make a judgment as to the validity of the complaint. Within 20 working days, the RD/DG shall instruct the relevant officer to take remedial action as necessary.

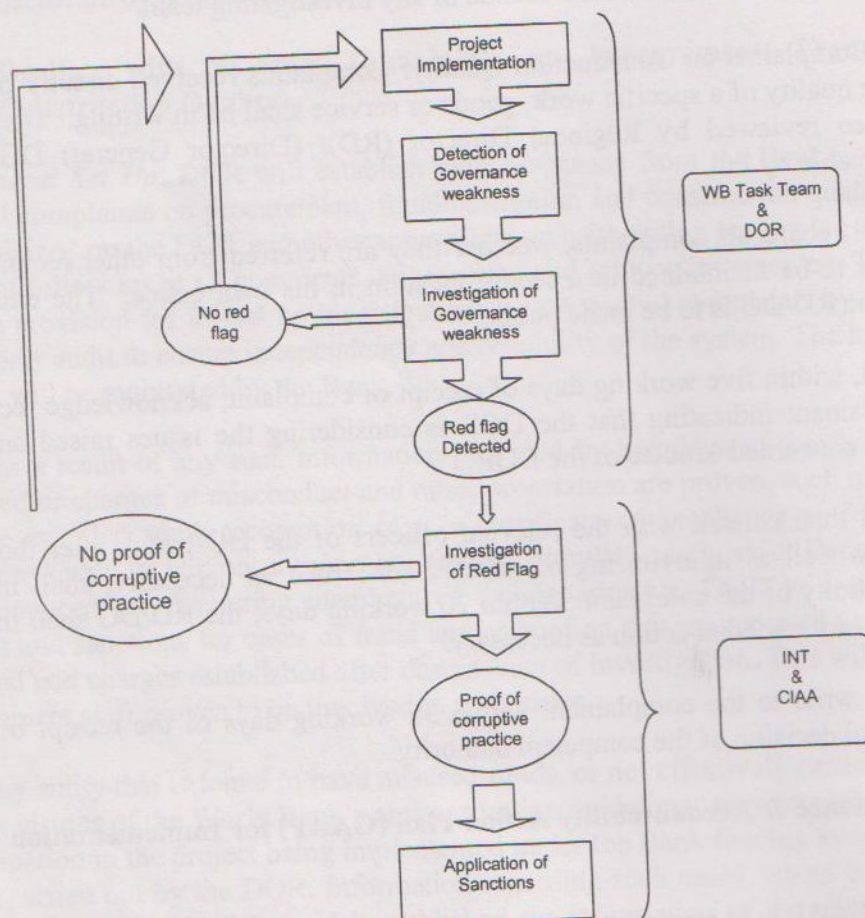
20. The RD/DG shall write to the complainant within 30 working days of the receipt of such complaint as to the final decision of the competent authority.

C. Improved Governance & Accountability Action Plan (GAAP) for Implementation of Road Sector Projects

21. The objective of a GAAP is to strengthen governance around a project and as a result prevent corruptive practices. The implementation of this plan would contribute greatly to the overall governance environment and would permeate to activities financed by other sources.

22. The diagram overleaf shows the structure of a Governance and Accountability Action Plan.

Structure of Improved Governance and Accountability Action Plan



D. Monitoring Indicators/Check List for Use by the Bank During Supervision

23. The anticorruption literature has produced a certain number of indicators that have been denominated commonly as "red flags"³. These are supposed to warn of possible corruption or fraud. As shown in the table these indicators are very vast in their scope and in a sense, although they may only be a potential indication of fraud, they are already proof of inefficiency at best or anti-competitive and unfair practices at worst. The use of red flag indicators by the World Bank Task Team is described below

24. The Bank intends to monitor implementation of the above arrangements and actions, through *inter alia*, the following:

25. **Disclosure of information** will be supervised mainly through: (a) checking the frequency and comprehensiveness of website updates; (b) checking the distribution of materials to key

³ An example of an exhaustive list of red flag indicators has been produced by the Office of the Inspector General Investigations; USAID. This is shown in Table in 6a.1

participating civil society groups and NGOs; and (c) checking the comprehensiveness of information available at public information kiosks.

26. Functioning of the complaints handling system and the system of sanctions and remedies will be supervised mainly through: (a) periodic review of statistics based on records kept on the website of PPMO and DOR; and (b) field level checks to ensure that problems are being reported and acted upon. Such supervision may be carried out by the Bank, through any independent international agency experienced in handling such matters.

27. Enhanced Supervision and Investigation of Red Flags: The scope of the enhanced supervision will be defined by the Task Team according to the red flag indicators and levels detected. The enhanced supervision team will include the fiduciary team (Financial Management and Procurement Specialist) and whatever additional requirement necessary.

28. During enhanced supervision the Task Team will endeavor to analyze the issues and look out for the "Red Flags" indicated in Table 6a -1. If no red flags are detected as a result of the enhanced supervision, the Task Team will update the risk assessment of the project and propose project implementation improvement measures if necessary. If Red Flags are found, the team will seek a written explanation from DOR and report to INT as per the Bank's own procedures.

29. The explanations given by DOR and the gravity and extent of Red Flags detected will be discussed with INT in an analysis meeting. If it is deemed that the explanations are satisfactory, the alert will be lifted. If the explanations are not satisfactory or the gravity of the Red Flags is deemed high then INT will proceed to an investigation in accordance with its own procedure

E. Red Flag Investigation

30. INT may investigate the reported Red Flags through a field visit to the country, and discussions with DOR, PPMO, Financial Comptroller General Office (FCGO) and Transparency International, Nepal Chapter, who will be monitoring as third party. If no proof of corruption is found the Investigating Team will provide recommendations for improvements to be made to the monitoring of project implementation process

31. If proof of corruption is found the Bank will officially ask the DOR/GON to take the measures that the existing legal framework allows:

- legal proceedings against individuals;
- blacklisting of firms.

Table 6a-1
Fraud Indicators or Red Flags
(For the reference of the Bank Task Team carrying out enhanced supervision)

Fraud indicators are best described as clues or hints that a closer look should be made at an area or activity. Although poor management decisions or negligence may give rise to possible indications of fraud, the difference between fraud and negligence is a fine line called intent. All that indicators can do is to point the way for further detailed inquiry.

PRE-SOLICITATION PHASE –

- Release of information by firms participating in project design to contractors competing for the contract
- Designing "pre-qualification" standards or specifications to exclude otherwise qualified contractors
- Splitting up requirements to get under small purchase requirements or to avoid prescribed levels of review or approval
- Information leaks to contractors or their representatives by technical or contracting personnel
- Justifications for sole source or negotiated procurement signed by officials without authority or bypassing required levels of review

SOLICITATION PHASE

1) Preparation of Bidding Documents:

- Rigged specifications to meet the qualifications of one particular contractor
- Placing any restrictions in the solicitation documents to restrict competition
- Restricting procurements to exclude or hamper any qualified contractor
- Limiting the time for submission of bids so that only those with advance information have adequate time to prepare bids
- Revealing any information about procurement to one contractor, which is not revealed to all (from either technical or contracting personnel)
- Conducting bidders' conference in a way which invites bid rigging or price fixing, or permits improper communications between contractors
- Failure to assure that a sufficient number of potential competitors is aware of the solicitation
- Improper communication with contractors, or improper social contact with contractor representatives
- Government personnel or their families acquiring a financial interest or employment in a contractor or subcontractor
- Special assistance to a contractor in preparing bid
- Referring a contractor to a specific subcontractor

2) Proposal Submission

- Improper acceptance of late bid
- Falsification of documents or receipts to get a late bid accepted
- Withdrawal of the low bidder (who may become a subcontractor to the higher bidder who gets the contract)
- Collusion or bid rigging between bidders (Indicators of bid rigging: (i) identical bids are received; (ii) a number of bids are received that are much higher than published costs of previous contracts of the same type, or of previous bids by the same firms for similar contracts; (iii) fewer firms bid than would normally be expected from that industry; (iv) there is an inexplicably large gap between the winning bid and all other bids; (v) apparent recurring patterns of low bids, such as corporations always winning a bid in a certain geographical area, or other patterns indicating collusive division of territory, or in a particular rotational sequence vis-à-vis other bidders; (vi) the successful bidder subcontracts work to companies that submitted higher bids on the same project; (vii) bids are very close on non-standard items with no suggested retail price; (viii) correlation between contractors that win the bids and the size of the contracts; (ix) certain contractors always bid against each other or conversely certain contractors do not bid against one another; (x) competing contractors regularly socialize, or contractors and government procurement personnel socialize.
- False certifications information of contractor (size of business certification; certification of independent price determination; financial capabilities; performance; companies conducting business under several names; etc)
- Change in bid after other bidders' prices are known

3) Bid Evaluation

- Improperly disqualifying or discarding the bid or proposal of a contractor - Accepting non-responsive bids from preferred contractors
- Unnecessary contact with contractor personnel by persons other than the contracting officer during solicitation, evaluation and negotiation processes
- Any unauthorized release of information to a contractor or other person
- Any exercise of favoritism toward a particular contractor during the evaluation process
- Use of biased evaluation criteria or biased individuals on the evaluation panel
- Documents from competing firms contain similar or identical: (i) company names; (ii) hand writing/signatures; (iii) company stationary; (iv) invoice numbers (in sequence); (v) telephone numbers.

Table 6a-1 (continued)
Fraud Indicators or Red Flags
 (For the reference of the Bank Task Team carrying out enhanced supervision)

POST-SOLICITATION PHASE

4) Contract Attribution and Signature

- Award of a contract to a contractor who is not the lowest responsible, responsive bidder - Disqualification of any qualified bidder
- Allowing a bidder to withdraw without justification
- Failure to forfeit bid bonds when a contractor withdraws improperly
- Material changes in the contract shortly after award
- Awards made to contractors with an apparent history of poor performance
- Awards made to the lowest of a very few bidders without re-advertising considerations or without adequate publicity
- Awards made that include items other than those contained in bid specifications
- Awards made without adequate documentation of all pre-award and post-award actions including all understandings or oral agreements
- "Back-dated" or after-the-fact justifications may appear in the contract file or may be signed by persons without the authority to approve noncompetitive procurement
- Contractor misrepresentation as to costs during negotiations
- Failure of government personnel to obtain and rely upon pricing data

5) Execution, Supervision and Control

- Receipt of works and services is certified even though physical inspections have not been performed
- Contractors fail to meet the contract terms but nothing is done to force compliance
- Unsuccessful bidders become subcontractors after the contract is awarded
- The labor of government employees is used to perform parts of contracted work
- Contract files are either incomplete or missing required documents
- Contract documents are altered, backdated, or modified to cover deficiencies
- Fictitious or inordinate time frames and dates are entered on contractor records (e.g. maintenance; inspection; receipt of reports)
- Contract deviations by means of changes requested and granted immediately after contract award
- Used or inferior products are substituted for the product actually ordered
- Defective pricing, which might include: (i) persistent defective pricing; (ii) repeated defective pricing involving similar patterns or conditions; (iii) failure to correct known system deficiencies; (iii) indications of falsification or alteration of supporting data; (iv) protracted delay in release of data to government to preclude possible price reductions; (v) identical or nearly identical high salary history data on employees or consultants.
- Employment of people known to have previously perpetrated fraud against the government

6) Payments

- Contractors are overpaid or paid twice for the same items/services and there is no attempt to recoup the overpayments
- Accounting reconciliation is not performed regularly relative to (i) contract payments; (ii) daily transactions; (iii) inventory.
- Cost proposal data that is incorrect or less than current or complete
- Billings (including progress payments) not adequately supported by project status or reliable cost data (including duplicate or altered invoices; double billing; etc)
- Significant increase in price without corresponding increase in work
- Substantial subcontracting without the knowledge and approval of contracting officer
- Failure to meet specifications

Source: *Fraud Indicators: Office of the Inspector General Investigations; USAID*