

Contract Administration Training for DoR Engineers

- Issues and Practical Solutions Taken in Contracts with respect to Real Cases in Projects Financed by the DPs



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Part A:

Background and History of Foreign Assistance in Road Projects

Department of Roads (DoR)- History

- A pioneer and reputed department under Government of Nepal.
- "Bato Kaj Goshwara" and "Chhembhadel Adda" for construction & maintenance of Civil Engineering works- Under Rana regime.
- Public Works Department (PWD), after the advent of democracy in 2007 BS.
- "Bagmati valley Road Project " In 2011 BS.
- In 2017 BS, three sub-sections, named as Construction, Planning and Maintenance, were created under road section of PWD
- Established along with Department of Building after splitting from Public Works Department (PWD) in 2027 B.S.

DoR- Vision and Goal

- **Vision-**
 - “Managing Roads for National Integration and Socio-Economic Development”
- **Overall goal-**
 - “to contribute in achieving sustainable socio-economic development by providing safe affordable public road infrastructure services through building of a cost-effective, efficient and reliable road network system”

DoR- Mission and Objective

- **Mission Statement-**

- to Contribute Towards the Betterment of Living Conditions of the People through Effective, Efficient, Safe and Reliable Road Connectivity“

- **Objective-**

- “to develop, expand and strengthen the road network in a sustainable way for enhancing the overall socio-economic development and integration of the country through balanced regional development by providing due consideration for remote areas and deprived communities”

Foreign Cooperation in Nepal's Road Sector

- Very important in the history of Road development in Nepal
 - E-W Highway, TRP, Sunauli- Pokhara, PRM, Kodari RM, Ktm Ring Road, Pokhara- Baglung, Charaali- Ilam- Fidim- Taplejung, Dhangadhi- Dadeldhura, Dadeldhura- Doti Sanfebagar etc
- Majority of bilateral grant assistance in the form of project grant up to 90's
- After 90's multilateral assistance is being increased
- Loan assistance from multilateral donors and bilateral donors (EXIM bank) is growing up since last decade.

Major Development Partners at Present

- Multi Lateral-
 - Asian Development Bank
 - The World Bank
- Bilateral-
 - Government of Japan (JICA)
 - Government of India and Indian EXIM bank
 - Government of China
 - Swiss Government
 - United States of America MCC
 - United Kingdom DfID

Assistance from Development Partners

- Budgetary Support
- Technical Support
- Managerial Support
- Exposure to Development Practices

Challenges

- Conducive environment
- Donor's conditions
- Institutional capacity
- Liaison and coordination (intra and inter Ministry, Department and with the external stake-holders)

Procurement Related Legal Provisions/ Guidelines to be familiar with

- Procurement Act, 2003
- PPR 2004
- Public Work Directives, 2002- (to be revised and updated)
- FIDIC- (Condition of Contract, Contract Guidelines)
- PPMO (SBDs, Guideline, Decisions/Awards)
- DP's Guidelines on Procurement and Bid Evaluation (ADB, WB, JICA, EXIM banks etc)
- Guidelines/ Instruction from FCGO, Ministry and Department

- **Environment Act and Regulation**
- **Labor Act**
- **Contract Act**
- **Nepal Arbitration Act**
- **Nepal Construction Entrepreneur's Act**

Features of Procurement Act, 2063

- Optimization and efficient management of public fund
- Optimum output and best value for money
- Promote fair and healthy competition
- Encourage participation by eligible and efficient bidder
- Ensure transparent procurement process
- Build in accountability
- Provide equal and non-discriminatory access and opportunity
- Reduce scope for corruption and abuse

Contract : Definition

Contract is an:

- agreement between two or more parties whereby each party **promises to do, or not to do, something.**
- **transaction involving two or more individuals,** whereby each has reciprocal rights to demand performance of what is promised.

Steps in Procurement Procedures

- Procurement Plan
- Procurement Strategy
- Pre and Post qualification
- Preparation of Bid documents
- Bidding Period
- Opening of Bids
- Bid Evaluation
- Contract Award
- Advance Payment
- Contract Implementation
- Contract Completion

Procurement Plan

- Packaging and slicing of Contract
- Scheduling of the Work
- Adequate Documentation (Bidding doc., Contract Papers)
- Organization and Staff to Implement Procurement Process

“A procurement plan should ensure competitive bidding by giving adequate notice to the bidders and providing equal opportunity to all the bidders.”

Procurement Strategy

- Procurement Methods and procedures to be adopted
- Standard Bidding Document to be Used
- Development of Contract Award Criteria
- Time Schedule

Areas of Improvement in Procurement and Contract Implementation

- Poor project Preparation
- Procurement Plan
- Selection of Contract Strategy and SBDs
- Transparency in Award Process
- Understanding Contract
- Insurance
- Advance Payment
- Timely Response
- Variation/ Change and Delays
- QAP and its Compliance
- Payment Delay
- Claims and Disputes
- Lesson learnt and Feed Back System

Way Forward

- Adequate time and efforts in preparation of project Trainings on Procurement and Contract management
- Clear Understanding of Contract
- Timely Response on Contractual issues
- Adequate Attention During Estimate and Bid Document Preparation
- Tenure of Project Team
- Consistency in Legal Provisions
- Record Keeping and Data base
- Effective and Efficient Monitoring Mechanism
- Management of Logistics and Supports
- Effective Feed Back Mechanism

Advantages of a Good Procurement Management and Contract Administration Practice

- Immediate Rectification of deficiencies, If Any
- Easy to Monitor and Report
- Consistent and Standard Practice
- Transparency in the whole Process
- Compliance of Legal Provisions and Donor's Guidelines/Covenants
- Effective Feedback
- Internal Practice for Technical Audit

Part B:

Issues and Practical Solutions Taken in
Contracts with respect to Real Cases in
Projects Financed by the DPs

Case: 1 : Omission in Quoting Rates

- 11 bids were purchased but only 3 bids were submitted in a road project financed by Donor D. The procurement method adopted was Post-qualification.
- In the loan agreement between GoN and the donor it was clearly mentioned that the donors' guideline should be followed.
- During Evaluation the lowest evaluated substantially responsive bidder's offer was 45% below the engineer's estimate and the bidder had missed to quote rates for 2 BoQ items PCC M10, RRM (Weightage 12% and 26% respectively).
- Remaining two bidder's offers were 2% and 5% higher the engineer's estimate.
- The lowest bidder urged for rejection of its bid on the ground of omission of quoting the rates in major items and award the contract to the second lowest bidder.
- But the Bid Evaluation committee recommended to approve the bid of the lowest bidder.
- The procurement was to go through donor's prior review.
- **What in your opinion the Public entity is supposed to do?**
- **What Would be the donor's comment in its No Objection?**

Case: 2 : Letter of Bid

- 17 bids were purchased and 7 bids were submitted in a road project financed by Donor X. The procurement method adopted was Post-qualification.
- In the loan agreement between GoN and the donor it was clearly mentioned that the donors' guideline should be followed.
- During Evaluation the lowest evaluated substantially responsive bidder's offer was 16% lower than the engineer's estimate.
- Other two bidder's offers were 5% and 4% lower than the engineer's estimate.
- The lowest bidder had signed and sealed but missed to quote its bid amount in the letter of Bid.
- As per the Bid Evaluation committee's recommendation the public entity approved the bid of the lowest bidder and sent to the donor's no objection for contract agreement.
- Donor X didn't provide no objection stating that since quoting the bid amount is mandatory in its guideline the lowest bidder can't be considered as responsive and suggested the public entity to go with the second lowest bidder.
- **What in your opinion the Public entity is supposed to do?**

Case: 3: Conflict of Interest/ Misprocurement

- 14 bidders submitted their Technical and Financial bid in in a road project financed by Donor Y. The procurement method adopted Single stage two envelop.
- In the loan agreement between GoN and the donor it was clearly mentioned that the donors' guideline should be followed.
- 11 bidders were technically qualified. PE got the no objection on its Technical evaluation Report and for opening of financial bids of all technically qualified bidders.
- The financial bid was opened on the designated date and the bid price was made public.
- As per the amount quoted on their letter of bid the bid prices of bidder no. 1-11 were -30%, -24%, -17%, -11%, -7%, -5% , -3%, -0.5%, +0.02%, +1.5% and +3%
- During the course of Bid evaluation Y sent a letter to disqualify technically he bidder no. 1 and 5 as they have conflict of interest and proceed the price bid evaluation of remaining 9 bidders only.
- **What in your opinion the Bid evaluation committee and the Public entity is supposed to do in this situation?**

Case: 4: Contract Completion in case of omission of minor BoQ item

- A contractor reported the engineer that he has accomplished the contract and asked for completion and discharge letter from the engineer.
- When the Engineer and client visited site, it was found that the road marking was done with enamel paint which was provisioned thermoplastic paint in the contract.
- Engineer didn't accept the painting work.
- Contractor asked the client to deduct the price of substandard paint and give him the completion certificate.
- **What the Client and engineer should do in this case?**

Case 5: Authenticity of Completion Certificate

- Contractor Submits a letter to the client to release one half of his retention money with a printed photograph of completion certificate issued by the engineer.
- Client became puzzled with the letter that the work was not completed substantially and EoT was not granted to the contractor
- Client asks the engineer about the authenticity of his letter.
- Engineer replies that was not issued to the contractor

What the Client should take actions to the contractor and to the Engineer?



Thank You