

सार्वजनिक खरिद पत्रिका Public Procurement Journal

वर्ष १३

अङ्क १

असार, २०८३



प्रकाशक



नेपाल सरकार

प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय

सार्वजनिक खरिद अनुगमन कार्यालय

केसरमहल, काठमाडौं

संरक्षक



श्री राम प्रसाद आचार्य
नि. सचिव

सम्पादन समिति



संयोजक
श्री नारायण प्रसाद भण्डारी
सहसचिव (प्रा.)



श्री इन्द्र गौतम
निर्देशक



श्री कृष्ण पुडासैनी
निर्देशक



श्री विवेक सिग्देल
निर्देशक



श्री विनोद कुमार कोइराला
निर्देशक



श्री मुना चुगुठी
निर्देशक



श्री दिलिप खड्का
शाखा अधिकृत



इ. श्री अद्वैत राम भण्डारी
इन्जिनियर



इ. श्री सुभाष कुमार खड्का क्षेत्री
इन्जिनियर

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सम्पादन समिति

सहसचिव, श्री नारायण प्रसाद भण्डारी	-संयोजक
निर्देशक, श्री इन्द्र गौतम	-सदस्य
निर्देशक, श्री कृष्ण पुडासैनी	-सदस्य
निर्देशक, श्री मुना चगुठी	-सदस्य
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इन्जिनियर, श्री अद्वैत राम भण्डारी	-सदस्य
इन्जिनियर, श्री सुभाष कुमार खड्का क्षेत्री	-सदस्य सचिव

(यस पत्रिकामा प्रकाशित लेख रचनाहरू लेखकका निजी विचार हुन।
लेखकबाट व्यक्त विचारले यस कार्यालयको प्रतिनिधित्व गर्दैन।)

प्रकाशक



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लेख/रचना आह्वान सम्बन्धी सूचना

सार्वजनिक खरिद अनुगमन कार्यालयद्वारा आर्थिक वर्ष २०८३/८४ मा प्रकाशन गरिने “सार्वजनिक खरिद पत्रिका” का लागि सार्वजनिक खरिदसँग सम्बन्धित मौलिक, अनुसन्धानात्मक तथा विश्लेषणात्मक लेख/रचनाहरू आह्वान गरिन्छ।

सार्वजनिक खरिद नीति, ई-प्रोक्चोरमेन्ट (e-GP), ठेक्का व्यवस्थापन, सार्वजनिक निर्माण आयोजना, खरिदमा नवप्रवर्तन, जोखिम व्यवस्थापन, दिगो तथा हरित सार्वजनिक खरिद, पारदर्शिता तथा सुशासन, अन्तर्राष्ट्रिय असल अभ्यास तथा सार्वजनिक खरिदसँग सम्बन्धित अन्य समसामयिक विषयहरूमा आधारित लेख/रचना पेश गर्न सकिनेछ।

मुख्य सर्त तथा प्राविधिक विवरण:

शब्द सीमा: ३,००० देखि ५,००० शब्दसम्म (नेपाली वा अंग्रेजी);

फन्ट/Spacing नेपालीका लागि Kalimati र अंग्रेजीका लागि Times New Roman (फन्ट साइज १०.५; Paragraph Spacing- Before ०, After ६ Pt; Line Spacing १.१५ Pt);

Paper Size: ६.९” * ९.४५” (B*H);

Margins: Top/Bottom/Left/Right – ०.६”;

लेखको संरचना: शीर्षक, सारांश (Abstract), मुख्य शब्द (Keywords), मुख्य लेख तथा सन्दर्भ सूची (References) समावेश गरिएको हुनुपर्नेछ।

आवश्यक विवरण: लेखकको फोटो, संक्षिप्त परिचय, ईमेल र मोबाइल नम्बर;

समयावधी: लेख/रचना पठाउने अन्तिम मिति २०८३ चैत्र मसान्त सम्म;

पठाउने माध्यम: ईमेल gunaso@ppmo.gov.np मा पठाउनुपर्नेछ।

थप जानकारीका लागि सार्वजनिक खरिद अनुगमन कार्यालयमा सम्पर्क गर्न सकिनेछ।

नोट: लेख पूर्ण रूपमा मौलिक र अप्रकाशित हुनुपर्नेछ। छनोट भएका लेखहरूका लागि नियमानुसार पारिश्रमिकको व्यवस्था गरिनेछ।

सार्वजनिक खरिद अनुगमन कार्यालय



नेपाल सरकार

प्रधानमन्त्री तथा मन्त्रिपरिषद्को कार्यालय

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मन्तव्य

सार्वजनिक खरिद प्रणाली सुशासन, वित्तीय अनुशासन तथा सार्वजनिक स्रोत-साधनको प्रभावकारी परिचालन सुनिश्चित गर्ने महत्वपूर्ण संयन्त्र हो। प्रतिस्पर्धा, पारदर्शिता, निष्पक्षता, जवाफदेहिता, दक्षता, आर्थिक मितव्ययिता तथा मूल्यको सार्थकता जस्ता आधारभूत सिद्धान्तहरूको अवलम्बनबाट मात्र सार्वजनिक लगानीको अधिकतम प्रतिफल प्राप्त गर्न सकिने तथा नागरिकको राज्यप्रतिको विश्वास अभिवृद्धि गर्न सकिने विषयमा यस कार्यालय दृढ प्रतिबद्ध रहेको छ।

यस कार्यालयले प्रचलित कानूनी व्यवस्थाअनुरूप सार्वजनिक खरिदसम्बन्धी नीति तथा कानूनको समयानुकूल सुधार, प्रणालीको सुदृढीकरण तथा संस्थागत विकासका लागि निरन्तर पहल गर्दै आएको छ। नेपाल सरकारको शासकीय सुधारसम्बन्धी कार्यसूचीमा समेत सार्वजनिक खरिद प्रकृयाको सुधार र परिमार्जनलाई प्राथमिकताका साथ समावेश गरिनुले यस क्षेत्रलाई थप प्रभावकारी, उत्तरदायी तथा परिणाममुखी बनाउने विषयलाई प्रतिबिम्बित गरेको छ। परिवर्तित आवश्यकता, प्रविधिको तीव्र विकास तथा सेवा प्रवाहमा देखिएका चुनौतीलाई सम्बोधन गर्दै सार्वजनिक खरिद व्यवस्थालाई आधुनिक, व्यावसायिक र विश्वासयोग्य बनाउने दिशामा कार्यालय निरन्तर सक्रिय रहेको छ।

सार्वजनिक खरिदको प्रभावकारिता केवल खरिद प्रक्रियाको कानूनी परिपालनमा मात्र सीमित हुँदैन। योजना तर्जुमा, लागत अनुमान, बोलपत्र तथा प्रस्ताव आह्वान, मूल्याङ्कन, सम्झौता व्यवस्थापन, कार्यान्वयन, अनुगमन तथा मूल्याङ्कनसम्मका सम्पूर्ण चरणमा पारदर्शिता, स्वस्थ प्रतिस्पर्धा, उत्तरदायित्व र व्यावसायिक दक्षताको सुनिश्चितताबाट मात्र अपेक्षित प्रतिफल हासिल गर्न सकिन्छ। यसका लागि खरिद प्रक्रियामा संलग्न सबै पक्षबीच समन्वय, क्षमता अभिवृद्धि तथा सूचना प्रविधिमा आधारित व्यवस्थापन प्रणालीको विकास अपरिहार्य रहेको छ।

व्यवहारमा देखिएका चुनौतीहरूको सम्बोधन, नीतिगत तथा कानूनी व्यवस्थाको समयानुकूल परिमार्जन, खरिद व्यवस्थापनमा संलग्न जनशक्तिको क्षमता विकास तथा सूचना प्रविधिमैत्री प्रणालीको विस्तारमार्फत सार्वजनिक खरिद प्रणालीमा सुधार र नवप्रवर्तनलाई संस्थागत गर्ने दिशामा यस कार्यालयले निरन्तर प्रयास गरिरहेको छ। यस्ता प्रयासहरूले सार्वजनिक खर्चको

प्रभावकारिता अभिवृद्धि गर्नुका साथै सुशासन तथा सार्वजनिक उत्तरदायित्वलाई थप सुदृढ बनाउने विश्वास लिइएको छ।

यस प्रकाशनले सार्वजनिक खरिदसम्बन्धी कानूनी व्यवस्था, नीतिगत पक्ष, अभ्यास तथा सुधारका आयामहरूलाई समेट्दै सार्वजनिक निकाय, निर्माण व्यवसायी, परामर्शदाता, आपूर्तिकर्ता तथा सार्वजनिक खरिदका विषयमा रुचि राख्ने सम्पूर्ण सरोकारवालाहरूका लागि उपयोगी सन्दर्भ सामग्रीका रूपमा कार्य गर्ने अपेक्षा गरिएको छ।

अन्त्यमा, सार्वजनिक खरिद समग्र पक्षलाई थप सक्षम, पारदर्शी तथा विश्वसनीय बनाउन निरन्तर सहयोग, सुझाव र योगदान पुर्याउनु हुने सम्पूर्ण विज्ञ, सरोकारवाला निकाय, यस कार्यालयका कर्मचारी, खरिद सम्बन्धी विषयमा रूची राख्नु हुने सम्पूर्ण सरोकारवाला तथा यस प्रकाशनको तयारी र सम्पादन कार्यमा संलग्न सम्पूर्ण महानुभावहरूप्रति हार्दिक धन्यवाद सहित कृतज्ञता अर्पन गर्दछु।

राम प्रसाद आचार्य
नि.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 सम्बन्धी 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 सार्वजनिक खरिद 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 प्रतिस्पर्धालाई सीमित नपार्ने हुनु पर्दछ। आम नागरिकको सरोकार रहने र यसबाट सार्वजनिक स्रोतको सदुपयोग भएको नागरिक विश्वास हासिल गर्दै सार्वजनिक जवाफदेहिता 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 पुर्याउने बनाउन अमूल्य सुझाउको अपेक्षा गर्दछौं।

सम्पादक मण्डल

विषय-सूची

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Alternative Dispute Resolution (ADR) in Construction Contract



Er. Keshab Kumar Sharma¹

1. Introduction

A contract is a complex arrangement involving various parties from different fields and backgrounds working together. Each party plays different roles in the project. Consequently, they also have numerous contractual relationships between them to form a team in achieving the project goal. As different parties involved and various contractual relationships occur in the contract there is always high risk of disputes. Due to the nature of construction contracts, or better yet the construction process, conflicts and disputes are almost inevitable. This is because, in construction projects, several different contracting entities with different needs are expected to cooperate and coordinate their efforts. If project ends up in a protracted dispute, the project will fail to meet its original goals and expectations and consequently cause the project to suffer.

2. Claim and Dispute

A Claim is an unresolved change. It may be either demanding money, time or an adjustment in contract terms. A claim generally arises when the contractor believes a change has occurred, but the employer/ client disagrees and/or both parties agree that change exists but do not agree on the impact and cost of the change. The claim is a request for compensation for damages incurred by any party to the contract.

A claim is defined by the Canadian Law Dictionary, as an “assertion to the right to remedy, relief, or property” or a “failure to fulfill obligations under the contract.”

Claims that are not entertained lead to disputes. Dispute exists when one party makes a decision, and the other party does not agree to it. When either party in contract makes certain issue or claim against another party or the latter does not accept the claim raised by the first party. If a party in the contract does not like the fact to be documented, it becomes unfortunate, and dispute is unavoidable.

Dispute may be defined as an assertion of right, claim or demand on one side, met by contrary claim or allegation or repudiation on the other.

3. Reasons for Arising Claims in Construction Industry

Claims in construction projects can be based on the contract itself, a breach of contract, a breach of some other common law duty, a quasi-contractual assertion for reasonable (quantum merit)

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compensation. Claims arise when the contractor believes he has been impeded in some way from executing the work and are increasingly common in construction projects due to:

- Competitive market resulting in low bids.
- Incomplete plans and specifications.
- Contradictory statements in the contract documents.
- Inexperienced contractors: less familiar with contract documents and procedures.
- Contractors, more aware of claims: having claim experts.
- Inability to recognize risks and failure to deal adequately with those including their sharing amongst contracting parties.
- Risks being either ignored or dealt with arbitrarily by the contracting parties
- Employers tend to retain all rights and shift obligations to the contractor.
- Contractor's tendency to seek the weakness of contract clause only to make profit
- Inability to define/ interpret the contract terms clearly.

4. Sources of Disputes in the Construction Contracts

Disputes often arise due to unclear objectives, undefined roles, and poor communication. Contractors and consultants have separate contractual relations with the client. Therefore, there is possibility of dispute raised by the contractor and/ or consultants against the client.

Contract Document is one of the main sources of disputes among the contracting parties. Other sources are- Client, Contractor, Consultant, organizations related to the projects and other environment.

- **Contract (Contract Documents):** Contract documents are the main source of dispute because parties in contract want to interpret the contract documents for their own interest. Therefore, the standard contract documents should be followed in contract. A contract document consists mainly of the following documents:

BoQ and Method of Measurement: BoQ should be as accurate as possible to reduce the possibility of dispute in contract implementation. Similarly, the standard method of measurement is to be specified in Contract documents for minimizing the dispute situation.

Drawings: Unclear drawings lead to dispute in construction. Therefore, clear and accurate drawings are to be provided to all prospective bidders before bidding.

Specification: The specification for each item should be achievable and reasonable.

Condition of Contract (CoC): Condition of Contract is the main guiding document in a contract. The CoC should be clear and precise with full meaning to avoid dispute situation.

- **Project Team:** Generally, there are four components in a project team. If all components form a team and work as a single team, project can be run smoothly without dispute. The role and responsibilities of all components should be clearly mentioned.

Client: The client is the owner of the project and drafts the contract. When a clause in a contract is ambiguous or unclear, it is interpreted against the party who drafted it- “the Rule of Contra Proferentem”.

Consultant: FIDIC envisaged the impartial role of the consultant in contract administration. The decisions made by the consultant have important role in dispute in the contract.

Contractor: Contractor is the party who implements the contract. Dispute in contract basically depends on the contractors as they generally initiate the dispute.

Project Manager: The project manager is the representative of the client on the work site who should fulfill the obligation of the client on the work site.

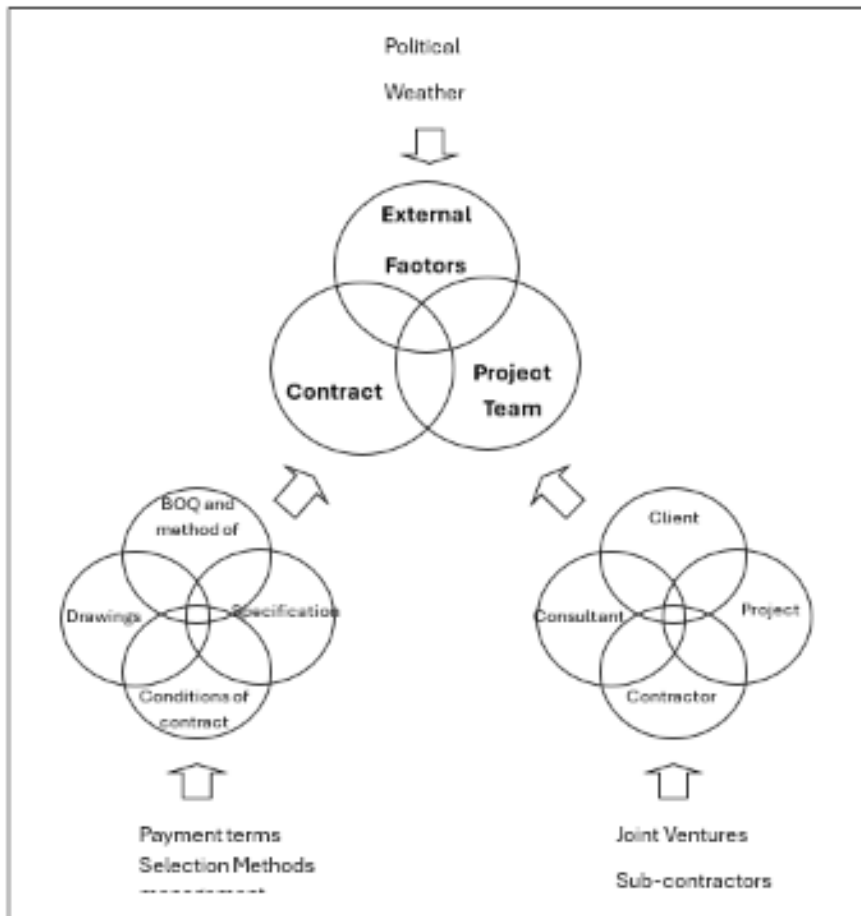
- **Contractors and Dispute:** There may be the dispute between employer and contractor because,
 - Contractor wants to maximize the profit, but the employer wants to get high quality work accomplished in minimum cost,
 - There is tendency of the contractor to increase quantities with higher rates,
 - In many cases the contractor inflates the claims,
 - Contractor generally tries to justify his/ her fault and shortcomings on to the employer,
 - Misinterpretation of the clauses of the Agreement on his own interest,
 - Sub-contractors, Suppliers and Vendors performance also cause some
- **Consultants and Dispute:** There may also be the dispute in projects due to the consultants because,
 - More authority vested on consultants by the contract document but are less accountable,
 - The Client must bear the cost resulting from the Consultant's decision, but consultants want to exercise their independent power,
 - Consultant gets benefit of his job extended by any extension of time for completion, but employer want to early completion,
 - Variation Order claims and disputes because of inappropriate design and drawing, insufficient field survey, Lack of experience, skill, efficiency of the consultant who prepare these documents.
- **External Factors:** External factors such as Force Majeure, political factors, market factors, weather and social factors also have an important role in disputes in a contract. External factors can be grouped as:

Political factors: Political Factors like Strike, Bands, disruption of work site are also important sources of dispute.

Weather: Weather factors e.g. unsuitable weather, heavy rain, flood etc influence the work progress and lead to the dispute.

Market: Availability of construction materials, price fluctuations etc are another major source of dispute.

Social factors: Social and cultural factors also influence the work progress and lead to the dispute.



Potential sources of construction disputes

(Source: Kumaraswamy, 1997)

5. Implication of Disputes in a Construction Project

Construction disputes can have serious implications for projects. The project may suffer cost and time overrun, the owner may suffer significant loss and profit and worse still the project may be

abandoned or failed. This is because construction is a complex process involving many activities, myriads of individuals, different companies or firms, different sizes, part of country with different skills and capabilities and always subject to the changing environment. Contractual disputes in construction projects can severely undermine the "Iron Triangle" of time, cost, and scope and could be a reason for the ruining of professional relationships among stakeholders.

In construction practice, there are numerous construction disputes that occur largely through many reasons between the various parties in a design/ construction effort. The construction disputes may occur from the initial stage until the closeout stage of the project. The occurrences of construction disputes can lead to a negative impact towards client organization. The construction work progress will be slow due to the conflict and disputes between the contractor and client. Subsequently, the cash flow of the client will slow down. The client organization may suffer losses of time, cost and quality.

Construction disputes can severely impact project outcomes, leading to:

- **Schedule Delays:** Work stoppages, prolonged claims, and extended timelines.
- **Financial Losses:** Cost overruns from legal fees, ADR, and arbitration; cash flow interruptions affecting subcontractors and suppliers.
- **Compromised Quality & Safety:** Rushed execution, poor workmanship, and increased safety hazards.
- **Strained Relationships:** Adversarial culture, mistrust, and reputational damage.
- **Risk of Abandonment:** In extreme cases, projects may be abandoned, resulting in financial write-offs and incomplete structures.

6. Management of Construction Disputes

Disputes are almost inevitable in construction environment. It may not be incorrect to say that we can always have dispute-free contracts for construction projects. This is mainly attributed to the fragmented and complex nature of construction.

If possible, disputes should be avoided. But it is not always possible to avoid claims and disputes in construction contracts. However, many disputes could be avoided by ensuring that a formalized contract is made, which is drafted clearly and fairly and contains provisions for early dispute resolution and effective contract management. There are four basic precautions which contribute to the minimization of disputes (Dr Robert, 2006).

- i) Ensure that the parties enter into finalized contract before work commences.
- ii) Ensure the scope and quality of the work are clearly defined at the pre-contract stage.
- iii) Ensure the contract terms are fair and clear, and utilize standard forms of contracts wherever possible.

- iv) Ensure that the contract used contains provisions for the early notification of potential disputes and a well-structured dispute resolution clause which is not limited to arbitration/litigation.

Effective project management requires contract conditions to be well-structured, clearly written, and properly administered. Also, the project documentation should be maintained and reviewed in such a way as to facilitate problem recognition. Therefore, the parties involved should realize that contract administration and documentation are the most important factors to reduce the dispute and the success of construction projects.

Dispute management may be, at least, as important as having a clear understanding of contractual terms and equitable risk allocation. In a construction contract, claims can be raised by both the employer (client) as well as by the contractor. However, in most cases in public projects, usually the contractor initiates the claim for disputes, and sometimes the client makes counter-claim. The dispute management process can be standardized as:

- Recognition and identification of changes or the causes of claims.
- Notification to the engineer and the client.
- Systematic and accurate documentation.
- Analysis of time and cost impacts.
- Pricing.
- Negotiation.
- Dispute resolution and settlement.

7. Dispute Resolution

Construction relationships in the construction industry all over the world have become more strained as years go on and on. Working relationships, communications, and contractual commitments are often not carried out in good faith. This has led to most developed countries searching for better alternatives on how to manage disputes in the construction industry.

The best way to settle disputes is to avoid them. Another way is to have amicable settlement or direct negotiations between the parties at an early stage. If no resolution is found, parties establish in writing the fact which constitutes the basis of dispute. Beyond this adjudication or dispute resolution board could be the solution for the resolution of disputes. Further way out is arbitration, and the final settlement may be in court. Dispute resolution can be broadly classified in two categories:

- Litigation
- Alternative Dispute Resolution (ADR)

Litigation is usually the final recourse as a settlement method and is utilized only when a construction dispute cannot be resolved by negotiation, mediation, or arbitration. Lawsuits are normally expensive and time consuming. Delays in settlement can be prohibitively expensive for

a contractor or a client incurring burdensome costs daily. In addition, legal action can expose the parties to undesirable publicity.

8. Alternative Dispute Resolution (ADR)

Traditionally, if the construction dispute couldn't be resolved by administrative method or by negotiation between the parties then it was used to be forwarded by one or both parties to the court for settlement. Construction disputes and conflicts were handled by litigation. However, the court system has proven to be neither cost effective nor timely in resolving construction issues. Due to the need for effective, economical, and efficient dispute resolution in construction contracts, Alternative Dispute Resolution (ADR) has been widely adopted in recent years. The emphasis on the need for ADR is highlighted by the fact that almost all standard forms of construction contracts, now days contain specific provisions or clauses on alternative dispute resolution. Accordingly, we will proceed to deal with litigation as well as the different alternative means of dispute resolution.

ADR mechanism has been popular and widely in use in construction contracts for the following advantages against litigation:

- Judges of parties' choice and experts of the field
- Convenience of law, language, venue and procedure
- Expeditious adjudication and less expensive
- Less strict legal rigor
- Privacy

Contractual claims and other disputes can arise in the construction projects and this will involve third party on behalf of owners, contractors, design professionals, and construction managers in the early resolution of these disputes through assistance in partnering, negotiation and mediation. When construction disputes cannot be resolved informally, disputes may lead to arbitration. If the construction disputes not able to reach the agreement between two parties or more, it will be litigation case. In this context, means of dispute resolution process can be classified as:

- Administrative remedy,
- Mediation,
- Arbitration, and
- Litigation.

Mediation and Arbitration (sometimes, administrative remedy as well) are considered as the alternative means of traditional litigation for the resolution of disputes. Amicable settlement or Negotiation, directly between the contracting parties, is also an effective form of dispute resolution. It is also stated in Nepal Arbitration Act, 2055. When a dispute arises in a construction

contract, the parties initially prefer negotiations to resolve the dispute, rather than going for third party's involvement or litigation.

Administrative Remedy

In the context of a construction contract dispute, “Administrative Remedy” refers to the formal process of resolving disagreements through the procedures established by the contract or the governing agency, *before* escalating to litigation or arbitration. It's essentially the internal dispute resolution mechanism built into the contract or mandated by law/regulation. It usually involves steps like submitting claims to the project engineer, employer, or a designated dispute board, and seeking resolution through administrative channels provided in the contract. In case of a construction dispute, the claimant must first pursue the administrative remedy outlined in the contract (engineer's decision, DAB, etc.) before moving to arbitration or litigation.

Negotiation

This is simply direct, face-to-face negotiation between the parties, without the use of a third party. It involves the exchange of offers and counter offers and a mutual discussion of the strengths and weaknesses of each party's position. This method is usually most effective if the parties are represented by skilled and knowledgeable counsel, and if both have an incentive to reach an agreed settlement.

Mediation

Mediation is a process whereby the parties, with the assistance of a neutral third party, negotiate a resolution to their differences. Mediation, in many instances, has been extremely effective in resolving contract disputes, thus avoiding the time, energy and cost of arbitration or litigation. Mediation is a structured negotiation in which the mediator provides the structure. The mediator will establish ground rules and acts as a referee, facilitating communications between the parties. The Mediator assists the disputants to generate options and understanding of their respective positions and manage emotions. Although the Mediator controls the process, he or she does not impose any resolution or opinion on the merits of the case, promoting a win/win situation, leaving the disputants themselves to control the outcome. Hence the process is flexible, private and confidential with legal rights of the parties protected when there is no agreement reached.

The mediator's role is to guide and assist the parties to fashion their own settlement, serving as a facilitator to help the parties reach the desired goal of a resolution of their conflict. Parties will settle a dispute as soon as they decide it is in their mutual best interest to do so.

If both parties are prepared to negotiate and compromise in good faith, mediation can be one of the least expensive and most effective dispute resolution methods. In addition to the cost benefit of mediation, there are many benefits that flow from a creative solution crafted by the parties themselves. Understandably, parties are more likely to abide by an agreement that they helped negotiate and, frequently, their business or personal relationship is left intact to allow future constructive dealings.

Adjudication

Adjudication is meant to refer to a disparate pre-arbitral dispute settlement method in the construction industry; it is commonly used in a technical sense. In the construction industry, adjudication can be defined as a process whereby an appointed neutral and impartial party is entrusted to take the initiative in ascertaining the facts and the law relating to a dispute and to reach a decision within a short period of time.

In some jurisdictions, adjudication of some types of construction disputes is required by law. Generally, the adjudicator's decision is binding on the parties unless challenged within a specified period and then varied in arbitration or litigation depending on the terms of the contract. If the decision is not challenged within the specified period, it then becomes final and binding.

The Consulting Engineer as a Quasi-Arbitrator

The FIDIC Standard Form of Contract highlights the importance of the consulting engineer in playing the role of a quasi-arbitrator. The consulting engineer, in addition to the normal services of counseling, pre-investment studies, preparation of documents, project management, supervision, etc. that he/she provides, is also entrusted by the Red Book to “resolve most of the day-to-day differences of opinion which frequently occur during the construction process. The consulting engineer, who is an agent of the employer of a particular project, is entitled to the pre-arbitral decision-making process whose non- acceptance by the parties will lead to the initiation of arbitration.

Arbitration

An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. Once the parties have agreed in writing to resolve their disputes by arbitration, it is not possible for one party to unilaterally seek the court's intervention unless procedural action from the court of the seat of arbitration is required (e.g. to enforce an arbitral award). Moreover, arbitration bestows upon the parties, the freedom to choose one or more arbitrators; the right to determine the powers to be conferred on the selected arbitrator(s); the freedom to choose the venue of the arbitration; the right to determine how the arbitration is to be conducted; and the ability to keep the dispute private. The parties to arbitration are free to choose one or more arbitrators. The chosen arbitrator should have the necessary expertise to resolve the technical disputes arising from the construction contract.

The essence of arbitration is that a third party renders an opinion about how the dispute should be settled. The arbitration award can be binding or nonbinding, depending on the contract or other agreement of the parties. In binding arbitration, the parties select an arbitrator or panel of arbitrators who help design the arbitration process, conduct a hearing, evaluate the evidence and make an award. The award is then binding on the parties and may be entered into and enforced as a judgment by the court. There is a very limited opportunity to appeal an arbitration award. Nonbinding arbitration is identical to binding arbitration except that the parties are not bound by

the result and either party still has the option to proceed to court if either party does not accept the arbitration award.

ADR Provision in PPMO Standard Bidding Document (SBD)

PPMO refers to FIDIC Standard Bidding Document for works as the SBD for International Competitive Bidding (ICB). For National Competitive Bidding (NCB), procurement value above NRs. 20 million PPMO issues its own SBD to be followed by all public entities of Nepal. The latest version of the PPMO SBD for procurement of works, NCB, revised on May, 2026 has mentioned the provision of dispute settlement in the clause 29 and procedure for disputes in clause 30 in the General Condition of Contract (GCC).

GCC “29.1 The Employer and the Contractor shall attempt to settle amicably by direct negotiation any disagreement or dispute arising between them under or in connection with the Contract.”

GCC “29.2 Any dispute between the Parties as to matters arising pursuant to this Contract which 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.”

GCC “30.1 In case of arbitration, the arbitration shall be conducted in accordance with the arbitration procedures in accordance with law of Nepal at the place within the territory of Nepal given in the SCC.”

In this SBD, no provision for Adjudication has been provided. As mentioned in clause 29.2, if the dispute can’t be settled amicably then it may be directly referred to the arbitration, not to the adjudication (as the provision for adjudication was in place in the previous versions).

Dispute Resolution Mechanism Under FIDIC contracts

FIDIC contracts manage construction disputes through a multi-tiered approach, emphasizing early avoidance and Alternative Dispute Resolution (ADR) before arbitration. Mandatory Dispute Avoidance/Adjudication Boards (DAAB) [formerly DAB] are central to this process, requiring prompt, binding decisions to prevent project delays.

The multi-tiered dispute resolution approach is a long-standing tradition in the FIDIC Suite of Contracts. The DAB was first introduced in 1995 into FIDIC work contracts (the 1995 FIDIC Red Book). In 1999, FIDIC then introduced the DAB as a permanent and mandatory feature prior to resorting to arbitration.[4] More generally, there are two types of DAB’s:

- (1) the standing board, as provided, for instance, in the 1999 FIDIC Red Book, which is appointed at the beginning of the contract and remains in place until its end; and
- (2) the ad hoc DAB, which is constituted only once a dispute has arisen (included in 1999 only in the Yellow and Silver FIDIC Contracts).

The 2017 FIDIC Contracts maintained a similar structure and have not changed the mandatory pre-arbitration requirements significantly, providing three mandatory tiers prior to resorting to arbitration:

1. The Engineer's Determination (which is, however, not included in the 2017 Silver Book);
2. The DAAB's Decision;
3. Arbitration.



Key Aspects of FIDIC Dispute Resolution:

- 1. Claim Management:** The Engineer makes initial determinations (Sub-Clause 20.1) on claims within specific, strict timelines.
- 2. Dispute Avoidance (DAAB):** The 2017 edition renamed DABs to DAAB, emphasizing a proactive role in helping parties resolve issues before they become formal disputes.
- 3. Adjudication:** If a dispute arises, it is referred to the DAAB. DAAB decisions are binding and must be complied with promptly.
- 4. Arbitration:** If either party is dissatisfied with the DAAB decision, they can submit a "Notice of Dissatisfaction" and proceed to final and binding arbitration.

Core ADR Mechanisms in FIDIC:

- **DAAB:** A permanent or ad-hoc board that provides quick, cost-effective decisions, often preventing the need for arbitration.
- **Negotiation/Amicable Settlement:** Encouraged at all stages, especially before reaching arbitration.
- **Mediation/Conciliation:** Sometimes integrated into the process to facilitate voluntary settlements.

The 2017 updates generally strengthened the "avoidance" aspect, encouraging better contract management to reduce the need for adversarial proceedings.

9. ADR Practice in Nepal

There is legal provision of Arbitration in Nepal Arbitration Act 2056. Arbitration is applicable in Nepal for construction contract in following condition:

- If after the period as stipulated in the contract the parties have failed to resolve their disputes, either party may give notice of its intention to commence arbitration.
- Purchaser may wish to consider the United Nations Commission on International Trade Law (UNCITRAL) rules/ The rules of conciliation and arbitration of International Chamber of Commerce (ICC)/Rules of the London court of international arbitration/ ICE or Nepal Council of Arbitration (NEPCA)
- The law indicates the place of arbitration in the contract document.

Nepal Arbitration Act, 2056

Nepal Arbitration Act enacted in 2056 BS is the main legal document which describes the process and procedure of arbitration. The act has the following features:

- Act Incorporates basic principles of UNCITRAL Model law.
- Provides supremacy of the contracting parties in the appointment of arbitrators, applicable law, and venue of arbitration, language and procedure followed by the arbitrators.
- Provide time frame to reduce delays in court procedures.
- Arbitration is guided as per the conditions of contract.
- The number of arbitrators, unless otherwise stated in the contract, will be three.
- Unless and otherwise stated in the contract two arbitrators will be appointed by each party and third will be appointed by both appointed members, the third member will work as the principal arbitrator.
- If there is no provision regarding the appointment of arbitrators in the contract or failing to appoint arbitrator, either party may apply to Appellate Court for the appointment of the arbitrator.
- Arbitrator must take oath before starting his work.
- Unless otherwise stated in the contract agreement the arbitrator should give his Arbitral Award within 120 days of receipt of all the necessary documents.

If either party is dissatisfied with the award, can go the court within 35 days of the notice of the award.

- In case of differences of opinion among the arbitrators and failing to enter into decision by majority the opinion of the principal arbitrator will prevail.
- If disputing parties want to settle the issue by conciliation they can apply details of conditions of conciliating points to arbitrator. In that case the arbitrator shall decide positively.

10. Current Scenario of Construction Dispute Resolution in Nepal

Dispute resolution of a contract should be performed as per the provisions stated in standard bidding documents and procurement guidelines applied in the particular contract. Dispute resolution process follows the provisions of the SBD in the public procurement now days. The standard bidding documents (SBD) and guidelines generally used in public procurements in Nepal are: Public Procurement Monitoring Office (PPMO) for NCB procurement. For the donor funded projects, procurement guidelines of the donors (WB, ADB, JICA etc.) are to be followed. The SBD generally adopted for ICB and Donor funded projects is FIDC contract documents. Before PPMO SBD, the SBD recommended by the Public Work Directives (PWD) was in practice since 2002. Before the introduction of PWD, there were no clear provisions for contract dispute resolution. Disputes were resolved either by engineer's decision or litigation. In practice, the ADR mechanisms stipulated in the contract are still not becoming final as the contracting parties, especially the client shows dissatisfaction with the arbitral award and refers the case to the court.

Persistent Challenges

Frequent disputes over vague contracts, poor risk allocation, and delayed payments.

Litigation bottlenecks: Contractors often challenge contract terminations in court, stalling new tenders and leaving projects idle for years.

Project delays and cost inflation: Disputes can halt infrastructure projects like roads, hydropower, and housing, undermining public trust.

Legal Framework

Public Procurement Act (PPA) & Rules (PPR): Governs government contracts, but enforcement is slow.

Arbitration Act 2055 (1999): Provides for arbitration, but uptake is limited due to lack of institutional support.

FIDIC contracts: Increasingly used in large projects, offering structured dispute resolution clauses.

Institutional Mechanisms

Dispute Resolution Center Nepal (DRC Nepal): Offers arbitration, mediation, conciliation, and Dispute Adjudication Boards (DABs). Acts as an appointing authority under NEPCA and UNCITRAL rules.

Dispute Review Boards (DRBs): Being promoted as preventive mechanisms to resolve issues early before they escalate.

Recent Developments

Proposed Infrastructure Court (2026): Ministry of Law is studying the creation of a dedicated court to fast-track infrastructure disputes. This aims to prevent prolonged litigation that currently stalls projects for years.

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के सार्वजनिक खरिद कानून विकासको बाधक नै भएको हो त ?



सुरेश प्रधान^२

१. पृष्ठभूमी

नेपालको विकास प्रकृयाको प्रसंग उठदा सार्वजनिक खरिद प्रकृया पनि सँगै जोडिएर आउँछ। किनभने विकास र खरिद कार्यको अन्योन्याश्रित सम्बन्ध रहेको छ। २०६३ सालमा सार्वजनिक खरिद ऐन जारी भए पश्चात नेपालमा खरिदको क्षेत्रमा सुशासन आउने अपेक्षाका साथ लागू गरिएको थियो। प्रस्तुत ऐनको उद्देश्य नै प्रतिस्पर्धा, खुल्लापन, पारदर्शी निर्णय प्रकृयाको साथै सार्वजनिक निकायको खरिद कार्यमा विभेद नगर्ने र समानताको आधारमा व्यवहार गरी जवाफदेहिता कायम गरी भ्रष्टाचार नियन्त्रण गर्ने रहेको देखिन्छ। यसै प्रावधान अनुसार खरिद कार्य व्यवस्थित गर्न सार्वजनिक खरिद नियमावली, २०६४, नमूना बोलपत्रसम्बन्धी कागजातहरू, प्राविधिक नोट निर्देशिका आदि जारी गरी सार्वजनिक खरिद अनुगमन कार्यालयले खरिद कार्य वस्तुगत र पारदर्शी गर्ने प्रयास गर्दै आएको छ। सार्वजनिक निकायको रूपमा परिभाषित निकायहरूमा उल्लिखित ऐन पनि लागू हुने भएकोले प्रस्तुत कानूनले एक किसिमले चालु खर्चका क्रियाकलाप बाहेक पूँजीगत प्रकृतिका सबै कार्यक्रम आयोजना र क्रियाकलापहरू समेटने हुँदा कानूनको परिधि भित्र रहेर विकास कार्य गर्नुपर्ने अवस्था सिर्जना भएको देखिन्छ।

तर प्रस्तुत ऐन लागू भएको करिब बीस वर्ष पुग्दा पहिला बजेटको कमी वा निकासामा कठिनाई भनी विकास कार्य हुन नसकेको टिप्पणी हुने गरेकोमा वर्तमान समयमा यस कानूनका प्रयोगकर्ता र प्रशासकको साथै निजी क्षेत्रका सरोकारवालाहरूले समेत खरिद कानूनको प्रावधानलाई दोष दिने र काम गर्न कठिन भएको भाष्य वा टिप्पणी व्यापक रूपमा गर्ने गरेको देखिन्छ। विकास नहुनुमा बहुआयामिक पक्षहरू जिम्मेवार रहेका छन्। तर यस लेखमा सार्वजनिक खरिद ऐनको व्यवस्था गर्दा केही मूलभूत मान्यताहरू लागू हुने अपेक्षा गरिएको कुराहरूको चर्चा गर्दै सो परिधिहरू

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तथामान्यताहरू पालनाको स्थितिको विवेचना गर्ने प्रयास गरिएको छ। प्रस्तुत कानूनले अपेक्षा गरेको उल्लिखित परिधि तथा विषयवस्तु व्यवहारमा सरोकारवाला निकायहरूले पालना गरेमा प्रस्तुत ऐन र नियमावली प्रभावकारी रूपमा लागू हुन सक्ने अपेक्षाका साथ उल्लिखित प्रावधान राखिएको देखिन्छ। यसैले यस लेखमा कानून लागू गर्ने समयमा राखिएको मान्यता वा पूर्व शर्तहरूमा केन्द्रित रही सम्बन्धीत विषयवस्तुहरू तथा सो आधारमा कानून कार्यान्वयनका पक्षहरूमा देखिएको अवस्था र समाधानका उपायहरू सुझावका रूपमा प्रस्तुत गरिएको छ।

२. सार्वजनिक खरिदका मान्यताहरू र कार्यान्वयनमा देखिएका समस्याहरू

सार्वजनिक खरिद ऐन र नियमावलीको कार्यान्वयनको सम्बन्धमा खरिद कार्यको संचालन मापदण्ड र प्रकृयाहरूको सम्बन्धमा कार्य प्रवाहका विभिन्न प्रावधानहरू राखिएका छन्। यसको लागि सार्वजनिक खरिद कानूनमा खरिद कार्यको कार्य सम्पादन गर्नको लागि गर्नुपर्ने कार्य र कार्यविधिहरू तोकिएको विषयहरू छन् जुन प्रस्तुत ऐन र नियमावली कार्यान्वयनको लागि अपरिहार्य रहेको छ। यसैलाई प्रस्तुत कानूनको अन्तरनिहित मान्यताहरूको रूपमा रहेका छन्। यस्ता पूर्व शर्तहरू कार्यान्वयन हुन नसकेमा खरिद कार्यको अपेक्षाकृत परिणाम आउन सक्ने देखिँदैन। यसैले खरिद कानूनको प्रभावकारी कार्यान्वयन र अपेक्षित नतिजा हासिल गर्न यस्तो मान्यताहरूको प्रचलन अपरिहार्य रहेको छ। यस्तो मान्यताहरू मुख्यतया निम्न रहेको देखिन्छ:

२.१. कार्यक्रम र बजेटसँगको आबद्धता सहीतको खरिद कार्यको योजनाबद्धता: सार्वजनिक खरिद कानूनको कार्यान्वयनको लागि बजेट तथा कार्यक्रम वा आयोजना तर्जुमा गर्ने कार्यमा खरिद योजनाबद्धताको उपयोग गर्ने मान्यता राखेको देखिन्छ। यसो भएको अवस्थामा मात्र खरिद कानूनका प्रावधानहरू चलायमान हुन गै वस्तुगत रूपमा लागू गर्ने पूर्व शर्त राखेको देखिन्छ। बजेट तथा कार्यक्रम वा आयोजना तर्जुमा गर्ने समयमा वार्षिक खरिद योजना र आवश्यकतानुसार खरिद गुरु योजना पनि अनिवार्य रूपमा पेश गर्नुपर्ने आर्थिक कार्यविधि तथा वित्तीय उत्तरदायित्व ऐन, २०७६ र वित्तीय उत्तरदायित्व नियमावली, २०७७ को प्रावधानले खरिद कार्यको योजनाबद्धता वस्तुगत रूपमा गर्नुपर्ने व्यवस्था छ। वास्तवमा उल्लिखित योजना बनाउँदा सार्वजनिक खरिद नियमावली २०६४ को तयारी सम्बन्धी कार्यहरू (माग वा आवश्यकता निर्धारण, बजार अध्ययन, अभिलेख, प्राविधिक विवरण तयारी, प्याकेज निर्माण, लागत अनुमान, खरिद विधि र खरिद सम्झौताको छनौट) पूरा भएको हुनुपर्दछ। यसको साथै खरिद कार्यविधिमा रहेका मूल्यांकनका कार्यहरू समेत हुने व्यवस्था र पुनरावलोकनको प्रकृया पनि

समयमा गर्नुपर्ने हुन्छ। हाल तयारीका कार्यहरू पूरा नभएको भनी आयोजना सम्पन्न गर्न कठिनाई भन्ने गरिएको छ, जुन सर्वथा कानूनको प्रावधान पूरा नगरी बजेट आयोजना वा कार्यक्रमको लागि बजेट विनियोजन गर्ने प्रणालीले गर्दा उत्पन्न भएको भन्दा फरक पर्दैन। वास्तवमा खरिद योजनालाई वस्तुगत आधार बनाउने भन्दा औपचारिक दस्तावेज मात्र बनाएको कारणले पनि खरिद कानूनले प्रमुख रूपमा कार्यान्वयन हुने मान्यता व्यवहारमा उतार्न देखिएको उदासिनताले पनि खरिद कार्य प्रभावकारी हुन सकेको देखिँदैन। खरिद योजनाले खरिद कार्यको क्रियाकलापगत रूपमा नै समय तोकी कार्य सम्पन्न गर्ने आधार तोक्ने र यसो नगरेमा पदाधिकारीहरूको जिम्मेवारी र जवाफदेहिता कायम गर्न सकिने भएकोले वास्तविक रूपमा बजेट र आयोजना खर्च गर्ने गराउने वस्तुगत आधार तयार गर्न सकिन्छ।

२.२. खरिद कार्यको समयबद्धता: सार्वजनिक खरिद कानूनले प्रस्तुत ऐन र नियमावलीमा उल्लिखित प्रत्येक खरिद कार्यको लागि आयोजना र कार्यक्रमको त्रैमासिक वा मासिक कार्य सम्पादन गर्ने समय तालिकासँग मिल्ने गरी प्रत्येक खरिद कार्य सम्पन्न गर्नुपर्ने समय तालिका तोकेको हुँदा सो समयसीमा भित्र सार्वजनिक निकायहरूले कार्यान्वयन गर्ने मान्यता राखेको देखिन्छ। जस्तै बजेटको सीमा तोक्नु अघि निकायको साविकको काम वा क्रियाकलापहरूको सूची तयार गरी सो प्राप्त गर्ने तरिका लागत अनुमान र विधि तयार गरी जेठ १५ मा बजेट पेश गर्नु अघि नै कार्यक्रम र आयोजनाहरूसँग तादात्म्यता कायम हुने गरी खरिद कार्यहरू एकीन गरी खरिद योजना तयार गर्ने समय सीमा नै तोकेको छ। त्यस्तै बजेट पेश भएपछि असार मसान्तसम्म खरिद कार्यको कागजात तयारी, लागत अनुमान अद्यावधिक गर्ने सुचना तयार गर्ने र बजेट तथा खरिद कार्यका तयारी सम्बन्धी कार्यविधि पूरा गर्ने समय सीमा भित्र रहेको देखिन्छ। त्यस्तै खरिद कार्यको सुचना आर्थिक वर्षको शुरुमा नै गर्ने र खरिद कागजात पेश गर्ने र मूल्यांकन गरी बोलपत्र मान्य हुने अवधि भित्र (९० दिन र १२० दिन) खरिद सम्झौता गर्ने कार्य पनि बोलपत्र वा दरभाउपत्र पेश गर्ने समयावधि, दरभाउ मान्य हुने अवधि र सम्झौता भै सक्नु पर्ने अवधि समेत उल्लेख भएको छ। सम्झौता पछि खरिद सम्झौता प्रशासन गर्न कार्यतालिका सम्झौतामा नै समावेश हुने भएकोले सो समयको पालना भएको अवस्थामा खरिद कार्य समयमा नै सम्पन्न हुने वस्तुगत आधार तयार गरेको देखिन्छ। प्रस्तुत मान्यता विकास कार्य तोकिएको समयमा सम्पन्न गराउने एक प्रमुख अस्त्र पनि रहेको मान्न सकिन्छ। तर व्यवहारमा केही टुक्रे काम र क्रियाकलापहरू बाहेक सम्पूर्णतामा उल्लिखित समयावधिको पालना यथोचित रूपमा हुन सकेको देखिँदैन।

२.३. सँस्थागत व्यवस्था र प्रक्रियागत जिम्मेवारी बोध र पालना गर्ने: सार्वजनिक खरिद कानूनले खरिद कार्यको माग वा आवश्यकता एकीन गर्ने देखि खरिद कार्य सम्पन्न नभएसम्मको लागि प्रकृयागत रूपमा जिम्मेवारी र जवाफदेहिता तोकेको छ र सो पालना हुने मान्यता प्रस्तुत कानूनले गरेको छ। जस्तै बजेटको सिलिग प्राप्त भएपछि खरिद कार्यको माग वा आवश्यकता एकीन गर्ने कार्य खरिद कार्य आवश्यकता हुने शाखा, महाशाखा वा एकाईहरूले कामको प्रकृति र उपलब्धीलाई ध्यानमा राखेर गर्ने जिम्मा रहेको र माग गलत भएमा माग गर्ने नै जिम्मेवार हुनुपर्दछ। त्यसपछिको खरिद कारवाहीको रूपमा रहेको सम्पूर्ण कार्यको आधारमा खरिद सम्झौतासम्म गर्ने कार्यको लागि खरिद एकाईको जिम्मेवारी तथा जवाफदेहिता रहन्छ। त्यस पछि सो सम्झौता कार्यान्वयन गर्ने करार प्रशासक वा समन्वयकर्ताको जिम्मेवारी हुन्छ। यसरी विशेषतः तीन तहको जिम्मेवारी पालना कानून बमोजिम हुने प्रावधान रहेकोले सो को ईमान्दारितापूर्वक प्रचलन हुने कुरा यस ऐनले गरेको छ। यसरी कार्यप्रवाहको रूपमा जिम्मेवारी तोकेर सँस्थागत संयन्त्र तोकेको आधारमा ऐनको कार्यान्वयन हुने विश्वास गरिएको छ। यसले गर्दा जिम्मेवारी पन्छाउने प्रवृत्तिको अन्त्य गर्ने प्रावधान समेत गरेको देखिन्छ। तर व्यवहारमा खरिद कार्यको आन्तरिक नियन्त्रण प्रणाली विकास भै नसकेको हुँदा यसको लागि जिम्मेवारी पालना गराउने कार्य अभ्यास पूर्ण रूपमा हुन सकेको देखिँदैन।

२.४. खरिद कार्य विशिष्टीकृत कार्यको रूपमा सँस्थागत रूपमा सँचालन गर्ने: खरिद ऐनले खरिद कार्य गर्ने निकायलाई 'सार्वजनिक निकाय' र सो निकायको विशिष्ट सँस्थागत व्यवस्थाको रूपमा 'खरिद एकाइ' को व्यवस्था गरी खरिद कार्यलाई विशिष्टीकृत क्षेत्रको रूपमा सो सँस्थागत प्रावधान अनुसार खरिद कार्य सम्पादन हुने व्यवस्था गरेको छ। सो एकाइमा विशिष्टीकृत कार्य गर्न खरिदसम्बन्धमा शीप, विशेषज्ञता, अनुभव तथा योग्यता हासिल गरेका विशेषज्ञहरू हुनु पर्ने व्यवस्था गरिएको छ। यस प्रावधानले प्रभावकारी र कार्यकुशलतापूर्वक खरिद कानून लागू हुने अपेक्षा रहेको देखिन्छ। तर अभ्यासमा न त खरिद एकाई प्रभावकारी देखिन्छ, न खरिदसम्बन्धी कार्य गर्ने विशिष्ट जनशक्तिको विकास गर्ने प्रयास गरिएको देखिन्छ।

२.५. खरिद कार्य तथा प्रकृया परिणाममुखी बनाउने: सार्वजनिक खरिद कानूनले खरिद कार्य राम्रो तयारी गरेर मात्र खरिद कार्य शुरू गर्नु पर्ने र एकपल्ट खरिद कार्य शुरू गरिसके पछि सकेसम्म खरिद सम्झौता हुनुपर्ने व्यवस्था गरी खरिद कार्यको परिणाम आउनु नै पर्ने व्यवस्था गरिएको देखिन्छ। सार्वजनिक खरिद ऐनको दफा २६ ले सकेसम्म खरिद कार्य चार विषयको रद्द गर्ने आधारहरू बाहेक रद्द गर्न नसकिने प्रावधान राखिएको र सम्झौता गर्नुपर्ने प्रावधान

राखिएको छ। यसको साथै पुनः बोलपत्र आव्हान गर्नुपर्ने अवस्थामा भएमा खरिद कार्यको पुनरावलोकन गर्नुपर्ने चार विषयहरू समेत तोकी अपरिहार्य कारणहरू बाहेक पुनः बोलपत्र आव्हान गर्न नसकिने व्यवस्था गरिएको छ। हाल प्रस्तुत विषयलाई भ्रष्टाचार नियन्त्रण ऐन, २०५९ दफा ८ ले दण्डनीय विषय समेत बनाएको कारणले सकेसम्म खरिद कार्य शुरु गरिसकेपछि परिणाम दिनु नै पर्ने व्यवस्था गरिनुले पनि यस कुराको पुष्टी गरेको देखिन्छ। यस्तो प्रावधान भएता पनि कतिपय अवस्थामा अझै पनि खरिद कार्यको पुनःबोलपत्र गर्ने कार्य गरेको देखिन्छ।

२.६. खरिद कार्यमा व्यवसायिक तथा पेशागत दक्षता / क्षमतामा विश्वास र आचरणको व्यवस्था:

खरिद कार्यमा सँलग्न हुने सार्वजनिक निकायको कर्मचारीहरूको साथै खरिद कार्यमा सँलग्न हुने बोलपत्रदाता तथा प्रस्तावदाताहरूले पेशागत रूपमा कार्यसम्पादन गर्ने र प्रचलित पेशागत मान्यता तथा आचरणमा रही कार्य गर्ने अपेक्षा कानूनले गरेको छ। सार्वजनिक खरिद ऐनमा दुवै पक्षहरूले आचरणको पालना गर्नुपर्ने व्यवस्था गरेको छ। अन्य दण्डात्मक व्यवस्था नगरी कालोसूचीमा राखेर आचरणको प्रावधान पालना गराउने प्रयास गरिएको छ। कालोसूची सम्बन्धी प्रावधान लागू भै रहेको भएता पनि आचरणको प्रावधानहरू नगण्य रूपमा प्रयोग हुने गरेको देखिन्छ।

२.७. विवेकशीलताको उपयोग: अन्य कानूनमा स्पष्ट व्यवस्था नभए पनि सार्वजनिक खरिद कानूनले खरिद कार्यको प्रकृति र आवश्यकताको आधारमा सार्वजनिक निकाय आफैले परिस्थितिको विश्लेषण गरी विवेकपूर्ण निर्णय गर्नसक्ने प्रावधान गरेको देखिन्छ। लागत अनुमान भन्दा बोलपत्रदाताले गरेको कबोल अँक बढी भएको अवस्थामा बोलपत्रदाताको कबोल अँकको दर विश्लेषणको तुलना गरी उल्लिखित अँक लागत अनुमानसँग तुलना गरी स्वीकृत गर्न सक्ने प्रावधानले खरिद कार्यमा विवेकशीलताको प्रयोग गर्न सक्ने आधार सिर्जना गरेको र यस्तो अवस्थामा समेत बोलपत्र सकेसम्म अस्वीकृत नगरिने प्रावधान राखेको देखिन्छ। यसैले लागत अनुमान भन्दा सारभूत रूपमा बढी भए नभएको विश्लेषण गर्ने प्रावधानले यसको पुष्टी गर्दछ। तर प्रायःजसो निकायहरूले प्रस्तुत प्रावधानको उपयोग नियामक निकायहरूको त्रासले उपयोग गर्न सकेको देखिँदैन।

२.८. खरिद कार्यको नियमित अनुगमन: खरिद कार्यको कार्यान्वयनको समयमा सर्वप्रथम तालुक मन्त्रालय र विभाग वा उच्च निकायले मातहतका निकायहरूको बजेट कार्यक्रम र

आयोजनाको बजेट तथा वार्षिक खरिद योजनाको खरिद कार्यको विस्तृत क्रियाकलापहरूको सामयिक अनुगमन नियमित रूपमा हुने र खरिद कार्य परिणाममुखी हुने मान्यता राखिएको छ। यसको लागि सार्वजनिक खरिद अनुगमन कार्यालयले समेत अवस्था र आवश्यकतानुसार डेस्क अध्ययन र स्थलगत अध्ययन समेत गरी अनुगमन गर्ने अधिकार दिएको छ र नियमित अनुगमन गर्दा बजेट र कार्यक्रम कार्यान्वयन गराउन अनुगमन गर्नु गराउनु पर्ने प्रावधान रहेकोले परिणाममुखी खरिद कार्य हुने विश्वास गरेको देखिन्छ। तर अनुगमनको लागि जिम्मेवार दुवै निकायहरूको अनुगमन न्यून हुने गरेको र गरेको अवस्थामा पनि प्रभावकारी हुन सकेको देखिँदैन।

२.९. खरिद कार्यवाहीको पूर्ण अभिलेख: प्रत्येक सार्वजनिक निकाय मातहतमा गर्नुपर्ने प्रत्येक खरिद कार्यको लागि सो कार्य तयारीका कार्यहरू खरिद कार्यविधि र खरिद सम्झौता प्रशासन गरी अन्तिम सम्पन्न भएका कार्यहरूसम्मका कागजात सहीतको अभिलेख राखी खरिद कार्यहरू वस्तुगत र पारदर्शी बनाउने प्रावधान खरिद कानूनमा गरिएको छ। यस्तो अभिलेख सात वर्षसम्म सुरक्षित राखी सँस्थागत सँस्मरण समेत हुने प्रणाली स्थापना गरिएको छ। यसरी खरिद कार्य वस्तुगत पारदर्शी र जवाफदेहितापूर्ण हुने अपेक्षा गरेको देखिन्छ। तर यस्तो प्रावधान प्रायः सबै सार्वजनिक निकायहरूले पूर्ण पालना गर्न सकेको देखिँदैन।

२.१०. सार्वजनिक खरिद कानूनको प्रस्तावना र सुशासनको प्रत्याभूति: सार्वजनिक खरिद ऐन, २०६३ को प्रस्तावनाले प्रस्तुत कानूनको आधार र दर्शन प्रस्तुत गरेको छ। जसमा सार्वजनिक खरिद कार्य प्रतिस्पर्धात्मक, पारदर्शी, खुल्ला, जवाफदेहिपूर्ण रूपमा हुने गरी खरिद कानूनका प्रकृया र प्रावधानहरू राखिएको देखिन्छ। यसको साथै खरिद कार्य समानताको आधारमा विभेद रहित रूपमा गर्नुपर्ने गरी निर्देशित गरिएको छ। यस्ता प्रावधानहरूले खरिद कार्यमा सुशासनको प्रत्याभूति गर्दै भ्रष्टाचार नियन्त्रण गर्ने उद्देश्य राखेको देखिन्छ।

२.११. खरिद सम्झौता र सम्झौता प्रशासनको सामयिक कार्यान्वयन: प्राविधिक कार्य सम्पन्न गर्ने समयावधि मापदण्ड बमोजिम तयार भएको समय तालिका अनुसार खरिद कार्य सम्पन्न गर्न खरिद सम्झौतामा समावेश भएको कार्यतालिका (Works Schedule) अनुसार सम्झौता सम्पन्न गर्नुपर्ने प्रावधान सार्वजनिक खरिद कानूनमा गरिएको छ। तोकिएको अवस्थामा सार्वजनिक निकायले म्याद थप गर्न सक्ने जरिवाना सहीत क्षतिपूर्ति तिराउने र मूल्य समायोजन समेत गर्ने प्रावधान राखेर सम्झौता अनुसार कार्य सम्पादन सामयिक रूपमा हुने व्यवस्था खरिद कानूनमा

गरिएको देखिन्छ। तर सामान्य आयोजना बाहेक प्रायः सबैजसो खरिद सम्झौतामा म्याद थपको कारवाहीको साथै समय र लागत बढी हुने गरेको प्रवृत्ति देखिएको छ। यसको कारण मुख्यतः खरिद सम्झौता प्रशासनमा देखिएको कमी कमजोरीहरू देखिन्छ।

३. कार्यान्वयनका लागि गर्नुपर्ने सुधारहरू: बजेट पुस्तीकामा उल्लिखित योजना कार्यक्रम र आयोजनाहरूको सार्वजनिक खरिद कानूनको मान्यता र कार्यान्वयन गर्न सम्पन्न गर्नुपर्ने कार्यहरू कानूनको समयावधि र ऋखला अनुसार कार्यान्वयन भएमा आयोजनाले लक्षित गरेको प्रतिफल वा उपलब्धी समयमा नै हुने कुरामा विश्वस्त हुन सकिन्छ। यस सम्बन्धमा तपसिल बमोजिम सुधारका कार्यहरू गरिएमा विकासको कार्यमा खरिद प्रणालीले अपेक्षा गरे अनुसार योगदान दिन सक्ने कुरामा विश्वस्त हुन सकिन्छ:

३.१. कार्यकारी मन्त्रालयहरूले खरिद कार्यको पूर्ण स्वामित्व लिनुपर्ने: विषयसँग सम्बन्धीत मन्त्रालयहरूले आफ्नो कार्यक्षेत्र भित्र पर्ने आवधिक योजना, कार्य विभाजन नियमावली र वार्षिक कार्यक्रम र आयोजना तथा बजेट अनुसार खरिद कार्य समयमा नै एकीन गरी खरिद एकाई, बजेट समिति क्रियाशील गराई खरिदसम्बन्धी तयारीका कार्यहरू, खरिद कार्यविधि र खरिद सम्झौता कार्यान्वयनमा क्रियाशीलता देखाउनु अति आवश्यक छ। माथि बुँदा नं २.१ देखि २.११ सम्मका कार्यहरूमा हालसम्म देखिएको कमी कमजोरीहरू सूचीबद्ध गरी सच्याउने तथा समाधान गरी दोहोरिन नदिने कार्य गरिएमा खरिद कानूनले अपेक्षा गरे अनुसार खरिद कार्यहरू सम्पन्न हुने कुरामा विश्वस्त हुन सकिन्छ।

३.२. राष्ट्रिय योजना आयोग र अर्थ मन्त्रालयले बजेट र कार्यक्रम साथ पेश गरेको खरिद योजनामा उल्लिखित खरिद कार्य र क्रियाकलापहरूको जाँच परीक्षण प्रभावकारी बनाउने: बजेट तयार गर्ने समयमा मन्त्रालयहरूले पेश गरेको वार्षिक बजेट आयोजना वा कार्यक्रमसँग सँगन रहेको खरिद गुरु योजना र वार्षिक खरिद योजनाको सम्पूर्ण अवयवहरू (विशेष गरी तयारी र कार्यविधि सम्बन्धी कार्यहरू) खरिद कानून अनुसार यथार्थ भए नभएको गहन जाँच गरी राष्ट्रिय योजना आयोगले अर्थ मन्त्रालयमा बजेट तथा कार्यक्रम वा आयोजना सिफारिश गर्ने गरेमा र कानून अनुसार खरिद कारवाही गरेको नदेखिएमा अर्थ मन्त्रालयमा सिफारिश गर्ने कार्य नगरेमा पनि मन्त्रालयहरूले यथार्थ खरिद कारवाही गर्न बाध्य भई खरिद कार्यको ऋखला अनुसार स्वतः कार्यान्वयन हुन कठिनाई हुँदैन। यसको साथै अर्थ मन्त्रालयले पनि खरिद गुरु योजना र वार्षिक खरिद योजनामा समावेश भएका तयारी र कार्यविधिसम्बन्धी कार्यहरू योजना

आयोगले जाँच गरे नगरेको पुनः परीक्षण गरी खरिद कानून अनुसार नभएमा मन्त्रालय र योजना आयोगको जिम्मेवारी पुनः सँशोधन गर्ने गराउने कार्यमा प्रतिबद्ध भएमा खरिद कानूनको आधारमा कार्यक्रम वा आयोजनाको बजेट रातो किताबमा उल्लेख भए अनुसार कार्यान्वयन हुने कुरामा शँका रहँदैन।

३.३. खरिद कार्यको अनुगमन तथा मूल्यांकन प्रभावकारी बनाउने: बुँदा नं ३.२ अनुसार बजेट विनियोजनको काम सम्भाव्य भएका आयोजना वा कार्यक्रमहरूमा गर्ने र खरिद योजना अनुसार काम भए नभएको भनी योजनामा उल्लिखित अवधि (मासिक रूपमा) अनुगमन र सुपरिवेक्षण गर्ने गरिएमा विशेष परिस्थितिमा बाहेक खरिद कार्य समयमा नै गर्न सकिन्छ। यसको लागि आर्थिक कार्यविधि तथा वित्तीय उत्तरदायित्व ऐन, २०७६ अनुसार मासिक रूपमा मन्त्रालयका सचिवले गर्ने मन्त्रालयगत समिक्षामा मन्त्रालय र मातहतका निकायहरूको वार्षिक खरिद योजना अनुसार खरिद कार्य सम्पन्न भए नभएको समिक्षा गर्ने र सो तालिका अनुसार काम नभएमा मनासिव कारण बाहेक काम सम्पन्न नगर्ने सम्बन्धीत प्रमुखलाई सचिवले दण्ड जरिवाना गर्ने प्रणाली स्थापित गर्नुपर्नेछ र सो अनुसार सचिवले दण्ड नगरेमा निज सचिवलाई नै मन्त्रीले दण्ड गर्ने माथि उल्लिखित ऐनको प्रावधान पालना गराउने अभ्यास भएमा पनि खरिद कानूनको ऋंखलाबद्ध कार्यहरू समयमा नै सम्पन्न हुने कुरामा द्विविधा हुँदैन। किनभने योजनाबद्धता र समयबद्धता नै यस कानूनको प्रमुख मान्यता रहेको छ।

३.४. सार्वजनिक खरिद अनुगमन कार्यालयको सँरचना सुधार गर्ने र खरिद कार्यको व्याख्या गर्ने अधिकार सो कार्यालयलाई दिने व्यवस्था गर्ने: सबै सार्वजनिक निकायहरूको खरिद कार्यको अनुगमन गर्नको लागि प्रधानमन्त्री तथा मन्त्रिपरिषदको कार्यालय मातहत राखेको भएता पनि सार्वजनिक खरिद अनुगमन कार्यालयले अपेक्षाकृत रूपमा प्रभावकारी भूमिका निर्वाह गर्न सकेको देखिँदैन। राय परामर्शमा द्विविधा परेको कुरामा निष्कर्ष हुने राय नदिएर प्रायः कानून बमोजिम गर्ने र कानूनमा नै भएकोले सो अनुसार नै गर्ने भनी राय दिने कारणले सार्वजनिक निकायहरूको खरिद प्रकृत्यामा देखिएको मामिला र समस्याहरूको बारेमा यथार्थ निर्णय लिन नसकेको अवस्था देखिन्छ। यसको लागि सार्वजनिक खरिद ऐनमा सँशोधन गरी सो कार्यालयको सँरचना आयोग वा अन्य उपयुक्त प्रकृतिको बनाउन र सो कार्यालयले खरिद कार्यसम्बन्धी जारी गरेको निर्देशिका मार्गदर्शन अनुसार सबै नियामक निकायहरूले पालना गर्ने गरी व्याख्या गर्ने अधिकार दिनुपर्दछ। यसले गर्दा व्याख्यामा द्विविधा हुने कार्यको अन्त्य गरिनु पर्दछ। तर व्याख्या गर्दा सो कार्यालयले कामको प्रकृति अनुसार प्राविधिक र विज्ञहरू

समावेश भएको कम्तीमा पाँचजनाको समितिले खरिद कानून प्राविधिक पक्ष र खरिद कार्यको ऋखलाबद्धताको आधारमा सामूहिक व्याख्याको आधारमा हुने व्यवस्था गरी व्याख्या गरी मार्गदर्शन वा निर्देशिका (खरिद प्रणाली, खरिद तयारीसम्बन्धी प्रत्येक कार्य, खरिद कार्यको मूल्यांकन र सम्झौता प्रशासन आदि) जारी हुने व्यवस्था गर्नुपर्दछ। विशिष्ट कार्य प्रकृतिका खरिद विज्ञहरू मात्र सो कार्यालयमा हुने व्यवस्था गर्नुपर्दछ।

३.५.सार्वजनिक खरिद क्षमता विकासको प्रशिक्षण अभ्यासमूलक र शीपमूलक बनाउने: खरिदसम्बन्धी दर्शन र मान्यताहरू र खरिदसम्बन्धी सबै कार्यहरूको व्यवहारिक व्याख्या र अभ्यास हुने गरी प्रशिक्षणको म्यानुअल समेत तयार गरी प्रशिक्षण दिने व्यवस्था गरी विज्ञ प्रशिक्षकहरूबाट मात्र तालिम दिने व्यवस्था गर्नुपर्दछ। सिकाईमा समानता र एकरूपताको लागि यस्तो व्यवस्था आवश्यक देखिन्छ। कानूनका प्रावधान संक्षिप्त राखी व्यवहारिक रूपमा पेशागत आधारमा प्राविधिक समस्या समाधान हुने किसिमले प्रशिक्षण दिने काम गर्नु आवश्यक छ। अन्यथा तालिममा जानकारी मात्र हुने तर शीप विकास नहुने हालको अवस्था यथावत रहने देखिन्छ। सही अभ्यास नहुँदा खरिद कार्य सम्पन्न गर्न कठिनाई हुने र बजेट खर्च गर्न पनि समस्यामूलक हुने अवस्था आउने हालको अवस्थाले निरन्तरता पाउने स्थिति रहन्छ। यसैले तालिम आवश्यकता पहिचान गरी सबै तहको सरकारको लागि हुने गरी तालिम मोड्युल र तालिम सामग्रीहरू विकास गरी प्रशिक्षण गर्ने कार्य गरिनुपर्दछ।

४. निष्कर्ष

पूँजीगत कार्यक्रम वा आयोजनाहरूको क्रियाकलापहरूको बजेट मुख्यतः खरिद कार्यको संचालन र कार्यान्वयनमा अधिक मात्रामा भरपर्दछ। यसको लागि सार्वजनिक खरिद कानूनले विषयगत, प्रकृयागत र समयबद्धताको आधारमा कार्यान्वयनको लागि पर्याप्त र आवश्यक व्यवस्था गरेको देखिन्छ। यसैले प्रस्तुत कानून कार्यान्वयनको लागि आधारभूत मान्यताहरू स्थापना गरिएको छ, जसको कार्यान्वयन खरिद कार्य कार्यान्वयनको लागि अपरिहार्य आधार हो। तर उल्लिखित मान्यताहरू माथि उल्लिखित समस्याहरू व्यवहारमा पूर्ण उन्नत सकेको देखिएन। यसको लागि पूर्ण जिम्मेवार कार्यकारी मन्त्रालयहरू छन भने राष्ट्रिय योजना आयोग र अर्थ मन्त्रालयले पनि यसको जिम्मेवारी लिनु पर्दछ। खरिद योजनाको मात्र सही परीक्षण र सम्पुष्टी गरी मन्त्रालयहरूले पेश गरेको योजनामा उल्लिखित कार्यहरू र तोकिएको समयावधि एकीन गरी े राष्ट्रिय योजना आयोग र अर्थ मन्त्रालयले बजेट तथा कार्यक्रमक स्वीकृत गर्ने तथा बजेट खर्च गर्ने समयको लागि सुपरिवेक्षण

र मूल्यांकन गरी पालना गराउन सकिएको अवस्थामा खरिद कानून हैन बजेट तर्जुमा र कार्यान्वयनमा रहेका समस्याहरू मुख्य रूपमा जिम्मेवार देखिन्छ, न कि खरिद कानून। जबकी खरिद कानूनले कार्यक्रम वा आयोजना वा बजेटलाई क्रियाकलापमा विभाजन गरी व्यवस्थापकीय रूपमा कार्यान्वयनयोग्य बनाएको देखिन्छ। त्यसैले माथि बुँदा ३ मा औल्याएका समाधानका उपायहरू अवलम्बन गरिएमा सार्वजनिक खरिद कानून बाधक नभै अर्थपूर्ण साधनको रूपमा रहेको मान्न सकिन्छ। त्यसैले सुझावका कार्यहरूलाई वास्तविक रूपमा कार्यान्वयन गर्न सरोकारवाला निकाय र पदाधिकारीहरूले कार्यक्षेत्र भित्रका काम कर्तव्य र उत्तरदायित्व पालना ईमानदारितापूर्वक गर्नु अति आवश्यक देखिन्छ।

५. सन्दर्भ सामाग्रीहरू:

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STANDARD PROFESSIONAL LIABILITY INSURANCE POLICY (ARCHITECTS AND ENGINEERS OR CONTRACTOR WHO DESIGN THE PROJECT)



Er. Prabhat Kumar Jha, P. Eng³

Professional Liability (PL) insurance, Professional Indemnity (PI) Insurance or Indemnity Insurance, can help protect if claims are brought against professional/expert by a client due to a problem with work that he/she has done for them.

The majority of professional liability claims are made by owners against architects and engineers they have hired to provide professional services related to the design and construction of a project. Claims may arise out of the alleged negligent acts, errors, or omissions of the design professionals in providing services related to the project where failures of structural components or equipment result in losses or damage to the owners and third parties.

A professional indemnity policy will offer cover for compensation he/she may need to pay to correct a mistake or cover any costs due to negligence (including his/her own initial defense costs), such as giving incorrect advice or making a mistake in his/her work.

Claims by owners may also allege breach of contract where design professionals have failed to meet the terms or conditions of the written contracts for professional services. Errors and omissions in rendering of professional services may involve bodily injury or property damage, but these are often the subject of general and excess liability insurance rather than professional liability coverage.

Damages other than bodily injury and property damage associated with professional errors and omissions may be economic in nature and may include the cost of redesigning portions of a project that fail to meet professional standards and delay in completion of the structure. These economic damages are the most common losses that give rise to professional liability claims against architects and engineers working on construction projects.

Professional liability risks are among the most difficult to insure for project owners, contractors, architects, and engineers who are at risk for claims arising out of the acts, errors, or omissions of design professionals. Given the limited capacity for professional liability insurance and the selective appetites of underwriters for these risks, it is important to get an early start in planning to manage professional liability risks for construction projects and to engage the services of a

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Professional Insurance Broker with specialist knowledge of the policy cover, contract obligations and risk management issues faced.

Covers:

- Claims from clients for financial loss
- Costs of defending third party/client claims
- Third Party claims for financial loss
- Compensation awards made to clients/third parties
- Legal fees (1st & 3rd party), injury awards, resultant business interruption / financial losses

For Construction Contract

Where Contractor does the project engineering design (i.e. under design and build contracts or EPC), the PLI ensures contractors with design responsibility against liability arising out of professional negligence and will respond if, for example, designs do not comply with the requirements of the underlying construction contract (although it is not uncommon for professional indemnity insurance to exclude cover for “fitness for purpose” warranties).

Caps on liability – It is a common misconception in the construction/consultancy industry that a consultant/contractor’s liability for a particular risk (especially for breach of professional duty or negligence) is implicitly capped at the amount of insurance that the consultant/contractor is required to have for that risk.

This is not the case. If, for example, the contractor is required to have professional indemnity insurance of NRs 5 million per claim, the contractor’s liability, for say a defective design, is not automatically capped at NRs 5 million per claim and the employer may seek to recover from the contractor’s assets (or any additional insurance policy that the contractor has in place) for any loss incurred that exceeds NRs 5 million.

In consideration of payment of the premium and subject to the terms and conditions of this policy, we agree with you to provide insurance as stated in this policy.

SECTION I. INSURING AGREEMENTS

A. COVERAGE PROVISION

We will pay on behalf of the Insured damages that the Insured becomes legally obligated to pay because of claims made against the Insured for wrongful acts arising out of the performance of professional services for others.

B. CLAIMS-MADE PROVISION

This insurance applies to a wrongful act only if all of the following conditions are satisfied:

1. the wrongful act took place on or after the Retroactive Date;
2. prior to the inception date of this policy or the first such policy issued and continually renewed by us, no Insured had knowledge of such wrongful act and had no basis to reasonably anticipate a claim that would be made. For purposes of this provision, prior knowledge of a wrongful act includes, but is not limited to, any prior claim or possible claim or circumstance referenced in an Insured's application;
3. the claim arising out of the wrongful act is first made against any Insured during the policy period; and
4. the claim is reported in writing to us no later than 60 days after the end of the policy period or, if applicable, during an extended claims reporting period.

C. DEFENSE PROVISION

We have the right and the duty to defend the Insured against any covered claim, even if such claim is groundless, false or fraudulent. We will designate or, at our option, approve counsel to defend the claim.

Claim expenses will be paid by us, and such payments will reduce the available limit of liability. Our right and duty to defend or continue to defend any claim ends when the applicable limit of liability has been exhausted by payment of damages or claim expenses or both combined. Once the limit of liability is exhausted, we will tender control of the defense of any claim to the Insured. The Insured agrees to accept such tender as a condition of this policy.

We have no duty to defend any claim not covered by this policy.

D. SETTLEMENT PROVISION

We may investigate and solicit settlement offers for any claim. No offer to settle a claim will be accepted without your written consent.

If we recommend that you accept the judgment of the trial court, appellate court, any negotiated settlement or settlement offer, and you are not willing to accept such judgment or settlement, our liability for such claim shall not exceed the amount we would have paid for damages and claim expenses incurred up to the time we made the recommendation, providing such amount does not exceed the remainder of the applicable limit of liability. We shall thereafter be relieved of any additional liability under this policy, including the duty to defend.

If you are unwilling to appeal a judgment of a trial court, we have the right to appeal such judgment, and we will bear all claim expenses subsequently incurred which result directly from the appeal. An increase in the judgment amount in such instance shall be borne by us and shall not be applied against the policy "Limit of Liability—Aggregate."

E. TERRITORY

The insurance provided by this policy applies to wrongful acts which result in damages in Nepal.

1. we shall have the right but not the duty to investigate, defend or settle any such claim;
2. if we elect not to investigate, defend or settle any such claim or suit, the Insured, under our supervision, shall arrange for such investigation and defense thereof as is reasonably necessary and, subject to our prior authorization, shall affect such settlement as we and the Insured deem expedient. Subject to the applicable limit of liability, we will reimburse the Insured for the reasonable cost of such investigation and defense and the amount of any settlement or judgment in excess of the deductible amount stated in the Declarations. Such reimbursement shall be made in United States currency at the rate of exchange prevailing on the date the judgment is rendered, the amount of the settlement is agreed upon or the date the expenditure is made;
3. all such claims shall be reimbursed pursuant to all applicable terms of this policy regardless of the law used in adjudicating the claim.

We are not an admitted or authorized insurer outside of United States of America, its territories or possessions, and we assume no responsibility for the furnishing of certificates or evidence of insurance or bonds in any country in which we are not admitted or authorized. We shall not be liable for any fine or penalty imposed upon the Insured for failing to insure with an admitted or authorized insurer nor for any other failure of the Insured to comply with an insurance law of a country, state, province, territory or possession in which we are not an admitted, authorized insurer.

F. SUPPLEMENTAL PAYMENTS

These supplemental payments will be paid in addition to the applicable limit of liability. The “Each Claim”

Deductible amount stated in the Declarations is not applicable to the payments described below.

1. We will pay for loss of earnings for the Insured’s attendance, at our written request, at a trial, hearing, arbitration or mediation proceeding involving a covered claim against such Insured. The maximum amount we will pay for any one or series of trials, hearings, mediation or arbitration proceedings arising out of the same claim shall not exceed NRs. 50000.0 per individual Insured for each day, or a prorate thereof for part of a day. The most we will pay for all Insureds’ attendance at trials, hearings, arbitration or mediation proceedings for all claims reported during the policy period is NRs. 100000.0.
2. We will pay all interest on the entire amount of any judgment which accrues after the entry of the judgment and before we have paid or tendered or deposited in the Court that part of the judgment that does not exceed the policy limit.
3. We will pay prejudgment interest awarded against the Insured on that part of the judgment, award, verdict or settlement we pay. If we make a settlement offer to pay the available limit of liability, we will not pay the interest that accumulates after the date of the offer.

4. In the event that the Insured receives a subpoena for documents or testimony related to the performance of professional services, the Insured will provide us a copy of the subpoena if legal advice in response to the subpoena is requested. If requested, we may retain legal counsel to advise the Insured regarding document production or to represent the Insured in giving sworn testimony. Expenses incurred in providing advice as to production of documents, review of testimony and representation on the date of deposition will be at our cost and not applicable to your deductible. A notice to us of such a subpoena shall be deemed to be notification of a potential claim under SECTION VII. B.
5. Pre-Claims Assistance: Until the date a claim is made against the Insured, we may investigate, at our sole discretion, a possible claim reported to us by the Insured in accordance with SECTION VII. B. We will pay for all expenses we incur as a result of our investigation. Expenses we incur will not reduce the Limit of Liability—Each Claim or Limit of Liability—Aggregate.

The Insured must not make any payment, admit any liability, investigate or settle any possible claim or assume any obligation without prior consent from us. We will not reimburse the Insured for any expenses or payments incurred without our prior approval.

SECTION II. EXCLUSIONS

This policy does not apply to:

- A. any claim arising out of any dishonest, fraudulent, criminal or malicious act, error or omission committed by or at the direction of any Insured. We shall provide the Insured with a defense of such claim unless or until the dishonest, fraudulent, criminal or malicious act, error or omission has been determined by any trial verdict, court ruling, regulatory ruling or legal admission, whether appealed or not. Criminal proceedings are not covered under this policy under any circumstance.
- B. any claim made by an Insured against any other Insured.
- C. any claim arising out of any actual or alleged:
1. interviewing, hiring or refusal to hire,
 2. employment,
 3. termination of employment, or
 4. employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination of an applicant or a present or former employee of an Insured.
- D. any claim made against any Insured by an entity:
1. which is operated, managed or controlled by any Insured;
 2. in which the Insured has a collective ownership interest in excess of 50%;

3. in which any Insured is an officer or director; or
 4. which wholly or partly owns, operates or manages any Insured.
- E. any obligation under any employer's liability law, unemployment compensation law, workers' compensation law, disability benefits law or similar laws.
- F. any claim based upon or arising out of express warranties or guarantees; however, this exclusion does not apply to any guarantee that the Insured's professional services conform with the generally accepted standard of care applicable to that professional service.
- G. liability of others assumed by the Insured under any contract or agreement. This exclusion does not apply to liability for damages that the Insured would have in the absence of such contract or agreement.
- H. any claim arising out of the cost to repair or replace faulty workmanship performed by any Insured on any construction, erection, fabrication, installation, assembly, manufacture or remediation including any materials, parts or equipment furnished in connection therewith.
- I. any claim arising out of the sale or distribution of any goods or products which are sold or supplied by or on behalf of the Insured. This exclusion does not apply to software sold or supplied by the Insured to its client in connection with the Insured's provision of professional services for that client.
- J. any claim arising out of bodily injury to any Insured.
- K. any claim arising out of nuclear projects, nuclear reaction, radiation or radioactive contamination or any consequence thereof, regardless of cause.
- L. any claim made in any country not maintaining active diplomatic relations with the United States of America at the time the claim is first made in writing.

SECTION III. WHO IS AN INSURED

- A. The Named Insured is an Insured.
- B. Each of the following is also an Insured:
1. any Additional Insured named in the Declarations;
 2. any past or present officer, director, partner, stockholder, member, manager, leased personnel under your direct supervision, or employee for professional services performed within the scope of his or her duties on behalf of you or any Additional Insured named in the Declarations;
 3. the heirs, executors, administrators and legal representatives of an Insured as defined in paragraphs

A., B. 1. and B. 2. above, in the event of an Insured's death, incapacity or bankruptcy, but only for liability arising out of professional services performed by or on behalf of you or an Additional Insured named in the Declarations prior to such Insured's death, incapacity or bankruptcy;

4. all joint ventures entered into, but only for liability arising out of professional services performed by you or an Additional Insured named in the Declarations as a participant in a joint venture project;

5. a retired officer, director, partner, stockholder, member, manager or employee for professional services performed as a consultant for you or any Additional Insured named in the Declarations; and

6. any entity newly formed or acquired by you during the policy period in which you own more than 50% of the issued and outstanding voting stock, either directly or indirectly. However,

a. we will only provide coverage for claims arising out of professional services performed on or after the date of formation or acquisition; and

b. this coverage will expire 90 days after the formation or acquisition or the end of the policy period, whichever is earlier.

SECTION IV. DEFINITIONS

A. **“Application”** means:

1. any application, renewal application, or supplemental application published by us for your use in applying for this policy, in our possession with an Insured's legal, dated signature and any other written information furnished to us by you in applying for this policy;

2. any other application or copy of an application, used by you to apply for this coverage, in our possession with an Insured's legal dated signature and any other written information furnished to us by you in applying for this policy; and

3. if this policy is a renewal or replacement of any previous policy or policies issued by us, all applications provided to us by you for the purpose of applying for those policies.

B. **“Bodily Injury”** means mental or emotional distress, bodily injury, sickness or disease, including death, sustained by a person.

C. **“Claim”** means a demand received by the Insured for money, damages or professional services alleging a wrongful act arising out of the performance of professional services.

D. **“Claim expenses”** means:

1. fees, costs and expenses charged by any attorney consented to or designated by us to defend the Insured against a claim;
2. all other fees, costs and expenses resulting from the investigation, discovery, adjustment, defense, settlement or appeal of a claim as authorized by us;
3. premiums for bonds required as a result of a covered claim, including bonds to release attachments, but only for bond amounts not exceeding the applicable limit of liability. However, we have no obligation to apply for or furnish any such bonds; and
4. all costs taxed against the Insured in any suit defended by us.

However, claim expenses do not include salaries of any of our employees.

E. **“Damages”** means any amount which an Insured becomes obligated to pay for any covered claim, including judgments, awards or settlements entered into with our prior knowledge and consent. But Damages does not include:

1. sanctions, fines or penalties that are imposed or ordered by an administrative or governmental agency, local board and/or state licensing authority;
2. punitive damages, exemplary damages or treble damages unless coverage for such punitive damages is required under the applicable state law; or
3. payment for professional services, including the return, withdrawal or reduction of monies paid to the Insured.

F. **“Formal Mediation”** means the nonbinding process by which a qualified mediator, mutually selected by the parties involved in the claim with our agreement, meets and intercedes with the parties in order to reach a resolution. In order to be considered formal mediation under this policy, the process must be of a kind set forth under the mediation rules of the American Arbitration Association. At our sole option, we may recognize any mediation process presented for approval. Litigation and arbitration are not considered to be part of the formal mediation process.

G. **“Named Insured”** means the entity or individual named in the Declarations.

H. **“Policy period”** means the period of time specified in the Declarations.

I. **“Prejudgment Interest”** means interest added to a verdict, award or judgment by the court, whether or not made part of the verdict, award or judgment.

J. **“Professional services”** means those services that the Insured is legally qualified to perform for others in the Insured’s capacity as an architect, engineer, land surveyor, landscape architect, construction manager, scientist, technical consultant, interior designer, land planner, golf course designer or as otherwise defined by endorsement to the policy.

- K. **“Retroactive Date”** is the date, if any, specified as such in the Declarations and other dates, if any, that are specified as such for the Insured by endorsement to this policy.
- L. **“Total and Permanent Disability”** means that an Insured is wholly prevented from performing professional services for a continuous period of 90 days or more and such disability is expected to be ongoing and permanent. Total and permanent disability shall not include any condition which results from: intentionally self-inflicted injuries; attempted suicide; or the abuse or misuse of addictive chemical compounds or alcohol.
- M. **“Wrongful Act”** means any actual or alleged negligent act, error or omission.

SECTION V. LIMITS OF LIABILITY AND DEDUCTIBLE

A. Limits of Liability

The applicable limit of liability shown in the Declarations is the maximum we will pay regardless of the number of:

- Insureds,
- individuals or entities that make a claim, or
- claims made.

1. Limit of Liability—Each Claim

The “Limit of Liability—Each Claim” shall apply in excess of the deductible shown in the Declarations. Our liability for each covered claim first made during the policy period or, if applicable, during an extended claims reporting period, shall not exceed the amount stated in the Declarations for “Limit of Liability—Each Claim.” This limit is the maximum amount of damages or claim expenses or both combined that we will pay for each covered claim.

Two or more covered claims arising out of a single wrongful act, or any series of related wrongful acts, will be considered a single claim. The single claim will be subject to the “Limit of Liability—Each Claim” in effect at the time such claim was first made against the Insured. Only one deductible will apply to such single claim. If the first of such claims is made prior to the effective date of this policy, no coverage shall apply to any subsequent claims made during this policy period which are based upon the same or related wrongful acts.

2. Limit of Liability—Aggregate

Subject to the “Limit of Liability—Each Claim” provision above, our liability for all claims shall not exceed the amount stated in the Declarations as “Limit of Liability—Aggregate.” This limit is the maximum amount of damages or claim expenses or both combined that we will pay for all claims made or deemed made during the policy period and, if applicable, during an extended claims reporting period.

B. Deductible

The “Each Claim” Deductible stated in the Declarations applies to each claim and shall be paid by you to us within 30 days of written demand and will be billed as incurred by us. The deductible shall be first applied to all claim expenses and then any remainder will be applied to damages.

In the event that a claim covered by this policy is fully and finally resolved through the process of formal mediation, the “Each Claim” deductible will be reduced by 50 percent.

The total of your liability for all deductible payments during the policy period will not exceed the Deductible - “Aggregate” stated in the Declarations.

SECTION VI. EXTENDED CLAIMS REPORTING PERIODS

A. Optional Extended Claims Reporting Period

If this policy is canceled or nonrenewed, you may purchase an Extended Claims Reporting Period Endorsement. This endorsement to the policy, when issued, extends the period of time during which the Insured may report claims to us.

The Extended Claims Reporting Period Endorsement applies to claims:

1. arising out of wrongful acts which first take place on or after the retroactive date and prior to the end of the policy period; and
2. which are first made against the Insured and reported to us in writing during this extended reporting period.

These extended claims reporting period does not otherwise change policy provisions.

The following conditions must be met before this option may be exercised:

1. this policy was canceled or nonrenewed for reasons other than failure to comply with policy provisions, failure to cooperate with us or material misrepresentation of facts in the application; and
2. if you are a sole proprietor, when you request to purchase this option your license or right to practice is not revoked, suspended or surrendered by, or at the request of any regulatory authority; and
3. we must receive written notice of your intent to purchase the option and the total additional premium due for the Extended Claims Reporting Endorsement no later than 60 days after the end of the policy period. The extended claims reporting period will not go into effect unless all premium and deductible amounts previously due and payable to us have been paid in full.

If any of the three conditions given above have not been met, you will not be able to purchase the Extended Claims Reporting Period Endorsement at a later date.

The term of this reporting period will be indicated in the Extended Claims Reporting Period Endorsement and will not be less than one year. The premium charged for this endorsement will be in accordance with the rules, rates and rating plans we have in effect at the inception of the current policy period.

The entire premium for the Extended Claims Reporting Period Endorsement will be fully earned when paid and in the event that you terminate this endorsement, we will not return any portion of the premium.

B. Death or Disability Extended Claims Reporting Period

If during the policy period any Insured dies from a cause other than suicide or becomes totally and permanently disabled, an extended claims reporting period is provided until the executor or administrator is discharged or until the disability ends. However, the Death or Disability Extended Claims Reporting Period will never be longer than seven years from the date of death or disability. No additional premium will be charged for this coverage, nor will any premium be refunded.

In the event of death, the Insured's estate must, no later than 60 days after the end of this policy period, provide us with written notice that the extended claims reporting period is desired. This notice must include written proof of the date of death.

In the event of total and permanent disability, the Insured or the Insured's legal guardian must, no later than 60 days after the end of this policy period, provide us with written notice that the extended claims reporting period is desired. This notice must include written proof of the total and permanent disability, including the date the disability began, certified by the attending physician. The Insured agrees to submit to medical examination(s) by any physician(s) designated by us, if requested.

These extended claims reporting period does not otherwise change policy provisions.

SECTION VII. CONDITIONS

A. Insured's Duties in the Event of a Claim

In the event of a claim, the Insured must do the following:

1. When a claim is made, the Insured must give prompt written notice to us, but in no event later than 60 days after the end of the policy period or, if applicable, during an extended claims reporting period. Such written notice shall include every demand, notice, summons, or any other applicable information received by the Insured or the Insured's representative.
2. The Insured must not make any payment, admit any liability, settle any claim or assume any obligation without prior consent from us.
3. If the Insured has the right to either accept or reject the arbitration of any claim, the Insured will exercise such right only with our written consent.

4. The Insured must cooperate with and provide all relevant information to us with respect to any claim. We may require that the Insured submit to examination or questioning, or attend hearings, depositions and trials. In the course of investigation or defense, we may require written statements or the Insured's attendance at meetings with us. The Insured must assist us in effecting settlement, securing and providing evidence and obtaining the attendance of witnesses, all without charge to us.
5. The Insured must do whatever is necessary to secure and effect any rights of indemnity, contribution or apportionment that may be available to the Insured.

B. Reporting Possible Claims

If during the policy period or any applicable extended claims reporting period, the Insured first becomes aware of a possible claim arising from a specific wrongful act in performing professional services for which coverage may be provided, such potential claim must be reported to us. The notice of the potential claim must be reported to us as soon as practicable during the policy period but no later than 60 days after the end of the policy period or, if applicable, during any extended claims reporting period. The notice of the potential claim must include the following:

1. the potential claimant's name and address;
2. a description of the professional services provided or that are alleged should have been provided;
3. an explanation as to why the Insured believes the claim may be made and the date that the Insured first became aware of such possible claim; and
4. an explanation of the type of claim that is anticipated.

Any claim that may subsequently be made against the Insured arising out of that wrongful act will be deemed for the purposes of this insurance to have been made on the date we first received such notice.

C. Innocent Insured Protection

If coverage under this policy would not apply because of SECTION II. EXCLUSION A., we will cover any Insured who did not commit, participate in, acquiesce in or fail to take appropriate action after having personal knowledge of such dishonest, fraudulent, criminal or malicious act, error or omission.

D. Subrogation

If the Insured has rights to recover all or part of any payment for damages or claim expenses which we made under this policy, those rights are transferred to us to the extent that we have made payment on the Insured's behalf. The Insured must do whatever is necessary to secure such rights and do nothing to impair them. Any amount recovered shall first be applied to reduce our loss or, if applicable, as directed by law.

We hereby waive subrogation rights against a client to the extent that the Insured had, prior to the wrongful act or circumstance, a written agreement to waive such rights against the client.

E. Other Insurance

This insurance will be excess over any other insurance, including but not limited to project specific insurance, which also provides coverage for any claim, including any deductible provisions. However, any insurance specifically arranged by you to apply in excess of this insurance shall not be deemed “other insurance”.

F. Premium

The first Named Insured shall pay us the premium stated in the Declarations.

G. Liberalization Clause

If during this policy period we implement revised non-optional terms for our Architects & Engineers Professional Liability Insurance policy form which broaden coverage for no additional premium, the revised terms will also apply to this policy. The new terms will be effective on the date that the appropriate regulatory authority grants approval of the revised terms. The revised terms will apply only to claims first made or potential claims that the Insured became aware of on or after the date regulatory approval is granted.

H. Policy Changes

The terms and conditions of this policy cannot be waived or amended except by specific written endorsement issued by us and made a part of this policy.

I. Assignment of the Insured’s Interest

Your interests under this policy may not be assigned to any other person or organization without our written consent.

J. Cancellation

You may cancel this policy by returning the policy to us or by mailing written notice to us stating when thereafter such cancellation shall be effective. If you cancel, the refund will be 90% of the unearned premium.

We may cancel this policy by sending written notice to you, at the address last known to us. We will provide written notice at least 60 days before cancellation is to be effective. However, you will only be entitled to ten days’ notice if we cancel because the premium has not been paid when due. If we cancel, earned premium will be computed on a pro rata basis. The mailing of any notice of cancellation will be sufficient proof of notice.

Upon cancellation of this policy, the end of this policy period will be changed to the effective date of cancellation. Unearned premium will be returned by us as soon as practicable, but return of unearned premium is not a condition of cancellation.

K. Bankruptcy

Bankruptcy or insolvency of any Insured or any Insured's estate shall not relieve us of our obligation under this policy.

L. Application

The statements in the application are representations of the Insured and are deemed material to the underwriting and acceptance of coverage by us. This policy is issued in reliance on the accuracy of such representations.

M. Action against Us

No Insured or anyone else may bring any legal action against us concerning this policy until:

1. there has been full compliance with all the terms and conditions of this policy; and
2. the amount of damages has been determined by:
 - a. final judgment against the Insured after trial, if the time to appeal such judgment has expired without an appeal being taken, or if an appeal is taken, after the appeal has been determined; or
 - b. settlement of the claim in accordance with the terms and conditions of this policy.

N. Waiver of Terms

In the event we do not insist on strict compliance with any of the terms, provisions or conditions of coverage under this policy, or if we do not exercise our rights or privileges thereto, our actions shall neither operate nor be construed as a waiver of our right to enforce any term, provision or condition of coverage.

USE OF VALUE ENGINEERING THROUGH REFORM IN PUBLIC PROCUREMENT SYSTEM FOR BUILDING SUSTAINABLE INFRASTRUCTURE IN NEPAL



Er Dharmendra Kumar Jha, P. Eng⁴

ABSTRACT

Nepal's chronic infrastructure deficit, characterized by delays, cost overruns, political instability, management and governance issues, skewed land acquisition policies, inadequate energy and fuel supply, lack of private investment, inefficient procurement system, lack of project readiness assessment, and poor quality, remains a primary barrier to achieving its Sustainable Development Goals (SDGs). Value engineering is a powerful tool in the arsenal of civil engineers, offering a systematic approach to optimize project value while controlling costs. By leveraging creativity, innovation, and collaboration, engineers can unlock efficiencies, enhance functionality, and deliver sustainable infrastructure solutions that shape the world for generations to come. In an era of increasing resource constraints and growing demand for infrastructure development, the importance of value engineering in civil engineering projects cannot be overstated - it is the key to unlocking efficiency and maximizing value. This article identifies the root cause as a procurement system that seriously emphasizes the lowest substantial responsive initial bid, entirely overlooking long-term lifecycle value. In employing a comparative study of best international practices and a critical examination of Nepal's procurement system, this article directs the attention to the revolutionary capability of Value Engineering (VE). By comparative examination of the Public Procurement Act (PPA), Standard Bidding Documents (SBDs), and FIDIC contracts, the article proposes realistic, law-oriented reforms for VE mainstreaming. Empirical case information, lifecycle cost analysis, and estimated national savings (more than NPR 100 billion annually) prove the viability of VE. Evidence points out that a transition towards a "best value" rather than a "lowest cost" model is essential to enhance the quality, speed, and sustainability of Nepal's infrastructure.

Keywords: Value Engineering (VE), Public Procurement Act (PPA), Lifecycle Cost (LCC), Infrastructure Procurement, Sustainable Development Goals (SDGs), Standard Bidding Documents (SBDs)

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1. Introduction

Nepal's infrastructure sector is plagued by systemic inefficiencies—delayed highways, over-budget hydropower projects, and rapidly deteriorating public assets. The Nagdhunga–Naubise–Mugling (NNM) road is one of Nepal's most vital transport corridors, connecting the Kathmandu Valley to the Terai and onward to India. As part of Asian Highway AH42, it carries an estimated 60-70 percent of all goods entering Kathmandu, including food, fuel, construction materials, and medicines. Recent upgrades under the Strategic Road Connectivity and Trade Improvement Project (SRCTIP) have improved pavement quality, road safety, and travel times along the 94.7 km stretch.

However, progress came at a cost: land acquisition alone took 35 months - nearly 150% longer than planned - highlighting the systemic delays that continue to slow infrastructure delivery in Nepal. This project reflects a broader challenge facing major investments in Nepal. Large investments in roads, hydropower, irrigation systems, and water supply projects are routinely approved, but implementation delays and incomplete projects remain widespread.

According to the World Bank's Nepal Capital Expenditure Bottlenecks Analysis (October 2025), this gap between planning and delivery is structural - and persistent. At the federal level, the share of the capital budget in the total budget declined from 27.1 percent in FY21 to 20.9 percent in FY24, with only around 62 percent of these allocations executed on average. As a result, federal capital expenditure as a share of GDP fell from 5.3 percent to 3.4 percent.

Combined with under spending at the subnational level, total capital expenditure (CAPEX) across all three tiers of government fell from 11.4 percent of GDP in FY21 to 7.8 percent in FY24, well below the 10-15 percent of GDP estimated as necessary to close the country's infrastructure gap. These trends carry real economic consequences: delayed infrastructure projects, raise investment costs, slow service delivery, constrain economic growth, and limit job creation.

On paper, Nepal seems to have a sound public investment management system. In practice, weaknesses appear throughout the project cycle—from selection to funding and contract management. Start with budgeting. Nepal approves far too many poorly prepared projects. This spreads resources thin - at current funding levels, completing 17 National Pride Projects would take 41 years as per World Bank estimates. Outdated costing data and weak monitoring also undermine strategic planning and the medium-term expenditure framework.

Project preparation is slowed mainly by delays in tree cutting clearance and land acquisition. For infrastructure projects, tree cutting approval processes take 2 years on average due to multiple approval procedures, duplicate surveys and limited use of digital tools. Land acquisition takes 2-3 years on average because of outdated valuation methods, fragmented records, and frequent compensation disputes.

Finally, procurement is a major bottleneck: Nepal has the longest World Bank–financed project procurement timeline in South Asia (231 vs. 192 total days). Mandatory use of lowest bids approach, strict termination penalties, paper decision making processes, and unclear guidance stall

contracts. Nepal must focus on better implementation of investment projects by shifting attention from budget allocations to how projects are selected, prepared, financed, and executed.

Under infrastructural development, the major priority has been given to the construction of strategically important infrastructure projects of the country and completion of ongoing projects/sectors such as the construction of roads, civil aviation, education, health, rail, waterways, telecommunication, information, and broadcasting including electronic media. Application of Value Engineering in Civil Engineering is mainly in physical infrastructure like roads, bridges, hydropower, irrigation structure and larger buildings.

The Government of Nepal (GoN) has been keen on accelerating economic growth of Nepal and graduating from the status of a Least Developed Country (LDC) by 2022 and attaining the vision of becoming a middle-income country by 2030. The Finance Minister also committed adequate budget for infrastructure projects in the budget of the fiscal year 2019/20. 9.2% of the GDP has been allocated for capital spending but it is lesser than that of the previous year. Economists predict that the government needs to spend at least 8-12% GDP in public infrastructure to bridge the infrastructure gap and as per the Nepal Development Update of 2019 published by the World Bank Group, around 10-15% of GDP is needed annually for infrastructural investment for the next 10 years.

However, for Nepal to achieve the target, per capita income needs to be raised and Human Development Index (HDI) has to witness progress as well. For this, the infrastructure gaps need to be closed. At present, the presence of infrastructure gaps and access to reliable and adequate infrastructure services are limited for Nepalese citizens because of various infrastructure bottlenecks.

Nepal's potential for development through investment in infrastructure has long been realized. Political instability has often been blamed and put out in the front for serving as an 'infrastructural bottleneck' but it is not the case because there seems to be plenty of political will to undertake underhand deals. In actuality, decision making is paralyzed which causes the hindrance and majorly because, infrastructure is 'hardware' and the real bottleneck facing the country is 'software' i.e. management, government coordination, transparency, and accountability. Various studies have proven that investment in infrastructure is not enough because investment without addressing the structural problems of governance will only aggravate inequality, leading to unbalanced development, create wastage and ultimately harm the environment. Other such bottlenecks are skewed land acquisition policies, inadequate energy and fuel supply, and lack of private investment.

All of this has been reflected in the Global Competitiveness Index 2019 which includes infrastructure as one of the pillars of enabling an environment of a country. Nepal ranks 112th out of 140 countries in it and scores 51.8 out of a 0 to 100 scale. Thus, Nepal cannot spare to dismiss its infrastructural bottlenecks as it affects the country's competitiveness and slacks the pace of growth while other countries move forward.

The most crucial point to understand in the overall context of development is that economic

activities and its subsequent inclusive growth cannot take place without an infrastructure base. For a strong infrastructure base, the participation from both the government and private sector, and legal and policy foundation is essential. The role of government and its bureaucracy has to be realized at every stage of infrastructural development i.e. from inception and licensing to construction and operation. Moreover, studies around this sector have also suggested that in order to overcome the infrastructure gap in Nepal, the private sector has to be mobilized in cooperation with the financing and policy changes by the public sector. The Investment and Infrastructural Summits have also indicated that it is high time Nepal gets investment-ready.

Additionally, it is given that infrastructural bottlenecks such as ineffective and delayed decision making, management, skewed land acquisition policies, inadequate energy and fuel supply, lack of private investment and others act as major stumbling blocks. Almost all infrastructure projects are being overrun in terms of either time or amount and thus deteriorated the quality of the projects as well. Thus, although infrastructural development is not an overnight process, integrated infrastructural development has to be convened.

Every country around the globe is progressing, be it at a fast or a snail's pace, so there is no reason why Nepal cannot learn a thing or two from them. Learning, adapting, and actualizing the lessons is the way forward for its infrastructural development.

Conventional wisdom often attributes these issues to funding shortages; however, a more profound and persistent problem lies in the procurement model that incentivizes the lowest initial bid at the expense of long-term value. International evidence demonstrates that Value Engineering (VE)—a structured, function-oriented methodology for optimizing project value—can systematically produce savings of 10–30% while simultaneously improving quality, performance, and sustainability.

Despite isolated, ad-hoc successes, VE remains conspicuously absent from Nepal's legal and contractual frameworks. This paper addresses this critical research gap by: (i) examining global procurement practices that successfully integrate VE, (ii) conducting a comparative gap analysis against Nepalese practices, (iii) presenting empirical data on VE benefits to project national savings for Nepal, and (iv) proposing a tailored, VE-integrated reform pathway for Nepal's procurement ecosystem.

2. Context

2.1 Value Engineering in Infrastructure Project

Value Engineering (VE) was developed at General Electric Corp. during World War II Originating in the U.S. and is used in industry and government, particularly in areas such as defense, transportation, construction, and healthcare. VE was developed to mitigate shortages of materials by discovering functional replacements without impairing performance. VE is now a codified body of knowledge, which International Association of Value Engineering (IAVE) has described as a "systematic, function-oriented process" to add value by considering the interrelationship between the functions of a product, their cost, and value. VE is a forward-

looking, creative problem-solving methodology, not cost-cutting after the fact.

Value Engineering (VE) is an effective technique for reducing costs, increasing productivity, and improving quality. It can be applied to hardware and software; development, production, and manufacturing; specifications, standards, contract requirements, and other acquisition program documentation; facilities design and construction. VE is an organized attempt to provide the required facility at the lowest total costs, consistent with performance, reliability, and maintainability (M.M. Marzouk et al, 2011).

Value engineering is not a cost-cutting exercise; it's a strategic process aimed at identifying and eliminating unnecessary expenses while preserving or enhancing project quality. It involves a multidisciplinary approach that integrates engineering principles, economics, and project management techniques. The primary goal is to achieve the desired project objectives at the lowest total cost, considering both initial and long-term expenses. At its core, VE seeks to maximize the functionality and quality of a project while minimizing unnecessary expenditures. It involves a structured analysis of project components to identify opportunities for cost reduction without compromising performance or quality.

Value Engineering (VE) is an efficient management technology that can significantly contribute to value rise and decrease in building projects. In addition to that VE is an accepted way of recognizing and removing excessive product construction, inspection, manufacture and design, operation, repairs. The technique comprises three main stages. The first step of the study on VE is designed to schedule and organize the study of significance.

Value engineering finds widespread application in various civil engineering projects, including infrastructure development, building construction, and transportation systems. For example, in bridge construction, engineers may explore alternative materials or structural configurations to reduce costs without compromising safety and durability. In highway projects, value engineering can lead to optimized pavement designs, efficient traffic management solutions, and streamlined construction processes.

Value Engineering routinely employs well-known techniques that classify the functions of the innovative product or service and thus operate at the lowest average cost of performance. Value engineering relies on the lowest marginal feature efficiency. It enables waste, time, and unnecessary expenses to be eliminated or minimized that increases customer loyalty. The second step consists of several phases: knowledge phase, research purposes phase, innovative phase, assessment phase, and initial phase.

Key Principles and Techniques of Value Engineering

Function Analysis: At the heart of value engineering lies function analysis, which involves breaking down a project into its fundamental functions or purposes. By understanding the essential functions that a structure or system must fulfill, engineers can explore alternative designs, materials, or construction methods that offer similar performance at a lower cost. This process encourages creative thinking and innovation while ensuring that every component

contributes meaningfully to the project's functionality.

Cost-Benefit Analysis: Value engineering relies heavily on cost-benefit analysis to evaluate different alternatives and determine their economic viability. Engineers assess the costs associated with each option, including initial construction costs, maintenance expenses, and potential savings over the project's life cycle. By comparing the costs and benefits of various alternatives, decision-makers can make informed choices that optimize value without sacrificing quality or performance.

Value Engineering Workshops: Value engineering workshops bring together stakeholders, including engineers, architects, contractors, and clients, to collaborate on optimizing project design and delivery. These workshops foster communication, creativity, and consensus-building, enabling participants to identify opportunities for value improvement and develop practical solutions. By leveraging the collective expertise of diverse perspectives, value engineering workshops generate innovative ideas and enhance project outcomes.

The Value Engineering Process

The value engineering process typically follows a structured methodology, consisting of several key phases:

Information Gathering: Engineers gather comprehensive data about the project, including its objectives, requirements, constraints, and stakeholders' preferences.

Functional Analysis: This phase involves dissecting the project's functions to understand its core purpose and essential elements. By identifying functions that are critical to project success, engineers can focus on optimizing them for maximum value.

Creative Idea Generation: Engineers brainstorm innovative ideas and alternatives to achieve project objectives more efficiently. This step encourages out-of-the-box thinking and fosters creativity in problem-solving.

Evaluation and Selection: The generated ideas are evaluated based on criteria such as feasibility, cost-effectiveness, and alignment with project goals. Promising concepts are selected for further development, while impractical or ineffective solutions are discarded.

Implementation Planning: Once suitable alternatives are identified, engineers develop detailed implementation plans outlining how these solutions will be integrated into the project. This phase may involve collaboration with various stakeholders, including designers, contractors, and clients.

Monitoring and Feedback: Continuous monitoring and feedback mechanisms are established to track the performance of implemented changes. This allows engineers to assess the effectiveness of value engineering interventions and make adjustments as needed.

Benefits of Value Engineering in Civil Engineering

The application of value engineering in civil engineering projects offers a myriad of benefits, including:

Cost Savings: By identifying inefficiencies and optimizing project components, value engineering can lead to significant cost reductions throughout the project lifecycle.

Enhanced Functionality: Value engineering enables engineers to enhance project functionality by refining design elements and incorporating innovative solutions.

Improved Quality: By focusing on value-added functions and optimizing performance, value engineering contributes to the quality and durability of civil engineering works.

Sustainability: Value engineering promotes the use of sustainable materials, construction methods, and practices, reducing environmental impact and promoting long-term viability.

Client Satisfaction: Delivering projects that meet or exceed client expectations while staying within budget enhances client satisfaction and fosters long-term relationships.

2.2 Value Engineering Practice in the World's Procurement

World practices, which have been analyzed below, exhibit well-established institutionalization of Value Engineering for public procurement.

United States: The U.S. has the most developed Value Engineering program. The Federal Highway Administration (FHWA) mandates Value Engineering analyses on all federal-aid highway projects with a cost in excess of \$50 million. Independent, interdisciplinary VE teams conduct systematic workshops, creating alternatives that often achieve greater than 10% overall project cost savings without compromising scope or quality. Perhaps most significant, the process is integrated into procurement and design stages, and savings are often negotiated with contractors as an incentive.

United Kingdom: For the UK, the strategy is within integrated project appraisal. HM Treasury's "Green Book" determines the essential guidance for the evaluation of public schemes, including consideration of whole-life costing (WLC) and value for money (VfM) rather than mere capital expenditure. Value Engineering workshops are standard as part of the RIBA (Royal Institute of British Architects) plan of work on major projects, ensuring innovation is specifically documented at the design development stage.

Japan: Japan implements VE on the whole project cycle. The Ministry of Land, Infrastructure, Transport and Tourism (MLIT) requires VE studies at the levels of feasibility, design, and even construction for public works. A distinct feature is the direct link between contractor incentive schemes and VE. Contractors are encouraged vigorously to submit proposals (in generic terms referred to as Value Engineering Change Proposals - VECs), and a high rate of the realized savings is distributed to contractors, fostering a culture of continuous innovation.

South Korea: South Korea's Public Procurement Service (PPS) has a robust Value Innovation Program (VIP) since the early 2000s. It is mandated institutionally for mega-sized public projects. The Korean practice adopts a performance specification with a transparent contractual framework

for contractors to submit value-adding proposals, with a standardized formula of sharing savings.

Multilateral Development Banks (e.g., ADB, World Bank): VE and lifecycle costing are encouraged by these institutions as a mandatory aspect under their borrower country procurement guidelines. Its effectiveness in a developing country context is witnessed in the experiences of Vietnam (transportation) and the Philippines (water resources), and it is practicable with evidence of flexibility in local materials and constraints.

2.3 Nepalese Procurement Practice

Nepal's procurement is governed by the Public Procurement Act (PPA) 2063 and its Regulations (PPR 2064), which explicitly refer to the selection of the "lowest evaluated substantially responsive bid" (Rule 20). It creates a process that discourages innovation by nature and overlooks lifecycle costs. Standard Bidding Documents (SBDs) tend to be highly prescriptive, occasionally requesting brands and methods, which legally prevents contractors from submitting functional equivalents. While FIDIC contracts are applied extensively to the large projects, Nepalese derivatives lack definite VE clauses, incentive schemes, and an official proposal system.

The result is a culture of ad-hoc, piece-meal VE implementation. Even such projects as the Sidhababa Tunnel (achieving ~25% cost saving using local stone and geotextiles in lieu of imported steel) remain stand-alone examples of contractor initiative and not outcomes of a systematic process.

Nepal lags in international best practice in Value Engineering (VE) regarding the absence of legal mandate in the PPA/PPR, procedural standardization and incentives in FIDIC/SBDs, institutional training capacity, and empirical studies on national benefits. We should address these gaps by developing actionable legal and contractual reforms based on international models and impact forecasts grounded in data.

Nepal's Public Procurement Act (PPA), Regulations (PPR), and Standard Bidding Documents (SBD) with international and Donor guidelines from US FHWA, UK Green Book, and FIDIC, ADB, WB etc. are used and also three large scale infrastructure/tunnel projects are considered for actual instances of using value engineering and their impact. These qualitative results were supplemented with stakeholder interviews to understand ground-level constraints. Quantitatively, lifecycle costing analysis models compared traditional low-bid conditions to VE-integrated approaches for common infrastructure elements. Finally, benefit estimation analysis applied worldwide VE savings baselines to Nepalese public investment data in order to estimate the significant potential national economic impact.

3. The Empirical Case for Value Engineering: Global Data and Projected Benefits for Nepal

The theoretical advantages of VE are widely documented, but its efficacy in practice is best attested by international empirical evidence.

3.1 Documented Benefits from Global Practice

Previous study regarding the value engineering programs on various infrastructure project reveals

significant savings and performance improvements in various countries. The following table and graph synthesize this data:

Table 1: Documented Value Engineering Savings Across Nations/Sectors

Country / Sector	Authority / Study	Scope	Average Saving (%)	Key Benefit Beyond Cost Saving
United States (Transportation)	Federal Highway Admin. (FHWA)	Federal-aid Highway Projects	10 - 15%	Improved safety, reduced maintenance, longer design life.
Japan (Public Works)	MLIT	National Infrastructure Projects	10 - 20%	Enhanced innovation, better resource utilization, contractor engagement.
United Kingdom (All Govt.)	HM Treasury	Major Project Portfolio	5 - 10%	Better value for money (VfM), higher achievement of strategic objectives.
Multilateral Projects (ADB)	ADB Report	Projects in Vietnam, Philippines	8 - 12%	Increased local content, adaptability to local materials and constraints.
Construction Industry (Meta-Study)	Kelly et al.	Review of Int'l Projects	~10% (of total project cost)	For every \$1 spent on VE, \$15-\$20 are saved.

These figures are not merely aspirational; they are the result of institutionalized processes. The FHWA, for instance, reports that its VE program has generated over \$10 billion in documented savings since its inception, with an average return of \$25 for every \$1 invested in conducting VE studies [6].

The following graph visualizes the different infrastructure project, how the impact of value engineering effect on the process and component.

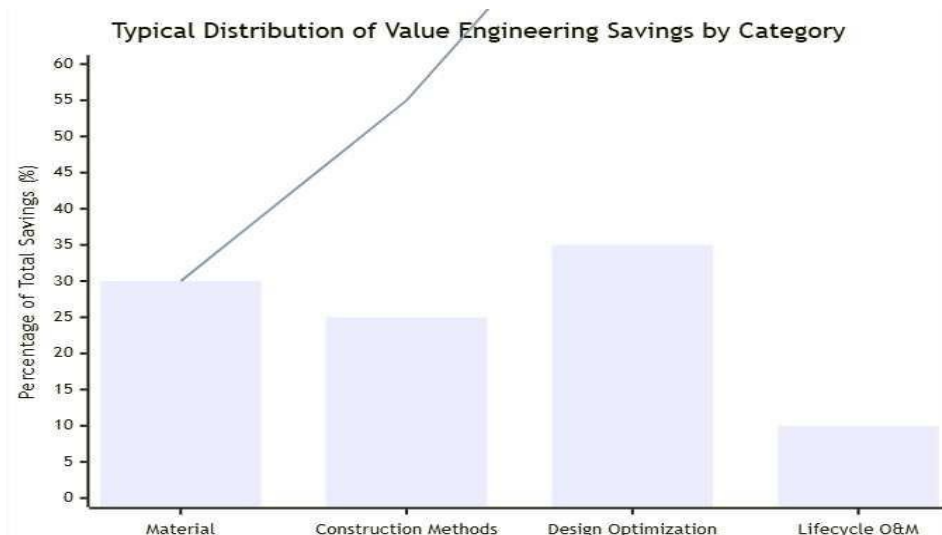


Figure 1: Sources of Value Engineering Savings (Adapted from SAVE International [5] and FHWA Reports [6])

As illustrated, the largest share of savings (35%) typically comes from Design Optimization—fundamental changes that improve efficiency from the outset. Significant savings also come from Construction Methods (25%) and Material selection (30%). Crucially, a further 10% of savings are realized in reduced Operation & Maintenance (O&M) costs, highlighting the lifecycle focus of VE.

3.2 Potential National Impact of VE in Nepal

Applying these global benchmarks to the Nepalese context reveals a staggering opportunity. According to National Planning Commission, actual annual public capital expenditure for infrastructure projects over the last two years is approximately **NPR 425 billion**.

A conservative VE saving of 10%—at the lower end of the international range—on this expenditure provides:

FY 2023/24	Allocation ~ NPR 302 billion for Capital	Actual utilization ~ NPR 191.73	~63.47%
FY 2022/23	Capital Allocation ~ NPR 380.38 billion	Utilised~ NPR 234.62 billion	~61.7%

Annual National Savings = NPR 425 billion × 10% = NPR 42.5 billion

A more ambitious but well-supported target of 15% saving would provide: Annual National Savings = NPR 425 billion × 15% = NPR 63.75 billion

These approximations align with the cited instance of the Sidhababa Tunnel, which achieved 25% savings (~NPR 600 million) for a stretch of a single project [13]. Nationally extrapolated, the total benefit easily exceeds NPR 100 billion annually, funds that can be recycled to minimize the

nation's staggering infrastructure deficit.

The intangible benefits are no less significant to Nepal:

- **Reduced Project Timelines:** VE focus on constructability and simplification would reduce timelines by a projected 15-20%, confronting root-cause delays directly.
- **Improved Local Capacity:** Performance-based specification would promote the utilization of local material and labor, stimulate local industry as well as retain capital within the national economy.
- **Better Sustainability:** VE's function-based strategy would automatically lead to better resource utilization and more robust designs, benefiting Nepal's SDG and climate adaptation plans in a direct manner. This evidence and prediction provide an undeniable economic and strategic rationale for the immediate insertion of Value Engineering into Nepal's national procurement policy.

4. Comparative Analysis: Gap Between Global Practice and Nepalese Reality

Component	Global Best Practice (US, UK, Japan, S. Korea)	Current Nepalese Practice	Identified Gap
Procurement Criteria	Best Value / Most Advantageous Tender based on Quality, Lifecycle Cost, Innovation (LCC).	Lowest Evaluated Bid (PPA Rule 20).	Lifecycle costs and value are completely ignored in award decisions.
VE Mandate	Legally required for projects above a financial threshold.	Entirely absent from PPA/PPR. No mandate.	Legal Void: No requirement to conduct VE studies at any project stage.
Outline of Contractual Clause	FIDIC document clearly shows VE clauses such as VECP procedures, shared savings formulas etc.	FIDIC implemented but without Value Eng. framework; Clause 13.2 (Variations) used as ad-hoc.	Incentive Gap: No formal mechanism or financial incentive for contractors to propose value-adding changes.
Specifications	Functional specifications or performed basis (e.g., "support load P").	Prescriptive specifications (e.g., "use brand Y cement at grade Q").	Innovation Silent: Legally binds contractors to a specific solution, prohibiting alternatives.

Skills & Institutions	Dedicated VE teams, IAVE/SAVE certification programs, trained facilitators.	Limited to no awareness; no formal training programs or certification bodies.	Capacity Chasm: A critical shortage of professionals trained in VE methodology.
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Table 2: Gap Analysis of VE Integration in Procurement Frameworks

5. Suggested Reform: An Adapted Value Engineering Integration Model for Nepal

Based on the probable viable profits/benefits and gap analysis, some suggestions are necessary for improvement regarding the value engineering.:

5.1 Judicial & Regulatory Improvements (PPA/PPR)

The PPR rule no 20 should be revised as: Add "Value-Based Procurement" (VBP) as the criteria for large projects such as estimated cost more than 100 million. Criteria need to be included for technical merit, lifecycle cost, innovation, and sustainability with clear scoring weight defined (e.g., 60% price, 40% quality/VE).

Introduce a Value Engineering Mandate: Add a new paragraph in the PPR demanding the use of mandatory VE study in the feasibility and detailed design stages for all large-scale infrastructure projects.

Create a Shared Savings Mechanism: Enact a universal formula for sharing savings (e.g., Contractor: 50%, Owner: 40%, Contingency Fund: 10%) to encourage post-award proposals for Value Engineering under PPR Rule 64.

5.2 Standard Bidding Document Reforms (SBDs)

Shift to Performance-Based Specs: Rethink SBDs to express performance requirements (e.g., "achieve a road surface PCI > 80 for 10 years") instead of prescriptive techniques.

Revised Evaluation Criteria for Bids: Assign and integrate significant weight (e.g., 30%) to VE criteria like proposed lifecycle cost, localization of material usage, and innovative construction methodologies.

Pre-Qualification Requirement: Require that bid consortia be headed by at least one professionally qualified VE specialist.

5.3 Reforms to FIDIC-Based Contracts

Include a VE Clause: Introduce an after-hours Value Engineering Change Proposal (VECP) clause to augment standard FIDIC contracts. The clause should stipulate:

- The formal process for submission.
- A clear timeline for review by the Engineer.
- Net Savings Sharing Formula agreed upon.
- Extension of period of contract (Clause 8.3) to draft proposals.

6. Implementation Challenges & Mitigation

6.1 Resistance to Change

Institutional resistance and inertia towards innovation are two of the strongest deterrents to adopting Value Engineering (VE) and innovative practices in the construction sector of Nepal. Ministries and government departments will often default to standard procedures even when better alternatives are known to be available. Pilot projects must be started in high-impact Sustainable Development Goal (SDG) sectors such as water supply, rural roads, and irrigation, wherein concrete benefits could be unearthed within the short timescale. The pilots must be backed up by tough ministerial directives and inter-ministerial coordination to ensure that lessons are documented, disseminated, and scaled up. Through their demonstration of concrete cost savings and efficiency gains, the pilots stood to gain momentum over time and reduce stress for government managers and other stakeholder groups.

6.2 Obsolete Standards

Nepal's incorporation of obsolete codes and specifications is also a primary barrier to innovation and sustainability in infrastructure. The National Building Code (NBC) and related technical standards have not been updated in cycles often enough to incorporate newer materials of construction, new safety requirements, or domestically suitable technologies. It is important to undertake urgent revisions to enshrine innovative and environmentally friendly materials like engineered bamboo, geo-synthetics, and recycled aggregates. Embedding international good practices while adapting them to Nepal's topography and resources would generate a regulation that supports innovation rather than hinders it. Updating it at regular intervals and having a fast-track procedure for clearances of novelty technologies are equally important to prevent standards from becoming outdated.

6.3 Capacity Gap

While policies and standards support innovation, the lack of technical knowledge typically hinders implementation. To correct this, Nepal can adopt a national VE certification program in conjunction with leading professional and academically-oriented organizations like the Institute of Engineering (Pulchowk Campus) and the Nepal Engineering Council. The program can aim to train at least 100 to 200 engineers/annually consisting town/city managers-planners and purchasing officials by 2028 in Value Engineering fundamentals and techniques, sustainable use of material, and lifecycle cost analysis. Such capacity-building would enhance institutional capability, professional reputation, and trust in the application of VE techniques for public projects.

6.4 Contractor Reluctance

Contractors tend to be wary of VE activities for fear of extra scrutiny, reduced margins, or past due payment. To gain contractors' trust, the government can incorporate guaranteed and competitive savings-sharing terms in the Standard Bidding Documents (SBDs). For example, if VE proposals deliver quantifiable cost savings or lifecycle improvements, contractors should be entitled to an unmistakable share of the resulting savings. Open procedures for assessment and release will make it worthwhile for contractors to actively submit innovative suggestions rather than oppose

change. In the longer term, it will promote a mutually beneficial climate of cooperation between government and contractors, from which resulting efficiency improvements accrue to all.

7. Conclusion and Recommendations

Nepal's procurement system of infrastructure needs to change its parochial "lowest cost" approach to a visionary "best value over time" methodology. International evidence from the United States, United Kingdom, Japan, and South Korea leaves little doubt: VE is no luxury, but a prerequisite for value for money in public outlays. The case evidence submitted herewith substantiates that institutionalizing VE can safely save 10-15% of project costs, implying potential national annual savings of more than NPR 40-60 billion. This analysis concludes that it is not only feasible but necessary to incorporate VE into Nepal's PPA, SBDs, and FIDIC contracts through such reforms as proposed. The potential outcomes are transformative: 15-25% lifecycle cost reduction, 20% early completion, local resource utilization augmentation, and more than NPR 100 billion annual national savings. By rewiring its procurement system to incentivize value, Nepal can finally break out of the cycle of underperformance of infrastructure and plant the seeds of sustainable, SDG-aligned growth. The most critical first step is the amendment of the Public Procurement Act to introduce Value-Based Procurement criteria, creating the legal foundation for all subsequent reforms. This single legislative change would trigger the necessary evolution in SBDs, contracts, and professional competencies, setting Nepal on a path toward infrastructural resilience and value.

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Risk Management Practice in Infrastructure Development Sector in Nepal



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ABSTRACT

Risk management is a fundamental pillar of successful public procurement, particularly in the context of large-scale infrastructure development. Nepal's public procurement framework—anchored by the Public Procurement Act (2007), Public Procurement Regulations (2007), and sector-specific Standard Bidding Documents (SBDs) embeds various risk allocation and mitigation mechanisms, yet significant implementation gaps persist. This article critically examines the conceptual foundations of risk management and risk sharing, analyses how these principles are institutionalized within Nepal's public procurement legal and regulatory architecture, and evaluates sector-specific risk dynamics across hydro power, irrigation, water supply, sanitation (WSS), roads and bridges, buildings and high-rise structures and commercial real estate developments. Drawing on the Project Development and Optimization Policy, comparative international practice, and empirical evidence from Nepalese procurement outcomes, the study identifies chronic risk mis-allocation, capacity deficits, and policy inconsistencies as root causes of cost overruns, schedule delays, and contract disputes. The article proposes targeted reforms including improved risk matrices in SBDs, risk-based bid evaluation, mandatory risk registers, and enhanced contract management capacity to strengthen value for money in public infrastructure investment.

Keywords: Risk Management, Risk Sharing, Public Procurement, Infrastructure Development, Nepal, Standard Bidding Documents, Public Procurement Act

1. INTRODUCTION

Infrastructure development stands at the heart of Nepal's socio-economic transformation. With a growing development budget channelized into hydro power, irrigation, roads, bridges, buildings, and urban commercial infrastructure, the stakes of effective procurement governance have never been higher. Nepal's public infrastructure investment has exceeded NPR 400 billion annually in recent years, yet systemic challenges—including cost overruns averaging 15–25 per cent above contracted amounts, schedule delays of two to five years, and a high incidence of contract disputes—continue to undermine the efficiency of public spending.

At the core of these challenges lies a persistent problem: the sub-optimal allocation and management of risk. Risk management—defined as the systematic identification, assessment,

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and mitigation of uncertainties that can affect project outcomes—is both a technical discipline and a governance imperative. In public procurement, risk management intersects with principles of transparency, accountability, and value for money to shape how contracts are structured, how disputes are resolved, and ultimately how public resources are translated into public goods.

Nepal's legal framework for public procurement is anchored in the Public Procurement Act, 2063 B.S. (2007 A.D.) and its implementing Public Procurement Regulations, 2064 B.S. (2007 A.D.), complemented by Standard Bidding Documents (SBDs) issued by the Public Procurement Monitoring Office (PPMO). While this framework provides a credible institutional foundation, it contains important lacunae in risk allocation, risk communication, and risk management procedures, particularly for complex, high-value infrastructure projects.

This article pursues three objectives. First, it establishes the conceptual foundations of risk management and risk sharing as they apply to public procurement. Second, it maps the risk management provisions embedded in Nepal's procurement legislation, regulations, and SBDs across the principal infrastructure sub-sectors. Third, it evaluates risk management practices in light of the Government of Nepal's Project Development and Optimization Policy and proposes reforms to align practice with international good standards.

2. CONCEPTUAL FRAMEWORK: RISK MANAGEMENT AND RISK SHARING

2.1 The Nature of Risk in Infrastructure Procurement

Risk, in the context of infrastructure procurement, refers to the possibility that events will occur which adversely affect the achievement of project objectives—whether those objectives relate to cost, time, quality, safety, environmental and social outcomes. In procurement contexts, risks are typically differentiated along two dimensions: their source (technical, financial, political, environmental, social, force majeure) and their contractual locus (who bears the consequences if the risk materializes).

Infrastructure projects are inherently risk-laden. Geological uncertainties in hydro power tunneling, hydro-logical variability in irrigation systems, design complexity in high-rise building construction, and land acquisition challenges in road projects all generate risk profiles that are difficult to quantify initially in preparation phase. The World Bank and Asian Development Bank have both emphasized that the failure to adequately manage risk is among the most significant drivers of project failure in developing country infrastructure implementation.

2.2 Risk Sharing: Principles and Rationale

Risk sharing—or risk allocation—concerns the contractual distribution of identified risks between the procuring entity (the government) and the contractor (or developer). The foundational principle in international procurement practice is that each risk should be borne by the party best positioned to control, manage, and absorb it. This principle, articulated in the FIDIC Suite of Contracts and endorsed by UNCITRAL and multilateral development banks, implies that governments should retain risks that are inherently sovereign (such as policy change, statutory approvals, and land acquisition), while contractors should bear risks that are within their

technical and commercial competence (such as workmanship, resource procurement, and productivity).

Risk sharing arrangements have evolved considerably since the emergence of Public-Private Partnership (PPP) models in the 1990s, which still dominates Nepal's public procurement landscape, allocates most risk to the government and provides limited incentives for contractors to innovate or manage risk proactively. In contrast, design-build (DB) and engineering-procurement-construction (EPC) contracts transfer design and construction risk to the contractor, while these models transfer operational and revenue risk as well.

Sound risk allocation frameworks deliver multiple benefits: they reduce the total cost of risk in the project by placing it with the party that can manage it most efficiently; they provide clear contractual certainty, reducing disputes; risk allocation frameworks improve contractor's performance; and they enable more accurate project cost estimation.

2.3 Risk Categories Relevant to Nepalese Infrastructure

Drawing on the risk typology of the World Bank Procurement Framework and FIDIC contract conditions, the following risk categories are most relevant to Nepal's infrastructure context:

- Site and geo-technical risks: Unexpected ground conditions, landslides, seismic events—highly relevant in Nepal's mountainous terrain.
- Hydro-logical and climatic risks: Variation in water flows affecting hydro power generation and irrigation systems; extreme weather events.
- Design and technical risks: Errors or inadequacies in designs, specifications, and surveys, leading to scope changes and cost overruns.
- Land acquisition and resettlement risks: Delays in securing right-of-way, compensation disputes, and community opposition.
- Regulatory and political risks: Changes in policy, taxation, or permitting requirements; political instability.
- Financial risks: Currency fluctuation, inflation, financing availability, and cost escalation.
- Contractor performance risks: Insolvency, sub-standard workmanship, resource constraints, and supply chain failures.
- Force Majeure risks: Earthquakes, floods, pandemics, and armed conflict—unpredictable events beyond either party's control.

3. RISK MANAGEMENT IN NEPAL'S PUBLIC PROCUREMENT LEGAL FRAMEWORK

3.1 The Public Procurement Act, 2063 B.S. (2007 A.D.)

The Public Procurement Act (PPA) provides the legislative foundation for all public procurement in Nepal. In terms of risk management, the PPA's most significant contributions are its provisions

on contract conditions, bid security, performance security, advance payment guarantees, and variation orders.

However, the PPA is largely silent on proactive risk management as a procurement planning function. It does not require procuring entities to conduct formal risk assessments as part of project preparation, nor does it mandate the inclusion of risk matrices or risk registers in procurement documents. This legislative gap means that risk management is treated as an ad hoc activity rather than a systematic governance obligation, which contributes to the persistence of structural risk management deficiencies in Nepalese infrastructure projects

3.2 Public Procurement Regulations, 2064 B.S. (2007 A.D.)

The Public Procurement Regulations (PPR) to support to apply the PPA and contain more clear provisions relevant to risk management. Regulation 119 sets out the conditions under which price adjustment clauses (escalation provisions) may be included in contracts, which is a critical risk-sharing mechanism for long-duration infrastructure projects where input cost volatility can otherwise lead to contractor financial distress and abandonment. Regulation 118 addresses variation orders, establishing thresholds and approval procedures that govern scope changes—a major source of cost overrun risk in Nepalese infrastructure projects.

The PPR also contains provisions on insurance requirements (Regulation 112), which are a risk transfer mechanism requiring contractors to maintain worker's injury, death compensation, third-party liability, and contractor's all-risk insurance. While these provisions represent a valuable risk management tool, their practical enforcement is often inadequate due to limited monitoring capacity in procuring entities.

A significant regulatory gap is the absence of a systematic requirement for risk-based pre-qualification and bid evaluation. The PPR's criteria for evaluating contractor qualifications are predominantly financial and experience-based, with no explicit requirement to assess a contractor's risk management capacity—its track record in managing unforeseen site conditions, claims, and disputes. This omission means that the procurement process itself fails to screen out contractors who lack the organizational maturity to manage project risk effectively.

3.3 Standard Bidding Documents (SBDs)

The PPMO has developed Standard Bidding Documents for various procurement categories, including works procurement for infrastructure projects. The SBDs draw heavily on the FIDIC Red Book (Conditions of Contract for Construction) for larger civil works and on simplified conditions for smaller contracts. The risk allocation provisions in the SBDs are among the most practically significant elements of Nepal's procurement risk management framework.

The SBDs for civil works include provisions on: employer's risks (including events such as war, radiation, pressure waves, and use of the site by the employer); contractor's risks (including performance, workmanship, and resource management); force majeure and exceptional events; extension of time for completion; claims procedures; and dispute resolution mechanisms. These provisions represent a structured, if incomplete, risk allocation matrix.

Key limitations of the current SBDs from a risk management perspective include: (i) inadequate provisions for geotechnical risk in tunnel and underground works, where ground condition uncertainty is the dominant risk driver; (ii) limited guidance on managing hydrological risk in hydropower and irrigation contracts; (iii) insufficient provisions for land acquisition risk, which is routinely retained by the government but without clear procedures for timely delivery; and (iv) restricted use of provisional sums and contingency provisions, which reduces procurement flexibility in dealing with unforeseen conditions.

4. SECTOR-SPECIFIC RISK MANAGEMENT PRACTICES

4.1 Hydropower Development

Nepal's hydro power sector represents the most complex risk environment in the country's infrastructure portfolio. With approximately 42,133 MW of technically and economically feasible hydro power potential, the sector is central to the government's energy security and export ambitions. However, hydro power projects are exposed to a distinctive risk profile that includes: geological and Geo-technical uncertainty (particularly in the Himalayan geology characterized by faulting, folding, and high groundwater pressures); hydro-logical variability (seasonal and inter-annual fluctuations in river flows affecting both construction access and future energy generation); and seismic risk (Nepal lies in one of the world's most seismically active zones, as demonstrated by the catastrophic 2015 Gorkha earthquake).

The current SBD for hydropower works procurement incorporates FIDIC-based contract conditions that address force majeure and exceptional events, but the treatment of geotechnical and hydrological risk remains insufficiently granular. International best practice for hydropower projects—as reflected in the FIDIC Yellow Book (DB) and the IFC Performance Standards—requires a Geotechnical Baseline Report (GBR) to define the ground conditions that the contract price is based upon, with variations from the baseline triggering employer risk and additional compensation. Nepal's SBDs do not currently mandate GBRs, leaving geotechnical risk allocation ambiguous and creating fertile ground for claims and disputes.

The Project Development and Optimization Policy, 2079 B.S. (2022/23 A.D.), issued by the Department of Electricity Development (DOED), seeks to streamline hydropower project development by setting out procedures for survey licensing, project development agreements (PDAs), and power purchase agreements (PPAs). In terms of risk management, the Policy allocates hydrological risk between the developer and the off-taker (Nepal Electricity Authority) through the PPA's energy payment structure. However, construction-phase risk allocation—particularly for tunnels, underground powerhouses, and switchyards—remains largely silent in the Policy, which focuses on project structuring rather than procurement risk management.

To strengthen risk management in hydropower procurement, PPMO should consider: mandatory inclusion of GBRs in tender documents for all hydropower projects above NPR 500 million; inclusion of provisional sums for unforeseen ground conditions; mandatory Dispute Boards for contracts above NPR 1 billion; and sector-specific risk matrices in SBDs identifying the standard allocation of hydropower-specific risks.

4.2 Irrigation, Water Supply and Sanitation

Nepal's irrigation and water supply and sanitation (WSS) sector is characterized by a large number of relatively small to medium-scale projects spread across diverse geographic and hydrological settings. The primary procuring entities are the Department of Water Resources and Irrigation, the Department of Water Supply and Sewerage Management, and local governments under the federal structure introduced by the 2015 Constitution. The decentralization of procurement authority to provincial and local governments has created a more complex governance landscape, with significant variation in procurement capacity and risk management sophistication across jurisdictions.

Key risks in irrigation procurement include: canal construction in difficult terrain with uncertain soil and rock conditions; seasonal flooding affecting construction scheduling; community ownership and operation risks post-completion; and procurement fraud, given the small-scale, geographically dispersed nature of many irrigation schemes. WSS projects face additional risks related to source water availability and quality, technical sustainability of infrastructure in remote areas, and the financial viability of water user committees.

The PPR and relevant SBDs do not provide sector-specific risk guidance for irrigation and WSS procurement. Risk management is therefore largely dependent on the skill and experience of individual project engineers and procurement officers. Given the capacity constraints of local governments and the prevalence of poorly scoped contracts, this reliance on individual competence rather than systematic risk management procedures generates significant project risk.

A significant reform opportunity lies in the development of sector-specific SBDs for irrigation and WSS procurement that incorporate: community risk management provisions (addressing the risks associated with community-managed schemes); climate risk screening checklists; simplified but structured risk matrices for small and medium-scale contracts; and strengthened provisions for supervision and quality assurance.

4.3 Roads and Bridges

The road sector is Nepal's largest infrastructure procurement category, accounting for a substantial portion of the annual development budget. The Department of Roads (DOR) and the Department of Local Infrastructure (DOLI) manage procurement of national and local road networks respectively, with the PPMO's SBDs providing the standard contract framework. Nepal's mountainous terrain creates a particularly challenging risk environment for road construction: unstable slopes prone to landslides and debris flows; river crossings exposed to flood damage; and difficult access conditions that add significant cost and schedule uncertainty.

The 2015 earthquake and subsequent monsoon seasons dramatically demonstrated the vulnerability of Nepal's road infrastructure to natural disaster risk. The government's periodic Emergency Recovery and Reconstruction Program (ERRP) has highlighted the importance of building climate and disaster resilience into road design and procurement—a dimension that is not yet systematically reflected in the SBDs or risk allocation provisions.

For bridge procurement, geotechnical and hydraulic risk are the dominant concerns. The design of bridge foundations in Nepal's dynamic river systems—characterized by high sediment loads, flash floods, and seismic ground shaking—requires detailed site investigation that is often inadequate in current procurement practice. Tender documents frequently contain insufficient soil investigation data, leading contractors to include large contingency margins that inflate contract prices or, alternatively, to submit optimistically low bids that result in claims and disputes during implementation.

The Government of Nepal's Roads Sector Program (supported by bilateral donors) has introduced some elements of risk-informed procurement, including mandatory slope stability assessments for road projects in high-risk zones and improved bridge design standards. These sectoral improvements represent positive developments but need to be incorporated into the standard PPMO procurement framework to achieve system-wide impact.

4.4 Buildings, High-Rise Towers, and Commercial Infrastructure

Nepal's rapid urbanization—particularly in the Kathmandu Valley and other urban centers—has generated growing demand for commercial buildings, high-rise office towers, shopping complexes, business centers, and mixed-use developments. While much of this investment occurs in the private sector, public procurement of government buildings, hospitals, schools, and cultural facilities constitutes a significant element of the works procurement portfolio.

The risk profile of urban building and commercial construction in Nepal is shaped by several distinctive factors. Seismic risk is paramount: Nepal lies in a high seismicity zone, and the 2015 earthquake demonstrated catastrophically that inadequate design and construction quality can translate geological hazard into human tragedy. The Revised National Building Code (NBC) establishes minimum seismic design requirements, but compliance monitoring and enforcement remain challenging, particularly for smaller public buildings constructed at local government level.

For high-rise construction in particular, geotechnical risk (deep foundation design in complex soil conditions), wind load design, fire safety, and structural system complexity create a risk environment that requires specialized contractor and designer capabilities. Current PPMO procurement procedures for buildings do not include specific provisions for pre-qualification of contractors on the basis of high-rise construction experience, nor do they require structural peer review or independent structural inspections for tall buildings—a standard risk management measure in international practice.

Commercial real estate and business center developments increasingly involve PPP structures, blending public land or infrastructure with private investment and operation. The risk sharing framework for such arrangements is governed primarily by the PPP Policy and Investment Board procedures, with limited integration with PPMO's procurement framework. This institutional fragmentation creates risk management gaps, particularly in relation to land acquisition, utility connections, and approvals.

5. RISK MANAGEMENT AND PROJECT DEVELOPMENT OPTIMIZATION POLICY

5.1 Policy Context and Objectives

The Government of Nepal has recognized the need to accelerate project development and improve investment efficiency through a series of sector-specific development and optimization policies. For the energy sector, the Project Development and Optimization Policy (PDOP), 2079 B.S., establishes the framework for hydropower development, including provisions on project risk identification, environmental and social risk management, and financial risk allocation. Analogous policy frameworks exist for other sectors, including the Road Sector Policy, the National Urban Development Strategy, and the Water Sector Strategy.

Taken collectively, these policies establish a development vision and sector-specific investment norms, but they are not themselves procurement instruments. Their interface with the procurement framework managed by PPMO is frequently unclear, creating policy incoherence and risk management gaps in the transition from project development to project implementation.

5.2 Risk Implications of the Optimization Policy

The PDOP's emphasis on project optimization—maximizing economic value from Nepal's water resources through storage-based hydropower, peaking power capacity, and multi-purpose project designs—increases the technical complexity and risk profile of hydropower projects. Storage projects involve larger dam structures, longer tunnels, and more complex hydrology than run-of-river schemes, generating commensurately greater geotechnical and hydrological risk. The Policy's ambition to develop upper-Karnali, Buddhi Gandaki, and other large storage schemes thus implies a need for significantly more sophisticated risk management in procurement than has been applied to the run-of-river projects that have historically dominated Nepal's hydropower portfolio.

The Policy also has implications for risk sharing in PPP hydropower projects. By setting out clear procedures for project development agreements and power purchase agreements, it provides a framework for allocating revenue risk between the developer and NEA. However, construction risk, force majeure risk, and hydrological risk allocation in the PDA framework remain areas requiring further policy development and harmonization with PPMO procurement standards.

5.3 Integration Gaps and Reform Recommendations

The principal integration gap between the PDOP and the procurement framework is the absence of a mechanism to translate the risk identification and assessment conducted during project feasibility and development phases into the risk allocation provisions of procurement documents. In international practice, projects go through a systematic process of 'risk mapping'—identifying, quantifying, and allocating risks—before procurement documents are prepared, so that contract conditions, pricing provisions, and performance security requirements reflect the actual risk profile of the specific project. Nepal's current practice lacks this systematic linkage, with procurement documents often based on template SBDs that do not reflect project-specific risk conditions.

The following reforms are recommended to strengthen the integration between project development policy and procurement risk management:

- **Mandatory Risk Assessment Reports:** All infrastructure projects above NPR 500 million should be required to produce a Risk Assessment Report (RAR) as part of the DPR/detailed design process. The RAR should identify all significant project risks, assess their probability and impact, and propose allocation between employer and contractor.
- **Sector-Specific Risk Matrices in SBDs:** PPMO should develop sector-specific standard risk matrices for hydro power, irrigation, roads, and buildings, to be incorporated as Schedule documents in the relevant SBDs. These matrices should specify, for each standard risk category, whether it is borne by the employer, the contractor, or shared.
- **Mandatory Dispute Boards:** For all contracts above NPR 1 billion, mandatory Dispute Boards (DBs) or Dispute Adjudication Boards (DABs) should be established from contract commencement, as recommended by FIDIC and the World Bank.
- **Risk-Based Bid Evaluation:** Evaluation criteria for large and complex contracts should include assessment of contractor risk management capacity—demonstrated through references, risk management plans, and organizational capability assessments.
- **Contract Management Capacity:** PPMO and line ministries should invest in dedicated contract management units with risk monitoring responsibilities, supported by contract management information systems that flag emerging risks and claims.

6. INTERNATIONAL BEST PRACTICE AND COMPARATIVE LESSONS

6.1 World Bank and Asian Development Bank Procurement Frameworks

The World Bank's 2016 Procurement Framework and the Asian Development Bank's Procurement Policy (2017) both place risk management at the center of procurement strategy. The World Bank's 'Fit for Purpose' approach requires procuring entities to select procurement approaches, contract types, and evaluation methodologies on the basis of a structured assessment of project risk, market conditions, and public interest considerations. This approach represents a fundamental shift from rule-compliance to outcomes-focused, risk-informed procurement.

Both frameworks mandate the use of FIDIC contract conditions for large civil works, including their risk allocation provisions, and encourage the use of DB and EPC contracts for complex technical projects where design risk transfer to the contractor can yield efficiency gains. For PPP projects, both MDBs have developed detailed risk allocation frameworks (including risk matrices) that specify standard allocations for common infrastructure risks—a model that PPMO should adapt for the Nepalese context.

6.2 FIDIC Contract Suite and Risk Allocation

The FIDIC Suite of Contracts, including the Red Book (Construction), Yellow Book (Plant & Design-Build), Silver Book (EPC/Turnkey), and Gold Book (Design, Build, Operate, provides the international benchmark for infrastructure contract risk allocation. The 2017 FIDIC editions

introduced enhanced provisions for early warning, risk registers, and collaborative risk management, reflecting the profession's recognition that proactive, real-time risk management during contract execution is as important as risk allocation in the original contract.

Nepal's SBDs draw on FIDIC conditions but have not incorporated the 2017 updates, particularly the early warning provisions (Clause 8.4 in the 2017 Red Book) and the enhanced dispute avoidance procedures. Updating the SBDs to incorporate these provisions would represent a practical improvement in risk management, particularly for complex and long-duration infrastructure projects.

6.3 Comparative South Asian Experience

Nepal can draw useful comparative lessons from India's experience with the EPC model for national highway procurement, introduced by the National Highways Authority of India (NHAI) in the 2010s. India's shift from item-rate contracts (equivalent to Nepal's BOQ-based contracts) to EPC contracts for highway construction transferred design and construction risk to contractors and significantly reduced the incidence of claims and disputes, while improving quality and schedule performance

Sri Lanka's introduction of a National Procurement Commission and standardized risk allocation guidelines for public contracts provides a model for institutional reform that Nepal might consider adapting, particularly the Commission's mandate to monitor procurement risk at a portfolio level rather than only at the individual contract level.

7. FINDINGS AND DISCUSSION

The analysis presented above reveals a public procurement risk management landscape in Nepal that has strong formal foundations—anchored in the PPA, PPR, and SBDs—but significant implementation deficits. The principal findings can be summarized as follows.

First, Nepal's procurement legislation and regulations provide a basic risk allocation framework through contract conditions, security mechanisms, and variation order procedures, but they fall short of requiring systematic, project-specific risk assessment as a procurement planning obligation. This legislative gap allows risk management to remain an informal, person-dependent activity rather than a systemic governance process.

Second, the SBDs, while broadly aligned with FIDIC principles, contain important sector-specific gaps, particularly for hydropower (geotechnical risk), roads (climate and disaster risk), and urban buildings (seismic risk compliance). These gaps create ambiguity in risk allocation that translates into disputes, delays, and cost overruns in project execution.

Third, the Project Development and Optimization Policy and sector-specific policies provide valuable frameworks for risk identification and allocation at the project development stage, but the linkage between these policy instruments and the procurement documents prepared by PPMO is weak. Risk assessments conducted during feasibility and DPR stages are not systematically reflected in procurement documents.

Fourth, Nepal's procurement capacity constraints, both within PPMO and in procuring entities at central and local government levels, mean that even where adequate risk management provisions exist in procurement documents, their implementation is uneven. The capacity gap is particularly acute at local government level following devolution, where procurement of irrigation, water supply, local roads, and community buildings has devolved to governments with limited procurement expertise.

Fifth, the international trend toward more collaborative, proactive, and digitally enabled risk management in public procurement, including early warning systems, dispute boards, real-time monitoring, and risk-based performance reporting, has yet to gain meaningful traction in Nepal's procurement practice.

8. CONCLUSIONS AND RECOMMENDATIONS

Risk management in public procurement is not a technical add-on to Nepal's infrastructure development agenda, it is a fundamental determinant of whether public investment in hydropower, irrigation, roads, buildings, and commercial infrastructure achieves its intended socio-economic outcomes. The analysis in this article demonstrates that Nepal's procurement framework has established the necessary institutional architecture for risk management but has not yet realized its potential for systematic, project-specific, and sector-differentiated risk governance.

The following priority recommendations are offered for consideration by PPMO, line ministries, and the Government of Nepal:

- Amend the Public Procurement Act and Regulations to require formal Risk Assessment Reports (RARs) for all projects above NPR 500 million as a procurement planning prerequisite.
- Develop and mandate sector-specific risk matrices as Schedule documents in the SBDs for hydropower, irrigation, roads, and buildings procurement.
- Update SBDs for civil works to incorporate FIDIC 2017 early warning provisions and enhanced Dispute Avoidance and Adjudication Board (DAAB) procedures.
- Introduce Geotechnical Baseline Reports (GBRs) as a mandatory tender document for all tunnel works, underground powerhouses, and deep foundation projects.
- Establish mandatory Dispute Boards for all contracts exceeding NPR 1 billion, with board members appointed from contract commencement.
- Invest in contract management capacity within PPMO and major procuring entities, including contract management training, dedicated contract management units, and digital contract monitoring systems.
- Develop a PPMO Risk Management Guideline to provide practical operational guidance to procuring entities at all levels of government on project-specific risk assessment, SBD customization, and claims management.

- Harmonize the Project Development and Optimization Policy with PPMO procurement standards to ensure that project-specific risk conditions identified during the development phase are systematically reflected in tender documents.

Implementing these reforms will require sustained institutional commitment, investment in capacity development, and willingness to modernize a procurement framework that has served its foundational purpose but needs to evolve to meet the challenges of Nepal's growing infrastructure ambitions. The costs of inaction measured in project delays, cost overruns, disputes, and foregone development outcomes substantially exceed the investment required to strengthen risk management practice.

Nepal stands at a pivotal moment in its infrastructure development trajectory. With major investments planned in storage hydropower, the Mid-Hill Highway, urban infrastructure, and commercial development zones, the quality of risk management in public procurement will be a determining factor in whether these investments deliver on their transformative potential. The time for reform is now.

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सार्वजनिक खरिदमा बोलपत्र वा प्रस्तावको पुनरावलोकन, एक समीक्षा



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नेपाल सरकारले सार्वजनिक निकाय मार्फत गरिने विभिन्न प्रकारका निर्माण कार्य, सेवा, मालसामान, वस्तु लगायत सबै खाले सार्वजनिक खरिद सम्बन्धी कार्यविधि, प्रक्रिया तथा निर्णयलाई खुल्ला, पारदर्शी, वस्तुनिष्ठ र विश्वसनीय बनाउन मिति २०६३ पौष ३० गते सार्वजनिक खरिद ऐन, २०६३ जारी गरेको थियो। यस ऐनमा तत्काल समय सापेक्ष संशोधन आवश्यक रहेकोले नव निर्वाचित सरकारले मिति २०८३ बैशाख १७ गते “सार्वजनिक खरिद (दोश्रो संशोधन) अध्यादेश, २०८३” जारी गरेको छ। यो ऐनको प्रस्तावनामा ‘सार्वजनिक खरिद प्रक्रियामा प्रतिस्पर्धा, स्वच्छता, इमान्दारिता, जवाफदेहीता र विश्वसनीयता प्रवर्द्धन गरी मितव्ययी तथा विवेकपूर्ण ढङ्गबाट सार्वजनिक खर्चको अधिकतम प्रतिफल हासिल गर्न र सार्वजनिक निकायले निर्माण कार्य गर्दा/गराउँदा, मालसामान, परामर्श सेवा तथा अन्य सेवा खरिद गर्दा त्यस्तो खरिदको व्यवस्थापन क्षमता अभिवृद्धि गरी उत्पादक, विक्रेता, आपूर्तिकर्ता, निर्माण व्यवसायी वा सेवा प्रदायकलाई विना भेदभाव सार्वजनिक खरिद प्रक्रियामा सहभागी हुने समान अवसर सुनिश्चित गरी सुशासनको प्रत्याभूति गर्ने सम्बन्धमा कानूनी व्यवस्था गर्न बाञ्छनीय भएको’ भन्ने वाक्य उल्लेख गरिएको छ।

ऐनद्वारा परिभाषित सार्वजनिक निकायले हरेक खरिद कार्य गर्दा यस ऐन बमोजिमको कार्यविधि पूरा गरी खरिद गर्नु पर्नेछ र ऐनको प्रतिकुल हुने गरी गरिएको खरिद बदर तथा अमान्य हुनेछ। ऐन बमोजिमको कार्यविधि पूरा गरी खरिद सम्बन्धी कार्य गर्ने/गराउने जिम्मेवारी सम्बन्धित सार्वजनिक निकायको प्रमुखको हुनेछ। सार्वजनिक निकायले खरिद सम्बन्धी कार्यबोझ र कार्य प्रकृतिको आधारमा छुट्टै एकाइ स्थापना गरी खरिद अधिकारी तोक्नुपर्दछ। सार्वजनिक निकायले आफ्नो निकायको आवश्यकताको पहिचान गरी खरिद योजनाको परिधिभित्र रहेर आवश्यक सामान, वस्तु, निर्माण कार्य वा परामर्श सेवाको लागत अनुमान तयार गर्नुपर्दछ। सार्वजनिक निकायको खरिद एकाइले ऐनले तोकेको मध्ये कुनै एक उपयुक्त खरिद विधि पहिचान गरी सो अनुरूपको खरिद

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सम्बन्धी कागजात तयार गर्नुपर्दछ। खरिदको प्रस्ताव सम्बन्धी कागजात तथा बोलपत्र सम्बन्धी कागजात तयारीको सिलसिलामा सार्वजनिक निकायले प्रस्ताव वा बोलपत्रको मूल्याङ्कनका आधारहरू निर्धारण गरी तोके पछि मात्र बोलपत्र वा प्रस्तावको आह्वान गर्नुपर्दछ। यसरी खरिदको सूचना जारी गर्दा नेपाल सरकार सार्वजनिक खरिद अनुगमन कार्यालयको एउटै मात्र आधिकारिक अनलाइन विद्युतीय पोर्टल bolpatra.gov.np मार्फत जारी गर्नुपर्दछ।

यस ऐनमा सार्वजनिक निकायबाट आह्वान भएको खरिदको सूचना बमोजिम कानूनद्वारा योग्य बोलपत्रदाताहरूले बोलपत्रमा भाग लिन सक्ने र यस्तो खरिद प्रक्रिया खुल्ला र स्वच्छ प्रतिस्पर्धामूलक हुने प्रावधान राखिएको छ।

प्राप्त भएको प्रस्ताव वा बोलपत्रको परीक्षण एवं मूल्याङ्कन गरेर सार्वजनिक निकायका प्रमुख समक्ष स्वीकृतिका लागि प्रतिवेदन पेश गर्न मूल्याङ्कन समितिको गठन गर्नुपर्नेछ भने मूल्याङ्कन समितिले बोलपत्र वा प्रस्ताव सम्बन्धी कागजातमा उल्लेख भएको मूल्याङ्कनको आधार बमोजिम मूल्याङ्कन गर्नुपर्नेछ।

सार्वजनिक खरिद ऐन २०६३ को परिच्छेद ६ मा खरिद कारवाही वा निर्णयको पुनरावलोकन सम्बन्धी व्यवस्था उल्लेख गरिएको छ। सार्वजनिक निकायले खरिद कारवाही वा निर्णय गर्दा कुनै त्रुटि गरेको वा पालना गर्नुपर्ने कर्तव्य पालना नगरेकोले आफूलाई क्षति पुग्ने वा पुग्न सक्ने कारण खुलाई कुनै बोलपत्रदाता वा प्रस्तावदाताले त्यस्तो त्रुटि वा निर्णयको पुनरावलोकनको लागि सम्बन्धित सार्वजनिक निकायका प्रमुख समक्ष निवेदन दिन सकिने र सार्वजनिक निकायका प्रमुखबाट गरिएको निर्णयमा चित्त नबुझेमा रु.२ करोड भन्दा बढी रकमको खरिद कारवाहीको हकमा सार्वजनिक खरिद पुनरावलोकन समिति समक्ष निवेदन दिन सकिने प्रावधान रहेको छ। यस्तो पुनरावलोकनको निवेदन उपर निर्णय गर्न नेपाल सरकारले यस प्रकारको काममा अनुभव हासिल गरेका दुई जना सदस्य र एक जना अध्यक्ष रहेको सार्वजनिक खरिद पुनरावलोकन समितिको गठन गरेको छ। उक्त समितिको सचिवालय सार्वजनिक खरिद अनुगमन कार्यालय केशरमहलमा रहेको छ। उक्त समितिले आर्थिक वर्ष २०६५/०६६ देखि निरन्तर पुनरावलोकनको दायित्व निभाइरहेको छ।

बोलपत्रदाता वा प्रस्तावदाताले पुनरावलोकनको लागि पेश गर्ने निवेदन तोकिएको हदम्याद भित्र दर्ता गराइसक्नु पर्दछ। सार्वजनिक निकायका प्रमुख समक्ष पुनरावलोकनको लागि निवेदन पेश गरेको ५ दिन वा सो भन्दा अघि नै सार्वजनिक निकायको निर्णय प्राप्त भएमा सो दिन देखि सात दिन सम्ममा

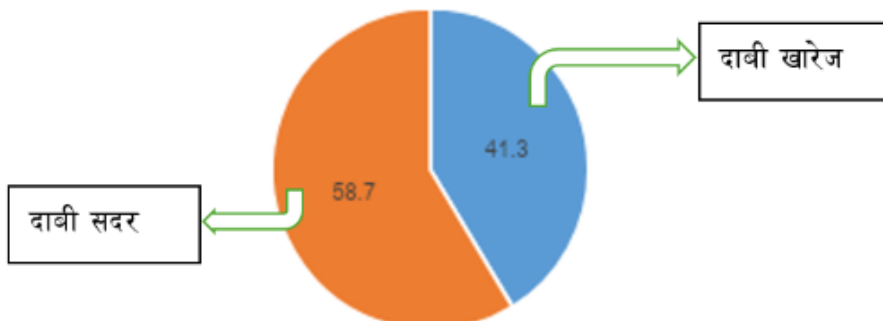
सार्वजनिक खरिद पुनरावलोकन समिति समक्ष निवेदन पेश गर्नुपर्दछ। पुनरावलोकनको निवेदनमा देहायका कुराहरू खुलाई पेश गर्नुपर्दछ।

- १ निवेदकको नाम, ठेगाना, सम्पर्क नम्बर र इमेल ठेगाना।
- २ निवेदकलाई कम्पनी वा जे भी को तर्फबाट निवेदन दिने अधिकार पत्र।
- ३ खरिद कारवाहीको संक्षिप्त विवरण।
- ४ निवेदकले खरिद सम्झौता पाउनुपर्ने तथ्यगत तथा कानूनी आधार।
- ५ खरिद सम्झौता प्राप्त गर्नेले त्यस्तो सम्झौता पाउनु नपर्ने तथ्यगत तथा कानूनी आधार।
- ६ सम्झौता प्राप्त नगरेको कारणले निवेदकलाई भएको वा पुग्न सक्ने वास्तविक हानी नोक्सानी।
- ७ निवेदकले गरेको दावी पुष्टि हुने कागजातको प्रतिलिपि।
- ८ बोलपत्र जमानतको १० प्रतिशतले हुन आउने वा मूल्य खुलेको अवस्थामा बोलपत्रमा कबुल गरेको रकमको एक प्रतिशतले हुन आउने रकम बराबरको कम्तीमा ९० दिन मान्य अवधि भएको सार्वजनिक खरिद पुनरावलोकन समितिको नाममा जारी भएको बैंक जमानत वा नगद जम्मा गरेको बैंक भौचर।

नेपाल सरकारले हरेक वर्ष सार्वजनिक खरिद प्रयोजनका लागि राष्ट्रको वार्षिक बजेटको ठूलो हिस्सा विनियोजन गर्दछ। उक्त विनियोजित रकम सम्बन्धित सार्वजनिक निकायले खर्च गर्ने गरि अख्तियारी प्रदान गरिन्छ। सार्वजनिक निकायका प्रमुखले त्यस्तो रकम खर्च गर्दा सार्वजनिक खरिद ऐन २०६३, सार्वजनिक खरिद नियमावली २०६४, आर्थिक कार्यविधि तथा वित्तीय उत्तरदायित्व ऐन २०७६, सार्वजनिक खरिद अनुगमन कार्यालय द्वारा जारी गरिएको स्ट्याण्डर्ड बिडिङ डकुमेन्ट तथा खरिद निर्देशिकाहरूको विधि प्रावधानहरू को पालना गर्नुपर्दछ। खरिद प्रक्रियामा जानेर वा नजानेर तोकिएको विधि अवलम्बन हुन सकेन भने सार्वजनिक खरिद ऐनको प्रस्तावनाको विपरित हुन जान्छ। फलस्वरूप खरिद प्रक्रियामा प्रतिस्पर्धा, स्वच्छता, विश्वसनीयता, पारदर्शिताको उल्लंघन हुन जाने हुनाले खरिद प्रक्रियामा सहभागी भएका बोलपत्रदाता/प्रस्तावदाताले आफूलाई क्षेती पुग्ने दावी गर्दै पुनरावलोकनको मार्ग अङ्गाल्न पुग्दछन्। त्यस्तो परिस्थिति उत्पन्न हुन नदिन सार्वजनिक निकायमा खरिद कार्यमा संलग्न कर्मचारीहरू खरिद कानूनको जानकारी हुनुपर्दछ।

सार्वजनिक खरिद पुनरावलोकन समिति बाट आ. व. २०६५/०६६ देखि हाल सम्म सम्पादन भएका कूल ३४६ वटा पुनरावलोकनका मुद्दाहरूलाई विश्लेषण गरेर हेर्दा २०३ वटा (अर्थात ५८.७ प्रतिशत) मुद्दामा मात्र निवेदकको पक्षमा निर्णय भएको देखिन्छ। (हेर्नुहोस् चार्ट नं १)

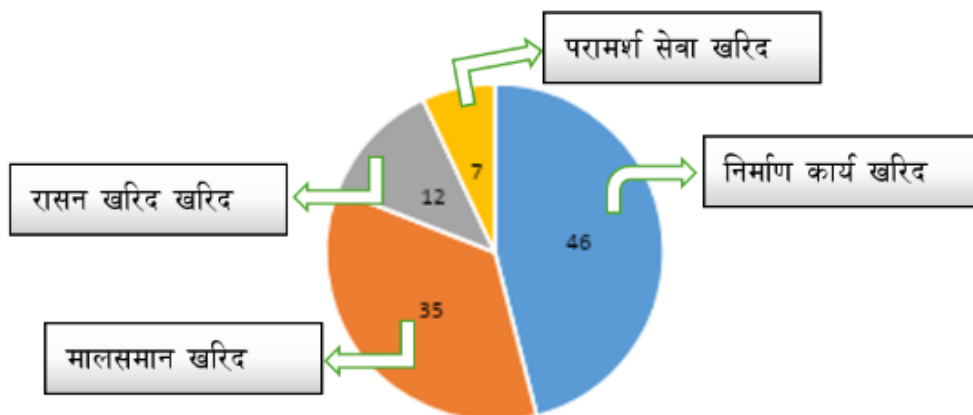
चार्ट नं १: पुनरावलोकन फैसलाको झलक (प्रतिशतमा)



बोलपत्रदाता/प्रस्तावदाता (निवेदक) को विपक्षमा निर्णय भएको अवस्थामा निजले राखेको बोलपत्र जमानतको रकम राजस्व खातामा जम्मा हुने, निवेदकले प्रतिस्पर्धाबाट विमुख हुनु पर्ने साथै जमानत रकम समेत गुमाउनु पर्ने हुनाले कुनै पनि बोलपत्रदाताले पुनरावलोकन समिति समक्ष निवेदन गर्नु भन्दा पहिले आफूले पेश गरेको बोलपत्र सम्बन्धी कागजातहरूको मिहिन ढङ्गले केलाएर निर्णय लिनु बेस हुन्छ। पुनरावलोकनको विषयमा खरिद विज्ञ वा कानूनी परामर्शदातासँग सल्लाह गरेर मात्र पुनरावलोकनको निवेदन दिने निर्णय गर्नुपर्दछ। निवेदकले पुनरावलोकन समिति समक्ष निवेदन दिदा सार्वजनिक निकायले मूल्याङ्कनको दौरानमा के, कस्तो त्रुटि वा लापरवाही गरेको हो सो विषयलाई उचित प्रमाणसाथ पेश गर्नुपर्दछ। निवेदनमा बोलपत्रदाताले ऐन, नियम, निर्देशिका वा बोलपत्र मूल्याङ्कन क्राइटेरियाको कुन प्रावधान विपरित छ भन्ने कुरा स्पष्टसँग खुलाउनु पर्दछ।

लेखकले पहिचान गरेका हालसम्म सार्वजनिक खरिद पुनरावलोकन समितिद्वारा सम्पादित ३४६ वटा (विवाद) मुद्दाहरू मध्ये निर्माण कार्यसँग सम्बन्धित विवाद १५८ वटा (अर्थात ४६%), वस्तु वा सामान खरिदसँग सम्बन्धित विवाद १२१ वटा (अर्थात ३५%), रासन खरिदसँग सम्बन्धित विवाद ४३ वटा (अर्थात १२%) र परामर्श सेवा वा अन्य सेवा खरिदसँग सम्बन्धित विवाद २४ वटा (अर्थात ७%) रहेको छ। तलको चार्ट नं २ मा खरिदको किसिम अनुसार सम्पादित विवादहरू प्रस्तुत गरिएका छन् :-

चार्ट नं २: खरिदका प्रकार अनुसार सम्पादित विवादहरू (प्रतिशतमा)



अर्कोतर्फ नेपाल सरकारले विनियोजन गर्ने गरेको विकास बजेट मध्ये वार्षिक विकास खर्चको ठूलो हिस्सा करिब ६०-७५ % निर्माण कार्यमा, १५-२० % मालसमान खरिदमा, २-५ % रासन खरिदमा र ७-१५ % परामर्श तथा सेवा खरिदमा खर्च गर्ने गरेको देखिन्छ। (हेर्नुहोस चार्ट नं ३)

चार्ट नं ३: सार्वजनिक निकायबाट हुने खर्च र पुनरावलोकन समितिमा प्राप्त हुने विवादको तुलनात्मक तालिका (प्रतिशतमा)

	विवाद %	खर्च %
निर्माण कार्यको खरिद	४६	७०
वस्तु वा सामान खरिद	३५	१६
रासन खरिद	१२	१०
सेवा, परामर्श खरिद	७	४

माथि दिइएको तथ्याङ्कलाई केलाएर हेर्दा हाम्रो देशमा बजेट खर्चको सबैभन्दा धेरै हिस्सा निर्माण कार्यमा रहेतापनि खरिद प्रक्रियामा धेरै मात्रामा विवाद भने मालसामान, उपकरण, रासन खरिदका विषयमा आउने गरेको देखिन्छ। निर्माण कार्य खरिदको कार्य सम्पादन गर्ने सार्वजनिक निकायहरूमा पर्याप्त मात्रामा खरिद सम्बन्धी जानकारी जनशक्ति उपलब्ध भएको कारणले तुलनात्मक रूपले कम सङ्ख्यामा विवाद उत्पन्न भएको मान्न सकिन्छ। निर्माण कार्यको खरिदसँग सम्बन्धित विवाद प्रदेश सरकार मातहतको कार्यालय र पालिकास्तरको कार्यालयमा धेरै रहेको देखिन्छ। यस अनुसार प्रदेश मातहत र पालिकास्तरीय कार्यालयमा खरिद कार्यमा निपूर्ण जनशक्तिको अभावको कारणले धेरै विवाद आउने गरेको हुनुपर्दछ।

मालसामान तथा उपकरण खरिदको सिलसिलामा धेरै विवाद आउने कारणहरूमा त्यस्तो खरिदसँग सम्बन्धित निकायमा खरिद जनशक्तिको कमी, यथार्थपरक लागत अनुमान तयारीमा कमजोरी, खरिद गरिने मालसामान तथा उपकरणको स्पेसिफिकेशन, नर्म्समा स्पष्टता हुन नसक्नु, खरिदको कागजातको तयारीमा कमी, कमजोरी रहनु वा त्यस्तो कागजात पूर्ण नहुनु रहेको पाइन्छ। त्यसैगरी अस्पतालमा प्रयोग हुने स्वास्थ्य उपकरण, सुरक्षा निकायबाट खरिद गरिने पोशाक र बन्दोवस्तीका सामानहरूको खरिद प्रक्रियामा अधिक मात्रामा विवादहरू आउने गरेको देखिन्छ।

सुरक्षा निकायबाट आव्हान गरिने विभिन्न प्रकारका राशनको बोलपत्रमा पनि त्यसको लागि छुट्याइने बजेटको तुलनामा अधिक संख्यामा पुनरावलोकनको निवेदन आउने गरेको हुनाले त्यस्ता निकायहरूले खरिद विज्ञको सहायता लिएर बोलपत्र सम्बन्धी कागजातहरूको तयार गरी पारदर्शी मूल्याङ्कन प्रक्रिया अपनाउनेतर्फ जोड दिनुपर्ने देखिन्छ।

पुनरावलोकन समिति समक्ष प्राप्त हुने गरेका निवेदन (विवाद) का प्रकृतिलाई केलाउदा मुख्यतया देहायका तीन प्रकारका कारणहरू रहेको पाइन्छ :-

पहिलो कारण: सार्वजनिक निकायले बोलपत्र कागजातमा बोलपत्रदाता वा प्रस्तावदाताको अनुभवको क्राइटेरिया तयार गर्दा अस्पष्ट वा असान्दर्भिक वा जटिल क्राइटेरिया तोकेको कारणले गर्दा प्रतिस्पर्धा सीमित हुने मात्र नभई सार्वजनिक निकायको मूल्याङ्कनको नतिजाप्रति बोलपत्रदाता/प्रस्तावदाता आश्वस्त हुन नसकी पुनरावलोकनको निवेदन पेश गर्ने गरेको देखिन्छ।

दोस्रो कारण: सार्वजनिक खरिद ऐन २०६३ को दफा २३ मा बोलपत्रको परीक्षणको व्यवस्था रहेको छ। ऐनको दफा २३ को उपदफा (४) मा बोलपत्रको परीक्षणको सिलसिलामा बोलपत्रदातासँग आवश्यक जानकारी माग गर्न सकिने तर त्यसरी जानकारी दिँदा बोलपत्रदाताले बोलपत्रको मूल्य वा अन्य सारभूत कुरा हेरफेर वा परिवर्तन गर्न नसकिने कुरा उल्लेख गरिएको छ। त्यसैगरी ऐनको दफा २५ मा बोलपत्रको मूल्याङ्कन अन्तर्गत उपदफा (२) मा बोलपत्र अस्वीकार गर्नु नपर्ने गरी प्राविधिक स्पेसिफिकेशन, विवरण, विशेषता आदि जस्ता कुराहरूमा सानातिना फरक पाईएमा सम्भव भएसम्म सो को मूल्य निकाली त्यस्तो मूल्य समेत बोलपत्र मूल्याङ्कन गर्दा समावेश गर्नुपर्दछ भन्ने प्रावधान राखिएको छ। सार्वजनिक खरिद नियमावली २०६४ को नियम ६० को उपनियम (६) मा सार्वजनिक निकायलाई स्वीकार्य सानातिना फरक भएका बोलपत्रलाई सारभूत रूपमा प्रभावग्राही बोलपत्र मानिने व्यवस्था रहेको छ। सार्वजनिक निकायले यिनै प्रावधानहरूको मर्म सम्म पुगेर सही निर्णय गर्न नसकेको कारणले गर्दा बोलपत्रदातामा असन्तुष्टी उत्पन्न भई

पुनरावलोकनको लागि निवेदन पेश गर्ने गरेको देखिन्छ। सानातिना फरक भनी कस्तो अवस्थालाई मात्रै भन्ने विषयमा सार्वजनिक निकाय स्पष्ट हुन सकेको देखिँदैन।

तेश्रो कारण: बोलपत्रदाताको मूल्याङ्कन वा छनौटको दौरानमा सानातिना कारणमा अल्टिमा राष्ट्रिय सतर्कता केन्द्र वा अख्तियार दुरुपयोग अनुसन्धान आयोग जस्ता नियमनकारी निकायको छानबिनमा पुगिने त्रासको साथ साथै सार्वजनिक निकायका कर्मचारीको निर्णय क्षमतामा कमीको कारणले सार्वजनिक खरिद पुनरावलोकन समिति बाट पुनरावलोकनको निर्णय पश्चात् कार्यान्वयनको निर्णयमा पुग्न सजिलो हुने विस्वासले पुनरावलोकनको निवेदन पेश गर्ने गरेको देखिन्छ।

ऐनको दफा ४७ ले सार्वजनिक निकायका प्रमुखलाई सबै प्रकारका प्रस्ताव/बोलपत्रको मूल्याङ्कन उपरको पुनरावलोकन निवेदन हेर्ने अधिकारी तोकेको छ। सार्वजनिक खरिद ऐन मा सार्वजनिक निकायका प्रमुखबाट बोलपत्र मूल्याङ्कन समितिको सिफारिशमा बोलपत्रको स्वीकृति हुने प्रावधान एकातर्फ रहेको छ भने अर्कोतर्फ सोहि अधिकारी बाट बोलपत्रको पुनरावलोकन गरिने प्रावधान रहेकोले बोलपत्र आव्हान गर्ने कार्यालय प्रमुखको तहबाट गरिने निर्णयबाट चित्त बुझाउने अवस्था अति कम रहन्छ। यसर्थ मूल्याङ्कनमा चित्त नबुझ्ने सबैजसो बोलपत्रदाताहरू सार्वजनिक खरिद पुनरावलोकन समिति समक्ष आईपुग्ने परिस्थिति रहेको छ। अधिकतम बोलपत्रदाताहरू आफूले पेश गरेको प्रस्ताव वा बोलपत्रको मूल्याङ्कनमा चित्त नबुझेर सार्वजनिक निकायका प्रमुख समक्ष पुनरावलोकन को लागि निवेदन पेश गर्दा सार्वजनिक निकायका प्रमुखले बोलपत्रदाताले पेश गरेको बोलपत्रमा रहेको कमी कमजोरीहरू राम्ररी नबताएको वा कुनै जवाफ नदिएको कारण देखाउँदै सार्वजनिक खरिद पुनरावलोकन समिति समक्ष पुनरावलोकन को लागि निवेदन पेश गर्न आएको देखिन्छ। सार्वजनिक खरिद ऐन, २०६३ को दफा ५० को उपदफा (४) मा पुनरावलोकन समितिले निवेदन प्राप्त गरेको तीस दिनभित्र पुनरावलोकनको निर्णय गर्नुपर्ने प्रावधान राखिएको छ। यसरी खरिद प्रक्रियामा विवाद उत्पन्न भई पुनरावलोकन समिति समक्ष पुग्न पुगेको अवस्थामा ४५ दिन थप लाग्न सक्ने हुनाले त्यस्तो विवाद उत्पन्न हुने परिस्थिति आउन नदिन सार्वजनिक निकाय प्रयत्नशील रहनु पर्दछ।

सार्वजनिक खरिद : विधि र प्रक्रिया



कृष्ण पुडासैनी^७

सार्वजनिक खरिद

सार्वजनिक खरिद कार्यलाई बढी खुला, पारदर्शी र विश्वसनीय बनाउन सार्वजनिक खरिद ऐन २०६३ जारी भएको हो। सार्वजनिक खरिद प्रक्रियालाई प्रतिस्पर्धी, स्वच्छ, इमान्दारी, जवाफदेही र विश्वसनीय बनाउँदै मितव्ययी तथा विवेकपूर्ण ढङ्गबाट सार्वजनिक खर्चको अधिकतम प्रतिफल हासिल गर्ने ऐनको उद्देश्य रहेको छ। तदनुसार, यस ऐनभित्र उत्पादक, विक्रेता, निर्माण व्यवसायी, आपूर्तिकर्ता, सेवाप्रदायकलाई विना भेदभाव सार्वजनिक खरिद प्रक्रियामा सहभागी हुने समान अवसर सुनिश्चित गर्न विभिन्न निष्पक्ष एवं पारदर्शी प्रावधानहरू समावेश गरिएको छ।

सार्वजनिक निकायहरू खरिद कार्यमा ऐन तथा नियमावलीको व्यवहारमा प्रयोग गर्दा कानुनी व्यवस्थाको अवलम्बनमा द्विविधाका कारण अलमल पर्नुका साथै कतिपय अवस्थामा थाहा पाउँदा पाउँदै पनि वेवास्ताका कारण र कुनैबेला अन्जानवश खरिद कार्यमा विभिन्न त्रुटी कमजोरी भएको धेरै देखिएको छ। जसबाट सार्वजनिक खरिद प्रक्रिया निगरानी निकायको अनुसन्धानमा परेको पाइन्छ। अर्कोतर्फ सार्वजनिक निकायको खरिद कार्य असफल भएका उदाहरणहरू प्रशस्त छन्। साथै सार्वजनिक पदाधिकारीहरू खरिद कार्यमा संलग्न हुन डराउने, अझ संलग्न हुनै नचाहने प्रवृत्ति बढेको देखिन्छ। यस लेखमा सार्वजनिक खरिद कार्यमा नेपालमा खरिद कानूनले आत्मसाथ गरेको खरिदका विधि र त्यसको प्रयोगका मुख्य, मुख्य प्रक्रियाबारे वर्णन गरिएको छ।

खरिद योजनाको तयारी

सार्वजनिक निकायले खरिद गर्नु अघि देहायबमोजिमका काम सम्पन्न गर्नु पर्दछ :-

^७ निर्देशकसार्वजनिक खरिद अनुगमन कार्यालय „, pudasainik14@gmail.com

- सार्वजनिक निकायले मालसामान, निर्माण कार्य वा सेवा खरिद गर्नु अघि त्यस सम्बन्धी स्पेसिफिकेशन, योजना, नक्शा, डिजाइन, विशेष आवश्यकता वा अन्य विवरण तयार गर्ने
- तोकिए बमोजिमको लागत अनुमान तयार गर्ने,
- खरिद विवरण र लागत अनुमान स्वीकृत गर्ने,
- खरिद योजना तयार गर्ने,
- मौजुदा सूची तयार गर्ने, र
- खरिद कार्यको जिम्मेवारी (सार्वजनिक निकाय प्रमुख, खरिद एकाइ) तोक्ने।

खरिद कारबाहीको तयारी गर्दा ध्यान दिनु पर्ने कुराहरू

सार्वजनिक निकायले कुनैपनि खरिद कार्यलाई परिणाममा पुर्याउन देहायका कुराहरूमा ध्यान पुर्याउनु पर्दछ :-

- खरिद आवश्यकताको पहिचान गर्ने,
- खरिद सम्बन्धी विभिन्न प्राविधिक कुरा समाधान गर्न र आपूर्तिकर्ताको उपलब्धता यकिन गर्न बजारमा प्रचलित खरिद सम्झौताको जानकारी लिने,
- अघिल्ला वर्षहरूमा समान प्रकृतिको मालसामान, निर्माण कार्य वा परामर्श सेवा वा अन्य सेवा खरिद गरिएको भए त्यस्तो खरिद प्रक्रियाको अध्ययन गर्ने,
- खरिदको विवरण, परिमाण र क्षेत्र एकिन गर्ने,
- खरिदलाई बढी सुविधाजनक समूहमा विभाजन गर्ने वा प्याकेजमा समावेश गर्ने,
- खरिदको लागत अनुमान तयार गर्ने,
- खरिदको आर्थिक स्रोत र रकमको पहिचान गर्ने,
- खरिद योजना तयार गर्ने,
- खरिद विधिको छनौट गर्ने, र
- दुई करोड रुपैयाँसम्मको निर्माण कार्यको खरिद भन्दा बाहेकको अन्य खरिदमा बोलपत्र योग्यता वा पूर्व योग्यताको कारबाही गर्नु पर्ने वा नपर्ने कुरा यकिन गर्ने।

माथि उल्लिखित कुराहरूमा ध्यान दिनुका साथै खरिदका लागि आवश्यक बजेट र निर्माणस्थलको व्यवस्था नभई खरिद कारबाही सुरु गर्नु हुँदैन।

मौजुदा सूची (स्टान्डिड लिष्ट)

सार्वजनिक निकायले आफ्नो खरिदको प्रकृति अनुसार आपूर्तिकर्ता, निर्माण व्यवसायी, परामर्शदाता, गैरसरकारी संस्था वा सेवाप्रदायकको योग्यताको आधारमा छुट्टाछुट्टै सूची तयार गर्नु पर्दछ। सूचीकृत हुन चाहने आपूर्तिकर्ता, निर्माण व्यवसायी, परामर्शदाता, गैरसरकारी संस्था वा सेवाप्रदायकले तोकिएको कागजात सहित सम्बन्धित सार्वजनिक निकायमा निवेदन दिनु पर्दछ। मौजुदा सूची अद्यावधिक गर्ने जिम्मेवारी सम्बन्धित सार्वजनिक निकायको हुन्छ। आपूर्तिकर्ता, निर्माण व्यवसायी, परामर्शदाता, गैरसरकारी संस्था वा सेवाप्रदायकले सूची अद्यावधिक गर्न प्रत्येक वर्ष सम्बन्धित सार्वजनिक निकायमा निवेदन दिनु पर्दछ। मौजुदा सूची (स्टान्डिड लिष्ट) तयार गर्ने तरिका सार्वजनिक खरिद नियमावली, २०६४ को नियम १८ मा समावेश गरिएको छ।

खरिद योजनाको आधारमा खरिद कारबाही गर्नु पर्ने

तोकिएको सीमाभन्दा बढी रकमको खरिद गर्दा तोकिए बमोजिम खरिदको गुरु योजना (मास्टर प्रोक्चुरमेन्ट प्लान) र वार्षिक खरिद योजना तयार गर्नु पर्दछ।

खरिद कार्यको गुरुयोजना

एक वर्षभन्दा बढी अवधिसम्म सञ्चालन हुने योजना वा आयोजनाको लागि खरिद गर्दा वा वार्षिक १० करोड रुपैयाँभन्दा बढी रकमको खरिद गर्दा खरिदको गुरु योजना तयार गर्नु पर्दछ।

वार्षिक खरिद योजना

वार्षिक १० लाख रुपैयाँभन्दा बढी रकमको खरिद गर्नु पर्ने भएमा आगामी आर्थिक वर्षको अनुमानित वार्षिक कार्यक्रम तथा बजेट तयार गर्दा आगामी आर्थिक वर्षमा गर्ने वार्षिक खरिद योजना तयार गर्नु पर्ने र खरिदको गुरु योजना समेत तयार भएको रहेछ भने त्यस्तो गुरु योजनाको समेत आधार लिनु पर्दछ।

खरिद विधिहरू

सार्वजनिक खरिद ऐन, २०६३ को दफा ८ ले सार्वजनिक निकायले खरिद गर्दा अवलम्बन गर्नुपर्ने खरिद विधिहरूको व्यवस्था गरेको छ। सार्वजनिक निकायले उक्त दफामा उल्लिखित विधि बाहेक

अन्य विधि प्रयोग गरी खरिद गर्न मिल्दैन। खरिद विधिका प्रकारहरू निम्नानुसार उल्लेख गरिएको छ :-

क) मालसामान, निर्माण कार्य वा अन्य सेवा खरिद

- बोलपत्र (राष्ट्रिय र अन्तराष्ट्रिय) : (यस विधिमा पूर्वयोग्यता निर्धारण गरी वा नगरी खरिद गर्ने गरिन्छ),
- शिलबन्दी दरभाउपत्र,
- सोझै खरिद,
- उपभोक्ता समितिमार्फत,
- अमानत,
- एकमुष्ट दर,
- उत्पादक वा अधिकृत विक्रेताद्वारा निर्धारित दरमा खरिद विधि (क्याटलग सपिङ्ग),
- सिमित बोलपत्रदाता भाग लिने खरिद विधि (लिमिटेड टेण्डरिङ्ग),
- नयाँ लिने पुरानो दिने खरिद विधि (बाई ब्याक मेथड)।

ख) परामर्श सेवा खरिद

- प्रतिस्पर्धात्मक प्रस्ताव माग गरी,
- सोझै वार्ताबाट।

खरिद विधि छनोट

सार्वजनिक निकायले खरिद विधि छनोट गर्दा खरिद मूल्यका आधारमा गर्नु पर्दछ। खरिदको मूल्य यसको लागत अनुमानबाट निर्धारण हुन्छ। खरिद कानूनबमोजिम खरिद मूल्यको सीमा तोकिएको र सोअनुसार खरिद विधि अवलम्बन गर्नुपर्ने प्रावधान रहेको छ।

(क) मालसामान, निर्माण कार्य वा अन्य सेवा खरिद गर्दा

- अन्तर्राष्ट्रिय वा राष्ट्रियस्तरमा खुल्ला बोलपत्र आह्वान (रु. २० लाख भन्दा बढी)
- शिलबन्दी दरभाउपत्र आह्वान (रु. २० लाखसम्म)

- सोझै खरिद ((रु. १० लाखसम्म) निर्माण कार्य र मालसामान, (रु. ५ लाख सम्मको परामर्श सेवा
- उपभोक्ता समितिमार्फत (रु. १ करोड सम्मको निर्माण कार्य)
- अमानतबाट (रु. १ लाखसम्मको सानातिना मर्मत संभारका कार्यहरू)
- क्याटलग सपिंगबाट रु ६० लाखसम्मको सवारी साधन, स्वास्थ्य उपकरण रु. ४० लाख र अन्य उपकरण रु. २५ लाख,
- एकमुष्ट दर, लिमिटेड टेन्डरिङ्ग, बाईव्याक
- कबोल अड्क घटाघट गर्ने (रिभर्स अक्सन) खरिद विधि।

ख) परामर्शसेवा खरिद गर्दा

प्रतिस्पर्धात्मक प्रस्ताव माग गरी

रु. २० लाखभन्दा कम रकमको परामर्शसेवा मौजुदासूचीबाट लिखितरूपमा प्राविधिक र आर्थिक प्रस्ताव माग गरेर खरिद गरिन्छ। सोभन्दा माथि रु. १५ करोडसम्म प्रतिस्पर्धात्मक राष्ट्रिय प्रस्ताव माग गरी, र सामान्यतया रु १५ करोड माथि प्रतिस्पर्धात्मक अन्तराष्ट्रिय प्रस्ताव माग गरी खरिद गरिन्छ।

माथि उल्लिखित रकमको परामर्शसेवा खरिद गर्दा परामर्शदाताको छनोट गर्न चारोटा छनोट विधिको व्यवस्था गरिएको छ। जसअनुसार गुणस्तर र लागत विधि, गुणस्तर विधि, निश्चित बजेट विधि, र न्यून लागत विधि रहेका छन्।

सोझै वार्ताबाट

गैरसरकारी संस्थामार्फत रु. ५ लाखसम्मको तालिम, गोष्ठी, सचेतनामूलक कार्यक्रम सार्वजनिक निकायको प्रमुख आफैँले र सोभन्दा माथि रु. २० लाखसम्म एक तहमाथिको अधिकारीको स्वीकृति लिइ खरिद गर्न सकिन्छ।

सार्वजनिक खरिदका विधि र प्रयोगका प्रक्रिया एवं चरणहरू

माथि बयान गरिएका सार्वजनिक खरिदका विधिहरू सार्वजनिक निकायबाट व्यवहारमा प्रयोग गर्दा के, कस्तो प्रक्रिया र चरणहरू अपनाउनु पर्दछ भनेर यहाँ संक्षिप्त रूपमा चर्चा गरिएको छ।

सोझै खरिद

सार्वजनिक खरिद ऐन, २०६३ को दफा ४१ र नियमावली, २०६४ को नियम ८५ मा सार्वजनिक निकायले सोझै खरिद गर्नसक्ने व्यवस्था गरेको छ। साथै ऐनको दफा ६६ र नियमावलीको नियम १४५ ले विशेष परिस्थितिमा सोझै खरिद गर्नसक्ने अवस्थाको प्रावधान समावेश गरेको छ।

सोझै खरिद विधिको प्रक्रिया र चरणहरू यस प्रकार रहेको छ :-

- रु १ लाख सम्मको वस्तु वा मालसामान, र अन्य सेवा खरिद गर्न लागत अनुमान बिना नै खरिद गर्न सकिने,
- एक लाख रुपियाँभन्दा बढी रु. १० लाखसम्म लागत अनुमान गरिएको छ भने सोझै खरिद गर्न सकिने। यसका लागि मौजुदा सूचीमा रहेका कम्तीमा ३ वटा आपूर्तिकर्ता, निर्माण व्यवसायी, परामर्शदाता वा सेवा प्रदायकबाट लिखित रूपमा दरभाउपत्र वा प्रस्ताव माग गरी खरिद गर्नु पर्ने,
- परामर्शसेवा खरिदमा रु. ५ लाखसम्मको लागत अनुमान भएको सेवा खरिद गर्दा मौजुदा सूचीमा रहेका कम्तीमा ३ परामर्शदाताबाट लिखित रूपमा प्रस्ताव माग गरी खरिद गर्न सकिने,
- रु २५ लाख सम्मको औषधिजन्य मालसामान वा नेपालमा उत्पादित मालसामान मालसामानको उत्पादकले राष्ट्रिय स्तरको समाचार पत्रमा सूचना प्रकाशन गरी तोकेको विक्रि मूल्यमा सोझै खरिद गर्न सकिने,
- नेपाल सरकारले नेपाल राजपत्रमा सूचना प्रकाशन गरी स्वदेशी घरेलु उद्योग भनी तोकिदिएको घरेलु उद्योगबाट उत्पादित पच्चीस लाख रूपैयाँसम्मको मालसामान सार्वजनिक निकायले त्यस्तो घरेलु उद्योगसँग खरिद सम्झौता गरी सोझै खरिद गर्न सक्ने,
- अन्तराष्ट्रिय अन्तर सरकारी संस्थासँग सो संस्थाले तोकेको दररेटमा मालसामान वा सेवा खरिद गर्न सकिने,
- एक सार्वजनिक निकायले अर्को सार्वजनिक निकायसँग सोझै खरिद गर्न सक्ने,
- प्रोपाइटरि मालसामानको हकमा सोझै खरिद गर्न सकिने, र
- विशेष परिस्थितिमा सोझै खरिद गर्न सकिने।

सोझै खरिद गर्दा ध्यान दिनुपर्ने कुराहरू

- निर्माण कार्य बाहेक रु. १ लाखसम्मको खरिद गर्न औपचारिक लागत अनुमान तयार गर्नु पर्ने,
- रु १ लाख भन्दा बढीको खरिदका लागि लागत अनुमान तयार गरिएको हुनुपर्ने,
- प्रस्तावको मूल्याङ्कन लगायतका निर्णय प्रक्रिया एवं सम्झौतासँग सम्बन्धित सबै कुराहरू पूरा भएको हुनुपर्ने,
- यसमा पत्रपत्रिकामा खुलारूपमा सूचना मात्र प्रकाशन गर्नु पर्ने तर मौजुदा सूचीमा भएका कम्तीमा ३ वटासँग लिखित रूपमा प्रस्ताव मागेको र प्राप्त गरेको हुनुपर्ने,
- एक आर्थिक वर्षमा एकै पटक वा पटक पटक गरी सीमाभन्दा बढी रकमको एउटै व्यक्ति, फर्म, कम्पनी वा संस्थाबाट सोझै खरिद गर्न नहुने,
- सार्वजनिक निकायसँग खरिद गर्दा जमानत लिनु पर्ने, र
- सोझै खरिद गरिएका कुराहरूको बारेमा सार्वजनिक सूचना प्रकाशन गर्नुपर्ने।

चरण	काम	कसले गर्ने
एक	लागत अनुमान तयार गर्ने र सोको आधारमा खरिद विधिको निक्यौल गर्ने प्रस्ताव मूल्याङ्कनका लागि आधार र मानदण्ड तय गर्ने यसरी तयार भएको दस्तावेज कार्यालय प्रमुखबाट स्वीकृत गराउने	सम्बन्धित शाखा र खरिद एकाइ
दुई	सूचीकृत भएका कामसँग सम्बन्धित कम्तीमा ३ वटा फर्मसँग लिखित रूपमा प्रस्ताव माग्ने	खरिद एकाइ
तीन	प्राप्त प्रस्तावहरू खोल्ने	खरिद एकाइ
चार	तुलनात्मक विवरण सहित तयार गर्ने र सो अनुसार उपयुक्त प्रस्ताव छनौटका लागि तयार गर्ने	मूल्याङ्कन समिति
पाँच	मूल्याङ्कन प्रतिवेदनका आधारमा कार्यालय प्रमुखबाट प्रस्ताव स्वीकृत गराउने	खरिद एकाइ
छ	स्वीकृत प्रस्ताव अनुसार खरिद आदेश वा कायदिश वा	खरिद एकाइ

	कार्यसम्झौता गर्ने	
सात	कामको अनुगमन, मूल्याङ्कन गर्ने, कामको गुणस्तर सुनिश्चित गर्ने र काम सम्पन्न भएको प्रमाणित गर्ने, जिन्सी दाखिला गर्नुपर्नेमा सो गर्ने	सम्बन्धित शाखा
आठ	भुक्तानी गर्ने	कार्यालय प्रमुख र आर्थिक प्रशासन शाखा

क) सिलबन्दी दरभाउपत्र

सार्वजनिक खरिद ऐन, २०६३ को दफा ४० र नियमावली, २०६४ को नियम ८४ मा सार्वजनिक निकायले सिलबन्दी दरभाउपत्र विधिबाट खरिद गर्नसक्ने व्यवस्था गरेको छ।

सिलबन्दी दरभाउपत्र खरिद विधिको प्रक्रिया र चरणहरू यस प्रकार रहेको छ :-

- रु २० लाख सम्म लागत अनुमान भएको निर्माण कार्य, मालसमान वा जुनसुकै सेवा खरिद गर्न सकिने
- रु ५० लाख रुपैयाँसम्मको एक्सरे, इसिजी, औषधिजन्य मालसामान, रोगको निदान तथा उपचारको लागि प्रयोग हुने स्वास्थ्य सम्बन्धी उपकरणहरू खरिद गर्दा सिलबन्दी दरभाउपत्र आह्वान गरी खरिद गर्न सकिने

सिलबन्दी दरभाउपत्र मार्फत खरिद गर्दा ध्यान दिनुपर्ने कुराहरू

- सिलबन्दी रूपमा दरभाउपत्र माग गर्नुपर्ने र सोहीबमोजिम प्राप्त हुनुपर्ने,
- कम्तीमा ७ दिनको समय दिइ सूचना गर्नुपर्ने,
- सिलबन्दी दरभाउपत्रको मान्य अवधि ४५ दिन र ब्याङ्क जमानतको मान्य अवधि ७५ दिनको हुनु पर्ने,
- एक पटक पेश भएको सिलबन्दी दरभाउपत्र फिर्ता वा संशोधन गर्न नपाइने,
- पहिलो पटकको सूचना बमोजिम न्यूनतम ३ वटा दरभाउपत्र सारभूत रूपमा प्रभावग्राही भएमा मात्र सबैभन्दा कम कबोल गरेको दरभाउपत्र स्वीकृतिका लागि छनौट गर्नुपर्ने,
- पहिलो पटक सूचना प्रकाशन गर्दा तीनभन्दा कम वा दरभाउपत्र पेस नै नभएमा सोसम्बन्धमा कुनै कुरा उल्लेख नगरी दोस्रो पटक सूचना प्रकाशन गर्नुपर्ने र यसमा

आवश्यक सङ्ख्यामा दरभाउपत्र पेस हुन नआएमा पेस भएका दरभाउपत्रमध्येबाट दरभाउपत्र स्वीकृत गर्न बाधा नपर्ने,

- दरभाउपत्र खोलेको १५ दिन भित्र स्वीकृत गरिसक्नुपर्ने,
- स्वीकृत भएको ७ दिनभित्र सम्बन्धित दरभाउपत्रदातालाई खरिद सम्झौता गर्न आउन सूचना दिनु पर्ने,
- परामर्श सेवाको हकमा दरभाउपत्रको प्रवन्ध नभएको ।

चरण	काम	कसले गर्ने
एक	लागत अनुमान तयार गर्ने र सोको आधारमा खरिद विधिको निक्क्यौल गर्ने प्रस्ताव मूल्याङ्कनका लागि आधार र मानदण्ड तय गर्ने यसरी तयार भएको दस्तावेज कार्यालय प्रमुखबाट स्वीकृत गराउने	सम्बन्धित शाखा र खरिद एकाइ
दुई	राष्ट्रिय वा स्थानीय स्तरको पत्रिकामा कम्तिमा ७ दिनको सूचना प्रकाशन गर्ने	खरिद एकाइ
तीन	प्राप्त दरभाउपत्रहरू खोल्ने	खरिद एकाइ
चार	तुलनात्मक विवरण सहित तयार गर्ने र सो अनुसार सारभूतरूपमा प्रभावग्राही सबैभन्दा कम रकम कबोल भएको दरभाउपत्र छनौटका लागि तयार गर्ने र मूल्याङ्कन प्रतिवेदन पेस गर्ने	मूल्याङ्कन समिति
पाँच	मूल्याङ्कन प्रतिवेदनका आधारमा कार्यालय प्रमुखबाट दरभाउपत्र स्वीकृत गराउने	खरिद एकाइ
छ	स्वीकृत दरभाउपत्रदातासँग कार्यालय प्रमुखबाट खरिद सम्झौता गर्ने	खरिद एकाइ
सात	सम्झौतबमोजिम कामको अनुगमन, मूल्याङ्कन गर्ने, कामको गुणस्तर सुनिश्चित गर्ने र काम सम्पन्न भएको प्रमाणित गर्ने, जिन्सी दाखिला गर्नुपर्नेमा सो गर्ने एवं भुक्तानी सिफारिस गर्ने	सम्बन्धित शाखा

आठ	भुक्तानी गर्ने	कार्यालय प्रमुख र आर्थिक प्रशासन शाखा
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ख) बोलपत्र

सार्वजनिक खरिद ऐन, २०६३ को दफा ९ ले अन्यथा व्यवस्था गरिएकोमा बाहेक सार्वजनिक निकायले कुनै खरिद गर्दा खुला रूपमा बोलपत्र आव्हान गरी गर्नुपर्ने प्रावधान राखेको छ। ऐनको परिच्छेद ३ मा बोलपत्रसम्बन्धी व्यवस्था समावेश गरिएको छ। साथै नियमावली, २०६४ को परिच्छेद ५ मा थप विस्तृत सर्त व्यवस्थाहरू उल्लेख छ।

बोलपत्र माध्यमद्वारा गरिने खरिद विधिको प्रक्रिया र चरणहरू यस प्रकार रहेको छ :-

बोलपत्रद्वारा खरिद गर्दा अपनाउनुपर्ने प्रक्रिया र चरण ऐनको दफा ११ ले गरेको छ।

- बोलपत्रदाताको योग्यता आवश्यक नपर्ने मालसामान वा अन्य सेवा खरिद वा तोकिएको रकमभन्दा कम (हाल रु. २ करोडसम्म) को निर्माण कार्यको खरिद गर्दा बोलपत्रदाताले प्राविधिक र आर्थिक प्रस्ताव एउटै खाममा पेस गर्ने एक खाम प्रणाली अवलम्बन गर्नु पर्ने,
- बोलपत्रदाताको योग्यता आवश्यक पर्ने मालसामान वा अन्य सेवा खरिद वा तोकिएको रकमभन्दा बढी (हाल रु. २ करोडमाथि) को निर्माण कार्यको खरिदमा बोलपत्रदाताले प्राविधिक र आर्थिक प्रस्ताव दुई अलग अलग खाममा पेस गर्ने दुई खाम प्रणाली अवलम्बन गर्नु पर्ने,

त्यसैगरी ऐनले पूर्व योग्यता निर्धारण गरी खुल्ला रूपमा बोलपत्र आव्हान गर्ने र पूर्व योग्यता निर्धारण नगरी खुल्ला रूपमा बोलपत्र आव्हान गर्ने व्यवस्था गरेको छ भने खुल्ला रूपमा आव्हान गरिने बोलपत्र एक वा दुई चरणमा आव्हान गर्न सकिने प्रावधान समावेश गरेको छ। पूर्व योग्यता निर्धारण गरी खरिद गर्न देहायका प्रक्रिया तोकिएको छ :-

- PPMO ले ठूला र जटिल भनी निर्धारण गरेका निर्माण कार्य वा औद्योगिक प्लाण्ट जस्ता उच्च मूलका मालसामान खरिद गर्न वा योग्य बोलपत्रदाताको पहिचान गर्न पूर्व योग्यता कागजात तयार गरी पूर्व योग्यता निर्धारण गरिन्छ। यसमा;

- कागजातमा योग्यताका आधार, प्रस्ताव तयार गर्ने र पेस गर्ने तरिका उल्लेख गर्ने
- उल्लिखित योग्यताका आधारमा आवेदकको छनौट गरी प्रकाशन गर्ने
- पूर्व योग्यताको प्रस्ताव अस्विकृत भएको जानकारी माग गरेमा सार्वजनिक निकायले तीस दिनभित्र दिनु पर्दछ।

निम्न अवस्थामा दुई चरणमा बोलपत्र आह्वान गर्न सकिने प्रावधान ऐनको दफा २८ मा गरिएको छ :-

- खरिद कार्यको प्राविधिक पक्ष वा खरिद सम्झौताका शर्तहरू बोलपत्र आह्वान गर्दाका बखत पूर्णरूपमा यकिन गर्न सम्भव नभएमा, वा
- कामको प्रकृति जटिल भई सोका विभिन्न प्राविधिक पक्ष वा खरिद सम्झौता सम्बन्धी समस्या के कसरी समाधान गर्न सकिन्छ भन्ने विषयमा र त्यस्ता प्राविधिक पक्ष र सम्झौताको शर्त तथा त्यसबाट हुने फाइदाका सम्बन्धमा बोलपत्रदातासँग छलफल गर्नु परेमा
- हालसम्म रु २ करोडसम्मको लागत अनुमान भएको निर्माण कार्यको सूचनामा लागत अनुमान रकम खुलाउनु पर्ने र यसमा योग्यता निर्धारण गर्नु नपर्ने व्यवस्था छ। तथापी नियमावलीको नियम २६(४) बमोजिमको खरिदमा योग्यता निर्धारण गर्नु पर्दछ।

चरण	काम	कसले गर्ने
एक	लागत अनुमान तयार गर्ने र सोको आधारमा खरिद विधिको निक्यौल गर्ने प्रस्ताव मूल्याङ्कनका लागि आधार र मानदण्ड तय गरी बोलपत्र कागजात तयार गर्ने यसरी तयार भएको कागजात कार्यालय प्रमुखबाट स्वीकृत गराउने	सम्बन्धित शाखा र खरिद एकाइ
दुई	खुल्ला रूपमा सूचना प्रकाशन गरी बोलपत्र आह्वान गर्ने दफा १४ (राष्ट्रिय २१ दिन र अन्तराष्ट्रिय ३० दिन)	खरिद एकाइ
तीन	प्राप्त बोलपत्रहरू रीतपूर्वक खोल्ने (दफा २२)	खरिद एकाइ

चार	दफा २३ अनुसार सारभूतरूपमा प्रभावग्राही भए, नभएको रीत पुगे, नपुगेको बोलपत्र परीक्षण गर्ने	मूल्याङ्कन समिति
पाँच	सारभूतरूपमा प्रभावग्राही भएका बोलपत्रहरूको तुलनात्मक विवरण सहित न्यूनतम मूल्याङ्कित सारभूत रूपमा प्रभावग्राही बोलपत्रको मूल्याङ्कन आधार खुलाइ मूल्याङ्कन प्रतिवेदन पेस गर्ने	मूल्याङ्कन समिति
छ	बोलपत्र छनोट गर्ने र सात दिनको समयावधी तोकী आसयको सूचना जारी गर्ने र सात दिनमा पुनरावलोकनको कुनै निवेदन नपरेमा बोलपत्र स्वीकृत गरी १५ दिनभित्र कार्यसम्पादन जमानतसहित सम्झौता गर्न आउन सूचना दिने	खरिद एकाइले कार्यालय प्रमुखबाट
	स्वीकृत बोलपत्रदातासँग कार्यालय प्रमुखबाट खरिद सम्झौता गर्ने	खरिद एकाइ
सात	सम्झौताबमोजिम कामको अनुगमन, मूल्याङ्कन गर्ने, कामको गुणस्तर सुनिश्चित गर्ने र काम सम्पन्न भएको प्रमाणित गर्ने, जिन्सी दाखिला गर्नुपर्नेमा सो गर्ने एवं भुक्तानी सिफारिस गर्ने	सम्बन्धित शाखा
आठ	भुक्तानी गर्ने	कार्यालय प्रमुख र आर्थिक प्रशासन शाखा

ग) क्याटलग सपिङ्ग- (कार्यविधि, २०७४)

यस विधिमा खरिद हुने सामग्रीहरूमा मूअकर समेत गरी रु. ६० लाखसम्मको हेभीइक्वीपमेण्ट तथा सवारी साधन, रु. ४० लाखसम्मको स्वास्थ्य उपकरण र रु. २५ लाखसम्मको अन्य औजार, उपकरण, यान्त्रिक मालसामान पर्दछन्।

- हेभी इक्विपमेण्ट, सवारी साधन, औजार, मेशिनरी, उपकरण, एक्सरे वा एमआरआई जस्ता स्वास्थ्य सेवाको लागि आवश्यक पर्ने उपचारजन्य यन्त्र वा यस्तै अन्य यान्त्रिक मालसामानहरू त्यस्तो समान स्तरको मालसामान उत्पादन वा वितरण गर्ने उत्पादक

कम्पनी वा त्यसको आधिकारिक बिक्रेतालाई कम्तीमा सात दिनदेखि बढीमा पन्ध्र दिनसम्मको लिखित सूचना दिई प्रतिस्पर्धा गराई खरिद गर्न सक्ने

- त्यस्तो मालसामान बिक्री गर्न चाहने उत्पादक कम्पनी वा त्यसको आधिकारिक बिक्रेताले उत्पादनको आधिकारिक स्पेशिफिकेशन, गुणस्तर, मूल्य र सुविधा सहितको विवरण (क्याटलग वा ब्रोसर) संलग्न राखी त्यस्तो सार्वजनिक निकायमा निवेदन दर्ता गराउनु पर्ने।
- यसरी निवेदन दर्ता गर्दा बोलपत्र जमानत आवश्यक नपर्ने
- उत्पादक कम्पनी वा त्यसको आधिकारिक बिक्रेताले पेश गरेको स्पेशिफिकेशन, गुणस्तर, मूल्य र सुविधा सहितको विवरण (क्याटलग वा ब्रोसर) हेरी समान स्पेशिफिकेशन र गुणस्तर भएका उत्पादनहरूको उत्पादक कम्पनी वा त्यसको आधिकारिक बिक्रेताको सूची तयार गर्नु पर्ने
- प्राप्त सूचीको आधारमा खरिद गरिने मालसामानको परिमाण खोली उत्पादक वा अधिकृत बिक्रेताबाट तोकिएको मूल्य र सुविधा मध्ये मूल्यमा छुट वा सुविधामा थप हुन सक्ने विवरण सहितको आर्थिक प्रस्ताव माग गर्नु पर्ने
- प्रस्ताव प्राप्त भएपछि मूल्यमा पाइने छुट र सुविधामा हुने थप समेतको आधारमा मूल्याङ्कन गरी न्यूनतम मूल्याङ्कित सारभूत प्रभावग्राही प्रस्तावदाताको छनौट गर्नु पर्ने
- छनौट भएको प्रस्तावदातासँग कार्यसम्पादन जमानत लिई खरिद सम्झौता गर्नु पर्दछ।

घ) अमानतबाट गरिने खरिद

- अमानतबाट काम गर्न एक तह माथिको अधिकारीको पूर्व स्वीकृति लिनु पर्ने
- सो कामको लागि आवश्यक पर्ने प्राविधिक सेवा र निर्माण सामग्री सार्वजनिक खरिद ऐन र नियमावलीको प्रक्रिया बमोजिम खरिद गरी ज्यालामा काम गराउनु पर्ने
- अमानतबाट निर्माण कार्य गर्नु परेमा त्यस्तो काम एकलाख रुपैयाँमा नबढाई खण्ड खण्ड गरी वार्ताबाट गराउन वा निर्माण सम्बन्धी काम आवश्यक निर्माण सामग्री उपलब्ध गराई ज्यालामा दिन सकिन्छ।

ङ) सीमित बोलपत्र (लिमेटेड टेण्डरिङ्ग) : सीमित प्रतिस्पर्धी

कुनै मालसामान, निर्माण कार्य वा सेवा खरिदमा सीमित निर्माण व्यवसायी, परामर्शदाता, आपूर्तिकर्ता वा सेवा प्रदायक मात्र भएमा त्यस्तो निर्माण व्यवसायी, परामर्शदाता, आपूर्तिकर्ता वा सेवा प्रदायकबीच मात्र प्रतिस्पर्धा गराई गरिने खरिद नै लिमिटेड टेण्डरिङ्ग हो .

- निर्माण व्यवसायी, परामर्शदाता, आपूर्तिकर्ता वा सेवा प्रदायक बजारमा तीन वा सोभन्दा कम भएको अवस्था यकिन गर्नु पर्ने,
- यसमा १५ दिनको बोलपत्र आह्वानको सूचना दिनु पर्दछ,
- एक तहमाथिको अधिकारीको पूर्वस्वीकृति लिनु पर्ने,
- यो विधि बहुवर्षीय सम्झौता गर्नुपर्ने खरिदमा प्रयोग गर्न नसकिने,
- सार्वजनिक खरिद अनुगमन कार्यालयले यससम्बन्धमा हालसम्म निर्देशिका तथा निर्दिष्ट नमुना बोलपत्र कागजात जारी गरिसकेको छैन।

च) बाई ब्याक मेथड : पुरानो दिने नयाँ लिने

- निश्चित समय पछि औचित्यहीन हुने वा जनस्वास्थ्य वा वातावरणको दृष्टिले लिलाम गर्न वा भण्डारण गरी राख्न नमिल्ने वा प्रयोग गर्न नहुने अवस्थाका मालसामान वा मेशिनरी औजार तोकिए बमोजिम मूल्याङ्कन गरी सम्बन्धित उत्पादक वा आपूर्तिकर्तालाई फिर्ता दिई नयाँ लिने खरिद विधि हो।
- यससम्बन्धमा सार्वजनिक खरिद अनुगमन कार्यालयले हालसम्म निर्देशिका तथा नमुना बोलपत्र कागजात जारी गरिसकेको छैन।

छ) एकमुष्ट दर विधि

प्रत्येक एकाइको परिमाण र लागत अनुमानको कुल अङ्कभन्दा एकमुष्ट रूपमा के, कति घटी वा बढी प्रतिशतमा काम गर्ने हो सो कबोल गरी बोलपत्र पेस गर्ने विधि हो।

- नियमावलीको नियम ३१क बमोजिम कुनै योग्यता आवश्यक नपर्ने दुई करोड रुपैयाँसम्म लागत अनुमान भएको निर्माण कार्य खरिद गर्दा लागत अनुमान सार्वजनिक गरी राष्ट्रियस्तरको बोलपत्रका माध्यमद्वारा प्रतिस्पर्धा गराइ खरिद गर्न सकिने,
- यो विधि बहुवर्षीय सम्झौता गर्नुपर्ने खरिदमा प्रयोग गर्न नसकिने,

- यससम्बन्धमा सार्वजनिक खरिद अनुगमन कार्यालयले हालसम्म निर्देशिका तथा निर्दिष्ट नमुना बोलपत्र कागजात जारी गरिसकेको छैन।

ज) विशेष परिस्थितिमा खरिद (दफा ६६ र नियम १४५)

- विशेष परिस्थिति उत्पन्न भई तत्काल खरिद नगर्दा सार्वजनिक निकायलाई हानी नोक्सानी हुने अवस्था आइपरेमा सार्वजनिक निकायले तत्काल खरिद गर्न गराउन सक्ने,
- यसको जानकारी एक तह माथिको अधिकारीलाई दिनु पर्ने,
- खरिद आवश्यकताको विवरण, गुणस्तर, परिमाण, सर्त र कार्यसम्पन्न गर्नु पर्ने अवधि जस्ता विवरण तयार गर्नु पर्ने,
- आकस्मिक परिस्थिति सामना गर्न आवश्यक पर्ने परिमाण र समयावधिका लागि मात्र यथासम्भाव प्रतिस्पर्धा गराइ वा एउटामात्र निर्माण व्यवसायी आपूर्तिकर्ता परामर्शदाता वा सेवाप्रदायकसँग लिखित दरभाउ वा प्रस्ताव लिइ स्वच्छ र उचित मूल्यका लागि वार्ता गरी खरिद गर्नु पर्ने,
- विशेष परिस्थिति सम्बन्धी विवरण सार्वजनिक सुरक्षा हित तथा सामुदायिक स्वास्थ्यमा पर्ने संकट र खरिदका अन्य विधि अपनाउन नसकिने कारण र आधार खुलेको कागजातको अभिलेख राख्नु पर्ने,
- रु १० लाख भन्दा बढीको खरिद गरेको भए सम्बन्धित सार्वजनिक निकायले खरिद भएको विवरणको सार्वजनिक सूचना प्रकाशन गर्नु पर्ने र सार्वजनिक खरिद अनुगमन कार्यालयलाई जानकारी पठाउनु पर्ने।

झ) रिभर्स अक्सन खरिद विधि

रिभर्स अक्सन खरिद विधि भन्नाले सार्वजनिक निकायबाट स्वीकृत लागत अनुमानलाई अधिकतम रकम मानी सो रकममा घटाघट गरी कबोल गर्न बोलपत्रदाता वा सेवाप्रदायकलाई निश्चित अवधि उपलब्ध गराउने र सो अवधिमा सबैभन्दा कम अड्क कबोल गर्ने बोलपत्रदाता वा सेवाप्रदायक छनोट गर्ने विधि हो। यस सम्बन्धी कार्यविधि नियमावलीमा थप स्पष्ट पार्न बाँकी नै छ। सार्वजनिक खरिद अनुगमन कार्यालयबाट “सरकारी इ-मार्केटप्लेस”को सार्वजनिक पोर्टल विकास गरी सोही प्रणालीमा रिभर्स अक्सन खरिद विधिको कारबाही समावेश गरी खरिद कारबाही अगाडि बढाउन सकिनेबारे प्रारम्भिक

सोचाइ रहेको छ। तथापी अब संशोधन हुने नियमावलीबाट नै यसका प्रक्रिया निर्धारण हुनेछ।

ज) परामर्शसेवा खरिद

सार्वजनिक खरिद ऐन, २०६३ को परिच्छेद ४ र नियमावली, २०६४ को परिच्छेद ६ मा परामर्शसेवा खरिदसम्बन्धी व्यवस्था गरिएको छ। ऐनले परामर्शसेवा खरिद गर्नुपर्ने अवस्था र त्यसबारे अपनाउनु पर्ने प्रक्रियाहरू उल्लेख गरेको छ। निम्न दुई अवस्थामा मात्र सार्वजनिक निकायले परामर्शसेवा खरिद गर्न सक्दछ :-

- सम्बन्धित सार्वजनिक निकायमा उपलब्ध जनशक्तिले कुनै काम हुन नसक्ने भएमा,
- दातृपक्षसँगको सम्झौताबमोजिम बैदेशिक सहायता स्रोतबाट बेहोरिने गरी परामर्श सेवा प्राप्त गर्नुपर्ने भएमा,

परामर्शसेवा खरिद गर्दा अवलम्बन गरिने प्रक्रियाबारे तल संक्षेपमा वर्णन गरिएको छ,

- परामर्शसेवाको (Purpose) उद्देश्य, (Scope) दायरा, प्रयोग गरिने विधिहरू, योग्यता, कार्यसम्पादन मूल्याङ्कन गर्ने मापदण्ड, स्रोत, समय र प्रतिवेदन लगायतका विषयवस्तुहरू उल्लेख गरिएको कार्यक्षेत्रगत सर्तहरूको लिखित दस्तावेज तयार गर्ने.

परामर्शसेवामा खरिद विधि छनोट

सोझै वार्ताबाट : ५ लाख सम्म —तालिम गोष्ठी सेमिनार)

सोझै खरिद : ५ लाख सम्म तालिम बाहेक अन्य विषयका सबै परामर्शसेवा लिनुपर्दा कम्तीमा तीनवटा मौजुदा सूचीकृत फर्महरूबाट .

प्राविधिक र वित्तीय प्रस्ताव : २० लाख सम्म (मौजुदा सूचीबाट कम्तीमा ३ वटा प्राविधिक र आर्थिक प्रस्ताव माग गरेर)

प्रतिष्पर्धात्मक प्रस्ताव माग गरेर गर्दा

राष्ट्रिय प्रस्ताव माग : रु. २० लाख देखि १५ करोडसम्म

अन्तरराष्ट्रिय माग : सामान्यतः रु. १५ करोड भन्दा माथि

संक्षिप्त सूची तयार गर्ने

- बीस लाख रुपैयाँभन्दा बढी मूल्यको परामर्श सेवा खरिद गर्दा कम्तीमा १५ दिनको अवधिको सूचना राष्ट्रियस्तरको समाचारपत्रमा सूचना प्रकाशन गरी संक्षिप्त सूची तयार गर्नुपर्ने
- सामान्यतया १५ करोड रुपैयाँभन्दा बढी रकमको परामर्श सेवा खरिद गर्दा अन्तराष्ट्रियस्तरको आशयपत्र माग गरी संक्षिप्त सूची तयार गर्नुपर्ने

मौजुदा सूचीबाट

- मौजुदा सूचीमा रहेका परामर्शदाताबाट लिखित रूपमा प्राविधिक र आर्थिक प्रस्ताव माग गर्न सकिने
- बीस लाख रुपैयाँभन्दा कम रकमको परामर्श सेवाको प्रस्ताव माग गर्दा सम्भव भएसम्म छ वटा र कम्तीमा तीन वटा परामर्शदातालाई प्रस्ताव सम्बन्धी कागजात पठाई प्राविधिक र आर्थिक छुट्टा छुट्टै खाममा माग गर्नु पर्ने
- यसमा प्रस्ताव मूल्याङ्कन तथा छनोट विधि गुणस्तर र लागत विधि हुने।

लागत अनुमान २० लाख रुपैयाँभन्दा बढी रकमको हकमा प्रतिस्पर्धात्मक प्रस्ताव मागपत्र

- संक्षिप्त सूचीमा परेका प्रस्तावदाताहरूलाई हुलाक, कुरिएर वा प्रत्यक्ष रूपमा वा विद्युतीय सञ्चार माध्यममार्फत प्रस्तावसम्बन्धी कागजात पठाउनु पर्ने
- लागत अनुमान बीस लाख रुपैयाँसम्म भएकोमा कम्तीमा १५ दिनको म्याद दिने र सोभन्दा बढी लागत अनुमान भएकोमा कम्तीमा तीस दिनको समय अवधि दिनुपर्ने
- प्रस्तावसम्बन्धी कागजातको कुनै शुल्क नलाग्ने
- प्रस्ताव माग गर्दा प्रस्ताव छनोट विधि उल्लेख गर्नुपर्ने। यसमा परामर्शसेवाको कार्यप्रकृतिबमोजिम तपसिलका कुनै विधि अवलम्बन गर्नुपर्ने।

(क) गुणस्तर र लागत विधि

(ख) गुणस्तर विधि,

(ग) निश्चित बजेट विधि, वा

(घ) न्यून लागत विधि।

प्रस्ताव छनौटको मूल्याङ्कनसम्बन्धी व्यवस्था

- प्रस्तावको छनौट गर्न गुणस्तर र लागत विधि अपनाइएकोमा प्राविधिक प्रस्ताव र आर्थिक प्रस्तावको संयुक्त मूल्याङ्कन गरी सबै भन्दा बढी अङ्क प्राप्त गर्ने प्रस्तावदातासँग ऐनको दफा ३७ बमोजिम वार्ता गरी छनौट गर्नुपर्ने।
- प्रस्तावको छनौट गर्न गुणस्तर विधि अपनाइएकोमा प्राविधिक प्रस्तावमा उच्चतम अङ्क प्राप्त गर्ने प्रस्तावदाताको मात्र प्रस्ताव छनौट गर्नु पर्नेछ।
- प्रस्तावको छनौट गर्न निश्चित बजेट विधि अपनाइएकोमा त्यस्तो बजेटको सीमाभन्दा बढी लागत भएको प्रस्ताव रद्द गरिनेछ र त्यस्तो बजेटको सीमाभित्र परी प्राविधिक प्रस्तावमा उच्चतम अङ्क प्राप्त गर्ने प्रस्तावदाताको प्रस्ताव छनौट गर्नुपर्नेछ।
- प्रस्तावको छनौट गर्न न्यून लागत विधि अपनाइएकोमा प्राविधिक प्रस्तावमा सफल हुन तोकिएको न्यूनतम अङ्क प्राप्त गर्ने प्रस्तावदातामध्ये सबै भन्दा कम लागत भएको प्रस्तावदाताको प्रस्ताव छनौट गर्नुपर्नेछ।

ठ) उपभोक्ता समितिमार्फत खरिद

सार्वजनिक खरिद ऐन, २०६३ को दफा ४४ को प्रावधानबमोजिम निम्न दुई अवस्था विद्यमान भएमा लाभग्राही समुदायबाट उपभोक्ता समिति गठन गरी निर्माण कार्य र सोसँग सम्बन्धित सेवा खरिद गर्न सकिने व्यवस्था छ। साथै नियमावली, २०६४ को नियम ९७ मा थप विस्तृत प्रावधान राखिएको छ :-

- जटिल प्राविधिक क्षमता आवश्यक नपर्ने,
- मितव्ययिता गुणस्तरीयता र दिगोपना अभिवृद्धि हुने,
- स्थानीय स्रोत साधन र सीप उपयोग गरी स्थानीयस्तरमा कार्यसम्पादन हुने,
- निर्माण कार्यको मुख्य उद्देश्य स्थानीय तहमा रोजगारीको अवसर सिर्जना गर्ने र लाभ प्राप्त गर्ने समुदायलाई सहभागी गराउन सकिने,
- निर्माण पश्चातको आयोजना मर्मत सम्भार तथा सञ्चालन उपभोक्ता समिति वा लाभग्राही समुहबाट हुनसक्ने,

लागत अनुमान तयार गर्नुपर्ने

- एक करोड रुपैयासम्मको लागत अनुमान भएको निर्माण कार्य वा सो सम्बन्धी सेवा सोही स्थानमा बसोबास गर्ने बासिन्दा र त्यस्तो सेवा उपभोग गर्ने समुदायमात्र रहेको उपभोक्ता समितिबाट गराउन सकिने।
- मूल्यअभिवृद्धि कर, ओभरहेड कन्टिन्जेन्सी रकम र जनसहभागिताको अँस समेत समावेश गरी लागत अनुमान तयार गर्नुपर्ने।
- कामको परिमाण, प्रकृति, जम्मा लाग्ने रकम, समितिले व्यहोर्नु पर्ने रकम र आवश्यक अन्य कुराहरू समेत खुलाइ सूचना प्रकाशन गरी प्रस्ताव माग गर्न सकिने।
- वा त्यस्तो समिति आफैले प्रस्ताव वा निवेदन पेश गर्न पनि सक्ने।

ठ) गैरसरकारी संस्थाबाट काम गराउने

सार्वजनिक खरिद ऐन २०६३ को दफा ४६ मा जनचेतनामूलक जस्ता कार्यहरू छिटो सम्पन्न गराउन गैरसरकारी संस्था छनोट गरी गर्न सकिने व्यवस्था गरिएको छ। यस अन्तर्गत;

- जनचेतनासम्बन्धी तालिम, अभिमुखीकरण, सबलीकरण, मूलप्रवाहीकरण जस्ता कार्यहरू छिटो, छरितो र मितव्ययी हुने भएमा गैरसरकारीबाट गराउन सकिने
- कार्यक्षेत्रगत सर्त र काममा लाग्ने रकमको मोटामोटी लागत अनुमान तयार गर्नुपर्ने
- दश लाख रुपैयाँसम्मको काम गराउनका लागि कामको उद्देश्य मिल्ने मौजुदा सूचीमा समावेश भएका संस्थाहरूलाई कम्तीमा १५ दिनको अवधि दिइ राष्ट्रिय वा स्थानीयस्तरको समाचारपत्रमा सूचना दिइ त्यस्ता संस्थाहरूबाट प्रस्ताव माग गर्ने
- कार्यक्षेत्रगत सर्त पूरा गरी न्यूनतम रकम प्रस्ताव गर्ने संस्थाको प्रस्तावलाई छनोट गरी स्वीकृत गर्ने।

ड) प्रतियोगिता गराइ डिजाइन खरिद गर्ने

सार्वजनिक खरिद नियमावली, २०६४ को नियम ८७ मा सार्वजनिक निकायले आर्किटेक्चरल वा शहरी योजना जस्ता विषयको डिजाइन खरिद गर्नु परेमा डिजाइन प्रतियोगिता गराइ उपयुक्त डिजाइन खरिद गर्नसक्ने व्यवस्था छ। यसमा डिजाइनसम्बन्धी

विस्तृत विवरण सहितको कागजात तयार गर्नु पर्दछ। सो अनुरूप डिजाइन मूल्याङ्कन तथा छनोट गर्नु पर्दछ।

निष्कर्ष

सार्वजनिक निकायहरूबाट खरिदको कार्यलाई अलग गर्ने सकिदैन। सार्वजनिक निकायहरूका सेवा प्रवाहलाई नियमित गर्न एवं नागरिकलाई सरकारले दिने सेवासुविधा प्रभावकारी तुल्याउन सार्वजनिक खरिद व्यवस्थित र चुस्त हुनु पर्दछ। यसका लागि माथि चर्चा गरिएका खरिदका विधि र कानुनमा स्थापित खरिद कारवाहीका प्रक्रिया पूर्णतः प्रचलनमा ल्याइनु पर्दछ। साथसाथै सार्वजनिक खरिद कार्यमा संलग्न हुने मानवस्रोतको सक्षमता विकास र उत्प्रेरणाका साथसाथै स्पष्ट एवं छरितो खरिद प्रक्रिया आजको आवश्यकता हो।

स्रोत सामग्री

- सार्वजनिक खरिद ऐन, २०६३ र नियमावली, २०६४ : कानुन किताब व्यवस्था समिति।
- सार्वजनिक खरिद (दोस्रो संशोधन) अध्यादेश, २०८३ : नेपाल राजपत्र, खण्ड ७६, अतिरिक्ताङ्क ४, बैशाख १७, २०८३ साल।
- नमूना बोलपत्र सम्बन्धी कागजात (निर्माण कार्य, मालसामान, परामर्श सेवा) : सार्वजनिक खरिद अनुगमन कार्यालय, केशरमहल, काठमाडौं।
- सार्वजनिक खरिद योजना विधि तथा प्रक्रिया र परामर्श सेवा, प्रशिक्षण प्रस्तुती सामग्री : पुडासैनी कृष्ण, सार्वजनिक खरिद अनुगमन कार्यालय, केशरमहल, काठमाडौं।

Procurement Reform for Nepal's National Pride Projects: Need for a Flexibility Framework



Er. Anil Pokhrel⁸

Abstract: Nepal's National Pride Projects (NPPs), institutionalized in fiscal year 2068/69 to fast-track a defined set of transformational investments, have largely failed to break free of the country's broader public-investment dysfunctions. Fifteen years on, most of the 24 NPPs remain under implementation, with the systemic time overruns of 100-300 percent and cost overruns of 50-200 percent (OAG, 2023) [10]; at current allocations, the World Bank estimates that 17 of these projects would require 41 years to complete (World Bank, 2025) [20]. This paper diagnoses public procurement as the binding constraint on NPP delivery and proposes a flexibility framework as the highest leverage reform available based on close review of six NPP of irrigation sub sector. The paper develops a dedicated NPP Procurement Directive under PPA Section 74A authority, complemented by an empowered project office architecture, single window inter agency coordination above the procurement law, multi-year financial commitment, and a public dashboard backed by independent third-party audit. This flexibility framework compresses the procurement cycle time from 231 to 150 business days, reduction of cost-overrun ranges from 50-200 percent toward 20-40 percent, and a return of irrigation NPP completion windows within sixteenth and Seventeenth-plan horizons. The framework requires no constitutional amendment and no significant new fiscal commitment, only a Cabinet-level decision that the cost of inaction now exceeds the cost of disciplined reform.

Keywords: National Pride Projects, public procurement reform, irrigation infrastructure, Nepal, project delivery, flexibility framework.

1. Introduction

The National Pride Project framework was institutionalized through the Budget Speech of fiscal year 2068/69, which designated strategically significant projects for prioritized financing, dedicated monitoring, and fast-tracked inter-agency clearance (MoF, 2011) [4]. Its intent was to extract a small set of transformational projects from the general failure mode of Nepal's public investment system by wrapping them in Cabinet-level political ownership, ring-fenced budgets, single-point accountability, and protection from the routine churn of project chiefs. The portfolio has since expanded to 24 projects spanning highways, airports, irrigation, hydropower, water supply, urban and cultural heritage, and conservation (NPC, 2023) [1]. Within this portfolio, the irrigation NPPs Sikta Irrigation Project, Bheri-Babai Diversion Multipurpose Project, Babai

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Irrigation Project, Rani-Jamara-Kulariya Irrigation Project, Sunkoshi-Marin Diversion Multipurpose Project and Mahakali Irrigation Project carry distinctive weight. They are not only infrastructure assets but direct instruments of food security, farm income, and Terai-belt poverty reduction in a country where agriculture still employs roughly two-thirds of the labour force (NPC, 2020; MoALD, 2022) [2][6].

Most NPPs remain under implementation; only Upper Tamakoshi Hydropower, Gautam Buddha International Airport, and Pokhara Regional International Airport have been formally commissioned (NPC, 2023) [1]. Successive Auditor General reports flag time overruns of 100-300 percent and cost overruns of 50-200 percent as systemic not exceptional features of the portfolio (OAG, 2022; OAG, 2023) [9][10].

Standard diagnoses of NPP delay cite a familiar list which are land, forest, funding, political interference, contractor capacity. All are real. But when project timelines are decomposed activity by activity, procurement-related steps consume the single largest share of avoidable delay (PPMO, 2022; World Bank, 2025) [11][20]. For irrigation NPPs this share is even higher, because civil works are typically packaged into large lots whose critical-path activities halt entirely whenever a procurement dispute is in progress.

This paper has diagnosed the procurement hurdles, gaps, and delay drivers specific to NPPs with deeper attention to the irrigation sector; draws on comparable international experience to identify the types of procurement flexibility that have proven credible and effective; and proposes a flexibility framework that accelerates NPP delivery without diluting the integrity safeguards the Public Procurement Act, 2063 was designed to provide.

2. The Procurement Pattern of National Pride Projects

There is no separate procurement regime for National Pride Projects in Nepal. NPPs are procured under the same legal framework, by the same institutional actors, through the same methods, and with the same approval thresholds as any routine federal capital project.

The World Bank's data show that contracts in its Nepal portfolio average 231 business days of government processing, the highest in South Asia, regardless of which external framework applies (World Bank, 2025) [20].

The Public Procurement Act, 2063 and Public Procurement Regulation, 2064 constitute the primary legal framework. The Act was drafted with three legitimate aims; competition, transparency, and integrity and is broadly aligned with the UNCITRAL Model Law on Public Procurement, although successive amendments have introduced divergences from the international standard. The PPR has been amended fourteen times since enactment, each amendment addressing a specific pain point, fast-track provisions, project deadline extensions, e-GP directives, and contract-termination modifications (World Bank, 2025) [20]. PPMO holds statutory authority under Sections 65 and 74A to issue consolidated procurement manuals and binding technical notes but has not, in practice, exercised it a point that becomes the legal anchor for the Directive proposed.

Four institutions hold decisive roles. The Public Procurement Monitoring Office (PPMO) is the central regulatory authority issuing procurement policy, operating the electronic Government Procurement (e-GP) system, and monitoring compliance. The line ministries holding NPPs (primarily MoEWRI, MoPIT) exercise procurement authority through Secretaries and Departmental Heads under the threshold structure in PPR Regulations 14, 67, and 81A. The project offices, headed by Project Directors, are the operational procuring entities, though their authority is narrowly bound. The National Planning Commission (NPC) holds overall portfolio responsibility through the National Project Bank and NPP monitoring reports (NPC, 2025) [3]. Three further institutions shape procurement from outside the chain: the Ministry of Finance through cash-flow control; the Office of the Auditor General through ex post audit; and the Commission for the Investigation of Abuse of Authority (CIAA) through integrity jurisdiction, whose chilling effect on procurement officers.

3. Procurement Hurdles, Gaps, and Drivers of Delay

National Pride Projects fail across a sequence from Detailed Project Report through tender award into contract administration. At each stage the PPA imposes process steps that are individually defensible on integrity grounds but cumulatively produce timelines incompatible with NPP scale and complexity.

3.1 Pre-tender Stage

Most NPP delays are conventionally booked against construction phases, but a substantial share is in fact pre-tender. Four gaps dominate:

- **Weak Detailed Project Reports:** the PPA presumes a technically sound, costed, clearance-ready design at tender; for irrigation NPPs this rarely holds. When DPRs are weak, every downstream procurement decision inherits weakness, and the contract becomes a vehicle for continuous redesign rather than execution.
- **Land acquisition and right-of-way:** the Land Acquisition Act, 2034 governs the process, and compensation disputes routinely delay site handover by one to three years on irrigation and highway NPPs (NPC, 2023; World Bank, 2025) [1][20]. Contractors mobilised on award letters then sit idle, generating standby and time extension claims.
- **Forest and environmental clearance:** tree cutting under the Forest Act and EIA clearance under the Environment Protection Act run sequentially through separate ministries; tree-cutting clearance alone typically takes 22 to 24 months (World Bank, 2025) [20]. Procurement timetables set without realistic allowance for these clearances are then blamed for delays that originated upstream.
- **Budget realism:** annual budget ceilings under the MTEF are frequently lower than the contractual cash flow requirement of ongoing NPP contracts (MoF, 2023) [5]. Contractors' slow execution to match the actual rate of payment, and the resulting under-spending is misread as contractor under-performance.

3.2 Tender stage

Once tendered, NPP procurements typically clear the PPA's procedural tests but fail its underlying purpose of securing a capable contractor at a realistic price within a reasonable time:

- **Long tender cycles:** on large ICB packages the elapsed time from publication to signature commonly reaches 9 to 14 months. The World Bank's analysis of its Nepal portfolio puts average government processing time at 231 business days, against a South Asia regional average of 192 (World Bank, 2025) [20].
- **The abnormally low bid problem:** PPA Section 25 mandates award to the lowest evaluated substantially responsive bid. In practice this has rewarded bidders who price aggressively below realistic cost, mobilize minimally, and then recover margin through variations and EOTs. SRCTIP data show winning bids 25 to 35 percent below the engineer's estimate across three ICB works contracts (World Bank, 2025) [20]. The PPA's ALB provision exists on paper but is rarely invoked because procuring entities fear procurement review proceedings.
- **Thin contractor pool:** the number of Nepali firms with the equipment, working capital, and technical staff for NPR 2 billion irrigation civil works is small; the same firms recur, and joint ventures formed primarily to satisfy qualification rather than to pool genuine capacity are a recurring audit finding (OAG, 2023) [10].
- **Re-tendering and procurement review:** when tenders are cancelled and re issued, six to nine months are typically lost (PPMO, 2022) [11]; the risk of a Section 48 review filing pushes project chiefs toward conservative decisions that prolong the process.

3.3 Contract management

Pre-tender weakness and tender-stage compliance theatre set up NPPs for trouble; the contract management stage is where that trouble materializes in cost and time:

- **Variation orders:** PPR Regulation 118 permits variations within defined limits, but on NPP irrigation contracts variations routinely arise from DPR errors rather than unforeseen site conditions, undermining the competitive basis of the original bid (OAG, 2022; OAG, 2023) [9][10].
- **Time extension and price adjustment:** EOT requests are filed almost as a matter of routine; the procuring entity faces a structural asymmetry refusing extension invites litigation, granting it carries no immediate cost. Price-adjustment indices under PPR Regulation 121 lag market reality, formulae are contested, and disputes are a major source of contractor cash-flow stress (PPMO, 2022) [11].
- **Payment delays:** even when work is certified, payments are delayed by Treasury Single Account constraints at fiscal year end and by audit objections held against running bills (OAG, 2023; World Bank, 2025) [10][20]. Capital spending in Quarter 4 has historically reached 30 to 69 percent of the year's capital expenditure (World Bank, 2025) [20].

- **Termination penalties:** PPA Section 59, as amended, makes contractors liable for the full outstanding contract amount (Only extra obligation of remaining cost on recent update of PPA) on termination, a provision the World Bank identifies as a serious deterrent to public sector contracting (World Bank, 2025) [20].

3.4 Cross cutting drivers and what the diagnosis implies

Four cross cutting drivers magnify each stage.

- Political and administrative interference narrows the space for engineering judgement on contractor selection, sub-contracting, and variations.
- Frequent transfer of project chiefs, average tenures well below two years under the standard Civil Service Act regime destroys the institutional memory that procurement decisions require.
- OAG and CIAA scrutiny, essential as integrity instruments, has produced a defensive culture in which procurement officers prefer the slow, fully documented decision to the timely one; the personal cost of an audit observation exceeds the personal cost of a year's project delay.
- e-GP coverage of complex NPP works remains uneven and is still primarily a bid-submission platform rather than an end-to-end contract-management platform (PPMO, 2022) [11].

Two implications follow directly and shape the reform framework. First, procurement reform for NPPs cannot be confined to the tender stage, the largest delay reservoirs are upstream (DPR quality, land, clearances) and downstream (variations, EOTs, payments); a reform that only tightens bid evaluation will move the bottleneck without dissolving it. Second, flexibility must be paired with capability, granting more discretion to a capability-constrained office is a recipe for audit risk, not faster delivery.

4. Analysis from Selected National Pride Projects; Irrigation Sector

The procurement-driven delay patterns identified above are abstract until pinned to specific projects, contracts, and decisions. This section sets four irrigation NPPs alongside one multipurpose NPP and reads the evidence procurement first. Table-01 provides a snapshot of the five cases.

Table-01: Snapshot of Selected National Pride Projects (Irrigation Sector)

Project	Original cost (NPR)	Revised cost (NPR)	Progress (Physical / Financial)	Principal procurement issue
Sikta (since 2062/63)	12.80 bn	52.89 bn	47.5% / 44.5%	Localised canal breach in dispersive soils; CIAA case filings paralysed wider decisions
Bheri-Babai (BBDMP, since 2068)	33.19 bn (initial)	Under revision	69% / 56%	Tunnel complete; Headworks, surface contractor slow progress on 6.89 bn HW/PH contract
Babai (since 2045/46)	Multi-stage	26.69 bn	78.7% / 64.3%	Sustained performer; Pending multiyear source assurance, overall project execution is too long
Mahakali Stage III	Multi-stage	Under revision	38% / 34.5%	Procurement is not the binding constraint bilateral and land tenure are issues
Sunkoshi Marin (SMDMP)	Original	Under revision	HW/PH terminated	Termination architecture broken; many legal cases pending

Sources: Sikta Irrigation Project, 2025 [14]; BBDMP, 2025 [15]; Babai Irrigation Project, 2025 [17]; Mahakali Irrigation Project, 2025 [18]; SMDMP, 2025 [19].

4.1 Sikta Irrigation Project

Sikta irrigation project is sanctioned in 2062/63 with an original cost of NPR 12.80 billion and command area of 42,766 hectares (33,766 Western and 9,000 Eastern), the revised estimate stands at NPR 52.89 billion as of fiscal year 2082/83 with its increasing scopes. After 19 fiscal years and cumulative expenditure of NPR 23.69 billion, financial progress is 44.50 percent and physical progress 47.5 percent, with irrigation actually delivered to roughly 22,500 hectares (Sikta Irrigation Project, 2025) [14].

Sikta's small portion of main canal was constructed in soils that technical reviews now characterize as dispersive soils (ghulanshil maato), a new and specific unexpected problem arises. A small segment of the canal experienced breaches in this zone after partial commissioning in 2071 BS. The breach itself was geographically limited and technically

addressable through targeted remedial work. What converted a localised problem into a portfolio-wide procurement paralysis was the institutional response. CIAA case filings on the breach event by all available technical assessments disproportionate to the scale of the defect placed multiple project officers, designers, and contractors under prolonged investigation, freezing decision-making across the project and chilling procurement initiative for years. No contract packages is issued over long period and some ongoing contracts have also gone disputed. The project faces new source-commitment files pending over long periods and the new procurement could not initiated. The opportunity cost of procurement delay is now larger than the original project cost itself.

4.2 Bheri-Babai Diversion Multipurpose Project

Bheri-Babai contains Nepal's most celebrated infrastructure success; a 12.2 km headrace tunnel completed with a tunnel-boring machine alongside a contract-administration breakdown on the surface works that has neutralised much of that success. As of now the tunnel 100 percent physical, civil works 42 percent, hydromechanical 55 percent, electromechanical 58 percent, transmission line 5 percent; overall 69 percent physical and 56 percent financial progress (BBDMP, 2025) [15].

The procurement-specific failure lies in the headworks-and-powerhouse contract with an original four-year duration and four subsequent extensions cumulating 894 days. The project office's diagnosis is unusually candid: the contractor's technical, managerial, and financial capacity has proven weak; the joint-venture partner has not effectively come on site; the contractor has fallen into financial distress to the point of failing to deliver four to five crore worth of rebar on time, delaying powerhouse raft concreting, missing insurance premium payments, and losing workers and staff to unpaid wages (BBDMP, 2025) [15]. Two further failures compound the contractor problem: the consultant failed to deliver the Major structure (Trunnion Block) design and powerhouse detailed design on time, giving the contractor a legitimate basis for repeated EOT claims; and the consultant's contract has now expired. The procurement question facing the project office is whether to retain the contractor or terminate under clause 15.2 and re-procure and the PPA offers no clean path between these two options.

4.3 Rani-Jamara-Kulariya Irrigation Project

Rani-Jamara-Kulariya (RJK) is the donor-financed comparator that sharpens the diagnosis. Included in the original NPP list of fiscal year 2068/69, RJK is one of the few NPPs designed not as a greenfield system but as modernisation of an existing farmer-managed irrigation system in Kailali district. Two findings carry into the reform agenda. First, the Bank's business-process analysis of its 19 largest active contracts in Nepal which includes MRJKIS2 shows the Government of Nepal averages 231 business days per contract against a regional average of 192 (World Bank, 2025) [20]; within this, consulting contracts averaged 89 days of delay (with the Bidder Shortlist and Request-for-Proposals stage driving 100 days of slippage) and works contracts averaged 110 days of delay (concentrated in pre-qualification evaluation and bidding-document drafting). These are not stories about contractor capacity, land, or forest, they are

stories about the procuring entity's own internal process on a project where the Bank's framework and prior review process already applies.

4.4 Babai Irrigation Project

Babai is the irrigation NPP closest to completion and the most useful counter-case. Started 2045/46, revised completion target 2085/86, master-plan cost NPR 26.69 billion, cumulative financial progress 64.26 percent, physical progress 78.74 percent, NPR 17.15 billion spent. Current-year (2082/83) annual physical progress is 74 percent against an annual allocation of NPR 1.83 billion (Babai Irrigation Project, 2025) [17]. Babai currently has large number of NCB packages totalling NPR 4.08 billion before the Source Committee at the Ministry of Finance and NPC; pending multi-year source assurance for these packages, the project office is unable to issue notices to bid. The speed with which this portfolio moves through the Source Committee, and downstream through the PPR's Section 14/67/81A approval architecture, will determine whether the 2085/86 completion target holds.

4.5 Mahakali Stage III

Mahakali Stage III is the boundary case: current-year physical and financial progress 38 percent and 34.46 percent (excluding land), with fiscal year-end projection of 99 percent. By the project office's own analysis, the binding constraints are upstream and inter-state: Krishnapur-1 residents are refusing compensation and physically obstructing canal excavation; Cabinet-level policy decisions are pending on Ailani land already in use as canal alignment for 20 years and on land allocated to freed Kamaiya; the bilateral treaty provision for water from Tanakpur Barrage and for canal works in Chandani Dodhara remains unimplemented on the Indian side (Mahakali Irrigation Project, 2025) [18]. The case demonstrates that even a perfect procurement regime cannot accelerate a project whose binding constraint sits outside the procurement law.

4.6 Sunkoshi Marin Diversion

Sunkoshi Marin is the cleanest contract-termination case in the current portfolio. The project submitted a termination file, and the Department of Water Resources and Irrigation terminated the headworks-and-powerhouse contract under clause 15.2, recommending for blacklisting the contractor (SMDMP, 2025) [19]. The aftermath illustrates precisely why the PPA's termination architecture is broken in practice: the project is facing close to a dozen pending legal cases; the Advance Payment Guarantee and Performance Bond bank guarantees have not been encased; the contractor's equipment and materials remain at site with no clear legal pathway for disposition; forcing a fresh source-commitment and multi-year contract approval and re-tendering after contract termination. A specialized tribunal for development-project disputes, banking-sector enforcement of guarantees, an explicit re-tendering provision in the PPA, JV-partner proportional liability through APG and Performance Bond, and explicit fast-track facilitation is the urgent need for NPPs.

4.7 Common patterns

Some common patterns recur across all five cases and map directly to the reform framework:

- **System response to localised problems is the dominant source of delay:** Sikta's stagnation following CIAA case-filings, the chilling effect documented across the irrigation portfolio, and the defensive layered-approval culture this has produced show that the institutional and oversight response to localised problems is itself a source of sector-wide paralysis.
- **Source assurance is the principal procurement bottleneck on ready projects:** Babai and RJK each have NPR 2 to 4 billion in major procurement packages held up because multi-year source assurance from MoF and NPC has not been issued. The single largest constraint on otherwise sound, ready-to-tender projects is the absence of credible multi-year financial commitment.
- **Contractor capacity and time extension have become routine:** Bheri-Babai's four cumulative EOTs (370+364+230+30 days) and slow concreting are the norm rather than the exception; pre-qualification and contract-administration weaknesses, not procurement-process failures, drive contractor under-performance.
- **Termination is legally and operationally unworkable:** the Sunkoshi Marin aftermath shows the current regime forces projects to choose between continuing with non-performing contractors well past the point of rational tolerance, or terminating and absorbing years of legal and re-tendering delay.
- **The procurement system is uniform regardless of project scale:** Babai's and Sikta's large number of procurement packages, and donor-financed RJK all move through the same Section 14/67/81A architecture as a routine tender, at South Asia's slowest pace (World Bank, 2025) [20].
- **No Specific privilege to NPP on Legal and procedural easements, budgetary priorities and no fast-track provision on Environmental and land acquisition process.**

5. Lessons from International Practice

Nepal is not the first country to discover that a single uniform procurement law cannot deliver strategic mega-projects at strategic speed. India, Bhutan, and the multilateral development banks have each evolved different architectures to handle the tension between integrity and speed.

5.1 India: coordination architecture above the procurement law

India has not significantly amended its procurement law to deliver its mega-project agenda; instead, it has built a coordination architecture above the law. Three institutional pieces matter. The Project Monitoring Group (PMG), established in 2013 under the Cabinet Secretariat and moved to the Prime Minister's Office in 2015, now operates as the Project Monitoring–Invest India Cell (PMIC). It handles projects of Rs 500 crore and above through a five-tier escalation framework lifting unresolved issues to the PRAGATI platform of the Prime Minister; as of early 2026 it has considered 1,038 projects with anticipated investment of Rs 30.5 lakh crore and

resolved issues in 615 (PIB, 2026; Invest India, 2024). The lesson for Nepal is direct: India did not solve mega-project delay by rewriting its procurement law; it built a single-window coordination platform above the law, with political ownership at the apex.

5.2 Bhutan: strategic carve-out via intergovernmental agreement

Bhutan's hydropower programme is the cleanest example in the region of a carve-out from the general procurement regime for strategic projects. The Agreement on Cooperation in the Field of Hydroelectric Power (2006) and the Framework Inter-Governmental Agreement (April 2014) established a model that bypasses competitive bidding in its conventional form (Royal Bhutanese Embassy, 2024; MEA-GoI, 2014). Projects are executed either as intergovernmental projects financed through a grant-loan mix or as joint ventures between Bhutan's Druk Green Power Corporation and Indian public-sector undertakings. The model has visible successes and visible failures, with Punatsangchhu-I delayed over a decade and cost overruns reportedly above USD 1 billion (Dialogue Earth, 2023; MP-IDSA, 2025). The lesson is not that competitive bidding should be abandoned, but that for projects of unique strategic scale the law itself can be structured to permit a different procurement basis under explicit, named conditions with integrity safeguards built into the framework.

5.3 Multilateral practice: Alternative Procurement Arrangements

The World Bank's 2016 Procurement Framework introduced Alternative Procurement Arrangements (APA), allowing borrowers to use the rules of another multilateral, a national agency, or a co-financier where the Bank assesses them as fit-for-purpose (World Bank, 2016) [21]. ADB's 2017 Procurement Policy moved in parallel (ADB, 2017) [23]. Both frameworks support Competitive Dialogue for complex contracts and Best and Final Offer procedures, and both are moving away from automatic lowest-bid award toward Merit Point Criteria evaluation (World Bank, 2025) [20]. Two elements are particularly relevant to Nepal. Rated-criteria evaluation addresses the abnormally low bid problem documented at SRCTIP and across the irrigation portfolio. APA-style flexibility allows the procurement regime to be calibrated to project risk and complexity rather than applied identically across project types, the opposite of what the PPA currently does.

5.4 Lessons transferable to Nepal

Four lessons map directly onto Section 6's reform agenda:

- **Separate the coordination problem from the procurement problem:** much of what is blamed on procurement delay in Nepal is in fact upstream inter-agency delay, resolvable by a coordination platform with political ownership without amending the PPA.
- **Legalise a carve-out rather than legalise a workaround:** Nepal currently neither carves out NPPs from the PPA nor effectively applies the PPA to them, it muddles through with ordinances; a clean NPP Procurement Directive would replace the muddle with a defensible architecture.

- **Modernise the bid evaluation method:** Nepal should adopt rated criteria for NPP works above a defined threshold and amend the PPR to explicitly empower ALB rejection.
- **Match the procurement regime to project complexity:** APA-style flexibility, two-stage bidding, and EPC/design-build are well-established for projects whose technical solutions cannot be fully specified upfront.

6. A Proposed Flexibility Framework for National Pride Projects

Nepal does not need to abandon the Public Procurement Act, 2063, but it does need to release National Pride Projects from a procurement architecture designed for routine government purchase. This section sets out a calibrated flexibility framework intended to accelerate NPP delivery while preserving and in some respects strengthening the integrity safeguards the PPA was designed to provide.

6.1 Legal foundation: a dedicated NPP Procurement Directive

The framework's legal foundation is a dedicated National Pride Project Procurement Directive issued by Government of Nepal under the existing authority of PPA Sections 65 and 74A (Government of Nepal, 2007a) [12]. The Directive would operate as binding subsidiary law for the named class of NPP projects, leaving the PPA itself unchanged, a reformist rather than radical posture, avoiding the protracted legislative process a separate NPP Procurement Act would require, while creating a defensible legal instrument that procuring entities can cite when audited. At minimum, the Directive should define an NPP project for procurement purposes anchored in the Cabinet designation; specify the procurement methods available; set raised approval thresholds for cost estimates, bid acceptance, and variation orders; establish the Project Procurement Committee and the safe-harbour protections; and sunset after five years unless renewed by Cabinet on the basis of an independent performance review.

6.2 Procedural flexibility

The Directive should offer a menu of procurement methods with the choice anchored in a documented project-readiness review at appraisal stage. For complex works where technical solutions cannot be fully specified upfront two-stage bidding and competitive dialogue should be the default. For integrated mega-packages where design and construction are inseparable, EPC/design-build contracting should be available. For repetitive small-to-medium works of similar specification, framework agreements with multiple pre-qualified contractors should authorise call-off contracts without re-tendering each package; this single innovation may be the largest time gain available in the irrigation sub-portfolio.

On evaluation, the Directive should mandate rated-criteria (merit point) evaluation for NPP works contracts above a defined threshold, a credible starting point being NPR 1 billion. It should give procuring entities explicit authority, with a defined methodology, to reject abnormally low bids where the bid price falls below a defined percentage of the engineer's estimate without satisfactory justification (World Bank, 2025) [20].

6.3 Institutional flexibility

The most important institutional reform proposed in this paper does not amend the PPA at all: the establishment of a National Pride Project Implementation Group at the Prime Minister's Office or under NPC. The Group's mandate is inter-agency coordination for NPPs- forest, land, environmental, bilateral water-treaty implementation, electricity and right-of-way with a defined escalation track lifting unresolved issues to the Cabinet Secretariat and the Prime Minister. The Mahakali Stage III evidence is decisive: a procurement regime, however well-designed, cannot resolve issues whose binding constraint sits outside the procurement law.

At project level, the Directive should establish an empowered Project Director with a CEO-equivalent role, fixed performance-based tenure of four to five years insulated from routine Civil Service Act transfer, chairing a Project Procurement Committee with delegated authority over cost estimates, bid acceptance, and variation orders up to defined thresholds. A credible benchmark is delegated authority up to 25 percent of original contract value at Project Director level. A single-window clearance mechanism should be operationalised within the Implementation Group for forest, environmental, and land approvals, the 22-to-24-month forest-clearance and 24-to-36-month land-acquisition timelines are products of sequential ministry-by-ministry processing that a single window can compress substantially without amending any of the constituent laws.

6.4 Financial, digital, and transparency safeguards

Four financial reforms convert the procurement reforms into actual delivery. First, multi-year source commitments aligned with the Master Plan should replace the current requirement that NPP project offices obtain Source Committee approval for each successive contract visible in Sikta's NPR 5.23 billion pending request and Sunkoshi Marin's post-termination re-tendering with automatic year-on-year drawdown subject only to physical-progress milestones. Second, NPP allocations should be ring-fenced from mid-year virement to non-NPP heads. Third, variation thresholds should be raised and a 21-day decision clock with deemed approval applied at each level. Fourth, NPP contractor payments certified on running bills should clear within a defined window under TSA priority, addressing the end-of-fiscal-year payment-bunching pattern documented across the portfolio (World Bank, 2025) [20].

Three digital and integrity safeguards complete the framework. End-to-end e-GP for all NPP contracts must move beyond bid submission to cover variations, EOTs, payment certificates, and dispute records on a single digital trail. A public NPP Dashboard drawing real-time data from e-GP, NPB MIS, and LMBIS should expose financial and physical progress, contract status, and variation history at project level. Pre-tender readiness should be transformed by mandating different methods for tree census, environmental baseline, and land-acquisition support on all NPPs, building on the precedent operating at Rani-Jamara-Kulariya, with the MoFE business process amended in parallel to accept digital census outputs. An annual independent third-party procurement audit, published, should substitute for routine ex-post objection-by-objection auditing where the third-party audit clears the project. A specialised infrastructure dispute

tribunal on the basis of close to a dozen pending legal cases would resolve contract disputes within a defined timeline and prevent project paralysis during litigation.

7. Effectiveness and Implementation Roadmap

7.1 Expected gains

Expected gains are concentrated in four areas, each tied to a specific reform element. Procurement cycle time, currently 231 business days per contract (the highest in South Asia against a regional average of 192), is realistically reducible toward 150 business days for NPP works contracts by fiscal year 2085/86 through raised thresholds, parallel rather than sequential internal review, the 21-day decision clock with deemed approval, and end-to-end e-GP for contract management. Cost overrun ranges on new procurements are compressible from the current 50–200 percent toward 20–40 percent through rated-criteria evaluation, ALB rejection authority, and project-readiness review at appraisal. Table-02 sets out the operational implications stage by stage.

Table-02: Procurement Timeline: Current vs. Proposed

Stage / Activity	Current (days)	Proposed (days)	Reform driver
Pre-tender: DPR finalisation	180–360	120–180	Project-readiness review at NPB entry; mandatory geotechnical investigation
Pre-tender: Land acquisition	600–900	270–450	Single-window clearance under NPP Implementation Group
Pre-tender: Forest / tree-cutting	660–720	240–330	LiDAR census; digitised MoFE business process
Tender: Full cycle (publication → award)	231 (avg)	150 (target)	Standard templates; rated criteria; 21-day decision clock; raised PD thresholds
Contract Management: VO up to 25%	60–120	≤21	Raised PD threshold; deemed approval after 21 days
Contract Management: Running bill payment	30–90+	≤21	TSA NPP priority

Source: derived from PPMO, 2022 [11] and World Bank, 2025 [20]. Figures are indicative working targets.

7.2 Implementation sequence: short, medium, and long-term

The reform package cannot be implemented all at once. The proposed sequence is built around three principles: executive actions first to demonstrate political seriousness, regulatory actions

next as the Directive consolidates, and institutional and legal reforms last where they require Parliamentary engagement or sustained capacity-building.

Short-term (0–6 months): executive and administrative. Cabinet issues the NPP Directive under PPA Section 74A authority; PMO or NPC establishes the NPP Implementation Group with five-tier escalation; PPMO publishes the rated-criteria methodology, the ALB definition, and the standard NPP procurement workflow, EOTs, and payment certificates; the NPP Dashboard launches in beta; the 21-day decision clock with deemed approval becomes effective for NPP variations at and below the Project Director threshold. No legislative amendment required.

Medium-term (6–24 months): regulatory consolidation. Cabinet amends the PPR through delegated legislation to formalise the raised approval thresholds, ALB rejection authority, and framework-agreement procedure; single-window clearance becomes operational with MoFE accepting LiDAR-based tree census; the Project Director capability standard is published and the first cohort certified; the NPP Dashboard moves to full operational status; multi-year source commitments replace successive-year approvals for ongoing NPP contracts.

Long-term (2–5 years): institutional and legal. The Public Procurement Act and regulations itself is amended (its fifteenth amendment) to consolidate the gains, particularly the ALB authority, and reverting Section 59 contract-termination liability to the original incremental cost basis (World Bank, 2025) [20]; the specialised infrastructure dispute tribunal is established by legislation; Civil Service Act provisions are to be amended to provide explicit protection for the four-year fixed Project Director tenure; the Directive is reviewed at the five-year mark and either renewed or absorbed into the consolidated PPA. Across all three horizons, capability investment runs in parallel — PPMO-led training for Project Directors and procurement officers, MoFE digital business-process rollout, and OAG capacity-building for the new third-party audit architecture.

8. Conclusion

National Pride Projects were created in fiscal year 2068/69 to extract a small set of transformational projects from the general failure mode of Nepal's public investment system. Fifteen years later, the portfolio has not been extracted. This paper has argued that procurement is the binding constraint on this failure, and that procurement reform anchored in a calibrated flexibility framework is the highest-leverage entry point available. The evidence from the irrigation sub-sector is decisive.

The Public Procurement Act, 2063 is not the enemy of NPP delivery. It is the wrong instrument for NPP delivery, designed for routine government purchase, applied to projects of strategic scale and technical complexity for which it was never calibrated. The flexibility framework proposed is anchored in a dedicated NPP Procurement Directive under PPA Section 74A authority, supported by an NPP Implementation Group above the procurement law, sequenced through executive, regulatory, and legal phases over five years, and accountable through a public dashboard.

One condition determines whether any of this happens: political ownership at the Council of Ministers and the Prime Minister's Office. The cost of inaction would increase the opportunity cost of continued delay is in the order of magnitude of the original cost of the projects themselves. Procurement reform, anchored in a calibrated flexibility framework, is one of the few reforms available to Nepal that requires no constitutional amendment, no significant new fiscal commitment, and no international negotiation. It requires only that the Council of Ministers decide that the cost of inaction now exceeds the cost of disciplined reform.

9. Recommendations

The following Eight actions translate the framework into immediate decisions. They are sequenced by urgency and by the political authority required for each step.

1. Issue the National Pride Project Procurement Directive under PPA Sections 65 and 74A authority within six months, naming the projects covered and setting raised approval thresholds, the 21-day decision clock with deemed approval, and the safe-harbour clause for good-faith procurement decisions.
2. Establish a National Pride Project Implementation Group at the Prime Minister's Office or under the National Planning Commission, modelled on India's Project Monitoring Group, with a five-tier escalation framework lifting unresolved inter-agency issues to Cabinet level.
3. Mandate rated-criteria (merit point) evaluation for NPP works contracts above NPR 1 billion, and amend the PPR to give procuring entities explicit authority to reject abnormally low bids below a defined percentage of the engineer's estimate.
4. Operationalise two-stage bidding and framework agreements as the default procurement methods for complex works.
5. Establish the empowered Project Director role with a four-to-five-year fixed performance-based tenure insulated from routine Civil Service transfer, supported by a published capability standard administered by PPMO.
6. Operationalise single-window clearance for forest, environmental, and land approvals within the NPP Implementation Group, with the MoFE business process.
7. Replace successive-year source-commitment approvals with multi-year source commitments aligned with the Master Plan; ring-fence the NPP capital envelope from mid-year virement; and apply Treasury Single Account priority to NPP contractor payments.
8. Establish a specialised infrastructure dispute tribunal with statutory timelines; revert PPA Section 59 contract-termination liability to the original incremental-cost basis; and replace routine ex-post procurement objections with an annual independent third-party procurement audit.

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नेपालको सार्वजनिक खरिदमा प्रतितपत्र (Letter of Credit) को व्यवस्था, अभ्यास र समसामयिक सवालहरू



राम बहादुर बस्नेत^९

१. पृष्ठभूमि तथा अवधारणात्मक स्पष्टता

सार्वजनिक खरिद (Public Procurement) भन्नाले सरकारी कोषको उपयोग गरी सार्वजनिक निकायले वस्तु, निर्माण कार्य वा सेवा प्राप्त गर्ने विधिसम्मत र कानुनी प्रक्रियालाई जनाउँछ। विश्वव्यापीकरण र अन्तर्राष्ट्रिय व्यापारको द्रुत विस्तारसँगै नेपालका सार्वजनिक निकायहरूले पनि ठूला मेसिनरी, उपकरण, रासायनिक मल, प्रविधि, जलविद्युतका टर्बाइन, र निर्माण सामग्रीहरू अन्तर्राष्ट्रिय बजारबाट खरिद गर्नुपर्ने आवश्यकता रहँदै आएको छ। यही आवश्यकतालाई मध्यनजर गर्दै सार्वजनिक खरिद ऐन, २०६३ को दफा ८ को उपदफा (१) को खण्ड (क) को उपखण्ड (१) ले तोकेका खरिदका विभिन्न विधिहरू मध्ये अन्तराष्ट्रिय स्तरको बोलपत्र मार्फत खरिद समेत एक रहेको छ। सोहि ऐनको दफा १५ ले अन्तराष्ट्रिय स्तरको बोलपत्र आह्वान गर्न सकिने अवस्थाहरूसमेत तोकेको छ। निर्माण कार्यको खरिदमा ५ अर्ब रुपैयाँसम्मको लागत अनुमान भएको निर्माण कार्यको खरिदमा राष्ट्रिय स्तरको खुला बोलपत्रको माध्यमबाट स्वदेशी बोलपत्रदाताहरूबीच मात्र प्रतिस्पर्धा गराइ खरिद गर्नुपर्ने व्यवस्था रहेको छ भने मालसामानको खरिदमा त्यस्तो कुनै रकमको सिमा तोकिएको छैन। ऐनको दफा १५ मा तोकिएबमोजिमको अवस्थामा जतिसुकै रकमको पनि अन्तराष्ट्रिय स्तरको बोलपत्रको माध्यमबाट खरिद गर्न सकिने व्यवस्था रहेको छ।

यसरी अन्तराष्ट्रिय स्तरको बोलपत्र मार्फत कुनै पनि मालसामान खरिद गर्दा दुई फरक देशका खरिदकर्ता (सार्वजनिक निकाय) र बिक्रेता (विदेशी आपूर्तिकर्ता) बीच व्यापार हुँदा कानुनी प्रणाली, मुद्राको भिन्नता, र भौगोलिक दुरीका कारण भुक्तानी र सामान प्राप्तिको जोखिम अत्यन्त उच्च हुन्छ। एकातिर विदेशी आपूर्तिकर्तालाई सामान पठाएपछि नेपाल सरकारले भुक्तानी दिने हो वा होइन भन्ने अविश्वास रहन्छ भने, अर्कोतिर सार्वजनिक निकायलाई अग्रिम भुक्तानी पठाउँदा सामान नआउने वा कमसल सामान आउने जोखिम रहन्छ। यही जोखिमलाई न्यूनीकरण गर्न र अन्तर्राष्ट्रिय व्यापारलाई सुरक्षित बनाउन प्रयोग हुने सबैभन्दा

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भरपर्दो र विश्वव्यापी रूपमा स्वीकृत वित्तीय औजार 'प्रतिपत्र' अर्थात् लेटर अफ क्रेडिट (Letter of Credit - LC) हो।

सार्वजनिक खरिदमा प्रतिपत्रको प्रयोग केवल भुक्तानीको एक साधारण माध्यम मात्र नभई यो अन्तराष्ट्रिय स्तरको बोलपत्रमा प्रतिस्पर्धा प्रवर्धन गर्ने आधार तथा, खरिद सम्झौता कार्यान्वयनको जग समेत हो भन्न सकिन्छ। त्यसैले यो, सार्वजनिक खरिद ऐन, सार्वजनिक खरिद नियमावली, अन्तराष्ट्रिय व्यापारिक सर्तहरू (Incoterms), नेपालको विदेशि विनिमय सम्बन्धि कानून कर कानून, नेपाल राष्ट्र बैङ्कको एकीकृत निर्देशन द्वारा निर्देशित एक जटिल कानुनी तथा वित्तीय प्रक्रिया हो। यस आलेखमा नेपालको सार्वजनिक खरिदमा प्रतिपत्रको परिचय, यसको अन्तर्निहित कार्यप्रणाली, कानुनी तथा नीतिगत व्यवस्था, नमुना बोलपत्र सम्बन्धी कागजात (Standard Bidding Document) मा यसको व्यवस्था, कार्यालयले ध्यान दिनुपर्ने प्राविधिक विषयहरूको विश्लेषण गर्ने प्रयास गरिएको छ।

२. प्रतिपत्र (Letter of Credit) को परिचय र कार्यप्रणाली

२.१ प्रतिपत्र भनेको के हो?

प्रतिपत्र (LC) खरिदकर्ता (आयातकर्ता) को अनुरोधमा बैङ्क (Issuing Bank) ले बिक्रेता (निर्यातकर्ता वा लाभग्राही) को नाममा जारी गर्ने एउटा यस्तो कानुनी र लिखित ग्यारेन्टी हो, जसमा तोकिएका सर्तहरू र कागजातहरू (जस्तै: चलानी बिल, बीजक, उत्पत्तिको प्रमाणपत्र, गुणस्तर प्रमाणपत्र आदि) पेस गरेपछि बैङ्कले बिक्रेतालाई निश्चित रकम भुक्तानी गर्ने सुनिश्चितता प्रदान गर्दछ^५। यदि खरिदकर्ताले कुनै कारणवश भुक्तानी गर्न नसकेमा वा नचाहेमा पनि, सर्त बमोजिमका सम्पूर्ण कागजातहरू पेस भएको अवस्थामा भुक्तानी गर्ने सम्पूर्ण दायित्व जारीकर्ता बैङ्कको हुन्छ। यो व्यवस्थाले विदेशी बिक्रेतालाई भुक्तानीको शतप्रतिशत सुनिश्चितता दिन्छ भने खरिदकर्तालाई सामान ढुवानी भएको आधिकारिक प्रमाण (कागजात) प्राप्त नभएसम्म राज्यको कोषबाट रकम नजाने सुरक्षा प्रदान गर्दछ।

अन्तराष्ट्रिय व्यापार र प्रतिपत्रको सञ्चालन अन्तराष्ट्रिय चेम्बर अफ कमर्स (ICC) द्वारा जारी गरिएको 'युनिफर्म कस्टम्स एन्ड प्रक्टिस फर डकुमेन्टरी क्रेडिट्स' (Uniform Customs and Practice for Documentary Credits - UCP 600) को नियम अनुसार हुन्छ। UCP 600 को सबैभन्दा महत्त्वपूर्ण र आधारभूत सिद्धान्त भनेको "डकुमेन्टरी अटोनामी" (Documentary Autonomy) हो। यसको अर्थ बैङ्कहरूले केवल 'कागजात' (Documents) को शुद्धता र सर्तको आधारमा कारोबार गर्छन्, ती कागजातले प्रतिनिधित्व गर्ने 'सामान' (Physical Goods) वा सेवाको भौतिक अवस्थाको आधारमा होइन। यो सिद्धान्तले अन्तराष्ट्रिय व्यापारलाई छिटो र छरितो त बनाउँछ।

२.२ प्रतितपत्रमा संलग्न प्रमुख पक्षहरू

प्रतितपत्रको चक्र एक बहुपक्षीय सम्झौता हो, जसमा सामान्यतया निम्न पक्षहरू संलग्न हुन्छन्:

पक्ष (Party)	अन्तर्राष्ट्रिय व्यापारमा भूमिका र जिम्मेवारी
आवेदक (Applicant)	मालसामान खरिदकर्ता वा आयातकर्ता (जस्तै: नेपालको कुनै सरकारी कार्यालय वा मन्त्रालय), जसले विदेशी मुद्रामा प्रतितपत्र खोल्न आफ्नो वाणिज्य बैङ्कमा औपचारिक निवेदन दिन्छ।
लाभग्राही (Beneficiary)	मालसामान बिक्रेता वा निर्यातकर्ता (विदेशी आपूर्तिकर्ता), जसको नाममा प्रतितपत्र जारी हुन्छ र जसले सतर्त बमोजिम सामान पठाएर भुक्तानी प्राप्त गर्दछ।
जारीकर्ता बैङ्क (Issuing Bank)	आवेदकको अनुरोध र जमानतमा प्रतितपत्र जारी गर्ने र कागजात मिलेको अवस्थामा भुक्तानीको अन्तिम ग्यारेन्टी लिने बैङ्क (नेपालस्थित 'क' वर्गको वाणिज्य बैङ्क)।
सल्लाह दिने बैङ्क (Advising Bank)	बिक्रेताको देशमा रहेको बैङ्क, जसले जारीकर्ता बैङ्कबाट प्राप्त प्रतितपत्रको आधिकारिकता प्रमाणित गरी बिक्रेतालाई सोको जानकारी (Advice) दिन्छ।

२.३ प्रतितपत्रको कार्यप्रणाली (Working Mechanism)

सार्वजनिक खरिदमा प्रतितपत्रले एक निश्चित र शृंखलाबद्ध चरणहरूमा काम गर्दछ। यी चरणहरूले कानुनी सम्झौतादेखि लिएर भन्सार विन्दुसम्मको यात्रा तय गर्दछन्:

प्रथम चरणमा, खरिदकर्ता (सरकारी कार्यालय) र विदेशी आपूर्तिकर्ताबीच सार्वजनिक खरिद कानून बमोजिम मालसामान खरिदको सम्झौता (Contract) हुन्छ। उक्त सम्झौतामा भुक्तानीको माध्यम 'प्रतितपत्र' हुने स्पष्ट उल्लेख गरिन्छ।

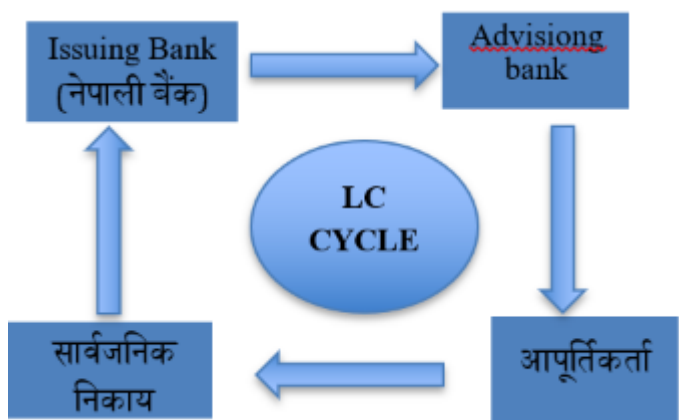
द्वितीय चरणमा, कार्यालयले आवश्यक कागजात, खरिद सम्झौता, प्रोफोर्मा इन्भ्वाइस (Proforma Invoice) र बजेट सुनिश्चिततासहित नेपालको कुनै वाणिज्य बैङ्कमा LC खोल्न निवेदन दिन्छ। बैङ्कले आफ्नो कर्जा नीति र नेपाल राष्ट्र बैङ्कको नियमअनुसार LC जारी गरी अन्तर्राष्ट्रिय सञ्चार प्रणाली (SWIFT) मार्फत विदेशी **Advising Bank** लाई पठाउँछ।

तृतीय चरणमा, LC प्राप्त गरेपछि आपूर्तिकर्ताले तोकिएको समयभित्र सम्झौता बमोजिमको सामान ढुवानी (Shipment) गर्दछ।

चौथो चरणमा, आपूर्तिकर्ताले ढुवानीको प्रमाण जस्तै: बिल अफ ल्याडिङ (Bill of Lading), एयरवे बिल (Airway Bill), कमर्सियल इन्भ्वाइस (Commercial Invoice), उत्पत्तिको प्रमाणपत्र (Certificate of Origin), र गुणस्तर परीक्षण प्रतिवेदन आफ्नो बैङ्कमा पेस गर्छ। यो बैङ्क आपूर्तिकर्ताको नियमित कारोबार गर्ने बैङ्क हो भने Advising Bank र Confirming Bank एउटै हुन्छ।

पाँचौं चरणमा, बैङ्कले UCP 600 को प्रावधान र LC को सर्तअनुसार प्राप्त कागजातहरूको सुक्ष्म परीक्षण (Document Examination) गर्छ। कागजातहरू सर्त अनुरूप (Compliant) भएमा आपूर्तिकर्तालाई भुक्तानी गरिन्छ र ती कागजातहरू नेपालको जारीकर्ता बैङ्कमा पठाइन्छ।

अन्तिम चरणमा, नेपालको बैङ्कले खरिदकर्ता कार्यालयलाई कागजात हस्तान्तरण गर्छ। सरकारी कार्यालयले ती कागजात (जस्तै: वि.वि.नि.फा.-४ फारम) को आधारमा भन्सार कार्यालयबाट मालसामानको जाँचपास गराई (Customs Clearance) सामान आफ्नो जिम्मामा लिन्छ।



२.४ प्रतितपत्रका प्रकारहरू

प्रतितपत्रको आधारभुत अवधारणा बुझ्नेपछी अब यसका आधारभुत प्रकार र नेपालको सार्वजनिक खरिदमा प्रयोग हुने प्रकार बारेमा बुझ्न जरुरी छ। खरिद गरिने सामानको प्रकार, र आपूर्तिकर्तासँगको सम्झौताको सर्त अनुसार विभिन्न प्रकारका प्रतितपत्रहरू प्रयोगमा आउँछन्:

प्रतितपत्रको प्रकार (Type of LC)	विशेषता र प्रयोगको अवस्था
Sight LC	आपूर्तिकर्ताले सही कागजात पेस गर्नासाथ (सामान्यतया ५ कार्यदिन भित्र) तत्काल भुक्तानी हुने प्रतितपत्र। सार्वजनिक खरिदमा यो सर्वाधिक प्रयोग हुन्छ।

Usance/Deferred LC	कागजात पेस गरेपछि पनि भविष्यको निश्चित मितिमा मात्र (जस्तै: ३०, ६० वा ९० दिनपछि) भुक्तानी हुने। यसले खरिदकर्तालाई तरलता व्यवस्थापन गर्न समय दिन्छ।
Confirmed LC	जारीकर्ता बैङ्कको अतिरिक्त अर्को अन्तर्राष्ट्रिय बैङ्कले पनि भुक्तानीको ग्यारेन्टी लिएको अवस्था। नेपालको कन्ट्री रिस्क (Country Risk) का कारण विदेशी सप्लायरले यो प्रायः माग गर्छन्।
Standby LC	यो भुक्तानीको प्राथमिक माध्यम नभई, ग्यारेन्टीको रूपमा काम गर्छ। सम्झौता अनुसार काम नभएमा मात्र यसको दाबी (Claim) गरिन्छ।

३. नेपालको सार्वजनिक खरिद कानुनमा प्रतितपत्रको व्यवस्था

नेपालको सार्वजनिक खरिद ऐन, २०६३ र सार्वजनिक खरिद नियमावली, २०६४ ले भुक्तानीको माध्यमका रूपमा प्रतितपत्रलाई स्पष्ट कानुनी मान्यता र मार्गदर्शन प्रदान गरेका छन्।

३.१ सार्वजनिक खरिद ऐन, २०६३ को व्यवस्था

ऐनको दफा ५२ ले खरिद सम्झौता र त्यसमा उल्लेख हुनुपर्ने सर्तहरूको बृहत व्यवस्था गरेको छ। दफा ५२ को उपदफा (२) को खण्ड (ज) अनुसार खरिद सम्झौतामा "विदेशी मुद्राको भुक्तानी लगायत भुक्तानीको शर्त र तरीका" (Mode of Payment) स्पष्ट रूपमा उल्लेख हुनुपर्दछ। अन्तर्राष्ट्रिय स्तरको खुला बोलपत्र (ICB) को हकमा यही कानुनी धरातलमा टेकेर भुक्तानीको तरिकाका रूपमा 'प्रतितपत्र' लाई स्थापित गरिएको हो।

ऐनको दफा ४१ मा व्यवस्था गरे बमोजिम अन्तराष्ट्रिय अन्तर सरकारी संस्थासँग सो संस्थाले तोकेको दररेटमा मालसामान वा सेवा खरिद गर्नुपरेमा वा विशेष परिस्थितिमा स्वदेशमा सामान उपलब्ध नभएमा विदेशबाट सोझै खरिद गर्न सक्ने बाटो खुला राखेको छ, जसका लागि पनि भुक्तानीको माध्यम प्रतितपत्र नै हुन्छ।

३.२ सार्वजनिक खरिद नियमावली, २०६४ को व्यवस्था

नियमावलीले प्रतितपत्रलाई सिधै सम्बोधन गर्दै यसको प्रयोग, अभिलेखन, र फर्स्यौट प्रक्रियालाई अनिवार्य गरेको छ, जसले खरिद प्रशासनलाई थप जवाफदेही बनाउँछ। सार्वजनिक खरिद नियमावली, २०६४ मा

प्रतितपत्रका सम्बन्धमा भएका व्यवस्था निम्नानुसार छन् ।

- **भुक्तानीको माध्यम तोक्ने (नियम २१):** मालसामान वा अन्य सेवाको खरिद सम्झौताको व्यवस्था गर्दै नियम २१ को उपनियम (५) मा "यस नियम बमोजिमको सम्झौतामा भुक्तानी गर्दा सामान्यतया आपूर्तिकर्ताले मालसामान आपूर्ति गरिसकेपछि कागजात पेस गरेको आधारमा **प्रतितपत्र** (Letter of Credit) वा बोलपत्र सम्बन्धी कागजातमा तोकिएको माध्यमबाट भुक्तानी गरिनेछ" भन्ने स्पष्ट व्यवस्था गरिएको छ ।
- **अभिलेख व्यवस्थापन (नियम १६):** सार्वजनिक निकायको खरिद एकाइको काम, कर्तव्य र अधिकार अन्तर्गत नियम १६ को उपनियम (३) खण्ड (च) मा "अनुसूची-२ बमोजिम **प्रतितपत्रको अभिलेख राख्ने**" जिम्मेवारी खरिद एकाइलाई तोकिएको छ । अनुसूची-२ ले प्रतितपत्र अभिलेख खाता को ढाँचा निर्धारण गरेको छ जसमा प्रतितपत्र खोल्ने फर्मको नाम, LC नम्बर, मिति, रकम, सामानको उत्पत्ति भएको देश, र बैङ्कको नाम जस्ता विवरणहरू अनिवार्य रूपमा अद्यावधिक गर्नुपर्छ ।
- **इन्कोटर्म्स (INCOTERMS) को प्रयोग (नियम २१):** नियम २१ को उपनियम (४) अनुसार मालसामान खरिदको सम्झौता वा मालसामान बुझाउने सर्तहरू अन्तर्राष्ट्रिय व्यापारिक सर्त (International Commercial Terms - INCOTERMS) अनुरूप तयार गर्नुपर्ने व्यवस्था छ ^{२४} । प्रतितपत्र सञ्चालनमा CIP (Carriage and Insurance Paid to), CIF (Cost, Insurance and Freight), EXW (Ex Works) वा FOB (Free on Board) जस्ता Incoterms को प्रत्यक्ष प्रयोग हुन्छ, जसले मालसामान आपूर्तिको क्रममा प्रयोग हुने ढुवानीको माध्यम र खरिदकर्ता र विक्रेताको दायित्वहरू, जोखिम र बीमा आदि विषयका सम्बन्धमा स्पष्टता कायम गर्छन ।
- **बिल वा बीजकको भुक्तानी (नियम १२२ र १२३)** नियम १२२ ले सिपमेन्ट र भुक्तानीका शर्त बिल विजकसाथ पेश गर्नुपर्ने आवश्यक कागजातहरू भन्ने विषय खुलाएको छ भने नियम १२३ को १(ड) मा बिल वा विजकको भुक्तानी प्रतितपत्रको शर्तको आधारमा गर्नुपर्ने व्यवस्था रहेको छ ।
- **पेशिक भुक्तानी र फस्यौट (नियम ११३):** अन्तर्राष्ट्रिय व्यापारमा प्रतितपत्र खोल्दा बैङ्कहरूले निश्चित प्रतिशत नगद मार्जिन (Cash Margin) राख्न लगाउँछन् । सामान्यतया सार्वजनिक खरिदमा यस्तो मार्जिन शत प्रतिशतनै हुने गर्छ । किनकि सरकारी निकायको बैङ्कमा कुनै धितो तथा कर्जा कारोबार नहुने भएकोले यस्तो मार्जिन बजेटरी निकायको हकमा सदैव शत प्रतिशत हुन्छ । कतिपय सार्वजनिक संस्थान जसको सरकारी बजेट बाहेक आफ्नै कोष संचालन गर्छन तिनले भने प्रतितपत्र खोल्दा न्युन

नगद मार्जिनका आधारमा समेत खोल्ने गरेको पाइएको छ तर त्यसको सुरक्षणका लागि Issuing Bank ले उक्त संस्थाको नगद मौज्दात रोक्का गर्ने लगायतको कुनै सम्पत्ति सुरक्षणमा लिएको हुन सक्छ। सरकारी बजेटबाट खरिद गर्ने अन्य निकायको हकमा विशेष परिस्थिति बाहेक यस्तो नगद मार्जिन शत प्रतिशतनै हुन्छ।

- नियमावलीको नियम ११३ को उपनियम (७) अनुसार प्रतितपत्र मार्फत मालसामान खरिद गर्दा, कार्यालयले सामान प्राप्त गरेको मितिले ३० दिनभित्र प्रतितपत्र खोल्दा राखिएको मार्जिन वा पेस्की रकमको फर्स्यौट गरिसक्नुपर्ने कानुनी व्यवस्था छ। साथै सोहि नियमको उपनियम ८ मा मालसामान उपलब्ध गराउने सम्बन्धित आपूर्तिकर्ताबाट मालसामान उपलब्ध हुन नसकेमा वा मालसामान उपलब्ध गराउन निर्धारित समयभित्र मालसामान प्राप्त हुन नसकेमा साधारणतया प्रतितपत्र रद्द गर्नुपर्नेछ र सो बापत बैङ्कमा जम्मा भएको रकम फिर्ता लिइ प्रतितपत्र खोलेको पेशिक रकम फर्छ्यौट गर्नुपर्नेछ भन्ने व्यवस्था रहेको छ।
- नियम ११३ को व्यवस्था हेर्दा प्रतितपत्र खोलिसकेपछी सो बमोजिम काम हुन नसकेमा Issuing Bank मा जम्मा गरेको नगद मार्जिन रकम सहजै कार्यालयले फिर्ता लिन सक्छ र पेशकी फर्छ्यौट गर्न सक्छ भन्ने नियमावलीको मनसाय रहेको देखिन्छ। तर नमुना बोलपत्र सम्बन्धी कागजात यसरी तयार भएको छैन। यसको असर नमुना बोलपत्र कागजातमा प्रतितपत्रको व्यवस्था विश्लेषण पछी व्याख्या गरीएको छ।

४. नमुना बोलपत्र सम्बन्धी कागजात (SBD) मा प्रतितपत्रको व्यवस्था

सार्वजनिक खरिद अनुगमन कार्यालय (PPMO) ले खरिद प्रक्रियालाई मानकीकरण, एकरूपता र त्रुटिरहित बनाउन विभिन्न प्रकृतिका खरिदका लागि नमुना बोलपत्र कागजातहरू (Standard Bidding Documents - SBD) जारी गरेको छ। मालसामानको अन्तर्राष्ट्रिय प्रतिस्पर्धात्मक बोलपत्र (ICB) मा मात्र प्रतितपत्र मार्फत भुक्तानीको व्यवस्था गरिएको छ।

४.१ बोलपत्रदातालाई निर्देशन (ITB) र बिड डाटा सिट (BDS)

SBD को खण्ड १ (Instructions to Bidders - ITB) ले बोलपत्रको सामान्य प्रक्रिया निर्धारण गर्छ भने खण्ड २ (Bid Data Sheet - BDS) ले उक्त प्रक्रियालाई सम्बन्धित खरिदको आवश्यकता अनुसार विशिष्टीकरण गर्छ। अन्तर्राष्ट्रिय खरिदमा विदेशी आपूर्तिकर्ताले आफ्नो देशको मुद्रामा भुक्तानी माग गर्ने हुँदा, BDS मा भुक्तानी कुन विदेशी मुद्रामा हुने र प्रतितपत्र खोल्नेसम्बन्धी प्राथमिक सर्तहरू के-के हुने भन्ने कुरा खुलाइएको

हुन्छ। ITB 15 ले बोलपत्रदातालाई वस्तुको मूल्य विभिन्न अवयवहरूमा (जस्तै: EXW मूल्य, भन्सार महसुल, भित्री यातायात, र बीमा) विभाजन गरी (Disaggregation of price components) खुलाउन निर्देशन दिन्छ। सो खरिदमा लागु हुने Incoterms खुलाउने व्यवस्था समेत ITB 15 अन्तरगत BDS मा गरिन्छ।

४.२ खरिद सम्झौताका सामान्य सर्त (GCC) र विशेष सर्त (SCC)

SBD को खण्ड ६ (General Conditions of Contract - GCC) ले सम्झौताका बृहत् सर्तहरू खुलाएको हुन्छ जुन हरेक खरिदमा समान हुन्छन। GCC 15 मा भुक्तानीको शर्त SCC मा तोकिएबमोजिम हुने, भुक्तानी आपूर्तिकर्ताले तोकिएका कागजात पेश गरेर सार्वजनिक निकायले स्वीकारेको ३० दिनभित्र हुने, भुक्तानीको मुद्रा SCC मा खुलाइए बमोजिम हुने, धरौटी कट्टी गरिने तथा फिर्ता सम्बन्धी विषयहरू GCC मा खुलाइएका हुन्छन। खरिद विशेषका लागि खुलाउनुपर्ने विशेष शर्तहरू (Special Conditions of Contract - SCC) मा विस्तृत रूपमा खुलाइएको हुन्छ। यसमा नै भुक्तानीको विधि तथा संयन्त्रको विस्तृतव्याख्या हुन्छ^१। मुख्य गरी SCC का निम्न व्यवस्थाहरू प्रतितपत्र सँग सम्बन्धित छन।

- **प्रतितपत्रसाथ पेश गर्नुपर्ने कागजातहरू (SCC 11.1):** प्रतितपत्रमा कागजातकै आधारमा बैङ्कले भुक्तानी गर्ने हुदा त्यस्ता कागजातहरू के-के हुने र कसरी कहिले पेश गर्नुपर्ने भन्ने विषय खरिद गर्ने निकायले यहाँ खुलाउनु पर्छ। सामान्यतया पेश गर्नुपर्ने कागजातहरूमा Suppliers commercial invoice, Bill of lading, packing list, insurance, warranty certificate, certificate of origin, inspection certificate लगायतका कागजातहरू हुन्छन। यी विषयहरू बोलपत्र सम्बन्धी कागजात तयारीकै क्रममा पर्याप्त छलफल गरी खुलाइएमा बोलपत्र पेश गर्ने समयमानै संभावित आपूर्तिकर्ताहरूले शर्त र पेश गर्नुपर्ने कागजात विश्लेषण गरेर मात्र बोलपत्र पेश गर्छन। जसले खरिद सम्झौता कार्यान्वयनमा सहजता हुन्छ।
- **भुक्तानीको विधि तथा शर्त (SCC 15.1):** नमुना बोलपत्र सम्बन्धी कागजातहरूमा (विशेषगरी मालसामान खरिदको ICB मा) विदेशबाट आपूर्ति हुने सामानको भुक्तानी "आपूर्तिकर्ताको पक्षमा खोलिने अपरिवर्तनीय र पुष्टीकृत प्रतितपत्र (Irrevocable Confirmed Letter of Credit) मार्फत गरिनेछ" भनी स्पष्ट भाषामा लेखिएको छ। नमुना बोलपत्र सम्बन्धी कागजातमा भुक्तानीका Milestone हरू खरिदकर्ता निकायले आवश्यकता अनुसार भर्ने सुविधा दिइएको छ। ठुला खरिद वारम्बार गरिरहने निकायहरू प्रतितपत्र मार्फत कारोबार हुने गरि बोलपत्र आह्वान गर्न अभ्यस्त भइसकेका हुन्छन। तर वार्षिक एकाध मात्र अन्तराष्ट्रिय स्तरको बोलपत्र गर्नुपर्ने र कर्मचारी सरुवा जस्ता कारणले खरिद तथा प्रतितपत्रको अभ्यास नगरेका कर्मचारी मात्रले बोलपत्र सम्बन्धी कागजात

तयारी गर्दा कतिपय विषयमा प्रष्टता नभइ सम्झौता कार्यान्वयनका क्रममा विवाद आउने तथा कतिपय अवस्थामा कर दायित्वको ठुलो रकम असुल गर्नुपर्ने बेरुजु आउने गरेको छ। विदेशी आपूर्तिकर्ताको नेपालमा मालसामान आपूर्ती गरेर प्रतितपत्रबाट रकम भुक्तानी लिइसकेपछि उसको कुनै कानुनी सम्पर्क तथा सम्पत्ती नेपालमा नहुने भएकोले यस्ता बेरुजुहरू कहिल्यै नटुङ्गिने प्रकृतिका जटिल हुन्छन्।

- **भुक्तानीका चरणहरू (Staged Payments):** प्रतितपत्र मार्फत हुने भुक्तानीलाई जोखिम न्यूनीकरण गर्न प्रायः दुई वा तीन चरणमा बाँडिन्छ। भुक्तानीका माइलस्टोनहरूमा कति रकम के कस्ता कार्य प्रगती भएपछि भुक्तानी हुने हो प्रष्ट रूपमा खुलाउने तथा कट्टी हुने कर समेट प्रष्ट रूपमा खुलाइयो भने विवाद सृजना हुने जोखिम कम हुन्छ। उदाहरणका लागि, ढुवानीका कागजात (Shipping Documents) पेस गरेपछि LC रकमको ७०% भुक्तानी हुने र बाँकी ३०% सामान सम्बन्धित कार्यालयको साइटमा आइपुगेर अन्तिम प्राविधिक परीक्षण (Final Acceptance) भइसकेपछि मात्र भुक्तानी हुने गरी SCC मा सर्त ड्राफ्ट गरिन्छ। यसले राज्यलाई कमसल सामान आएमा पूर्ण भुक्तानी रोक्ने सुविधा दिन्छ।
- **धरौटी तथा अन्य कट्टी सम्बन्धी व्यवस्था** SCC 15.3 मा प्रत्येक भुक्तानीमा ५% धरौटी कट्टीको विषय खुलाइएको छ। धरौटीको रकम व्यवस्थापन सम्बन्धमा पनि सार्वजनिक निकाय अनुसार फरक फरक अभ्यास हुने गरेको छ। कतिपय निकायले कट्टी भएको धरौटी पनि अन्तिम भुक्तानीको रूपमा प्रतितपत्र मार्फत नै विदेशी कम्पनीलाई भुक्तानी दिने हो भन्ने मानि शत प्रतिशत रकम प्रतितपत्रमा नै राखेर धरौटीको रकम प्रतितपत्रमा नै बाँकि राख्छन्। यस्तो गर्नुको एउटा कारण कट्टी भएको धरौटी कानुन बमोजिम फिर्ता गर्नुपर्ने समयमा विनिमय दर परिवर्तनका कारण न्युन नहोस भन्ने शुनिश्चितताका लागि सहि जस्तो देखिन्छ। तर कुनै कारणबस कट्टी भएको धरौटी जफत गर्नुपर्ने भएमा प्रतितपत्रमा भएको धरौटी जफत गर्न सार्वजनिक निकायले आपूर्तिकर्ता कम्पनी स्वदेशी बैङ्क तथा विदेशी बैङ्कको सहमती बिना सक्दैन। यसले धरौटीको मर्म नै पुरा नहुने हुदा धरौटी कट्टी गरेपछि प्रतितपत्रमा नै छाड्नु उचित हुदैन। यसलाइ धरौटी खातामा विदेशी मुद्रामा नै जम्मा गर्नु राम्रो हुन्छ। तर नेपालका सबै कोष तथा लेखा नियन्त्रक कार्यालयहरूमा विदेशी मुद्रामा धरौटी खाता नभएका कारण सबैनिकायले चाहेर पनि विदेशी मुद्रामा कट्टी भएको धरौटी कोलेनिका को धरौटी खातामा राख्न सक्दैनन्। काठमाण्डौ जिल्लाको हकमा कोष तथा लेखा नियन्त्रक कार्यालय बबरमहलको विदेशी मुद्रामा धरौटी खाता रहेको छ। अन्य कोलेनिका बाट भुक्तानी निकासालिने कार्यालयहरूको हकमा समेत महालेखा नियन्त्रक कार्यालयले पत्राचार गरेपछि यस कोलेनिकाले विदेशी मुद्रामा धरौटी

कारोवार संचालन गरिदिने अभ्यास रहेको छ । साथै खरिदको प्रकृती अनुसार प्रचलित आयकर ऐन बमोजिम विदेशी आपूर्तिकर्ताले व्यहोर्नुपर्ने कर दायित्व समेत SCC मा खुलाउन सकिएमा भुक्तानीका समयमा हुने विवाद न्युन गर्न सकिन्छ ।

- भुक्तानीको मुद्रा खुलाउने विमा गर्नुपर्ने रकम तथा वहन गर्नुपर्ने जोखिम, वारेन्टिका विषयहरू समेत SCC मा खुलाउनुपर्ने व्यवस्था छ । यि कागजातहरू प्रतितपत्रको शर्तमा जोडिएका हुन्छन् ।

५. असंगत व्यवस्था र नेपाल राष्ट्र बैङ्कको अभ्यास

५.१ खरिद नियमावली र Standard Bidding Document (ICB Goods) मा भएका प्रावधान विचको असंगतता

“SCC 15.1: The terms of payment to be made to the Supplier under the contract shall be as follows: The payment shall be made: through an irrevocable confirmed letter of credit opened in favour of the Supplier or...”

यहाँ दुइवटा शब्दहरू निकै महत्वपूर्ण छन् “Irrevocable” “Confirmed” । सार्वजनिक खरिद अनुगमन कार्यालयले जारी गरेको नमुना बोलपत्र सम्बन्धी कागजातकै आधारमा देशभरका सबै कार्यालयहरूले खरिद गर्ने भएकोले सबै अन्तराष्ट्रिय बोलपत्रको खरिद सम्झौतामा यि दुइ शब्द परेकै हुन्छन् । प्रतितपत्रको विश्वसनियतालाई बढाउन सकिने सबैभन्दा उच्चतम स्तरको प्रतितपत्र मार्फत भुक्तानी दिइनेछ भन्ने भाषा नमुना बोलपत्र सम्बन्धी कागजातमा राखिएको हुन सक्छ जुन सान्दर्भिक पनि छ ।

तर सार्वजनिक खरिद नियमावली २०६४ को नियम ११३ को उपनियम ८ मा मालसामान उपलब्ध गराउने सम्बन्धित आपूर्तिकर्ताबाट मालसामान उपलब्ध हुन नसकेमा वा मालसामान उपलब्ध गराउन निर्धारित समयभित्र मालसामान प्राप्त हुन नसकेमा साधारणतया प्रतितपत्र रद्द गर्नुपर्नेछ र सो बापत बैङ्कमा जम्मा भएको रकम फिर्ता लिइ प्रतितपत्र खोलेको पेशीक रकम फर्छ्यौट गर्नुपर्नेछ भन्ने व्यवस्था रहेको छ । नियम ११३ को व्यवस्था हेर्दा प्रतितपत्र खोलिसकेपछि सो बमोजिम काम हुन नसकेमा Issuing Bank मा जम्मा गरेको नगद मार्जिन रकम सहजै कार्यालयले फिर्ता लिन सक्छ र पेशीक फर्छ्यौट गर्न सक्छ भन्ने नियमावलीको मनसाय रहेको देखिन्छ । यो नियमले या त प्रतितपत्रको जटिलतालाई नवुझेको वा “ Revocable” Unconfirmed Letter of Credit मात्र खोल्नुपर्ने जस्तो व्यवस्था गरेको देखिन्छ । जब प्रतितपत्र खोल्नका लागि मार्जिनको रूपमा बैङ्कमा पेशीक रकम राखिन्छ र Irrevocable Confirmed Letter of Credit खुल्छ, त्यसपछि प्रतितपत्रका ४ वटै पक्षहरू पुरा सहमत नभइ त्यो प्रतितपत्रको शर्त संसोधन हुँदैन र दाखिला भएको पेशीक रकम मालसामान समयमा प्राप्त भएन भन्ने आधारमा मात्र कार्यालयले फिर्ता लिएर पेशीक फर्छ्यौट गर्न

सकदैन। Irrevocable भनेको रद्द गर्न नसकिने प्रतितपत्र हो। एक पक्षले मात्र चाहेर प्रतितपत्र रद्द हुनै सकदैन। यो जटिलताभित्र नेपालका धेरै सार्वजनिक निकायका खरिद सम्झौता कार्यान्वयनका लागि खोलिएका प्रतितपत्रहरू पक्षहरू विचको विवादमा निकास विनानै रोकिएका छन्। प्रतितपत्र पेशकी फर्छ्यौट तथा विदेशी आपूर्तिकर्तालाई थप जिम्मेवार बनाउने सार्वजनिक खरिद नियमावली मा थप प्रष्ट व्यवस्था गर्न जरूरी छ।

५.२ Confirmed LC र बजेट

नेपालका सार्वजनिक निकायले एक आर्थिक वर्षमा विनियोजित बजेटले खाम्ने रकमको मात्र खरिद गर्नुपर्दा वा शत प्रतिशत बजेट विनियोजन भइसकेको अवस्थामा खरिद गर्दा जुनसुकै बैङ्कमा गएर प्रतितपत्र मार्फत कारोबार गर्न सक्छन्। यसको आधार भनेको प्रतितपत्र मार्फत भुक्तानी गर्नका लागि आवश्यक पर्ने शत प्रतिशत रकम मार्जिनको रूपमा सुरुमा नै नेपालको बैङ्कमा दाखिला गरिसक्नुपर्ने र सो गर्न सार्वजनिक निकाय सक्षम छन् भने Confirmed LC खोल्न कुनै समस्या छैन।

तर नेपालको बजेट प्रणालीमा एक वर्षभन्दा लामो अवधिको योजना वा आयोजनाका लागि खरिद गर्नुपर्दा कुल बजेट एकैपटक विनियोजन भएको हुदैन। २ वर्ष लाग्ने आयोजना भएमा कुल लागतको निश्चित प्रतिशत एक आर्थिक वर्षमा विनियोजन हुन्छ र बाँकि बजेट आगामि वर्षहरूमा विनियोजन हुने स्रोत शुनिश्चितता मात्र प्राप्त भएको हुन्छ। यस्तो अवस्थामा सार्वजनिक निकायले शत प्रतिशत नगद मार्जिन राखेर प्रतितपत्र खोल्न सकदैन र सबै वाणिज्य बैङ्कहरूले अब उक्त निकायलको प्रतितपत्र खोल्दैनन्। विकल्पमा नेपालका सार्वजनिक निकायहरूले नेपाल राष्ट्र बैङ्क मार्फत मात्र प्रतितपत्र खोल्नुपर्ने हुन्छ त्यसका लागि पनि नेपाल सरकारका विशेष नीतिगत निर्णयहरू आवश्यक पर्छन्।

५.३ नेपाल राष्ट्र बैङ्कको अभ्यास

सार्वजनिक निकायको प्रतितपत्र सम्बन्धमा नेपाल राष्ट्र बैङ्कको अभ्यास फरक छ। नेपालका सैयौं अन्तराष्ट्रिय स्तरका बोलपत्रहरूमा नेपाल राष्ट्र बैङ्कले वर्षेनि सैयौं प्रतितपत्र हरू मार्फत कारोबार गरिरहेको हुन्छ। तर हालसालै समेत नेपाल राष्ट्र बैङ्कमा प्रतितपत्र खोल्नका लागि गरेको पहलको अनुभव अनुसार नेपाल राष्ट्र बैङ्कले हालसम्म एउटा पनि “Confirmed” LC खोलेको छैन। Confirmed LC मा तोकिएका कागजात वा शर्त पुरा भएपछी Issuing Bank ले समेत कुनै पनि अवस्थामा भुक्तानी रोक्न सकदैन। नेपाल राष्ट्र बैङ्कले यस प्रकृतिको स्वतः भुक्तानी हुने प्रतितपत्र नै नखोल्दा कतिपय खरिद सम्झौतामा कार्यान्वयनको पहिलो चरण मा नै खरिद सम्झौताका पक्ष विच विवाद सृजना हुन्छ। खरिद सम्झौतामा प्रष्ट रूपमा Confirmed भनेर खुलेकोले LC Confirmed हुनुपर्छ भन्ने दावि आपूर्तिकर्ताको हुन्छ भने सार्वजनिक निकायसँग हामिकहाँ त्यस्तो

अभ्यास छैन भन्ने मात्र जवाफ हुन्छ। यस्ता असंगतता तथा सम्झौताका शर्तको लेखाइ, करारका पक्षको बुझाइ र अन्तरसम्बन्धित निकायको अभ्यासमा फरक पर्न नदिन प्रतितपत्रको व्यवस्था सम्बन्धमा नेपाल राष्ट्र बैङ्कसँग समेत प्रतितपत्रका प्रकार, जोखिम र विकल्पमा छलफल गरेर नमुना बोलपत्र सम्बन्धी कागजातमा भएका शब्दहरू सार्वजनिक खरिद नियमावली बमोजिम हुने गरी अध्यावधिक गर्नुपर्छ।

५.४ विदेशी बोलपत्रदाताको नेपालमा कर दायित्व र कर प्रयोजनका लागि दर्ता सम्बन्धी व्यवस्था

मालसामानको अन्तराष्ट्रिय स्तरको बोलपत्रको नमुना बोलपत्र सम्बन्धी कागजातमा खरिद सम्झौताको दोश्रो पक्ष नेपालमा कर प्रयोजनका लागि दर्ता हुनुपर्ने कुनै व्यवस्था छैन। तर GCC 15.3 मा धरौटी फिर्ता प्रयोजनका लागि “when the supplier has submitted the evidence of submission of tax return to the concerned Internal Revenue Office.” भन्ने वाक्य रहनुले विदेशी बोलपत्रदाता खरिद सम्झौता भएपछि नेपालमा कर प्रयोजनका लागि दर्ता हुनुपर्ने जस्तो भन्ने देखिन्छ। GCC 16 मा “Tax deduction at source shall be applied as per taxation laws of Nepal.” भन्ने उल्लेख भएकोले विदेशी बोलपत्रदाताको भुक्तानीमा नेपालको कर कानून अनुसार कर कट्टी हुने प्रष्ट व्यवस्था छ। साथै GCC 16.3 मा नेपालमा कुनै कर छुट तथा सहूलियत दिने व्यवस्था रहेछ भन्ने बोलपत्रदातालाई त्यस्तो छुट सुविधा दिलाउनका लागि खरिदकर्ता निकायले सक्दो पहल गर्नेछ भन्ने समेत व्यवस्था रहेको छ।

If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in Nepal, the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

यि व्यवस्थाले मालसामान आपूर्तिकर्ताको करको दायित्व स्रोतमा कर कट्टि (TDS) मा नै सिमित हुने रहेको देखिन्छ। यसबाहेक नमुना बोलपत्र सम्बन्धी कागजातमा मालसामानको खरिदमा विदेशी बोलपत्रदाताको कर दायित्व सम्बन्धी थप प्रष्ट व्यवस्था SCC मा गरिएको छैन।

तर अभ्यासमा कतिपय निकायले खरिद सम्झौता गर्नु अगाडी विदेशी बोलपत्रदाता नेपालको आन्तरीक राजस्व विभागमा कर प्रयोजनका लागि दर्ता हुनुपर्छ भन्ने शर्त नै राखेर बोलपत्र आह्वान गर्छन। यस्तो व्यवस्था अन्तराष्ट्रिय स्तरको निर्माण कार्य खरिदको बोलपत्रमा भन्ने नमुना बोलपत्र सम्बन्धी कागजातमानै प्रष्ट रूपमा खुलाइएको हुन्छ। निर्माण कार्यको नमुना बोलपत्र सम्बन्धी कागजातमा भन्ने करका विषय समेत विस्तृत रूपमा खुलाइएको छ। यसमा मुख्य रूपमा निम्न दुइवटा Particular Conditions of Contract (PCC) मा बोलपत्रदाताको नेपालमा कर दायित्व सम्बन्धमा खुलाइएको छ। यस अनुसार खरिद सम्झौता भएको ३० दिनभित्र विदेशी बोलपत्रदाता नेपालको आन्तरिक राजस्व विभागमा दर्ता भएको कागजात पेश गर्नुपर्नेछ भन्ने व्यवस्था रहेको छ। यसरी दर्ता भएपछि उक्त विदेशी फर्म कानुनी रूपमा स्वदेशी सरह हुने र सोहि बमोजिम

करको गणना हुने हुदा यसमा प्रष्टता देखिन्छ। साथै निर्माण कार्यको खरिदमा भुक्तानीको विधिमा प्रतितपत्रको व्यवस्था नभएकोले करको जटिलता सृजना हुने अवस्था न्युन हुन्छ।

मालसामान खरिदमा विक्रि पश्चातको सेवा, तालिम, जडान, संचालन लगायतको विषय समेत जोडिदा खरिद आफैमा जटिल हुन्छ। यसमा मालसामान आपूर्ति गरेर मात्र हुदैन उक्त बोलपत्रदाताका विज्ञहरू नेपालमा बसेर लामो समयसम्म काम गर्नुपर्ने, ती कर्मचारीलाई नेपालमै तलब भुक्तानी गर्नुपर्ने, कतिपय अवस्थामा लामो समयसम्म मेशिन उपकरण संचालनको जिम्मा समेत सम्बन्धित बोलपत्रदाताकै हुने हुदा नेपालमा PE दर्ता हुनैपर्ने हुन्छ। यस्ता बोलपत्रमा शत प्रतिशत भुक्तानी विदेशी मुद्रामा विदेशी बैङ्क खातामा प्रतितपत्र मार्फत गरीएमा सम्बन्धित कम्पनीको नेपाल भित्रको दायित्व बक्यौता रहिरहन सक्ने जोखिम हुन्छ। साथै प्रतितपत्र मार्फत भुक्तानीको विकल्प दिनुको एउटा मुल मर्म विदेशी कम्पनीको नेपालमा बैङ्क खाता नहुनु, नेपालमा कुनै कारोबार नहुनु ले भुक्तानीको विधिको विकल्पको रूपमा प्रतितपत्र सुविधा दिइएको हो। जब नेपालको कर कार्यालयमा दर्ता अनिवार्य गरिन्छ र सम्झौतामा Resident and Income Source Principle shall be applied भनेर खुलाइन्छ त्यस्तो अवस्थामा प्रतितपत्र मार्फत हुने भुक्तानी रकम विदेशबाट आयात गरेको मालसामानको मुल्यको सिमासम्म मात्र सिमित हुनुपर्छ। कुल सम्झौता रकम प्रतितपत्र मार्फत भुक्तानी दिन हुदैन। यसले नेपालमा दर्ता भएको विदेशी कम्पनीको नेपालमा फरफारक गर्नुपर्ने दायित्व तथा कर दायित्व समेत निर्धारण सहज बनाइ सार्वजनिक निकायलाई जोखिम कम गराउछ। तर नमुना बोलपत्र सम्बन्धी कागजातमा यि विषय खुलेका छैनन जसले गर्दा भुक्तानी विदेशमा हुने र नेपालमा दर्ता भएको निकायको कर बक्यौता रहिरहने जस्तो जोखिम हुन्छ। यस्तो अभ्यासले एकैसाथ आयकर ऐन र विदेशि विनिमय नियमित गर्ने नियमावलीको व्यवस्था उल्लंघन हुने भएकोले सार्वजनिक निकाय आफै अग्रसर भएर यसमा खरिद सम्झौता कार्यान्वयन गर्दा प्रचलित कानुन उल्लंघन नहुने शुनिश्चितता गर्नुपर्छ। ICB मा सम्झौता गर्न नेपालमा Entity दर्ता हुनै पर्छ भन्ने शर्त यदि खरिदमा राखिन्छ भने नेपालको बैङ्क खातामा भुक्तानी किन नगर्ने। यस विषयमा समेत खरिद कर्ता निकाय चनाखो भइ यसका लाभ तथा जोखिम र यसले अन्तराष्ट्रिय बोलपत्रदातालाई प्रतिस्पर्धामा आउनबाट निरुत्साहित गर्न सक्ने संभावन जस्ता पक्षको विश्लेषण गरेर PE दर्ता हुनुपर्छ भन्ने व्यवस्था राख्ने हो भने LC को विकल्प नदिने वा भुक्तानीको रकम आयात गर्नेपने मालसामानको खुद लागत सम्म मात्र सिमित गर्ने बारेमा समेत नमुना बोलपत्र सम्बन्धी कागजातमा खुलाउदा सहज हुन्छ।

अन्तराष्ट्रिय स्तरको निर्माण कार्यको नमुना बोलपत्र सम्बन्धी कागजातमा भएका कर दायित्व सम्बन्धी व्यवस्थाहरू

PCC 21.7 Income Tax	(a) Income tax assessed in accordance with the prevailing Income Tax Act of Nepal and as per the provision of specific Double
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	Taxation Agreement, shall be imposed on the Contractor, its subcontractor and nominated subcontractor. An advance income tax as per the prevailing Income Tax and Finance Act shall be deducted from the monthly progress payments of the Contractor.
PCC 21.8 Duties, Taxes regulations etc.	(a) The Contractor shall pay all duties, taxes, fees and contributions levied in Nepal in Nepalese Rupees as directed by the relevant governmental department or office or any other local statutory agency or body in accordance with the relevant rules and regulations. (i) The provisions of the clause shall apply equally to foreign subcontractors or nominated subcontractors of the Contractor employed for the Works. (ii) The Contractor and any foreign subcontractors or nominated subcontractors employed on the Works, if not already registered in Nepal, shall be required to get registered with the Inland Revenue Department (IRD) for the purpose of the Contract, which shall be undertaken within 30 days after signing of the Contract Agreement. The Contractor, subcontractor or the nominated subcontractor shall submit Certified copies of the Registration Certificate(s) to the Engineer within 14 days of registration. (iii) Other local fees and charges (toll taxes) shall be applied in accordance with the prevailing laws and regulations of Nepal.

५.५ कुन कागजात प्रयोग गर्ने भन्ने दुविधा

कुनै खरिद कार्य पुरा निर्माण पनि हैन र पुरा मालसामान मात्र पनि हैन भने त्यस्तो खरिदमा नमुना बोलपत्र सम्बन्धी कागजातहरूका सिमा धेरै छन । जस्तै कुनै जलविद्युत आयोजनाका लागि आवश्यक मेशिन औजार खरिद गर्ने काम पुरा मालसामान हो । तर त्यही बोलपत्रमा ति मालसामान निर्माण स्थलमा जडानको काम समेत जोडिएमा निर्माणको अंग समेत थपिन्छ । अब निश्चित अवधिसम्म ति मेशिन औजार आपूर्तिकर्ताले नै चलाएर विद्युत उत्पादन गर्नुपर्ने भन्ने विषय समेत जोडियो भने यसमा मालसामान निर्माण र परामर्श सेवा समेत जोडिएर आउने भयो । यस्तो खरिदमा प्रतिपत्रको व्यवस्था कसरी गर्ने ? कुल लागतको कति भार कुन पाटो (मालसामान, निर्माण, परामर्श) ले समेटेमा कुन नमुना बोलपत्र सम्बन्धी कागजात प्रयोग गर्ने ? त्यसमा नसमेटिएका शर्तहरू कसरी थप्ने भन्ने जस्ता विषयमा नमुना बोलपत्र सम्बन्धी कागजातहरूमा थप प्रष्टता र खरिद गर्ने निकायलाई आवश्यकताका आधारमा शर्तहरू थपघट गर्ने स्वायत्तता दिइनुपर्छ । अन्य नियामक सार्वजनिक खरिद पत्रिका, २०८३

निकायले समेत नमुना बोलपत्र सम्बन्धी कागजातलाई कानुन सरह व्याख्या नगरी यसलाई खरिद गर्ने सार्वजनिक निकायको सहजताका लागि तयार भएको खाकाको रूपमा मात्र लिनुपर्छ र क्षमता र आवश्यकताका आधारमा पर्याप्त पुष्ट्याइ सहित यसमा जस्तोसुकै थपघट गर्न सक्ने लचकता खरिदकर्ता निकायलाई दिइनुपर्छ।

६. कार्यालयले प्रतितपत्र (LC) खोल्दा ध्यान दिनुपर्ने प्राविधिक तथा कानुनी विषयहरू

सार्वजनिक निकायले प्रतितपत्र खोल्नु भनेको राज्यको सञ्चित कोषबाट विदेशी मुद्रा विदेश पठाउने कानुनी र वित्तीय प्रतिबद्धता सिर्जना गर्नु हो। सामान्य बैंकिङ अभ्यास र सरकारी खरिद अभ्यासमा तात्त्विक भिन्नता हुने भएकाले, कार्यालयका प्रमुख, खरिद एकाइ, र आर्थिक प्रशासन शाखाले प्रतितपत्र खोल्ने क्रममा निम्न विषयहरूमा गम्भीर ध्यान दिनुपर्दछ:

६.१ बजेट सुनिश्चितता

प्रतितपत्र खोल्नु अघि कार्यालयसँग पर्याप्त बजेट, स्रोत सुनिश्चितता, र स्वीकृत कार्यक्रम हुनु अनिवार्य छ। बहुवर्षीय खरिद सम्झौता भइसकेको छ तर शत प्रतिशत नगद मार्जिन राख्न पुग्ने बजेट विनियोजन भएको छैन भने अर्थ मन्त्रालयको भुक्तानी सुनिश्चितता पत्रको आधारमा नेपाल राष्ट्र बैंकले निश्चित प्रतिशत मात्र नगद मार्जिनका आधारमा प्रतितपत्र खोल्छ।

६.२ नेपाल राष्ट्र बैंकको एकीकृत निर्देशन र फारमहरू

कार्यालयले LC खोल्दा नेपाल राष्ट्र बैंकले वाणिज्य बैंकहरूलाई जारी गर्ने विदेशी विनिमय व्यवस्थापन सम्बन्धी एकीकृत निर्देशनहरूको पूर्ण पालना गर्नुपर्दछ।

- **फारमहरूको प्रयोग:** वाणिज्य बैंकमा LC खोल्न निवेदन दिँदा 'बि.बि.नि. फारम नं. ३' (BBN-3) अनिवार्य रूपमा भर्नुपर्दछ। सामान भन्सार विन्दुमा आइसकेपछि भन्सार जाँचपास गराउन बैंकले 'बि.बि.नि. फारम नं. ४' (BBN-4) जारी गर्छ, जसको आधारमा कार्यालयले सामान छुटाउँछ।

६.३ खरिद सम्झौताको शर्त बमोजिमको कागजातको सुनिश्चितता

अन्तर्राष्ट्रिय व्यापारमा प्रतितपत्रको सबैभन्दा ठूलो फाइदा तथा कमजोरी समेत भनेको बैंकले 'सामान' नहेरी 'कागजात' मात्र हेरेर भुक्तानी दिने सिद्धान्त हो। यो दुइधारे तरवार जस्तै हो, कागजात र शर्तहरूमा पर्याप्त ध्यान दिन सकियो भने यसले अन्तर्राष्ट्रिय व्यापारलाई सहज बनाउँछ तर यदि आपूर्तिकर्ताले कमसल सामान पठाएर पनि कागजात मिलाएर पेस गर्‍यो भने बैंकले भुक्तानी रोक्न सक्दैन। यसलाई रोक्न सरकारी कार्यालयले LC का सर्तहरू ड्राफ्ट गर्दा निम्न बुँदाहरू अनिवार्य गरिएमा जोखिम कम हुन्छ :

- तेस्रो पक्ष प्रि-शिपमेन्ट इन्स्पेक्सन (Third Party Pre-shipment Inspection): LC को सर्तमा सामान ढुवानी हुनुअघि ख्यातिप्राप्त स्वतन्त्र अन्तर्राष्ट्रिय संस्थाले परीक्षण गरेको प्रमाणपत्र (Inspection Certificate) अनिवार्य गर्न सकिन्छ।
- उत्पतिको प्रमाणपत्र (Certificate of Origin) र विश्लेषण प्रमाणपत्र (Certificate of Analysis): उत्पादक कम्पनीले नै जारी गरेको प्राविधिक विशिष्टीकरण (Technical Specifications) सँग मेल खाने विश्लेषण प्रमाणपत्रलाई LC भुक्तानीको पूर्वसर्त बनाउन सकिन्छ।
- बीमा (Insurance): Incoterms अनुसार बीमा कसले गर्ने हो यकिन गरी, नेपाल सरकारको दायित्व हुने भएमा मालसामान ढुवानी हुनुअघि नै नेपालकै कुनै बीमा कम्पनीमा ट्रान्जिट र मरीन इन्स्योरेन्स (Marine Insurance) गराइसक्नुपर्छ।
- खरिदको प्रकृति जटिलता तथा आवश्यकताका आधारमा आवश्यक पर्न सक्ने सबै कागजातहरू समेटिएको सुनिश्चित हुने।

६.४ सम्झौताको शर्त बमोजिमको भुक्तानीका प्रत्येक माइलस्टोन प्रतितपत्रमा खुलाउने

खरिद सम्झौताको Special Conditions of Contract मा तोकिए बमोजिमका प्रत्येक माइलस्टोनमा कति रकम कुन मुद्रामा भुक्तानी गर्नुपर्ने हो, सो भुक्तानीमा कति धरौटी कति अग्रिम कर काट्ने हो र खुदा भुक्तानी कति हुने हो रकम नै गणना गरी प्रतितपत्रमा खुलाउने। यसरी कट्टी भएका रकम दाखिलाका विषयमा समेत प्रतितपत्रको शर्तमा प्रष्ट रूपमा खुलाउने। साथै कतिपय समयमा बैंडले भुक्तानी गर्नुपर्ने विदेशी मुद्रा तत्कालै खरिद गरेर नराख्दा विनिमयदर जोखिम सृजना हुन सक्ने हुदा प्रतितपत्र पेशकी दिनासाथ सोहि दिन सम्बन्धित विदेशी मुद्रा खरिदका लागि बैंडलाई लिखित रूपमै अनुरोध गर्ने।

६.५ सार्वजनिक खरिद नियमावलीको अनुसूची-२ मा तोकिए बमोजिम प्रतितपत्र अभिलेख खाता अध्यावधिक गरेर राख्ने

धेरै प्रतितपत्र कारोवार गर्ने निकायले सामान्यतया यस्तो खाता राख्ने गरेकै पाइन्छ। वार्षिक एकाध मात्र प्रतितपत्र मार्फत कारोवार गर्ने कतिपय निकायहरूले यसको अभिलेख राम्रोसँग नराखेको पाइन्छ। यसले प्रतितपत्रको कारोवारको यथार्थ ऐनाको रूपमा काम गर्ने हुदा अनिवार्य रूपमा कारोवार गर्ने सार्वजनिक निकायले यो खाता तयार गर्नुपर्छ।

७. सार्वजनिक खरिद र प्रतितपत्र अभ्यासमा देखिने अन्य महत्त्वपूर्ण सवालहरू

माथि उल्लिखित विषयहरूका अतिरिक्त नेपालको सार्वजनिक खरिद र प्रतितपत्रको अभ्यासमा केही गम्भीर प्रकृतिका प्रणालीगत (Systemic) सवालहरू छन्, जसले नीति-निर्माताहरूको ध्यानाकर्षणको माग गर्दछन्:

७.१ डकुमेन्टरी अटोनामी (Documentary Autonomy) र गुणस्तर नियन्त्रणको द्वन्द्व

अन्तर्राष्ट्रिय व्यापारमा प्रतितपत्रको सम्पूर्ण संरचना 'Documentary Autonomy' मा अडेको छ। UCP 600 को धारा ५ ले प्रस्ट भन्छ, "बैंकहरू कागजातको आधारमा कारोबार गर्छन्, वस्तु वा सेवाको आधारमा होइन।" अख्तियारले दायर गरेका मल खरिद र स्वास्थ्य उपकरण खरिदका मुद्दाहरूले यही जोखिमलाई सतहमा ल्याएका छन्। सामानको गुणस्तरमा आपूर्तिको समयमा नियन्त्रण गर्ने क्षमता कार्यालयसँग हुँदैन तर बैंकमा पेस गर्नुपर्ने कागजातहरू 'प्रविधिगत रूपमा पूर्ण' (Technically Compliant) बनाउँछन्। यसको प्रत्यक्ष प्रभाव स्वरूप, राज्यको ढुकुटीबाट डलर बाहिरिन्छ तर तोकिएको गुणस्तर र विशेषता भएका मालसामान प्राप्त नहुन सक्छ। यसलाई रोक्न सप्लायरकै देशमा सामान प्याक हुनुअघि ख्यातिप्राप्त तेस्रो पक्षबाट गरिने निरीक्षण (Pre-shipment Inspection) लाई PPMO का नमुना बोलपत्र सम्बन्धी कागजातहरूमा अझ कडा र छलेर जान नमिल्ने (Foolproof) बनाइनु जरुरी छ।

७.२ विनिमय दरको उतारचढाव र वित्तीय जोखिम (Exchange Rate Volatility)

अन्तर्राष्ट्रिय खरिदमा प्रतितपत्र सामान्यतया अमेरिकी डलर (USD) वा युरो (EUR) मा खोलिन्छ। खरिद सम्झौता हुँदाको बखत र LC को अन्तिम भुक्तानी (Negotiation) हुने बखतको बीचमा महिनौं वा वर्षौं लाग्न सक्छ। यस अवधिमा नेपाली रुपैयाँ अवमूल्यन भएमा, विनियोजित बजेट अपुग हुने र अर्थ मन्त्रालय वा दातृ निकायसँग थप बजेट मागनुपर्ने अवस्था सिर्जना हुन्छ। यसले आयोजनाको समय र लागत (Time and Cost Overrun) दुवै हातै बढाउँछ, जसको प्रत्यक्ष असर विकास निर्माणका आयोजनाहरूमा परेको विश्व बैंकको प्रतिवेदनले समेत औँल्याएको छ।

वाणिज्य बैंकहरूमा नगद मार्जिन जम्मा गरेकै बखतमा सो बराबरको सम्बन्धित विदेशी मुद्रा खरिद गरेर राखिदिने अभ्यास हुन्छ र यसो गर्नका लागि नेपाल राष्ट्र बैंकले अनिवार्य गराएको पनि छ। तर नेपाल राष्ट्र बैंकमा भने जम्मा भएको नगदले खामे सम्मको सम्बन्धित विदेशी मुद्रा खरिद गरेर राख्ने अभ्यास विगतमा नरहेकोले विनिमय दर जोखिमका कारण विनियोजित बजेट अपुग भइ प्रतितपत्रको भुक्तानीमा समस्या भएका थुप्रै उदाहरण छन्।

७.३ कर कट्टि तथा धरौटी कट्टी र व्यवस्थापनको जोखिम (Tax and retention related issues)

प्रतितपत्र मार्फत भुक्तानी पाउने गरी अन्तराष्ट्रिय स्तरको बोलपत्रमा सहभागि भएको बोलपत्रदाता न्युनतम मुल्यांकित सारभुत रूपमा प्रभावग्राही भएमा खरिद सम्झौता गर्नुअगाडी उसले नेपालमा के के मा दर्ता हुनुपर्छ ? GCC मा सार्वजनिक खरिदमा प्रतितपत्र मार्फत भुक्तानीमा खरिद ऐन, आर्थिक कार्यविधि ऐन, आयकर ऐन, विदेशी विनिमय ऐन, बस्तु विक्री सम्बन्धि करार ऐन लगायतका धेरै ऐनहरू एकैपटक आकर्षित हुन्छन्। एकल निकाय यि सबै विषयमा विज्ञ हुन सक्ने संभावना हुदैन। यि सबै विषय समेटेर कस्तो अवस्था यि कानूनका कुन कुन दफा को व्यवस्था आकर्षित हुन्छन्, कट्टी धरौटी सम्बन्धित विदेशी मुद्रामानै सम्बन्धित कोलेनिकामा नै दाखिला गर्न सक्ने कसरी बनाउने भन्ने पूर्वाधार बनाउने। मालसमानसँग सेवा समेत जोडिएमा करको दायित्व र दरहरू के कस्ता हुन्छन् नेपालमा PE हुनुपर्ने हो वा होइन भन्ने जस्ता विषयमा प्रष्टता जरुरी छ। साथै PE भएपछि विदेशमा लान पाउने विदेशी मुद्रालाइ विदेशी विनिमय नियमन गर्ने कानून अनुसार फरक व्यवस्था लागु हुने हुदा सबै सम्झौता रकम LC मार्फत भुक्तानी हुनु कानून संवत हुन्छ वा हुदैन जस्ता विषयमा समेत कानून तथा सम्बन्धित निकायको बुझाइ र अभ्यासमा स्पष्टता हुनुपर्छ।

७.४ क्षमता अभाव र प्रशासनिक पक्षघात (Capacity Constraints & Administrative Paralysis)

विश्व बैङ्कको कन्ट्री प्रोक्योरमेन्ट एसेसमेन्ट रिपोर्ट (CPAR) ले नेपालको सार्वजनिक खरिदमा मुख्य समस्या 'क्षमताको अभाव' (Lack of Procurement Capacity) रहेको देखाएको छ। प्रतितपत्र (LC) बैकिङ र अन्तर्राष्ट्रिय कानूनसँग जोडिएको अत्यन्तै प्राविधिक विषय हो। धेरैजसो सरकारी कार्यालयका खरिद र लेखा एकाइका कर्मचारीहरूमा अन्तर्राष्ट्रिय व्यापारिक सर्तहरू (Incoterms) र UCP 600 को ज्ञान हुँदैन। सानो त्रुटिले पनि "Discrepancy" सिर्जना भई बैङ्कले जरिवाना काट्ने वा भुक्तानी रोकिने समस्या आउँछ, जसले गर्दा भन्सारमा महिनौंसम्म सामान थन्किने र 'Demurrage' चार्ज तिर्नुपर्ने अवस्था आउँछ।

अर्कोतर्फ, एउटै खरिद प्रकरणमा दर्जनौं कर्मचारीलाई थोकमा (Indiscriminate Prosecution) मुद्दा चलाउने गर्दा निजामती प्रशासनमा एक किसिमको मनोवैज्ञानिक त्रास र प्रशासनिक पक्षघात (Administrative Paralysis) सिर्जना भएको छ। असल नियतले काम गर्ने कर्मचारीहरूले पनि निर्णय लिन डराउने र LC सम्बन्धी फाइलहरू तथा समग्र खरिद सम्बन्धि निर्णय पन्छाउने प्रवृत्तिले सार्वजनिक निकायका काम कारवाही नराम्ररी प्रभावित भएका छन्।

८. निष्कर्ष (Conclusion)

नेपालको सार्वजनिक खरिद प्रणालीमा 'प्रतिपत्र' (Letter of Credit) अन्तराष्ट्रिय स्तरको खरिदलाई सुरक्षित, पारदर्शी र भरपर्दो बनाउने एक अपरिहार्य र अन्तराष्ट्रिय रूपमा प्रमाणित वित्तीय औजार हो। सार्वजनिक खरिद ऐन, २०६३ र सार्वजनिक खरिद नियमावली, २०६४ ले प्रतिपत्रको प्रयोगलाई स्पष्ट कानुनी मान्यता दिँदै अन्तराष्ट्रिय खरिदमा यसलाई भुक्तानीको मुख्य माध्यमको रूपमा स्थापित गरेका छन्। यद्यपि, कानुनी व्यवस्था अनुसार पर्याप्त नमुना बोलपत्र सम्बन्धी कागजातहरू तयार नहुन, भएका नमुना बोलपत्र सम्बन्धी कागजातका कतिपय शर्तहरू पूर्ण नहुनु, बहु निकाय संलग्नतामा विभिन्न निकायका आ आफ्नै अभ्यास हुनुले यसको कार्यान्वयन पक्ष जटिल रहेको पुष्टी गर्दछ।

प्रतिपत्रका जोखिमहरूलाई न्यूनीकरण गर्न सार्वजनिक निकायहरूले बोलपत्र सम्बन्धी कागजात तयारी देखिनै तथा र नियामक संस्थाहरूले नीतिगत तथा व्यावहारिक रूपमा उच्च सतर्कता अपनाउनु जरुरी छ। साथै खरिदका सबै पक्षको आवधिक तालिमहरू खरिद एकाइमा संलग्न कर्मचारीहरूलाई दिने तथा असल अभ्यासहरूको प्रवर्द्धनका लागि ठुला खरिद गर्ने निकायहरूविरूद्ध अनुभव आदानप्रदान कार्यक्रम संचालन गर्ने, सरकारी कार्यालयका खरिद एकाइमा कार्यरत कर्मचारीहरूलाई UCP 600, Incoterms, र अन्तराष्ट्रिय व्यापार फाइनेन्स (Trade Finance) सम्बन्धी निरन्तर प्राविधिक क्षमता अभिवृद्धि तालिम प्रदान गर्ने जस्ता पक्षमा समेत सुधार गर्न सकिन्छ।

अन्ततः, प्रतिपत्र आफैमा भ्रष्टाचार गर्ने वा रोक्ने संयन्त्र होइन; यो केवल अन्तराष्ट्रिय व्यापारलाई सहजीकरण गर्ने एउटा वित्तीय माध्यम हो। यसको सदुपयोग गरी सार्वजनिक खरिदमा मूल्यको सार्थकता (Value for Money) हासिल गर्न खरिद सम्झौताको कडा र व्यावसायिक व्यवस्थापन, खरिद कानूनको स्थिरता, खरिदका प्रकार अनुसारका विशिष्टिकृत नमुना बोलपत्र सम्बन्धी कागजातहरूको तयारी र सार्वजनिक पदाधिकारीहरूको उच्च क्षमता र नैतिकता अनिवार्य सर्त हुन्। प्रभावकारी खरिद व्यवस्थापन र पारदर्शी बैकिङ अभ्यासको सही तालमेलले मात्र नेपालको सार्वजनिक खरिदलाई जोखिममुक्त, स्वच्छ र परिणाममुखी बनाउन सक्छ।

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सार्वजनिक खरिदमा आर्थिक प्रशासनमा कार्यरत कर्मचारीको भूमिका



बिष्णु प्रसाद सुबेदी ¹⁰

सारांश

सार्वजनिक खरिदमा आर्थिक प्रशासन शाखामा कार्यरत कर्मचारीहरूको भूमिका बहुआयामिक र जिम्मेवारपूर्ण छ। उनीहरूले बजेट अनुकूलता सुनिश्चित गर्छन्, नियम पालन गर्छन्, भुक्तानी प्रक्रिया व्यवस्थापन गर्छन्, अनियमितता पहिचान गर्छन् र वित्तीय पारदर्शिता प्रवर्द्धन गर्छन्। कर्मचारीहरूको सही निर्णयले केवल वर्तमान खरिदमा मात्र नभई दीर्घकालीन वित्तीय स्थिरता र सरकारी स्रोतको संरक्षणमा पनि प्रभाव पार्दछ। उनीहरूको कामले सरकारी स्रोतको सही उपयोग सुनिश्चित गर्दै विकास, सेवा प्रवाह, र जनताको विश्वासमा प्रत्यक्ष योगदान पुर्याउँछ। आर्थिक प्रशासन शाखाका कर्मचारीहरू केवल प्रशासनिक कर्मचारी नभई सरकारी वित्त व्यवस्थापनका संरक्षक हुन्, जसले सुशासन, विकास, र वित्तीय अनुशासनमा आधार तयार गर्छन्। सार्वजनिक खरिदमा आर्थिक प्रशासनका कर्मचारीहरूले सामना गर्ने चुनौतीहरू प्रायः प्रक्रियागत जटिलता, समन्वय अभाव, क्षमता सीमितता र पारदर्शितासँग सम्बन्धित हुन्छन्। क्षमता विकास, स्पष्ट कार्यविधि, प्रविधिको प्रयोग र सुशासन उपायहरू अपनाउँदा यी चुनौतीहरू प्रभावकारी रूपमा न्यूनीकरण गर्न सकिन्छ।

१. परिचय

सार्वजनिक निकायहरूले वस्तु, सेवा वा निर्माण कार्य खरिद गर्दा अपनाइने प्रक्रियालाई सार्वजनिक खरिद भनिन्छ। यो प्रक्रिया पारदर्शी, प्रतिस्पर्धात्मक, आर्थिक रूपमा लाभदायक र कानुनी रूपमा वैध हुनुपर्छ। खरिद प्रक्रियालाई व्यवस्थित, अनुशासित र विश्वसनीय बनाउन आर्थिक प्रशासन शाखामा कार्यरत कर्मचारीहरूको भूमिका अत्यन्त महत्वपूर्ण हुन्छ। आर्थिक प्रशासन कार्यालयको आर्थिक अनुशासनको केन्द्र भएकाले खरिद प्रक्रियामा वित्तीय अनुशासन कायम गर्ने, जोखिम न्यूनीकरण गर्ने तथा स्रोतको सदुपयोग सुनिश्चित गर्ने काम यसमा कार्यरत कर्मचारीले गर्नुपर्दछ। सार्वजनिक खरिद

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प्रक्रियामा आर्थिक प्रशासन शाखामा कार्यरत कर्मचारीहरू वित्तीय अनुशासन, पारदर्शिता र कानुनी अनुपालन सुनिश्चित गर्ने मध्ये मुख्य पात्र हुन्। उनीहरूको भूमिका वित्तीय नियन्त्रण, भुक्तानी व्यवस्थापन, अभिलेख राख्ने तथा आन्तरिक नियन्त्रण सुदृढ गर्ने पक्षसँग प्रत्यक्ष सम्बन्धित हुन्छ। सार्वजनिक खरिद ऐन, २०६३ र नियमावली, २०६४ ले सार्वजनिक खरिद प्रक्रियाका विभिन्न चरणमा आर्थिक प्रशासन शाखामा कार्यरत कर्मचारीको भूमिका समेत व्यवस्था गरेको छ।

२. सार्वजनिक खरिद र आर्थिक प्रशासन : परिचय

सामान्य अर्थमा सरकारले आफ्नो कार्यसम्पादनका लागि आवश्यक पर्ने चिजवस्तु खरिद गर्ने कार्यलाई सार्वजनिक खरिद भनेर बुझिन्छ। विस्तृत अर्थमा सार्वजनिक निकायले सार्वजनिक कोष खर्च गरी मालसामान, परामर्श सेवा तथा अन्य सेवा प्राप्त गर्ने एवम् निर्माण तथा सोसँग सम्बन्धित कार्य गर्ने गराउने प्रक्रियालाई सार्वजनिक खरिद भनिन्छ। सरकारी कोषको प्रभावकारीता बढाउँदै वित्तीय क्षमता विकास गरी खर्चमा मितव्ययीता गर्न सार्वजनिक नीतिहरूको कार्यन्वयन हुने गरी व्यावसायिकता विकास गर्न सार्वजनिक खरिदको महत्वपूर्ण भूमिका देखिन्छ।

सार्वजनिक प्रशासनका मूलभूत पक्ष सामान्य प्रशासन, विकास प्रशासन, कर्मचारी प्रशासन र आर्थिक प्रशासनमध्ये आर्थिक प्रशासन एउटा यस्तो पक्ष हो, जसलाई बाहिर झिकिदिँदा अरू सबै प्रायः निष्प्रभावी हुन्छन्। आर्थिक साधन स्रोतको तर्जुमा गर्ने, सङ्कलन एवं प्राप्ति गर्ने, बाँडफाँट गर्ने, उपयोग एवं कार्यान्वयन गर्ने, लेखाङ्कन गर्ने, प्रतिवेदन गर्ने, लेखापरीक्षण, मूल्याङ्कन एवं पृष्ठपोषण गर्नेसम्मका कार्यको समष्टिगत रूपलाई आर्थिक प्रशासन भनिन्छ। यो सरकारको आय र व्ययको व्यवस्थापन गर्ने संयन्त्र हो। यो आधुनिक सरकारको प्रमुख अङ्ग हो, जसले सरकारी सेवाका लागि रकम सङ्कलन गर्ने, खर्च गर्ने र लेखा राख्ने प्रक्रिया र निकायको पहिचान दिन्छ। यो सार्वजनिक प्रशासनको एक अभिन्न अङ्ग हो।

३. आर्थिक प्रशासनको भूमिका

सार्वजनिक प्रशासनमा आर्थिक प्रशासनको भूमिकालाई निम्नानुसार उल्लेख गर्न सकिन्छ :-

- मुलुकमा आर्थिक वृद्धि, आर्थिक स्थायित्व र सामाजिक न्याय कायम गर्न आर्थिक प्रशासनले सहयोग गर्छ।
- सरकारको आयव्ययको कुशल व्यवस्थापन, आर्थिक प्रशासनसम्बन्धी ऐन, नियमको पालना गरी आर्थिक अनुशासन कायम गर्न एवं वित्तीय जवाफदेहिता प्रवर्द्धन गर्दछ।

- सार्वजनिक प्रशासनले गर्नुपर्ने नियमित कार्य, आकस्मिक कार्य र विकाससम्बन्धी कार्यलाई आवश्यक पर्ने साधनस्रोतको व्यवस्था गर्छ।
- सरकारलाई नीति, योजना, कार्यक्रम तर्जुमा गर्न, निर्णय गर्न आवश्यक पर्ने वित्तीय सूचना उपलब्ध गराई सहयोग गर्दछ साथै- मुलुकमा सुशासन कायम गर्न समेत मद्दत गर्छ।

४. आर्थिक प्रशासन शाखाको संरचना र कार्यक्षेत्र

आर्थिक प्रशासन शाखा सरकारी कार्यालयमा वित्तीय व्यवस्थापनको मुख्य एकाइ हो। यस शाखाको मुख्य कार्यक्षेत्रमा बजेट कार्यान्वयन, भुक्तानी व्यवस्थापन, लेखा परीक्षण, आन्तरिक वित्तीय नियन्त्रणका विषय समावेश हुन्छन्। सार्वजनिक खरिद प्रक्रियामा आर्थिक प्रशासन शाखाका कर्मचारीहरूको कार्यलाई निम्नानुसार उल्लेख गर्न सकिन्छ :-

१. खरिद प्रस्तावको मूल्याङ्कन र अनुमोदन
२. बजेट अनुकूलता र वित्तीय योजना सुनिश्चितता
३. भुक्तानी प्रक्रिया व्यवस्थापन र समीक्षा
४. अनियमितता पहिचान र रिपोर्टिङ
५. लेखा दिग्दर्शन पालना र वित्तीय पारदर्शिता प्रवर्द्धन

५. सार्वजनिक खरिद प्रक्रियामा आर्थिक प्रशासन शाखामा कार्यरत कर्मचारीहरूको महत्त्व

सार्वजनिक खरिद सरकारको वित्तीय स्रोतको उपयोग गर्दै सेवा, सामग्री वा परियोजना खरिद गर्ने प्रक्रिया हो। यो प्रक्रिया संवेदनशील र जिम्मेवारीपूर्ण छ, किनभने यसले सरकारी स्रोतको सही उपयोग, पारदर्शिता, र जवाफदेहिता सुनिश्चित गर्नुपर्छ। सार्वजनिक खरिदको प्रभावकारीता नाप्न सकिने प्रमुख मापदण्ड भनेको बजेटको सदुपयोग, नियमको पालना, भुक्तानीको सही व्यवस्थापन, र लेखा दिग्दर्शनको पारदर्शिता हो। यस क्षेत्रमा आर्थिक प्रशासन शाखाको भूमिका अत्यन्तै महत्त्वपूर्ण हुन्छ।

आर्थिक प्रशासन शाखाका कर्मचारीहरूले केवल प्रशासनिक काम मात्र गर्दैनन्; उनीहरूले वित्तीय अनुशासन, नियमपालना, भुक्तानी प्रक्रिया, अनियमितता पहिचान, लेखा दिग्दर्शन र लेखा परीक्षण प्रक्रिया सुनिश्चित गर्ने जिम्मेवारी बहन गर्छन्। यसैले, सार्वजनिक खरिद प्रक्रियामा कर्मचारीहरूको भूमिका सरकारको विश्वासिलो संरक्षकको रूपमा देखिन्छ।

५.१. बजेट अनुकूलता र वित्तीय योजना: आर्थिक प्रशासन शाखा कर्मचारीहरूको पहिलो जिम्मेवारी भनेको बजेट अनुकूलता सुनिश्चित गर्नु हो। प्रत्येक खरिद प्रस्ताव प्राप्त भएपछि, कर्मचारीहरूले प्रस्तावको लागत र उपलब्ध बजेटको तुलना गर्छन्। यसले अनावश्यक खर्च, बजेट अभाव, र प्राथमिकताभन्दा बाहिरको खरिद रोक्छ। सार्वजनिक खरिद ऐन, २०६३ र सार्वजनिक खरिद नियमावली, २०६४ अनुसार खरिद सम्बन्धी कागजात तयार गर्नुअघि बजेट उपलब्धता पुष्टि हुनुपर्दछ। प्रस्तावित खरिदको स्रोतको उपलब्धता पुष्टि गर्ने जिम्मेवारी आर्थिक प्रशासन शाखाको हुनेछ। स्वीकृत कार्यक्रम तथा खरिद योजनासँग मिलाएर बजेट उपलब्धता पुष्टि गर्ने, बजेट कोड, शीर्षक र विनियोजन अनुसार खर्च हुने सुनिश्चित गर्ने जस्ता कार्यहरूको लागि आर्थिक प्रशासनको महत्वपूर्ण भूमिका हुनेछ।

५.२. नियम पालन र कानुनी अनुकूलता : कानुनी तथा प्रक्रियागत अनुपालन सुनिश्चित गर्नु पनि महत्वपूर्ण जिम्मेवारी हो। बोलपत्र कागजात, सम्झौता, स्वीकृति आदेश तथा अन्य वित्तीय कागजातहरू प्रचलित नियम, मापदण्ड र वित्तीय कार्यविधिसँग मेल खान्छन् कि छैनन् भन्ने विषयमा आर्थिक प्रशासनमा संलग्न कर्मचारीले जाँच तथा प्रमाणीकरण गर्छन्। यसले खरिद प्रक्रियालाई वैधानिक बनाउँछ र भविष्यमा हुने विवाद तथा बेरुजु घटाउँछ। खरिद प्रक्रियाको योजना तथा लागत अनुमान चरणमा आर्थिक प्रशासन शाखाले वित्तीय परामर्श प्रदान गर्छन्। लागत अनुमान यथार्थपरक छ कि छैन, बजार मूल्यसँग मेल खान्छ कि खाँदैन, कुन खरिद विधि अपनाउने भन्ने निर्णयमा पनि वित्तीय दृष्टिकोणबाट आर्थिक प्रशासन शाखाले राय सुझाव दिन्छन्। यसले सार्वजनिक निकायलाई आर्थिक रूपमा लाभदायक विकल्प छनोट गर्न सहयोग पुर्याउँछ। सार्वजनिक खरिद ऐन, २०६३ ले स्पष्ट गरेको छ कि प्रत्येक खरिदले न्यूनतम लागतमा अधिकतम सेवा/सामग्री उपलब्ध गराउनुपर्छ। ऐनको पालना आर्थिक प्रशासन शाखाका कर्मचारीहरूको प्रमुख जिम्मेवारी हो। प्रचलित सार्वजनिक खरिद कानून, नियम तथा वित्तीय कार्यविधिको पालना सुनिश्चित गर्ने, सम्झौता सर्तअनुसार खर्च भएको छ/छैन परीक्षण गर्ने जस्ता कार्यमा राय, परामर्श प्रदान गरी कार्यलाई सफल बनाउन महत्वपूर्ण भूमिका हुन्छ।

५.३. भुक्तानी प्रक्रिया व्यवस्थापन : भुक्तानी व्यवस्थापनमा आर्थिक प्रशासन शाखाको प्रत्यक्ष भूमिका हुन्छ। काम सम्पन्न भएको प्रमाण, नापी किताब, बिल तथा अन्य आवश्यक कागजात जाँच गरी भुक्तानी सिफारिस गर्ने, अग्रिम तथा किस्ता भुक्तानी नियमअनुसार गर्ने तथा अन्तिम भुक्तानी अघि सबै शर्त पूरा भएको सुनिश्चित गर्ने जिम्मेवारी सोही शाखाको हुन्छ। यसले सार्वजनिक धनको दुरुपयोग हुनबाट जोगाउँछ। भुक्तानी प्रक्रिया व्यवस्थापन आर्थिक प्रशासन शाखाको अत्यन्त महत्वपूर्ण

कार्यक्षेत्र हो। खरिद सम्पन्न भएपछि, विक्रेता वा सेवा प्रदायकलाई भुक्तानी गर्नुपर्ने हुन्छ। यस क्रममा शाखाका कर्मचारीहरूले भुक्तानी निवेदनको परीक्षण, प्रमाणीकरण, र अनुमोदन हुने गर्दछ। खरिद सम्झौताको आधारमा बिल पेश भएपछि सम्बन्धित शाखाले सामग्रीको गुणस्तर जाँच गरी प्रमाणपत्र प्रदान गर्ने गर्दछ। आर्थिक प्रशासन शाखाले सम्झौतामा उल्लिखित बिल अफ क्वाण्टिटि र दर सँग पेश गरेको बिलको भिडान गर्ने र कर तथा अन्य कटौतीहरूको गणना गर्ने कार्य गर्दछ। बिल जाँच गर्दा केही त्रुटीहरू फेला परेमा सम्बन्धित शाखालाई सुधारका लागि जानकारी दिइन्छ। सार्वजनिक खरिद ऐन र नियमावली अनुसार कुनै पनि भुक्तानी दिनुअघि सामग्रीको आपूर्ति र सेवा उपलब्धता हुनुपर्दछ। माइलस्टोन वा कार्य सम्पन्नताको आधारमा भुक्तानी प्रक्रिया अघि बढाउने, भुक्तानी आदेश तयार गर्ने र समयमै भुक्तानी सुनिश्चित गर्ने, दोहोरो भुक्तानी, अनियमितता वा अस्वीकृत खर्च रोक्ने जस्ता कार्यहरू साथै खरिद प्रस्ताव, सम्झौता, बिल तथा कागजातको वित्तीय परीक्षण गर्ने दररेट, कर, भ्याट, अग्रिम तथा धरोटीको शुद्धता जाँच गर्ने कार्यहरू गर्ने हुँदा सार्वजनिक खरिदमा आर्थिक प्रशासन शाखाको महत्वपूर्ण भूमिका रहेको छ।

५.४. अनियमितता पहिचान गरी प्रतिवेदन गर्ने : आन्तरिक नियन्त्रण तथा जोखिम व्यवस्थापनमा पनि आर्थिक प्रशासन शाखाको महत्वपूर्ण योगदान रहन्छ। दोहोरो भुक्तानी, अनावश्यक खर्च, सम्झौता उल्लंघन वा वित्तीय अनियमितता हुन सक्ने सम्भावित जोखिम पहिचान गरी नियन्त्रणका उपाय लागू गर्ने काम आर्थिक प्रशासन शाखा प्रमुखले गर्छन्। प्रभावकारी आन्तरिक नियन्त्रण प्रणालीले संस्थाको वित्तीय विश्वसनीयता बढाउँछ। सार्वजनिक खरिदमा अनियमितता वा भ्रष्टाचारको सम्भावना उच्च हुन्छ। आर्थिक प्रशासन शाखाका कर्मचारीहरूले अनियमितता पहिचान गर्ने र सम्बन्धित निकायमा प्रतिवेदन गर्ने जिम्मेवारी बहन गर्छन्। सम्भावित वित्तीय जोखिम पहिचान गरी नियन्त्रण उपाय सुझाव दिने, अनियमितता, बेरुजु तथा कमजोरी न्यूनीकरणमा सहयोग गर्ने कार्यमा आर्थिक प्रशासन शाखाको महत्वपूर्ण भूमिका रहन्छ।

५.५. अभिलेख तथा प्रतिवेदन व्यवस्थापन : अभिलेख व्यवस्थापन तथा प्रतिवेदन तयारी पनि आर्थिक प्रशासनको जिम्मेवारीभित्र पर्छ। खरिदसँग सम्बन्धित सबै वित्तीय कागजात व्यवस्थित रूपमा सुरक्षित राख्ने, खर्च विवरण तयार गर्ने तथा लेखापरीक्षणका लागि आवश्यक सूचना उपलब्ध गराउने कार्यले संस्थाको उत्तरदायित्व र पारदर्शिता बढाउँछ। खरिद सम्बन्धी वित्तीय अभिलेख सुरक्षित राख्ने, लेखा प्रतिवेदन, प्रगति विवरण र वित्तीय विवरण तयार गर्ने र लेखापरीक्षणका लागि आवश्यक कागजात उपलब्ध गराउने जस्ता कार्यहरू सम्पादन गर्न आर्थिक प्रशासन शाखाको भूमिका हुने गर्दछ।

आर्थिक प्रशासन शाखाबाट सरकारी स्रोतको उपयोग, भुक्तानी प्रक्रिया र खर्चको विवरण अभिलेखमा राखिन्छ। यसमा बजेट प्रयोग, भुक्तानी प्रक्रिया, लागत तुलना, र स्रोतको उपयोग समावेश हुन्छ।

६. सार्वजनिक खरिद चक्रमा आर्थिक प्रशासन शाखाले ध्यान दिनुपर्ने कुराहरू

सार्वजनिक खरिद चक्र (Public Procurement Cycle) मा आर्थिक प्रशासन शाखाको भूमिका वित्तीय अनुशासन, पारदर्शिता र कानुनी अनुपालन सुनिश्चित गर्नेमा केन्द्रित हुन्छ। खरिद चक्रको चरण अनुसार ध्यान दिनुपर्ने मुख्य कुराहरू निम्नानुसार छन् :-

१. **योजना तथा बजेट सुनिश्चितता चरण :** खरिद प्रक्रियाको प्रथम चरण योजना तथा बजेट सुनिश्चितता गर्नु हो। यस चरणमा आर्थिक प्रशासन शाखाले सार्वजनिक खरिद नियमावली २०६४ को नियम ६ बमोजिम बजेट तथा निर्माण स्थलको व्यवस्था भए/नभएको हेर्ने, स्वीकृत वार्षिक कार्यक्रम र बजेटसँग खरिद मिलेको छ/छैन जाँच गर्ने, बजेटको उपलब्धता (Budget Availability) प्रमाणित गर्ने, बजेट शीर्षक, कोड र खर्च सीमा सही भएको सुनिश्चित गर्ने, आवश्यक परे Budget Ceiling / Authorization लिन समन्वय गर्ने जस्ता कुराहरूमा ध्यान दिनुपर्दछ।
२. **लागत अनुमान (Cost Estimate) चरण :** खरिद प्रक्रियाको दोश्रो चरणमा लागत अनुमान तयार गर्नु हो। वस्तु तथा सेवा खरिद, निर्माण कार्य तथा परामर्श सेवा खरिदको लागि लागत अनुमान तयार गर्दा आर्थिक प्रशासन शाखा प्रमुखको राय लिने गरिन्छ। यसरी राय दिँदा लागत अनुमान स्वीकृत मापदण्ड अनुसार तयार भएको जाँच गर्ने, दररेट, कर (VAT), भन्सार, ढुवानी आदि समावेश भएको सुनिश्चित गर्ने, अनुमानित लागत बजेटभित्र छ/छैन जाँच गर्ने जस्ता कुराहरूमा आर्थिक प्रशासन शाखाले ध्यान दिनुपर्दछ।
३. **बोलपत्र/प्रस्ताव चरण :** खरिद प्रक्रियाको तेश्रो चरणमा बोलपत्र वा प्रस्ताव आव्हान गरिन्छ। वस्तु तथा मालसामान खरिद, निर्माण कार्यको लागि बोलपत्र आव्हान तथा परामर्श सेवा तथा अन्य सेवा खरिदको लागि प्रस्ताव आव्हान गर्दाका बखत आर्थिक प्रशासन शाखाको राय लिने गरिन्छ। यसरी राय दिँदा बोलपत्र कागजातमा वित्तीय सर्तहरू स्पष्ट छन्/छैन जाँच गर्ने, Bid Security / Earnest Money सही दर र वैधता भएको सुनिश्चित गर्नुपर्दछ। बोलपत्र वा प्रस्ताव मुल्याङ्कन गर्दा आर्थिक प्रशासन शाखा प्रमुखले मुल्याङ्कन समितिको सदस्य भई कार्य समेत गर्नुपर्नेछ। यसरी मुल्याङ्कन गर्दा वित्तीय मूल्याङ्कन पारदर्शी र अभिलेखीकृत भएको सुनिश्चित गर्ने जस्ता कुराहरूमा विशेष ध्यान दिनुपर्दछ।

४. **सम्झौता (Contract) चरण :** खरिद प्रक्रियाको अर्को चरणमा मुल्याङ्कनमा सारभुत रूपमा न्यूनतम मूल्याङ्कित बोलपत्र वा प्रस्ताव छनौट गरी खरिद सम्झौता गरिन्छ। यसको लागि खरिद सम्झौतापत्र तयारी गरिन्छ। सम्झौतापत्र तयारीमा आर्थिक प्रशासन शाखाको प्रमुख भूमिका हुने हुँदा सम्झौतामा राखिएका सम्झौता रकम, कर, भुक्तानी सर्त (Payment Terms) स्पष्ट भएको जाँच गर्ने, पेश भएको Performance Security को अवधि, रकम र सम्बन्धित बैङ्कबाट Verification प्राप्त भए/ नभएको जाँच गर्ने, सम्झौता गर्दाका बखत आधिकारिक व्यक्ति (Approval Authority) सही भए/नभएको जाँच गर्ने, निर्माण व्यवसायीले पेश गरेको कार्यतालिका, गुणस्तर आस्वस्तता योजनापेश भए, नभएको जस्ता कुराहरूमा ध्यान दिनुपर्दछ।
५. **कार्यान्वयन तथा भुक्तानी चरण :** खरिद सम्झौता पश्चात सम्झौताको कार्यान्वयन गर्ने गरिन्छ। कार्यान्वयनको अनुगमन सम्बन्धित शाखाले गर्ने गर्दछ। सम्बन्धित शाखाबाट भुक्तानीको लागि सिफारिस (म.ले.प.फा.नं.२०२) साथ पेश भएको कागजातहरू अधिकारप्राप्त अधिकारीबाट स्वीकृत भई प्राप्त भए, नभएको, कार्य प्रगति अनुसार बिल / Invoice पेश भएको जाँच गर्ने, नापी किताब (Measurement Book) वा कार्य सम्पन्न प्रमाण संलग्न भएको सुनिश्चित गर्ने, कर कट्टा (TDS, VAT) नियम अनुसार गरिएको जाँच गर्ने, Running Bill / Final Bill मा गणना सही भएको जाँच गर्ने, भुक्तानी पूर्व Budget Release / Cash Availability सुनिश्चित गर्ने जस्ता कुराहरूमा आर्थिक प्रशासन शाखाले ध्यान दिनुपर्दछ।
६. **लेखाङ्कन तथा प्रतिवेदन चरण :** खरिद प्रक्रियाको अर्को चरण लेखाङ्कन तथा प्रतिवेदन चरण हो। यस अन्तर्गत खर्च सही बजेट शीर्षकमा लेखा राख्ने, Advance, Retention, Deposit को छुट्टै अभिलेख राख्ने, वित्तीय प्रतिवेदन (Financial Statement) मा सही खुलासा गर्ने जस्ता कुराहरूमा ध्यान दिनुपर्दछ। यसका साथै सम्झौता भुक्तानीको लेखाङ्कनको लागि सम्झौता अवधिभित्र भए,नभएको, पेशकी रकम भएमा कट्टा भए,नभएको, धरौटी, करकट्टी नियमानुसार भए, नभएको, विगतको भुक्तानी रकम सही भए, नभएको, सम्झौतामा उल्लिखित दर अनुसार बिलमा उल्लिखित दरमा फरक भए, नभएको, नापी किताब र ठेक्का बिलमा उल्लिखित परिमाण फरक भए, नभएको जस्ता कुराहरूमा आर्थिक प्रशासन शाखाले विशेष ध्यान दिनुपर्दछ।
७. **अनुगमन र लेखापरीक्षण तयारी चरण :** सम्झौता कार्यान्वयनको चरणमा भएका भुक्तानीहरूको अभिलेख खडा गरी आन्तरिक वा बाह्य रूपमा अनुगमन गर्नुको साथै लेखापरीक्षणको लागि तयारी कागजातहरू राख्नुपर्दछ। यस चरणमा आर्थिक प्रशासन शाखाको महत्वपूर्ण भूमिकाहरू

रहेका हुन्छन्। आर्थिक प्रशासन शाखाले सम्पूर्ण कागजात (File Documentation) पूर्ण र व्यवस्थित राख्ने , आन्तरिक नियन्त्रण (Internal Control) पालना भएको सुनिश्चित गर्ने, बेरुजु जोखिम हुने विषय पहिचान गरी सुधार गर्ने जस्ता कुराहरूमा ध्यान दिनुपर्दछ।

सार्वजनिक खरिदको भुक्तानीमा ध्यान दिनुपर्ने कुराहरू

- सार्वजनिक खरिद ऐन, नियमावली र कार्यविधिको पूर्ण पालना,
- पारदर्शिता र जवाफदेहिता (Audit Trail) कायम,
- जोखिम व्यवस्थापन (Risk Management) अपनाउने,
- दोहोरो भुक्तानी वा अनियमितता रोक्ने,
- समयमै भुक्तानी गरी दायित्व व्यवस्थापन गर्ने ।

७. सार्वजनिक खरिद प्रक्रियामा आर्थिक प्रशासन शाखाले सामना गर्नुपर्ने चुनौतीहरू

सार्वजनिक खरिद प्रक्रियामा आर्थिक प्रशासन शाखाले विभिन्न कानुनी, प्राविधिक तथा व्यवस्थापकीय चुनौतीहरूको सामना गर्नुपर्छ। मुख्य चुनौतीहरू निम्नानुसार छन् :-

१. कानुनी तथा प्रक्रिया सम्बन्धी चुनौती

- सार्वजनिक खरिद ऐन, २०६३ र सार्वजनिक खरिद नियमावली, २०६४ को सही व्याख्या तथा पालना सुनिश्चित हुनु,
- बारम्बार संशोधन हुने कानुनी प्रावधानसँग अद्यावधिक रहनु,
- प्रक्रियागत त्रुटि भएमा लेखापरीक्षण (Audit) जोखिम बढ्नु।

२. बजेट तथा वित्तीय व्यवस्थापन चुनौती

- बजेट विनियोजन ढिलो हुनु वा अपर्याप्त हुनु,
- नगद प्रवाह कार्यक्रम अनुसार समयमै भुक्तानी गर्नु,
- लागत अनुमान (Cost Estimate) र वास्तविक लागतबीच ठूलो अन्तर कायम हुनु।

३. पारदर्शिता र उत्तरदायित्व चुनौती

- अनियमितता, मिलेमतो (Collusion) वा भ्रष्टाचारको जोखिम बढ्नु,
- खरिद निर्णयमा निष्पक्षता कायम राख्ने दबाव हुनु,

- सार्वजनिक उत्तरदायित्व (Public Accountability) कायम राख्न कठिनाइ हुनु।

४. कागजात तथा अभिलेख व्यवस्थापन चुनौती

- ठूलो मात्रामा कागजात (Bids, Contracts, Bills) व्यवस्थापन गर्न कठिनाइ हुनु,
- अभिलेख ठीकसँग नराख्दा लेखापरीक्षणमा बेरुजु आउनु,
- डिजिटल प्रणाली र म्यानुअल प्रणालीबीच समन्वय कायम गर्नु।

५. समन्वय तथा संस्थागत चुनौती

- प्राविधिक शाखा, योजना शाखा र निर्माण व्यवसायी वा आपूर्तिकर्तासँग समन्वय कायम गर्नु,
- जिम्मेवारी स्पष्ट नहुँदा काम दोहोरिनु वा ढिलाइ हुनु,
- निर्णय प्रक्रियामा बहु-स्तरीय स्वीकृतिका कारण ढिलाइ हुनु।

६. क्षमता तथा दक्षता सम्बन्धी चुनौती

- सार्वजनिक खरिद, वित्तीय व्यवस्थापन र सूचना प्रविधि प्रणालीमा पर्याप्त तालिमको व्यवस्था गर्नु,
- दक्ष जनशक्ति अभाव वा कर्मचारी सरुवा (Transfer) धेरै हुनु,
- नयाँ प्रणाली (e-GP, IPFMS) प्रयोगमा कठिनाइ हुनु।

७. भुक्तानी तथा लेखा परीक्षण चुनौती

- भुक्तानीका लागि आवश्यक कागजात अपूर्ण आउनु,
- ठेक्का सम्झौता सर्त र भुक्तानी शर्तबीच विसंगति हुनु,
- लेखापरीक्षणबाट बेरुजु (Audit Observation) बढ्नु।

८. चुनौती / समाधानका उपायहरू

सार्वजनिक खरिद प्रक्रियामा आर्थिक प्रशासन शाखामा कार्यरत कर्मचारीहरूले विभिन्न प्रशासनिक, कानुनी तथा प्राविधिक चुनौतीहरू सामना गर्नुपर्छ। ती चुनौतीहरू समाधान गर्न अपनाउन सकिने मुख्य उपायहरू निम्नानुसार छन्:

९. क्षमता विकास र तालिम :

- सार्वजनिक खरिद ऐन, नियमावली तथा कार्यविधिमा नियमित तालिम सञ्चालन गर्ने,
- IT-based procurement system (e-GP) प्रयोगमा दक्षता अभिवृद्धि गर्ने,

- लेखा, लेखापरीक्षण तथा जोखिम व्यवस्थापन सम्बन्धी निरन्तर पेशागत विकास (CPD)।

२. स्पष्ट कार्यविधि (SOP) र मापदण्ड

- खरिद प्रक्रिया चरणगत मार्गदर्शन तयार गरी लागू गर्ने,
- जिम्मेवारी र अधिकार स्पष्ट निर्धारण गर्ने (segregation of duties),
- चेकलिस्ट र Standard Templates प्रयोग गर्ने।

३. योजना तथा बजेट व्यवस्थापन सुधार

- यथार्थपरक वार्षिक खरिद योजना (APP) तयार गर्ने,
- बजेट उपलब्धता र cash flow व्यवस्थापन समन्वय गर्ने,
- समयमै भुक्तानी र contract management प्रणाली मजबुत बनाउने।

४. पारदर्शिता र सुशासन प्रवर्द्धन

- e-Procurement प्रणालीको अनिवार्य प्रयोग,
- निर्णय प्रक्रिया र कागजात अभिलेखीकरण (documentation) व्यवस्थित गर्ने,
- गुनासो सुनुवाइ तथा whistleblower mechanism सक्रिय गर्ने।

५. अन्तर-समन्वय सुदृढीकरण

- प्राविधिक शाखा, योजना शाखा र आर्थिक प्रशासन शाखाबीच नियमित समन्वय बैठक गर्ने,
- Stakeholder communication plan तयार गर्ने,
- निर्णय प्रक्रियामा सामूहिक जिम्मेवारी (team approach) अपनाउने।

६. कानुनी तथा जोखिम व्यवस्थापन

- Contract risk assessment र mitigation plan तयार गर्ने,
- कानुनी परामर्श (legal review) समयमै लिने,
- Internal control system तथा internal audit सुदृढ गर्ने।

७. प्रविधिको प्रभावकारी प्रयोग

- e-GP, document management system जस्ता डिजिटल उपकरण प्रयोग,
- Data analytics प्रयोग गरी खर्च अनुगमन,
- Automation मार्फत human error घटाउने।

९. निष्कर्ष

आर्थिक प्रशासन शाखाका कर्मचारीहरू सार्वजनिक खरिद प्रणालीमा वित्तीय संरक्षक (Financial Gatekeeper) का रूपमा कार्य गर्छन्। उनीहरूको प्रभावकारी भूमिका बिना पारदर्शी, उत्तरदायी र परिणाममुखी खरिद सम्भव हुँदैन।

आर्थिक प्रशासन शाखा प्रमुख सार्वजनिक खरिद प्रक्रियामा पारदर्शिता, जवाफदेहिता र सुशासन कायम गर्ने प्रमुख स्तम्भ हुन्। उनीहरूको प्रभावकारी भूमिका बिना खरिद प्रक्रिया आर्थिक रूपमा सुरक्षित, कानुनी रूपमा वैध र व्यवस्थापकीय रूपमा विश्वसनीय हुन सक्दैन। त्यसैले सार्वजनिक स्रोतको संरक्षण, प्रभावकारी उपयोग र संस्थागत सुशासन प्रवर्द्धन गर्न आर्थिक प्रशासन शाखा प्रमुखको भूमिका अत्यन्त महत्वपूर्ण र अपरिहार्य मानिन्छ।

सन्दर्भ सामाग्रीहरू

- सार्वजनिक खरिद ऐन, २०६३ तथा सार्वजनिक खरिद नियमावली, २०६४,
- आर्थिक कार्यविधि तथा वित्तीय उत्तरदायित्व ऐन, २०७६ र आर्थिक कार्यविधि तथा वित्तीय उत्तरदायित्व नियमावली, २०७७,
- एकीकृत आर्थिक सङ्केत बर्गीकरण र व्याख्या (संशोधन सहित), २०७४,
- महालेखापरीक्षकद्वारा स्वीकृत म.ले.प.फारामहरू

सार्वजनिक निर्माणमा बिल डिस्काउन्टिङ: एक निर्विकल्प प्रस्थानविन्दु



दिनेश लम्साल¹

भूमिका

आधुनिक अर्थतन्त्रमा भौतिक पूर्वाधार विकासलाई समृद्धिको मेरुदण्ड मानिन्छ। नेपाल जस्तो विकासोन्मुख मुलुकका लागि समयमै पूर्वाधार निर्माण हुनु राष्ट्रिय आवश्यकता मात्र नभई आर्थिक गतिशीलताको आधार पनि हो। तर, पछिल्ला वर्षहरूमा नेपालको निर्माण क्षेत्र 'भुक्तानीको संकट' र 'नगद प्रवाह (Cash Flow) को अभाव' का कारण अत्यन्तै शिथिल बनेको छ। काम सम्पन्न भइसकेका आयोजनाहरूको अबैध रुपैयाँ भुक्तानी सरकारी ढुकुटीबाट समयमै निकास हुन नसक्दा एकातिर निर्माण व्यवसायीहरू टाट पल्टिने अवस्थामा पुगेका छन् भने अर्कोतिर विकासका आयोजनाहरू अलपत्र परेका छन्।

यही गम्भीर वित्तीय खाडललाई पुर्नका लागि विश्वव्यापी रूपमा सफल अभ्यासमा रहेको 'बिल डिस्काउन्टिङ' (Bill Discounting) को अवधारणा नेपालमा अहिले निकै चर्चामा आएको छ। बिल डिस्काउन्टिङ यस्तो वित्तीय औजार हो, जसले निर्माण व्यवसायीले सार्वजनिक निकायबाट पाउनुपर्ने प्रमाणित भुक्तानी बिललाई बैंकमा 'धितो' वा 'सम्पत्ति' सरह राखेर तत्कालै नगद प्राप्त गर्ने सुविधा प्रदान गर्दछ। नेपाल सरकारले आर्थिक वर्ष २०८१/८२ को बजेटमार्फत यसलाई औपचारिक रूपमा सम्बोधन गर्दै निर्माण क्षेत्रको तरलता व्यवस्थापन गर्ने नीति लिएको छ। तर यसबारे कानूनी व्यवस्था भइसकेको देखिदैन।

प्रस्तुत लेखमा बिल डिस्काउन्टिङको आधारभूत अवधारणा, यसका विश्वव्यापी सफल अभ्यासहरू र नेपालको विद्यमान खरिद प्रक्रिया तथा बैंकिङ प्रणालीमा यसले खेलन सक्ने रूपान्तरणकारी भूमिकाका बारेमा विस्तृत चर्चा गर्ने प्रयास गरिएको छ।

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अवधारणा

बिल डिस्काउन्टिङ एउटा यस्तो वित्तीय व्यवस्था हो जसले निर्माण व्यवसायी वा आपूर्तिकर्तालाई काम सम्पन्न गरिसकेपछि सरकारबाट भुक्तानी प्राप्त हुनु अगावै बैंकमार्फत नगद प्राप्त गर्न मद्दत गर्छ। सरल भाषामा जब कुनै निर्माण व्यवसायीले विकास आयोजनाको एउटा चरण पूरा गर्छ, उसले सरकारी कार्यालयबाट 'पेमेन्ट बिल' (प्रमाणित बिल) प्राप्त गर्छ। सरकारबाट पैसा आउन महिनौं लाग्न सक्छ। यस्तो बेला निर्माण व्यवसायीले त्यो बिल बैंकमा लैजान्छ। बैंकले केही निश्चित शुल्क वा ब्याज काटेर उक्त बिलको पैसा (करिब ८०-९० प्रतिशत) निर्माण व्यवसायीलाई तुरुन्तै दिन्छ। पछि जब सरकारले ठेक्काको पैसा निकासो गर्छ, त्यो सिधै बैंकको खातामा जान्छ र बैंकले आफ्नो रकम असुल गर्छ।

यसका मुख्य फाइदाहरू:

- **नगद प्रवाह (Cash Flow):** निर्माण व्यवसायीले सरकारबाट पैसा पर्खिरहुनु पर्दैन। उसले बैंकबाट तुरुन्तै पैसा पाएर अर्को काम सुरु गर्न वा मजदुर र सामग्रीको भुक्तानी गर्न सक्छ।
- **आयोजनामा गति:** पुँजीको अभावमा ठेक्का अलपत्र पर्ने (रुग्ण हुने) समस्या हट्छ र विकास निर्माणको काम रोकिँदैन।
- **बैंकको सुरक्षा:** बैंकका लागि पनि यो सुरक्षित लगानी हो किनभने यसको ग्यारेन्टी सरकारी भुक्तानीले दिएको हुन्छ।

प्रक्रिया

'बिल डिस्काउन्टिङ' सुविधा प्रयोग गर्न निर्माण व्यवसायीले केही कानुनी र प्रक्रियागत सर्तहरू पूरा गर्नुपर्ने हुन्छ। यो सुविधा मुख्य रूपमा बैंक र सरकारी निकायबीचको समन्वयमा आधारित हुन्छ।

यसको सामान्य सर्तहरू र प्रक्रिया निम्नानुसार रहनसक्नेछन्:

१. निर्माण व्यवसायीले पालना गर्नुपर्ने मुख्य सर्तहरू:

- **प्रमाणित बिल (Approved Invoice):** निर्माण व्यवसायीले गरेको कामको भुक्तानीका लागि सम्बन्धित सरकारी निकाय (Project Office) बाट बिल प्रमाणित भएको हुनुपर्छ।
- **बैंकसँगको सम्झौता:** निर्माण व्यवसायीको उक्त बैंकमा चल्ती खाता हुनुपर्छ र बैंकसँग बिल डिस्काउन्टिङ सम्बन्धी सीमा (Limit) स्वीकृत भएको हुनुपर्छ।

- **त्रिपक्षीय समझदारी (Optional but Preferred):** कतिपय अवस्थामा बैंक, निर्माण व्यवसायी र सरकारी कार्यालयबीच "भुक्तानी सिधै बैंकमा जाने" गरी समझदारी हुनुपर्छ।
- **राम्रो ड्र्याक रेकर्ड:** निर्माण व्यवसायीको कर्जा सूचना केन्द्रमा खराब रेकर्ड हुनु हुँदैन र यसअघिका आयोजनाहरूमा भुक्तानीको अवस्था राम्रो हुनुपर्छ।

२. बैंकको प्रक्रिया (Step-by-Step):

१. **बिल पेश गर्ने:** निर्माण व्यवसायीले सरकारी कार्यालयबाट प्रमाणित भएको सकल बिल र भुक्तानीको आदेश बैंकमा पेश गर्छ।
२. **कागजात प्रमाणीकरण:** बैंकले उक्त बिलको आधिकारिकता जाँच गर्छ र सम्बन्धित सरकारी कार्यालयसँग समन्वय गरी भुक्तानी हुने निश्चित गर्छ।
३. **डिस्काउन्ट रेट निर्धारण:** बैंकले बिलको कुल रकमबाट केही निश्चित प्रतिशत (**Discount Rate/Interest/Commission**) कटाएर बाँकी रकम निर्माण व्यवसायीको खातामा तुरुन्तै जम्मा गरिदिन्छ। सामान्यतया ८०% देखि ९०% सम्म रकम तुरुन्तै उपलब्ध गराइन्छ।
४. **सरकारी भुक्तानी:** पछि जब सरकारले उक्त बिलको पैसा निकास गर्छ, त्यो रकम सिधै बैंकको खातामा जम्मा हुन्छ।
५. **खाता फछ्यौट:** सरकारबाट पुरै पैसा आएपछि बैंकले बाँकी रहेको रकम (**Marginal Amount**) निर्माण व्यवसायीलाई फिर्ता गर्छ र कारोबार बन्द हुन्छ।

यसका विश्वव्यापी सफल अभ्यासहरू

विश्वभरका विभिन्न मुलुकहरूले निर्माण र आपूर्ति क्षेत्रमा हुने भुक्तानीको ढिलाइलाई सम्बोधन गर्न बिल डिस्काउन्टिङ (जसलाई कतिपय देशमा **Reverse Factoring** वा **Supply Chain Finance** पनि भनिन्छ) लाई सफलतापूर्वक कार्यान्वयन गरेका छन्। यसका प्रमुख विश्वव्यापी अभ्यासहरू यस प्रकार छन्:-

- **भारत (TReDS प्रणाली):** भारतले साना तथा मझौला व्यवसायी (MSMEs) का लागि TReDS (Trade Receivables Discounting System) नामक अनलाइन प्लेटफर्म सञ्चालन गरेको छ। यसमा सरकारी निकायले स्वीकृत गरेको बिललाई धेरै बैंकहरू बीच लिलामी (Auction) गराइन्छ र व्यवसायीले सबैभन्दा कम ब्याजदर प्रस्ताव गर्ने बैंकबाट तत्काल भुक्तानी पाउँछन्।

- **मेक्सिको (Nafin प्लेटफर्म):** मेक्सिकोको विकास बैंक 'Nafin' ले सरकारी ठेक्काका लागि विकास गरेको अनलाइन प्लेटफर्म विश्वमै एक नमुना मानिन्छ। यस प्रणालीमा बिल स्वीकृत भएको केही घण्टाभित्रै व्यवसायीले आफ्नो बैंक खातामा ९५% सम्म भुक्तानी प्राप्त गर्छन्।
- **दक्षिण कोरिया (KONEPS):** कोरियाको ई-प्रोक्योरमेन्ट प्रणाली KONEPS ले खरिद प्रक्रिया र भुक्तानीलाई पूर्ण रूपमा डिजिटल बनाएको छ। त्यहाँका बैंकहरूले सरकारी प्रणालीमा प्रमाणित भएको बिलका आधारमा कुनै अतिरिक्त धितो विना नै व्यवसायीलाई सस्तो ब्याजदरमा तत्काल नगद उपलब्ध गराउँछन्।
- **बेलायत र युरोप:** बेलायतमा "Prompt Payment Code" मार्फत ठूला सार्वजनिक आयोजनाहरूमा अनिवार्य रूपमा बिल डिस्काउन्टिङ सुविधाहरू उपलब्ध गराइन्छ। यसले गर्दा साना उप-ठेकेदारहरू (Sub-contractors) ले पनि मुख्य ठेकेदार वा सरकारको भुक्तानी नकुरी बैंकबाट पैसा पाउँछन्।
- **भुटानको हालैको अभ्यास:** नेपालको छिमेकी मुलुक भुटानले पनि हालै सरकारी ठेक्काहरूमा व्यवसायीको तरलता अभाव टार्न बैंकहरूसँगको समन्वयमा बिल डिस्काउन्टिङ सम्बन्धी विशेष SOP (Standard Operating Procedure) लागू गरेको छ।

उल्लिखित अभ्यासहरू मध्ये यस लेखमा भुटान र बेलायतले अङ्गीकार गरेका फरक दुई मुख्य अभ्यासलाई प्रस्तुत गरिएको छ ।

भुटानको अभ्यास

भुटानको अर्थ मन्त्रालयले वित्तीय संस्थाहरूको सङ्घ (FIAB) सँगको सहकार्यमा जनवरी २०२५ देखि सरकारी ठेक्काहरूमा बिल डिस्काउन्टिङ सुविधा लागू गर्न एक विशेष Standard Operating Procedure (SOP) जारी गरेको छ।

भुटानको यस SOP मा भएका मुख्य व्यवस्थाहरू देहाय बमोजिम छन्:

- **भुक्तानीको सुनिश्चितता:** यदि सरकारी निकायले तोकिएको समय सीमाभित्र निर्माण व्यवसायीको अन्तिम बिल भुक्तानी गर्न सकेन भने, व्यवसायीले उक्त प्रमाणित बिल बैंकमा पेश गरी तत्काल नगद प्राप्त गर्न सक्नेछन्।
- **त्रि-पक्षीय सहकार्य:** यस SOP ले निर्माण व्यवसायी (Drawer), बैंक (Financial Institution) र सार्वजनिक निकाय (Procuring Agency) बीचको समन्वयलाई स्पष्ट पारेको छ।

- **प्रक्रियागत चरणहरू (Process Flow):**

- १) व्यवसायीले काम सम्पन्न गरी सार्वजनिक निकायमा बिल पेश गर्ने।
 - २) सार्वजनिक निकायले उक्त बिलको प्रमाणीकरण (Verification) गर्ने।
 - ३) व्यवसायीले बैंकमा डिस्काउन्टिङका लागि आवेदन दिने र बैंकले स्वीकृत बिलको आधारमा रकम उपलब्ध गराउने।
 - ४) पछि सरकारी निकायले उक्त बिलको रकम सीधै बैंकलाई भुक्तानी गरिदिने।
- **डिजिटल एकीकरण:** भुटानको सरकारी भुक्तानी प्रणाली e-PEMS मार्फत बैंक र सरकारी निकायबीच कारोबारको मिलान (Settlement) गर्ने व्यवस्था मिलाइएको छ।
 - **ब्याज र शुल्क:** बैंकले बिल डिस्काउन्ट गर्दा निश्चित समयको ब्याज कट्टी गरी बाँकी रकम व्यवसायीलाई दिन्छ। यदि सरकारी निकायले तोकिएको समयभन्दा अगावै भुक्तानी गरेमा बाँकी अवधिको ब्याज व्यवसायीलाई फिर्ता गरिने प्रावधान समेत छ।

बेलायतको अभ्यास

बेलायत (UK) मा Prompt Payment Code (PPC) आफैंमा बिल डिस्काउन्टिङ संयन्त्र नभए पनि यसले बिल डिस्काउन्टिङका लागि आवश्यक "बाध्यात्मक वातावरण" सिर्जना गरेको छ। विशेष गरी ठूला सार्वजनिक आयोजनाहरूमा भुक्तानीको चक्रलाई छिटो बनाउन यसले निम्न अनुसार काम गर्छ: -

१. भुक्तानीमा ९५% भुक्तानीको नियम

PPC अन्तर्गत हस्ताक्षर गर्ने ठूला कम्पनी वा सरकारी निकायहरूले आफ्ना आपूर्तिकर्ता र साना व्यवसायीहरूलाई ३० देखि ६० दिनभित्र ९५ प्रतिशत भुक्तानी गरिसक्नुपर्ने कानुनी र नैतिक प्रतिबद्धता जनाउनुपर्छ।

२. अनिवार्य बिल डिस्काउन्टिङ (Supply Chain Finance)

बेलायतका ठूला सार्वजनिक आयोजनाहरू (जस्तै: रेलमार्ग वा सडक निर्माण) मा मुख्य ठेकेदार (Tier 1 Contractor) ले साना सब-कन्ट्र्याक्टरलाई भुक्तानी दिन ढिला नहोस् भनेर बैंकहरूसँग मिलेर Supply Chain Finance वा बिल डिस्काउन्टिङ सुविधा अनिवार्य रूपमा उपलब्ध गराउनुपर्छ।

- यसमा सानो ठेकेदारले मुख्य ठेकेदारबाट पैसा आउनुअघि नै बैंकबाट आफ्नो बिल भुक्तानी लिन सक्छ।
- यसको ब्याजदर मुख्य ठेकेदारको "क्रेडिट रेटिङ" को आधारमा तय हुने हुनाले साना व्यवसायीले सस्तोमा ऋण पाउँछन्।

३. डिजिटल प्रमाणीकरण

बेलायतमा "ई-इनभ्वाइसिङ" प्रणाली मार्फत बिल पेश हुने बित्तिकै बैंकले त्यसको आधिकारिकता जाँचन सक्छ। यसले गर्दा व्यवसायीले २४ देखि ४८ घण्टाभित्रै बैंकबाट नगद पाउन सक्छन्।

४. पारदर्शिता र दण्ड

यदि कुनै ठूलो कम्पनी वा सरकारी निकायले समयमा भुक्तानी गरेन वा बिल डिस्काउन्टिङको सुविधामा सहजीकरण गरेन भने, उनीहरूलाई सार्वजनिक ठेक्का प्रक्रियामा सहभागी हुनबाट रोक लगाइने वा कालोसूचीमा राख्न सकिने कडा व्यवस्था छ।

निर्माण व्यवसायीहरूको माग

यो व्यवस्था लागू गर्नका लागि नेपालमा निर्माण व्यवसायीहरूले यसलाई लामो समयदेखिको "भुक्तानी अभाव" को समस्या समाधान गर्ने एउटा उचित मार्ग मानेका छन्। यस मागका मुख्य तर्कहरू यस प्रकार छन् :-

- **तरलता अभावबाट मुक्ति:** व्यवसायीहरूले सरकारबाट अबौं रुपैयाँ भुक्तानी नपाउँदा मजदुर र सामग्री आपूर्तिकर्तालाई पैसा तिर्न सकेका थिएनन्। बिल डिस्काउन्टिङले बैंकबाट तुरुन्तै पैसा पाउने बाटो खोलेपछि उनीहरूले राहतको महसुस हुनजाने,
- **रुग्ण आयोजनामा सुधारको आशा:** पुँजी अभावकै कारण धेरै ठेक्काहरू 'रुग्ण' (अलपत्र) परेका थिए। अब पैसाको चक्र (Money Cycle) नरोकिने भएपछि आयोजनाहरूले गति लिनेमा व्यवसायीहरू आशावादी हुने,
- **बैंकको ब्याजदरमा चिन्ता:** कतिपय व्यवसायीहरूले भने बिल डिस्काउन्टिङ गर्दा बैंकले काट्ने ब्याज वा सेवा शुल्कबारे चासो व्यक्त गरेका छन्। सरकारको ढिलाइका कारण निर्माण व्यवसायीले बैंकलाई थप ब्याज तिर्नुपर्ने अवस्था आएमा त्यसले नाफा घटाउने उनीहरूको गुनासो छ,

- **प्रशासनिक झन्झटको डर:** ऐनमा व्यवस्था भए पनि सरकारी कार्यालयले समयमै बिल प्रमाणित नगरिदिने वा बैंकले प्रक्रिया लामो बनाइदिने हो कि भन्नेमा उनीहरू सशंकित छन्। "कागजी प्रक्रिया सरल हुनुपर्छ" भन्ने उनीहरूको मुख्य माग छ,
 - **साना व्यवसायीको उत्साह:** विशेषगरी साना र मझौला निर्माण व्यवसायीहरूले यसलाई बढी स्वागत गरेका छन्, किनकि उनीहरूसँग ठूला कम्पनीको जस्तो अतिरिक्त बचत पुँजी हुँदैन।
- समग्रमा, नेपाल निर्माण व्यवसायी महासंघ (FCAN) ले यसलाई सकारात्मक भन्दै यसको प्रभावकारी कार्यान्वयनका लागि स्पष्ट कार्यविधि (Working Procedure) तुरुन्तै आउनुपर्नेमा जोड दिएको छ।

बैंकहरूको लगानी गर्ने क्षमता वा तरलतामा प्रभाव

बिल डिस्काउन्टिङको यो व्यवस्थाले बैंकहरूको लगानी गर्ने क्षमता र बजारको समग्र तरलतामा सकारात्मक र सुधारात्मक प्रभाव पार्ने देखिन्छ। यसका मुख्य प्रभावहरू यस प्रकार छन् :-

- **लगानीको नयाँ र सुरक्षित क्षेत्र:** बैंकहरूका लागि यो लगानीको एउटा सुरक्षित क्षेत्र हो। सरकारी आयोजनाको प्रमाणित बिल आफैंमा बलियो जमानत (Guarantee) हुने भएकोले बैंकहरूले कम जोखिममा ऋण प्रवाह गर्न पाउँछन्। यसले बैंकहरूको कर्जा क्षमता (Lending Capacity) लाई उत्पादनशील क्षेत्रमा केन्द्रित गर्न मद्दत गर्छ।
- **बजारमा तरलता (Liquidity) वृद्धि:** जब बैंकले निर्माण व्यवसायीलाई पैसा दिन्छ, त्यो पैसा सिधै बजारमा जान्छ 'मजदुरको ज्याला, निर्माण सामग्री (सिमेन्ट, डन्डी) को भुक्तानी र इन्धनमा खर्च हुन्छ। यसले बजारमा नगद प्रवाह बढाउँछ र सुस्त रहेको अर्थतन्त्रलाई चलायमान बनाउँछ।
- **निष्कृय पुँजीको परिचालन:** सरकारको ढुकुटीमा पैसा भएर पनि प्रशासनिक प्रक्रियाका कारण निकास नहुँदा त्यो पुँजी 'फ्रिज' भएर बसेको हुन्छ। बिल डिस्काउन्टिङले बैंकमार्फत उक्त पैसालाई अग्रिम रूपमा बजारमा ल्याउने हुनाले वित्तीय गतिशीलता बढ्छ।
- **खराब कर्जा (NPL) मा कमी:** धेरै निर्माण व्यवसायीहरूले सरकारबाट पैसा नपाउँदा बैंकको किस्ता तिर्न सकेका थिएनन्, जसले गर्दा बैंकहरूको खराब कर्जा बढिरहेको थियो। अब काम हुनासाथ पैसा पाउने भएपछि निर्माण व्यवसायीहरूले बैंकको ऋण समयमै तिर्न सक्छन्, जसले बैंकको वित्तीय स्वास्थ्य सुधार गर्छ।

- **बैंकिङ च्यानलमा विश्वास:** सरकारी भुक्तानी सिधै बैंक खातामा आउने (Direct Credit) व्यवस्थाले अनौपचारिक लेनदेनलाई निरुत्साहित गर्छ र धेरै रकम औपचारिक बैंकिङ प्रणालीमा ल्याउन मद्दत गर्छ।

निष्कर्ष

यो व्यवस्था निर्माण व्यवसायीहरूको मुख्य माग सम्बोधन गर्न र बजारमा तरलता बढाउन उपयोगी व्यवस्थाकारूपमा लागू गर्न सकिन्छ। साथै यो सुविधा कर्जा भन्दा फरक हो। यसमा निर्माण व्यवसायीले आफ्नो सम्पत्ति धितो राख्नु पर्दैन, बरू उसले गरेको "कामको बिल" नै मुख्य धितोको रूपमा रहन्छ। तर यदि सरकारले लामो समयसम्म बैंकलाई पैसा फिर्ता गरेन भने बैंकहरूको पैसा त्यहाँ रोकिन सक्छ, जसले गर्दा केही समयका लागि बैंकको लगानी योग्य कोषमा दबाव पर्न सक्ने हुनाले सावधानी अपनाएर लागू गर्न सकेमा यो व्यवस्थाले सरोकारवालाहरूको हित गर्ने र सरकारले लिएको सार्वजनिक निजी साझेदारीमा बढोत्तरी भई भौतिक पुर्वाधार लगायत समग्र विकास प्रक्रियाको गति द्रुत हुनेमा विश्वास गर्न सकिन्छ।

PAYMENT PROTECTION FOR LOCAL VENDORS AND LABOURERS IN NEPAL'S CONSTRUCTION SECTOR



*Ram Chandra Poudel*¹²

ABSTRACT

Nepal's construction sector is beset by a chronic and structurally embedded problem: international and national private contractors regularly fail to pay local sub-contractors, vendors, and labourers on time—or at all. This failure cascades into project stoppages, communal strikes, idle-time penalty claims by prime contractors, and costly arbitration. Drawing on peer-reviewed literature, documented case studies from Nepal (Melamchi Water Supply Project, Mid-Hill Highway, road projects across multiple provinces), and best practices from the top five economies of the world—the United States, China, Japan, Germany, and the United Kingdom—this paper diagnoses the root causes of the payment deficit and proposes concrete reforms to Nepal's Public Procurement Act 2063 (PPA) and Public Procurement Regulations 2064 (PPR). Recommended interventions include mandatory sub-contractor payment schedules embedded in standard bidding documents, a ring-fenced Project Escrow Account (PEA) mechanism analogous to the UK's Project Bank Account (PBA), a statutory prompt-payment obligation modelled on Japan's Subcontract Act 1956, an adjudication regime drawing from Australia's Security of Payment Acts, and a performance-bond revision that explicitly protects downstream payees. These reforms, if enacted, would protect the most economically vulnerable participants in Nepal's construction supply chain while reducing the incidence of project-stalling protests and inflated idle-time claims.

Keywords: PPA 2063, PPR 2064, subcontractor payment, project bank account, Security of Payment, Nepal construction, FIDIC, prompt payment, labour protection, procurement reform.

1. INTRODUCTION

Infrastructure development is the backbone of Nepal's economic growth agenda. The government's periodic national plans—including the Fifteenth Plan (2019/20–2023/24) and the ongoing Sixteenth Plan—place capital expenditure at the centre of poverty reduction and regional connectivity strategies. Yet the construction sector that is expected to deliver these outcomes is mired in a payment crisis that threatens both project delivery and the livelihoods of thousands of small-scale local actors who constitute its supply chain base (Fiscal Nepal, 2024).

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The payment problem in Nepal's construction sector operates at two related levels. First, government public entities routinely fail to release certified payments to prime contractors within reasonable timeframes, creating upstream cash-flow deficits. Second—and this is the focus of the present paper—the prime contractors themselves, including large international firms, systematically fail to pass payments downstream to local sub-contractors, material suppliers (vendors), and daily-wage labourers. The consequences at the local level are severe: unpaid workers stage protests that physically block project sites; vendors who have supplied cement, steel, aggregate, and fuel on credit are unable to service bank loans; and the resulting paralysis of project sites triggers idle-time penalty claims by prime contractors against the procuring entity, further inflating public expenditure (Kathmandu Post, 2019a; Paudel et al., 2024).

Nepal's current legislative framework—the Public Procurement Act 2063 (2007) and the Public Procurement Regulations 2064 (2008), together with their multiple amendments—is largely silent on the obligation of contractors to pay sub-contractors and workers within defined timeframes. The Act's principal payment provisions govern the relationship between the procuring entity and the prime contractor; there is no cascading payment obligation that explicitly protects the sub-contractor tier (Dahal, 2024; Government of Nepal [GoN], 2007). This lacuna has real consequences: when an international contractor departs, as CMC di Ravenna did in December 2018, or when a domestic contractor abandons a rural road project, local actors have no statutory mechanism through which to assert payment claims other than expensive civil litigation under the Muluki Civil Code.

The paper is structured as follows. Section 2 establishes the rationale through documented case studies of project closures, strikes, and consequential claims in Nepal. Section 3 reviews the global scholarly literature on construction payment protection. Section 4 examines best practices from the top five world economies. Section 5 critically analyses the current PPA/PPR framework. Section 6 proposes specific legislative and regulatory reforms. Section 7 discusses implementation considerations. Section 8 concludes.

2. RATIONALE: DOCUMENTED CONSEQUENCES OF PAYMENT FAILURE IN NEPAL

The payment-protection problem is not hypothetical. A survey of publicly documented projects reveals a consistent and repeating pattern in which unpaid local actors close project sites, leading to project delays and subsequent contractor claims for idle time and extended preliminaries.

2.1 The Melamchi Water Supply Project (MWSP): A Paradigm Case

The Melamchi Water Supply Project is Nepal's most fully documented case of contractor payment failure and its consequences. The Italian firm Cooperativa Muratori e Cementisti di Ravenna (CMC), contracted to tunnel 26.5 km from the Melamchi River to the Sundarijal treatment plant, formally abandoned the project in December 2018 following an extended financial dispute with the government. When CMC departed, the firm left unpaid obligations

across an entire local supply chain. Eighty-seven firms—sub-contractors, material vendors, equipment hire companies, and transport operators—filed claims with a government-constituted 14-member technical committee totalling NPR 1.67 billion in outstanding dues (Kathmandu Post, 2019b). Labour claims, including unpaid salaries and provident fund contributions, added a further NPR 1.68 billion (Kathmandu Post, 2019c).

The Sindhupalchok District Administration Office was forced to issue a prohibitory order when 350 protesting sub-contractors and workers marched on the Ambathan reservoir site; police fired warning shots and tear gas, and five people, including two protesters and three police constables, were injured (Kathmandu Post, 2019c). The protests directly threatened the recommencement of project works under the incoming Chinese contractor Sinohydro Corporation, as aggrieved sub-contractors threatened to obstruct operations. Obstruction of Sinohydro's mobilisation would have triggered idle-time claims under the new contract, adding yet another layer of cost to the public exchequer.

The institutional response was revealing in its inadequacy. The Water Supply Ministry's spokesperson stated that 'the government is not primarily responsible for clearing their dues. They worked for CMC, which has already left. So their claims should be against CMC first' (Kathmandu Post, 2019a). This position—legally defensible under the current PPA framework—illustrates precisely the gap that legislative reform must close: the procuring entity has no statutory obligation to ensure downstream payment, and local actors have no direct claim against performance guarantee proceeds except through lengthy bureaucratic channels.

The Melamchi case also illustrates the compounding problem of idle-time claims. CMC had itself claimed NPR 1.65 billion for approximately 60,000 cubic metres of additional open-cut excavation at the Headwork site, against which the government had paid only NPR 280 million (Kathmandu Post, 2018). The dispute ultimately contributed to CMC's departure, but the mechanism by which a contested variation claim by the prime contractor can simultaneously cause the government to withhold payment—thereby starving the downstream supply chain—is a systemic design flaw in the current contractual architecture.

2.2 Road Projects: Systemic Payment Failure Across the Network

The Melamchi case is not anomalous. Nepal's road sector exhibits identical dynamics at scale. As of November 2024, the government owed contractors approximately NPR 45 billion for completed road works—a figure that the Federation of Contractors' Association of Nepal (FCAN) estimates may be higher (Fiscal Nepal, 2024). FCAN President Rabi Singh stated publicly that contracts worth over NPR 600 billion had been signed without securing adequate funding sources (Fiscal Nepal, 2024). The Department of Roads had separately acknowledged arrears of approximately NPR 15 billion owed to road contractors (Kathmandu Post, 2018). These arrears, passed upstream to government, were passed downstream in turn: contractors delayed payment to sub-contractors, vendors ceased supply, and labourers stopped receiving wages.

In August 2023, contractors staged protest marches in Kathmandu demanding NPR 50 billion in overdue payments, and sought government action on approximately NPR 400 billion in projects with resource guarantees but no allocated budget (Kathmandu Post, 2023). By January 2025, FCAN announced plans for a nationwide gathering to launch 'decisive protests,' noting that contractors faced blacklisting for bank-loan defaults because the government had not released payment while loan deadlines expired (MyRepublica, 2025). The World Bank's Nepal Capital Expenditure Bottlenecks Analysis (October 2025) characterised the gap between planning and delivery as 'structural and persistent,' noting that federal capital expenditure as a share of GDP had fallen from 5.3 percent in FY2021 to 3.4 percent in FY2024, with only about 62 percent of capital allocations executed on average (World Bank, 2026).

A specific case-level study by Paudel et al. (2024) examining 61 road projects in Surkhet under the Road Division Surkhet found that administrative inefficiencies and documentation issues disrupted project timelines, particularly when compounded by cash-flow problems arising from delayed payments. Both employers and contractors acknowledged that the cascade from slow government payment to slow contractor payment to sub-contractor payment was a primary driver of delay. Dhakal et al. (2021), using Relative Importance Index (RII) analysis in Bharatpur, ranked political influence, delayed payments, and communication gaps as the top three delay causes.

The Mid-Hill Highway (Pushpalal Lokmarga), a national pride project stretching 1,879 km across 26 districts, has experienced repeated stoppages linked to payment failures. In June 2025, approximately 150 labourers abandoned the construction site due to unpaid wages, causing major construction delays (Nepal Monitor, 2025). The project, originally budgeted at NPR 33 billion, had escalated in cost to NPR 100 billion by 2025—a figure partly attributable to repeated contract extensions caused by payment-induced stoppages (Nepal News, 2025).

2.3 The Idle-Time Claim Cycle

A particularly pernicious consequence of payment failure is the idle-time claim cycle. When local protests or vendor boycotts halt a project site, the prime contractor—unable to deploy its equipment, expatriate technicians, and supervisory staff—is legally entitled under FIDIC conditions and standard Nepal SBDs to claim for the prolongation of contract duration, idle plant and equipment costs, and extended preliminaries. In the Melamchi case, local obstructions following CMC's departure threatened to trigger idle-time claims from the incoming Sinohydro contractor before work had even formally commenced (Kathmandu Post, 2019a). In the road sector, contractors routinely claim price escalation and extended-period costs alongside payment demands (FCAN, as cited in Kathmandu Post, 2023).

The idle-time cycle is self-reinforcing: the procuring entity withholds payment → the prime contractor withholds sub-contractor payment → local actors protest and block the site → the prime contractor claims idle-time costs from the procuring entity → the procuring entity's financial position worsens → it withholds further payment. Breaking this cycle requires

intervention at its most upstream point: ensuring that sub-contractors and workers are paid directly and on time, regardless of upstream payment disputes.

A broader quantitative analysis by Bhattarai et al. (2024), examining 11 public retrofitting projects in Kathmandu Valley, documented schedule overruns of 42 to 167 percent, with the cascading payment problem listed as a primary contributing factor alongside unrealistic scheduling and labour shortages. Oodbodhan (2025) synthesised findings from multiple studies across Nepal's rural municipalities, consistently identifying contractor cash-flow constraints—traceable to late payment—as among the top-ranked delay factors by RII score.

3. REVIEW OF SCHOLARLY LITERATURE

3.1 Payment Delay as a Structural Problem in Construction

The literature on construction payment delay consistently identifies it as a systemic, structural problem rather than one caused by individual bad actors. Arditi and Chotibhongs (2005) characterised the construction industry's payment culture as 'hierarchical cash dependency,' where each tier of the supply chain finances the tier above it by accepting payment deferrals that erode working capital. This characterisation closely describes the Nepali context, where vendors supply materials on informal credit, workers extend labour before wages are due, and only the prime contractor holds contractual leverage against the procuring entity.

Sears et al. (2015) established that the primary cause of small contractor insolvency in developing economies is not project failure per se but cash-flow deficits caused by upstream payment delay. The authors noted that the vulnerability is asymmetric: while large prime contractors can access overdraft facilities and revolving credit, micro and small sub-contractors in developing contexts operate without formal financial safety nets. This asymmetry is especially acute in Nepal, where the majority of local sub-contractors are small family businesses operating in predominantly cash-based economies (Dahal, 2024).

Gould and Joyce (2009) identified three categories of payment risk in construction supply chains: sovereign risk (government entity delays), credit risk (prime contractor financial distress), and conduct risk (deliberate withholding to improve cash position). In Nepal's documented cases, all three categories are present simultaneously: government revenue shortfalls create sovereign risk; prime contractor disputes with the government create credit risk; and opportunistic withholding—paying local workers and vendors only when they apply sufficient pressure—constitutes conduct risk.

More recent scholarship has examined the role of contract architecture in perpetuating payment delay. Hughes et al. (2015) argued that 'pay when paid' clauses—which make sub-contractor payment conditional on the prime contractor first receiving payment—are structurally incompatible with a fair payment regime because they transfer sovereign and credit risk entirely onto the most financially vulnerable party. UK legislation prohibited such clauses under Section 113 of the Housing Grants, Construction and Regeneration Act 1996; the construction industry

literature has consistently supported this prohibition as an effective intervention (Ndekugri et al., 2007; Griffiths et al., 2017).

3.2 Project Bank Accounts and Escrow Mechanisms

The Project Bank Account (PBA) concept, formalised in UK government guidance in 2012, has generated a substantial body of research. A PBA is a ring-fenced, trust-structured bank account from which payments are made directly and simultaneously to the prime contractor and named sub-contractors in proportion to their certified work (Scott & Broyd, 2024). The critical feature of the PBA is that project funds are legally segregated from the prime contractor's general business account; if the prime contractor becomes insolvent, the project funds are protected and available to pay the supply chain directly.

Scott and Broyd (2024), in a comprehensive study published in the *Journal of Information Technology in Construction*, found that supplier payments on standard non-PBA projects were processed on average over 30 days late, whereas PBA projects showed markedly superior payment performance. The authors also found that 'fear of reprisal'—sub-contractors' reluctance to demand PBAs because they feared future exclusion from contractor work programmes—was the primary barrier to adoption, followed by legal expenses and industry cultural resistance to change. This finding has direct implications for Nepal, where the power asymmetry between international prime contractors and local sub-contractors is even more pronounced than in the UK context.

Griffiths et al. (2017), in research cited by Scott and Broyd (2024), identified that PBAs provide two principal benefits: accelerated payments and protection in the event of prime contractor insolvency. The Office of Government Commerce in the UK estimated that public-sector clients could save up to 2.5 percent on construction costs by introducing better payment processes, partly because prompt payment reduces the risk premium embedded in sub-contractor bids. Consistent with this, Swai et al. (2020) found that sub-contractors in the UK spent billions annually chasing overdue payments—an activity that could be largely eliminated by mandatory PBA use.

The blockchain-enabled PBA, explored by Scott and Broyd (2024) and Ahmadiheykhsarmast and Sonmez (2020), offers a technology-forward evolution of the concept. A smart contract system can guarantee that certified payment amounts are ring-fenced at the commencement of each payment period and released automatically upon engineer certification, eliminating the administrative burden that has limited PBA adoption and democratising the mechanism across smaller project types. For Nepal, where institutional capacity for complex financial administration is limited, a simplified escrow or PBA-lite mechanism—perhaps operated through the Nepal Rastra Bank or a designated payment administrator—may be more feasible than a full blockchain implementation in the near term.

3.3 Adjudication and Statutory Payment Rights

A critical gap in Nepal's current dispute resolution framework is the absence of rapid statutory adjudication for payment disputes. Under the current PPA, disputes between procuring entities and prime contractors proceed through an internal review process and then to a Dispute Adjudication Board (DAB), followed by arbitration. This process routinely takes years. There is no analogous mechanism for sub-contractor payment disputes, which must be resolved through civil litigation—a process that is even slower and prohibitively expensive for small local firms.

Australia's Security of Payment Acts (varying by state and territory, but originating with New South Wales in 2000) established a statutory adjudication mechanism that provides a binding interim determination of payment disputes within 10 to 15 business days (Adjudicate Today, 2026). The Acts render 'pay when paid' clauses void, grant sub-contractors a statutory right to suspend work on non-payment, and impose interest on late payments. Brand and Uher (2010), cited in Scott and Broyd (2024), found that the New South Wales scheme significantly improved payment performance in construction supply chains by shifting the cost of dispute from the claiming party to the party that withheld payment.

Ndekugri et al. (2007) evaluated the UK's parallel adjudication regime under the Construction Act 1996 and found that the availability of rapid adjudication had a 'shadow' effect on payment behaviour: even parties who never used adjudication paid more promptly because they knew their counterparties had access to a fast remedy. This ex-ante deterrence effect is important for Nepal's policy design: a credible statutory adjudication mechanism does not need to be invoked frequently to be effective; its existence changes contractual behaviour.

3.4 Labour Protection in Construction Contracts

The scholarly literature on labour protection in construction supply chains identifies wage theft—the non-payment of agreed wages—as a global phenomenon concentrated in developing-economy contexts and in projects involving migrant or informal labour. Baruah (2010) found that informal workers in South Asian construction sites are particularly vulnerable because they have no written contracts, no union representation, and no legal standing to enforce payment claims. The Nepali construction labour force closely fits this description: a significant proportion of workers on public projects are daily-wage migrants from rural areas operating outside any formal employment relationship with the sub-contractor, let alone the prime contractor.

China's regulatory response to migrant worker wage theft in construction is instructive. The 2019 Regulations on Ensuring Wage Payment to Migrant Workers mandated that main contractors maintain a dedicated bank account for migrant workers' wages; if the sub-contractor fails to pay wages, the main contractor must advance payment and seek recovery (Global Arbitration Review, 2025). This direct joint liability mechanism—holding the prime contractor responsible for the wage obligations of its sub-contractors—has been identified in the literature as among the most effective instruments for preventing labour payment failure in construction (Chan et al., 2020).

4. BEST PRACTICES FROM THE TOP FIVE WORLD ECONOMIES

4.1 United States: Prompt Payment Acts and Mechanic's Lien

The United States addresses contractor payment at both federal and state levels. At the federal level, the Prompt Payment Act requires federal agencies to pay contractors within 30 days of a proper invoice, and contractors must in turn pay sub-contractors within 7 days of receiving payment from the government, with mandatory interest penalties for non-compliance (Levelset, 2022). Nearly every US state has enacted its own prompt payment statute covering both public and private projects, with payment deadlines typically ranging from 7 to 30 days and penalty interest rates of up to 15 percent of the overdue amount.

The US mechanic's lien system provides an additional layer of protection for sub-contractors and material suppliers on private projects: any party that contributes labour or materials to a project can file a lien on the property, preventing the owner from refinancing or selling the property until the claim is resolved. While this mechanism is primarily applicable to private-sector projects and requires statutory adaptation for the sovereign-entity context, its underlying concept—that a claim to unpaid work attaches to the physical asset improved by that work—is transferable to Nepal's context through a retention fund mechanism.

4.2 China: Migrant Worker Wage Protection and Dedicated Accounts

China's approach to construction payment protection reflects the scale of its migrant labour force and the particular vulnerability of rural workers employed on urban infrastructure projects. The Regulations on Ensuring Wage Payment to Migrant Workers (2019) impose a direct joint liability on main contractors for sub-contractor wage defaults: if a sub-contractor fails to pay migrant workers, the main contractor must advance payment, with the employer also required to advance unpaid wages up to the outstanding amount owed to the prime contractor if the employer's payment failure caused the wage default (Global Arbitration Review, 2025). The 'back-to-back' payment clause, while permitted in principle, is limited by the obligation of the main contractor to pursue employer payment proactively rather than passively using it as a shield against sub-contractor claims.

The dedicated wage account mechanism—mandated for projects above a defined size—requires that a separate bank account be established for migrant workers' wages, with regular reporting to local labour authorities. This mechanism has been credited with reducing wage arrears in China's construction sector significantly since its introduction. For Nepal, where a substantial proportion of construction workers are internal migrants from hill and mountain districts employed on Tarai and urban projects, an analogous mechanism integrated into the SBD could provide effective protection.

4.3 Japan: The Subcontract Act and Construction Business Act

Japan's approach to subcontractor payment protection is among the most comprehensive of any major economy. The Act Against Delay in Payment of Subcontract Proceeds, etc. to Subcontractors (Subcontract Act, 1956, as amended most recently in 2025) prohibits main

contractors from unilaterally reducing sub-contractor fees without negotiation, requires payment within 60 days of the sub-contractor's delivery of work (and requires that this deadline be set as short as feasible), and imposes mandatory interest on late payments (Japan ICLG, 2025; 360 Business Law, 2025). The Act is enforced by the Japan Fair Trade Commission and the Small and Medium Enterprise Agency, both of which have powers to issue cease-and-desist orders and impose fines.

The Construction Business Act (1949) adds a further obligation: where the prime contractor holds a 'special construction business' licence, it must pay the sub-contractor within 50 days of the sub-contractor's demand for acceptance, regardless of whether the prime contractor has received payment from the employer (AMT Law, 2023). This mandatory payment obligation—not conditional on upstream payment—is the critical feature distinguishing Japan's system from the 'pay when paid' model that pervades Nepal's construction contracts. The 2025 amendments to the Subcontract Act further strengthened protections by prohibiting payment by promissory note in certain circumstances and introducing enhanced measures against unilateral pricing decisions (Baker McKenzie, 2025).

4.4 Germany: VOB/B and Mandatory Advance Payment

Germany's construction contract law is governed by the Vergabe- und Vertragsordnung für Bauleistungen, Teil B (VOB/B), which establishes standard conditions for construction contracts including detailed payment provisions. Under the VOB/B, contractors have a statutory right to payment of agreed amounts within 30 days of invoice presentation, with the employer required to state specific grounds for any withholding (ICLG Germany, 2025). Germany also maintains a robust system of statutory liens (Bauhandwerkersicherung) under Section 650f of the BGB (Civil Code), which allows a contractor who has not received adequate security for payment to demand a guarantee covering up to 10 percent of the contract value before commencing work. The principle that sub-contractors are entitled to security before supplying their services—rather than after—inverts the credit-extension model that prevails in Nepal and substantially reduces the risk of payment default.

4.5 United Kingdom: Housing Grants, Construction and Regeneration Act 1996 and Project Bank Accounts

The UK's Construction Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009) remains the most fully developed statutory payment protection regime in the common-law world. Key provisions include: the prohibition of 'pay when paid' clauses (Section 113), except in cases of upstream insolvency; the mandatory inclusion of an adequate payment mechanism in every construction contract (Section 110); the right to suspend work on non-payment (Section 112); and a right to adjudication of any payment dispute within 28 days (Section 108). These provisions apply to all construction contracts, regardless of whether the project is public or private.

The UK's Fair Payment Code—replacing the earlier Prompt Payment Code withdrawn in November 2024—requires certified contractors to pay 95 percent of invoices within 30 days

(Gold Award) or 95 percent within 60 days with 95 percent to small suppliers within 30 days (Silver Award), under oversight of the Office of the Small Business Commissioner (Constructionline, 2025). Failure to comply can result in removal from the register and exclusion from public contracts. The PBA mechanism, introduced in UK government guidance in 2012, has been incorporated into standard form contracts including JCT 2016 and NEC3 Option Y(UK)1 (Lexology, 2009).

The broader conditional payment prohibition has been widely adopted across common-law jurisdictions: New Zealand, Malaysia, Canada (selected provinces), and Australia have all enacted similar reforms (Charles Russell Speechlys, 2021). This convergence of practice across diverse legal systems provides strong evidence that the prohibition of conditional payment is a robust and transferable policy instrument.

5. CRITICAL ANALYSIS OF NEPAL'S CURRENT PPA/PPR FRAMEWORK

5.1 Payment Provisions Between Procuring Entity and Prime Contractor

Nepal's PPA 2063 and PPR 2064 establish detailed procedures for the release of payments from procuring entities to prime contractors. Section 41 of the PPA and associated PPR provisions govern direct procurement, variation orders, and payment certification. The standard bidding documents published by the PPMO incorporate FIDIC Conditions of Contract, which provide for monthly payment certificates, interim payment applications, and a dispute adjudication board process. In principle, these provisions should protect the prime contractor from undue payment delay by the government.

In practice, however, several structural weaknesses undermine the framework. First, the PPMO's standard payment certification process requires multiple levels of approval—site engineer, project director, financial comptroller, and in some cases the ministry level—meaning that certified payments routinely take three to six months to clear (Paudel et al., 2024). Second, the PPA permits the procuring entity to withhold payment where there is a dispute about quality or quantity of work, without requiring the entity to specify the exact grounds for withholding or pay the undisputed portion (Dahal, 2024). Third, the absence of mandatory interest on delayed government payments removes the financial incentive for procuring entities to release payments promptly.

5.2 Absence of Sub-Contractor Payment Obligations

The most significant gap in the current framework is the complete absence of any provision governing the contractor's obligations to pay local sub-contractors, vendors, and workers. The PPA 2063 defines 'Procurement' as the acquisition of goods, consultancy services, or construction works by a public entity; 'contractor' is defined as the party that contracts with the public entity (GoN, 2007). There is no definition of 'sub-contractor' and no provision imposing any obligation on the contractor in relation to its sub-contractors.

The standard SBDs do contain a day-work rates schedule that acknowledges the role of labour, and certain clauses that permit the engineer to instruct sub-contracting (Jagannath Rural Municipality Office, 2023). But these provisions are purely enabling—they authorise sub-contracting without imposing any obligation on the prime contractor to pay its sub-contractors within any defined timeframe, or to protect sub-contractors in the event of a dispute between the prime contractor and the procuring entity. 'Pay when paid' arrangements are implicitly permitted by the current framework, as they are not prohibited.

5.3 Performance Guarantee Proceeds and Local Claims

The PPA 2063 and PPR 2064 provide for the seizure of performance guarantees in the event of contractor default. Section 63 of the PPA allows blacklisting of a party that abandons a project or fails to perform contractual obligations. In the Melamchi case, the government seized CMC's performance guarantee of NPR 2.9 billion (Kathmandu Post, 2019a). However, there is no provision in the PPA that entitles local sub-contractors to claim against the performance guarantee; the proceeds, once seized, go to the government account. Local sub-contractors must pursue CMC through civil litigation under the Muluki Civil Code—a jurisdiction-spanning process that is practically impossible given that CMC is an Italian corporation.

This gap is particularly acute because performance guarantees are designed precisely to protect the procuring entity from contractor default. Extending their protection to the downstream supply chain—following the precedent set by the UK's PBA trust mechanism and China's joint liability model—would require only modest legislative amendment.

5.4 Labour Law Interface

Nepal's Labour Act 2074 (2017) provides general protections for workers, including minimum wage provisions and the right to organise. However, the Act's enforcement mechanisms are geared toward formal employment relationships; daily-wage construction workers operating under informal arrangements with local sub-contractors fall outside its practical reach. The construction-specific Labour Regulations lack a direct payment security mechanism analogous to those found in Japan or China. The result is that wage theft is technically illegal but practically unenforced (Fiscal Nepal, 2024).

6. PROPOSED REFORMS TO PPA 2063 AND PPR 2064

Drawing on the foregoing analysis, the following specific legislative and regulatory reforms are proposed. Each reform is calibrated to the Nepali private-entity contractor context and to the institutional capacity of the PPMO and relevant line ministries.

6.1 Reform 1: Mandatory Sub-Contractor Payment Schedules in Standard Bidding Documents

The PPMO should amend its standard bidding documents to require every contractor, as a condition of contract, to submit a sub-contractor payment schedule within 28 days of contract

signing. The payment schedule must specify: (a) the name of each sub-contractor and material vendor; (b) the scope of work or supply; (c) the payment schedule and milestones; and (d) the bank account details for payment transfer. Any variation to the sub-contractor list must be approved by the engineer.

The payment schedule should be made a contract document with equal legal standing to the bill of quantities and technical specifications. Failure to maintain the payment schedule—evidenced by sub-contractor or vendor complaints filed with the PPMO—should constitute a contract breach, triggering deduction from the next interim payment certificate. This provision mirrors the recordkeeping obligations in Japan's Construction Business Act (Article 24-7) and the fair payment certification requirements in the UK's Fair Payment Code.

6.2 Reform 2: Project Escrow Account (PEA) Mechanism

A Project Escrow Account (PEA) should be introduced as a mandatory feature of all contracts above NPR 100 million (approximately USD 750,000), covering both central and provincial government procurement. The PEA would be a ring-fenced, trust-structured account held at a Nepal Rastra Bank-licensed commercial bank, administered by a PPMO-certified payment trustee.

The mechanics of the PEA would be as follows: (a) upon issue of each interim payment certificate, the procuring entity releases the certified amount into the PEA rather than directly to the prime contractor; (b) the payment trustee disburses funds simultaneously to the prime contractor and to each named sub-contractor and vendor as per their certified entitlements; (c) worker wages are disbursed through a dedicated wage sub-account that cannot be offset against other claims; and (d) any amount withheld from the prime contractor due to dispute is held in the PEA pending resolution, protecting sub-contractor and worker entitlements from upstream dispute contamination.

This mechanism directly addresses the structural deficiency identified in the Melamchi case: it ensures that even if the prime contractor-government relationship breaks down, local sub-contractors and workers continue to receive payment for work already certified. It follows the PBA model validated by Scott and Broyd (2024) and the trust account structure proposed by Griffiths et al. (2017).

6.3 Reform 3: Statutory Prompt Payment Obligation — 'Pay When Paid' Prohibition

A new Section (to be inserted after Section 41 of the PPA 2063) should establish the following statutory prompt payment obligation, applicable to all construction contracts entered into by a public entity:

- The prime contractor must pay each sub-contractor within 28 days of the engineer's certification of the relevant sub-contractor's work, regardless of whether the prime contractor has received payment from the procuring entity.

- The prime contractor must pay all daily-wage labourers employed on the project site within 7 days of the end of each working week.
- Any contractual term that makes sub-contractor payment conditional on the prime contractor first receiving payment from the procuring entity ('pay when paid') shall be void and of no legal effect.
- Interest shall accrue on late sub-contractor payments at the Nepal Rastra Bank's base rate plus 5 percent per annum, calculated from the due date.

These provisions mirror Section 113 of the UK Construction Act 1996, Article 24-3 of Japan's Construction Business Act, and the China Regulations on Ensuring Wage Payment to Migrant Workers 2019. The prohibition of 'pay when paid' clauses is the single most powerful intervention available because it eliminates the legal vehicle through which payment risk is transferred to the weakest party.

6.4 Reform 4: Statutory Adjudication for Sub-Contractor Payment Disputes

A new sub-chapter of the PPR 2064 (following Chapter 20, which currently addresses disputes) should introduce a statutory adjudication mechanism for sub-contractor payment disputes, modelled on Australia's Security of Payment Acts and the UK's Construction Act 1996 (Section 108). Key elements should include:

- Any sub-contractor, vendor, or worker owed payment under a construction contract may serve a payment claim on the prime contractor, specifying the amount claimed and the basis for the claim.
- The prime contractor must respond with a payment schedule within 14 days, either paying the full amount or specifying the disputed amount and grounds for dispute.
- If no payment schedule is served, the full claimed amount becomes immediately payable.
- Either party may refer the dispute to a PPMO-certified adjudicator, who must deliver a binding (but interim) determination within 28 days.
- The adjudicator's determination is immediately enforceable, regardless of whether either party seeks further review through arbitration.
- Adjudication costs shall be borne by the party whose position was not upheld by the adjudicator.

PPMO should establish and maintain a panel of certified adjudicators, including construction engineers, quantity surveyors, and lawyers with construction contract expertise. Adjudicator fees should be regulated to ensure accessibility by small firms and individuals.

6.5 Reform 5: Extension of Performance Guarantee Protection to Local Sub-Contractors

Section 63 of the PPA 2063 should be amended to provide that, upon seizure of a prime contractor's performance guarantee following contract termination for cause, the PPMO shall

constitute a Sub-Contractor Claims Committee within 30 days to receive, verify, and settle claims from local sub-contractors, vendors, and workers who are owed payment by the defaulting prime contractor. The Committee should:

- Accept claims from any entity that can demonstrate a documented contractual or labour relationship with the prime contractor on the specific project.
- Verify claims against the sub-contractor payment schedule filed under Reform 1 and against the prime contractor's payment records.
- Prioritise wage claims above all other claims, consistent with Nepal's Labour Act 2074.
- Disburse verified claims from the seized performance guarantee proceeds before any balance is credited to the consolidated fund.

This reform directly responds to the institutional failure in the Melamchi case, where the government disclaimed responsibility for local claims while holding NPR 2.9 billion in performance guarantee proceeds. It follows the spirit, if not the precise mechanism, of Australia's Building Code 2016 provisions on security of payment for sub-contractors (ABCC, 2026).

6.6 Reform 6: Contractor Blacklisting for Payment Default

Section 63 of the PPA 2063 currently provides for blacklisting of contractors for specified defaults against the procuring entity. The blacklisting grounds should be expanded to include sustained failure to pay sub-contractors or workers, defined as failure to pay more than 30 percent of the certified sub-contractor and worker obligations on a given project within the prescribed timeframes. Blacklisted contractors should be ineligible for all public procurement for a minimum of three years.

This provision creates a powerful deterrent for both domestic and international contractors. International firms bidding on Nepal projects are highly sensitive to reputational risk; the prospect of PPMO blacklisting—publicly listed on the PPMO's e-procurement portal—would incentivise compliance with payment obligations in a way that civil litigation alone cannot.

6.7 Reform 7: Mandatory Idle-Time Dispute Protocol

A specific provision should be added to the PPR 2064 requiring that, where a prime contractor claims idle-time costs or extension of time arising from a site obstruction or stoppage caused by unpaid local actors, the contractor must first demonstrate compliance with its sub-contractor payment schedule. Any claim for idle-time compensation that arises from a stoppage attributable to the prime contractor's own payment default shall be disallowed. This provision introduces a causal nexus requirement into idle-time claims, preventing prime contractors from profiting from their own payment failures.

7. IMPLEMENTATION CONSIDERATIONS

7.1 Phased Introduction

The reforms proposed above should be introduced in two phases. Phase I (within 12 months) should amend the standard bidding documents to introduce mandatory sub-contractor payment schedules and the 'pay when paid' prohibition, as these require no new institutions. Phase II (within 36 months) should introduce the PEA mechanism, the adjudication regime, and the expanded blacklisting provisions, which require regulatory infrastructure to be established (PPMO-certified payment trustees, adjudicator panels, the Claims Committee process). A pilot of the PEA mechanism on five to ten large contracts above NPR 500 million would provide an evidence base for full rollout.

7.2 Capacity Building and PPMO

The PPMO will need significant capacity building to administer the expanded regulatory regime. Specifically, PPMO staff will need training in payment schedule review, PEA administration oversight, and adjudicator panel management. Development partner support—from the ADB, World Bank, or bilateral donors—should be sought for this capacity-building programme. The ADB, as the primary financier of the Melamchi project, has both an institutional interest in preventing repeat payment failures and substantial technical expertise in construction procurement reform.

7.3 Private Sector Context

The proposed reforms address contractors as private entities in Nepal's construction market, consistent with the paper's scope. Because the procuring entities are public (government agencies), the PPA and PPR have jurisdiction over all contracts they award, including to international private firms. The 'pay when paid' prohibition and the PEA mechanism can be applied as contract conditions that international firms must accept as a precondition of bidding on Nepal government projects. This is legally analogous to the UK approach (where Construction Act provisions apply to all contracts, not just those between public entities) and to Australia's Building Code (which extends its payment obligations to all code-covered entities, including on private projects, once the firm has been engaged on a Commonwealth-funded project).

7.4 Addressing Political Economy Constraints

The Melamchi case illustrates that legal reform alone is insufficient if institutional actors—particularly government officials—subvert payment processes for rent-seeking purposes (Kathmandu Post, 2019d; Nepali Times, 2018). The payment cascade failure in Melamchi was compounded by bureaucratic corruption that blocked legitimate contractor payment. The PEA mechanism addresses this by removing government officials from the payment chain: once funds are certified and deposited in the escrow account, disbursement is automatic and cannot be withheld by a government official seeking a commission. This is a significant institutional-design advantage of the PEA over the current single-account payment model.

8. CONCLUSION

Nepal's construction sector faces a payment crisis that extends far beyond the government-contractor relationship: it reaches into the livelihoods of local sub-contractors, material vendors, and daily-wage workers who lack any effective legal protection when international or domestic prime contractors fail to pay. The resulting protests, strikes, and project closures impose enormous costs on the public exchequer—not only through direct project delays but also through the idle-time claims and extended-period costs that prime contractors levy on procuring entities when sites are blocked.

The international evidence, drawn from the United States, China, Japan, Germany, and the United Kingdom, converges on a set of effective interventions: mandatory payment schedules for sub-contractors; ring-fenced escrow accounts from which sub-contractors are paid directly; statutory prohibition of 'pay when paid' clauses; rapid adjudication of payment disputes; and extended contractor liability for sub-contractor wage defaults. Nepal's current PPA 2063 and PPR 2064 contain none of these protections in their current form, creating a regulatory vacuum that is exploited—whether deliberately or structurally—by both international and domestic prime contractors.

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Significance of Technical Specification Bank in Procurement of Medical Goods – Illustrating the Health Sector of Nepal

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Abstract

Technical specifications are the detailed, qualitative requirements of the procurement process. It should cover the material composition, physical, dimensional, and performance parameters. The Technical Specification Bank (TSB) provides a collection of specifications that do not favor any particular brand, trademark, name, design, or origin. In Nepal, the procurement of medical goods is a crucial facet of efficient healthcare management and service delivery. This article highlights the technical and legal grounds for developing and endorsing the TSB, and its significance in procurement, illustrating the practices of the Department of Health Services, Nepal. TSB is a live array of standard specifications of drugs and equipment. It is pre-bid information that directs the whole procurement management process. So, the development and standardization of specifications and managing TSB for drugs and equipment are critical tasks to kick off the whole procurement management process.

Key Words: Procurement, medical goods, TSB, significance

Introduction

Procurement in the health sector is a management function that oversees the entire process of acquiring health commodities, including logistics aspects, in an efficient and economical manner. Therefore, effective and efficient procurement is a pivotal aspect of health service delivery. The quality of health services depends on the quality of goods and services procured for treatment. In the health sector, procurement encompasses a wide range of essential goods and services, including medicines, vaccines, medical equipment, hospital supplies, laboratory items, IT systems, and even infrastructure works. These items are critical to ensuring continuous patient care and efficient healthcare delivery. According to the World Health Organization (WHO), these days, there are an estimated 2 million different kinds of medical devices on the world market, categorized into more than 7000 generic devices groups. A medical device can be any instrument, apparatus, implement, machine, appliance, implant, reagent for in vitro use, software, material or other similar or related article, intended by the manufacturer to be used, alone or in combination for a medical purpose (https://www.who.int/health-topics/medical-devices#tab=tab_1). A medical device is defined as an article, instrument, apparatus or machine that is used in the prevention,

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diagnosis or treatment of illness or disease, or for detecting, measuring, restoring, correcting or modifying the structure or function of the body for some health purpose (WHO, 2011).

The Public Procurement Act, 2007 (PPA) and Public Procurement Regulations, 2007 (PPR) of Nepal, defined “Medical Goods” as drugs, vaccine, syringe, blood-bag, reagent, hormonal product for family planning, or medical equipment for diagnosis and treatment of illness [Regulations; Rule 2(u)]. In Nepal, there are 8,100 public hospitals and 2,451 non-public health facilities in 2025 (DoHS, 2025). Among them 7,865 are Basic Health Service Centers, 413 Basic Hospitals (5-15 Beds), 305 General Hospitals (25-50 Beds), 72 General Hospitals (100-300 Beds), 23 Specialized Hospitals (100 Beds and above), 20 Super Specialty Hospitals (50+ Beds), 28 Academy and Teaching Hospital (300+ Beds), and 1,825 other types of Health Facilities¹⁴. Similarly, there are 5 Federal/Central Ayurveda Health Facilities, 6 Provincial Ayurveda and Alternative Hospitals, 14 District Level Ayurveda and Alternative Hospitals and one Local Level Ayurveda Hospital. All of the above institutions can procure medical goods independently. Apart from them, the Management Division (MD) of the Department of Health Services (DoHS) at the federal level and seven Provincial Health Logistics Management Centers (PHLMCs) procure medical goods in bulk and distribute them to other health facilities. Additionally, the 753 local municipalities also procure medical goods.

There is no reference for the exact number of medical goods being procured in Nepal. However, it is dependent on the types of services being provided by the health facilities. A rough estimation can be depicted from various sources, such as the list of the WHO essential medicine list (EML), the Basic Health Services (BHS) Package, and so on. Essential medicines treat the priority health-care needs of populations. The 2025 edition of the WHO Model List includes over 520 medicines, including 374 for children (<https://www.who.int/news-room/fact-sheets/detail/essential-medicines>; 26 January 2026). Similarly, the Standard Treatment Protocol (STP) for Basic Health Services of Nepal includes 148 medicines in different dosage form and strengths under 98 generic names; and 18 medical and surgical supportive devices (DoHS, 2022). On the other hand, the Benefit Package for Health Insurance, 2024 lists 1,289 medicines, 25 surgical items for emergency cases (HIB, 2024). Likewise, 240 types of medical equipment in different groups per se classification of health facilities as above are listed in the Health Institution Conduction Standard, 2020, first amendment 2021 (MoHP, 2021). A study done on the condition of biomedical equipment at 22 government hospitals in the Bagmati Province of Nepal found that 321 varieties of equipment are at TU Teaching Hospital, followed by Patan Academy of Health Sciences Hospital with 189 types and with only 13 types at Ratnanagar Bakular Hospital (B.C., R., Munankarmi, N. N., Gyanwali, P., Khanal, E. D., Chhetri, D., & Dhimal, M., 2025).

Technical specification is the first and crucial information for procurement. Standardization of quality technical specification can make homogeneity in procurement and consistency of services

¹⁴ Other type of Health Facilities comprises of health facilities like (Polyclinic, Diagnostic Center, Clinics, Dialysis Center, Eye Center etc.)

across the health institutions. In addition, efficiency, economy, and transparency on procurement and the supply chain of medical goods are important part for achieving the constitutional mandate of receiving basic health services by the people.

Legal Framework for Technical Specification

The approval of Technical Specifications along with cost estimate is mandatory before processing for any procurement as per the PPA and PPR. Following are the provisions on PPA:

- Public entities shall prepare specification, plan, drawing, designs, special requirement, or other descriptions of goods, civil works, or services before the solicitation of procurement proceedings. [Clause 4(1)].
- Technical Specifications shall be based on product characteristics, technical features, quality requirements, and performance of the goods, works or services [Clause 4(2)].
- Technical Specifications shall be based on objective, functional and generic standardized trade terms and conditions.

Technical Specifications shall not use the name of any brand, trademark, name, patent, design, type, origin, or producer/suppliers. In the case of necessity, the words “or equivalent” can be used [Clause 4(3)].

- Technical Specifications shall not use any type of words that are unrelated, restrict participation, or limit competition [Clause 4(4)].
- Technical Specification must be included in the bidding document along with nature of procurement [Clause 13(2)(a)].

Similarly, PPR also states that Technical Specification may be a criterion of qualification in procurement of goods [Rule 25(1)(c)]. Rule 42 pronounces about the matters to be stated in Technical Specification.

The overall objective of the law is that a technical specification should clearly and accurately describe or identify requirements, stating descriptions of function, performance, standards, workmanship, materials, and compositions, etc., without restricting competition or acting as a barrier to the introduction of alternative products or new advancements, and the specification must be fixed before the solicitation procedure.

The Technical Specification Bank

Technical Specification is a legal document mandatorily required for procurement management initiation. Without this document, procurement proceedings cannot be started, and for this reason, it is operationalized in a formal manner in every institution. Preparation of specifications has the greatest impact on quality and value for money (VfM) in procurement. The Technical Specification Bank (TSB) is a central collection of pre-approved, standardized technical specifications for the purpose of procurement. By maintaining a ‘library’ of specifications,

organizations can ensure that their procurement processes are efficient, transparent, and aligned with overall business goals.

The usability of TSB can be analyzed as follows:

User	What TSB can provide	Usability
Planner	Guide on options available	Fit well with intervention Simplicity of access Different levels of technology
Indenting person	Understandable Guide as what is appropriate	Simple language Common and local names Searchable Linked with intervention Different level of technology
Specification developer	Reference for internal specification development	Simple to cross reference with other formats Clear, consistent format
Procurement Department	Copy and use for bids Adaptable for local use	Not too many options to choose Simple contents
Database maintainer	Easy to keep up	Simple, relational database
Industry/Supplier	Benchmarking of products Marketing	Open access Facility to comment and object

Based on WHO Technical Specification for Medical Devices, User Guide, 2 June 2014.

The significance of the TSB is the standardization of specifications for any specific item and the use of a standard, user-friendly template. The standardized specification bank provides an up-to-date collection of fixed specifications that do not favor any particular brand. Therefore, there is no possibility of skewing the bid evaluation towards a particular bidder or deviating from the standard requirement of procurement. In the absence of a standard specification bank, the procuring entity (PE) receives numerous complaints from bidders regarding technical specifications, and resolving them leads to a highly time-consuming process and results in delays in the tendering phase or procurement process.

Key significances of a Technical Specification Bank:

- **Consistency and Standardization:** Provides an integrated language and set of requirements, ensuring that similar items are procured with the same quality standards across the organization.
- **Efficiency and Cost Reduction:** Accelerates the procurement cycle by eliminating the need to recreate specifications for repeat purchases, reducing administrative effort and lead time.
- **Improved Procurement Skill:** The procurement personnels can have common understanding on use of specification, standard and regulatory compliance; and newly appointed staff can also catch the procedure quickly.

- **Quality Assurance:** Helps in setting precise performance or conformance standards, ensuring that delivered goods or services are fit for purpose and meet regulatory requirements.
- **Improved Transparency and Fairness:** Provides clear, non-restrictive requirements that enable a wide range of bidders to compete on a level playing field. Reduces risks of favoritism or corruption.
- **Value for Money:** Prevents over-specification (which can inflate costs) and under-specification (which can compromise quality). Supports cost-effective procurement decisions aligned with organization needs.
- **Risk Mitigation:** Reduces the likelihood of misinterpretations, disputes, and receiving inappropriate, low-quality, or incorrect goods.
- **Better Decision Making:** Enables precise, evidence-based evaluations of bids against established, approved criteria.
- **Capacity Building:** Provides procurement officers and procuring entities with a knowledge base to make informed decisions. Reduces dependency on external consultants for drafting specifications.
- **Feedback Mechanism:** Procurement need continuous feedback from the suppliers, market intelligence and vigilance agencies. Proper use of TSB provides feedback from contract management and new inventions on the markets.
- **Adaptability:** Allows updates to reflect new technologies, international standards, and evolving priorities. Ensures procurement remains relevant and future-proof.

Practice of Department of Health Services, Nepal

TSB plays a crucial role in the procurement of medical goods, especially in public health systems. It is essentially a centralized repository of standardized technical specifications for medical equipment, devices, supplies, and drugs. Understanding the need for standardization of technical specifications, with support of the Nepal Health Sector Support Programme (NHSSP), the Logistics Management Division (LMD)¹⁵ of DoHS initiated the development of a central collection of standardized technical specifications of drugs and medical equipment for the purpose of procurement, and it has been endorsed as the Technical Specification Bank (TSB).

Prior to the endorsement of the TSB by the LMD (i.e., prior to the fiscal year 2012/13), the specifications of drugs and equipment used to be developed by the respective Divisions and Centers. The Divisions/Centers either use earlier developed specifications or create a set using the existing specifications combined with information found on the internet. No written standard procedures were available while developing the technical specifications. The main drawback of the practice was that the procurement unit had to develop and collect technical specifications every time they prepared solicitations. This practice of preparing technical specifications

¹⁵ LMD was changed to the Logistics Management Section (LMS) and was absorbed into the Management Division (MD) in FY 2018/19.

normally takes a long time, which leads to a significant delay in procuring drugs and medical equipment. Thus, the LMD had started using the TSB since January 2013 by uploading it onto its website and using it in preparing bidding documents (DoHS, 2017). The TSB could be used by the LMD, provinces, local governments, and health facilities/institutions for procuring drugs and equipment; and also, it could be referenced by manufacturers, suppliers, researchers, academicians, and external development partners.

The TSB was updated in 2017/18, making it dynamic and user-friendly, with standard code and template for medical goods. The objective was to institutionalize TSB for consistency in the use of standard specifications and avoid any chance of individuals or institutions skewing specifications. Institutionalization resulted consistency in the procurement of drugs and equipment over the PE. There are 45 categories under the medical equipment section, and in drugs there are 40 categories. It is being used for bidding by DoHS itself and other PEs with 1,421 technical specifications. In 2020/21, 117 COVID-19 items were added, facilitating all entities and individuals to ensure rapid decisions in procurement. By October 2022, over 1,700 users were registered and over 40,000 downloads of specifications were recorded (TSB Admin/DoHS, as of October 2022).

Coding is related to nomenclature used to generically identify the medical goods. There are different systems adapted by different agencies, such as the Emergency Care Research Institute (ECRI), Universal Medical Devices Nomenclature System (UMDNS), Global Medical Devices Nomenclature (GMDN), WHO (Drugs and Vaccines), UNICEF (Cold Chain equipment), etc. The LMD used the common nomenclature widely used by the government and the private sectors in the Asian region.

The template for standardized technical specifications of equipment includes the following points:

1. Description of Function
2. Operational Requirements
3. System Configuration
4. Technical Specifications
5. Accessories, Spares, and Consumables
6. Operating Environment and Power Supply
7. Standards and Safety Requirements
8. Training (User/Maintenance)
9. Warranty
10. Maintenance Service During Warranty Period
11. Installation and Commissioning
12. Documentation

Similarly, the template for standardized technical specifications of drugs includes the following points:

1. INN/Generic Name
2. Dosage Form
3. Strength
4. Standard
5. Basic Unit
6. Primary Pack
7. Quantity Primary Pack in Supply Unit
8. Special Storage
9. Shelf Life

The institutional practice of using TSB enhanced procurement transparency, time-saving, and bid evaluation, promoting compliance with standard medical goods, quality, and VfM. A report presented by MoHP/NHSSP in April 2015 mentioned that the introduction of TSB had shown the quantitative assessment and qualitative examination were significant and with positive VfM (Barry Armstrong, 2015). The standardization of technical specifications and establishment of TSB made it easy to procure quality medical goods at all levels (MoHP, 2023). Thus, the use of standard technical specifications from the TSB is pivotal in ensuring the quality assurance of medical goods (DoHS, 2025).

Discussion

There are quite a large number of health sector PEs in Nepal across the three tiers of government. On the other hand, enormous numbers of medical goods are in the procurement list. Therefore, it is obvious that a series of parallel procurements of the same medical goods are being done among the PEs. Harmonization of procurement between the similar PEs shall resist the inconsistency in product quality, price, vulnerability in supply of substandard or counterfeit goods, and delays in procurement cycles due to repeated drafting of specifications.

One of the important elements of health sector procurement is the technical specifications of medical goods. There is a growing need for health care professionals, administrators, and planners involved in procurement to have a database of specifications of medical goods. TSB is a safeguard for quality, efficiency, and accountability in medical goods procurement. It ensures that hospitals and health systems receive the right products at the right price while protecting patients and public funds. The practice of DoHS, Nepal, shows how a TSB strengthens procurement of medical goods. Here is how procurement of medical goods looks with TSB, using the DoHS experience:

Feature	With Technical Specification Bank
Standardization	Uniform specifications across all hospitals and tenders; reduces

	variation in product quality.
Efficiency	Ready-to-use specifications save time; faster tendering and procurement cycles.
Transparency	Clear, objective criteria; reduces risks of favoritism or corruption.
Quality Assurance	Goods meet national and international standards; protects patients and service providers.
Cost Control	Prevents over-specification (inflated costs) and under-specification (poor quality); ensures value for money.
Emergency Response	Rapid procurement during crises (e.g., COVID-19 PPE, ventilators, diagnostic kits, reagents and medicines) using pre-approved specs.
Knowledge Sharing	Procurement officers access a centralized knowledge base; builds institutional capacity.

In short, TSB shows how a centralized repository of specifications can transform procurement from a fragmented, risky process into a streamlined, transparent, and quality-assured system. DoHS had published technical specifications for medical goods on its website as TSB, which include 1,174 medical equipment items, 130 pharmaceuticals, and 117 COVID-19-related items. The users can search, view, and download specifications from the online portal. Initially, the TSB was uploaded to the LMD website, www.dohslmd.gov.np, but these days the website is not available to visit, as LMD has been absorbed into the MD as LMS. Neither the MD has its live website now nor is there any link for TSB on the DoHS website. However, it is available at the archived host, <http://182.93.95.152/tsb/>. The support of NHSSP was incredible to establish and keep updating the TSB. Development in TSB has been stagnant after phasing out of NHSSP in December 2023. Nonetheless, a study by Transparency International Nepal had recommended that “it is necessary to make the specification bank more accessible of health commodities items to all levels of the governments” (TI-Nepal, 2020).

Conclusion

Designing the standard technical specification and its approval is the foundation of TSB for its usage in the procurement proceedings. The development of TSB has led to improved efficiency in DoHS. The TSB saves time by providing off-the-shelf standard specifications to procure quality drugs and medical equipment, which enables faster, more efficient, and more transparent procurement practices. It is also useful for potential suppliers to prepare their business plan for the health sector in Nepal. However, technology and requirements in health services have been changing and developing day by day. The standard specifications should be periodically revised to match the evolving needs, ensuring the competition. In lack of timely updating and monitoring, the use of TSB is now becoming only a reference standard. TSB must be a live web-based information platform for its application and must be owned by health ministry or departmental administration with a dedicated portal. Standardizing specifications of medical goods must be corresponding to the different levels of health facilities and their respective needs.

Last but not least, it must be revitalized and made active among the entire health sector of Nepal. MoHP should mandate using TSB for better procurement.

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सार्वजनिक खरिदका विभिन्न प्रकार, विधि, व्यवस्था तथा सिमित प्रतिस्पर्धा मार्फत हुने खरिदमा सम्भाव्य त्रुटी एवं दुरुपयोग

लक्ष्मण खतिवडा¹⁶



बिषय प्रवेश

सार्वजनिक खरिद सम्बन्धी कार्यविधि, प्रक्रिया तथा निर्णयलाई अझ बढी खुला, पारदर्शी, वस्तुनिष्ठ र विश्वसनिय बनाउन तथा प्रतिस्पर्धा, स्वच्छता, ईमान्दारिता, जवाफदेहिता प्रवर्द्धन गरि मितव्ययी तथा विवेकपूर्ण ढंगबाट सार्वजनिक खर्चको अधिकतम प्रतिफल हासिल गर्न बि.सं. २०६३ सालमा प्रतिनिधी सभाबाट स्वीकृत भई मिति २०६३ पौष ३० गते प्रमाणित तथा प्रकाशित भई सार्वजनिक खरिद ऐन, २०६३ लागु भएको हो। मिति २०८३ बैशाख १७ गते सार्वजनिक खरिद (दोश्रो संशोधन) अध्यादेश, २०८३ स्वीकृत भइ ऐन दोश्रो पटक संशोधन भई विध्यमान रहेकोछ। ऐनको अधिनमा रही ऐनको दफा ७४ ले दिएको अधिकार प्रयोग गरि नेपाल सरकारले मिति २०६४ भदौ ३ गते सार्वजनिक खरिद नियमावली, २०६४ जारी गरेकोछ। मिति २०८२ बैशाख १५ गते सार्वजनिक खरिद नियमावली चौधौँ पटक संशोधन भई विध्यमान रहेकोछ। ऐनको दफा ३ बमोजिम सार्वजनिक निकाय र प्रचलित कानून बमोजिम दर्ता भएका संस्थाले सरकारी कोष प्रयोग गरि खरिद गर्दा उक्त रकमको हदसम्म प्रचलित सार्वजनिक खरिद ऐनको कार्यविधि पूरा गरि खरिद गर्नुपर्दछ र सो को प्रतिकूल हुने गरि गरिएको खरिद बदर तथा अमान्य हुनेछ। तसर्थ यस ऐन र नियम पालना गर्नु सबैको वाध्यकारी कर्तव्य रहेकोछ।

सार्वजनिक खरिदको परिचय [दफा २(क) र ३(१क)]

सार्वजनिक निकायले र सार्वजनिक कोष प्रयोग गरि कुनै निकायले मालसामान खरिद गर्ने, अन्य सेवा वा परामर्श सेवा प्राप्त गर्ने वा कुनै निर्माण कार्य गर्ने वा गराउने कार्यलाई सार्वजनिक खरिद भनिन्छ।

नेपालको सार्वजनिक खरिद कानूनले उपरोक्त प्रकारको खरिदलाई निम्नानुसार परिभाषित गरेको छः

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दफा	खरिदका प्रकार	मुख्य व्यवस्था
२ (ग)	मालसमान खरिद (Procurement of Goods)	चल वा अचल, सजीव वा निर्जीव, भौतिक वा अभौतिक जुनसुकै किसिमको वस्तु सम्झनुपर्छ र सो शब्दले त्यस्तो वस्तु आपूर्ति गर्ने कार्यको आनुषाङ्गिक सेवा समेतलाई जनाउनेछ । कम्प्युटर, ल्यापटप, मसलन्द, औषधि, उपकरण आदि ।
२ (घ)	निर्माण कार्यको खरिद (Procurement of Works)	स्थिर संरचना निर्माण, पुनःनिर्माण, जिर्णोद्धार, भत्काउने, मर्मत गर्ने, खन्ने, बनाउने, ठड्याउने, उपकरण वा मालसामान जडान गर्ने, सजाउने (पुल, बाटो, भवन निर्माण आदि) ।
२ (ङ)	परामर्श सेवा खरिद (Procurement of Consultancy Service)	अध्ययन, अनुसन्धान, सर्भेक्षण, डिजाइन, ड्रईङ, सुपरीवेक्षण, तालीम, परीक्षण गर्ने काम, सफ्टवेयरको विकास वा यस्तै प्रकृतिका अन्य बौद्धिक वा पेशागत सेवा ।
२ (च)	अन्य सेवा खरिद (Procurement of Other Service or Non-Consulting Service)	सवारी साधन, उपकरण वा मालसामान भाडामा लिने, ढुवानी गर्ने, मालसामान मर्मत सम्भार गर्ने, विज्ञापन गर्ने, सुरक्षा सेवा लिने, सरसफाई सेवा लिने, हवाई टिकट लिने, पूर्वाधार व्यवस्थापन, संचालन तथा मर्मत गर्ने लगायत परामर्श सेवामा नसमेटिएका अन्य गैर परामर्श सेवाहरू ।

माथि उल्लेखित खरिदका प्रकार अनुसार खरिदका विधि, प्रक्रिया तथा कागजात फरक फरक हुने हुनाले खरिद गर्न लागिएको कार्यको प्रकार सुनिश्चित गरि खरिद प्रकृया अगाडी बढाउनु पर्दछ ।

खरिद विधि तथा व्यवस्था

सार्वजनिक निकायले खरिद गर्दा खरिद मूल्य तथा अवस्थाका आधारमा निम्न मध्ये कुनै विधि तथा व्यवस्था अपनाई खरिद गर्नु पर्दछ ।

दफा तथा नियम	खरिदका विधि तथा व्यवस्था	मुख्य व्यवस्था
	खरिदका विधि	
दफा ८, उप-दफा	मालसामान, निर्माण कार्य र अन्य सेवा खरिद गर्नु पर्दा	

१ (क)	
१.	अन्तराष्ट्रियस्तरमा खुला बोलपत्र (ICB: International Competitive Bidding) आह्वान गरि ✓ राष्ट्रिय स्तरमा बोलपत्रदाता उपलब्ध नभए, राष्ट्रिय स्तरको बोलपत्रआह्वान गर्दा बोलपत्र पेश नभए, विशेष तथा जटिल किसिमको मालसामान वा निर्माण कार्य ✓ कम्तिमा ३० दिनको अंग्रेजी राष्ट्रिय दैनिक पत्रिकामा सूचना प्रकाशित गर्नुपर्ने तर विद्युतीय खरिद प्रणाली मार्फत बोलपत्र आह्वान गरिएकोमा विद्युतीय खरिद प्रणाली बाहेक अन्य मध्यमबाट सूचना प्रकाशन गर्नु नपर्ने। ✓ विद्युतीय खरिद प्रणाली (e-GP) को प्रयोग गर्नुपर्ने। ✓ अन्तराष्ट्रिय मुद्रामा भुक्तानी । ✓ अन्तराष्ट्रिय स्तरको प्रतिस्पर्धा ।
२.	राष्ट्रियस्तरमा खुला बोलपत्र (NCB: National Competitive Bidding) आह्वान गरि ✓ बीस लाख रुपैयाँ भन्दा बढी लागत अनुमान भएको मालसामान, निर्माण तथा अन्य सेवा खरिद कार्य । ✓ सिलबन्दी दरभाउपत्र भन्दा बढी लागत अनुमान भएको खरिद कार्य । ✓ कम्तिमा २१ दिनको अवधि दिएर राष्ट्रिय स्तरको दैनिक पत्रिकामा सूचना प्रकाशित गर्नुपर्ने तर विद्युतीय खरिद प्रणाली मार्फत बोलपत्र आह्वान गरिएकोमा विद्युतीय खरिद प्रणाली बाहेक अन्य मध्यमबाट सूचना प्रकाशन गर्नु नपर्ने। ✓ विद्युतीय खरिद प्रणाली (e-GP) को प्रयोग गर्नुपर्ने।
३.	सिलबन्दी दरभाउपत्र (Sealed Quotation) आह्वान गरि ✓ बीस लाख रुपैयाँ सम्म लागत अनुमान भएको मालसामान, अन्य सेवा र निर्माण कार्य । ✓ पचास लाख रुपैयाँ सम्म लागत अनुमान भएको औषधी जस्तै मालसामान, स्वास्थ्य सम्बन्धी उपकरण ✓ कम्तिमा ७ दिनको अवधि दिएर स्थानीय वा राष्ट्रिय स्तरको दैनिक पत्रिकामा सूचना प्रकाशित गर्नुपर्ने तर विद्युतीय खरिद प्रणाली मार्फत सिलबन्दी दरभाउपत्र आह्वान गरिएकोमा विद्युतीय खरिद प्रणाली बाहेक अन्य मध्यमबाट सूचना प्रकाशन गर्नु नपर्ने।

		✓ विद्युतीय खरिद प्रणाली (e-GP) को प्रयोग गर्न सकिने।
४.	सोझैँ खरिद (Direct Procurement) गरि	✓ दश लाख रुपैयाँ सम्म लागत अनुमान भएको निर्माण कार्य वा मालसामान । ✓ पाँच लाख रुपैयाँ सम्म लागत अनुमान भएको परामर्श सेवा वा अन्य सेवा । ✓ पच्चिस लाख रुपैयाँ सम्म लागत अनुमान भएको औषधी जन्य मालसामान, स्वास्थ्य सम्बन्धी उपकरण, नेपालमा उत्पादित मालसामान । ✓ एक देशले अर्को देश सँग (G to G) खरिद । ✓ एक सार्वजनिक निकायले अर्को सार्वजनिक निकाय सँग (PE to PE) खरिद । ✓ एकमात्र बिक्रेता भएमा, विकल्प नभएमा । ✓ सार्वजनिक खरिद अनुगमन कार्यालयबाट तयार गरिएको सरकारी ई-मार्केटप्लेसमा प्रकाशित तोकिए बमोजिमको रकम सम्मको मालसामान तथा सेवा ।
५.	उपभोक्ता समिति (Users' Committee) सहभागी गराई	✓ एक करोड रुपैया सम्म लागत अनुमान भएको सामान्य निर्माण कार्य सोहि स्थानमा बसोवास गर्ने बासिन्दा र उपयोग गर्ने समुदाय मात्र सम्मिलित उपभोक्ता समिति मार्फत गराउँदा मितव्ययिता, गुणस्तरीयता, वा दिगोपना अभिवृद्धि हुने भएमा वा उपभोक्तालाई रोजगारी सृजना हुने भएमा । ✓ जटिल प्राविधिक क्षमता आवश्यक नपर्ने, उपभोक्ता आफैले गर्न सक्ने प्रकृतिका सामान्य निर्माण कार्य । ✓ रोजगारी सृजना हुने गरि तालीम केन्द्र, लघु उद्यम व्यवसाय स्थापना र संचालन कार्य गर्न सकिने । ✓ निर्माण कार्यमा प्रयोग गरिने ठुला उपकरण प्रयोग गर्न नहुने, तर उपकरण प्रयोग गर्नुपर्ने जटिल प्रकृतिको कार्य भनि उल्लेख भएमा सम्बन्धित प्राविधिकको सिफारिसमा सम्बन्धित सार्वजनिक निकायबाट सहमति लिई आवश्यक उपकरण प्रयोग गर्न सकिने ।

		✓ उपभोक्ता समितिले पाएको काम आफैले सम्पन्न गर्नुपर्नेछ। कुनै निर्माण व्यवसायी वा सब-कन्ट्र्याक्टरबाट गराउन नसकिने।
६.	अमानतबाट (Force Account)	✓ लागत अनुमान तयार गर्न कठिन हुने सामान्य प्रकृतिको मर्मत सम्भार, सानातिना नियमित कार्य वा सरसफाइ जस्ता कार्य, जानकारी व्यक्तिहरुबाट नै गर्नु गराउनु पर्ने कार्य, जोखिम पूर्ण तथा सुरक्षाको दृष्टिकोणबाट संवेदनशील कार्य। ✓ एक लाख रुपैयाँमा नबढाई खण्ड खण्ड गरि वार्ताबाट गराउन वा आवश्यक सामग्रीहरु (ढुंगा, बालुवा, डन्डी, सिमेन्ट आदि) आवश्यक प्रक्रिया बमोजिम खरिद गरि ज्यालामा काम गराउन सकिने। ✓ एक तह माथिको अधिकारीको पूर्व स्वीकृति लिनु पर्ने।
७.	एकमुष्ट दर (Lump-Sum Rate) विधि	✓ दुई करोड रुपैयाँ सम्मको निर्माण कार्य। ✓ योग्यता आवश्यक नपर्ने। ✓ सार्वजनिक भएको लागत अनुमानमा निश्चित प्रतिशतले घटी वा बढीमा प्रतिस्पर्धा गराई। ✓ बहुवर्षीय सम्झौता गर्नुपर्ने खरिद कारवाहीमा प्रयोग गर्न नसकिने।
८.	उत्पादक वा अधिकृत बिक्रेताद्वारा निर्धारित दरमा खरिद (Catalogue Shopping)	✓ ठुला उपकरण, सवारी साधन, स्वास्थ्य उपचार जन्य उपकरण उत्पादक वा त्यसको अधिकारिक बिक्रेता सँग मात्र प्रतिस्पर्धा गराई खरिद गर्न सकिने। ✓ कम्तिमा ७ दिन देखि बढीमा १५ दिनको लिखित सूचना दिएर अधिकारिक स्पेसिफिकेशन, गुणस्तर, मूल्य र सुविधा सहितको विवरण (Catalogue or Brochure) पेश गर्नुपर्ने। ✓ सफल र सूचीमा समावेश उत्पादक वा अधिकारिक बिक्रेता सँग मूल्यमा छुट वा सुविधामा थप हुन सक्ने विवरण सहितको आर्थिक प्रस्ताव माग गरि न्यूनतम मूल्यांकित सारभूत रुपमा प्रभावग्राही प्रस्तावदाताको छनौट गर्नुपर्ने। ✓ ६० लाख रुपैयाँ सम्म लागत अनुमान भएको सवारी साधन, ठुला उपकरण, रु. ४० लाख सम्मको स्वास्थ्य उपकरण र रु. २५

		लाख सम्मको औजार, मेसिनरी, उपकरण खरिद गर्न सकिने। ✓ बहुवर्षीय सम्झौता गर्नुपर्ने खरिद कारबाहीमा प्रयोग गर्न नसकिने।
९.	सीमित बोलपत्रदाताले भाग लिने (Limited Tendering) खरिद विधिबाट	✓ तीन वा सो भन्दा कम संख्यामा अपूर्तिकर्ता, निर्माण व्यवसायी, सेवा प्रदायक भए । ✓ कम्तिमा १५ दिनको सर्वजनिक बोलपत्र सूचना । ✓ एक तह माथिको अधिकारीको पूर्व स्वीकृति लिनु पर्ने। ✓ बहुवर्षीय सम्झौता गर्नुपर्ने खरिद कारबाहीमा प्रयोग गर्न नसकिने।
१०.	नयाँ लिने पुरानो दिने (Buy Back Method) खरिद विधिबाट	✓ सुरु खरिद गरेकै उत्पादक, आपूर्तिकर्ता, अधिकारिक बिक्रेता संग सट्टा पट्टा गर्ने । ✓ वारेन्टी/ग्यारेन्टी सकिएको, काम हुन नसक्ने, मर्मत, लिलाम गर्न उपयुक्त नहुने, पुनः प्रयोग हुन नसक्ने, जनस्वास्थ्य तथा वातावरणको दृष्टिले भण्डारण गर्न नमिल्ने अवस्था भएमा। ✓ बहुवर्षीय सम्झौता गर्नुपर्ने खरिद कारबाहीमा प्रयोग गर्न नसकिने।
११.	कबोल अड्ड घटाघट गर्ने (Reverse Auction)	✓ लागत अनुमानलाई अधिकतम रकम मनी सो रकमबाट घटाघट गरि कबोल गर्न बोलपत्रदाता वा सेवा प्रदायकलाई निश्चित अवधि उपलब्ध गराउने र सो अवधिमा सबै भन्दा कम अड्ड कबोल गर्ने बोलपत्रदाता वा सेवा प्रदायक छनौट गर्ने।
दफा ८, उप-दफा १ (ख)	परामर्श सेवा खरिद गर्नु पर्दा	
१.	प्रतिस्पर्धात्मक प्रस्ताव (Competitive Proposal) माग गरी	✓ बीस लाख रुपैयाँ सम्म लागत अनुमान भएको कार्य: मौजुदा सूचीमा समावेश भएका योग्य ३ देखि ६ वटा प्रस्तावदातालाई कम्तिमा १५ दिनको अवधि दिएर प्रस्तावसम्बन्धी कागजात (RFP) पठाई प्राविधिक तथा आर्थिक प्रस्ताव माग गरि गुणस्तर र लागत विधि (QCBS) बाट परामर्शदाता छनौट गर्ने । ✓ बीस लाख रुपैयाँ भन्दा बढी लागत अनुमान भएको कार्य:

		कम्तिमा १५ दिनको अवधि दिई राष्ट्रिय स्तरको समाचारपत्रमा सूचना प्रकाशित गरि खुल्ला रूपमा आशयपत्र (EoI) माग गर्ने तर विद्युतीय खरिद प्रणाली मार्फत आशयपत्र आह्वान गरिएकोमा विद्युतीय खरिद प्रणाली बाहेक अन्य मध्यमबाट सूचना प्रकाशन गर्नु नपर्ने। ✓ कम्तिमा ३ देखि ६ वटा योग्य आशयपत्र दाताको संक्षिप्त सूची तयार गर्ने । ✓ कम्तिमा ३० दिनको अवधि दिएर प्रस्तावसम्बन्धी कागजात (RFP) पठाई प्राविधिक तथा आर्थिक प्रस्ताव माग गरि परामर्शदाता छनौट गर्ने ।
२.	सोझै वार्ताबाट (Direct Negotiation)	✓ थोरै रकमको (पाँच लाख रुपैयाँ सम्म लागत अनुमान भएको) कार्य । ✓ एक देशले अर्को देश सँग (G to G) खरिद गर्नुपर्दा । ✓ एक सार्वजनिक निकायले अर्को सार्वजनिक निकाय सँग (PE to PE) खरिद गर्नुपर्दा । ✓ उच्च स्तरको विशेषज्ञता आवश्यकता भएमा । ✓ आवश्यक कार्य सम्पन्न गर्न केहि परामर्शदाता मात्र योग्य र उपलब्ध भएमा । ✓ परामर्श छोटो समयको लागि आवश्यक भएमा । ✓ समय न्यून भएमा ।
	खरिद सम्बन्धी अन्य व्यवस्था	
दफा ४२ तथा नियम परिच्छेद ८	रासन खरिद सम्बन्धी विशेष व्यवस्था	✓ सुरक्षा निकाय, अस्पतालका बिरामी, कारागारका थुनुवा वा पशुपंक्षी, नेपाल सरकारले तोकिएको सरकारी कर्मचारीको लागि खानाका सम्बन्धमा नेपाल सरकारले तोकिएको जिन्सी सामग्री खरिद । ✓ स्वीकृत लागत अनुमानको आधारमा सोझै खरिद, सिलबन्दी

		दरभाउपत्र मार्फत वा बोलपत्रको विधि छनौट गरि खरिद गरिने।
दफा ४३ नियम परिच्छेद ९	घर जग्गा भाडामा लिने सम्बन्धी व्यवस्था	✓ काठमाडौं उपत्यका भित्रको केन्द्रिय स्तरको सार्वजनिक निकायको हकमा कम्तिमा १५ दिनको अवधिको सूचना राष्ट्रिय स्तरको समाचारपत्रमा सूचना प्रकाशित गरि भाडाको प्रस्ताव माग गर्नुपर्ने। ✓ क्षेत्रीय, प्रादेशिक वा जिल्ला वा स्थानीय स्तरका सार्वजनिक निकायको हकमा सम्बन्धित कार्यालय, जिल्ला प्रशासन कार्यालय, जिल्ला समन्वय समिति र कोष तथा लेखा नियन्त्रक कार्यालयको सूचना पाटीमा कम्तिमा ७ दिनको अवधिको सूचना टाँस गरि भाडाको प्रस्ताव माग गर्नुपर्ने। ✓ सार्वजनिक निकायले काठमाडौं उपत्यका भित्र वार्षिक १५ लाख रुपैयाँसम्म र काठमाडौं उपत्यका बाहिर वार्षिक ५ लाख रुपैयाँसम्मको भाडा तिर्नु पर्ने गरि घर जग्गा भाडामा लिनु परेमा सूचना बमोजिम प्राप्त प्रस्ताव मध्ये उपयुक्त प्रस्तावमा सेवा, सुविधा तथा भाडा रकम सम्बन्धमा घर जग्गा धनीसँग सोझै वार्ता गरि घर जग्गा भाडामा लिन सक्ने। सो भन्दा बढी रकमको वार्षिक भाडा तिर्नु पर्ने गरि घर जग्गा भाडामा लिनु परेमा सम्बन्धित जिल्लामा घरभाडा निर्धारण समितिमा पेश गरि उक्त समितिको मूल्याङ्कन तथा निर्धारण बमोजिम घर जग्गा भाडामा लिनु पर्ने।
दफा ४३क.	जग्गा खरिद गर्ने सम्बन्धी व्यवस्था	✓ सार्वजनिक निकायले व्यापारिक वा व्यवसायिक प्रयोजनको लागि जग्गा खरिद गर्नुपर्ने भएमा। ✓ सार्वजनिक हितको लागि जग्गा प्राप्ति गर्दा जग्गा प्राप्ति सम्बन्धी प्रचलित कानून बमोजिम गर्नुपर्ने।
दफा ४३, नियम ९५	सेवा करारमा लिने सम्बन्धी व्यवस्था	✓ कार्यालय सुरक्षा, चिठीपत्र ओसारपसार, सरसफाई, टेलिफोन, विद्युत र धाराको संचालन तथा रेखदेख, पशुस्वास्थ्य तथाकृषि प्रसार कार्य, बगैँचाको सम्भार र रेखदेख, टाइपिङ्ग, ड्राइभिङ्ग जस्ता दैनिक कार्य संचालन गर्न आवश्यक पर्ने सेवा करारमा लिनु परेमा। ✓ ५ लाख रुपैयाँ सम्मको सेवा शुल्क लाग्ने सेवा सोझै वार्ता गरि खरिद गर्न सक्ने।

		✓ सो भन्दा बढी सेवा शुल्क लाग्ने सेवाको हकमा काठमाडौँ उपत्यकामा रहेका तथा केन्द्रिय सहरका सार्वजनिक निकायले कम्तिमा १५ दिनको अवधिको सूचना राष्ट्रिय स्तरको समाचारपत्रमा प्रकाशित गरि र क्षेत्रीय, प्रादेशिक वा जिल्ला वा स्थानीय स्तरका सार्वजनिक निकायको हकमा कम्तिमा १५ दिनको अवधिको सूचना स्थानीय स्तरको पत्रपत्रिकामा प्रकाशित गरि र सम्बन्धित कार्यालय, जिल्ला प्रशासन कार्यालय, जिल्ला समन्वय समिति र कोष तथा लेखा नियन्त्रक कार्यालयको सूचना पाटीमा कम्तिमा सूचना टाँस गरि प्रस्ताव माग गरि न्यूनतम मूल्यांकित सारभूत रुपमा प्रभावग्राही सेवा प्रदायक छनौट गर्नुपर्ने।
नियम ९६	मालसामान मर्मत सम्भार गर्ने गराउने कार्यविधि	✓ आफ्नै वर्कशप वा मर्मत केन्द्र भए सोहि वर्कशप वा मर्मत केन्द्रमा मालसामान मर्मत गर्ने। ✓ मर्मत गर्दा कुनै पार्टपुर्जा फेरबदल गर्नुपर्ने भए त्यस्तो पार्टपुर्जा मौज्दातमा लिई र मौज्दातमा नभए लागत अनुमानको आधारमा आवश्यक खरिद प्रक्रिया (सोझै खरिद, सिलबन्दी दरभाउपत्र वा बोलपत्र) अबलम्बन गरी खरिद गर्नुपर्ने। ✓ आफ्नै वर्कशप वा मर्मत केन्द्र नभए लागत अनुमानको आधारमा आवश्यक खरिद प्रक्रिया (सोझै खरिद, सिलबन्दी दरभाउपत्र वा बोलपत्र) अबलम्बन गरी मालसामानको मर्मत गर्नुपर्ने। ✓ फेरबदल वा प्रतिस्थापन भएको व्यहोरा सम्बन्धित प्राविधिकबाट प्रमाणित गराई पुराना समान जिन्सी दाखिला गर्नुपर्ने।
दफा ४६ तथा नियम ९९	गैरसरकारी सँस्था (NGO) बाट काम गराउने व्यवस्था	✓ जनचेतना सम्बन्धी तालिम, अभिमुखीकरण, सबलीकरण, मूल प्रवाहिकरण जस्ता कार्य गैर सरकारी सँस्था मार्फत गराउँदा छिटो छरितो, प्रभावकारी र मितव्ययी हुने भएमा गैर सरकारी सँस्था बीच मात्र प्रतिस्पर्धा गराई (निजि सँस्था सँग नमिसाई) खरिद गर्न सकिने। ✓ पाँच लाख रुपैयाँ सम्म लागत अनुमान भएको कार्यको हकमा मौजुदा सूचीमा रहेका कम्तिमा ३ देखि ६ वटा सम्म गैर सरकारी

		संस्था संग प्रस्ताव माग गरि संस्था छनौट गर्न गर्नुपर्ने। ✓ दश लाख रुपैयाँ सम्म लागत अनुमान भएको कार्यको हकमा कम्तिमा १५ दिनको अवधि दिई राष्ट्रिय स्तर वा स्थानीयस्तरको दैनिक समाचारपत्रमा सूचना प्रकाशित गरि प्रस्ताव माग गरि संस्था छनौट गर्न गर्नुपर्ने। ✓ दश लाख रुपैयाँ भन्दा बढी लागत अनुमान भएको कार्यको हकमा परामर्श सेवा खरिदको प्रक्रिया अनुसार कम्तिमा १५ दिनको अवधि दिएर आशयपत्र माग गर्ने, कम्तिमा ३ देखि ६ वटाको संस्थाको संक्षिप्त सूचि तयार गर्ने, सूचीमा रहेका संस्थाबाट कम्तिमा ३० दिनको अवधि दिएर प्राविधिक तथा आर्थिक प्रस्ताव माग गरि संस्था छनौट गर्न गर्नुपर्ने।
दफा ६६ तथा नियम १४५	विशेष परिस्थिति (Special Circumstances) मा खरिद गर्ने सम्बन्धी व्यवस्था	✓ सुकखा, आनावृष्टि, अतिवृष्टि, भूकम्प, बढी, पहिरो, दैवी प्रकोप, महामारी, युद्ध, अन्तरिक तथा बाह्य द्वन्द जस्ता आकस्मिक वा अप्रत्याशित परिस्थिति उत्पन्न भई तत्काल खरिद नगर्दा थप हानी नोक्सानी हुने अवस्था आइपरेमा तत्काल खरिद गर्न वा गराउन सकिने। ✓ सूचना प्रकाशित नगरी दरभाउ वा प्रस्ताव माग गरि, यथासम्भव प्रतिस्पर्धा गराई वा एउटा मात्र उचित मूल्यको दरभाउ वा प्रस्ताव लिई वा छोटो समयको सूचना प्रकाशित गरि खरिद गर्न सकिने। ✓ सम्बन्धित निकायबाट विशेष परिस्थिति भएको पुष्टि हुनुपर्ने, तत्काल खरिद नगर्दा पर्नसक्ने सङ्कट र खरिदका अन्य नियमित विधि अपनाउन नसकेको कारण र आधार पुष्टि गरि अभिलेख राख्नु पर्ने। ✓ भएको खरिद सम्बन्धी विस्तृत विवरणको जानकारी एक तह माथिको अधिकारीलाई दिनुपर्ने, सार्वजनिक सूचना प्रकाशित गर्नुपर्ने र सोको जानकारी सार्वजनिक खरिद अनुगमन कार्यालयमा पठाउनु पर्ने।
दफा ६७	सार्वजनिक	क. सुरक्षा, सामरिक वा प्रतिरक्षा सम्बन्धी खरिद कार्य ऐन बमोजिम

तथा नियम ८७क	खरिद ऐन बमोजिमको खरिद प्रक्रिया अपनाउनु नपर्ने खरिद	गर्न उपयुक्त नहुने भनी नेपाल सरकारले निर्णय गरेमा। यस्तो अवस्थामा कारण खुलाई तत्सम्बन्धी छुट्टै कार्यविधि समेत निर्धारण गर्नुपर्ने। ख. नेपाल सरकार र दातृ पक्ष भएको सम्झौता बमोजिम दातृ पक्षको खरिद निर्देशिका (Procurement Guideline) अनुरूप खरिद गर्नु परेमा। तर दातृ पक्षको खरिद निर्देशिकामा उल्लेख नभएका व्यवस्थाहरूको हकमा प्रचलित सार्वजनिक खरिद ऐन र नियमावली बमोजिम हुनेछ। ग. निजी क्षेत्रसँग प्रतिस्पर्धा गरि व्यापारिक कारोवार गर्ने सार्वजनिक निकायले कुनै मालसामान वा सेवा खरिद गर्नु परेमा। यस्ता निकायमा २०८३ वैशाख १४ को नेपाल सरकारको निर्णय अनुसार सूचीकृत सुरक्षण मुद्रण केन्द्र समेत हालसम्म यस्ता ८ वटा निकाय अनुसूची ५(क) मा सूचीकृत रहेका छन्। घ. विदेशमा आयोजना हुने सामाजिक, संस्कृतिक कार्यक्रम, औद्योगिक, आर्थिक प्रदर्शन र प्रवर्द्धनका लागि आयोजना हुने मेला, महोत्सव वा प्रदर्शनी जस्ता कार्यको लागि विदेशमा खरिद गर्नु परेमा। ङ. विदेशस्थित नेपाली राजदुतावास, नियोग जस्ता सार्वजनिक निकायले मालसामान वा सेवा खरिद गर्नु परेमा। च. विमान सेवा संचालन गर्न स्वीकृत प्राप्त सार्वजनिक निकायले एभिएशन वा विमान संग सम्बन्धित उपकरण खरिद गर्नुपरेमा वा भाडामा लिनु परेमा। च१. पूर्वाधार कम्पनीले जिम्मा पाएको निर्माण गर्य गर्न आवश्यक निर्माण सामग्री खरिद तथा मेशिन उपकरण भाडामा लिने सम्बन्धी कार्य। नेपाल सरकारले निर्णय गरि कुनै निर्माण कार्य तत्काल गर्नु पर्ने भएको कारण खुलाई पूर्वाधार कम्पनी मार्फत खरिद गर्नुपर्ने भएमा। छ. नेपाल सरकारले निर्णय गरि कुनै निर्माण कार्य तत्काल गर्नु पर्ने
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		भएको कारण खुलाई पूर्वाधार कम्पनी मार्फत खरिद गर्नु पर्ने भएमा । ✓ खण्ड (ग), (घ), (ङ) र (च) बमोजिमको खरिदको लागि आवश्यक कार्यविधि बनाई सार्वजनिक खरिद अनुगमन कार्यालयको सहमति लिई स्वीकृत गराई लागु पर्नु पर्नेछ ।
दफा ५ तथा नियम ८५ (४)	फुटकर खरिद	✓ एक लाख रुपैयाँ सम्म लागत अनुमान भएको कार्य सोझै खरिद गर्न सकिने, ३ वटा दरभाउ आवश्यक नपर्ने । ✓ बीस हजार रुपैयाँ सम्म लागत अनुमान भएको मालसामान खरिद वा निर्माण कार्य गराउँदा स्थायी लेखा दर्ता भएका तर मू.अ. कर दर्ता नभएका व्यवसायी सँग खरिद गर सकिने । तर सम्भव भए सम्म मू.अ. कर लाग्ने प्रकृतिका कार्य खरिद गर्दा मू.अ. कर दर्ता भएका व्यवसायी सँग खरिद गर्न उपयुक्त हुने ।
नियम ८७	प्रतियोगिता गराई डिजाइन खरिद	✓ सार्वजनिक निकायले आर्किटेक्चरल वा शहरी योजना जस्ता बिषयको डिजाइन खरिद गर्नु पर्दा त्यस्तो डिजाइन सम्बन्धी विस्तृत विवरण सहितको कागजात तयार गरी प्रतियोगिता गराई उपयुक्त डिजाइन खरिद गर्न सक्नेछ ।

यसरी खरिद कार्यको प्रकार, प्रकृति, अवस्था तथा लागत अनुमानको आधारमा विभिन्न विधि तथा व्यवस्थाहरू रहेका छन् । उपयुक्त विधि तथा व्यवस्था छनौट गरि सोहि बमोजिम सार्वजनिक खरिद अनुगमन कार्यालयबाट जारी भएको नमुना खरिद सम्बन्धी कागजात प्रयोग गरि खरिद कार्य गर्नु पर्दछ ।

सिमित प्रतिस्पर्धा मार्फत हुने खरिदमा सम्भाव्य त्रुटी एवं दुरुपयोग

सार्वजनिक निकायहरू मार्फत प्रतिस्पर्धा नगरी वा सिमित प्रतिस्पर्धा मार्फत हुने खरिद त्यसमा पनि विद्युतीय मध्यम (e-GP) को प्रायोग गर्न अनिवार्य नभएका तथा समाचारपत्रमा सार्वजनिक सूचना प्रकाशन गर्नु नपर्ने प्रकृतिका खरिद सम्बन्धि कार्यहरू सम्पादन गर्दा विभिन्न प्रकारका त्रुटी हुने गरेका तथा दुरुपयोग समेत हुने गरेको देखिएको छ । खरिद कार्यमा हुने त्रुटी तथा दुरुपयोग अन्जानवश, जानाजान व्यवसायीको प्रलोभनमा परेर, माथिल्लो तहबाट दबाब तथा करकापमा परेर समेत हुने गरेको देखिएको छ । खरिद कार्य जुनसुकै कारणले पनि अपूर्ण वा त्रुटीपूर्ण भएमा उक्त

खरिद अवैध हुनसक्ने, रकम बेरुजु ठहर हुन सक्ने तथा नियामक निकायबाट अनुसन्धान भई भ्रष्टाचार ठहर समेत हुनसक्ने सम्भावना भएको हुनाले खरिद कार्य सम्पादन गर्दा प्रचलित खरिद ऐन, नियम, कार्यविधिमा भएका व्यवस्थाको पालना तथा सोको असल मर्मलाई आत्मसाथ गरि खरिद कार्य गर्नु पर्दछ। सार्वजनिक निकायहरू मार्फत प्रतिस्पर्धा नगरी वा सिमित प्रतिस्पर्धा मार्फत हुने खरिदमा बारम्बार देखिने त्रुटीहरू, सम्भाव्य दुरुपयोग र सो का सम्भाव्य समाधानका उपायहरूको बारेमा छोटकरीमा चर्चा गरिएको छ।

सोझौ खरिद तर्फ:

- १० लाख रुपैयाँ सम्म लागत अनुमान भएको मालसामान र निर्माण कार्य
- ५ लाख रुपैयाँ सम्म लागत अनुमान भएको अन्य सेवा र परामर्श सेवा
- २५ लाख रुपैयाँ सम्म लागत अनुमान भएको औषधि तथा औषधि जन्य मालसामान

प्रतिस्पर्धात्मक प्रस्ताव माग गरि परामर्श सेवा खरिद तर्फ:

- २० लाख रुपियाँ सम्म लागत अनुमान भएको कार्य: मौजुदा सूचीमा समावेश भएका प्रस्तावदाता सँग प्रस्ताव माग गरि

त्रुटी तथा सम्भाव्य दुरुपयोग	त्रुटी तथा सम्भाव्य दुरुपयोग रोक्ने सम्भाव्य उपायहरू
➤ पहिला खरिद कार्य सम्पन्न गर्ने, खरिद प्रक्रिया पछि मात्र प्रारम्भ गर्ने ➤ पुरानो मितिहरूमा खरिद कार्य भएको देखाइने ➤ सार्वजनिक खरिद अनुगमन कार्यालयद्वारा जारी नमुना खरिद सम्बन्धी कागजातको प्रयोग नगर्ने ➤ एकै व्यवसायीलाई ३ वटा दरभाउ पेश गर्न लगाउने ➤ एकै व्यक्ति/व्यवसायीले दरभाउ माग सम्बन्धी ३ वटा पत्र बुझ्ने ➤ दरभाउ पेश हुने एक भन्दा बढी व्यवसाय एकै व्यक्ति वा जनिकका	✓ खरिद योजना बनाई योजना बमोजिम आवश्यकताको आधारमा कार्यहरू सम्पादन गर्ने ✓ सार्वजनिक खरिद अनुगमन कार्यालयद्वारा जारी नमुना खरिद सम्बन्धी कागजातको प्रयोग गर्ने, कागजातले निर्देशित गरे बमोजिम पूर्ण कागजात तयार गरि जारी गर्ने ✓ एकै व्यवसायी वा जनिकको नातेदार भित्रका व्यवसायी सँग एक भन्दा बढी दरभाउ माग नगर्ने ✓ अलग अलग व्यवसायीलाई एक आपसमा जानकारी नदिई फरक फरक पत्र मार्फत वा इमेलको BCC मा ठेगाना उल्लेख गरि दरभाउ माग गर्ने ✓ दरभाउ माग गर्ने व्यवसायी कानूनी रुपमा ग्राह्य तथा प्रस्तावित कार्य सम्पादन गर्न योग्य भए नभएको

नातेदारको हुने ➤ एक भन्दा बढी दरभाउको खामको आकार, प्रकार, रङ्ग समान हुने ➤ एक भन्दा बढी दरभाउको लेखाई, खाम बन्द गर्ने तरिका, अक्षर, व्यवसायीको ठेगाना, फोन नम्बर आदि समेत समान हुने ➤ लागत अनुमान खुलाउन नमिल्ने खरिद कार्यमा समेत अनौपचारिक रूपमा लागत अनुमानको बारेमा व्यवसायीलाई जानकारी दिने ➤ प्राप्त दरभाउहरू स्वीकृत लागत अनुमानको करिब नजिक, नाम मात्रको फरक (केहि सय रुपैयाँ भित्र) पारि दरभाउ पेश गर्ने ➤ प्रक्रिया पुरा गर्ने प्रयोजनको लागि कागजातमा मात्र प्रतिस्पर्धा देखाउने, वास्तवमा प्रतिस्पर्धा नगराउने ➤ मौजुदा सूचिमा धेरै व्यवसायी सूचिकृत भएता पनि पटक पटक समित व्यवसायी सङ्ग मात्र दरभाउ माग गरि खरिद गरि रहने ➤ ३ वटा दरभाउलाई अधिकतम सरह मानिने ➤ एक वा दुई मात्र दरभाउ सफल हुने अन्य असफल वा अपूर्ण हुने ➤ प्रस्तावित कार्य गर्ने उद्देश्य नभएका तथा इजाजत आवश्यक पर्ने कार्यमा	यकिन गरि दरभाउ माग गर्ने ✓ कुनै खरिद कार्यको लागि ३ भन्दा बढी सम्भव भए सम्म मौजुदा सूचिमा समावेश भएका ग्राह्य तथा योग्य सबै व्यवसायीलाई दरभाउ पेश गर्न अवसर दिने ✓ लागत अनुमान खुलाउन नमिल्ने कार्यको स्वीकृत लागत अनुमानको गोप्यता कायम गर्ने ✓ एकै कार्यलाई प्रतिस्पर्धा छल्ने, सिमित गर्ने वा विधि परिवर्तन हुने गरि टुक्रा-टुक्रा परि खरिद नगर्ने ✓ प्राविधिक विवरण, आवश्यक संख्या/परिमाण, शर्तहरू समेत उल्लेख गरिने पूर्ण खरिद सम्बन्धी कागजात गरि गरि पुरै रकमको दरभाउ माग गर्ने ✓ कार्यको जटिलता तथा लागत अनुमानको आधारमा पर्याप्त समय उपलब्ध गराउने (पाँच लाख रुपैयाँ सम्म लागत अनुमान भएको खरिद कार्यमा सामान्यतया ५ देखि ७ दिन दिनको अवधि दिएर दरभाउ/प्रस्ताव माग गर्ने ✓ फुटकर बाहेक सबै प्रकृतिका खरिद कार्यमा सम्झौता गरि खरिद कार्य गर्न ✓ छनौट सम्बन्धी बोधार्थ जानकारी सहभागी सबै आवेदक/व्यवसायीलाई दिने ✓ बजार दर विश्लेषण तथा लागत अनुमान तयार पर्ने प्रयोजनको लागि दरभाउ पेश गर्नुको अर्थ स्वार्थ बाझिनु नभएको हुनाले उक्त व्यवसायीलाई वास्तविक दरभाउ पेश गर्न तथा व्यवसाय गर्ने अधिकारलाई सम्मान गर्ने, उक्त प्रकृतियामा सहभागी भएका तथा नभएका समेतलाई वास्तविक दरभाउ माग गरि प्रतिस्पर्धा गराउने।
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समेत इजाजत प्राप्त नगरेका व्यवसायी सँग दरभाउ माग गर्ने तथा छनौट गर्ने ➤ प्राविधिक विवरण, आवश्यक संख्या/परिमाण, शर्तहरू उल्लेख नगरी इकाई दर मात्र माग गर्ने ➤ पत्र तयार तथा चलानी गरि राख्ने तर खुल्ला जनागरी नदिने ➤ दरभाउ/प्रस्ताव तयार गर्न पर्याप्त समय नदिने ➤ छनौट सम्बन्धी जानकारी छनौट नभएका व्यवसायीलाई नदिने, सोझै सम्झौता गर्ने वा कायदिश दिने ➤ वजार दर विश्लेषण तथा लागत अनुमान तयार पर्ने प्रयोजनको लागि दरभाउ माग गरिएका व्यवसायी सँग वास्तविक दरभाउ माग नगर्ने	
प्रतिस्पर्धात्मक प्रस्ताव माग गरि परामर्श सेवा खरिद तर्फः	
➤ परामर्श सेवा खरिदमा समेत कार्यक्षेत्रगत शर्त (ToR) तयार नगरी वा संलग्न नगरी दरभाउ माग गर्ने ➤ प्रस्ताव माग गर्न मौजुदा सूचीमा समावेश भएका परामर्श दाता छनौट गर्दा निर्णय बिना तजविजमा गर्ने ➤ प्राप्त प्रस्तावको मूल्याङ्कन रकमको आधारमा मात्र गर्ने	✓ परामर्श सेवा खरिदमा कार्यक्षेत्रगत शर्त तयार गरी, संलग्न गरी प्रस्ताव माग गर्ने (दरभाउ माग नगर्ने) ✓ प्रस्ताव माग गर्न मौजुदा सूचीमा समावेश भएका परामर्श दाता छनौट गर्दा सँस्थाको योग्यता, क्षमता तथा अनुभव समेत विश्लेषण गरि निर्णय गरि छनौट गर्ने ✓ जारी भएको प्रस्ताव सम्बन्धी कागजातमा उल्लेखित आधारको अधिनमा रही प्राप्त प्रस्तावको मूल्याङ्कन गर्ने ✓ प्रतिस्पर्धात्मक प्रस्ताव माग गरि परामर्श सेवा

➤ परामर्श सेवा खरिद कार्यको लागि पूर्ण प्रस्ताव सम्बन्धी कागजात तयार नगर्ने, संयुक्त मूल्याङ्कन गर्ने ➤ आशयपत्र मार्फत संक्षिप्त सूचीमा समावेश भएका आशयपत्रदाता सँग प्रस्ताव माग गर्दा मिलेमतो गरि प्रस्ताव पेश हुने, संक्षिप्त सूचीमा समावेश भएका सबै प्रस्तावदाताबाट पूर्ण तथा प्रतिस्पर्धात्मक प्रस्ताव पेश नहुने	खरिद गर्दा जारी नमूना प्रस्ताव सम्बन्धी कागजातको आधीनमा रही पूर्ण कागजात तयार गरि प्रस्तावदातालाई जारी गर्ने, मूल्याङ्कन समितिका प्रत्येक सदस्यले अलग अलग अङ्कभार प्रदान गरि औषत अङ्क गणना गर्ने ✓ लागत अनुमान खुलाउन नमिल्ने खरिद कार्यमा स्वीकृत लागत अनुमानका सम्बन्धमा गोप्यता कायम गर्ने, प्रतिस्पर्धा, स्वच्छता कायम गर्ने, मिलेमतो हुनसक्ने अवस्था सृजना हुन नदिने
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निष्कर्ष

देशको द्रुत विकाश तथा सार्वजनिक सेवा प्रवाहलाई नियमित, चुस्त तथा प्रभावकारी बनाउन सार्वजनिक खरिद कार्य व्यवस्थित, चुस्त तथा प्रभावकारी हुनु बान्छनिय हुन्छ। देशको प्रचलित सार्वजनिक खरिद सम्बन्धी कानून, कार्यविधि, मापदण्ड, मूल्य-मान्यता, असल मनसाय अनुरूपका खरिद विधि, प्रकृया तथा व्यवस्था अनुरूप खरिद कार्य सम्पादन गर्दा त्रुटी तथा अनियमितता हुने सम्भावनाको न्यूनीकरण हुदै सार्वजनिक खरिद कानूनको मर्म अनुरूप प्रतिस्पर्धा, स्वच्छता, ईमान्दारिता, जवाफदेहिता प्रवर्द्धन गरि मितव्ययी तथा विवेकपूर्ण ढंगबाट सार्वजनिक खर्चको अधिकतम प्रतिफल हासिल हुनेछ।

स्रोत सामग्री

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- विभिन्न सार्वजनिक नियम देखिएका व्यवहारिक अभ्यास, तालिम गोष्टि आदिमा भएका छलफल ।

Examining the Significance of National Project Bank (NPB) in Effective-cum-Efficient Resource Allocation and Good Governance



Hrithik Yadav¹⁷

Abstract

This article meticulously dives into understanding the background and rationale of The National Project Bank (NPB, hereafter) in Nepal, as a pivotal initiative aimed at reforming public investment management through a structured, evidence-based approach to project selection and execution. Established by the National Planning Commission, the NPB serves as a comprehensive repository for bankable projects, ensuring that only rigorously vetted initiatives are prioritized for funding. This framework addresses historical inefficiencies characterized by arbitrary project inclusion and misallocation of resources, thereby enhancing accountability and promoting sustainable development. The article encompasses the different stages of NPB through which it operates i.e. identification, appraisal, selection, and prioritization, aligning with national development strategies while facilitating equitable resource distribution. Afterward, the article analyzes the role and significance of the Project Bank Management Information System (PBMIS) at national, provincial and local levels. Ultimately, the article analytically asserts the potential of NPB to transform Nepal's approach to development planning by ensuring judicious allocation of public investments and effective management of resources, enhancing good governance, accountability, and transparency in public expenditure while paving the way for sustainable economic progress.

Keywords: National Project Bank, Evidence-Based Planning, Public Investment Management, Project Prioritization, Resource Allocation Efficiency, Governance Accountability, Sustainable Development.

Background

A development plan cannot be envisioned without proper identification, selection, preparation, and implementation of projects. On the one hand, there is scarcity of well- conceived projects, while on the other; there are abundant projects in pipeline that has been included in development plans but without proper and adequate study, resulting into fragmentation, inefficient use of

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public investment, and poor delivery of projects. This has resulted in unnecessary delay, cost overruns, and slow progress of the projects.

Article 51(f)(1) of the constitution of Nepal states one of the directive policies of the government to formulate sustainable socio-economic development strategies and programs under the regional development plan for inclusive economic development with regional balance, and implement them in a coordinative manner. To this end, a project's scientific, systematic, and logical planning is crucial. A development plan is nothing more than a wish list if initiatives are not properly identified, chosen, prepared, and carried out.

There are currently few well-thought-out projects. However, many ongoing projects are incorporated into development plans without sufficient research, leading to project delivery issues, fragmentation, and inefficient use of public funds. This has caused needless delays, overspending, and sluggish project progress. In light of this, the concept of Project Bank has developed to make the planning process systematic, scientific, objective, and evidence-based.

Conceptualizing National Project Bank (NPB)

The National Project Bank (NPB) is the primary database of projects, including infrastructure projects that have already been investigated and documented through different line ministries and agencies. In simpler terms, it is the depository of projects eligible for investment (i.e., bankable projects) to be executed by the federal government which will be selected based on predetermined processes of project identification, appraisal, selection, and prioritization guidelines developed by the National Planning Commission.

The major rationale behind NPB is to facilitate fair and objective selection of development projects and allocation of resources to new or existing projects resulting in allocation efficiency of scarce resources as well as delivery of projects on time, cost, and quality. NPB ensures system-wide coherence in the identification, appraisal, selection, and prioritization of development projects and efficient public investment management which will attract investment in development projects by enhancing credibility.

This NPB is also helpful in the effective mobilization of development cooperation based on its needs and priorities. It leads to appropriate evidence-based allocation of projects in private and public sectors which is crucial in effective management and optimal utilization of valuable resources.

Legal Regimes on NPB

Section 17(2) of The Financial Procedures and Fiscal Responsibility Act, 2076 has provided provisions relating to the classification of projects and project banks. The Act mentions that there shall be a national project bank with the Planning Commission and the appropriate ministry shall cause to entry projects into the project bank as per the criteria prescribed by the Planning

Commission. Any other matters concerning the classification of projects, determination of bases and norms, and project bank shall be as prescribed.

In pursuant to Sub-Rule (8) of Rule 26 of The Financial Procedures and Fiscal Responsibility Regulation, 2077, NPC can facilitate developing the project bank and also facilitate in identification, evaluation, selection and prioritization of the projects for province and Local Level. Similarly, according to Sub-Rule (3) of Rule 26 of The Financial Procedures and Fiscal Responsibility Regulation, 2077, NPC can make provisions to integrate systems for interoperability.

Stages of Inclusion of Projects in NPB

The National Project Bank: Guidelines for Identification, Appraisal, Selection, and Prioritization of Projects (2020) prepared by the National Planning Commission set out a rigorous process to be followed before inserting any project in the national budget. The guideline has provided the following processes or stages that must be compulsorily abide before making any decision on the National Project to be executed by state resources:

Stage 1: Project Identification

Project identification is the first step in selecting project ideas appropriate for development intervention to address a particular problem or need. This stage needs to resonate with the overall objectives, strategies, and priorities of the government's national development plans. The line ministries are key players in identifying and developing appropriate projects aligned with national objectives.

The purpose is to develop a preliminary proposal for appropriate interventions within specific time frames to address specific needs. The identified project needs approval by NPC.

Stage 2: Project Appraisal

Following approval by NPC and notification to the concerned line ministry, a Feasibility Study (FS) or Detailed Project Report (DPR) is carried out by the line ministry to appraise project viability. Project appraisal serves as a decision support system for investment decisions.

For appraisal, line ministries should prepare FS/DPR by procuring credible consulting services. Following approval by the competent authority within line ministries, a Project Proposal (PP) should be prepared by the concerned line ministry and submitted to NPC along with the FS report/DPR.

Stage 3: Project Selection & Prioritization

Many potential projects are pursued simultaneously by various sectors to meet a plethora of competing demands. Almost inevitably, the resource requirement for the implementation of projects proposed exceeds available resources. Therefore, projects included in the NPB need further scrutinization based on project prioritization and project readiness assessment. A

systematic process of project selection and prioritization is therefore formulated to select a portfolio of projects that can allow allocation of resources to maximize value addition to the nation's economy.

The selection and prioritization of projects is thus an important and crucial stage in PPM to ensure allocation efficiency in development plans. It establishes a strong linkage of projects with the sector development strategy and their integration in the national development plans. Such an integration requires prioritization of projects on the basis of their contribution to national development and their selection based on available resources.

Project Bank Management Information System (PBMIS)

PBMIS is the storage of projects/programs, operated by different ministries/ agencies of the government. It uses MIS as a software tool through which data related to projects/programs are captured, validated, interpreted, processed, and analyzed to back up project decision-making. Projects are the means through which development goals are realized. To realize the national goal through assuring the identification of well-conceived projects, appraising them through the system-based formula, and selection, and prioritization is a must for effective and efficient delivery of development endeavors.

Following three tiers of the ruling system in the nation, Project Bank Management Information has been installed in every tier of governance.

a. *The National Project Bank Management Information System (NPBMIS)*

The National Project Bank Management Information System (NPBMIS) is controlled by the National Planning Commission and is utilized by the Federal Government to manage and oversee development projects, ensuring that only well-studied and feasible initiatives are included in the national budget.

b. *The Provincial Project Bank Management Information System (PPBMIS)*

The Provincial Project Bank Management Information System (PPBMIS) is governed by the Provincial Planning Commission and serves the Provincial Government, facilitating the identification, evaluation, and prioritization of projects at the provincial level.

c. *Local Level Project Bank Management Information System (LPBMIS)*

Lastly, the Local Level Project Bank Management Information System (LPBMIS) is managed and utilized by Local Governments, allowing for effective project management and ensuring that local development needs are addressed efficiently.

Analyzing the Significance of National Project Bank (NPB)

The National Project Bank (NPB) in Nepal serves as a crucial framework for the identification, appraisal, selection, and prioritization of development projects. Established by the National Planning Commission (NPC), the NPB aims to enhance the effectiveness and efficiency of public investment management.

The NPB significantly increases the credibility of development projects through a rigorous selection process based on evidence and need. This structured approach ensures that only well-conceived projects are included, thereby fostering trust among stakeholders, including government entities and development partners. By relying on systematic evaluation criteria, the NPB helps to mitigate risks associated with project failures and enhances the overall reputation of government initiatives.

One of the primary objectives of the NPB is to ensure that selected projects are completed on time, within budget, and to a high standard. The guidelines established for project management facilitate better lifecycle management, which is essential for effective implementation. By providing a clear framework for project preparation and execution, the NPB aims to reduce delays and cost overruns that have historically plagued public projects in Nepal.

The NPB promotes the efficient allocation of national resources by ensuring that projects are prioritized based on their strategic importance and potential impact. This systematic approach allows for optimal utilization of financial resources, reducing waste and enhancing the delivery efficiency of development initiatives. The guidelines encourage evidence-based planning, which aligns resource allocation with national priorities and sustainable development goals.

The NPB facilitates the integration of various projects across sectors, promoting a holistic approach to development. By consolidating diverse expertise and resources in one platform, it enables better coordination among different stakeholders involved in project planning and execution. This integrated framework not only enhances project viability but also ensures that they contribute effectively to broader development objectives.

The establishment of the NPB introduces a transparent system for project governance, which is vital for maintaining accountability in public expenditure. The guidelines require adherence to predefined protocols during project selection and prioritization, thereby minimizing opportunities for corruption or mismanagement. This transparency fosters greater confidence among citizens and stakeholders regarding how public funds are utilized.

Since the data is software-based, and the server is located at the central secretariat accessible to planners at both federal and provincial levels, it will eventually help promote open government data—a philosophy gaining momentum globally in promoting transparency, accountability, and value creation by making government data available to all. The transparency it provides can be expected to help foster an informed and healthy discussion in the provincial parliament while prioritizing projects and approving the budget.

The NPB enhances the capacity for monitoring and evaluating development projects. By providing a structured framework for these processes, it allows for continuous assessment of

project performance against established benchmarks. This capability is crucial for identifying challenges early on and making necessary adjustments to improve outcomes. Furthermore, NPB aligns with Nepal's commitment to achieving Sustainable Development Goals by ensuring that selected projects contribute positively to socio-economic development. The guidelines emphasize the importance of selecting projects that promote equity, justice, and sustainable growth, thus supporting national aspirations to transition into an upper-middle-income country by 2030.

The guidelines established by the NPB also serve as a reference for sub-national governments in Nepal seeking to implement their own project banks. This capacity-building aspect empowers local governments to adopt similar frameworks tailored to their specific contexts, thereby enhancing local governance and project management capabilities across the country. The NPB provides integrated frameworks that cover all stages of project management from identification through appraisal to prioritization ensuring a comprehensive approach to public investment management. These frameworks include templates and checklists that simplify processes and improve consistency in project preparation across various sectors,

By establishing a credible platform for project selection, the NPB encourages greater participation from private sector entities in public projects through Public-Private Partnerships (PPPs). This collaboration can lead to innovative solutions and increased investment in critical infrastructure while sharing risks between public authorities and private investors.

In summary, the National Project Bank represents a transformative initiative aimed at improving project management practices within Nepal's public sector. By enhancing credibility, ensuring efficient resource allocation, promoting transparency, and aligning with national development goals, NPB plays a pivotal role in steering Nepal toward sustainable economic growth and improved public service delivery.

Conclusion

Usually kept up to date by government agencies, a project bank is an extensive database or repository that lists every development project inside a particular jurisdiction. By offering comprehensive details about each project's progress, budget, beneficiaries, and compatibility with more general development goals, including the Sustainable Development Goals (SDGs), it helps to improve transparency and efficiency in project design and implementation. By ensuring that resources are distributed according to need and priority, this system seeks to do away with the arbitrary inclusion of projects in planning procedures.

For Nepal's overall growth, the establishment of a national project bank may be a positive move. Nepal needs to advance in a number of areas in order to compete on a global scale. The NPC-run project bank has the ability to contribute to economic success and give development a fresh perspective. The project bank's initiatives must put balanced development first and avoid sacrificing sound governance. Careful planning that considers budgets and policies is necessary for these projects to be implemented successfully. If not, they might end up like previous ventures of a similar nature. Thus, the project bank is a remarkable leap compared to the past

when influential people inserted their pet projects in the annual plans at the last minute, upsetting the whole notion of bottom-up planning.

Despite its potential benefits, the NPB faces several challenges that hinder its effectiveness. Many provincial and local governments lack the technical expertise and resources necessary to effectively utilize the NPB for project planning and implementation. This gap can lead to inefficiencies and delays in project execution. Further, Political influences often affect project prioritization and funding decisions, undermining the NPB's objective of impartial resource allocation. Ensuring that decisions are made based on merit rather than political considerations is crucial for maintaining the integrity of the NPB. Last but not least, effective functioning of the NPB relies on accurate data collection and management but Inconsistent data reporting from various government agencies often lead to poor decision-making.

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Strengthening Nepal’s Public Procurement through End-to-End Digital Architecture: Lessons and a Practical Reform Roadmap

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Abstract

Public procurement is where public budgets become visible service delivery: roads maintained, medicines supplied, classrooms furnished, and essential services kept running. Globally, procurement is macro-scale—estimated at about USD 11 trillion in 2018, roughly 12% of global GDP—so even small improvements to integrity, competition, and cycle time matter materially. [2] In Economic Co-operation and Development (OECD) countries, public procurement is commonly around 13% of GDP, reinforcing procurement’s relevance for fiscal discipline and public trust. [3]

For Nepal, “digital procurement” should mean more than publishing notices and exchanging PDFs online. Nepal’s national e-GP platform has expanded functional coverage across the procurement cycle (including banking interfaces and data publication initiatives), and reform discussions already acknowledge both operational constraints (connectivity, platform performance, bank confirmation delays) and the need for capacity strengthening. [6] This article synthesizes lessons from high-maturity systems in Estonia, South Korea, Singapore, India, the United Kingdom, and the United States, showing why successful platforms converge on similar architectural patterns: verified identity and organisational authority, reusable supplier registries and identifiers, interoperability via APIs or data-exchange layers, and tamper-evident audit trails that connect procurement events to payments. [10–19] It proposes a phased, Nepal-realistic roadmap to evolve from e-tendering to an end-to-end “procurement stack” without assuming disruptive, expensive replacements.

Keywords: Public Procurement; e-Procurement; Nepal; e-GP; interoperability; supplier registry; digital identity; audit trail; invoice-to-payment; Open Contracting; OCDS

Relevance to Journal Themes (as per Call for Articles notice) [1]

- Procurement improvement measures: phased reforms, KPIs, and integrity-by-design controls.
- Information technology-based procurement (national/international best practice): architecture patterns and comparative system lessons.

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- Procurement monitoring/regulation-related analysis: identifiers, open data, auditability, and oversight enablement.
- Procurement management challenges; minimum methods and processes: workflow standardisation, capacity constraints, and three-tier coordination.

Introduction

Public procurement is not only a compliance function; it is a delivery engine. When a local road contract is delayed, it is not a “paper delay”—it affects mobility, local markets, and citizens’ confidence in government. When medicines are procured late or with weak contract management, patients face stock-outs, and hospitals become the public face of systemic inefficiency. These outcomes explain why procurement performance is closely linked to both value for money and public trust.

International evidence shows why procurement is a high-leverage reform area. The World Bank estimates that public procurement spending was about USD 11 trillion in 2018—around 12% of global GDP—making procurement systems macroeconomically significant. [2] The OECD reports that public procurement accounts for around 13% of GDP in OECD countries, and highlights integrity and risk management pressures that make performance measurement increasingly important. [3] In plain terms: if procurement processes waste even 1–2% through delays, weak competition, or overbilling, the fiscal and governance impacts are large.

Nepal’s own reform discussions similarly treat procurement as a system. Nepal’s legal framework is anchored in the Public Procurement Act, 2007 and Public Procurement Regulation, 2007, and reform presentations repeatedly emphasize professionalisation, monitoring capacity, and system upgrading—not merely “digitising forms.” [4,6] The point is not to claim Nepal is behind; rather, the practical objective is to ensure that digitisation produces measurable governance outcomes: fewer contested procurements, shorter cycle times, better supplier participation (including qualified Small and Medium-Sized Enterprises (SMEs)), stronger contract administration, and faster, safer payments.

This article takes a policy-aware but backend-architecture lens. It treats procurement as an end-to-end lifecycle platform—supplier onboarding to payment—because that is where the largest integrity and efficiency gains are visible in mature systems. The OECD frames digital procurement transformation around lifecycle integration, robust data, skills, and modern infrastructure; these pillars align closely with Nepal’s reform needs under federalism and capacity constraints. [19]

Nepal’s Current Procurement Digitisation

Nepal is not starting from zero. In fact, several national building blocks already exist, and they should be treated as assets for incremental “stack building,” rather than replaced in a costly big-bang.

What exists and is working

Nepal's national e-GP direction has been implemented through a central platform approach. A national presentation on Nepal's e-GP evolution (shared in an international procurement conference context) describes functional coverage that goes beyond tender publication: user registration, procurement planning (APP/MPP), e-bid publishing, e-submission, bid opening, online evaluation, contract awarding, contract management, complaint management, and integration elements including a banking interface for securities/guarantee verification and linkages with other systems. [6] A later Public Procurement Monitoring Office training presentation similarly lists national e-GP modules and security features (including encryption, time stamping, and OTP), reinforcing that Nepal's platform includes several modern transaction-layer controls. [7]

A particularly important institutional move is bank linkage for bid securities and guarantees. The same Nepal conference presentation notes an MoU framework with the central bank and commercial banks for issuance and verification of procurement securities and guarantees through the national e-GP. [6] This is not a small feature: bid security confirmation is a high-frequency integrity step, and automation reduces forged-instrument risks and administrative delays—if operational reliability is managed well.

Nepal has also taken concrete steps toward structured transparency. The Nepal conference presentation describes an initiative to open procurement data in collaboration with the Open Contracting Partnership, using OCDS-aligned publication through the “Public Procurement Transparency Initiative in Nepal (PPTIN).” [6] This aligns with the broader intent of the Open Contracting Data Standard (OCDS), which is designed to make procurement information available in structured form across the contracting process, supporting competition and accountability. [20]

What gaps remain in practice

Nepal's most clearly documented digital gap is not “lack of a portal”; it is incomplete end-to-end integration under real constraints—connectivity, user capability, and process fragmentation across agencies and tiers.

First, operational reliability issues are explicitly recorded in Nepal's own reform presentations. Municipalities raised issues such as system slowness during data entry, occasional loss of entered data requiring re-entry, and delays by commercial banks in confirming bid security through online systems. [6] These have governance consequences: when users experience instability, they fall back to informal workarounds, which weakens standardisation and auditability.

Second, connectivity constraints are a structural reality. The same Nepal presentation notes that internet problems outside main cities can be significant, even if e-GP is not the only affected service. [6] This should shape architecture and product design choices directly: resumable uploads, offline-tolerant workflows, and minimal “heavy PDF dependence” where structured forms can be used.

Third, “end-to-end” is still incomplete. Nepal reform planning explicitly frames a future direction to implement contract management through e-GP with payment management, and to move toward e-payment workflows rather than only tendering. [6] This is a crucial admission: procurement integrity and supplier confidence are often won or lost during contract execution and payment, not at the tender notice stage.

Finally, capacity constraints remain binding. Nepal’s own conference presentation lists inadequate skilled professionals and frequent turnover of key officials as major issues, and identifies continuing training up to local level and strengthening monitoring capacity as core solutions. [6] These are not “soft” issues. For a digital system, high turnover translates into inconsistent data entry, uneven application of workflows, and weak configuration governance unless the platform embeds guidance, validations, and role-segregated approvals.

In summary: Nepal’s digitisation foundation is meaningful and growing, but the national challenge is to evolve from a tender-centric experience into an interoperable, auditable lifecycle platform—while designing for Nepal’s practical constraints and institutional realities.

What High-Maturity Systems Converge On

High-maturity e-procurement systems differ in history and implementation choices, but they converge on common architectural patterns because they solve the same governance problems: reduce supplier burden, prevent forgery and fraud, ensure fair access and attributable actions, and connect procurement to financial settlement.

The patterns below are drawn from five consistent elements: (i) identity and organisational authority, (ii) reusable supplier registries and identifiers, (iii) interoperability through APIs or national data-exchange layers, (iv) invoice-to-payment integration, and (v) evidence-grade auditability (logs, data publication, analytics).

Estonia: interoperability and evidence as infrastructure

Ministry of Finance of Estonia describes its Public Procurement Register as covering procurement “from preparation till end of the contract,” including contract management, e-submission, contract signing, and “X-road enquiries” into other systems on exclusion grounds and selection criteria. [10] The architectural lesson is that procurement becomes stronger when the platform can query authoritative registries rather than rely on uploaded certificates.

This approach relies on X-Road’s security and evidentiary properties. X-Road’s published security architecture states that messages exchanged between security servers are signed and encrypted; the message log provides means to prove reception of request/response messages, producing signed and timestamped documents. [11] X-Road specifications also list audit log behavior: central and security servers keep audit logs, and user actions are logged whether the outcome is success or failure. [12] For procurement systems, this is “integrity engineering”: the platform’s interoperability layer is built to preserve evidential value, not just connectivity.

South Korea: full lifecycle plus large-scale interconnection

Public Procurement Service presents its KONEPS system as covering the entire process “from contract request... to payment,” and delivering one-stop service by linking with more than 200 external systems. [13] The OECD’s 2025 digital transformation paper provides additional scale: as of January 2025, KONEPS is interconnected with 227 external systems across public and private sectors. [19]

Why does this matter? Because interconnection enables automatic document validation and reduces paperwork. The OECD notes that linking platforms can eliminate paper submissions of documents such as business registration and tax payment certificates, by accessing data directly from government databases. [19] Technically, this is a shift from uploading proof to querying proof—reducing forgery risk and improving data reliability.

Singapore: strong identity, clear channels, and structured invoicing

Singapore’s GeBIZ portal is described as a one-stop e-procurement portal where public sector invitations for quotations and tenders are posted; suppliers can download tender documents and submit bids online. [14] GeBIZ also visibly integrates national identity login options (e.g., Singpass), reflecting an “identity-first” posture for government transactions. [15]

A key design insight from Singapore is that identity is both authentication and authority. CorpPass is described by Singapore government services as an authorisation system for businesses to grant employees and third parties access to perform digital transactions with government agencies. [16] Corporate identity is reinforced by the Unique Entity Number regime: ACRA guidance describes the UEN as a standardised identification number used when transacting with government agencies. [17] Together, these create a clean chain: verified person → authorised role → identified entity.

Singapore’s invoicing channel provides an especially relevant pattern for Nepal’s “end-to-end” agenda. The Accountant-General’s Department describes Vendors@Gov as a secured one-stop portal to submit e-invoices, check payment status, and update particulars, routing invoices electronically to agencies for processing and payment. [18] Government invoicing guidance for InvoiceNow further makes the control logic explicit: vendors must have an approved **vendor** record; vendors log in using CorpPass; and payment is made based on bank details provided in the vendor record. [21] This is not just convenience—it is payment integrity engineering.

India: platform engineering, API-first integration, and payment coupling

India’s GeM is notable because engineering design and implementation approach are described in unusually concrete terms. A 2026 case study published by NeGD (under MeitY) describes GeM as a large digital transformation program and documents a cloud-native approach, modular platform components, and data-driven governance (including analytics). [22] Even where readers are not engineers, the key policy insight is important: modularity supports incremental evolution without destabilising users.

India also illustrates why procurement-to-payment integration is central to “real digital procurement.” A Department of Expenditure Office Memorandum (2016) states that the GeM portal generates a Sanction Order followed by Contract/Supply/Purchase Orders and that these are digitally signed and made available online to payment authorities and vendors. [23] PFMS itself is described by the PFMS platform as a robust web-based system developed and implemented by the Office of the Controller General of Accounts, with interfaces to banks and other external systems, facilitating payments and exchequer control among other functions. [24] The combined pattern is highly relevant for Nepal: procurement systems generate structured, signed artifacts that flow into payment systems, enabling traceable settlement.

United Kingdom: an integrated central platform plus open data APIs

Under the UK’s Procurement Act reform package, the Cabinet Office describes Find a Tender as the central digital platform where contracting authorities publish procurement information; it is also where identifiers are recorded/issued and where suppliers input commonly used information—integrating noticing, sign-in and registration, and supplier information. [25] The supplier registration guidance shows a concrete identity and registry pattern: use One Login, register the organisation using a Companies House number (or equivalent), and where Companies House data exists, organisation details are auto-populated. [26]

The UK also provides a practical model for machine-readable transparency. Find a Tender’s developer documentation states that notices can be downloaded in OCDS JSON format via API, with notice fields mapped to OCDS (including extensions). [27]

United States: entity eligibility gating, exclusion checks, and invoice controls

The US procurement ecosystem is complex, but its digital procurement stack shows a clear “eligibility and integrity gate” approach. SAM.gov’s registration guidance states that registering assigns a Unique Entity ID, and that user credentials are managed by Login.gov (sign-in via Login.gov to return to SAM.gov). [28] SAM.gov’s Entity Information area also explicitly supports integration: it provides APIs for Entity, Exclusions, and Responsibility/Qualification data. [29]

Integrity enforcement is reinforced by suspension and debarment tools. The General Services Administration explains that the suspension and debarment process protects the federal government from fraud, waste, and abuse, and that such actions are visible to the public via SAM. [30] This illustrates a procurement-integrity pattern Nepal can adapt (within its legal framework): a central “do not contract/pay” control list that is accessible, enforceable, and auditable.

On invoice-to-payment, the US Bureau of the Fiscal Service describes the Invoice Processing Platform (IPP) as a secure, centralized program managing invoicing from purchase order through payment notification. [31] A Treasury privacy impact assessment adds a governance-relevant claim: IPP’s increased controls help agencies avoid improper payments and prevent overbilling, and it supports electronic interactions rather than paper workflows. [32]

Why convergence matters for Nepal

Across these systems, the designs converge on a small set of “low-regret” patterns:

- Identity + authority binding: reliable attribution of actions to a verified person acting under an organisation’s authority (e.g., CorpPass, One Login, Login.gov patterns). [16,26,28]
- Reusable supplier registry and identifiers: “tell government once,” reuse across tenders, and support open data and analytics (UK core business details; US UEI; Singapore UEN; Korea/KONEPS one-time profile reuse). [17,25,28]
- Interoperability: procurement platforms reduce paperwork by querying authoritative registries (X-Road enquiries; KONEPS interconnection). [10,19]
- Invoice-to-payment integration: procurement value is realised when settlement is traceable and controlled (Vendors@Gov; GeM sanction order linkage; US IPP). [21,23,32]
- Evidence-grade auditability: tamper-evident logs and data publication enable oversight and deterrence (X-Road signed+timestamped messages; UK OCDS APIs). [11,27]

Nepal’s opportunity is to adapt these patterns pragmatically to national institutions and constraints, building on existing e-GP and PFM systems rather than importing expensive, fragile solutions.

Reference Architecture for Nepal

To guide realistic reform, it helps to describe a reference architecture in plain language. Think of a procurement system as a national “transaction stack” with layered responsibilities:

Channels layer: the front doors

This includes the supplier portal, buyer/procuring entity portal, auditor/oversight views, and public data portals. Nepal’s e-GP already supports multiple user groups and modules, and training materials emphasize centralised internet-based access and role-based functionality. [6,7]

Design principle: channels should be lightweight and resilient (including under low bandwidth), while procurement rules and audit logic live in backend services. This helps Nepal manage three-tier scaling because business rules remain consistent even when user interfaces evolve.

Identity and authority layer: who is acting, and who can bind an organisation

This is the most underestimated layer in procurement digitisation. The international comparison shows that “login” is not enough. The system must capture:

- the person (authenticated user), and
- the authority (role and delegation to act for an entity), and
- the entity (supplier or government organisation).

Singapore's separation between Singpass (person) and CorpPass (organisation authorisation) is instructive. [16] The UK's flow similarly starts from personal sign-in via One Login and then registers organisations with unique identification. [26] The US separates Login.gov identity from SAM.gov entity registration while keeping a clean handoff. [28]

For Nepal, the practical direction is to progressively integrate national identity services for stronger assurance over time. Nepal's Department of National ID and Civil Registration provides official portals for National ID pre-enrolment and citizen services, showing that digital identity infrastructure is expanding. [33,34] Legal recognition of digital signatures and electronic authentication can be anchored in Nepal's Electronic Transactions Act framework and oversight by the Office of Controller of Certification; official OCC materials describe digital signature concepts and publish the relevant legal instruments. [35]

Nepal-realistic design choice: implement tiered assurance rather than a strict "all users must have highest assurance from day one." Start with strong MFA, role-based access, and controlled delegation; then expand the use of digital signatures for legally sensitive actions as adoption and capacity grow.

Procurement services layer: the domain engine

A mature system breaks procurement into lifecycle services (not just one portal). Nepal's reform presentations already list modules spanning planning, tendering, evaluation, contracting, and contract management, showing the architectural direction is already recognised. [6,7]

A Nepal reference stack should treat these as clear services/modules:

- Supplier registry (master record, qualifications, bank details, authorised representatives)
- Planning (APP/MPP)
- Notice/tender service (structured data + documents)
- Bid submission and opening (confidentiality + timestamps + committee workflows)
- Evaluation workflow (roles, approvals, scoring capture, audit trails)
- Award + contract lifecycle (LOI/LOA, amendments, milestones)
- Acceptance/inspection events (especially for works and goods)
- Invoicing and payment orchestration (invoice validation, three-way match, payment status feedback)
- Complaints and review workflows (time-bounded and traceable)

Interoperability layer: APIs and "registry pull" instead of paperwork push

This is where the largest "real" gains emerge in mature systems. Estonia's procurement register explicitly describes X-Road enquiries into other systems for exclusion and selection criteria. [10] Korea's KONEPS is described as one-stop service by linking with more than 200 systems, enabling automated verification and data reuse. [13,19]

Nepal does not need to connect hundreds of systems early. A pragmatic approach is to build a Government Integration Gateway (conceptually: an API gateway + connector services + audit logging) and connect the highest-value registries first:

- entity registration/business registry (where authoritative)
- tax/VAT/PAN compliance services (eligibility and standing)
- banking/treasury rails for bid security verification and payments
- blacklisting/exclusion data (where lawful and feasible)

Nepal's own vision documents already refer to integrating e-GP with other systems (including central bank and tax registration linkages). [6,7]

Payment layer: closing the loop from award to settlement

This is the critical missing middle in many e-tendering systems. Singapore's vendor guidance makes payment integrity operational: payment is based on approved vendor record bank details, and invoice workflows have controlled status transitions. [21] The US IPP explicitly frames centralized invoicing from PO to payment notification and links controls to prevention of improper payments and overbilling. [31,32] India's GeM payment guidance connects procurement-generated sanction orders and digitally signed contracts to payment authorities. [23]

For Nepal, end-to-end procurement means that contract milestones and acceptance events become prerequisites for invoice approval, and invoice approval becomes a structured trigger for payment initiation through the treasury system—not a manual afterthought.

Nepal's PFM environment suggests this is increasingly feasible. The World Bank notes that Nepal rolled out the Treasury Single Account across all districts, significantly shortening expenditure processing time and providing a consolidated view of government cash resources. [36] Nepal's local government PFM direction also includes standard systems: the IMF PFM blog notes that by FY 2020/21, all 753 local governments used SuTRA for at least some core functions (budgeting and accounting among them). [37] These are meaningful foundations for procurement-to-payment integration under federalism.

Audit and transparency spine: evidence + publication + analytics

Auditability is the backbone of integrity. X-Road's security architecture describes signed and encrypted message exchange, with signed and timestamped outputs and message logging for third-party proof; audit logs capture user actions regardless of success/failure. [11,12] The UK's Find a Tender API publishes procurement notices in OCDS JSON formats through APIs, enabling machine-readable transparency. [27] Nepal's own reform initiative toward open contracting data publication (PPTIN) signals alignment with these global patterns. [6]

For Nepal, the audit spine should be designed as parallel, not “after the fact.” Every state transition (tender published, bid submitted, evaluation approved, contract signed, milestone

accepted, invoice approved, payment initiated) should generate a tamper-evident event log entry that can feed oversight dashboards and (where lawful) structured public disclosure.

A Pragmatic Reform Roadmap for Nepal

Nepal's best strategy is phased: build the digital procurement stack in layers, prioritising high-impact controls and reuse, while avoiding expensive disruptive replacements. Nepal's own planning documents already describe phased improvements, future enhancements, and identified pain points, which supports a realistic step-by-step roadmap. [6]

The phases below are framed with objectives, key modules, operational prerequisites, risks, and measurable KPIs.

Phase 1: identity integration, supplier registry, and access controls

Objective: establish “who is acting” and a reusable supplier base record (“tell us once”), while hardening access controls for sensitive actions.

Key system modules

- Unified supplier registry service (common profile used across procuring entities)
- Delegated authority management (who can submit bids, sign contracts, change bank details)
- MFA by default for all sensitive functions (minimum baseline)
- Basic unique identifiers discipline: supplier ID, tender ID, contract ID, invoice ID
- Controlled change process for high-risk fields (especially bank details and beneficial ownership/connected persons where required)

Policy and operational prerequisites

- Agreement on minimum supplier master fields and update governance (PPMO-led, but aligned with sector/agencies) [6]
- A practical identity integration plan that uses Nepal's existing identity platforms progressively (not a single binary switch) [33,34]
- Digital signature adoption roadmap for specific legal steps (e.g., contract signing, key approvals), aligned with OCC and Electronic Transactions Act governance [35]

Risks and mitigations

- *Risk:* over-complex onboarding discourages SMEs and regional suppliers. *Mitigation:* phased onboarding; allow essential registration first, then progressive disclosure; provide guided workflows and help desk. Nepal's own experience emphasizes training and support as continuous needs. [6]

- Risk: “registry becomes a dumping ground” of unverified data. Mitigation: mark critical fields by assurance level; enforce maker-checker changes; require explicit declarations (as the UK requires suppliers to declare accuracy before sharing). [26]

Phase 1 KPIs (examples)

- Supplier registration completion time (median) and drop-off rate
- Percentage of bids submitted by verified/role-authorised representatives
- Number of bank detail change incidents flagged and resolved (time and outcome)
- Reduction in repeated document uploads per tender (proxy for “tell us once”)

Nepal mini-scenario: local road works bidding, A municipality issues an NCB for blacktopping a feeder road before monsoon. Under Phase 1, contractors register key documents once; the procurement committee can see verified bank guarantee metadata through integrated bank linkage; and every bid submission is attributable to a named authorised representative using MFA. Delays caused by “who actually submitted?” disputes reduce, and complaints become easier to adjudicate because logs show the exact timeline. [6]

Phase 2: workflow enforcement, contract management, and usability/performance

Objective: move from digitised document exchange to digitally enforced workflows across tendering and contract execution, with strong usability under Nepal’s connectivity realities.

Key system modules

- Workflow engine for evaluation and approvals (segregated roles; audit trails)
- Contract lifecycle minimum viable module: contract signing, variations, milestones, inspection/acceptance, closure
- Performance and reliability enhancements: resilient uploads, autosave, queue-based processing, observability dashboards
- Improved bidding forms: reduce unnecessary PDF dependence by using structured fields where possible
- Enhanced complaint/review process integration (time-bounded, status-tracked)

Nepal’s reform presentations already list contract management features in e-GP (e.g., assigning coordinators, updating schedules and physical progress, certifying IPC, and billing steps), indicating feasibility and user demand. [7] Nepal’s international conference presentation also identifies an “existing contract management module” and a plan to enhance it. [6]

Policy and operational prerequisites

- Standard workflow definitions (what steps are mandatory; minimal acceptable evidence at each step)

- Cross-tier harmonisation approach: one reference workflow that can be configured, rather than separate divergent systems
- Embedded training: templates, wizards, and validation rules inside the product (critical under turnover risk) [6]

Risks and mitigations

- *Risk:* performance issues undermine trust (slow system, data loss).
- *Mitigation:* treat performance as governance; implement autosave and resumable uploads; monitor peak load; publish service status transparently. Nepal's municipalities have already raised slowness and data loss issues, so addressing them is not optional. [6]
- *Risk:* contract management becomes “checkbox reporting.”
Mitigation: require limited but meaningful events, tied to payments (milestone acceptance drives invoice eligibility).

Phase 2 KPIs

- Tender cycle time (publish → award), and variance across tiers
- Evaluation stage duration and number of reworks/clarifications
- Contract variation frequency and value (flag abnormal patterns)
- Percentage of procurements with complete contract milestone records
- User-reported system reliability (uptime, failed submissions, autosave recovery)

Nepal mini-scenario: medicines procurement with delivery acceptance, A provincial health office procures essential medicines. Under Phase 2, contract milestones include delivery schedule and batch acceptance at stores. Acceptance events (quantity, expiry compliance, inspection) are recorded digitally. This reduces disputes and supports faster invoice approval later, while strengthening audit evidence for both stock management and financial accountability. (This scenario aligns with the contract-to-payment control logic seen in mature systems, even if Nepal's health supply chain systems remain separate initially.) [31,32]

Phase 3: invoice-to-payment integration, analytics, and OCDS transparency expansion

Objective: close the loop—connect contract execution to invoice approval and treasury payment, while expanding structured transparency and analytics for monitoring and integrity.

Key system modules

- E-invoice submission module (portal or network-ready interface)
- Invoice validation and matching (contract/order ↔ acceptance ↔ invoice)
- Payment orchestration and status feedback to suppliers

- Analytics and anomaly detection dashboards (participation, unit prices, delays, variation risk, supplier concentration)
- OCDS-aligned publication expansion beyond notices: awards, contracts, amendments, implementation milestones (with appropriate redactions)

International patterns show that Phase 3 is where integrity gains become strongest. Singapore's Vendors@Gov and InvoiceNow guidance explicitly tie invoicing to approved vendor records and bank details, reinforcing payment routing integrity. [18,21] The US IPP positions centralized invoice-to-payment workflows as a control mechanism against improper payment and overbilling. [31,32] India's GeM payment memorandum links digital procurement documents (sanction orders, digitally signed contracts) to payment authority workflows. [23]

For Nepal, Phase 3 is realistic because PFM foundations are strengthening. The World Bank notes TSA rollout and shortened processing times. [36] The IMF notes SuTRA use across all local governments for core PFM functions by FY 2020/21. [37] An end-to-end procurement stack should therefore integrate with Nepal's treasury and local PFM systems through standard interfaces, even if full nationwide harmonisation takes time.

Policy and operational prerequisites

- Define national "minimum data to pay" (what evidence is required before payment initiation)
- Strengthen vendor bank detail governance (maker-checker; cooling period; notification)
- Decide the national approach to e-invoice channels (portal-first with network transition, or hybrid)
- Data governance for analytics and publication (quality rules, privacy, acceptable redactions)

Risks and mitigations

- *Risk:* integration complexity across tiers and systems creates delays.

Mitigation: start with a limited number of high-impact integrations; define clear APIs; use staged rollouts (pilot clusters of municipalities/provinces). Estonia's lesson is that a secure interoperability layer reduces the proliferation of one-off integrations over time. [10–12]

- *Risk:* transparency expansion without data quality creates distrust.

Mitigation: publish incrementally with quality checks, using OCDS structures that support validation and progressive enrichment. [20,27]

Phase 3 KPIs

- Average invoice processing time (invoice submitted → paid)
- Percentage of payments linked to complete acceptance records (three-way match compliance)
- Supplier payment delay complaints (volume and resolution time)

- Data completeness scores for awards/contracts/amendments publication
- Audit findings related to payment irregularities and documentation gaps (trend)

Nepal mini-scenario: school furniture procurement and payment tracking, A district education unit procures desks and benches. Under Phase 3, once delivery is accepted (digital receipt with committee sign-off), the supplier submits an e-invoice, and the system checks contract terms and accepted quantities before initiating payment through treasury rails. Suppliers can track status (submitted → processing → approved → paid), which reduces follow-up visits and informal pressure. This is the same “order-to-pay traceability” logic described for centralized invoice platforms internationally. [31,32]

Governance, Capacity, and Integrity-by-Design

A procurement stack is not only software; it is a governed ecosystem. Nepal’s reform experiences highlight three governance realities: three-tier federalism requires harmonisation, procurement professionalism must be reinforced under turnover, and vendor ecosystems should not be locked into a single provider pathway. [6]

Three-tier harmonisation without “one size fits all”

Nepal’s procurement system operates across federal, provincial, and local governments. Nepal’s own reform analysis identifies harmonisation under three-tier government as a challenge and calls for continued training and monitoring capacity. [6] The lesson from mature systems is that harmonisation is best achieved through common identifiers, common minimum data requirements, and interoperable interfaces, not by forcing every entity into identical organisational processes.

A practical Nepal strategy is to publish a “national reference workflow” (minimum steps and records) and allow configuration for legally required variations—while keeping the core lifecycle events consistent for monitoring and audit.

Change management embedded in product design

Nepal has already delivered large-scale training (thousands of users) and plans further training and professional accreditation. [6] But training alone cannot solve turnover and uneven capacity. The platform must embed “guardrails”:

- templates that reduce discretionary variation
- step-by-step wizards for complex tasks (bid evaluation, contract amendments)
- validations that prevent inconsistent entries (dates, totals, missing documents)
- role-based dashboards that show pending approvals and deadlines
- contextual help and “what good looks like” examples

This approach aligns with the OECD’s emphasis on digital skills gaps and fragmented governance as key barriers to transformation. [19]

Procurement professionalism and the turnover reality

Nepal's own presentation explicitly flags inadequate skilled professionals and frequent turnover of key officials. [6] A digital platform should therefore protect institutional memory through:

- workflow and approval logs (evidence remains even when staff changes)
- standardized evaluation and contract templates
- mandatory justification capture for key discretionary decisions (extensions, variations)
- automated reminders and escalation paths

Vendor ecosystem strategy: open APIs and avoiding lock-in

Interoperability is a sovereignty choice. Estonia's X-Road model illustrates how a secure exchange layer enables many organizations to collaborate without each pair building bespoke integrations. [11,12] Nepal can adopt the principle without copying the exact technology by implementing:

- an API gateway with standard authentication and audit logging
- published (and versioned) APIs for supplier registry, tenders, contracts, and payments
- standard event schemas for key lifecycle transitions

This reduces future lock-in, supports local innovation, and helps oversight tools ingest data consistently.

Risk controls and integrity-by-design

Integrity controls should be built into the architecture and workflows, not added later.

- MFA and role-based access control (RBAC). The UK's One Login flow includes multi-factor options, and the platform design is explicitly built around identity and registration. [26] Nepal can enforce MFA as baseline for all sensitive actions.
- Segregation of duties and maker-checker. Procurement workflows should enforce separation between requestor, evaluator, approver, receiver, and payment initiator—especially for high-risk changes like supplier bank details. Singapore's vendor invoicing guidance ties payment directly to bank details in approved vendor records, illustrating why bank details governance is critical. [21]
- Tamper-evident logs and non-repudiation. X-Road security architecture demonstrates signed, timestamped messages and message logs designed for third-party proof; audit logs capture actions regardless of success/failure. [11,12] Nepal's platform can implement an immutable event log for procurement state transitions even without a national data exchange product—this is a design choice.
- Eligibility and exclusion checks. The US model shows a central platform supporting exclusions data; GSA notes that suspension and debarment tools protect government from fraud, waste, and abuse and are visible through SAM. [30] Nepal already operates

blacklisting mechanisms; a long-term digital direction is to integrate exclusion/blacklist checking into the supplier registry and bidding workflows in a legally defensible way.

- Invoice controls to prevent overbilling. The US Treasury IPP assessment explicitly links increased controls with avoiding improper payments and preventing overbilling; it supports electronic invoice interactions. [32] Nepal's Phase 3 architecture should adopt similar controls: duplicate invoice prevention, matching against acceptance records, and strong audit logs.

Conclusion

For Nepal, “end-to-end digital procurement” should be understood as a stack: identity and authority binding, reusable supplier registry and identifiers, lifecycle workflows that cover tendering through contract execution, and a payment-connected audit spine that produces evidence and data by default. Nepal's own reform materials already recognize the direction: national e-GP has expanded module coverage, bank linkages are being pursued, open contracting publication is underway, and the need for contract management and payment integration is clearly articulated. [6,7]

International comparisons show that high-maturity systems converge on similar architectural choices because the governance problems are the same everywhere: reduce barriers for legitimate suppliers, standardize fair competition, prevent forgery and fraud, and ensure that every procurement decision can be traced to an accountable actor and to a financial settlement. Estonia shows the power of a secure interoperability layer with evidential logging. [10–12] Korea shows the efficiency and integrity benefits of large-scale system interconnection. [13,19] Singapore demonstrates identity-authorization clarity and disciplined invoice-to-payment controls. [16,21] India shows how modular platform engineering and payment coupling can be documented, governed, and scaled. [22–24] The UK and US highlight the importance of identifiers, APIs, and integrity gating (supplier information reuse, exclusions checks, and invoicing controls). [25–32]

Nepal's most defensible strategy is therefore not a disruptive “replace everything” program. It is a pragmatic phased agenda: Phase 1 strengthens identity integration, supplier registry governance, and access controls; Phase 2 hardens workflow enforcement and contract management while addressing reliability and usability; Phase 3 connects invoice-to-payment, strengthens analytics, and expands structured transparency using OCDS principles. [6,19,20] If Nepal pursues this stack-building path using existing foundations (e-GP, bank linkages for securities, TSA and SuTRA directions, and improving digital identity services), the country can steadily build a procurement system that is not only digital, but measurably more trustworthy, more efficient, and more capable of converting budget into public value. [6,36,37]

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The Race to the Lowest Bid: How Nepal's Procurement Culture is Fueling Delays, Sick Projects, and e-GP Manipulation



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ABSTRACT

Nepal's public procurement regime was originally established to ensure transparency, competition, accountability, and economical utilization of public resources. The Public Procurement Act, 2063 expressly states that procurement procedures must remain "open, transparent, objective and reliable" while promoting competition, fairness, accountability, and maximum returns from public expenditure²⁰.

However, the practical reality of Nepal's construction sector reveals a fundamentally different picture. Over the past decade, the procurement system has increasingly transformed into a "low bid trap," where contractors submit Abnormally Low Bids (ALBs) far below realistic project costs merely to secure contracts, often without adequate technical or financial capacity to execute them²¹.

*This article argues that Nepal's excessive dependence on lowest-price procurement has produced consequences extending far beyond project delay and cost overruns. **The low-bid culture has gradually distorted the entire procurement ecosystem financially, technically, institutionally, and now digitally. Recent investigations concerning manipulation of the Public Procurement Monitoring Office (PPMO) electronic procurement (e-GP) system reveal that the race to become the "lowest bidder" has allegedly evolved into direct cyber manipulation of confidential bid proposals themselves²².***

The article further examines Nepal's legal framework under the Public Procurement Act, 2063 and the Fourteenth Amendment to the Public Procurement Regulations, 2064, arguing that although recent reforms attempt to address procurement inefficiency, Nepal must fundamentally move beyond a procurement philosophy dominated solely by lowest-price evaluation. The article concludes by suggesting that Nepal should gradually adopt more quality-oriented evaluation systems similar to the Rated Criteria methodology applied in Asian Development Bank (ADB) procurement frameworks, where technical competence, financial sustainability, project methodology, and lifecycle value receive substantial evaluative weight alongside price.

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²⁰ (Public Procurement Act, 2063, Preamble.)

²¹ (Niroula, Yamanta Raj, and Santosh Nepal. "Low Bidding in Nepal's Construction Industry: Prevalence, Impacts and Mitigation." PM World Journal, vol. XIII, no. II, Feb. 2024.)

²² Shrestha, Sandesh. "CIB Uncovers Massive Tender Manipulation through Nepal's e-GP System." My Republica, 2026.)

Keywords:

Public Procurement, Nepal, Lowest Bid Procurement, Abnormally Low Bids (ALBs), e-GP Manipulation, Bid Hacking, Public Procurement Monitoring Office (PPMO), Sick Projects, Procurement Reform, Construction Governance, Digital Procurement Integrity, Quality and Cost Based Selection (QCBS), Infrastructure Delay, Procurement Cybersecurity, Public Infrastructure.

1. The “Low Bid Trap”: Theory vs. Reality

The Public Procurement Act, 2063 was enacted with the stated objective of ensuring that public procurement remains transparent, competitive, objective, accountable, and economical²³. The procurement framework theoretically assumes that open competition naturally drives prices toward efficient market value while minimizing corruption and favoritism. Similarly, the Public Procurement Regulations, 2064 require public entities to properly identify procurement needs, prepare realistic cost estimates, package procurement works appropriately, and ensure maximum competition during procurement proceedings²⁴. In theory, this framework appears economically rational.

Competitive bidding should reduce public expenditure, maximize infrastructure output, and improve procurement transparency. However, the practical operation of Nepal’s procurement system has increasingly transformed this philosophy into what may properly be described as a systemic “low bid trap.” In practice, contractors frequently submit Abnormally Low Bids (ALBs), often 25%–40% below engineer estimates, and in extreme cases even lower²⁵. Such pricing rarely reflects genuine efficiency. Rather, it is frequently driven by liquidity pressure, portfolio survival, desperation for mobilization advances, and the expectation that losses can later be recovered through claims, variations, delays, renegotiation, or price adjustment mechanisms.

The result is the classic “winner’s curse.” Contractors succeed in winning projects at prices that make proper project execution financially impossible. Consequently, once awarded the project, contractors often become trapped between unrealistic economics and contractual obligations. This directly contributes toward project delays, under-mobilization, reduced manpower, inferior materials, compromised workmanship and incomplete infrastructure.

The Sunkoshi Marin Diversion Multipurpose Project provides one of the clearest illustrations of this procurement paradox. The Patel–Raman JV reportedly secured the contract at approximately 32% below the engineer’s estimate.²⁶ Initially, the low bid appeared to save public funds. However, despite approximately 61% of the contractual period elapsing, physical progress

²³ Public Procurement Act, 2063, Preamble.

²⁴ Public Procurement Regulations, 2064, Rule 3.

²⁵ Shakya, Ashmita, and Krishna Raj Panta. “A Comparative Study on Bidding Trends and Competition Analysis before and after Limiting Number of Projects for Bidders’ Qualification in Procurement of Works in Nepal.” Dec. 2023.

²⁶ “Government Moves to Terminate Contract for Sunkoshi Marin Diversion Project.” Nepal Energy Forum, 11 Nov. 2025.

reportedly remained only between 7% and 11%.²⁷ Ultimately, the government terminated the contract and initiated confiscation proceedings involving approximately Rs 3.60 billion in bank guarantees²⁸. This demonstrates *a fundamental contradiction within Nepal's procurement system i.e. the "cheapest" bid frequently becomes the most expensive outcome. Once delay, arbitration, remobilization, and lost economic productivity are considered, as the initial paper savings are quickly eclipsed by ballooning cost overruns, the administrative burden of legal disputes, and the staggering loss of regional economic benefit*

2. Financial Mismanagement & "Mobilization" Abuse

One of the most damaging consequences of Nepal's low-bid procurement culture is the systemic misuse of mobilization advances.

In their original conception, mobilization advances were intended to provide contractors with initial liquidity necessary for equipment transportation, workforce mobilization, site establishment, and preliminary construction preparation. Under the Public Procurement Rules 2007, contractors were eligible to receive up to 20% of the total contract amount in advance against a bank guarantee²⁹. However, the low-bid environment gradually transformed mobilization advances into mechanisms for financial extraction rather than project execution. Contractors increasingly pursued projects not because they were technically or financially viable, but because securing contracts enabled access to substantial advance payments against bank guarantees³⁰. *In many situations, mobilization advances were allegedly diverted toward repayment of prior liabilities, financing unrelated projects, real-estate investment, or maintaining business liquidity.* The consequences became visible through Nepal's growing number of "sick projects." According to reports cited by the Commission for the Investigation of Abuse of Authority (CIAA), approximately 1,848 projects worth nearly Rs 118 billion became severely delayed or stalled³¹. Many of these projects have remained idle for eight to nine years because the initial funds intended for their completion were diverted elsewhere. The CIAA report revealed that the government is at risk of losing between Rs 23 billion and Rs 24 billion in advance mobilization because contractors absconded or used the funds for personal gain after receiving the payout. This loss of public money is exacerbated by administrative inertia. Government agencies have

²⁷ (Khatiwada, Bimal, and Raj Kumar Karki. "Half of Contract Period Passed, but Sunkoshi-Marini Dam Construction Is Just 7 Percent Complete." The Kathmandu Post, 26 June 2025.)

²⁸ ("Legal Barrier Removed: Government to Confiscate Rs 3.60 billion from Sunkoshi-Marini Contractor." Fiscal Nepal, 11 Feb. 2026.)

²⁹ See Rule 113 of Public Procurement Regulation 2007

³⁰ Lamsal, Himat. "Govt Working to Reduce Mobilization Fund to Prevent Project Fund Misuse." My Republica, 7 June 2019.

³¹ Shrestha, Prithvi Man. "Anti-Graft Body Asks Government Agencies to Furnish Progress Report on 'Sick Projects.'" The Kathmandu Post, 10 Nov. 2019.

frequently been criticized for failing to take timely action under "Fundamental Breach of Contract" provisions when contractors clearly abandoned sites after pocketing the advance.³²

The Public Procurement Regulations themselves recognize the importance of realistic project preparation. Rule 6 expressly prohibits public entities from initiating procurement proceedings without ensuring budget availability, construction site availability, removal of site obstructions, environmental approvals and compensation mechanisms where necessary. Similarly, Rule 3 of the Fourteenth Amendment emphasizes procurement planning, realistic feasibility studies, technical preparation, and project structuring before procurement initiation. However, despite these legal safeguards, projects frequently proceeded under unrealistic timelines and financially unsustainable pricing structures. The low-bid system also encouraged “front-loading” practices, in this scenario, contractors strategically quote unusually high rates for initial project stages such as mobilization, site clearing, and early excavation and lower rates for the more capital-intensive middle and final phases³³. By inflating the value of early Bill of Quantities (BOQ) items, a contractor extracts the maximum possible cash flow from the government at the very start of the contract. Once these profitable initial stages are finished and the mobilization fund is exhausted, the contractor is often left with no financial incentive or liquidity to tackle the actual construction work, where the quoted rates may now be lower than the market cost of materials and labor. This leads to projects being “parked” while contractors wait for material price fluctuations or government-granted price adjustments to make the remaining work viable. This leads to projects being “parked” while contractors wait for material price fluctuations or government-granted price adjustments to make the remaining work viable³⁴. *Thus, procurement gradually transformed from infrastructure delivery into financial engineering.*

3. Technical Erosion: When “Cheap” Becomes “Incapable”

The consequences of aggressive underbidding extend far beyond financial inefficiency. Nepal’s procurement culture has gradually produced a technical erosion within the domestic construction industry itself. The Public Procurement Act itself requires procurement specifications to be based on objective technical and quality standards rather than discriminatory or arbitrary requirements³⁵. Similarly, Rule 5A of the Public Procurement Regulations requires:

- a) technical specifications,
- b) design approvals,
- c) engineering drawings, and
- d) procurement details

³² *ibid*

³³ Poudel, Kshitiz. “The Procurement Process of World Bank Funded Projects and Government Funded Projects in Nepal: Exploring Sustainability through Procurement.” *Academia Journal of Humanities & Social Sciences*, vol. 2, 2025.

³⁴ *ibid*

³⁵ Public Procurement Act, 2063, Section 4

to be properly prepared and approved before project implementation. However, in practice, when contractors secure projects through unrealistically low pricing, technical quality frequently becomes the first casualty. Contractors operating on razor-thin margins often reduce expenditure on skilled manpower, engineering supervision, quality assurance, safety compliance, modern equipment, and durable materials. Because bid prices are frequently 25% to 40% below the engineer's estimate, contractors often lack the budget to employ skilled manpower or capitalize on modern engineering technologies³⁶. Studies within Nepal's construction industry indicate that many professionals directly associate low bidding with sacrifice of quality for survival.³⁷ This has gradually created a procurement culture that rewards aggressive pricing, risk-taking, and financial desperation rather than technical excellence. The consequences are particularly severe in technically complex infrastructure projects. The Sunkoshi Marin Diversion Project again illustrates this disparity. While technologically advanced tunnel works reportedly progressed efficiently, the low-bid domestic JV responsible for dam construction failed to mobilize adequate technical resources.³⁸

Thus, the “cheap win” frequently becomes a technically incapable project.

Safety as an “Avoidable” Overhead

Technical erosion extends to the very environment of construction. In a “market-oriented society” where the primary objective is to finish a task with the “least number of resources and time,” occupational health and safety (OHS) is rarely prioritized³⁹. Private construction companies, in their “hoard to get the tender offer in the lowest bid,” severely limit the budget for safety resources and specialized protective equipment.⁴⁰ With approximately 20,000 workers injured at construction sites yearly, the high accident rate in Nepal is a direct technical consequence of a procurement culture that treats safety as an avoidable “overhead” cost rather than a fundamental engineering requirement⁴¹. This issue becomes even more severe under the low-bid procurement culture because contractors operating under unsustainably low margins frequently perceive safety expenditure not as a technical necessity but as a financial burden reducing already limited profitability. Consequently, expenditure on:

³⁶ (Poudel, Kshitiz. “The Procurement Process of World Bank Funded Projects and Government Funded Projects in Nepal: Exploring Sustainability through Procurement.” *Academia Journal of Humanities & Social Sciences*, vol. 2, 2025.)

³⁷ (Niroula, Yamanta Raj, and Santosh Nepal. “Low Bidding in Nepal's Construction Industry: Prevalence, Impacts and Mitigation.” *PM World Journal*, vol. XIII, no. II, Feb. 2024.)

³⁸ (Khatiwada, Bimal, and Raj Kumar Karki. “Half of Contract Period Passed, but Sunkoshi-Marín Dam Construction Is Just 7 Percent Complete.” *The Kathmandu Post*, 26 June 2025.)

³⁹ (“Prioritization of Factors Affecting Safety Work Behavior of Workers in Building Construction Projects: A Case Study of Kathmandu Metropolitan City.” *Proceedings of 12th IOE Graduate Conference*, Oct. 2022.)

⁴⁰ (“Prioritization of Factors Affecting Safety Work Behavior of Workers in Building Construction Projects: A Case Study of Kathmandu Metropolitan City.” *Proceedings of 12th IOE Graduate Conference*, Oct. 2022.)

⁴¹ *ibid*

- a) worker protection systems,
- b) safety supervision,
- c) specialized equipment,
- d) training,
- e) and occupational risk management

is often minimized during project execution. In many situations, the pressure created by aggressive underbidding indirectly incentivizes unsafe construction practices. Contractors attempting to recover financial losses frequently accelerate construction schedules, reduce technical supervision, employ inadequately trained labor, and minimize expenditure on safety compliance. This creates a dangerous construction environment where project survival becomes prioritized over worker welfare. The long-term consequence is not merely financial inefficiency but institutional normalization of technically compromised and unsafe construction culture itself. Thus, the low-bid trap does not simply weaken infrastructure quality; it also weakens the human safety environment within which infrastructure is constructed.

4. The “Hidden Costs” of Delay and the Rise of Procurement Manipulation

The apparent “savings” generated through low bidding frequently conceal enormous long-term public costs. While governments may initially celebrate reduced contract prices, those “paper savings” are often erased through arbitration, delay, remobilization, re-tendering, price escalation, idle infrastructure and lost economic productivity. However, Nepal’s procurement crisis has now evolved beyond underpricing and project delay into digital procurement manipulation itself.

Recent investigations concerning Nepal’s electronic procurement (e-GP) system under the Public Procurement Monitoring Office (PPMO) reveal a disturbing transformation of the low-bid culture into technologically sophisticated bid manipulation⁴². According to reports, investigators alleged that confidential financial proposals in hundreds of tenders were unlawfully accessed and manipulated after submission deadlines. Unauthorized actors reportedly viewed competitors’ bid prices and subsequently altered selected proposals to artificially ensure that certain contractors emerged as the “lowest bidder” (Shrestha, Sandesh.) In one reported instance, a contractor’s bid amount was allegedly altered from approximately Rs 670 million to Rs 600 million after the submission deadline in order to secure the lowest-price position⁴³. This incident is not merely a cybersecurity issue. Rather, it reflects a deeper structural consequence of excessive dependence on lowest-price procurement itself. When procurement systems overwhelmingly reward only the lowest financial figure, incentives gradually shift from:

⁴² Shrestha, Sandesh. “CIB Uncovers Massive Tender Manipulation through Nepal’s e-GP System.” My Republica, 2026.

⁴³ “E-Bidding System Hack Case: 22 People Including Former Minister Booked.” eKantipur, 10 May 2026.

- a) engineering capability to manipulation;
- b) from technical competition to informational advantage;
- c) and from project delivery to contract acquisition at any cost.

The procurement system therefore evolves into an environment where success depends not merely on offering the lowest price, but on unlawfully discovering competitors' prices and artificially positioning one's proposal slightly lower. Ironically, Nepal's transition toward electronic procurement was originally intended to eliminate:

- a) cartelization,
- b) physical interference
- c) coercion,
- d) and procurement opacity.

Yet recent events demonstrate that manipulation has merely migrated from physical tender spaces into the digital sphere⁴⁴. Thus, the low-bid culture has now begun disrupting the integrity of the procurement system itself.

5. Policy Shift: Beyond the Lowest Bid (Conclusion & Recommendation)

Nepal's procurement crisis demonstrates that the "lowest evaluated bidder" is not necessarily the "best contractor." The excessive dependence on lowest-price procurement has contributed toward technical incapacity, project abandonment, financial misuse, compromised workmanship, systemic delays and digital procurement manipulation. Although the Fourteenth Amendment to the Public Procurement Regulations attempts to strengthen procurement preparation by emphasizing feasibility analysis, procurement planning, project structuring and technical preparation,

the broader procurement philosophy still remains heavily price-oriented. Nepal must therefore gradually move toward more quality-oriented procurement systems. A particularly important comparative framework is the Rated Criteria methodology used within Asian Development Bank (ADB) procurement systems. Under the ADB framework, evaluation is not based solely on the lowest financial proposal. Instead, substantial evaluative weight is assigned toward technical methodology, contractor experience, personnel qualification, financial sustainability, implementation strategy, lifecycle cost, quality assurance and project-specific technical capability. Such an approach is especially important for National Pride Projects, technically complex infrastructure, EPC contracts, tunnel projects, hydropower projects and high-risk public infrastructure.

Nepal should therefore consider gradually integrating similar quality-oriented evaluation systems into its procurement framework. Potential reforms may include weighted technical scoring, Quality and Cost Based Selection (QCBS), Average Bid Methods, lifecycle costing, exclusion of

⁴⁴ "CIB Investigating Bid Hacking Network Including Involvement of PPMO Employees." Ratopati English, 2026.

Abnormally Low Bids, contractor performance grading and enhanced technical qualification thresholds.

Furthermore, the recent e-GP manipulation scandal demonstrates that cybersecurity must now be treated as an essential component of procurement integrity itself. A digital procurement system lacking immutable audit trails, robust encryption, timestamp locking, independent cybersecurity audits, multi-factor authentication and real-time monitoring risks becoming merely a technologically advanced platform for procurement manipulation.

Ultimately, Nepal's procurement system must move beyond the illusion that the lowest number automatically represents the best public value. Because when contractors begin competing not through engineering capability but through unsustainable underpricing, manipulation of confidential financial proposals, and cyber intrusion, the procurement system no longer serves the public interest. Instead, it becomes a distorted contest of who can survive the most destructive race to the bottom.