

Public Procurement in Nepal

Issues and Challenges



Ashesh Shrestha and Yatindra K C

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664, Bhimsengola Marga, Min Bhawan, Kathmandu, Nepal

Tel. : +977-1-456-4616

E-mail: info@samriddhi.org

Website: www.samriddhi.org

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List of Acronyms

GDP: Gross Domestic Product

NPC: National Planning Commission

OAG: Office of the Auditor General

PPA: Public Procurement Act

PPMO: Public Procurement Monitoring Office

PPR: Public Procurement Rules

UN: United Nations

v.s.:Vikram Samvat

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Executive Summary

Nepal spends 5.77 per cent of its GDP and 60 per cent of its national budget on public procurement. There are, however, inefficiencies related to cost and time. A related concern today is also the federal nature of governance and the effect of federal procurement system on sub-federal procurements.

Inefficiencies related to cost and time, as the note finds, are a function of legal provisions that places emphasis on least cost bidding system. This has led to a phenomenon called the “winner’s curse” culminating into project delays and defaults. While the legislation adopts a framework for technically responsive least cost bidding system, the emphasis today is on the latter part i.e. least cost rather than the former i.e. technically responsive. There are two reasons for this. First is the risk averse nature of implementing agency. The Nepali bureaucracy because of valid concerns of corruption investigation has so far awarded contracts to the bidder who has quoted the lowest price, even when there are valid concerns of technical capacity. Since, the unsuccessful bidder is given multiple avenues for redressal, the bureaucratic apparatus has so far remained risk averse. Secondly, the technical capacity of the bureaucracy also remains minimal. This is evidenced by a lack of any prior training on technical evaluation of bids.

At the sub-federal level, specially at the local level, there is evidence of bunching of contracts around a certain value to navigate challenges posed by the low cost bidding system. Local governments today procure through either user committees or direct procurement methods. Both mechanisms allow them to circumvent the federal legislation to the extent that they can exercise autonomy in selection. There are valid concerns of corruption when these two methods are used, but these concerns should not be the only lens that is used to evaluate procurement at the sub-federal level. At the local level especially, there have been instances when adhering to the federal procurement system has resulted in time and cost overruns and to that extent the use of either direct procurement or procurement through user committees demand an analysis through the lens of local autonomy.

There are a few actionable recommendations that follow from these findings. They are:

Amending the provision of low cost bidding

The bidder who bids the lowest wins the procurement contract as per the

existing procurement laws. With this provision we have seen the winning bid being significantly below the government's estimated cost of the project. The representatives of the local governments have claimed that when winning bids are considerably below the cost estimates the quality of the project is compromised. Moreover, it directly hinders timely completion of the project. One way to overcome this issue is making provision of Average Price bidding, wherein the bidder whose bid is closest to the average bids among all the participating bidders wins.

Understanding the difference in needs of different tiers of governments

The procurement law treats all the levels of government by placing them in the same basket. The local governments are required to follow the same procedure as the federal government. Provisions such as preferential treatment to the domestic bidders, bid period, bidding procedure are uniformly applicable to all levels of governments. Moreover, the nature and size of federal and local projects varies widely necessitating varied treatment. Therefore, procurement laws should acknowledge this difference and have separate provisions for local governments.

Incorporating past performances into bid evaluation

As bids are evaluated only on the basis of bid amount proposed, there is no provision whereby the past performances of the bidders are taken into account. Despite having dismal performances in the past projects, the same firm is handed out procurement contracts just because it has submitted the lowest bid amount. In order to tackle this issue, the 11th amendment has made a provision that no firm can participate in the bidding process of more than five construction projects. However, this provision could reduce competitiveness in the bidding process. A better approach would be to have a scoring auction mechanism in place whereby the scoring rule can encompass the status of the existing construction projects being carried out by a firm along with its past performances while evaluating its bid for any new construction project. This creates an incentivizing mechanism to perform better and on time and ensures competition.

Autonomy to the local governments

Currently, local governments are not autonomous with regards to formulation of their own procurement laws. Their procurement laws must align with the federal procurement laws leaving them only a slender space to make any innovation pertaining to procurement administration. Local governments have always been doubted with regards to their ability on formulating their own laws. While recognizing the fact that all the local governments may not be capable enough to formulate and implement their own procurement laws, we cannot deny the possibility that a few of them could be capable enough to come up with innovative practices to resolve the problems mentioned above.

Their solutions could well be emulated not only by other local governments but the federal government as well.

Introduction

Public Procurement accounts for 13 to 20% of the global Gross Domestic Product (GDP)¹. In 2022 public procurement spending globally was estimated at nearly 9.5 trillion US dollars. Low-income countries spend about 13 percent of their GDP on procuring goods, services, and works². While the fundamental goal of public procurement spending is efficiency in terms of performance and cost, there are inefficiencies. The UN estimates that 10-25 per cent of a contract's value is lost due to corruption³.

Nepal is no exception. In 2022 it spent 5.77 per cent of its GDP on public procurement⁴, and around 60 percent of the National budget is implemented through procurement. However, significant cost and time overruns have been noted. A telling example is the status of National Pride Projects. The National Planning Commission estimated that project delays resulted in a total efficiency loss of NPR 283 billion—17.23 per cent of the originally estimated cost⁵.

A related concern is the federal nature of governance in Nepal. The Constitution of the Federal Democratic Republic of Nepal has established three tiers of government with their independent and joint functions. Among others, the primary responsibilities of local governments include management of local services, basic education and health, development of local infrastructure including road, water supply, and hydropower⁶. With these exclusive responsibilities assigned to the local governments, they are implicitly allotted the task of designing a mechanism by which these services will be provided to their residents. In other words, they are responsible for the procurement of goods and services and handing out contracts for the effective delivery of these services.

Given this context, this note provides an analysis of public procurement

- 1 World Bank Group, *Global Public Procurement Database: Share, Compare, Improve!*, (Washington DC: World Bank Group, March 23, 2020), <https://www.worldbank.org/en/news/feature/2020/03/23/global-public-procurement-database-share-compare-improve>
- 2 Erica Bosio and Simeon Djankov, *How Large is Public Procurement?*, Washington DC: World Bank Group, March 23, 2020), <https://blogs.worldbank.org/en/developmenttalk/how-large-public-procurement#:~:text=Public%20procurement%20%E2%80%94%20the%20process%20by,is%20spent%20following%20procurement%20regulation.>
- 3 United Nations, *Guidebook on Anti-corruption in Public Procurement and the Management of Public Finances*, (New York: United Nations, 2013), unodc.org/documents/corruption/Publications/2013/Guidebook_on_anti-corruption_in_public_procurement_and_the_management_of_public_finances.pdf
- 4 World Bank Group, *Nepal: Country Profile for 2022*, (Washington DC: World Bank Group, 2022), https://www.globalpublicprocurementdata.org/gppd/country_profile/NP
- 5 National Planning Commission, *Rashtriya Gauravka Aayojanaharuko Samchipt Parichaya: Aa. Va 2021/22 sammako Pragati Vivanan*, (Kathmandu: National Planning Commission, 2022), https://npc.gov.np/images/category/230201111635%E0%A4%B0%E0%A4%BE%E0%A4%B7%E0%A5%8D%E0%A4%9F%E0%A5%8D%E0%A4%B0%E0%A4%BF%E0%A4%AF%20%E0%A4%97%E0%A5%8C%E0%A4%B0%E0%A4%B5%E0%A4%95%E0%A5%8B%20%E0%A4%86%E0%A4%AF%E0%A5%8B%E0%A4%9C%E0%A4%A8%E0%A4%BE_final.pdf
- 6 Constitution of Nepal, 2072 v.s., Schedule 8

in the federal context of Nepal. It is framed within the broader framework of the incentive effects of the current practice of public procurement in Nepal and also deals with some concerns at the local level.

The procurement system of Nepal

Rules Regarding Public Spending 2016 v.s. (1958/59) was the first law that spelled out procurement processes in Nepal. In the years that followed laws related to financial administration were changed and amended multiple times to deal with issues related to transparency, competitiveness, and accountability in public procurement in Nepal⁷. In 2007 a separate law dedicated to Public Procurement was formulated. The enactment of Public Procurement Act (PPA) 2063 v.s. (2007), Nepal was the first major reform on public procurement administration in Nepal.

Today, the Public Procurement Act, 2063 v.s. (2007) and the Public Procurement Regulations 2064 v.s. (2008) guide the public procurement process in Nepal. The legal architecture recognizes three types of procurement—procurement of goods, procurement of consultancy work, and procurement of construction work. By far, procurement of construction work is the most significant form of procurement in Nepal, accounting for 73.3 per cent of bids in Nepal.

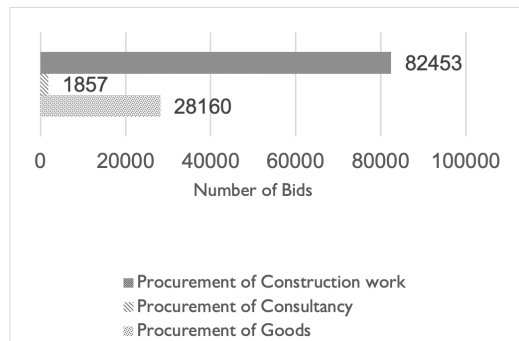


Fig 1: Number of bids by forms of procurement.

Source: Public Procurement Monitoring Office

Nepal's public procurement system offers preferential treatment to domestic bidders over international bidders⁸. Such preferential treatment is not uncommon. Except for Maldives, all South Asian countries offer some form of preferential treatment to domestic bidders⁹. Even comparator countries Lao PDR and Vietnam, upper-middle-income countries Malaysia, Indonesia, Mexico, and Colombia offer some form of preference to domestic bidders¹⁰.

Section 14 sub-section 8 of the PPA emphasises that a public entity may provide preference to domestic bidders. The provision previously left it to the

7 Rajendra P Adhikari, "Public Procurement: Issues and Challenges," *Journal of Engineering and Management* 2-3, (January 2015): 3-27.

8 Public Procurement Act, 2063 v.s. § 14(8) and Public Procurement Regulations 2064 v.s. §31E

9 "Global Procurement Database," World Bank Group, accessed August 5, 2024, <https://www.globalpublicprocurementdata.org/gppd/>.

10 Global Procurement Database

discretion of the public entity involved in procuring. If domestic preference was to be given a notice to that effect in the bid documents would suffice. A proviso to the clause, however, was later inserted in 2016. The proviso states that an arrangement, in case of procurement of construction work, may be made to procure such services through national competitive bidding up to a certain amount. The provision of domestic preference was first added to the rules (secondary legislation) in 2016. At the time domestic preference was given if the estimated cost of any project was below 1 billion. Since then the rules regarding domestic preference have been amended twice. In 2022, this ceiling was raised to NPR 3 billion¹¹ and three months later the ceiling was raised to NPR 5 billion¹². Although never proved, it has been speculated that the provisions allow for collusive practices, and amendments have been guided by interest groups¹³.

In 2022, a provision specifying the conditions for domestic preference in a global bid setting was also added through an amendment. The provision further provided that a domestic bidder or a consortium of domestic bidders or a consortium of foreign and domestic bidders (where the domestic bidder was responsible for 25 per cent of the work) would get preference in an international bid setting. Such a bid would be accepted if the proposed amount was no more than 5 per cent of the value submitted by the lowest bidder¹⁴. The amendment also stated that an international bidder would be required to enter into a joint venture agreement with a domestic firm if the estimated cost of the project was more than NPR 10 billion.

In South Asia, domestic preference is often left to the discretion of the public entities. The prevailing laws provide only the amount of variation that is deemed acceptable when providing domestic preference. In Sri Lanka domestic preference is given if the estimate provided by the domestic bidder is no more than 7 per cent of the estimate provided by a foreign firm¹⁵, and in India this margin is 20 per cent¹⁶. Nepal however has gone above and beyond. It not only sets a margin but also requires a joint venture agreement with a domestic bidder and only allows international bidding above a certain value.

In line with international practice, the Nepali procurement regime provides

- 11 Prithivi Man Shrestha, "Rule barring foreign firms in projects below Rs3 billion cost limits competition, stakeholders say", The Kathmandu post, March 27, 2022. <https://kathmandupost.com/national/2022/03/27/rule-barring-foreign-firms-in-projects-below-rs3-billion-cost-limits-competition-stakeholders-say>
- 12 Nabin Kafle, "Twelfth amendment of Public Procurement Regulation: Implications on construction regime," Nepal Live Today, February 14, 2023. <https://www.nepalivetoday.com/2023/02/13/twelfth-amendment-of-public-procurement-regulation-implications-on-construction-regime/>
- 13 Online Kahabar, "Thekedar ko Isharama Pradhanmantri Karyalaya: Jasto Chahayo Ustai Kanun," Online Khabar, September 8, 2024. <https://www.onlinekhabar.com/2024/05/1484271/prime-ministers-office-at-the-contractors-behest-as-you-want-same-law>
- 14 Public Procurement Regulations, 2064 v.s., §31f
- 15 Procurement Guidelines of Sri Lanka, 2006, §7(9)(4)
- 16 Executive Order P-45021/2/2017-99 (BE-II) of September 16, 2020, Public Procurement (Preference to Make in India), Order 2017—Revision, Ministry of Commerce and Industry, https://www.meity.gov.in/writereaddata/files/PPP_MII_Order_dated_16_09_2020.pdf

a statutory time limit for invitation to bid, a standstill period for bids and mechanisms for complaint resolution¹⁷. Section 14 Sub-section 4 of PPA stipulates that for the invitation of national-level bidding or pre-qualification proposals, a period of at least thirty days shall be given. For international-level bidding or prequalification proposals at least forty-five days is given. Section 27 sub-section 3 of PPA provides for a standstill period of 7 days for bidders not selected to file a complaint. Chapter 6 of the PPA provisions for the process of complaint and review.

Adequate planning is also emphasised. According to the PPA, any Public entity before getting involved in any procurement process has to establish a procurement unit. The unit is responsible for producing a bidding document with specifications, plans, drawings, designs, and special requirements before procuring any goods, construction work or service, and a prequalification document if required. The bidding document should specify the procurement method, and the time required for the procurement to be used.¹⁸ The public entity is also responsible for preparing a cost estimate of the planned project. The bid document should also include instructions for the preparation and submission of bids, the place for the submission of bids, the deadline for the submission of bids, the place, date, and time for the opening of bids, and the validity period of the bid. In addition, the law places emphasis on the preparation of the annual procurement plan and a master procurement plan to guide the process of procurement and procurement packages.

To date, bidder selection is guided by the least cost selection method. The PPA requires the procurement unit to pre-specify evaluation criteria and methods in the bidding document and select the lowest evaluated bid based on the said criteria. The current provisions state that the bid prices of all the bids must be compared and the bid with the lowest bid price is to be determined¹⁹. Moreover, when an invitation to bid has been made through pre-qualification and the qualification of the lowest bid is deemed consistent with the criteria outlined in the bid document, the bid is deemed the lowest evaluated bid²⁰. The primary emphasis on cost/bid price is further substantiated by a few other provisions. For instance, Section 5 of the PPA stipulates that the public entity responsible for procurement shall prepare a cost estimate for any procurement. Likewise, section 26 sub-section 1(b) of the act specifies that if the bid price of the lowest substantially responsive bid exceeds the cost estimate, the procurement proceeding will be cancelled.

17 Supra note 8

18 Various procurement method options for the procurement of goods, works and services has been provided in §8(a) of PPA.

19 See §25 (5) of PPA

20 See §25(4), 25(5) and 25(7) of PPA

Box 1: Primary and secondary procurement legislation in Nepal.

There are some salient features of the primary procurement legislation worth noting. On paper, the PPA, 2063 v.s. satisfies all necessary prerequisites of a well-functioning procurement system. In 2017, Nepal's scores in the Public Procurement benchmarking Index were well above its South Asian Peers and even high-income countries like Netherlands. The law provisions for a transparent and fair procurement system by making arrangements for a standstill period for contract, a performance guarantee provision, provisions to allow bidders to attend bid opening session, statutory provisions for compliant resolution and statutory provision for extension and cancellation of contracts. The public procurement regulation builds on these provisions by providing the procedure to be adopted by public entities. Both the primary and secondary legislation in Nepal is exhaustive to the extent that there is no scope for public entities to decide either on the method of procurement or the selection criteria to be used. While this is seemingly designed to ensure some form of consistency across all public entities desired results have not been met so far.

Source: Prepared by the authors based on PPA and Rules.

The PPA together with the regulation applies to all three tiers of government. Post the transition of Nepal into a federal country, an amendment was made to the definition of public entities to cover provincial and local government structures. Furthermore, Section 74 sub-section 1 of the Local Government Operation Act provisions for procurement by Local governments in accordance with the Federal legislation. Sub-section 2 however specifies that Local governments can frame their own secondary legislation. So far, a majority of local governments have not prepared their own public procurement regulation. Even when such regulations are formulated, they do not deviate from the federal public procurement legislation because there are certain limits put in place by the Constitution of Nepal.

The Constitution of Nepal establishes a hierarchy of laws²¹. Local laws cannot be inconsistent with either provincial or federal laws to that extent, local public procurement regulations when formulated are only allowed to deviate from the federal regulations slightly, most notably to align the regulation with their own institutional structure which includes specifying the procuring entity, specifying the selection committee of procurement and specifying the responsible departments for preparation of annual and master procurement plans.

21 Constitution of Nepal, 2072 v.s., art 57 § 6

Box 2 : Kathmandu Metropolitan's Public Procurement Regulation.

In 2018, Kathmandu Metropolitan formulated its own Public procurement regulation pursuant to section 74 of the Local Government Operation Act, 2018. Kathmandu Metropolitan modelled the regulation after the federal regulation and made only a few changes to the regulation. This included replacing the word Secretary with Chief of Kathmandu Metropolitan, Department head with the word Chief Administrative officer, and changing the composition of the Committee responsible for evaluation of bids. No substantive changes have been made and procedures relating to procurement, evaluation, selection, fulfillment and cancellation of bids remains the same.

After Kathmandu Metropolitan had framed its own regulation, the federal regulation was amended to include procurement through beneficiary committee. Rule 97a was inserted to the federal legislation which for procurements worth no more than NPR 50 million may be made through beneficiary groups if such groups exist. The Metropolitan is yet to make changes to its own regulation to reflect this. Kathmandu Metropolitan's law highlights a challenging issue faced by local governments in Nepal. Although the law provides that local governments may frame their own secondary legislation, the constitutionally established hierarchy of laws prevents them making regulations that suit their own needs.

Source: Prepared by the authors based on Kathmandu Public Procurement Regulations

The problems in the current legal regime

Rules incentivize certain behaviours²². In some cases, the incentives may be expressed clearly in the form of financial gains or rewarding better performance, whereas in others they are implied in so far as they reward certain behaviour that leads to some form of gain. This section frames the current legislation from the perspective of the incentives it provides to the bureaucracy and identifies possible avenues to deal with incentives that do not align with the larger goal of public procurement in Nepal.

As stated earlier, Nepal's public procurement system is based on least cost selection. Subject to certain exceptions, the bidder who has quoted the lowest amount wins the bid. The rationale for the system is simple—the least cost method minimizes the cost in a competitive bidding environment. However, the least-cost selection method often leads to what has been termed the “Winner’s Curse”.

In a common value setting, the bidder who receives the highest signal regarding the valuation of the object being auctioned out, if bids according to his signal, wins the auctions. However since all other bidders have valued the object at a lower price, the winner ends up paying more than the actual value of the object. This phenomenon is termed the “winner’s curse”²³.

In a procurement auction, especially in the first price/low bid auction, the bidder who receives the lowest signal regarding the cost of fulfilling a contract, if places a bid as per his/her signal, wins. However, since all other bidders have higher cost estimation, she has underestimated the cost, thus suffering from a “winner’s curse”. The occurrence of winner’s curse is commonplace in first price common value auctions as the winning bidder receives his/her bid amount (an underestimated amount) which would be inadequate for fulfilling the contract, leading to default of the project midway through completion²⁴.

22 Peter Boettke and Alexander Fink, “*Institutions First*,” *Journal of Institutional Economics* 7, no. 4 (February 8, 2011): 499–504

23 John H. Kagel and Dan Levin, “*The Winner’s Curse and Public Information in Common Value Auctions*,” *American economic review* 76, no. 5 (1986): 894-920; John H. Kagel and Dan Levin, “*Common Value Auctions and the Winner’s Curse*” (Princeton: Princeton University Press, 2002); Richard H Thaler, “*Anomalies: The Winner’s Curse*,” *The Journal of Economic Perspectives* 2, no. 1 (February 1, 1988): 191–202, Stuart E. Thiel, “*Some Evidence of Winner’s Curse*,” *The American Economic Review* (1988): 884-895; Dakshina G. De Silva and Benjamin Rosa, “*Winner’s Curse and Entry in Highway Procurement*,” *SSRN Electronic Journal*, January 1, 2021,

24 Wei-Shiun Chang, Bo Chen, and Timothy C. Salmon, “*An Investigation of the Average Bid Mechanism for Procurement Auctions*,” *Management Science* 61, no. 6 (June 10, 2014): 1237–54.

To elucidate the intensity of the differences between the lowest evaluated bids and the estimated cost of local governments, we create a sample of procurement undertakings of local governments in two stages. In the first stage, we randomly selected ten local governments out of a total of 753. Subsequently, in the second stage, we acquired a sample of procurement undertakings of these ten local governments in the past three years. The second stage was a convenient sampling method as we browsed the websites of each of the local government in our sample and collected data on estimated costs and lowest evaluated bids/ winning bids of the projects whose descriptions have been uploaded to their respective websites.

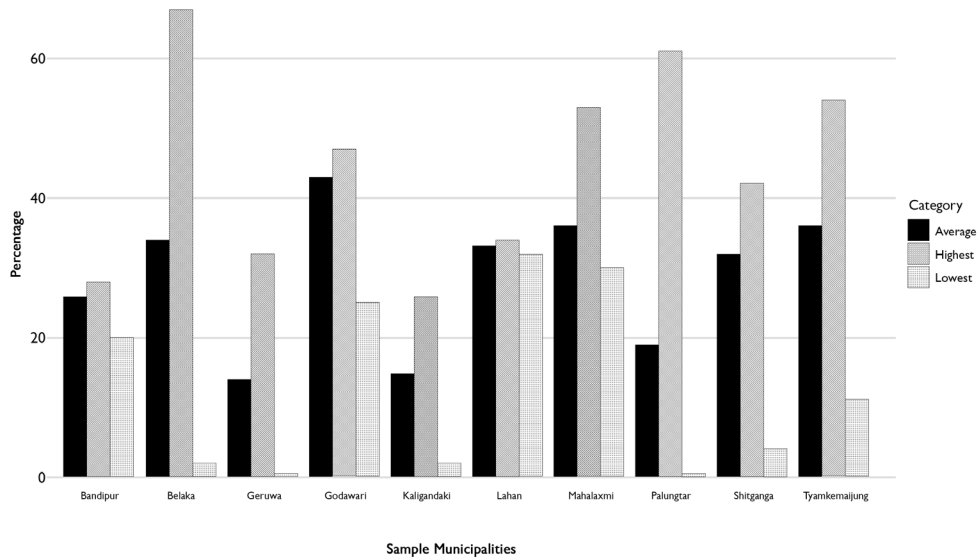


Figure 2: Percentage difference between the lowest evaluated bid and estimated cost

Source: Procurement notices of the local governments as published in their respective websites

Figure 2 reveals that on average Geruwa rural municipality has the lowest percentage difference between the lowest evaluated bid and the estimated cost which stands at around 15 percent. In other words, Geruwa has handed out procurement contracts to the bidder whose bid is on average 15 per cent lower than the estimated cost. Moreover, Godawari municipality has the highest difference as the lowest evaluated bid on average is more than 40 per cent lower than the estimated cost. Likewise, we can see in the figure that there are projects whose lowest evaluated bids are more than 50 per cent lower than the cost estimates.

That the contracts have been awarded to the bidders whose bid is lower than 60 per cent of the estimated cost hints towards the ubiquity of the “winner’s curse” in public procurement under the current framework. With the winning bid being significantly lower than the cost estimates, there is a high probability of project defaults, cost and time overrun.

This phenomenon cannot be estimated at the federal level given a lack of data. While the Office of the Auditor General's Report highlights a significant variation between the initial estimates made by the public entity and the final award value for projects implemented by the local government, such data is not readily available for federal government projects. There is however anecdotal evidence to suggest that the winner's curse is as prevalent at the federal level as it is at the sub-federal level²⁵.

Box 3: The now Infamous Pappu Construction

Pappu Construction was never renowned for delivering projects on time. It had an infamous reputation for winning government contracts and up until 2018 the company had been awarded total contracts worth NPR 15 billion. There are some stylized facts that come to light when analysing the modality with which the company secured bids. First the promoter of the Company was a parliamentarian and had some degree of influence. Secondly, the company navigated the legal landscape well, often approaching the Supreme Court of Nepal with a writ petition to avoid any legal proceedings brought against it. But most importantly, it secured multiple contracts by bidding the lowest amount. In 2014, the company through a joint venture agreement with AIPAL and Mritsanjivanu won the contract to construct the 11 Kilometer Chahare-Dhikure road. The final award amount was 26.7 per cent lower than the initial amount estimated by the public entity. In fact, officials at the Department of Roads were aware of the tactic and noted that when the law provisions for the lowest bidder to be awarded the contract, there is very little that can be done.

Source: Prepared by the authors based on available news sources.

Public officials know too well about the problems associated with low-cost bidding. Yet, rules are structured in a way that any deviation from the prescribed law will result in some form of penalty. This penalty often takes the form of scrutiny from either the Office of the Auditor General or the Commission for Investigation of Abuse of Authority. An officer from the Kageshwori Municipality shared the following.

25 Prithivi Man Shrestha, "Pappu Construction has billions in contracts—and little work to show", The Kathmandu Post, September 10, 2018. <https://kathmandupost.com/national/2018/09/10/pappu-construction-has-billions-in-contracts-and-little-work-to-show>; Nepal Live, "Balaju-Trishuli Sadak: Pappudekhi Prachandako Gharbetisammako Thekka, Kaam Alapatra," Nepal Live, November 16, 2019. <https://nepallive.com/story/172641>

“In the past, we have had to award contracts to bidders who quoted a price that was 60 per cent less than our estimates. We knew that the bidder would cut corners to deliver the project, yet the law provisions for the lowest bidder to be selected. Had we gone with another bidder, complaints would have been made to the Commission for Investigation of Abuse of Authority.”

In reality, the criteria for the selection of bids is not just the lowest evaluated bid, it is “the lowest evaluated substantively responsive bid”. The lowest part is easy to understand, the substantive part however is not clarified. Section 25 sub-section 7 of the PPA reads “Where on examination, the qualification of the bidder of the bid having the lowest bid price according to sub-section (4) conforms with the qualification evaluation criteria outlined in the bidding documents under sub-section (5), such bid shall be the lowest evaluated substantively responsive bid.” To that extent, the law places an equal emphasis on the bidder having the qualification to deliver the project based on the needs of the public entity. This qualification is gauged through past experiences and the bidder’s understanding of the project. The Standard bidding documents issued by the Public Procurement Monitoring Office, to a certain degree, expand on the substantive part. Clause 30 of the Standard Bidding Document reads,

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

(a) if accepted, would:

- (i) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or
- (ii) limit in any substantial way, inconsistent with the Bidding Document, the Employer’s rights or the Bidder’s obligations under the proposed Contract; or

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

The examination of whether a particular bid is substantially responsive depends on the capacity of the evaluators. Rule 147 of the PPR provides for a four-member evaluation committee which includes the chief of the public entity, the chief of the financial administration section of the public entity, the technical expert concerned with the subject matter and the law officer of the concerned public entity. The provision provides for a balanced panel and is in fact comprised of members that one would find in evaluation committees in advanced economies.

The PPR also emphasises the need for a technical expert to the extent that

rule 147 states that the chairperson of the evaluation committee to be “the chief of the public entity or a person designated by him or her (a technical employee as far as possible).” If the chief of the public entity delegates the responsibility, an employee with technical expertise is desirable. This emphasis suggests that the procurement regime is designed to facilitate the evaluation from a technical lens as much as it is from a financial lens.

So far, however, public entities in Nepal have not been able to evaluate the technical aspects of a bid skillfully. An official from the Department of Roads noted,

“So far only the financial proposal of a bid is evaluated with scrutiny. A technical evaluation would involve ascertaining whether the bidder understands the project details and whether or not the bidder is able to deliver the project as envisioned by the public entity. While all public entities have an engineer, they do not have the capacity to evaluate bids. Furthermore, the Chief of the Public entity rarely devolves power, for if an error were to be made the person delegating the responsibility would be held responsible. Since the Chief of the Public entity usually comes from an administrative background, the focus is on selecting the bidder who can do the job with the least amount of financial resources.”

The Government of Nepal made some efforts to navigate the challenges posed by the least-cost method and the capacity problem. First, a provision was inserted into the PPA section 27 sub-section 4 through an amendment in 2016. The inserted provision reads “In so furnishing the performance guarantee, the bidder shall furnish the performance guarantee in a sum to be set by five per cent of the bid price of the bidder if such a bid price is up to fifteen per cent below the cost estimate and by fifty per cent of the amount by which less price is quoted if such a bid price is below more than fifteen per cent of the cost estimate, in addition to five per cent of the bid price”.

This amendment, however, does not address the cause of the problem, it rather places the burden on prospective bidders and even punishes bidders who might otherwise be able to offer services at a cheaper rate owing to either their own experiences or economies of scale²⁶. Even before the amendment was made there were provisions of similar nature in the public procurement regulations that allowed public entities to scrutinize bids that were deemed to be suspiciously low. For instance, Rule 65 of the PPR provisions for special considerations to be made when evaluating bids relating to construction work. Subrule 2 of Rule 65 makes it mandatory for the evaluation committee to ask for clarification from bidders if the committee believes that there exists a situation when the bidder “has quoted in such a manner that he or she cannot complete the work satisfactorily or has quoted low price whether or not through a

26 Dhruv Nepal, “Kam Laagatma Kaam Garna Napaine?,” Nagarik News, March 20, 2018. https://nagariknews.nagariknetwork.com/opinion/143318-1521519420.html?click_from=category; Dhruv Nepal, “Imandar Nei Dandako Shikar!,” Nagarik News, April 5, 2020. https://nagariknews.nagariknetwork.com/opinion/1431962-1712282012.html?click_from=trending

lack of understanding of the scope or technical specifications of the construction work”. Furthermore, even before the provision of additional performance security was inserted into the Act, the regulation allowed public entities per Sub Rule 3 of Rule 65 to award the contract to the lowest bidder by having the bidder deposit additional performance security of eight per cent of the bid price should the clarification sought was deemed to be satisfactory to the committee.

The Public Procurement Regulation via an amendment in 2019 also added special provisions aimed at ensuring that bidders had adequate capacity to perform by placing restrictions on bidding based on the turnover of the bidder and the value of contracts. The inserted provision places the following restrictions:

- a) A bidder can only undertake projects whose value is within five times the value of the average turnover of projects undertaken in any given three fiscal years,
- b) In calculating the turnover in any three fiscal years the bidder can select any three fiscal years within a period of ten years immediately preceding the current fiscal year, and
- c) In calculating the annual turnover, the bidder shall not include the value of the contract for the current fiscal year.

Despite the additions, the procurement system in the years that followed faced similar challenges i.e. cost and time overruns. It should be noted that the provision, while framed within the larger context of the capacity of bidders, allowed bidders to circumvent it because the rules gave bidders the choice of the fiscal years. In other words, despite having poorly performed in recent years and not having undertaken projects of similar nature and value in the immediate past, bidders could still choose to showcase their capacity by relying on experiences from within the time frame of 10 years. Another concern here is that of a bidder who had been recently removed from the blacklist. Such a bidder could take part in the bid if the bidder could show relevant experiences from the ten-year time frame. The provision to that extent does not address the core question of low-cost bidding and capacity. Importantly, the basis of the provision is unknown, it has been noted that the amendment emanated from the Office of the Prime Minister and Council of Ministers and not the Public Procurement Monitoring Office, the central procuring agency²⁷.

Countries circumvent the problem of capacity in two ways. First, they leave the choice of committee members to the procuring entity²⁸. The procuring entity designs its committees based on broader categories of procurement i.e., the nature of procurement or the amount of procurement. In Nepal however, this choice is not offered to public entities. Rule 147, although emphasizing the need

27 Online Khabar, “*Thekedar ko Isharama Pradhanmantri Karyalaya: Jasto Chahayo Ustai Kanun*,” Online Khabar, September 8, 2024. <https://www.onlinekhabar.com/2024/05/1484271/prime-ministers-office-at-the-contractors-behest-as-you-want-same-law>

28 Manual for Procurement of Works (India), 2019, §4(10)

for members to have sound technical knowledge nonetheless prescribes the class of officers and as noted earlier this prescriptive model of the procurement selection committee often leads to the selection of the lowest bidder.

Second, specialized training courses are offered to public officials in other countries. These training courses offer several modules and prepare public officials to undertake procurement for their agencies based on the broader guidelines and prepare them to evaluate not just the financial bid but also the technical aspects of the bid. Capacity-building exercises are missing in Nepal. Under the current framework employees of a public entity are offered minimal training. An official from Kageshwori Municipality noted,

“The local government has adequate engineers; they are skilled at what they do but their involvement in the procurement process is only limited to designing the initial project map. After that, the evaluation committee is responsible for selecting bids. Since the law only provides one technical expert, the focus is on financial proposals. At the same time, officials of the local government do not have the capacity, they have been provided with minimal training and are not capable of evaluating the technical proposal as minutely as possible.”

Box 4: Evaluation Committee in India

Procurement in India is guided by the General Financial Rules, 2017 and guidelines issued by the Department of Economic Affairs. The General Financial Rules, provisions for a purchase committee which evaluates bids and certifies that the members are jointly and individually satisfied with the bid. In addition, the General Financial Rules also states that in case the estimated value of procurement exceeds INR 2.5 million no member of the purchasing committee should report directly to the other. The Manual for procurement of Work, 2019 further clarifies about the composition of the committee. The manual only provides guidance to the extent that a tender committee should be constituted with three or more members with requisite experience and competence. It provides that the members should include a financial and a one member depending on the Schedule of Procurement Powers. The procuring entity is provided the power to include other members, but the guideline suggests that the tender committee not be made very large.

Source: Prepared by the authors based on General Financial rules and Manual for procurement of works.

Given the lack of capacity to evaluate whether a bid is substantially responsive, the least cost method currently in practice is unlikely to result in efficient procurement, especially procurement of construction. Improving the capacity itself is not enough. Even if concrete steps were to be taken to improve the capacity of public officials the hesitance to award projects to a bidder who is the “proper fit” has more to do with the level of scrutiny. Public officials, even if capacitated, are unlikely to follow through so long as oversight agencies such as the Office of the Auditor General and the Commission for Investigation of Abuse of Authority interpret the law to mean the selection of the bidder who quotes the lowest price. Any proposal to reform the existing procurement regime therefore must consider other mechanisms of procurement.

Box 5: Alternative forms of Procurement

Second Price Sealed Bid Auction

In the second price auction, the bidder who bids the highest is the winner and must pay the price equal to the bid submitted by the second highest bidder. In a procurement setting, the bidder who submits the lowest bid i.e., promises to fulfill the contract at the lowest price among the participating bidders, is handed out the contract and is paid the second-lowest bid amount. In this case, the dominant strategy for any bidder is to bid their valuation. If a bidder i bids his/her valuation and if it happens to be the highest bid, he/she wins and pays a price equal to the second highest bid, thus making a positive payoff. If he/she lowers the bid below his/her valuation, and if it still turns out to be the highest bid, he/she still wins, and the payoff remains the same. Increasing the bid amount will not change the outcome and the payoff for the bidder i . But, if some other bid is higher than i 's bid, bidder i does not win and receives a payoff of zero. In this case the bidder i will not increase the bid above his/her valuation because he/she stands to lose (payoffs are negative) by winning the auction. Therefore, the dominant strategy of any bidder in a second-price auction is to bid their valuation/cost estimate.

Average Bid Auction

In an average bid auction, the bidder whose bid is closest to the average of all the submitted bids is the winner. The provision of the average bid auction mechanism is present in procurement regulation of many countries like Chile, China, Colombia, Italy, Japan, Peru, Switzerland, and Taiwan. Average Price auction design is one of the mechanisms by which the underestimation of the project cost resulting in project delays and default can be tackled.

2.5 Scoring Auction

In conventional auctions, only the price or bid amount is considered as a selection criterion. An auctioneer auctioning out an item sells it to the highest bidder. Likewise, in a reverse auction scenario, the auctioneer seeking to buy any goods or service and handing out a construction contract selects the bidder based on price or some function of price.

However, in many procurement scenarios, buyers place importance not only on the price but also quality and other attributes while evaluating the submitted bids. This is especially true of the public procurement auctions. A government agency who intends to select a contractor for any construction project or supply of any goods and services, in general is not only concerned about the price but also inter alia quality of the product, time required for completion. Therefore, in a scoring auction a scoring metric is designed such that all the non-monetary attributes of the bidders are also taken into consideration along with the bidding amount. The bidder who scores the highest based on the scoring rule wins the contract.

Prepared by the authors based on available literature. (See Bibliography for a list of available sources)

An equally pressing concern is the value thresholds that determine the selection mechanisms. Globally, public officials are allowed some form of flexibility to the extent that procurement regimes allow public officials to design procurement projects, especially for construction projects, discretionarily, and allow them to circumvent open bidding and transparency requirements by placing thresholds on contract value²⁹. The latter is motivated by the need to reduce additional administrative and time costs associated with open bidding provisions. However the provision can also increase the risk of collusion³⁰.

Two such provisions of value thresholds are worth highlighting. The first is related to the National Competitive bidding ceiling. Per Rule 3 I E of the PPR, only national bidders are allowed to bid on construction work with an estimated value of

29 Decio Coviello, Andrea Guglielmo, and Giancarlo Spagnolo, “The Effect of Discretion on Procurement Performance,” *Management Science* 64, no. 2 (February 17, 2017): 715–38; Steven Kelman, “Procurement and Public Management: The Fear of Discretion and the Quality of Government Performance”, (Washington, DC: The AEI Press, 1990); Jeremy Bulow & Paul Klemperer, “Auctions versus Negotiations,” *American Economic Review* vol. 86(1) (1996), 180-194; Maria Arnal Canudo et al., “Five Things You Wish You Knew About Public Procurement (Guest Blog Post),” World Bank Group, March 16, 2024, <https://blogs.worldbank.org/en/impacetevaluations/five-things-you-wish-you-knew-about-public-procurement-guest-blog-post>.

30 Ján Palguta and Filip Pertold, “Manipulation of Procurement Contracts: Evidence From the Introduction of Discretionary Thresholds,” *American Economic Journal Economic Policy* 9, no. 2 (April 26, 2017): 293–315,

NPR 5 billion. If public officials were colluding with national bidders, then bids in Nepal would be bunched closer to the ceiling. However, the average value of bids is nowhere close to the ceiling amount. In fiscal year 2020/21 v.s., the average value of construction contracts was 36 million, in 2021/22 it was 27 million, in 2022/23 it was 35 million and in 2023/24 it was 25 million³¹.

There is no evidence of collusion, but competition is certainly limited in the construction procurement sector. Given the average contract award value, the ceiling placed is substantially higher and is even unjustified when the law has provisioned for preferential treatment to domestic bidders regardless of the estimated value of the project (see section 2 paragraphs 4 and 5)³².

While there is no evidence to suggest that projects are being bunched around the value of the ceiling at the federal level, there are concerns at the local level. Rule 97 of the PPR provisions for procurement through user committees for any work with an estimated cost of up to NPR 10 million. Although data regarding the total number of projects being commissioned through the user committee is not available, there is some evidence that suggests that projects are being bunched around the ceiling value. First, the number of local governments that have not followed the due process when procuring through user committees has increased since fiscal year 2017/18. The PPR provisions for procurement through user committees for works that are labor intensive. In fiscal year 2022/23 302 local governments procured construction work requiring the operation of machinery and equipment through the user committees as opposed to 269 local governments in the previous fiscal year and 77 local governments five years prior.

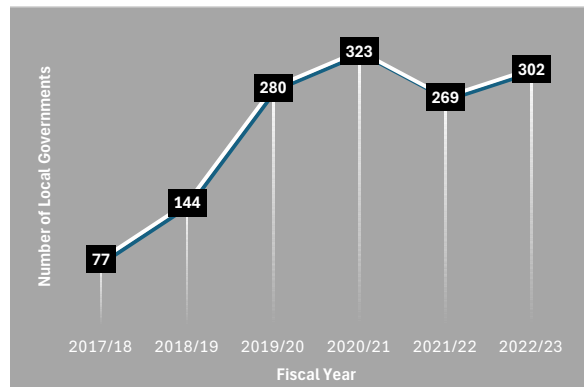


Figure 3: Number of Local Governments employing User-Committees for work requiring operation of machinery

Source: Compiled by the authors based on Office of the Auditor general reports

Collusion through user committees usually occurs for the monetary gains that can be derived by employing construction companies. The law prohibits both the use of heavy machinery and equipment and sub-contracting the work to

31 Public procurement Monitoring Office, *Barshik Prativedhan, 2081 (Arthik Varsha 2023/24)*, September 16, 2024, <https://ppmo.gov.np/content/13190/annual-report-2081/>

32 PPR, § 31F

the construction companies if procurement is done by employing the user committees. User Committees have been known to employ construction companies and pocket the difference³³. A construction company owner notes,

“User Committees are not allowed to employ either construction companies or use heavy machinery, their work has to be labour intensive. A simple calculation of the cost is that if one were to use an excavator the cost would be NPR 180 per cubic meter, whereas if the same work were to be done through manual labour it would cost around NPR 800 per cubic meter, user committees budget for manual labour when signing the contract and employ construction companies later, the difference is then distributed amongst them.”

Furthermore, the Office of the Auditor General reports that 122 user committees employed construction companies to carry out a total of 1173 projects totalling NPR 700.9 million in fiscal year 2022/23³⁴. Similarly, the evidence available so far also suggests that local governments have bunched projects around the ceiling value for direct procurement. Rule 85 of the PPR provides that public entities can procure directly from a supplier if the estimated value does not exceed NPR 1 million in the case of goods and construction work and NPR 500,000 in the case of consultancy procurement. The number of local governments procuring directly has more than doubled and the amount spent on direct procurement has increased by more than threefold in the five years since fiscal year 2017/18 (See Figure 4).

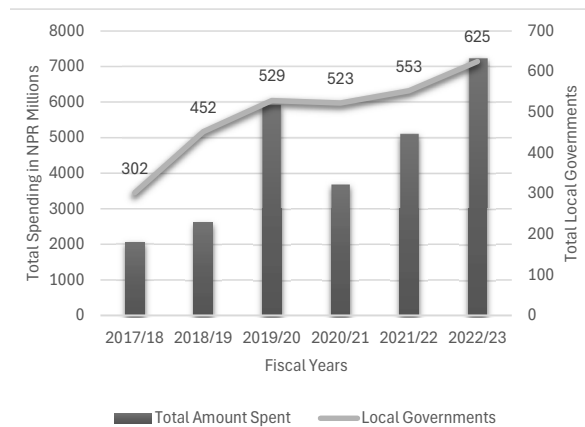


Figure 4: Number of Local Governments using direct procurement and value of direct procurement

Source: Compiled by the authors based on Office of the Auditor general reports

It is worth noting, however, that local governments often undertake small projects. Bunching around the said ceiling value thus may not be by design but rather a result of the functional assignment of the local governments. Nonetheless, anecdotal evidence suggests that direct procurement at the local

33 Office of the Auditor General of Nepal, *Mahalekha Parikshakko Ekshatiyau Varshik Prativedhan, 2081*, May 26, 2024, 704-705. <https://oag.gov.np/uploads/files/.pdf>

34 Office of the Auditor General at 704

level incentivizes collusive practices.

At the same time, the decision of local governments to procure directly might also be a result of the lack of autonomy that the law provides to local governments to adjust procurement methods based on their realities. Lalitpur's case offers an illustration of how the current procurement laws in Nepal affect local government functioning adversely.

“The provision of low-cost bidding has particularly affected reconstruction/ renovation of cultural heritage sites. The reconstruction of temples and other physical infrastructure of historical importance in the city of Lalitpur requires skills and human resources available locally. Nonetheless, there have been instances wherein bids from local contractors with access to human resources possessing those skills have been higher than the lowest bid amount resulting in the rejection of their bids. This has directly affected reconstruction and renovation of the cultural/ historical sites in Lalitpur.”

In Biratnagar, the concern was about the time frame of bids. Section 14 Sub-section 4 of the PPA states that a period of at least 30 days shall be given when inviting bids from national bids and a period of at least 45 days shall be given when inviting a global bid. While this time frame is adequate for large-scale projects, it lengthens the procurement processes at the local level. Similarly, in Biredranagar the current exercise of low-cost bidding has compromised the quality and time of the projects.

“If the bidding period could be adjusted depending upon the nature and size of the project, the procurement process would be prompt. Moreover, local governments should have more autonomy about procurement legislation. By doing so local context would be reflected in the procurement process”.

“The current provision of awarding contracts to the lowest bidder has led to bid offers of up to 40 per cent less than the estimated cost.”

While procurement through user committees and direct procurement methods have increased at the local level, what must also be acknowledged is that local governments have limited autonomy in so far as the current laws and regulations provide little space for local governments to adopt methods that are suited to their realities. Given this lack of autonomy, it might also be the case that user committees and direct procurement, regardless of the inherent problems of collusion, are mechanisms to navigate the space of limited autonomy.

Concluding Observations

The major problem that has been identified in the current legislation on multiple occasions is the provision of the lowest bid mechanism. The law requires that for any construction project, the lowest bidder among the participating bidders is to be handed out the procurement contract. This has led to the phenomenon called the “winner’s curse” culminating in project delays and defaults. Moreover, the sub-national governments do not have room for innovation in the procurement process as they must abide by federal legislation. The existing federal legislation completely disregards the differences in federal and local public works along with variations in local needs and requirements. Such apathy to differences in the nature and size of federal and local projects can be seen in a one-size-fits-all approach. Therefore, the current legislation requires amendments which would address the aforementioned issues. Based on the analyses made in this note, a few recommendations have been presented below.

S.N.	Recommendations	Reasons for the Recommendation	Relevant Agency
1.	Amend Section 23 of the PPA to read, “A public entity shall evaluate bids pursuant to guidelines of procurement issued by the Ministry of Finance from time to time. Provided that the public entity shall publish details of the evaluation after a contract has been awarded.”	The current problem emanates from the legislation’s focus on evaluation of bids through prescriptive methodologies. Public procurement is a complex endeavor, and the law cannot adequately prescribe methodologies for evaluation because evaluation methodologies depend on project specification. To that extent some form of discretion should be allowed to public officials, a broader framework that is flexible however should be made by the Ministry of Finance.	Ministry of Finance, Public Procurement Monitoring Office, Council of Ministers and the Parliament.

2.	<p>Frame general framework of procurement allowing flexibility to public entities to evaluate the best procurement methodologies</p>	<p>The public procurement regulation already allows for some form of flexibility to some state-owned enterprises. It provisions for procurement to be made on the basis of the framework of the state-owned enterprise concerned. Such flexibility should be extended to other public entities as well. In fact, the global practice is to allow for some form of flexibility by having a broader framework of procurement instead of legislation that is prescriptive. Since legislative changes require time, a broader framework allows public entities to adjust to their own needs. A point of caution here is that such practice can also lead to collusion, to that end ensuring mechanisms of transparency is important.</p>	<p>Same as above.</p>
3.	<p>Amend section 14(4) of the PPA to read, “<i>In publishing a notice under Sub-section (1), for invitation of national level bidding or prequalification proposals, a period as prescribed by the Ministry of finance in case of the federal Government, the concerned ministry in case of the province and the local executive in case of local governments shall be given in the case of a notice on invitation that of international level bidding or prequalification proposals. The Ministry of finance, concerned ministry of province and local executive shall determine the number of days based on the value of project.</i>”</p>	<p>Sub-federal governments current problem is that the time for submission of bid documents is not suited to their needs. Sub-federal government undertakes small scale projects, to that end, a period of 30 days as noted earlier lengthens the entire procurement process. Instead, a better approach would be to detail out the number of days segregated by the value of the contract.</p>	<p>Ministry of Finance, Public Procurement Monitoring Office, Council of Ministers the Parliament, Provincial Government and Local Government.</p>

<p>4.</p>	<p>Amend Section 74 of the Local Government Operation Act to read <i>“Local governments can formulate their own laws and regulations pursuant to the broad guidelines issued by the Ministry of Finance.”</i> Remove section 2(b)(4) and remove the word Province Government from section 2(b)</p>	<p>The current federal framework does not address the realities of sub-federal governments. There is also evidence that suggests that local governments are bunching contracts around the threshold values of user committee contract value to exercise more autonomy, to that extent sub-federal governments should be allowed some autonomy to formulate their own procurement policies.</p>	<p>Same as above.</p>
<p>5.</p>	<p>Amend Rule 31E to read, <i>“Preference to be given to domestic bidders: In case of single stage open bidding domestic bidders will be given preference over foreign bidders if the estimate provided by domestic bidders is no more than 10 per cent of the estimate provided by foreign bidders.”</i></p>	<p>Competition concerns aside, the ceiling of NPR 5 billion currently in place is exceptionally high given that the average estimated cost of a construction project in the past three fiscal years is between 25 to 40 million NPR. In addition, the basis for the ceiling is unclear and anecdotal evidence suggests that it has been done to benefit a few construction companies in Nepal. A better alternative here is to specify the amount of variation up to which domestic bidder is given the preference. Besides there are already provisions for domestic preference in case of joint venture and variations up to a certain percentages. The provisioning of a ceiling value is therefore moot.</p>	<p>Ministry of Finance, Public Procurement Monitoring Office, Council of Ministers and the Parliament</p>
<p>6.</p>	<p>Amend Rule 65(4c) of Public Procurement Regulations to read, <i>“In calculating the average turnover, the bidder shall take as basis the turnover of the past three years immediately before the current fiscal year.”</i></p>	<p>Capacity of the bidder can only be gauged by their most recent experiences. If a choice to showcase experience from the past 10 years is given, then it might result in bidders whose most recent performance has been weak winning the contract.</p>	<p>Ministry of Finance, Public Procurement Monitoring Office, Council of Ministers and the Parliament</p>

7.	<p>Amend rule 147 to read, <i>“The Evaluation Committee shall be as follows:</i></p> <ul style="list-style-type: none"> a) <i>A gazetted third-class officer or above who oversees the technical aspects of any given project.</i> b) <i>A gazetted third-class or above who is employed in the financial section of the public entity.</i> c) <i>A gazetted third-class or above who is employed in the Legal section of the public entity.</i> <p><i>The evaluation committee shall frame its own procedural rules provided that the rules shall make arrangement of evaluation of bids based on independent evaluation of bids by each member’s and selection of bidder based on independent evaluations.”</i></p>	<p>The majority of the evaluation committee composition as per the rules are employees from the administrative section, it is then no surprise that the evaluation committee does not have the capacity to scrutinise the technical proposal. The proposed composition borrows from international practice which suggests that the committee should not have too many members but should focus on independent evaluations by each of the members separately and selection should be based on independent evaluations to ensure that each bidder is judged carefully based on the technical proposal, the financial proposal and their adherence to the legal framework.</p>	<p>Ministry of Finance, Public Procurement Monitoring Office, Council of Ministers and the Parliament</p>
8	<p>Incorporate past performance provisions in bid evaluation</p>	<p>Despite having dismal performances in the past projects, the same firm is handed out procurement contracts just because it has submitted the lowest bid amount. In order to tackle this issue, the 11th amendment has made a provision that no firm can participate in the bidding process of more than five construction projects. However, this provision could reduce competitiveness in the bidding process. auction mechanism in place</p>	<p>Ministry of Finance, Public Procurement Monitoring Office, Council of Ministers and the Parliament</p>

		<p>whereby the scoring rule can encompass the status of the existing construction projects being carried out by a firm along with its past performances while evaluating its bid for any new construction project. This creates an incentivising mechanism to perform better and on time and ensures competition.</p>	
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Table I: List of Recommended Actions

Source: Prepared by the Authors

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Annex I—Methodological Note

This note approaches the subject matter from an exploratory and descriptive lens. The analysis draws heavily from the literature on political economy to the extent that it frames the policies of public procurement within the broader context of the incentive effect it has. It does not consider the effect of informal institutions and thus the subject matter remains one area of future research.

The study also employs qualitative interviews as a mechanism for understanding the nuances that surround procurement policies in Nepal. It must be noted that the number of interviews is limited here because of both resources and time constraints. Given that interviews have only been conducted in 4 local governments, the authors are aware that the views cannot be generalized but work under the assumption that since the law is applicable to all local governments as it is, all local governments share similar concerns and some generalization is possible.

Majority of this note relies on the analysis of the policies and how it forces the actors concerned to act in a certain way. Evidence of this behavior is verified through secondary data. Here it must be noted that the authors do not claim any causal relationship and remain cognizant in so far as they only imply that a relationship between the two possibly exists and subsequently some fine tuning of the incentive scheme is required.

Since this note is aimed to enrich discussions in the policy-making circle it is organized as such, i.e. it does not adopt the formulaic structuring of a research endeavor, thus the reason why the methodology appears as the annex rather than as part of the main body. The primary goal here is also to rejuvenate discourse on the subject matter as such there are a few topics worth exploring in the future, this includes the workings of the user committee in Nepal, the decision to package and slice contracts a certain way and the perception of citizens as to the efficiency of user committees.