

## Chapter 4

# Contract Management

# The Public Procurement Act, 2063 The Public Procurement Regulation, 2064

Date of certification and publication  
30th Poush 2063 (14 January 2007)

- “**Procurement**” means acquisition of any goods, consultancy services or other services or carrying out or causing to be carried out any construction works, by a public entity pursuant to this Act;

- Description of Goods, Construction Works and Services to be Prepared :
- Prior to procuring goods, construction works or services, a Public Entity shall have to prepare specifications, plan, drawing, design, special requirement or other descriptions pertaining thereto.

- Cost Estimate to be Prepared:
- A Public Entity shall have to prepare a cost estimate as prescribed for any procurement whatsoever.

# **Procurement Method to be selected:**

A Public Entity while procuring shall have to procure by applying any of the following methods based on such conditions and purchase price as prescribed:-

# **Procurement Method to be selected:**

## **(a) For procurement of goods, construction works or other services:**

- (1) By inviting open bids at international level,
- (2) By inviting open bids at national level,
- (3) By inviting sealed quotations,
- (4) By procuring directly,
- (5) Through participation of users' committee or beneficiary group,
- (6) Through force account.

# **Procurement Method to be selected:**

## **(b) Procurement of consultancy service:**

- (1) By requesting competitive proposals,
- (2) Through direct negotiations.

(2) In making procurement pursuant to this Act and the rules framed under this Act, procurement shall not be so made in piece-meal as to limit competition.



# Process in Procurement

A Public Entity shall establish a procurement unit or assign the responsibilities thereof in order to carry out the following acts:

- (a) Preparing a procurement plan,
- (b) Preparing prequalification documents, bidding documents and procurement contract related documents by making necessary amendments in the standard bidding documents, standard prequalification documents and standard procurement contract documents prepared by the Public Procurement Monitoring Office,

- (c) Preparing documents relating to proposals for consultancy services by making necessary modification in the standard request for proposal prepared by the Public Procurement Monitoring Office,
- (d) Publicly publishing the procurement notice,
- (e) Issuing pre-qualification documents, bidding documents or forwarding documents relating to proposals for consultancy service,

- (f) Receiving and safely keeping pre-qualification proposals, bids or consultancy service proposals,
- (g) Submitting the pre-qualification proposals, bids or consultancy service proposals to the evaluation committee for evaluation and submit the evaluated bids for acceptance,
- (h) Notifying the acceptance of the pre-qualification proposals, bids or consultancy service proposals,

- (i) Obtaining, examining and safely keeping the performance guarantee,
- (j) Examining, or causing to be examined, the quality standards of the goods, construction works or services that have been procured,
- (k) Making available the information and documents asked for by the Public Procurement Monitoring Office, and
- (l) Performing other functions as may be prescribed.

# **Functions, Duties and Powers of Public Procurement Monitoring Office:**

- (a) To make recommendation to the GoN for reform in the procurement policy or laws in force,
- (b) To issue technical guidelines and manuals required for implementing this Act,
- (c) To prepare standard model of the standard bidding documents, prequalification documents, procurement contract document and documents relating to proposal to be used by a Public Entity to conduct procurement proceedings,
- (d) To collect statistics of procurement proceedings and to monitor or to make technical auditing of whether or not such proceedings are conducted in compliance with this Act or Regulations or manual, made there-under

# Functions, Duties and Powers of PPMO

- (e) If the Public Entity seeks opinion, advice about a matter as referred to in this Act or Regulations, Manuals made there- under, to provide opinion, advice,
- (f) To establish and operate procurement website,
- (g) To publish a bulletin
- (h) To prepare procedures required for coordination in the procurement proceedings and submit to the Government of Nepal for approval,
- (i) To make arrangements for regular training program for the bidder or the employee involved or to be involved in procurement proceedings,

# Functions, Duties and Powers of PPMO

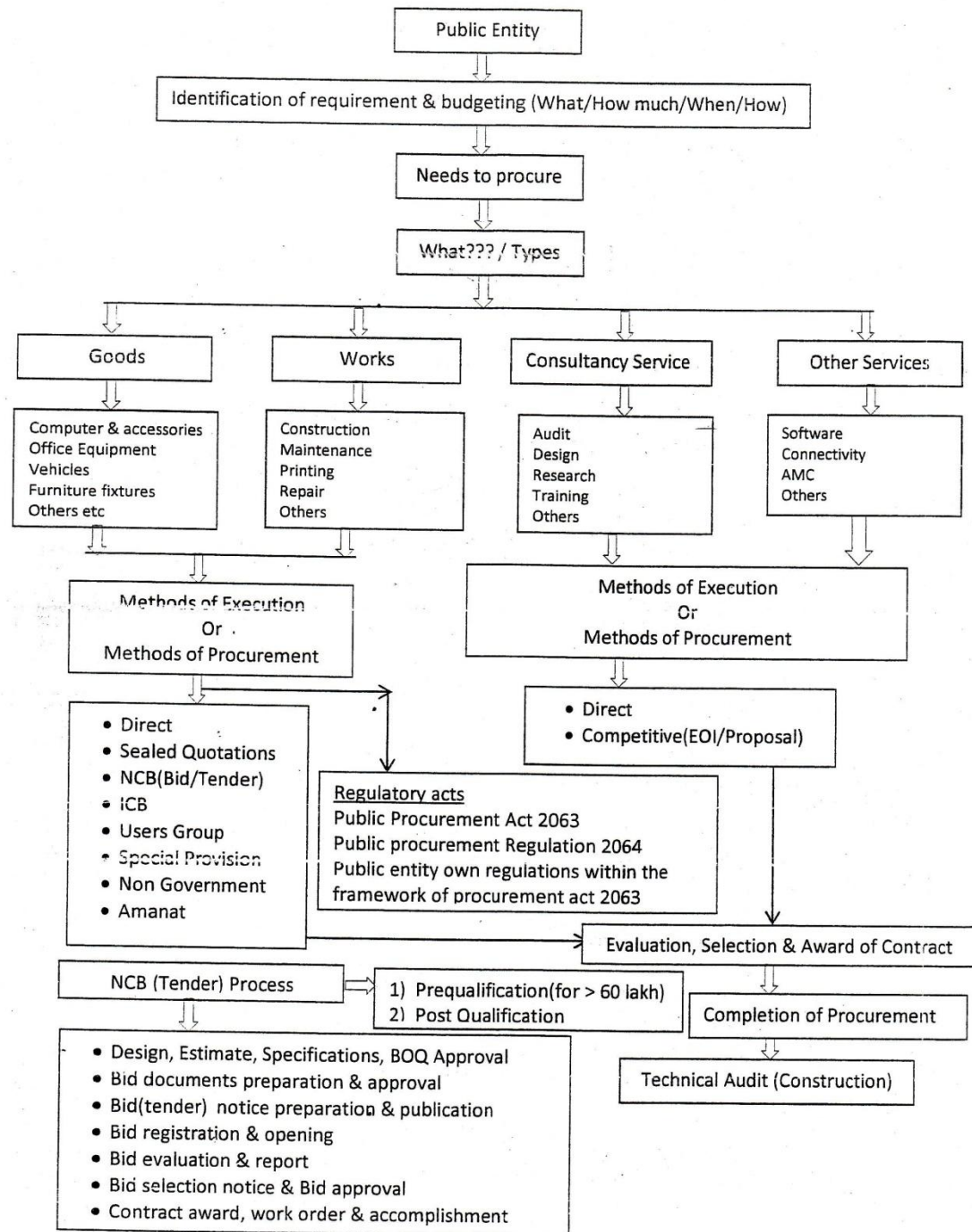
- (j) To make necessary criteria of exclusion from the blacklist under Section 63 and exclude from such blacklist as per such criteria,
- (k) To review, appraise construction works, supply, consultancy service, and other services system in order to make the procurement system effective,
- (l) To prepare plan of domestic or foreign assistance required to systematize and reform procurement system and to act as the central body for coordinating such assistance,
- (m) To submit the annual report of the procurement proceedings
- (n) To do other prescribed functions.

# **Procurement Transaction Through Electronic Communications Means**

Government of Nepal may, by publication of a notice in the Nepal Gazette, provide a mechanism that the Public Entity may arrange, through the means of electronic communications, invite a pre-qualification proposal, issue notice of bid invitation, prepare a short list by inviting expression of interest, invite a proposal of consultancy service, transmit bidding or pre-qualifying documents, receive bids, proposals for pre-qualification or consultancy services, conclude the procurement contract, make payment and give and receive other notices.



# Flow Diagram of Procurement Process



# Methods of execution references for - Works/Goods

## **1) Direct purchase**

- Minimum three quotation from standing list is required if purchase is above 25000
- Estimate up to 5,00,000 for construction work (revised)
- Estimate up to 3,00,000 for goods
- Estimate up to 15,00,000 for domestic products for one time in FY

## **2) Sealed Quotations**

- Estimate up to 2 million for construction work (revised)
- Estimate up to 1 million goods
- 15 days notice in national or local newspaper
- 3 minimum quotations are required .
- 45 days bid validity and 75 days bid security validity
- 7 days notice for agreement
- No withdraw and no modifications
- Contract only within or below the estimate amount

### **3) National Contract Bidding (Bid/Tender)**

- 30 days notice in national newspaper/website
- minimum one responsive bid
- 90 (up to to 10 crore / 120(10 crore above) days bid validity and 120/150 days bid security validity
- 15 days notice for agreement
- One time withdraw or modifications
- Single or joint venture (maximum 3 and not less than 25% share)
- Selection notice for 7 days
- Contract can award if bid amount is not substantially higher than the approved estimate

#### **4) International Contract Bidding (Bid/Tender)**

- 45 days notice in national English newspaper or international journal/website
- minimum one responsive bid
- Single or joint ventures

#### **5) Users committee / beneficiary committee**

- Including all cost
- Up to 6 million
- Up to one third of estimate – mobilization

# Methods of execution references for-Goods

## **6) Direct purchase**

- Minimum three quotation/proposal from standing list is required if purchase is above 25000
- Estimate up to 3,00,000 for" purchasing goods

## **7) Sealed Quotations**

- Estimate up to 1 million
- 15 days notice in national or local newspaper
- 3 minimum quotations are required
- 45 days bid validity and 75 days bid security validity
- 7 days notice for agreement
- No withdraw and no modifications
- Contract only within or below the estimate amount

## **8) NCB (Bid/Tender)**

- 30 days notice in national newspaper
- minimum one responsive bid
- 90 / 120 days bid validity and 120/150 days bid security validity
- 15 Days notice for agreement
- Onetime withdraw or modifications
- Single or join venture (maximum 3 and not less than 25% share)
- Contract can award if bid amount is not substantially higher than the approved estimate

## **9) ICB (Bid/Tender)**

- 45 days notice in national English newspaper or international journal/website
- Single or joint venture

## **10) User's committee / beneficiary committee**

- Including all cost

# Methods of work execution

## **Procurement of works :**

- ICB/NCB/Sealed Quotations/Direct/Users group/Special/Non-government/Amanat

## **Procurement of goods :**

- ICB/NCB/Sealed Quotations/Direct/Users group/Special/Non-government/Amanat

**Procurement of consultancy services** – Competitive (15 days' notice of EOI & 30 days' notice of presenting Proposals)  
/direct

**\* *EOI = Expression of Interest***

# Tendering procedures

## ***Tender:- (Definition)***

- Offer in writing by the tenderer/owner (the person/firm who offers the tender) to execute some specified work or to supply some specified goods at certain rate/amount within stipulated time under certain conditions of agreement.
- It's the initial process/step in formulation of contract.



# Purpose for tendering / bidding

- Use of fund for intended purpose (project implementation).
- For the observation of economic and efficient project (best value for money) .
- To give an equal opportunity to compete for eligible bidders .
- To encourage for the development of domestic contracting & manufacturing industries.
- For the transparency in all stage of procurement process.

# Tender notice

- It is the information inviting bids from competent and capable contractors firms/service providers and forms a part of contract document
- It should be widely published in important newspapers or acclaimed national daily newspapers eg : Gorkhapatra / Kantipur / Nagarik etc.

# Preparation before inviting Tender notice publication

- Project preparation
- Estimation of quantities
- Cost estimation (abstract of cost)
- Approval of cost estimate from concerned authorities
- Resource planning
- Tender/bid document preparation & approval
- Tender invitation

# Information to be furnished in Tender Notice

- Name of authority publishing the notice
- First date of publication
- Brief description of the job
- Duration of the project to be completed
- Date time and place-where and when the bid documents is available and to be submitted
- Cost of tender/bid document
- Cost estimate (optional)
- Date, time and place of opening the tender/bid
- Earnest money(bid security) and security deposit amount(performance security)
- Expected date of acceptance of successful bids etc.

# Earnest money (bid security):

- it is the amount of money deposited while bidding a tender as a guarantee of the party's willingness of carrying out the work awarded to him/them
- it's amount generally ranges from 1% to 3% . In Nepal 2.5% of the bid amount is demanded as earnest money and for foreign party, the amount is considered to be 5%
- This money(fund) is refunded to unsuccessful bidder.
- If a successful bidder fails to carry the work, this amount will be forfeited

# Security Deposit (Performance Security)

- It is the amount of money which is deposited by a successful bidder as a security for the satisfactory performance (quality of work)
- In Nepal, security deposit is equal to 5% of the contract amount whereas 10% of the bid amount will be taken as security amount for foreigner
- It includes the earnest money deposited
- This is refunded after the completion of defect liability period (maintenance period)
- This fund can be forfeited if contractor fails to perform his duty

# National Competitive Biddings (NCB)

- Local competitive bidding
- All the eligible bidders are invited to participate in bidding
- Tender notice to be published in national daily newspaper for two consecutive days
- Also, tender shall be published in the concerned office

# International Competitive Bidding (ICB):

- If the amount of work is huge and national/domestic contractor cannot perform the job, eligible bidders are invited from all over the world
- In this process tender notice is provided to diplomatic missions working in the country

## □ **Information to be furnished in the bid by foreign bidder**

- Whether the bidder is having a local agent or not
- Name and address of the agent if any .
- Types of the service being provided by the agent
- Currency and procedure of payment to the agent
- Other agreement with the agent if any



# Qualification Procedure for tendering

- Two forms of qualification :
  - A. prequalification and
  - B. post-qualification
- are used to ensure that bidders have adequate capability and resources to perform the particular contract satisfactorily, taking into account their
  - 1. Experience record on works of a similar nature and complexity,
  - 2. Financial capability,
  - 3. Personnel capability,
  - 4. Equipment capability and
  - 5. Litigation(Legal Actions) history.
  - 6. Other relevant information of certification (ISO certificate), particular job experience, methodology etc

- **Pre Qualification** is carried out in advance of bidding to establish a list of capable firms to be invited to tender while ensuring that a proper level of competition is safeguarded.
- **Post Qualification** is used where no prequalification has been carried and bids are invited at large from one or more classes of contractor, and is carried out after bids are received as part of the bid evaluation process.
- Post Qualification has the advantage of reducing the total procurement time by cutting out the prequalification steps.

# Pre-Qualification (PQ)

- It is a process of short listing of eligible bidder and to avoid crowd of bidder.
- Also, it ensures that the invitation to the-bid is extended only to those perspective bidders who have adequate capability and resources to perform the work/contract satisfactorily taking into accounts their:
- Experience & past performance on similar work/contract
- Capabilities with respect to personnel , equipment and construction & manufacturing facilities
- Financial status
- Litigation history

# Benefits of Prequalification

- Reduces the amount of work and time involved in evaluating bids from unqualified contractors
- Encourages local firms to form joint ventures with other local or international firms, thereby benefiting from their resources and experience
- Reduces significantly; if not eliminate, problems associated with low prices submitted by bidders of doubtful capability
- Enables contractors, who may be insufficiently qualified on their own, to avoid the expense of bidding or to form a joint venture; which may give a better chance of success
- The well qualified firms may also price their bids more competitively with the knowledge that they will only be competing with other qualified bidders meeting realistic minimum competence criteria
- The assurance that competitors which lack the necessary qualifications will be excluded from bidding thus encourages leading contractors or suppliers to bid

# Post Qualification

Eligible bidders can participate in the bidding. No pre-qualification process is adopted. This process may include single envelope system (financial proposal only) or double envelope system (financial as well as technical proposal). In double envelope system successful bidders are selected by adopting one of the following three methods:

1. Short list from technical proposal and select the lowest bidder to award the contract
2. Select the lowest bidder first and check the technical proposal. If technical proposal is ok select the firm. If technical proposal is not satisfactory, select second lowest bidder and check the technical proposal
3. Give weightage to both technical proposal as well as financial proposal. Then, select the bidder getting highest point.

# Contract

- An agreement between two or more competent parties in which an offer is made and accepted, and each party benefits.
- Agreement concluded between two or more parties for performing /not performing any work
- If any person or firm advances any proposal to any other person or firm and latter gives his / their consent, they shall be deemed to have a contract
- it is done to seek a legal action/remedies any parties breached the agreement
- in extensive sense, it includes every description of agreement, or obligation, whereby one party becomes bound to another to pay a sum of money or to do or to omit to do a certain act
- It is an act which contains a perfect obligation

# Agreement

- It is the acceptance to the offer (proposal) with or without any conditions
- It does not have any legal obligations

# Essential elements of Contract.

1. **Offer and acceptance:** In simple expressions, offer is a promise made by one party (or a person) to another party ( or a person). The party who made promise is called "offeror" and the party whom to whom a promise has been made is called "offeree". As per contract act 2056, the offer made by a person to another person with the intention of getting approval to do or not to do any business. Similarly, acceptance has been in the Act as the consent given by the offeree to the matters in the offer in the same spirit of the offeror.
2. **Competent parties:** Both parties or person who make contract must be competent according to law
3. **Mutual intent to enter into contract :** Both parties in a contact shall have intentions to establish a legal relationship. Therefore, agreements made without the intention s of establishing legal relationship cannot be considered as contract. A social, family and even commercial agreement that has no intention of establishing legal relationships can be taken as example.



4. **Consideration:** Consideration can be described as something of value that is exchanged by contracting parties (D.L Martson, Law for professional engineer, 1996). As per contract act 2056, consideration means the promise of doing or not doing any thing because of doing or not doing the work stated in the offer. In general, the court does not see for the adequacy of the consideration.
5. **Capacity to contract:** The parties need to have capacity to contract. As per contract Act 2056 except the following person, all others persons are capable to contract.
  - a) Person below 16 years
  - b) Person not in own control (mad senseless )
6. **Lawful purpose:** Contract must have lawful purpose otherwise; law cannot enforce it. As per contract act 2055, contract becomes void if there is an illegal objective or consideration in the contract.
  - a) Lawful consideration
  - b) Law full object

7. **Free consent:** The parties in a contract should have given free consent that is without any correction, undue influence, fraud, misrepresentation etc. In such cases the party suffering damage may make the contract void.
8. **Possibility of performance:** Any contract should be within possibility of performance. The law does not consider legal of the contract work is not within possibility of performance.
9. **Certainty:** Contractual conditions must not be unclear and unlimited. Both parties under the contract must have understood the term and conditions

# Elements of Contract.

- Two or more competent parties
- Offer & acceptance
- Intention of creating legal relation by both parties
- Considerations
- Capacity to contract/competence to contract
- Free consent
- Lawful purpose
- Possibility of performance
- Verbal or written and registration

# Importance of contract

1. To make an agreement legally enforceable.
2. To record the terms of agreement.
3. To specify what the contractors / supplier/ service-provider must do & what the owner must pay.
4. To specify the quantity & quality of work to be done
5. To specify the time frame within which the Work is to be completed and payment to be made.
6. To specify the means, methods / mode, terms and time of payment

7. To identify the parties to the agreement
8. To identify the official agent or representatives of parties to the agreement and define their authority and responsibility
9. To set out in advance the courses of action that will be taken in different possible situations
10. To define words and establish common meanings
11. To define what is and what is not included in contract
12. To specify how the contract will be terminated
13. To specify the responsibilities of the parties not just to each other but to third parties such as government , community in which work is to be done, workers, sub-contractors, material suppliers, unions, etc.

# Types of contract

## (Classification of contract)

With respect to mode of creation :

1. **Indirect contract:** Notwithstanding anything contained elsewhere in this act, a contract shall be deemed to have been concluded as follows in the following circumstances:
  - A. In case a person who is incompetent to conclude a contract under this Act or other prevailing Nepal law, or any other person who is to be maintained by him/her is provided with any material, commodity or service which material commodity service paid from the property of such he/she needs and that is consistent with his social status, to have the cost of such person to the person so meeting his/her need.

- B. In case any person, who is concerned with the payment or nonpayment of any amount to be paid by another person under the prevailing Nepal law makes such payment him/herself, to have that payment repaid to him/her from the property of the person who is actually under obligation to make the payment.
- C. In case any person gives anything to another person, or employs him/her in any work, to pay the appropriate cost or remuneration.
- D. In case any person keeps under his/her personal possession any property belonging to another person that property as a bailment property.
- E. In case any person pays amount (to any person) by mistake, to refund the same.

## **2. Contingent contracts:**

- a) In case a contract has been concluded to performing or not to perform any work if any event happens in the future, the contract shall not create any liability until such event happens.
- b) In case a contract has been concluded subject to the condition that it shall be deemed to have been concluded in case person performs any specified work in the future, no liability shall be deemed to have emerged from that contract if such person does anything in such a manner as not to perform that work or acts in such a manner that the work cannot be performed.



3. In case a contract has been concluded to perform or not to perform any work if any uncertain event does not happen in the future, liability under that contract shall emerge only after the happening of that event becomes impossible.
4. In case a contract has been concluded with a provision to perform or not to perform any work if any event happens within a specified period in the future, the contract shall be deemed to have become invalid after the happening of that event becomes impossible within the specified period or after the expiring of that period.
5. In case a contract has been concluded with a provision to perform or not to perform any work if any event does not happen within a specified period in the future, liability under such contract shall emerge if that event does not happen within that period or if it becomes certain that the event will not happen within that period.

# Types of contract

## (Classification of contract)

**With respect to legal relationship**  
**[Valid/Void/Voidable]**

- 1. Valid Contracts:** A contract that complies with all the essentials of a contract and is binding and enforceable on all parties.

## **2. Void Contracts:**

The following contracts shall be void:

- A. A Contract preventing anyone from engaging him/herself in any occupation, profession or trade which is not prohibited by prevailing law. Provided that a contract shall not be deemed to have been concluded in preventing profession or trade in the following circumstances:
  - I. A contract preventing the seller from engaging him/herself in a profession or trade at the time and place as mentioned in the contract concluded between the buyer and the seller on selling and buying of the goodwill of any trade

- II. A contract concluded among partners in preventing their engagement in any trade or business, other than those of the partnership firm, similar to those of the partnership firm or any other trade or business together with other competitors belonging to the same kind of trade or business as long as the partnership continues.
- III. A contract concluded among the partners in preventing them from engaging in a trade or business under the partnership firm for the specified time or place after being separated from the partnership;
- IV. A contract preventing any individual from receiving the service of any such agency, company, firm, individual or competitor of such agency, company, firm, or individual for the specified period of time after the retirement from service or during the service of such agency, company, firm or individual pursuant to contract concluded by any individual with any agency, company, firm or individual.

- b) A contract restraining marriages other than those prohibited by the prevailing law.
- c) A contract preventing any one from enjoying the facilities already being enjoyed by the general public.
- d) A contract seeking to prevent the legal rights of any person from being enforced by any government office or court.
- e) A contract concluded in matters, contrary to or prohibited by the prevailing law.
- f) A contract concluded for immoral purpose or against Public morality or public interest.
- g) A contract which cannot be performed because the parties there to do not exactly know about the matter in relation to which it has been concluded.
- h) A contract which is considered impossible to fulfill even at the time is concluded.
- i) A contract which is vague as it does not provide reasonable meaning there of.
- j) A contract concluded by an incompetent person to conclude such contract.
- k) A contract concluded with an unlawful consideration or objective.

### **3. Voidable Contacts: (Coercin/Undue influence/Fraud)**

1) The following contracts may be made void by the aggrieved party:

a) **A contract concluded through coercion**

#### **Explanation:**

A person shall be deemed to have indulged if he/she, with the objective of compelling any person, to accept any contract against his /her will, withholds or threatens to withhold property belonging to him/her, or threatens to defame him/her or takes or threatens to take any other action in contravention of prevailing law.

**b) A contract concluded through of undue influence:**

**Explanation:**

- I. Undue influence means influence exercised by a person upon another person who is under his/her influence and is amenable to his/her personal benefit or interest.
- II. Without prejudice to the generality of Clause (1), the following persons shall be deemed to be under the influence of any person and amenable to his/her wishes:
  - 1) A person living under his/her guardianship, protection or custody.
  - 2) A persons who cannot take care of their interest temporarily or permanently by reason of old age, sickness or physical or mental weakness.
  - 3) A person who can be subjected to under one's economic or ranking influences.

c) **A contract concluded through fraud:**

Explanation:

- A party to the contract or his/her agent shall be deemed to have committed fraud if he/she, leads the other party or his/her agent to believe or takes any action to believe the particular matter is true, although he/she knows that it is false, or suppresses any information in his/her possession, or indulges in any other fraudulent act punishable under prevailing law, with the intention- of deceiving the opposite party or his/her agent.



**d) A contract concluded through deceit:**

**Explanation:**

- 1) Any of the following act shall be taken as deceit:
  - i. Submission of false particulars on any matter without reasonable basis for doing so;
  - ii. Misleading any party so as to aggrieve him/her;
  - iii. Causing any wrong deliberately on the matter of contract;
2. In a case of a voidable contract under this section, the following matters shall be dealt with as prescribed below:
  - ii. The party caused to enter into a contract may, instead of making the contract void, demand his/her position to be remained the same, as it was prior to conclusion of the contract.
  - iii. Burden of proof of innocence of undue influence shall be rest in the party who claims that such contract is not concluded under an undue influence in case a contract is concluded with

# Difference between Void and Voidable.

1. When dealing with contracts, the terms void and voidable are widely used. A void contract is considered to be legal contract that is invalid, even from the start of signing the contract.
2. On the other hand, a voidable contract is also a legal contract which is declared invalid by one of the two parties, for certain legal reasons.
3. While a void contract becomes invalid at the time of its creation, a voidable contract only becomes invalid if it is cancelled by one of the two parties who are engaged in the contract.
4. In the case of a void contract, no performance is possible, whereas it is possible in a voidable contract.

5. While a void contract is not valid at face value, a voidable contract is valid, but can be declared invalid at any time.
6. A contract can become void if it involves any illegal activity, if the contract is made in such a way that it cannot be executed, or if the contract is not properly structured. An example of a void contract is a contract between a drug dealer and a buyer. This type of contract is void because it involves an illegal activity.
7. There are many reasons attributed to a voidable contract. It is a situation where one party of the contract may repudiate it. A contract involving minors is an example of voidable contract. Although minors can enter into contracts, these agreements cannot be enforced, as minors are at liberty to change their stand.
8. While a void contract is nonexistent and cannot be upheld by any law, a voidable contract is an existing contract, and is binding to at least one party involved in the contract.

# Summary

1. While a void contract becomes invalid at the time of its creation, a voidable contract only becomes invalid if it is cancelled by one of the two parties who are engaged in the contract.
2. A contract can become void if the contract involves any illegal activity, if the contract is made in such a way that it cannot be executed, or if the contract is not properly structured.
3. A voidable contract is where one party in the contract may repudiate it.
4. A void contract is nonexistent and cannot be upheld by any law. On the other hand, voidable contracts are existing contracts, and are bound to at least one party involved in the contract.

# Types of contract with respect to procurement method

**A. For goods and other services:** goods or other services may be procured by entering into any one contract out of the following:

**a) Contract for supply of specific goods and other services.**

A contract for the supply of specific goods or other services may be used for the procurement of raw materials, equipment required for any specific purpose, pharmaceuticals, drugs, tools or similar other goods of specific nature

**b) Framework or unit rate contract:**

A framework or unit rate contract may be used for obtaining the goods or other services set forth in the procurement contract from one or more than one supplier at the prices and terms specified in the procurement contract as and when a demand is placed by the public entity.

This contract shall specify the minimum and maximum quantity of goods or other services to be procured by the public entity.

This term of this contract shall normally not exceed one year.

### **C. Multi-year contract:**

A multi-year contract can be entered into in the following circumstances:

- a) If procurement under a multi-year contract would result in substantial savings to the public entity as compared to procurement as under an annual contract,
- b) If the quantity of procurement remains substantially unchanged during the period of procurement contract,
- c) If the design of goods to be procured remains unchanged during the period of procurement contract, and
- d) If the technical risks associated with the supplies of goods are not excessive.

**d) Design, supply and erection contract:**

A design, supply and erection contract may be used for designing of goods involving state-of-art or complex technology such as big power plants or pumping stations, delivering such goods at the construction sites, assembling there of, testing and commissioning the same and providing training, as required, to the employees of the concerned public entity for handling such goods. such contract may also be entered into for any two works out of design, supply and erection



**e) Turn-key contract:**

A turn-key contract may be entered into for designing, supplying, building and erecting an industrial plant involving state of art technology such as fertilizer plant and milk processing plant in accordance with the procurement contract, specifying the performance capacity of such plant, and then transferring the plant to the public entity.

## **B. For construction works:**

### **a) Unit Price Contract:**

An unit price contract may be entered into where the quantity of a construction work is difficult to be ascertained or where a construction work is to be procured on the basis of unit price set forth in the bill of quantity.

The bidder has to include in such unit price the materials, labor and other matters required to complete the proposed construction work.

In making payment for work done under this contract, the public entity shall make such payment on the basis of the unit of work actually done and measured in the field.

**b) Lump sum contract:**

A lump sum contract may be entered into for procuring a construction work such as ground water pipeline installation, the quantities of which are difficult to measure or a construction work such as superstructure of bridge, the quantities of which can be measured.

Such contract shall specify that the construction entrepreneur shall be responsible for all types of risks and liabilities associated with the construction work provided that if the financial liabilities of the construction entrepreneur increases as a consequence of an order issued by the public entity that involves any type of change in the construction work after the commencement of work upon making the contract, the public entity shall bear such liabilities.

**c) Cost reimbursement contract:**

A cost reimbursement contract may be entered into for procuring a construction work involving high risks and unpredictable conditions, when it is likely that a construction entrepreneur would refuse to, or be unable to perform the work under a unit price contract.

While making payment to the construction entrepreneur for the construction work procured under this contract, such payment may include the costs actually incurred by that entrepreneur, overheads of that work plus profits set forth in the approved cost estimate.

In procuring a construction work under this contract, the chief of public entity shall establish the ceiling of maximum amount of cost reimbursement and approval of the department head shall be required to make reimbursement of the cost in excess of that ceiling.

**d) Time and materials rate contract:**

Where the labor and materials required for the repair and maintenance of any construction work cannot be predicted at the time of entering into a procurement contract, a time and materials rate contract can be entered into for procuring work by calculating labor on the basis of time and materials on the basis of unit price.

This contract shall clearly provide for payment as follows to the construction entrepreneur:

(i) Amount to be set by adding overheads and profits set forth in the approval cost estimate to the amount set by dividing the construction entrepreneur's labor on the basis of per hour or per day or per month, and

(ii) Amount paid for the materials used in the repair and maintenance subject to the ceiling set forth in the procurement contract

**e) Design and build contract:**

A design and build contract may be entered for procuring the design and build of any construction work from the same construction entrepreneur. The work set forth in this contract shall commence only after the public entity has through its technician or group of technicians examined and approved the design of construction work.

The technician or group of technician who so examine the design shall, in examining and accepting such design, drawing and cost estimate, examine and accept in accordance with the procedures to be adopted for making examination and acceptance.

**f) Management contract:**

Under a management contract, the construction entrepreneur entering into procurement contract with a public entity, while undertaking full legal and contractual liabilities for time and quality of a construction work, shall execute the work through a number of sub-contractors managed and supervised by that entrepreneur.

Payments for work set forth in this contract shall be made only to the construction entrepreneur entering into contract with the public entity.

**g) Performance based maintenance or management contract :**

A performance based maintenance or management contract may be entered into for the procurement of any construction work by specifying only the final performance without specifying the equipment and various item-wise works required for the maintenance or management of such work.



## **h) Piece work contract:**

A piece work contract, which establishes a list of prices of construction work, may be entered into for procuring commonly occurring minor items of construction work to be used as and when the need arises. The validity period of this contract shall not normally exceed one year.

# For consultancy services

## a) **Lump sum contract:**

- A lump sum contract may be entered into for procuring consultancy service for a clearly defined assignment, the quality of which can be readily assessed, with minimum risks to the consultant, such as feasibility studies, project design and preparation of tender documents.
- This contract shall provide that the consultant is to submit a report to the public entity upon performing the assignment of specified technical characteristics set forth in the terms of reference within the specified period and the entity is to pay consultant remuneration to the for the same.

**b) Time based contract:**

where it is difficult to estimate the period of consultancy service such as supervision of construction works, management of complex business institutions or design of complex structures such as dams and tunnels, a time based contract may be entered into for such service. This contract shall provide that the consultant's remuneration shall be based on:

- (a) Amount to be set upon multiplying the rate of remuneration set forth in the contract by the actual time spent by the consultant in executing the assignment,
- (b) Reimbursable expenses using actual expenses supported by bills, receipts.

**c) Performance based remuneration contract:**

If it is required to procure consultancy service on conditions that the consultant shall be called as and when required to perform the assignment set forth in the procurement contract or remuneration is to be paid based on the assignment executed by the consultant, a performance based remuneration contract may be entered into. The remuneration of the consultant shall be as set forth in such contract.

**d) Percentage contract:**

- A percentage contract may be entered into for procuring goods inspection service, architect service, supervision or monitoring service or similar other service.
- This contract shall provide that consultant's remuneration is to be paid on the basis of the percentage of the estimated or actual cost of the concerned construction work or project or the cost of goods procured or inspected

**e) Indefinite delivery contract:**

An indefinite delivery contract may be entered into for the procurement of a consultancy service as and when required on a particular activity such as adviser required from time to time for the implementation of a construction work, adjudicator or arbitrator for the settlement of any dispute relating to the procurement contract, adviser on institutional reforms or procurement and technical problem shooter. This contract shall provide for the following matters:

- (a) The contractor shall perform the assignment set forth in the contract at the rates stipulated in the procurement contract as and when the public entity so requires,
- (b) Remuneration shall be paid on the basis of the time actually used by the consultant in the performance of assignment.

# Factors to be considered in preparing contract

1. The contract must be fair
2. The contract must be clear
3. Contract language must be consistent
4. Do no repeat (No Repetition)
5. Use each part of the contract for its proper purpose
6. Contract information must be retrievable
7. Use foresight
8. If you want it, get it in the contract.

# Conditions of Contract

- Whatever agreement is reached between different parties, it is followed by certain terms and references (conditions) that bind all the parties reaching an agreement.
- This helps for the ease and smooth functioning of work and minimizes disputes.
- These terms and conditions are called the conditions of contract.
- There may be two parts
  1. General condition of contract.
  2. Special condition of contract.



# Elements of Contract

- Definition and interpretation
- Security Deposits
- Time of completion and delays
- Mode of payment
- Alternation, additions, variations and omissions
- Execution of work and measures of completed works
- Subletting
- Breach of contract
- Arbitration – Settlement of Disputes
- Suspension of works
- General obligation of contract
- Labor and labor welfare
- Changes in cost and legislation
- Material and workmanship etc

# Contract Documents

- The documents that describes in details the scope of the agreement and responsibility of the parties to it is called contract document.
- The document that lead towards a contract are referred to as contract document

# Priority of Contract Document

- The contract agreement
- The letter of acceptance
- The bid / tender
- Conditions of contract – general / special
- The detail specifications
- The detail drawings
- Priced bill of quantities (BOQ)
- Addenda (list of things) to clarify, corrects and provide additional information.

# Roles of Contract Document

- Define duties and responsibilities of the parties involved in the contract
- Defines payment procedures such as lump sum /
- Deals with variation / changes in the work during implementation
- Guides for the procedure, pricing and payment of the altered, added & omitted work
- Value and duration of the contractual work
- Contract termination process
- Assigns risks (weather condition/delays/changes/performance) etc.

**The End**