

Amendment of Public Procurement Act 2063 and Regulation 2064: Implications on Development Projects in Nepal

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ABSTRACT

This research delves into the significance of public procurement in ensuring fair, competitive, and economical government activities, emphasizing the crucial role of well-structured laws and regulations in this domain. The study particularly focuses on the amendments made to the Public Procurement Act 2063 (PPA 2063) and Public Procurement Regulation 2064 (PPR 2064) in Nepal, exploring their effects on development projects. The subsequent amendments, occurring three times for PPA 2063 and twelve times for PPR 2064 within fifteen years, create an environment of instability, particularly evident in the frequent changes to PPR 2064 within the last four years. The primary factors prompting amendments include Force Majeure, contractors' and clients' interests, faulty rules, and political considerations. The global impact of the COVID-19 pandemic further accentuated the need for adjustments in procurement laws to address unforeseen circumstances beyond control. The concerns arise regarding the extension of project completion time and costs due to amendments in PPR 2064, often without clear justifications. Project quality, sustainability, and functionality were unaffected by amendments, but an increase in project safety was noted, coupled with a decrease in construction risks. Disputes among stakeholders escalated due to the frequent and abrupt changes in procurement laws, emphasizing the need for stability and consistency in the regulatory framework.

Keywords: Amendment, Procurement law, Construction projects, Force Majeure, COVID-19, Project completion time, Stakeholder disputes, Sustainability.

Introduction

Public procurement, encompassing the acquisition of goods, services, and works by governments and state-owned enterprises, constitutes a crucial governmental mechanism for efficiently utilizing public funds in support of public programs and projects. This process involves a sequence of activities, beginning with needs assessment, budget preparation, procurement planning, and execution of procurement plans (Khan, 2018). The overarching aim is to deliver quality and timely

services to citizens through well-managed public programs. The government's procurement activity spans various stages, including input identification, cost estimation, supplier selection, contract award, contract management, and the delivery and receipt of goods, works, and services.

The objective of public procurement is rooted in the pursuit of quality and efficiency, ensuring economic costs within a competitive market. This is underpinned by six main objectives outlined in the Model Law, emphasizing aspects such as achieving

economy and efficiency, wide participation, maximizing competition, fair and equitable treatment, integrity, and transparency (UN, 2014). Legal provisions are deemed essential to enhance openness, transparency, and accountability in public procurement processes, promoting good governance and equal opportunities for participants (Government of Nepal, 2007; ADB, 2015).

However, public procurement in Nepal faces persistent challenges, primarily stemming from deficiencies in its legal provisions (Samriddhi Foundation, 2019). Ambiguities and inconsistencies in the legal framework contribute to process-oriented rather than result-oriented approaches, necessitating attention to issues such as bidding timeframes, evaluation processes, accountability, government officer capacity, support for small and medium-scale contractors, fair treatment of foreign bidders, transparency enhancement, and the revision of mobilization fee disbursement processes. To address these challenges (Mishra, 2022; Mishra, 2019; Mishra, 2020; Mishra & Singh, 2019; Mishra & Aithal, 2022), it is crucial not only to establish effective national public procurement legislation and review procedures but also to reinforce organizational structures, management control systems, internal audits, and skill development for procurement officials. This multifaceted approach is vital for enhancing the efficiency and effectiveness of public procurement in Nepal (OECD, 2000).

Problem Statement

The Government of Nepal introduced the Public Procurement Act in 2063 B.S., followed by the Public Procurement Regulation in 2064 B.S., marking the inception of a framework to efficiently manage public procurement activities in the country. The essence of public procurement is to execute processes that instill confidence in all stakeholders, both internal and external, ensuring fairness in the procedures. A transparent system is characterized by clear rules and mechanisms, backed by effective compliance. However, the efficacy of acts and regulations can only be gauged through practical application in the real field, a process that necessitates time to uncover potential pitfalls. Recognizing the need for

continuous improvement, the amendment of Public Procurement Acts (PPA) and Regulation (PPR) becomes imperative to enhance the efficiency of public procurement processes. Amendments are deemed essential to address evolving challenges and incorporate feedback from concerned stakeholders (Mishra & Aithal, 2020; Wagle & Mishra, 2021). Yet, the frequent amendment of acts and regulations, often influenced by the perspectives of one party in the contract, may inadvertently lead to significant negative consequences. The impact of such amendments requires critical analysis, particularly concerning stakeholders such as contractors, clients, consultants, and the users of public utilities. This study aims to address the gaps in understanding the effects of the frequent amendments to PPA 2063 and PPR 2064 after their initial issuance on construction projects in Nepal. Through a comprehensive examination, the research seeks to provide insights into the implications of these amendments on the diverse stakeholders involved in the public procurement process.

Research Objective

The study aims to identify the current amendment status of PPA 2063 and PPR 2064, analyze the major factors that have led to their amendment, and assess the effects of these changes on development projects in Nepal.

Literature Review

Public procurement, a vital component of government activities, is regulated by laws that dictate planning, requirements, procedures, centralization, and data recording in various sectors. The World Bank (2015) underscores the significance of these legal frameworks in streamlining public procurement.

In the case of *Faraday Development Ltd. V Work Berkshire Council, et al*, the judgment delves into development agreements' implications on public contracts, emphasizing the importance of VEAT notices and shedding light on remedy-related issues. The court's guidance on 'Voluntary Transparency Notices' highlights the intricacies of procurement-related legalities (*Faraday Development Ltd. V Work Berkshire Council, 2018, EWCA Civ. 2532*).

The Nepalese legal landscape on contracts traces back to the Muluki Ain 1910, with the modern era governed by the Contract Act, 2056, under the Muluki Civil Code. Kalika (2020) provides insights into the historical and contemporary aspects of contract regulation in Nepal.

Preceding the Public Procurement Act 2063 (PPA 2063) and Public Procurement Regulation 2064 (PPR 2064), the Government of Nepal issued the Financial Procedure Act 1998, emphasizing regulated financial procedures and internal control. This act played a pivotal role in the financial management of the government before the enactment of PPA 2063 and PPR 2064 (GoN, 1998).

The introduction of PPA 2063 and PPR 2064 aimed to address concerns about the transparency, fairness, and efficiency of public procurement in Nepal. Recognizing its critical implications on development, these laws were designed to establish a transparent, open, fair, competitive, economic, and efficient procurement system, aligning with internationally accepted standards (ADB, 2008).

Furthermore, the Government of Nepal's commitment to enhancing the public procurement system is evident in the issuance of PPA 2063 and PPR 2064. These laws aim to make procurement procedures more open, transparent, objective, and reliable. They emphasize obtaining maximum returns on public expenditures by promoting competition, fairness, honesty, accountability, and reliability, ensuring good governance and equal opportunities (Government of Nepal, 2007).

In the international context, the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Public Procurement, issued in 2011, seeks to regulate procurement to maximize economy and efficiency, encourage international participation, promote competition, ensure fair treatment, and achieve transparency (UN, 2011). This international model serves as a benchmark for effective public procurement practices globally.

This review highlights the evolution and significance of public procurement laws,

providing a foundation for understanding the legal frameworks governing procurement processes in Nepal and internationally.

Methodology

Research Design

This research primarily adopts a doctrinal approach, combining extensive literature review with the analysis of both secondary and limited primary data. The nature of this study is more descriptive than analytical, emphasizing a comprehensive understanding of the subject matter. The research draws from secondary information obtained through literature, articles, journals, cases.

Study Area

The study focuses on the impact of amendments to the Public Procurement Act (PPA) 2063 and Public Procurement Regulation (PPR) 2064 by the Government of Nepal. Primary data is collected from government offices in Province No. 1, specifically targeting multi-year construction projects implemented under the federal structure. A questionnaire survey, involving 52 respondents from clients, contractors, and beneficiaries, along with 13 Key Informant Interviews (KII), was conducted to assess the effects of these amendments.

Data Collection

Data collection encompasses an extensive literature review of public procurement acts, regulations, articles, and journals. Additionally, a questionnaire survey and Key Informant Interviews (KII) were conducted. The purposive sampling method was employed for the questionnaire survey in Province No. 1, targeting clients, contractors, and beneficiaries. Key Informant Interviews involved key personnel at all government tiers, including Federal, Provincial, and Local Levels, contractors, and beneficiaries. Secondary data from project records complemented the study objectives.

Data Analysis and Results

The study is predominantly descriptive, with the interpretation of secondary data and analysis of primary data utilizing comparison, quantitative, and qualitative methods. To determine the ranking

of factors, a Likert scale was employed. The five-point scale ranged from one to five, and a Relative Importance Index (RII) was calculated for each factor using the formula:

$$R II = \frac{\sum W}{A \times N}$$

Where;

W: is the mentioned scale for rating a factor by the respondents which ranges from 1 to 5

A: is the highest weight in the scale

N: denotes the total number of respondents.

This scale facilitated the collection of perceptions from various stakeholders, aiding in prioritizing major factors influencing the frequent amendment of public procurement laws and regulations (Somiah, 2015).

Results and Discussion

Promulgation of consolidated procurement law in the country facilitates to control procurement activities from a single door. However frequent amendments in the law create different consequences towards concerned stakeholders i.e. clients, consultants, contractors, users etc. So it is interesting to study the causes and effects after changes in procurement law in the field of implementation of construction projects. For this, Questionnaire Survey and Key Informant Interview (KII) was conducted to clients, contractors and beneficiaries/users of assets to find causes and effects. Results along with interpretation of results in co-ordination with relevant literatures and laws have been illustrated.

Organizations under Study for Questionnaire Survey

Table 1: Organizations under Study for Questionnaire Survey

SN	Name of Organization	Nature of Organization	Questionnaire Distributed	Valid Questionnaire Received	Respondent Percentage (%)
1.	Public procurement Monitoring Office	Federal Level Government Offices	25	22	88
2.	Office of Auditor General				
3.	Department of Road				
4.	Office of Urban Development				
5.	Distict Treasury Controller Office				
6.	Nepal Electricity Authority				
7.	Infrastructure Development Office	Provincial Level Government Offices	20	17	85
8.	Transport Infrastructure Directorate				
9.	Water Resources and Irrigation				
10	Arjundhara Municipality	Local Level government Office	4	2	85
11	Jhapali Builder, Jhapa	Contractor Entrepreneurs	8	6	75
12	Safal Construction P. Ltd, Ilam				
13	Attareya Nirman Sewa				
14	Sagun Construction P. Ltd.				
15	SAS-Devidanda JV				
16	Beneficiaries	Asset User People	8	6	75
	Total		65	52	80

The table 1 shows that clients from federal, provincial, and local level development-related government offices, contractors, and beneficiaries with a minimum of a Bachelor's level education and officer-level employees, and owners of contractors were under study to fill a questionnaire survey who

are very closely practicing public procurement law. The response rate was pretty good at 80%, indicating that the answers from the respondents were more realistic since the respondents have had to use it in their daily working schedule

Major Factors Affecting to Amend PPA 2063 & PPR2064

Table 2: Major Factors Affecting to Amend PPA and PPR

Affecting Factor	Client		Contractor		Beneficiaries		Overall	
	RII	Rank	RII	Rank	RII	Rank	RII	Rank
Force Majeure (i.e. Covid- 19, Natural Disasters etc.)	0.849	1	0.900	1	0.84	1	0.854	1
Contractor's Interest	0.839	2	0.833	2	0.72	5	0.827	2
Client and Interest		3	0.700	3	0.84	1	0.738	3
Faulty act and Regulation Provisions	0.732	5	0.569	4	0.84	1	0.712	4
Political Interest	0.717	4	0.500	5	0.6	4	0.685	5

(Field Survey, 2022)

The Table 2 shows that major governing factors to amend public procurement law are prioritized as Force Majeure, Contractors'interest, Clients' interest, Faulty act and regulation provisions, Political interest by using Relative Importance Index(RII). The factors are explained below:

Force Majeure

Clients, contractors and beneficiaries prioritized Force Majeure as one of the key factors to amend public procurement law.As per KII, it is expressed that COVID-19 enforced government to lock down the country in two occasions for a long time so it created mandatory for the government to extend construction project time which enforced to amend Public Procurement Regulation 2064 in various occasions.Supreme Court of Nepal issued a mandamus of 076-RE-0392 on petition of Advocate Tikaram Bhattarai (076-WO-0944) regarding statute of limitation ,time limit, date of appearance during period of lockdown .One of the objectives of extending statute of limitation, time limit and date of appearance is to ensure access to justice to the service recipients and also make them feel so.Court must conduct necessary research on how parties to the case can get justice and to what extend the minor technical issues can create obstacles regarding it and take initiative towards

resolving problems .The Hon'ble Supreme Court of India in the matter of Civil Appeal No. 1318 of 2022 (Prakash Corporates vs. Dee Vee Projects Limited9) vide its order dated February 14, 2022 having regard to the purpose for which the Hon'ble Supreme Court of India had exercised plenary powers under Article 142 read with Article 141 of the Constitution of India, 1949 held that the periods envisaged in the orders passed by the Hon'ble Supreme Court of India from time to time in Suo Moto Civil Writ Petition (Civil) No. 3 of 2020 are required to be excluded in computing the period of limitation even for filing written statement and even in cases where the delay is otherwise not condonable. Though the proviso to Order 8 Rule 1 of the Code of Civil Procedure, 1908 provides that in any suit in respect of a commercial dispute under the Commercial Courts Act, 2015 if a Defendant fails to file a written statement within a maximum period of 120 days from the date of service of summons, the Hon'ble Court shall not allow the written statement to be taken on record. Thus, the Hon'ble Supreme of India did not leave a single stone unturned by exercising its plenary powers and carved out an exception to the applicable statutes .So Supreme court of Nepal considers the covid-19 affected period as zero period. Zero period shall not be counted in all types of legal proceedings

including the statute of limitation, time limit, date of appearance, filing of plaint, rejoinder, charge sheet appeal, petition having prescribed period of time limit, written response, application for execution of judgement etc. that are required to be presented before any court of law. So the cause for amendment of PPR 2064 seems to be relevant due to Force Majeure.

Contractors' Interest

All stakeholders (i.e. clients, contractors, beneficiaries) agree that contractors' interest in amendment of procurement law seems to be one of the major causes. As per KII, it was found that contractor is the key stakeholder to implement construction project with interest of earning profit too. If enough time and resources are not available due to force majeure condition and other weaknesses that become cause of losses rather than profit so as an entrepreneur their trial to control over project time and variation in cost seems to be normal however government side should be clever enough to benchmark whether the situation is under force majeure or it is own contractors' default to increase project cost and time. As per PPR 2064 Rule 120(2) the following conditions prevail in the extension of time

- Whether the concerned public entity has provided the construction entrepreneur, supplier, service provider or consultant with the matters required to be provided under the contract or not,
- Whether the delay in work has been made because of the requirement of documents pursuant to Section 67A. of the Act or not
- Whether the delay in work has been made because of a force majeure event or not ,

Clients shall be responsible for checking above conditions whether the extension of time is needed or not as per acts and rules. In the context of Nepal most of the contractors have tendency to elongate the time for management of projects since they are bidding beyond their capacity.

Likewise As per PPR 2064 Rule 118 variation occurs in construction projects in pursuant to the Clause 54 of PPA 2063 due the following reasons:

- a. Whether the drawing, design and specifications etc. of the construction work need to be changed or not, and where such change is to be made, whether the basic nature or scope of the construction work will be changed or not,
- b. Technical justification and reason for the variation quantity of work,
- c. If it affects the cost estimate pursuant to sub-section (2) of Section 5A. of the Act, percentage thereof,
- d. Whether it is included in the approved budget and program or not .

Clients shall be responsible for checking above conditions whether the variation order is needed or not as per the field situation. Cost estimate is approximate figure so completion of work needs variation to address uncertainties in the construction projects but variation should not be the requirement of contractor but it should be justifiable and compatible with law. In various occasions PPR 2064 has been amended to address delayed project time period and variation orders.

Clients' Interest

As per field survey data mentioned in above table clients' interest is also one of the factors to amend procurement law. As per KII, it reveals that approximate cost estimate, least accurate design and Detail Project Report (DPR), baseless and approximate project time invite uncertainties in completion of project. These factors enforce clients to recommend for amend procurement law.

Faulty Acts and Regulation Provisions

As per field survey data mentioned in above table faulty acts and regulation provision is also one of the factors to amend procurement law. In various occasions PPR 2064 has been amended to address short term problems which affects negatively in long duration. For example PPR 2064 Rule 120A has special provision for extension of time

which states that notwithstanding others things mentioned in Rule 120 any contracts which has completion time upto 2079 Ashad end, which are not completed or not applied for extension can apply within 21 days of issuance of this amendment alongwith application, performance bond, revised work schedule , insurance and other necessary documents. If it seems reliable to public entity, EoT can be done upto 2080 Ashad end as per Rule 120 A (3) .

This shows that PPR 2064 must be amended again in 2080 Ashad end because demarcation date has been mention in regulation to address short term problem. Such provision in regulation should be avoided to reduce frequency of amendment but rather this can be controlled by directives of concerned departments for field level problems.

Political Interest

As per field survey data mentioned in above table faulty acts and regulation provision is also one of the least factors to amend procurement law. Procurement law is technical subject matter so political parties do not directly influence by their own effort however recommendation from contractors to political parties play pivotal role to amend procurement law. Change in political system also enforce to amend procurement law. After promulgation of constitution 2072, amendment of PPA 2063 and PPR2064 became mandatory to recognize three tiers of government i.e Federal, Porvincial and Local level. PPA 2063 clause 2(B) redefined government and public entity as:

1. A constitutional organ or body, court, Ministry, secretariat, commission, department of the Government of Nepal or Provincial Government or any other governmental entity or office thereunder,
2. A corporation, company, bank or board which is owned or controlled wholly or in majority by the Government of Nepal or Provincial Government or commission, corporation, authority, undertaking, enterprise, board, center, council and other corporate body of similar nature which is established at the public level or formed by the Government

of Nepal or Provincial Government, in accordance with the prevailing law,

3. A university, college, research center and other academic or educational institute of similar nature which is operated by the Government of Nepal or Provincial Government or receives grants wholly or in majority from the Government of Nepal,
4. Local Level,
5. A development board which is formed under the Development Board Act, 2013 (1956),
6. A body which is operated through a loan or grant by the Government of Nepal or Provincial Government, and
7. Such other body as specified to be a public entity by the Government of Nepal or Provincial Government, by a notification in the Nepal Gazette .

Effects of Amending PPA 2063 & PPR2064

Amendment of procurement laws have direct effect on construction projects from initial stage of procurement to final work completion stage. The perception of concerned stakeholders i.e. clients, contractors, beneficiaries have been represented in the table 3.

Procurement Process

From above table it is seen that the 71% of respondents believe that amendment of procurement law makes procurement process easy. As per KII, this is due to clarity in laws and regulations after amendment takes place. Addition of procurement process in PPA 2063 Clause 8 sub-clause 1(7) Lumpsum Method, 1(8) Catalogue Shopping Method 1(9) Limited Tendering Method 1(10) Bye Back Method supported all tiers of government to buy vehicles and equipments in easy and effective way . Amendment of evaluation in Two Envelope system, alongwith increase in cost limit started with two million rupees enhances quality and growth of Nepalese contractors . Mechanism of use of Users' Committee upto ten million rupees has facilitated local level to work and complete the work easily raising quality issues in work.

Table 3: Effects of Amendment in PPA 2063 & PPR2064 on Construction Projects

Procurement Process	a. An akes easy	b. remains same	c. makes complex
Sample size (n=52)	39	7	6
Percentage(%)	75	13	12
Project Completion Time	a. increases	b. remains same	c. decreases
Sample size (n=52)	37	5	10
Percentage(%)	71	10	19
Project Cost	a.increases	b. remains same	c. decreases
Sample size (n=52)	37	10	5
Percentage(%)	71	19	10
Quality of Work	a. increases	b. remains same	c. decreases
Sample size (n=52)	17	30	5
Percentage(%)	33	58	10
Asset Functionality	a. increases	b. remains same	c. decreases
Sample size (n=52)	14	23	9
Percentage(%)	27	44	17
Asset Sustainability	a. increases	b. remains same	c. decreases
Sample size (n=52)	14	28	10
Percentage(%)	27	54	19
Construction Safety	a. increases	b. remains same	c. decreases
Sample size (n=52)	20	23	9
Percentage(%)	38	44	17
Construction Risk	a. increases	b. remains same	c. decreases
Sample size (n=52)	19	13	20
Percentage(%)	37	25	33
Disputes	a. increases	b. remains same	c. decreases
Sample size (n=52)	24	13	15
Percentage(%)	46	25	29

(Field Survey, 2022)

Project Completion Time

From table 3 it is seen that the 75% of respondents believe that amendment of procurement law increases project completion time. As per KII, this is due to force majeure, contractors' vested interest and clients' lack of use given authority to control project. From above table, secondary data related to multiyear road projects of IDO, Jhapa shows that project completion time has been extended after frequent amendments of PPR2064. after project time has extended PPR 2064 Rule 120 and PPR2064 Rule 120(A) Special provision for EoT provides space to extend time for contract

agreement . The rule has focussed on extension of time of those projects which are chronic in nature also along with other running projects too. If fundamental breach of contract takes place, lack of will power of concerned authority to control and punish such parties enforces to extend time. PPA 2063 Clause 59 has provision for termination of contract, same act clause 61 A provides space to departmental action against concerned employee likewise Clause 63 provides space to punish firms, companies for blacklisting .However less practice for the use of law has been seen so far.

Table 4: Status of Road Projects in Infrastructure Development Office, Jhapa

SN	Name of Multi Year Project	Agreement Date	Intended Completion Date	Estimate Amount (NRs in Thousands)	Agreement Amount (NRs. in Thousands)	Remarks
1.	Bhadrapur -Jyamirgadhi Dhulabari-Guur-M Road (Bhadrapm Dhulabari Section)	7/20/2076	3/31/2079	584,060.27	462,382.98	Time extended, cost increased
2.	Bhadrapur -Jyamirgadhi Dhulabari-Gujabasti Road(Dhulabari-Irautar Section)	7/20/2076	3/31/2079	325,113.69	253,284.82	Time extended
3.	Satashidham-Jhiljhile Road Fkkal-Jogmai-Nayabazaar Road	4/6/2076				
4.	Satashidham Jhiljhile Road	4/6/2076	4/6/2076	433684.05	356,153.99	Time Extended
5.	Fikkal Jogmai Nayabazar Road	8/6/2076	7/15/2079	657462.00	538426.47	Tim Extended, VO Issud
6.	Rakse-Gagrebhanjyang Belase Road	7/19/2076	3/31/2079	660,556.83	398610.51	Time extended as per eleventh amendment
7.	Deurali-Phalate Gajurmukhi Road-Package I	4/26/2076	4/26/2079	398,452.48	336424.23	Time extended as per eleventh amendment
8.	Deurali-Phalate Gajurmukhi Road-Package II	3/31/2076	3/31/2079	399,907.25	333968.47	Time extended, cost increased
9.	Ilam Sandakpur Paryatakiya Road Package I	5/23/2078	5/22/2080	607,812.60	330799.31	
10.	Ilam Sandakpur Paryatakiya Road Package II	3/31/2076	3/31/2080	554,663.02	442620.8692	
11.	Durgapur-Danabari Road	5/23/2078	5/22/2080	450,233.14	234866.6962	Eighty percent work completed
12.	Mechirajmarg-Bangadangi Road	7/7/2078	6/18/2080	624,447.00	334013.9259	
13.	Sahid Mem Road	6/11/2077	3/20/2079	299,058.52	174543.711	Eighty percent work completed, Time extended
14.	Damak 5-HiMaBi Road	6/20/2077	3/20/2079	364,271.61	204645.3739	Time extended
15.	Kanakai08-Laxmipur Road	7/7/2078	6/18/2080	380,259.00	209595.263	
16.	R r ur aha Schoolchaun	7/20/2076	7/18/2079	202,047.63	155292.95	Time extended as per amendment of PPR 2064
17.	Dharampur- Ranamil Road	2073/08/21	2078/12/30	100,810.45	79,045.29	Chronic Project, Time extended as per amendment of PPR 2064
18.	Sukhani-Danabari-7/20/2076 Rajduwali Road		12/20/2078	561,656.00	472796.10	Completed in COVID-19 peirod with EOT1, VO1
19.	Amarpath Road Package I	5/16/2076	5/16/2080	575,902.88	470,122.55	nearly completed on time
20.	Amarpath Road Package II	3/30/2076	3/30/2080	701,610.29	571,815.83	
21.	Jalthal Adhikari Chowk Road Package I	2073/10/23	2078/12/30	144,124.38	109,193.90	completed with extension of time
22.	Jalthal Adhikari Chowk Road Package I	2073/10/23	2078/12/15	68,762.74	47,596.00	Time extended Chronic Project
23	Sanischare Khudunabari Road	2075-03-27	2078/12/30	131206.60	91062.96	Chronic roject,frequently Time extended as per amendment of

Project Cost

From table 3 it is seen that the 71% of respondents believe that amendment of procurement law increases project cost however 19% believe that it remains same. As per KII, it is revealed that project cost increases due to variation of projects. Variation occurs due to uncertainty in geographical condition and less accurate design and estimates. PPA2063 Clause 5A in first amendment have provision to take action against designer and approver if estimate differs by more than 25% . Despite this fact again variation orders increasing cost have been occurring frequently due to changing site condition and lack of accurate in design and cost estimate.

Quality of Work

From table 3 it is seen that the 58% of respondents believe that amendment of procurement law doesnot have any effect on quality while 33% believe that it increases.As per KII, Quality Assurance Plan (QAP) does not change with extension of time and variation orders so there is no change in quality however it might increase due to clarity in procurement process and mechanisms in contract agreement.

Asset Functionality

From table it is seen that the 44% of respondents believe that amendment of procurement law doesnot have any effect on functionality of structures while 27% believe that it increases.

Asset Sustainability

From table 3 it is seen that the 54% of respondents believe that amendment of procurement law doesnot have any effect on sustainability of structures while 27% believe that it increases and 19% believe that it decreases. As per KII, it increases due to improvement in planning but it decreases because completion of structures in a long interval of time decreases efficiency and load bearing capacity.

Construction Safety

From table 3 it is seen that the 44% of respondents believe that amendment of procurement law doesnot have any effect on safety while 38% believe that it increases and 17% believe that it

decreases. Amended standard bidding documents for more than twenty million rupees section III General conditions of contract clause 19 insurance and clause 24 Safety , security and protection of environment makes provision for project safety in various aspects (PPMO, 2022).So after amendment safety of project has been increased by including various clauses in act however field implementation still seems to be weak.

Construction Risk

From table 3 it is seen that the 38% of respondents believe that amendment of procurement law decreases risk while 37% believe that it increases and 25% believe that it remains same. Amended standard bidding documents for more than twenty million rupees section III General conditions of contract clause 16 Employers and contractor's risk,clause 17 Employer's risk, clause 18 contractor's risk,clause 19 insurance has included various provisions to reduce risk in construction projects. These clauses have illustrated various conditions and provided provisions to combat with it. Such as Contractor All Risk (CAR) insurance provides umbrella safety if any accident occurs in structural part.Similarly Group Personnel Accident(GPA) insurance mechanism provides safety valve to field level accidents.Provision of line of credit in initially had reduced financial risk but it has again been amended and removed.PPR 2064 Rule 124 (2A1) in 11th amendment provided opportunity to return retention money if minimum of 80% work has been completed and work is satisfactory in nature provided that retention money bank guarantee is submitted .It increases financial cash flow decreasing contractors' risk while it increases clients' risk.

Dispute

From table 3 it is seen that the 46% of respondents believe that amendment of procurement law increases dispute while 29% believe that it decreases and 25% believe that it remains same. As per KII, it reveals that dispute increases due to advanced and complicated acts and rules amended by considering short term duration only. PPR 2064 Rule 129 after amendment provides mechanism to settle issues by arbitration only by removing negotiation, amicable settlement etc . The rule that

an award is not open to objection on the sole basis that it merely reproduced an agreement between the parties, applies only where the consent of the parties is regarded by the arbitrator as evidence of the fact that the settlement proposed is fair to all. After that only litigation option is available to settle the issues. So there is chance of increasing dispute.

Conclusion

The evolution and frequent amendments in Nepal's public procurement laws and regulations, particularly the Public Procurement Act 2063 and Public Procurement Regulation 2064, have been influenced by various factors and events. The legislative journey involved multiple amendments, with the initial focus on aligning the regulations with the changing constitution of Nepal in 2072.

The prime issue prompting changes in the Public Procurement Regulation (PPR) 2064 was the extension of time, which became a recurrent theme and was exacerbated by the challenges posed by the COVID-19 pandemic. The pandemic led to significant legal adjustments, including the concept of zero periods during lockdowns, impacting not only time limits and appearances but also construction project periods.

Force Majeure emerged as a pivotal factor driving amendments, especially in response to external uncontrollable events. The interests of contractors and clients played a crucial role, reflecting the dynamics of a developing country like Nepal. The amendments focused on addressing issues related to time extensions, project costs, and the overall efficiency of the procurement process.

Despite the positive effects observed in terms of clarifying unclear matters and streamlining the procurement process, the frequent amendments also had consequences. The extension of project completion times became a byproduct, leading to increased costs in some projects, particularly due to external factors like geopolitical events.

Interestingly, the amendments did not significantly impact construction quality, functionality, or sustainability of projects. Instead, the changes focused on improving construction safety measures and reducing risks. However, the

downside was an increase in construction disputes among stakeholders, possibly stemming from misunderstandings and frequent changes in regulations.

In the broader context, a need for stability in the legislative framework is highlighted, with considerations for external events, contractor interests, and the avoidance of conflicts of interest at the policy and executive levels. Striking a balance between adapting to unforeseen circumstances and maintaining a stable regulatory environment will be crucial for the continued development and success of public procurement in Nepal.

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