

Construction Business Act, 2055 (1999)

Date of Authentication

2055.11.27(11 March 1999)

Act number 25 of the year 2055 (1999)

An Act made to manage and expand construction business

Preamble: Whereas, it is expedient to make necessary provisions on the operation of construction business by promoting and developing construction entrepreneurs so as to maintain required quality standards of public construction works;

Be it enacted by the Parliament in the twenty-seventh year of reign of His Majesty King Birendra Bir Bikram Shah Dev.

Chapter-1

Preliminary

1. **Short title and commencement:** (1) This Act may be called as the "Construction Business Act, 2055 (1999).
(2) It shall come into force on the 1st day of Baishakh 2056 (14 April 1999).
2. **Definitions:** Unless the subject or the context otherwise requires, in this Act:
 - (a) "public construction works" means any kinds of construction related works to be carried out by Government of Nepal and anybody corporate fully owned by Government of Nepal, and this term also includes reconstruction and maintenance works.
 - (b) "construction entrepreneur" means a firm or company registered under the prevailing law with an object to carry out construction business.
 - (c) "foreign construction entrepreneur" means a firm or company which is registered in a foreign country and carries out construction business related works.
 - (d) "license" means a license to be issued pursuant to Section 4 to carry out public construction works.
 - (e) "temporary license" means a license to be issued pursuant to Section 6 to a foreign construction entrepreneur to carry out public construction works.

- (f) "body corporate" means a body corporate fully owned by Government of Nepal.
- (g) "technician" means a technical employee deputed by Government of Nepal and the concerned body corporate to look after and supervise the public construction works.
- (h) "quality standard" means the quality standard as mentioned in an agreement concluded between the proponent and the acceptor as per a proposal invited for the construction works or in any documents, drawings, designs and specifications forming an integral part of such agreement.
- (i) "council" means the Construction Business Development Council formed pursuant to Section 13.
- (j) "committee" means the execution committee formed pursuant to Section 15.
- (k) "prescribed" or "as prescribed" means prescribed or as prescribed in the Rules framed under this Act.

Chapter-2

Provisions relating to License

- 3. Prohibition on carrying out construction without license:** No person shall carry out or cause to be carried out public construction works without having obtained the license pursuant to this Act.

Provided that, this Section shall not be deemed to prevent the carrying out of public construction works to be carried out through a consumers' committee or public participation pursuant to the prevailing law.

- 4. License:** (1) A construction entrepreneur who intends to carry out public construction works shall make an application, accompanied by such fees and in such format as may be prescribed, to the committee for the license to carry out public construction works.

(2) If an application is made pursuant to Sub-section (1), the committee shall examine the application as prescribed and make recommendation to Government of Nepal to issue the license of the class which appears to be

appropriate, out of the classes of construction entrepreneurs classified pursuant to Section 8.

(3) Government of Nepal shall issue the license in the format as prescribed to the applicant recommended by the committee pursuant to Sub-section (2).

(4) Notwithstanding anything contained in Sub-sections (2) and (3), Government of Nepal may also issue the license of class "B", without recommendation of the committee.

5. Validity period and renewal of license: (1) Except in cases of annulment pursuant to Section 7, the license issued pursuant to Section 4 shall remain valid for one fiscal year. The validity period of the license shall expire on the last day of that fiscal year irrespective of the date of issue of such license.

(2) Each construction entrepreneur whose license has expired pursuant to Sub-section (1) shall get such license renewed, as prescribed, by the prescribed authority by paying the prescribed fees no later than three months of the date of expiration of such license.

(3) A construction entrepreneur who intends to get the license renewed within six months of expiration of the time limit as referred to in Sub-section (2) may get the license renewed as prescribed by paying the prescribed fees.

6. Temporary license: (1) The temporary license to carry out public construction works shall be issued to a foreign construction entrepreneur who is selected in an international competitive bidding and who is involved in joint venture with a native construction entrepreneur in a local competitive bidding exceeding sixty million rupees.

(2) The fees and format of the temporary license to be issued pursuant to Sub-section (1) shall be as prescribed.

(3) No foreign construction entrepreneur having obtained the temporary license pursuant to this Section shall carry out any public construction works other than the works mentioned in such license.

7. **Annulment of license:** (1) In the following circumstances, Government of Nepal may, on recommendation of the committee, annul the construction entrepreneur license:

- (a) where the license is obtained on submission of false statements,
- (b) where false statements and related documents are submitted to Government of Nepal and corporate body with intent to carry out, or cause to be carried out, public construction works,
- (c) where the entrepreneur is held to have failed to carry out works of standard quality.

(2) Prior to annulling the license pursuant to Sub-section (1), a reasonable opportunity shall be given to the concerned construction entrepreneur to furnish explanation.

(3) The license not renewed within the time limit referred to in Section 5 shall *ipso facto* be annulled.

(4) Where the license is annulled pursuant to Sub-section (1) or (3), information thereof shall be given to the office registering the firm or company concerned.

Chapter-3

Classification and Obligation of Construction Entrepreneur

8. **Classification of construction entrepreneur:** The construction entrepreneurs who carry out public construction works shall be classified as follows based on the prescribed grounds:

- (a) Construction entrepreneur of class "A";
- (b) Construction entrepreneur of class "B";
- (c) Construction entrepreneur of class "C";
- (d) Construction entrepreneur of class "D".

9. **Obligation of construction entrepreneur:** (1) It shall be the obligation of the construction entrepreneur to carry out public construction works, subject to the terms and conditions mentioned in the contract agreement.

(2) The construction entrepreneur shall submit statements of each construction works completed by him to the committee as prescribed.

10. **Grouping of construction entrepreneurs:** Government of Nepal may, based on the prescribed grounds and on recommendation of the council, group the construction entrepreneurs classified pursuant to Section 8.

11. **Public construction works capable of being procured from construction entrepreneur:** Any public construction works valued at the following amount in maximum and in minimum may be procured from the following construction entrepreneur:

- (a) works valued at whatever amount exceeding twenty million rupees, from the construction entrepreneur of class "A",
- (b) works valued at an amount from six million rupees to thirty million rupees, from the construction entrepreneur of class "B",
- (c) works valued at an amount from two million rupees to ten million rupees, from the construction entrepreneur of class "C",
- (d) works valued at an amount not exceeding three million rupees, from the construction entrepreneur of class "D".

Explanation: For purposes of this Section, "amount" means the estimate figure.

12. **Procurement of public construction works from native construction entrepreneur and construction entrepreneur in joint venture:** (1) Notwithstanding anything contained in the prevailing law, any public construction works mentioned in an international competitive bidding may be procured from the following construction entrepreneur in the following circumstances:

- (a) despite that the total contract price quoted in the bidding by a construction entrepreneur wholly owned by a Nepalese citizen or by a construction entrepreneur licensed

under joint venture with a foreign construction entrepreneur with at least fifty percent of share owned by the Nepalese citizen or by a construction entrepreneur making a joint venture agreement with a foreign construction entrepreneur with at least fifty percent of share owned by the Nepalese citizen is higher by a maximum of seven and half percent than the total contract price quoted in the bidding by a foreign construction entrepreneur, the entrepreneur making such bidding.

- (b) despite that the total contract price quoted in the bidding by a construction entrepreneur licensed under joint venture with a foreign construction entrepreneur with at least twenty five percent of share owned by the Nepalese citizen or by a construction entrepreneur making a joint venture agreement with a foreign construction entrepreneur with at least twenty five percent of share owned by the Nepalese citizen is higher by a maximum of five percent than the total contract price quoted in the bidding by a foreign construction entrepreneur, the entrepreneur making such bidding.

(2) Any public construction works valued at a maximum of sixty million rupees shall be procured from a Nepalese construction entrepreneur.

Chapter-4

Construction Business Development Council and Execution Committee

13. **Construction business development council:** (1) The following Construction Business Development Council shall be formed to prepare necessary policies and give direction to the concerned bodies in order to carry out the construction business in a consolidated and systematic manner:

- (a) Minister for Works and Transport -Chairperson
(b) Member, National Planning Commission
(looking after works and transport sector) -Member

- (c) Secretary, Ministry of Works and Transport - Member
- (d) Secretary, Ministry of Water Resources -Member
- (e) Secretary, Ministry of Housing and Physical Planning -Member
- (f) Chairperson of Nepal Construction Entrepreneurs' Federation or representative designated by him/her -Member
- (g) Chairperson, Society of Consulting Architectural and Engineering Firm (SCAEF) -Member
- (h) Technical Joint Secretary designated by the Ministry of Works and Transport -Member Secretary

(2) In cases where only the Minister of State for Works and Transport is appointed, the Minister of State shall be the chairperson of the council.

(3) The procedures relating to the meeting of the council shall be as determined by the council itself.

14. Functions, duties and powers of council: The functions, duties and powers of the council shall be as follows:

- (a) To prepare norms required to maintain quality standards of public construction works,
- (b) To make and develop model drafts of agreement to be concluded between the proponent and the acceptor on public construction works, terms of contract and specifications,
- (c) To make and develop necessary codes on other matters including the environmental aspects related with public construction works,
- (d) To operate trainings for the generation of human resources required to carry on the construction business in a consolidated and efficient manner,
- (e) To do necessary research works and carry out development on matters related with the construction business,

(f) To carry out such other functions as are required to implement the objectives of this Act.

15. Implementation committee: (1) An implementation committee, as follows, shall be formed to render necessary assistance to Government of Nepal on the promotion and management of the construction business.

- (a) Technical Joint Secretary designated by the Ministry of Works and Transport -Chairperson
- (b) Technical representative, Ministry of Water Resources -Member
- (c) Technical representative, Ministry of Housing and Physical Planning -Member
- (d) Technical representative, Department of Roads -Member
- (e) Representative, Nepal Construction Entrepreneurs' Federation -Member
- (f) Representative, Society of Consulting Architectural and Engineering Firm (SCAEF) -Member
- (g) Officer designated by the Ministry of Works and Transport - Member secretary

(2) The procedures relating to the meeting of the committee shall be as determined by the committee itself.

16. Functions, duties and powers of committee: The functions, duties and powers of the committee shall be as follows:

- (a) To make recommendation to Government of Nepal to issue license to the construction entrepreneur.
- (b) To do timely study and research works and collect necessary suggestions on the construction business and submit them to Government of Nepal.
- (c) In the event of any question as to the quality standard of public construction works, to hold, or cause to be held, necessary inquiry and

examination into the verification and clearance made by the concerned technician.

- (d) In the event of revelation from the inquiry and examination held pursuant to Clause (c) that the technician has verified and cleared without maintaining the prescribed quality standard, to make recommendation to the concerned body to recover the loss and damage caused therefrom and take action against the person involved in that act, in accordance with the prevailing law.
- (e) To determine required policy matters on the submission of a tender by a construction entrepreneur licensed under this Act for carrying out construction related works in a foreign country, make a contract agreement and issue a bid bond or performance bond in the currency of the concerned country and recommend the same to Government of Nepal.
- (g) To perform such other functions as prescribed.

Chapter-5 **Fund and Audit**

17. Construction entrepreneur fund: (1) A construction entrepreneur fund is hereby established to render necessary services and assistance to the construction entrepreneurs in order to enhance the quality standard of public construction works and the efficiency of construction entrepreneurs.

(2) The following amounts shall be credited to the fund as referred to in Sub-section (1):

- (a) Amounts obtained from Government of Nepal,
- (b) Fees obtained from construction entrepreneurs,
- (c) Amounts obtained from native or foreign organizations.

(3) Expenditures shall be made from the fund as per the decision of the council.

(4) The fund as referred to in Sub-section (1) shall be operated and audited as prescribed.

Chapter-6
Miscellaneous

18. **Contract documents to be forwarded:** The contract accepting body shall forward a copy of the agreement concluded on the carrying out of public construction works in the Kingdom of Nepal and the documents related therewith to the committee.
19. **Details of goods imported under facility to be set out:** A native or foreign construction entrepreneur who has imported any motor vehicle, machinery, tools and similar other machine and equipment into the Kingdom of Nepal under the facility available pursuant to the prevailing law for the public construction works to be carried out under a bilateral or multilateral agreement shall submit to the committee the details thereof in the prescribed format.
20. **Prohibition on use of machinery, tools etc. imported by foreign construction entrepreneur under facility for another purpose:** (1) A foreign construction entrepreneur who imports any motor vehicle, machinery, tools and similar other machine and equipment pursuant to Section 19 shall use them only in the works for which they are imported. The entrepreneur shall not use such motor vehicle, machinery, tools, machine and equipment for another work without approval of Government of Nepal.
- (2) If the foreign construction entrepreneur who has imported any motor vehicle, machinery, tools and similar other machine and equipment pursuant to Section 19 does not take them back after the completion of public construction works, such tax, fees or charges as may be levied on such motor vehicle, machinery, tools, machine and equipment pursuant to the prevailing law shall also be recovered.
21. **Prevalence of agreement concluded with foreign government or organization:** Notwithstanding anything contained elsewhere in this Act, the provisions of a grant or loan agreement concluded between Government of Nepal and a foreign government or organization owned by a foreign government or an international organization shall be applicable to the public construction works to be carried out under such agreement.

22. **Punishment:** If any native or foreign construction entrepreneur misuses facilities and concessions available pursuant to the prevailing law, Government of Nepal may impose a fine in a sum not exceeding the double of the amount so misused on such construction entrepreneur.
23. **Powers to form sub-committee:** (1) The council and the committee may, as per necessity, form sub-committees for the operation of their functions.
- (2) The functions, duties and powers of the sub-committees to be formed pursuant to Sub-section (1) shall be as specified by the council and committee on their own.
24. **Issuance of duplicate copy of license:** If any construction entrepreneur makes an application for a duplicate copy of the license which is lost or destroyed, the committee shall issue a duplicate copy of that license by collecting the fees as prescribed.
25. **Delegation of authority:** Government of Nepal may delegate any of the powers conferred to it pursuant to this Act to any prescribed official for a certain specified period.
26. **Application of prevailing law:** The matters contained herein shall be governed by this Act itself and the other matters by the prevailing law.
27. **Powers to frame Rules:** Government of Nepal may frame necessary Rules for the accomplishment of the objectives of this Act.
28. **Saving:** The licenses issued to the contractor firms and companies registered under the prevailing law prior to the commencement of this Act shall be deemed to have been issued under this Act.