

Examination of Limit for Review Committee in Public Procurement

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Abstract

During the bidding process in construction works, there is need of selection of proper contractor in order to perform the works as per contract agreement. A review committee in public procurement is typically formed to check for evaluated bids or proposals submitted by potential contractors and make decisions regarding the selection of the winning bidder. The committee's primary purpose is to ensure fairness, transparency, and adherence to the procurement guidelines and regulations. This research was focused on whether the minimum bid amount that can enter PPRC (currently 2 crores) should be increased or decreased as well as the security deposit (currently 1 percentage of bid amount) should be increased or decreased on the basis of the past cases and decisions made by PPRC. Furthermore, the research also looked to find various types of cases and their frequencies of occurrences. The 143 cases provided by PPRC served as the research population for our research and their analysis showed that higher percentage of decisions are being overturned when the minimum bid amount is decreasing. A similar trend of data was seen for the security percentage which means when the security deposit percentage is lower the decision overturn percentage is higher. The conclusion of this research is that the minimum bid amount should be decreased and so should the security percentage in order to make fair decisions regarding award of bids. But in doing so, the resources of PPRC which is limited at the moment should be increased. After including the recommendations of this research in PPR next amendments, fewer cases will have to be reviewed resulting timely completion and no price escalation of projects.

Keywords

Minimum bid amount, minimum security deposit percentage, high frequency cases

1. Introduction

A review committee in public procurement is a group of individuals responsible for assessing and evaluating the procurement process and decisions made by the procuring entity. It serves as an oversight body to ensure transparency, fairness, and compliance with applicable laws, regulations, and policies [2]. The main purpose of a review committee is to provide an independent and impartial assessment of the procurement process to safeguard the interests of the procuring entity and promote accountability. The committee's composition may vary depending on the jurisdiction, but it typically includes individuals with expertise in procurement, legal matters, finance, and relevant technical fields [10]. The main task of the Review Committee is carrying out a review procedure, including reviewing requests for reviews and requests for compensation of damage according to the procedure set out in the law [1]. Whenever the chief of the public entity does not give satisfactory response to the application given by one of the bidders regarding the issuance of Letter of Intent that the bidder who should have been selected was not selected or the bidder selected is not appropriate, an application can be given to the review committee upon fulfilment of required security amount.

2. Statement of the problem

Whenever the public entity invites bids from responsive bidders and bid evaluation is completed, LOI is generated. It is

often the case that some of the bidders do not accept the evaluation committee's approval of technical proposal as well as financial proposal. More often than not they end up giving an application to the review committee. As a result of which the project will not commence in time leading to price escalation and delayed completion [2]. Also the minimum bid amount that can enter to the Public Procurement Review Committee has been fluctuating in Public Procurement Regulations as shown in Figure 1.

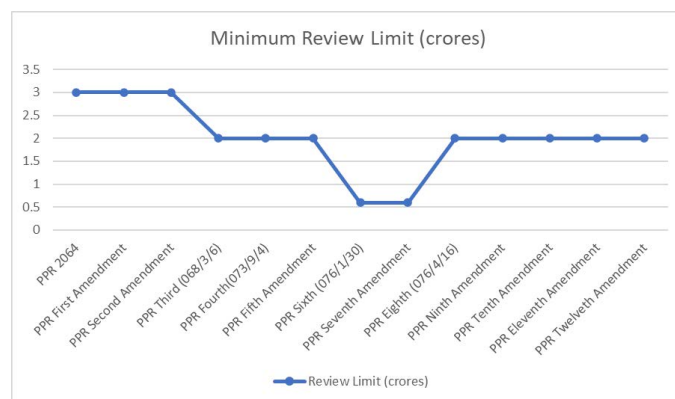


Figure 1: Change in minimum review limit amount with PPR amendments [3,4]

Also, minimum security amount that should be allocated while reviewing to the review committee has also been fluctuating as shown in Figure 2.

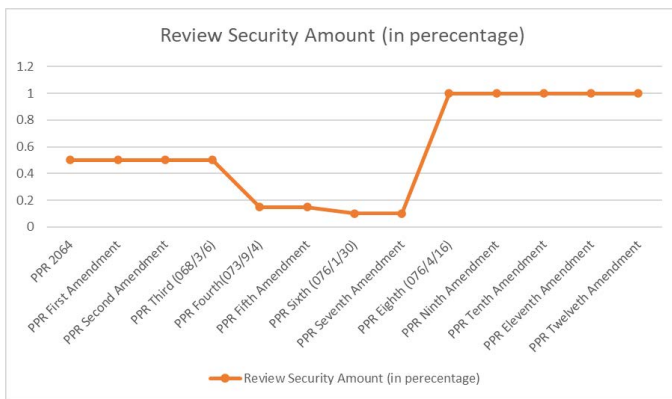


Figure 2: Change in review security amount in percentage with PPR amendments [3,4]

3. Objectives of the research

The specific objectives of this research are:

- To examine the limits set for the Review Committee in the PPR and evaluate their effectiveness in addressing procurement-related disputes and grievances. i.e., whether the current limit set for entering the review committee of 2 crores should be increased or decreased.
- To examine the security amount in percentage set for entering the review committee. i.e., whether the current security amount of 1 percentage of bid amount for entering the review committee should be increased or decreased.
- To find the higher percentage of cases arising from low percentage of causes as well as ranking those cases and provide suggestions for mitigating those causes for amendment in PPA and PPR in the near future.

The objectives of this research can be clearly understood from the research matrix shown in Table 1.

Table 1: Research Matrix

S.No	Objectives	Indicator	Source of Information	Respondent	Question	Measurement
1	The current limit (project cost) set for entering the review committee should be increased or decreased	Case files for different project cost limits	Public Procurement Review Committee	Public Entity/Bidder	How many decisions by public entity as being overturned when project cost limit is decreasing?	Line graph(trend analysis)
2	The current limit (security deposit in percentage) set for entering the review committee should be increased or decreased	Case files for different security limits	Public Procurement Review Committee	Public Entity/Bidder	How many decisions by public entity as being overturned when security limit is decreasing?	Line graph(trend analysis)
3	To find out whether similar cases are entering the review committee frequently and ranking the cases	Technical capacity of contractor and case files	Public Procurement Review Committee	Public Entity/Bidder	What and how many numbers of categorical cases are entering the review committee?	Score(Standard Competition Ranking)

4. Literature Review

Studying Nepali and international practices for review committee was important in order to perform the research investigation. Globally, a number of review systems and processes are in use, entailing the creation and consideration of a large number of decision criteria that are used. There are many distinct criteria, information types, and assessment techniques, according to literature review.

The following records or choices made by the contracting authority or entity may be subject to a request for review:

- 1) procurement records;
- 2) the candidate or tenderer's elimination from the process;
- 3) whether a candidate or tenderer is not excluded from the procurement process in accordance with Public Procurement Act subsection 97(2);
- 4) whether an economic operator is qualified or not;
- 5) deeming a bid acceptable;
- 6) the contracting authority or entity may decide to reject a tender or reject all tenders;
- 7) to declare a tender successful; or
- 8) to make any other decision based on the Public Procurement Act that may violate the requester's rights or negatively impact its interests [1].

Only the changes to the procurement documents that are in conflict with the final decision of the Review Committee or the final judgment made with regard to the same public procurement, or changes made independently thereof, may be contested during the extended time limit if the contracting authority or entity has modified the procurement documents and extended the deadline for submitting tenders, requests to participate, or C conceptual designs [1].

While talking about provisions for review in procurement Asian Development Bank basically mentions about prior review and post review.

Prior review Contracts classified as high risk are reviewed in advance during the project conceptualization phase, and they are verified and detailed in the project procurement plan (approved by ADB) in accordance with the financial and legal terms of the project. In order to ensure that the borrower's proposed procurement actions comply with ADB's 2017 procurement policy and procurement regulations, prior review entails ADB reviewing and providing a "no-objection" prior to each step in the procurement process. Additionally, ADB reviews and certifies that the project's financing agreement, procurement plan, and, where applicable, the provisions of the relevant procurement documents (collectively referred to as "the agreed procurement procedures"). The borrower's procurement methods, documentation, bid evaluations, award recommendations, and draft contracts are all subject to prior approval. The borrower must satisfactorily respond to ADB's comments, including by making the necessary adjustments [5]. Post review Contracts not subject to ADB's previous assessment will, if specified in the procurement strategy, be subject to post review (sampling) utilizing a sample technique. When a number of withdrawal applications are received, during each reimbursement cycle, or as part of ADB's or its consultants' project review missions, procurement post review (sampling) may be carried out. Alternatively, it could be arranged as separate post-review trips on a semi-annual or annual basis, or on an as-needed basis, depending on what ADB deems most effective. The purpose of ADB's post review (sampling) is to:

- i) confirm that the processes used to obtain certain contract under the project adhere to the terms of the established procurement procedures;
- ii) find any flaws or noncompliance in the procurement processes;propose mitigating measures to correct procurement deficiencies and deter future noncompliance;
- iii) propose mitigating measures to address procurement deficiencies and discourage future noncompliance;
- iv) identify and report any indications of potential integrity violations;
- v) identify best practices and lessons learned;
- vi) rate the procurement process of sampled contracts in terms of compliance with the agreed procurement procedures and their contribution to the borrower's overall procurement performance rating; and
- vii) serve as a basis for updating that plan [5].

5. Research Methodology

The research's goal was to identify and study the review committee analysis process in Nepal. The research was conducted through various steps, including a review of the literature, data collection and analysis, a thorough statistical analysis, a determination of the hierarchy of cases and ranking them and a discussion of the findings, conclusions, and recommendations for Nepal's government [9]. This research will also include data-collection process and statistical data analysis. The research will consist of following main stages.

Stage One: Establish the research plan and define the research problem and objectives.

Stage Two: Perform a thorough literature research on the review committee's works.

Stage Three: Create a questionnaire to research the factors to take into account for the review committee from the number of case files.

Stage 4: Using the MS Office, conduct a thorough statistical analysis of the data gathered.

Stage 5: Create a hierarchy and rank the factors that were found from the case files.

Stage 6: Compare the result obtained with the existing minimum bid amount and security deposit percentage amount existing in Nepal.

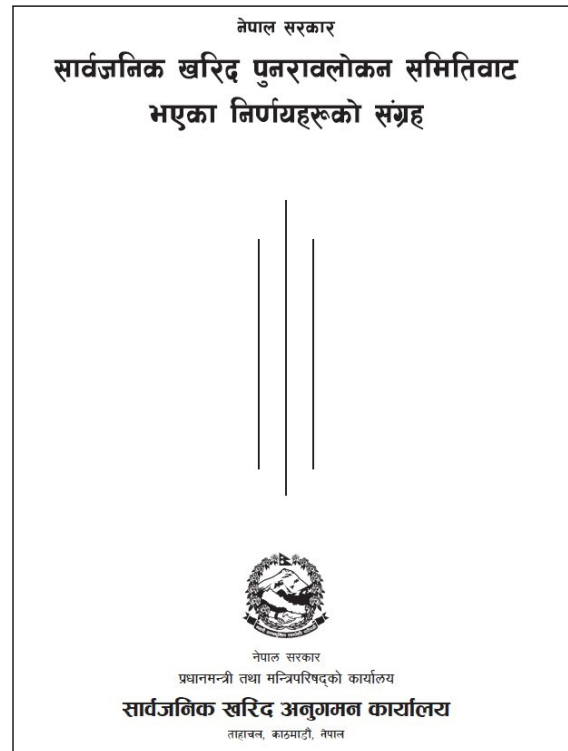
Stage 7: Discuss the results, and provide conclusions and recommendations for Nepal's construction industry [9].

Sample Selection

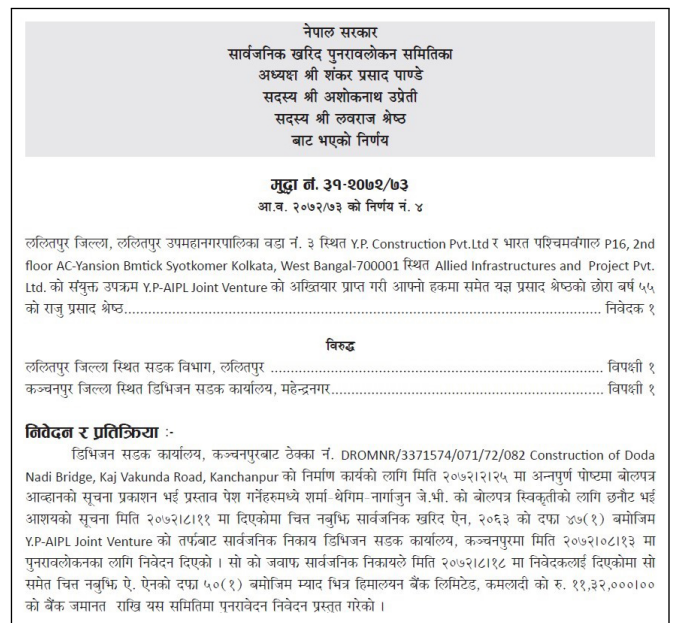
Various cases that went to Public Procurement Review Committee in Nepal made up the research's targeted audience.. 146 cases that were published by the PPRC made up the target sample.

6. Data Collection

The data collected was from the collection of cases provided by Public Procurement Monitoring Office(Source:PPMO).



Sample Data The sample data displayed here is about YP-AIPL JV filing an application in the project “Construction of Doda Nadi Bridge, Kaj Vakunda Road, Kanchanpur”(Source:PPMO).



Applicant's Claim Applicant makes the claim to review committee in the prescribed format specified by the committee(Source:PPMO).

निवेदकले टेक्का नं. DROMNR/3371574/071/72/082 Construction of Doda Nadi Bridge, Kaj Vakunda Road, Kanchanpur को पुल निर्माणको लागि रु. २२,६३,०५,८२९।२० कबोल गरी बोलपत्र पेश गरेको जुन उक्त पुल निर्माण गर्ने आशय पत्र प्राप्त गर्ने शर्मा-धेमिम-नागार्जुन जे.भी.को भन्दा रु. १,०१,८४,२६०।०४ ले कमि छ । बोलपत्र विद्युतिय माध्यम (e-Bidding) विधिबाट पेश गरिएको हुँदा सम्पूर्ण कागजात प्रस्तुत गर्न सम्भव नहुने हुनाले महत्वपूर्ण कागजात विद्युतिय माध्यमबाट प्रस्तुत गरि अन्य कागजात ठोस प्रतिलि (Hard Copy) वाट पेश गरिएको थियो । विपक्षीबाट विनिय श्रोतको सम्बन्धमा ने.रु. ७,६२,८०,०००।- बराबरको नगद प्रवाह हुनुपर्ने मापदण्ड रहेको र सो को लागि नगद सम्पत्ति, दाईत्व विहित भौतिक सम्पत्ति र सिक्कत कर्जा वा अन्य वित्तिय साधन हुन सक्ने प्रावधान बोलपत्र कागजातमा गरेको छ । निवेदक मुख्य साभेदार Y.P. Construction को रु. २९,४०,००,०००।- बराबर बैंक क्रेडिट लाईन र Allied Infrastructures and Project Pvt. Ltd. को भा.रु. १०,०४,८९१।- बराबर नगद मौज्जात भएको Short-term Loans and Advance रु. १८,७०,३३,६०९।३८ र Trade Receivable रु. ४,४८,७०,९६४।५० क्रमश आ.व. २०७०/७१ र २०१३/१४ को लेखापरीक्षण भएको वित्तिय विवरण प्रमाणित गरिएको हुँदा विनिय मापदण्ड पुरा नभएको भन नमिले हुँदा मेरो बोलपत्र सारभूत रुपमा प्रभावग्राही र न्यूनतम मुल्याङ्कित भएको हुँदा अन्यलाई टेक्का प्रदान गर्ने गरी डिभिजन सडक कार्यालय, कञ्चनपुर समेतबाट कामकारवाही निर्णय मुचना लगायतका सम्पूर्ण कार्य वदर गरि निवेदकलाई टेक्का प्रदान गरि निवेदक सँग सम्झौता गरि काम गर्नु गराउनु भनि आवश्यक र उपयुक्त आदेश जारी गरि पाई भन्ने मुख्य जिकिर रहेको छ ।

Table 3: Data breakdown for security limit percentage

Date	No of decisions	Approved	Rejected	Approved Percentage	Evaluation limit	
					Amount	Security %
2065 Falgun to 2073/9/4	39	19	20	49		0.5
2073/9/4 to 2076/1/30	58	38	20	66		0.15
2076/1/30 to 2076/4/16	7	5	2	71		0.1
2076/4/16 till now	39	21	18	54		1

Decision of Review Committee The decision given by the review committee for YP-AIPL JV filing an application in the project “Construction of Doda Nadi Bridge, Kaj Vakunda Road, Kanchanpur” was as follows where the chief of the public entity’s verdict was given the nod(Source:PPMO).

The provisional graph for public entity decision overturn percentage versus Minimum limit for review is found as follows which shows that the maximum overturn percentage is 71 percentage when the bid amount is minimum at 60 lakhs.

समितिको निर्णय :

उपरोक्त आधार तथा पुष्ट्याई अनुसार Y.P.-AIPL Joint Venture ले e-Bid माफत पेश गरेको बोलपत्र कागजातहरु मध्ये मुख्य साभेदार Y.P. Construction Pvt. Ltd. ले आर्थिक क्षमता प्रस्तुत गर्ने Form Fin. 1 (Financial Situation) र Form FIN - 3 (Financial Resources) साथ हिमालयन बैंक लिमिटेड, कर्पोरेट अफिस, कमलादीले जारी गरेको Credit Line Letter प्रस्तुत गरि नगद प्रवाहलाई आवश्यक पर्ने रकम नगद प्रवाह NRS 39.79 Million को ४० प्रतिशत पुरा गरेको देखिन्छ । तर अर्का साभेदार AIPL Pvt. Ltd., India ले e-Bid मा Mandatory भनिएको उपरोक्त Form Fin. 1 र Form FIN - 3 भरी पेश गरेको हुँदा each Partner ले अनिवार्य रुपमा पुर्‍याउनु पर्ने नगद प्रवाह NRS. 39.79 Million को २५ प्रतिशत पुरा गर्न नसकेकोले सार्वजनिक निकायले Y.P.-AIPL Joint Venture को बोलपत्र सारभूत रुपमा प्रभावग्राही नभएको भनि मुल्याङ्कनमा समावेश नगर्ने निर्णय नियमसम्मत नै भएकोले M/S Y.P.-AIPL Joint Venture ले पेश गरेको पुनरावलोकन जिकिर पुन सक्दैन । सार्वजनिक खरिद ऐन, २०६३ को दफा ५० को उपदफा ५ (क) बमोजिम पुनरावलोकन निवेदन खारिजभागी ठहरेछ । अरु तपसिल बमोजिम गर्ने :

तपसिल

- यो निर्णयको जानकारी सार्वजनिक खरिद अनुगमन कार्यालय र दुवै पक्षलाई दिने ।
- निवेदकको पुनरावेदन निवेदन खारिज भएकोले नियम बमोजिम जमानत जफत गर्ने ।
- सरोकारवालाको नक्कल माग गर्न आएमा दिने ।
- निर्णय सहितका कागजात, फायल अभिलेखबद्ध गरि सुरक्षित राख्ने ।

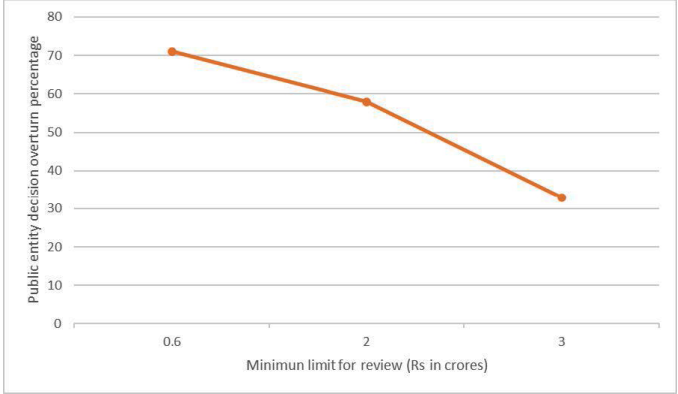


Figure 3: Public entity decision overturn percentage versus Minimum limit for review [4]

7. Data Analysis

The collected datas were analyzed in the following ways. Out of 143 cases that were analysed , 83 cases filed by the contractor was approved and 60 cases was rejected meaning 58 percentage of decisions done by the public entity were overturned.

Similarly the graph plotted between public entity decision overturn percentage and security percentage was found as follows which shows that the maximum overturn percentage is 71 percentage when the security deposit percentage is as low as 0.1 percentage.

Then while classifying the data in accordance to the minimum bid amount that could enter the review committee , it was found that the maximum decisions of the public entity was overturned (71 percentage) when the minimum bid amount was lowest at 60 lakhs.

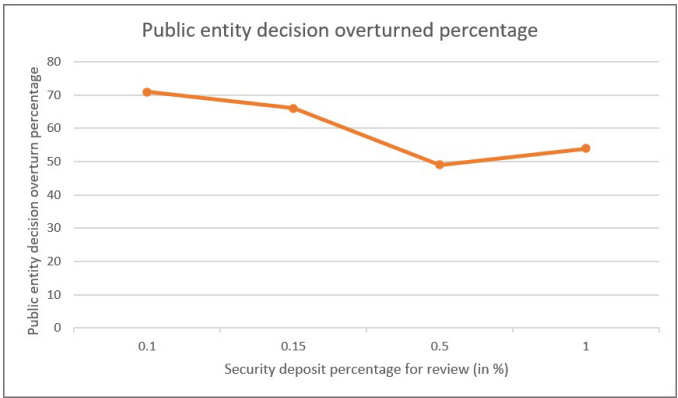


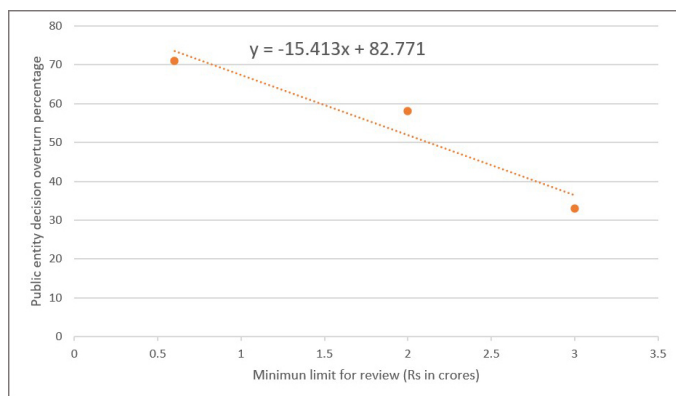
Figure 4: Public entity decision overturn percentage versus Minimum limit for review [4]

Table 2: Data breakdown for review limit amount

Date	No of decisions	Approved	Rejected	Approved Percentage	Evaluation limit	
					Amount	Security %
2065 Falgun to 2068/3/6	6	2	4	33	3 crores	
2068/4/6 to 2076/1/30 and 2076/4/16 till now	130	76	54	58	2 crores	
2076/1/30 to 2076/4/16	7	5	2	71	60 lakhs	

Also while classifying the above data on the basis of review security percentage , it was found that maximum error of the public entity was when the review security amount was the lowest at 0.1 percentage.

A straight line fit for the below graphs (Figure 6)shows Y intercept as 82.771 and 66.758 respectively which means the decision overturn percentage would be 82.771 percentage if there would be no minimum bid amount to enter PPRC and 66.758 percentage if there would be no security deposit to enter PPRC.



The classification of the case types shows the overall decision overturn percentage and the case percentage of the followings as the highest.

Table 4: Case types in Review Committee (Note: The Score column is calculated as Total Case Percentage*Overturn Percentage/Total of the same column*100 and rounded off to the nearest decimal place.)

Case Types	Total No	Total Case percentage	Overturned Cases	Overturn Percentage	Total Case Percentage* Overturn Percentage	Score	Rank
Technical	60	41.96	33	55.0	2308	39	1
Eligibility	13	9.09	7	53.8	490	8	4
Financial Situation	9	6.29	6	66.7	420	7	5
Bidding forms	18	12.59	13	72.2	909	15	3
Court related	3	2.10	2	66.7	140	2	7
Mistakes/ Negligence	31	21.68	18	58.1	1259	21	2
Collusive Bid	2	1.40	1	50.0	70	1	9
ITB37.1 not properly applied	4	2.80	3	75.0	210	4	6
Others	3	2.10	2	66.7	140	2	7
Total	143	100.00			5944	100	

Rank 1: Technical Specification not matched. (eg: Equipments asked (Minor, Major), Experience of Engineers, Specific Construction Experience)

Rank 2: Mistakes/Negligence (Form not properly filled, Wrong bid document published by client)

Rank 3: Bidding Forms (Letter of technical Bid, letter of price bid, table of price adjustment)

8. Conclusion

For the problem of our first objective, from the above data analysis it is clear that there is a need for reducing the minimum review limit.

For the second objective of our research, it is seen that the need for reducing the minimum review limit percentage is a must but extra resources to PPRC should be added.

For our final objective, contractors and clients should be extra careful about the higher frequencies cases while submitting and evaluating bids respectively.

Addressing the problems that was found during this research will ensure transparency, and efficiency. Public Procurement Review Committees can contribute to better outcomes and promote public confidence in the procurement process.

9. Significance of the study

If the conclusion of this research can included in PPA and PPR next amendments, fewer faulty decisions regarding awarding the contract will take place resulting transparency and efficiency in Public Procurement.

10. Recommendations for further research

- The capability of the public entity’s bid evaluation committee can be checked.
- The capability of the contractors to properly fill out the bid document during bidding can be checked.
- Further research may be carried out by using newer cases samples to get different or similar outputs.

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