

# GHOST CONTRACTORS IN NEPAL

Taisuke Miyao and Narendra Chand



## Background

Ghost contracting occurs when (typically) a foreign bidder forms a joint venture with a local contractor (or two or more contractors). However, after winning the international competitive bid and signing the contract, the foreign bidder disappears from contract execution in the field. The local partner or subcontractor conducts all the management, administration, and implementation of the awarded contract. Though the work was supposed to use international expertise, this does not materialize. In some cases, the disappearing partner does not even provide cash flow support. This seriously affects the contractor's project progress and portfolio performance.

Until a few years ago, ghost contractors were a phenomenon, particularly in the transport sector and the urban and water sector in Nepal. The Nepal Resident Mission, in cooperation with the Procurement, Portfolio, and Financial Management Department of the Asian Development Bank (ADB), analyzed the situation in 2018 and developed measures for uptake. The resident mission updated its analysis in 2021 and reviewed whether the measures taken had been effective or not.

## Summary of the 2018 Ghost Contracting Situation

In 2018, the ghost contracting situation in the transport sector and the urban and water sector in Nepal was alarming. Meanwhile, in the energy sector, foreign contractors were executing their contracts themselves. A deeper analysis was undertaken based on interviews with implementing agencies in the major sectors and on the size of the contracts. From this analysis, it was gleaned that, in the urban

and water sector, the smaller the size of the contract, the greater the problem relating to ghost contractors. The situation was similar in the transport sector.

Findings are as follows:

- 100% in contracts worth less than \$5 million,
- 100% in contracts valued between \$5 million and \$10 million,
- 70% in contracts valued between \$10 million and \$20 million, and
- 63% in contracts greater than \$20 million.

As noted above, in the energy sector, foreign contractors were present during contract implementation and were, in fact, working in the field. The ghost contracting situation in Nepal is summarized in Table 1 (for the urban and water sector) and Table 2 (for the transport sector).

**TABLE 1. Status of Ghost Contracting in Nepal's Urban and Water Sector Projects, 2018**

Contract Size	No. of Project(s)	Presence of Lead Partner	Absence of Lead Partner	% of Absence
<\$5 million	8	0	8	100
\$5 million–10 million	3	0	3	100
\$10 million–20 million	10	3	7	70
>\$20 million	8	3	5	63

Source: Asian Development Bank.

**TABLE 2. Status of Ghost Contracting in Nepal's Transport Sector Projects, 2018**

Contract Size	No. of Project(s)	Presence of Lead Partner	Absence of Lead Partner	% of Absence
<\$5 million	0	0	0	0
\$5 million–10 million	1	1	0	0
\$10 million–20 million	1	0	1	100
>\$20 million	3	2	1	33

Source: Asian Development Bank.

## MESSAGE

The Asian Development Bank (ADB) provides loans and grants to our developing member countries (DMCs) for infrastructure projects to strengthen their economy. Contractors of the ADB-funded projects are selected through the process agreed between ADB and the DMCs, which shall be in accordance with ADB Procurement Policy and Regulations. Open competitive bidding is the default method of selection. Under the Open competitive bidding procedure, the financial situation and previous experience of bidders are carefully assessed and only those who meet the minimum qualification criteria set specifically for each bid are considered as qualified bidders.



Contractor's capacity and capability are among the key elements for a smooth implementation of contracts, leading to the success of projects. Thus, DMCs mobilize so much human resources and take time to assess submitted bids, including the assessment of bidders' compliance on qualification requirements.

However, it has been observed that contractors selected through such a process do not always utilize their technical and financial capacity demonstrated at the time of bidding during the stage of contract execution, which delays project implementation. One of the frequent issues seen at the field is the so-called "ghost contractor" situation, where the contractor whose capacity was assessed in the bidding process "disappears" from the project site and leaves the project execution to their joint-venture partners or subcontractors.

This publication records how the Government of Nepal and ADB tackled the issue of ghost contracting. Mitigation measures presented in this publication seem to be effective to some extent. I hope our recent experience in Nepal is useful for project implementation in the future, not just in Nepal but also in other countries.

Let me congratulate Taisuke Miyao, senior procurement specialist, and Narendra Chand, senior procurement officer, ADB, for leading the work in publishing this guide. I would also like to thank the project directors who shared their experience on this topic in Nepal and provided their useful opinions, and ADB staff who provided useful comments on and/or prepared this publication.

### Arnaud Cauchois

Country Director, Nepal Resident Mission  
Asian Development Bank

## Ghost Contracting Situation Updated for 2021

In 2021, the ghost contracting situation in the urban and water sector in Nepal had improved. Since 2018, 23 contracts had been awarded. Among them, 17 had been awarded to joint ventures between foreign and local partners. In most of these contracts, the foreign joint-venture partners had been absent during contract implementation. The analysis indicates that the smaller the size of the contract, the greater the problem of ghost contracting:

- 100% in contracts worth less than \$5 million,
- 67% in contracts valued between \$5 million and \$10 million,
- 50% in contracts valued between \$10 million and \$20 million, and
- 50% in contracts greater than \$20 million.

However, in most cases, the local subcontractors or the joint-venture partners who have full responsibility had been performing well without any involvement of their lead foreign partners. Table 3 summarizes the ghost contracting situation in Nepal's urban and water sector as of 2021

In the transport sector, contracts had been awarded to foreign contractors, but all of them to single foreign companies only. Table 4 describes the 2021 ghost contracting situation in Nepal's transport sector. In the energy sector, contracts had been awarded to foreign contractors, but all of them to single foreign companies or joint ventures consisting of foreign partners only. This is because there are no local

**TABLE 3. Status of Ghost Contracting in Nepal's Urban and Water Sector Projects, 2021**

Contract Size	No. of Project(s)	Presence of Lead Partner	Absence of Lead Partner	% of Absence
<\$5 million	3	0	3	100
\$5 million–10 million	5	2	3	67
\$10 million–20 million	6	3	6	50
>\$20 million	9	2	4	50

Source: Asian Development Bank.

**TABLE 4. Status of Ghost Contracting in Nepal's Transport Sector Projects (All Single Contractors), 2021**

Contract Size	No. of Project(s)	Presence of Lead Partner	Absence of Lead Partner	% of Absence
<\$5 million	0	0	0	0
\$5 million–10 million	0	0	0	0
\$10 million–20 million	1	1	0	0
>\$20 million	5	5	0	0

Source: Asian Development Bank.

contractors in Nepal with experience in energy, except in small decentralized renewable energy sources such as mini hydro and solar mini-grid.

## Executing Agencies' Opinion: What Do the Main Stakeholders Say?

The opinions of a few directors of ADB-funded projects were sought. Their responses are summarized below.

### Opinion of the Director of Road Projects

Site progress is not what was expected from an experienced foreign contractor. There may be a number of reasons for this, but the most likely are as follows:

- The contractor wants to carry out the work in Nepal using staff with insufficient capacity and, in reality, they have limited authority, as can be seen in the project documentation.
- Sole foreign contractors consume a substantial amount of time in the initial phases of the contract in understanding the local working environment.
- Foreign contractors believe, at the time of bidding, that Nepalese human resources are very cheap; however, such is not the case, as realized during contract execution.
- Foreign contractors fail to understand Nepalese public sentiment and, as a result, run into a number of strikes for often minor issues.
- Contractors need to obey the laws of Nepal and comply with legal requirements, such as for permits, licenses, etc. Those who have no local partner have to rely on local agents who have no experience in this regard, which has a very big impact on performance.

### Opinion of the Director of Water Projects

The water project director shared the following views:

- Contract requirements with regard to minimum average annual construction turnover and construction experience of a similar size and nature are too high for local construction companies; hence, contractors need to find “ghost contractors” with a higher profile.
- A provision declaring the engagement of all joint-venture partners will help make all partners responsible for the contract's accomplishment.
- A trial provision of having the contractor's representative act as a full-time employee of bidder—and, in the case of joint ventures, the lead partner—did not help and, sometimes, it was not practical either.

- The international partner of the joint venture must have at least one experience of project construction of a similar nature from outside the home country.
- The joint venture agreement should clearly mention, along with the joint-venture shares, which among the joint-venture partners will do what (engagement-sharing plan).
- There should be a penalty provision, including banning the firm from further engagement for nonparticipation during implementation, in accordance with the engagement-sharing plan.
- It is generally a matter of intention of the parties how seriously or honestly the joint-venture partners comply with their own commitments. From experience, single foreign contractors who are without joint-venture partners do not perform well; whereas, in some cases, local subcontractors or joint-venture partners with full responsibility perform well without any involvement of their lead foreign partner.
- Good foreign contractors may not be willing to be engaged, for various reasons, including cumbersome rules, procedures, and working culture; slow decision-making; and heavy requirements and delays regarding work permits, visas, and payments in foreign currency.

## Recommendations: Adjustments and Innovations in the Bidding Documents

This section enumerates the recommendations for minimizing ghost contracting, from the design and bidding preparation stage to contract implementation.

### During Design and Bidding Document Preparation

The following measures will be undertaken during design and bidding preparation:

- (i) **Appropriate sizing of the contract.** In the strategic procurement planning process, project processing teams, based on the findings of market analysis, need to carefully analyze what contract size leads selected firms (both foreign and local) to be involved effectively in contract execution. Lessons learned from contracts awarded to foreign contractors, in particular in the transport sector, would be taken into consideration.
- (ii) **Use of the “abnormally low bid” provision.** As per the latest standard bidding documents, an “abnormally low bid” provision is included

in Section 1: Instructions to Bidders, which discourages or prevents contractors from quoting substantially low bid prices. If the bid price is 20% below the engineer's estimate, the employer will be advised to seek a written explanation from the lowest evaluated bidder of the reasons for the offered bid price, including a detailed analysis of cost and unit prices.<sup>1</sup> After examining the explanation given, and if the evidence provided does not satisfactorily account for the low bid price, the employer may reject the bid. This is in line with the provisions of the Procurement Regulations of ADB and Rule 65 of the Public Procurement Regulations of the Government of Nepal.

- (iii) **Flexibility in the evaluation and qualification criteria.** In Section 3: Evaluation and Qualification Criteria, flexibility should be exercised with regard to lowering requirements for (a) minimum average annual construction turnover and (b) construction experience of a similar size and nature, to enhance further development of domestic contracting industries.
- (iv) **Clarified engagement plan.** Section 4: Bidding Forms of the bidding documents should include a form for the bidder to clearly state how each joint-venture partner will be engaged in the work (the engagement plan).<sup>2</sup>
- (v) **Employer's requirements.** In Section 6: Personnel Requirements, employer's requirements in the bidding documents may include the following:
  - (a) The contractor's representative shall be a full-time employee of the bidder (in the case of joint ventures, of the lead partner)<sup>3</sup> for at least 1 year prior to the bid submission date.
  - (b) The contractor's representative shall be at the worksite during the contract duration.

- (c) Failure to comply with this requirement will lead to termination by the employer, as stipulated in the General Conditions of Contract (GCC) 15.<sup>4</sup>

- (vi) **Contractor's representative.** Referring to GCC 4.3 (Contractor's Representative) of Section 8, Particular Conditions of Contract (PCC) may include, at the end of the subclauses, the following: "For contractors consisting of a joint venture, the contractor's representative shall be a permanent employee of the lead partner."
- (vii) **Contractor's personnel.** Referring to GCC 6.9 (Contractor's Personnel) of Section 8, PCC may include, at the end of the subclause, the following conditions:
  - (a) If the contractor is a joint venture, the majority of the contractor's key personnel, as required under the employer's requirements (Section 6: Personnel Requirements), shall be from the lead partner.
  - (b) The project manager or contract manager shall require the bidder (in the case of joint ventures, the partner who meets the major requirement of experience in contracts of a similar size and nature) to be the senior employee and to have worked with the firm for at least 1 year prior to the bid submission deadline.
  - (c) The project manager or the contract manager's representative shall be at the site location during the period of contract implementation. If the person is to be temporarily absent during the period, a suitable replacement shall be temporarily appointed, subject to the engineer's prior consent.
  - (d) Failure on these requirements will lead to a Notice to Correct (GCC 15.1) and Termination by Employer (GCC 15.2).

<sup>1</sup> Before seeking an explanation, the employer may need (i) to ensure that the technical proposal of the concerned bid covers appropriately the whole of the scope or technical specifications of the work, and (ii) to review the engineer's estimate to demonstrate it is still valid under the latest market conditions. ADB. 2018. *Abnormally Low Bids: Guidance Note on Procurement*. Manila.

<sup>2</sup> Though submission of an unsatisfactory engagement plan will not be a reason for disqualification, any questionable matter shall be listed and put on the agenda for contract negotiation. Any clarified matter should be recorded in writing and may become part of the contract obligation. Also, further reinforcement in the contract may be developed to make it possible for the employer to withhold the certification of the contractor's payment and, if the situation needs to be rectified, the Notice to Correct may be issued in accordance with General Conditions of Contract (GCC) 15.1.

<sup>3</sup> The needs of the lead partner should be properly defined.

<sup>4</sup> The International Federation of Consulting Engineers (FIDIC) Conditions of Contract for Construction (2017) GCC 4.3 requires the contractor's representative to be "based at the Site for the whole time that the Works are being executed at the Site." FIDIC also adds a new clause, which requires all key personnel to "be at the Site ... for the whole time that the Works are being executed" (GCC 6.12).

- (vii) **Total advance payment.** Referring to GCC 14.2 (Total Advance Payment) of Section 8, PCC:

Total of 15% of the Accepted Contract Amount payable in the currencies and proportions in which the Accepted Contract Amount is payable. The advance payment shall be made in two installments: 1st installment of 7.5%, which shall be paid after signing the Contract Agreement; and 2nd installment of another 7.5%, which shall be paid after the contractor's mobilization at the site as mentioned below:

- (a) Personnel as mentioned in Personnel Requirements (Volume II, Employer's Requirements, Part A); and
- (b) Equipment as specified in Equipment Requirements as necessary for 2nd installment payment (Volume II, Employer's Requirements, Part A).

### **During Contract Implementation**

The following measures will be undertaken during contract implementation:

- (i) The engineer and the employer shall monitor closely the engagement plan, including the requirement of presence of the contractor's representative on site. With appropriate reinforcements in the contract provisions, in the case of nonfulfillment, the engineer may withhold the certification of the contractor's payment as per GCC 14.6 (b). Further, if the situation needs to be rectified, a Notice to Correct may be issued in accordance with GCC 15.1.
- (ii) ADB may assist the executing agency and/or implementing agency to agree with the contractor on a time-bound action plan to rectify the matter and closely monitor progress.

- (iii) A Contractor Performance Monitoring and Evaluation System will be fully utilized for tracking contractors' performance, including presence of the lead contractor.
- (iv) The Contract Management Plan shall be strictly implemented.
- (v) Review missions of ADB should check compliance on resource mobilization, utilization of advance payments, and adherence to the program submitted by the contractor. Action plans of the Aide Memoire should be on the agenda of the monthly meetings among the employer, engineer, and contractor.
- (vi) Explore the possibility of paying the advance payment and interim payment, including the foreign currency component, in the employer's country instead of in the payment country for the respective currency. This mechanism will ensure proper utilization of the advance payment for the intended purpose and avoid a cash crunch during contract execution.

Capacity constraints on contract management of the executing agency and/or implementing agency are always an issue. More effective enrollment of supervision consultants is also required. The Nepal Resident Mission's capacity development program through the Capacity Development Resource Center for contract management needs to be enhanced with the participation of consultants to increase overall resource capacity.

The Nepal Resident Mission will continue to discuss with the government and local industry to ensure that nonexistence of foreign joint-venture partners does not affect project implementation.



## About the Asian Development Bank

ADB is committed to achieving a prosperous, inclusive, resilient, and sustainable Asia and the Pacific, while sustaining its efforts to eradicate extreme poverty. Established in 1966, it is owned by 68 members—49 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.



Creative Commons Attribution 3.0 IGO license  
(CC BY 3.0 IGO)

© 2023 Asian Development Bank  
6 ADB Avenue, Mandaluyong City, 1550 Metro Manila, Philippines  
Tel +63 2 8632 4444; Fax +63 2 8636 2444  
[www.adb.org](http://www.adb.org)

Some rights reserved. Published in June 2023.

ISBN 978-92-9270-166-6 (print); 978-92-9270-167-3 (electronic)  
Publication Stock No. TIM230194-2  
DOI: <http://dx.doi.org/10.22617/TIM230194-2>

The views expressed in this publication are those of the authors and do not necessarily reflect the views and policies of the Asian Development Bank (ADB) or its Board of Governors or the governments they represent.

ADB does not guarantee the accuracy of the data included in this publication and accepts no responsibility for any consequence of their use. The mention of specific companies or products of manufacturers does not imply that they are endorsed or recommended by ADB in preference to others of a similar nature that are not mentioned.

By making any designation of or reference to a particular territory or geographic area, or by using the term “country” in this publication, ADB does not intend to make any judgments as to the legal or other status of any territory or area.

This work is available under the Creative Commons Attribution 3.0 IGO license (CC BY 3.0 IGO) <https://creativecommons.org/licenses/by/3.0/igo/>. By using the content of this publication, you agree to be bound by the terms of this license. For attribution, translations, adaptations, and permissions, please read the provisions and terms of use at <https://www.adb.org/terms-use#openaccess>.

This CC license does not apply to non-ADB copyright materials in this publication. If the material is attributed to another source, please contact the copyright owner or publisher of that source for permission to reproduce it.

ADB cannot be held liable for any claims that arise as a result of your use of the material.

Please contact [pubsmarketing@adb.org](mailto:pubsmarketing@adb.org) if you have questions or comments with respect to content, or if you wish to obtain copyright permission for your intended use that does not fall within these terms, or for permission to use the ADB logo.

Corrigenda to ADB publications may be found at <http://www.adb.org/publications/corrigenda>.

### Notes:

In this publication, “\$” refers to United States dollars.

Cover design by Bhuvan Adhikari.