

**ROYAL GOVERNMENT OF BHUTAN**

**MINISTRY OF FINANCE**

**DEPARTMENT OF PROCUREMENT AND PROPERTIES**



**GUIDELINES FOR MILESTONE AGREEMENT 2023**

## **PREFACE**

One of the principal mandates and powers of the Ministry of Finance, as provided under section 104 (i) of the Public Finance (amendment) Act of Bhutan 2012 is to issue rules, manuals, directives, instructions or notifications ensuring an equitable, transparent, competitive and cost-effective procurement system in the country. While the milestone agreement is practiced by some procuring agencies, proper understanding and uniform implementation of Milestone Agreement is missing because of which the Guidelines for Milestone Contract 2023 is drafted.

Ministry of Finance in the exercise of the power conferred by the section 104 (i) of the Public Finance (amendment) Act of Bhutan 2012 hereby adopts Guidelines for Milestone Contract 2023 vide 141<sup>st</sup> Policy and Planning Coordination Meeting on 20<sup>th</sup> February, 2023 which shall come into effect from 1<sup>st</sup> July 2023.

Any queries, clarification, interpretation on this standard bidding document contact:

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## INTRODUCTION

In an effort to bring about consistency and uniformity in the implementation of the milestone agreement, the Ministry of Finance is pleased to issue the Guidelines for Milestone Agreement. The inconsistency in adoption of the milestone agreement by different procuring agencies resulted in confusion among the engineers on evaluation and implementation of relevant clauses in the Contract Agreement.

The sole intention of having milestone agreement in the contract is to ensure that the contractor starts the work from the day the site is being handed over to them and not wait till the last phase of the contract duration which normally ends up in contractual issues.

Therefore, the incorporation of such strategies will not only help in smooth project progress but also timely completion and quality construction avoiding various contractual complications.

With the issue of this guidelines with removing the ambiguities, it is expected to make smooth implementation while executing different projects.

## 1. Incorporation in the Standard Bidding Document

- (1) In reference to Procurement Rules and Regulation 2019 clause no. 6.4.3 (b), 'Monitoring periodically progress in implementation of the contract, including determination of the volume of works accomplished according to work plan, milestone agreement and inspection and testing of quality aspects, the clause for milestone agreement shall be incorporated in the preparation of Standard Bidding Document.
- (2) The Clause which shall read as follows shall be under Section VII. Special Conditions of Contract; B. Time Control, Program **GCC 27.1 (c) & GCC 27.3**, and Termination **GCC 59.2 (k) & GCC 59.2 (l)**:

**SCC; GCC 27.1 (c):** *The milestone agreement shall be signed within 30 days of signing the contract agreement which shall be a part of contract.*

**SCC: GCC 27.3:** *The period between program updates is as and when required by the Employer. However, work program updates shall not be allowed within the milestone period. In case of force majeure, change of scope and genuine hindrances as approved by procuring agencies resulting in time compensation, the duration of the milestone agreement may be revised accordingly. However, the physical target specified in the milestone agreement shall not be revised.*

**SCC: GCC 59.2 (k):** *Failure to submit, sign and execute milestone agreement in accordance with clause GCC 27.1 (c), shall be treated as fundamental breach of contract by the contractor.*

**SCC: GCC 59.2 (l):** Additional Clause:

- (i) *If the contractor fails to achieve all the three milestone agreements consecutively.*

**OR**

- (ii) *In the event the contractor achieves at least one milestone agreement, but fails to achieve a minimum of 50% in every item specified in the agreements at the end of three milestone periods.*

- (3) After signing of the Resource-Based Work Plan the contractor shall sign milestone agreement with the employer for every (**insert number of months**) specifying the deliverables in terms of **physical target** at the end of each milestone agreement.

## 2. Application

The Milestone contract shall apply to procurement of works as follows:

- (1) Estimate of Nu. 10 Million and above for works in category 1 (Roads & Bridges);
- (2) Estimate of Nu. 15 Million and above for works of category 2, 3 & 4 (Building works, Bhutanese painting works & Telecommunication works);

## 3. Determination of Milestone Targets and Duration

- (1) The milestone targets shall be specified as physical targets as deemed appropriate.
- (2) The milestone agreement shall be signed for contracts having contract duration of 8 months and above and/or contract amount exceeding **Nu. 10 Million for W1 & Nu. 15 Million for W2, W3 & W4** categories respectively.
- (3) The duration for the three milestone periods shall be taken as minimum of **40%** to maximum of **50%** of total contract duration equally divided into three milestone periods.
- (4) The physical targets shall be specified for respective milestone periods.
- (5) In each milestone period, the items and quantities shall be selected from the BoQ of the contract agreement based on the **approved resource based work plan<sup>1</sup>**.
- (6) For example; if **40%** of the total contract duration is taken as the total milestone period for three milestone agreements, approximately 35% of physical targets need to be specified.

## 4. Signing of Milestone Agreement

- (1) The milestone agreement shall be signed within **10** days of signing the contract agreement<sup>2</sup>
- (2) Milestone agreement shall be signed between the Employer and the Contractor, upon mutual agreement on the specified physical target and period.
- (3) All the three milestone agreements shall be signed **at once** before the start of execution, between the head of Engineering sector/division/services/units/ROs and the Contractor/Contractor's authorized representative in witness of the concerned Project Manager/Site Engineer (Regional Office) and Contractor's representative.

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<sup>1</sup>Responsibility and accountability for reviewing and finalizing the resource-based work plan shall lie with the concerned Project Manager.

<sup>2</sup>Responsibility and accountability for preparation of Milestone Agreement shall lie with the Engineering sector/division/services/units/Ros

## 5. Revision of Milestone Agreement

The revision of milestone agreement in terms of physical targets shall not be allowed. However, in case of force majeure, change in scope and genuine hindrances as approved by the procuring agencies resulting in time compensation, only the milestone agreement duration may be extended.

## 6. Evaluation of Milestone Agreement

- (1) At the end of each milestone agreement period, the physical target achieved shall be evaluated corresponding to each item from the BoQ selected and specified in the milestone agreement.
- (2) The evaluation of each milestone agreement shall be completed within 10 days from the end of each milestone agreement period.
- (3) In the event of non-achievement of the physical target specified in the 1<sup>st</sup> milestone period, there shall be no carryover of the non-achieved quantity of the items to the 2<sup>nd</sup> milestone agreement period and similarly to 3<sup>rd</sup> milestone period.
- (4) The physical target specified initially at the time of milestone agreement signing shall remain unchanged for each milestone period to the end of 3<sup>rd</sup> milestone period.
- (5) At the end of the 3<sup>rd</sup> milestone agreement period, the overall evaluation shall be done.

*Note: The above conditions are specific to milestone agreement and not to quantities of total BoQ of the project. At the end of the contract duration, the contractor shall achieve all the quantities of the BoQ of Contract Agreement including variation or additional works.*

- (6) During the evaluation of the milestone agreement the following evaluation shall be taken in to account;
  - (i) **1<sup>st</sup> Milestone target specified Vs Achievement of targets for each item:**

- a) If all the targets specified in the milestone agreement for each item/activity is achieved<sup>1</sup>, then the milestone agreement is passed.
- b) Even if one of the targets of any of the items/activity specified in the milestone agreement is not achieved\*, then the milestone agreement failed.

**(ii) 2<sup>nd</sup> Milestone target specified Vs Achievement of target for each item.**

- a) If all the targets specified in the milestone agreement for each item/activity is achieved<sup>3</sup>, then the milestone agreement is passed.
- b) Even if one of the targets of any of the items/activity specified in the milestone agreement is not achieved<sup>3</sup>, then the milestone agreement failed.

**(iii) 3<sup>rd</sup> Milestone target specified Vs Achievement of target for each item.**

- a) If all the targets specified in the milestone agreement for each item/activity is achieved<sup>3</sup>, then the milestone agreement is passed.
  - b) Even if one of the targets of any of the items/activity specified in the milestone agreement is not achieved<sup>3</sup>, then the milestone agreement failed.
- (7) Failing to achieve all the three-milestone agreement targets consecutively results in total failure of the milestone agreement. This refers to condition No. 1 of SCC; GCC 27.1 (c).
  - (8) In the event, if among the three milestone agreement targets, one milestone agreement target is achieved, then the cumulative targets achieved in all the three milestone agreements shall be evaluated with the total targets specified in the three milestone agreement for each item.
  - (9) Upon final evaluation:
    - (i) If the cumulative physical achievement is equal to or greater than 50% of the total targets specified in the three milestone agreement, then the milestone agreement is passed.
    - (ii) If the cumulative achievement of targets is less than 50% of the total quantities specified for every item/activity in the three milestone agreement, then the milestone agreement is failed. This refers to condition No.2 of SCC; GCC 27.1 (c)

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<sup>3</sup>The physical target achieved shall be in conformity with the Design and the Technical Specification.



- (iii) If the contractor falls into any one of the conditions specified in SCC; GCC 27.1 (c), it shall be a fundamental breach of contract by the contractor warranting termination of the contract by the Employer.

### 3. Annexure I (Sample Milestone Agreement Format)

| <p style="text-align: center;">This Agreement is made the <i>[insert day]</i> day of <i>[insert month]</i>, <i>[insert year]</i><br/> between<br/> <i>[insert name and address of Head of Engineering Sector/Division/Section/Unit/RO]</i> (for the Employer) of one part<br/> and<br/> <i>[insert name and address Contractor]</i> (for the Contractor) of the other part.</p> <p>By signing this Agreement, the Contractor hereby agrees to execute Milestone Agreement No. 1, 2 &amp; 3 for the Work<br/> - <i>[insert name and identification number of Contract]</i> within the three milestone period; MA No. 1 (<i>insert duration, from – to, date, month and year</i>). MA No 2 (<i>insert duration, from – to, date, month and year</i>) and MA No.3 (<i>insert duration, from – to, date, month and year</i>), as per the approved resource based Work Program and as specified in Special Conditions of Contract and the General Conditions of the Contract Agreement.</p> <p><b>Name of Contractor: ...</b></p> <p><b>No. of Months in a Milestone Contract:</b></p> |  |      |  |  |  |
|---|--|------|--|--|--|
| Sl No   | Activity   | Unit | Physical Target for MA No.1 ( <i>insert duration from – to</i> ) | Physical Target for MA No.2 ( <i>insert duration from – to</i> ) | Physical Target for MA No.3 ( <i>insert duration from – to</i> ) |
| 1   | <i>Insert the description of the activity in reference to BoQ items as per the approved resource based work plan</i> |      | <i>Specify the quantity to be achieved in this particular MA</i> | <i>Specify the quantity to be achieved in this particular MA</i> | <i>Specify the quantity to be achieved in this particular MA</i> |

**(Affix Legal**

**(Affix Legal**

**Signature for**

**Signature for**

**(Contractor/Contractor's Authorized**

**Witness:**

**Witness:**

#### 4. Annexure II (Example/Illustration)

- (1) Contract duration **15 Months (Starting January 2021 to March 2022)**
- (2) Leaving 1 month as mobilization period, MSA can be effective from the month of February 2021.
- (3) The three milestone period can be 6 months which is 40% of overall contract duration. Then this is equally divided into three milestone periods of 2 months each.
- (4) Corresponding to three milestone duration specified as 40% of the total contract duration (6 months), the physical target shall be specified as 35% of the total physical target of the contract.
- (5) The 35% physical targets shall be equally divided into three for respective 2 months of milestone period.
- (6) The physical targets shall be selected from the items in the BoQ which falls within the milestone period (6 months) of total contract duration as per the approved resource based work plan.

*Note: This is merely for proper understanding of the MA but not recommended to be used during implementation of MA*

##### Case I (*Illustration*)

##### Milestone Agreement No 1. (1<sup>st</sup> February 2021 – 31<sup>st</sup> March 2021)

| Sl No | Activity | BoQ Quantity | Unit | Physical Target Specified | Physical Target Achieved | Remarks |
|-------|----------|--------------|------|---------------------------|--------------------------|---------|
| 1     | FC       | 10,000       | Cu.m | 1,200                     | 1,500                    | Pass    |
| 2     | GSB      | 6,000        | Cu.m | 500                       | 600                      | Pass    |
| 3     | WMM      | 5,800        | Cu.m | 380                       | 200                      | Fail    |

##### Milestone Agreement No 2. (1<sup>st</sup> April 2021 – 31<sup>st</sup> May 2021)

| Sl No | Activity | BoQ Quantity | Unit | Physical Target Specified | Physical Target Achieved | Remarks |
|-------|----------|--------------|------|---------------------------|--------------------------|---------|
| 1     | FC       | 10,000       | Cu.m | 1,300                     | 1,500                    | Pass    |
| 2     | GSB      | 6,000        | Cu.m | 700                       | 600                      | Fail    |
| 3     | WMM      | 5,800        | Cu.m | 650                       | 800                      | Pass    |

**Milestone Agreement No 3. (1<sup>st</sup> June 2021 – 31<sup>st</sup> July 2021)**

| Sl No | Activity | BoQ Quantity | Unit | Physical Target Specified | Physical Target Achieved | Remarks |
|-------|----------|--------------|------|---------------------------|--------------------------|---------|
| 1     | FC       | 10,000       | Cu.m | 1,000                     | 1,500                    | Pass    |
| 2     | GSB      | 6,000        | Cu.m | 900                       | 700                      | Fail    |
| 3     | WMM      | 5,800        | Cu.m | 1000                      | 600                      | Fail    |

- i. In this case, the total percentage of physical targets for each item in the three milestone agreement specified is **35%** of the total quantity of BoQ.
- ii. The total duration of three milestone periods (6 months), which is **40%** of total contract duration.

From the above tables of three milestone agreement evaluation, it can be observed that all the three milestone agreements failed consecutively as targets specified are not achieved in one or two of the items.

*Note: This is merely for proper understanding of the MA but not recommended to be used during implementation of MA*

**Case II****Milestone Agreement No 1. (1<sup>st</sup> February 2021 – 31<sup>st</sup> March 2021)**

| Sl No | Activity | BoQ Quantity | Unit | Physical Target Specified | Physical Target Achieved | Remarks |
|-------|----------|--------------|------|---------------------------|--------------------------|---------|
| 1     | FC       | 10,000       | Cu.m | 1,200                     | 600                      | Fail    |
| 2     | GSB      | 6,000        | Cu.m | 500                       | 200                      | Fail    |
| 3     | WMM      | 5,800        | Cu.m | 380                       | 100                      | Fail    |

**Milestone Agreement No 2. (1<sup>st</sup> April 2021 – 31<sup>st</sup> May 2021)**

| Sl No | Activity | BoQ Quantity | Unit | Physical Target Specified | Physical Target Achieved | Remarks |
|-------|----------|--------------|------|---------------------------|--------------------------|---------|
| 1     | FC       | 10,000       | Cu.m | 1,300                     | 700                      | Fail    |
| 2     | GSB      | 6,000        | Cu.m | 700                       | 400                      | Fail    |

|   |     |       |      |     |     |      |
|---|-----|-------|------|-----|-----|------|
| 3 | WMM | 5,800 | Cu.m | 650 | 300 | Fail |
|---|-----|-------|------|-----|-----|------|

**Milestone Agreement No 3. (1<sup>st</sup> June 2021 – 31<sup>st</sup> July 2021)**

| Sl No | Activity | BoQ Quantity | Unit | Physical Target Specified | Physical Target Achieved | Remarks |
|-------|----------|--------------|------|---------------------------|--------------------------|---------|
| 1     | FC       | 10,000       | Cu.m | 1,000                     | 1,300                    | Pass    |
| 2     | GSB      | 6,000        | Cu.m | 900                       | 950                      | Pass    |
| 3     | WMM      | 5,800        | Cu.m | 1000                      | 1,000                    | Pass    |

- i. In this case, the overall percentage of physical targets for each item in the three milestone agreement specified is **35%** of the total quantity of BoQ.
- ii. The total duration of three milestone periods (6 months), which is **40%** of total contract duration.

From the above tables of three milestone agreement evaluation, it can be observed that two milestone agreement (1<sup>st</sup> & 2<sup>nd</sup>) fails as the physical target specified is not achieved in one or two of the items.

However, the 3<sup>rd</sup> milestone agreement is passed achieving all the physical targets specified in this particular milestone agreement.

In other words, all the items specified in this milestone agreement (3<sup>rd</sup> milestone agreement) are achieved.

In this case, the evaluation shall be done to find out whether **50%** of the total physical targets specified in the three milestone agreement are achieved for each item.

**Hence,**

| Sl No | Activity | Total Physical Target Specified in three milestone agreement | 50% of total Physical Target | Unit | Cumulative Physical Target Achieved | % of Physical Target Achieved | Remarks |
|-------|----------|--|------------------------------|------|-------------------------------------|-------------------------------|---------|
| 1     | FC       | 3,500  | 1,750                        | Cu.m | 2,600                               | 74.29%                        | Pass    |
| 2     | GSB      | 2,100  | 1,050                        | Cu.m | 1,550                               | 73.81%                        | Pass    |

|   |     |       |       |      |       |        |      |
|---|-----|-------|-------|------|-------|--------|------|
| 3 | WMM | 2,030 | 1,015 | Cu.m | 1,400 | 68.97% | Pass |
|---|-----|-------|-------|------|-------|--------|------|

**The result of overall milestone agreement evaluation is;**

The percentage of the cumulative physical target achievement in the three milestone agreement is equal or higher than 50% of the total physical target specified in the three milestone agreement.

**Hence, the milestone agreement is Pass. If it is less than 50% then it is Fail.**

*Note: This is merely for proper understanding of the MA but not recommended to be used during implementation of MA*