



# Investment Related Issues of Power Development in Nepal and Cross Border Electricity Trade

3<sup>rd</sup> Meeting of Task Force-1

4-5 June 2014, Thimpu

USAID SARI/EI

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# PRESENTATION OUTLINE



- **Project Development**
- **Legal & Policy Framework**
- **Environment Framework**
- **Issues & Challenges**
- **Investment Requirements**
- **Conclusion**



# PROJECT DEVELOPMENT



1. License required for Survey, Generation, Transmission and Distribution of projects larger than 1 MW.
2. Types of Licenses

<b>Survey</b>	<b>Generation/Operational</b>
<ul style="list-style-type: none"><li>• Generation</li></ul>	<ul style="list-style-type: none"><li>• Generation</li></ul>
<ul style="list-style-type: none"><li>• Transmission</li></ul>	<ul style="list-style-type: none"><li>• Transmission</li></ul>
<ul style="list-style-type: none"><li>• Distribution</li></ul>	<ul style="list-style-type: none"><li>• Distribution</li></ul>

3. Company Registration from Company Registrar's office (CRO), Industry Registration & FDI approval from DOI.



# PROJECT DEVELOPMENT

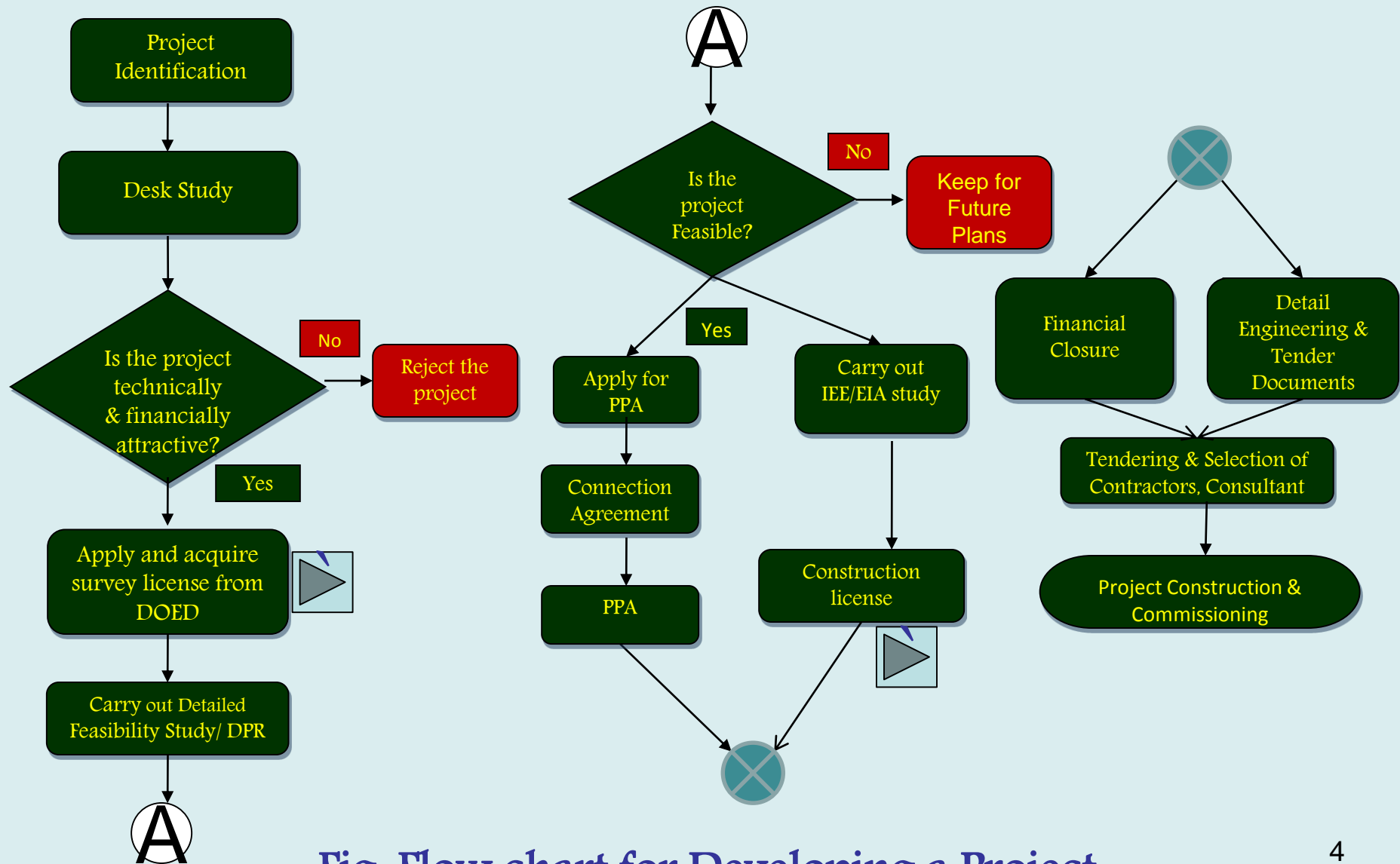


Fig: Flow chart for Developing a Project



# PROJECT DEVELOPMENT (CONTD...)



## Information related to Generation License

- Generation license within 120 days
- Period of generation license up to 50 years at max. (35 yrs for domestic and 30 yrs for export)
- Valid survey is required.
- Public notice before the issuance of generation license.
- PPA required
- IEE/EIA required
- 1 year given for finance closure
- Industry registration



## Key Laws Relevant to Hydropower Development

- Electricity Act, 1992
- Water Resources Act, 1992
- The Foreign Investment & Technology Transfer Act, 1992
- The Industrial Enterprises Act, 1992
- Environment Protection Act, 1997
- Forest Act, 1993
- National Parks and Wildlife Conservation Act, 1973 and its amendment



## LEGAL & POLICY ... (CONTD...)



- Land Acquisition Act, 1977
- Finance Act, 2007 and its amendments
- Income Tax Act, 2002 and its amendments
- Value Added Tax Act, 1996
- Bonus Act, 1974
- Company Act, 2006
- Labour Act, 1992
- Investment Board Act, 2011



# LEGAL & POLICY ... (CONTD...)



## Policy

- Hydropower Development Policy, 2001
- Water Resources Strategy, 2002
- National Water Plan, 2005





# ENVIRONMENT FRAMEWORKS



## Governed by Environment Protection Act 1996/Regulation 1997

### A. Environment Impact Assessment (EIA)

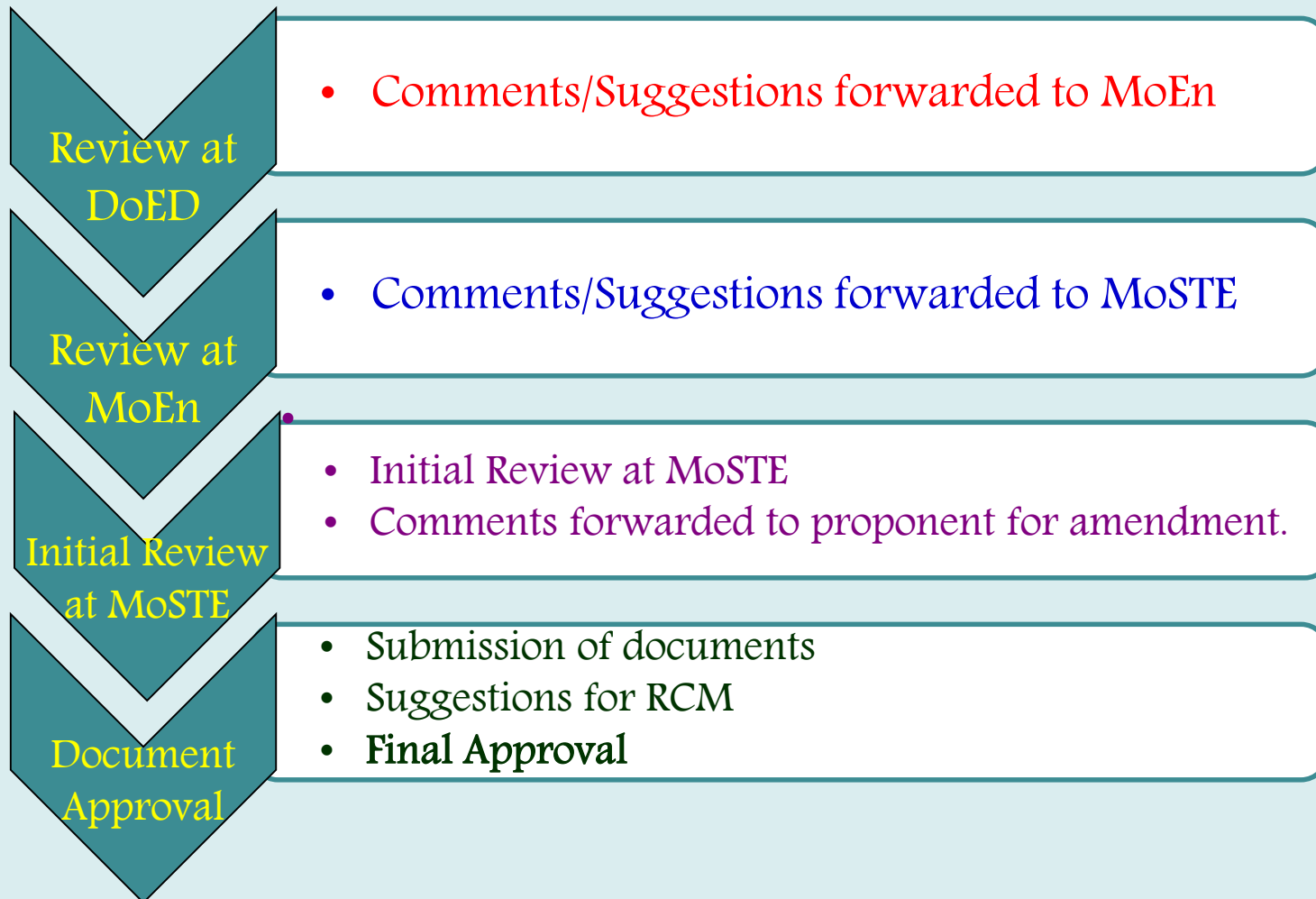
- More than 50 MW capacity
- Conservation, National Park Area and its buffer zone area and heritage area.
- More than 5 hectares of forest land.
- Inter-basin transfer
- More than 100 people displaced.



# ENVIRONMENT ...(CONTD...)



## B. EIA Approval process





# ISSUES & CHALLENGES



- Political and Governance related
- Legal, Institutional and Policy related
- Infrastructure related
- Financial related
- Market related



# ISSUES & CHALLENGES



## Political and Governance related


- ❖ Political instability and prolong political transition.
- ❖ Poor law & order situation and weak government.
- ❖ Lengthy and more agencies involved in approval process.
- ❖ Rules made by one government will not be followed by other government.
- ❖ Labor unions are highly politicized and divided into different political groups.
- ❖ Issues of local ownership and benefit.



# ISSUES & CHALLENGES



## Legal, Institutional and Policy related

- ❖ Double licensing system.  
(Survey – 5 yrs max. and Generation – 30 yrs) 
- ❖ Repeated process of approval of EIA (MoEn & MoSTE).
- ❖ Lengthy process to acquire land, uncertainty and not clear in land ceiling.
- ❖ Lack of resettlement standard in law and not adequate to address of resettlement and rehabilitation of PAP.
- ❖ Fees for registration of Deeds (1% in Land Reform Act vs 0.0001% in HDP,2001).



# ISSUES & CHALLENGES



## Legal, Institutional and Policy related

- ❖ VAT exemption and 1% custom applied to only machinery & equipments and their spare parts that are not manufactured in Nepal.
- ❖ No law compels the developer to issue shares to local people.
- ❖ Overlapping and often contradictory laws and institutional arrangements.
- ❖ Bonus for the employees
  - Bonus Act – 10% of the net income
  - Electricity Act – 2% of the net income



# ISSUES & CHALLENGES



## Legal, Institutional and Policy related

### ❖ Royalties

- Electricity Act, 1992 – Rs. 100 + 2% for 15 years  
– Rs. 1000 + 10% beyond 15 years
- HDP, 2001
  - much higher rate with a provision of compounding of capacity royalty @ 5% per year from 2001
- Agreement through MoUs and contracts.

### ❖ Differing priorities of various agencies of the government.

- Income tax relief provided by other acts are nullified by the provisions of the amended Revenue Act and the New Income Tax Act.



# ISSUES & CHALLENGES



## Legal, Institutional and Policy related

- Ministry of Forest and Soil Conservation has a policy of retaining 40% of land with covered of trees and they are always reluctant to give approval to hydropower and transmission line projects.
- ❖ Repeated process of approval of foreign investment – FOREX and NRB circular.
- ❖ No supporting Acts or Regulations to support the policy.
- ❖ Lack of coordination of among various ministries, departments and agencies.
- ❖ ‘One Window Policy’ remains so in name alone.
- ❖ EIB has been established to offer one window solution to investors of Mega projects (>500 MW) but not acting in reality.





# ISSUES & CHALLENGES



## Infrastructure related

- ❖ Lack of adequate transmission lines.
- ❖ Traditional approach of project specific transmission line development for domestic needs only.
- ❖ Significant difference between planned TL development and actual realized to date.
- ❖ Nepal and India have worked on cross border power transaction for several decades, unfortunately without much success.
- ❖ Delay in construction of transmission line projects.



# ISSUES & CHALLENGES



## Financial related

- ❖ Huge upfront investment is required in Mega projects. Without foreign investments, not possible to develop these projects in Nepal.
- ❖ With foreign investments, the different issues also come together.
  - ❖ Foreign Currency Risk
  - ❖ Repatriation  
(If the share is sold in Local currency, only 75% repatriation facility in HDP 2001 but it is not in FITT Act 1992.)
  - ❖ Sovereign guarantee
  - ❖ PPA in dollar



# ISSUES & CHALLENGES



## Market related

- ❖ Relatively small domestic market as compared to other South Asian countries such as India, Bangladesh & Pakistan.
- ❖ Though huge hydro potential, no access to Indian and Bangladesh electricity markets till today.
- ❖ Water related issues (tri-partite rights, downstream benefits, use of national resources) supersedes the cross border electricity trade.
- ❖ Import duty on electricity and classification of electricity as a “restrictive commodity” for trade.



# INVESTMENT REQUIREMENTS



## National Water Plan 2005

Estimated costs at 2003/04 price level

Year	Power Generation (MW)		Investment (NRs. Billion)
	Domestic	Export	
2017	2035	400	110
2027	4000	Substantial	150



# INVESTMENT REQUIREMENTS



## Energy Sectors Vision 2050 AD

Projected Capital Investment Requirements for Energy Sector in Million NRs. (at 2010/11 price level)

Scenario	2011-2020	2021-2030	2031-2040	2041-2050
Low Growth	252,651	608,065	100,7921	132,9766
Medium Growth	259,690	672,274	1,212,230	2,018,412
High Growth	269,419	755,064	1,443,279	3,024,064
Moderate Growth	690,488	1,909,649	2,233,966	4,106,565



# CONCLUSION



- ❖ Political stability to create investment friendly environment.
- ❖ Enactment of supporting Acts and Regulations to changing circumstances.
- ❖ Harmonization of the key laws relevant to hydropower development.
- ❖ Electricity Act should clearly supersede other acts in the matters of hydropower projects if there is still conflicting in laws.
- ❖ Need to strengthen the domestic transmission networks upgrading to higher voltage levels.



# CONCLUSION



- ❖ The high voltage cross border interconnection lines of different capacities need to be constructed in close coordination and cooperation with the neighboring countries.
- ❖ Bilateral Power Trade Agreement (PTA) among the neighboring countries for open up cross border energy trade.
- ❖ Protection and promotion of foreign investments based on most favor national treatments.
- ❖ Market mechanism to be in place for CBT without which the private sector investment in mega hydropower projects in Nepal is a far cry.

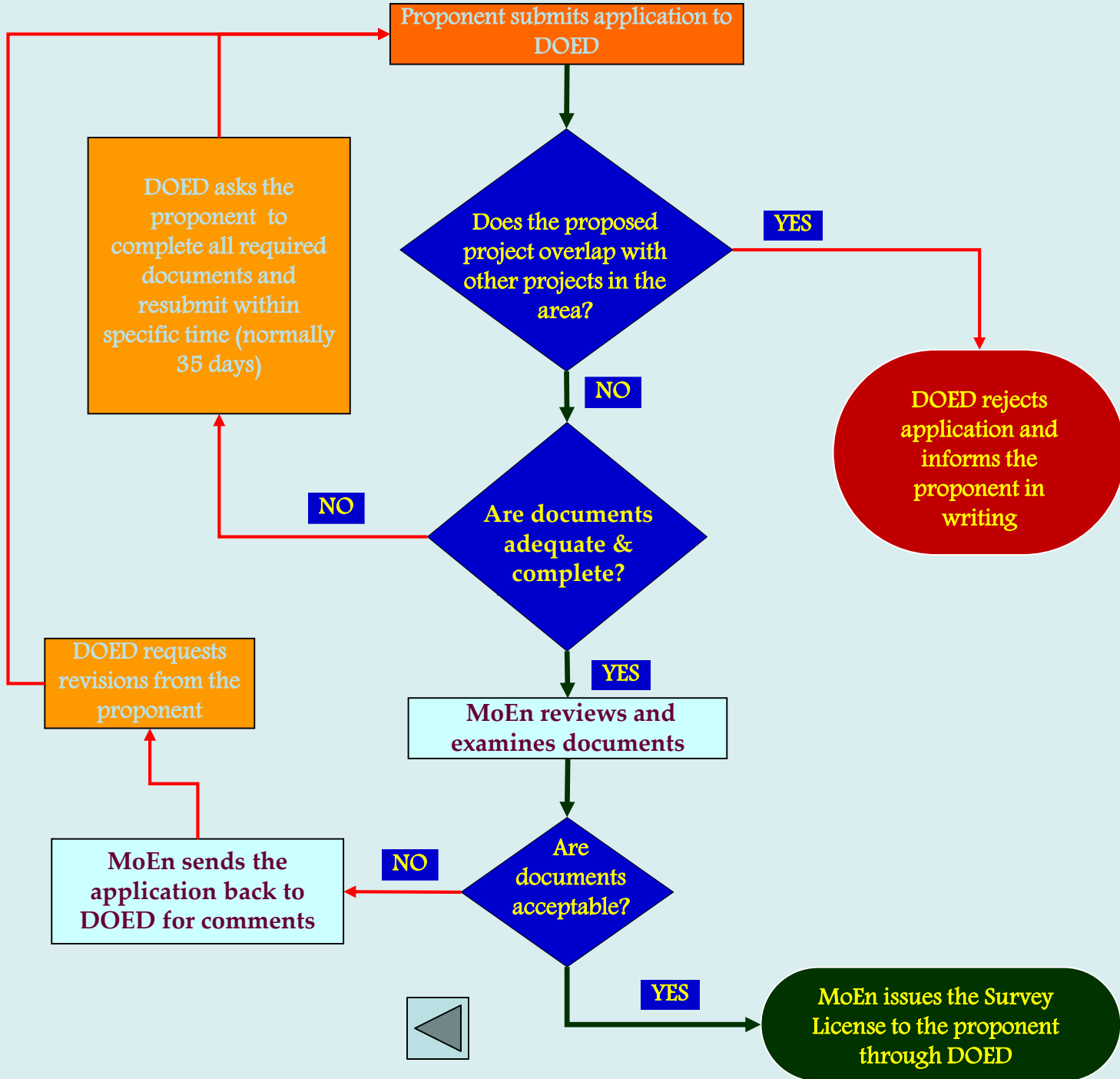


*Thank You*



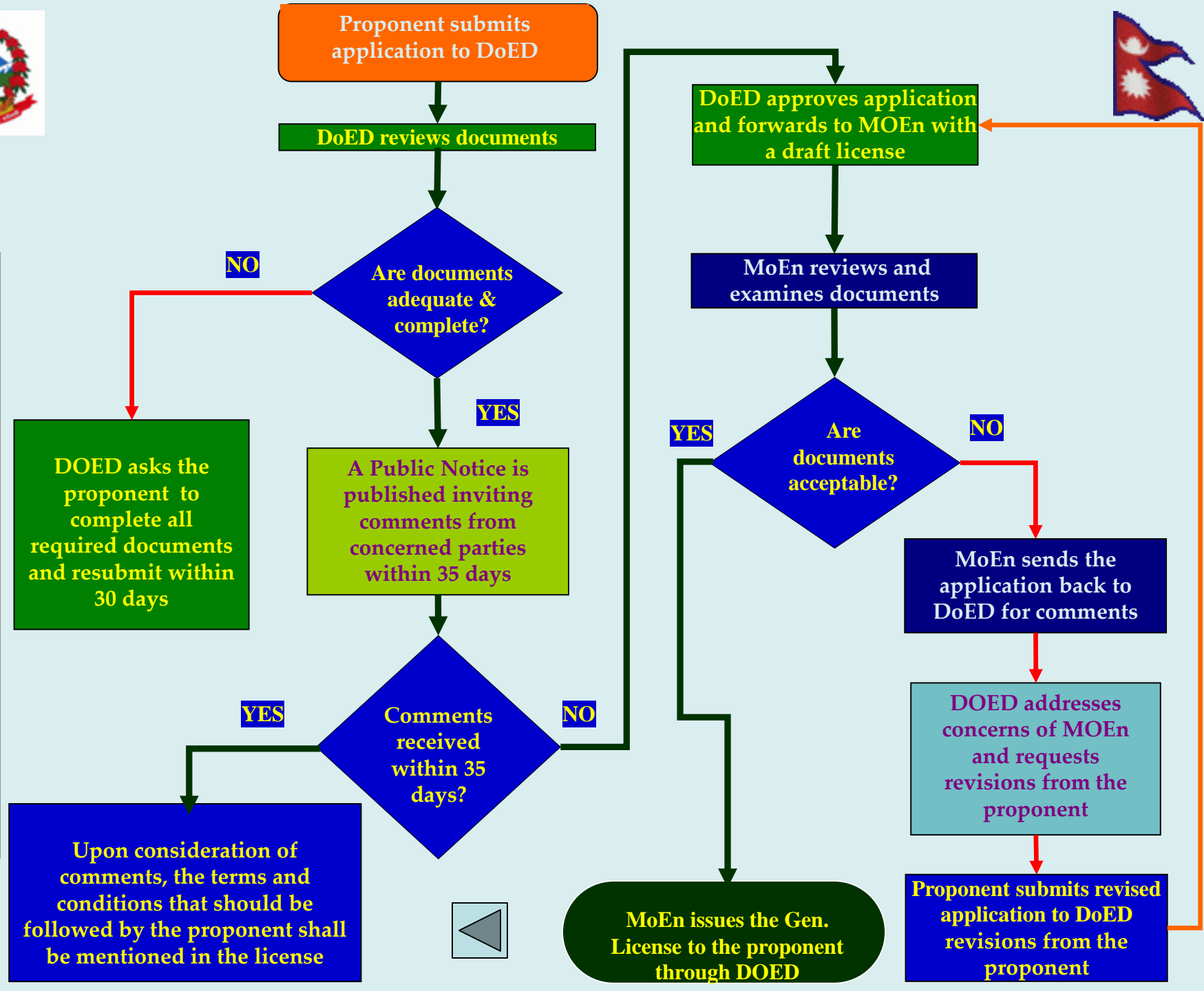


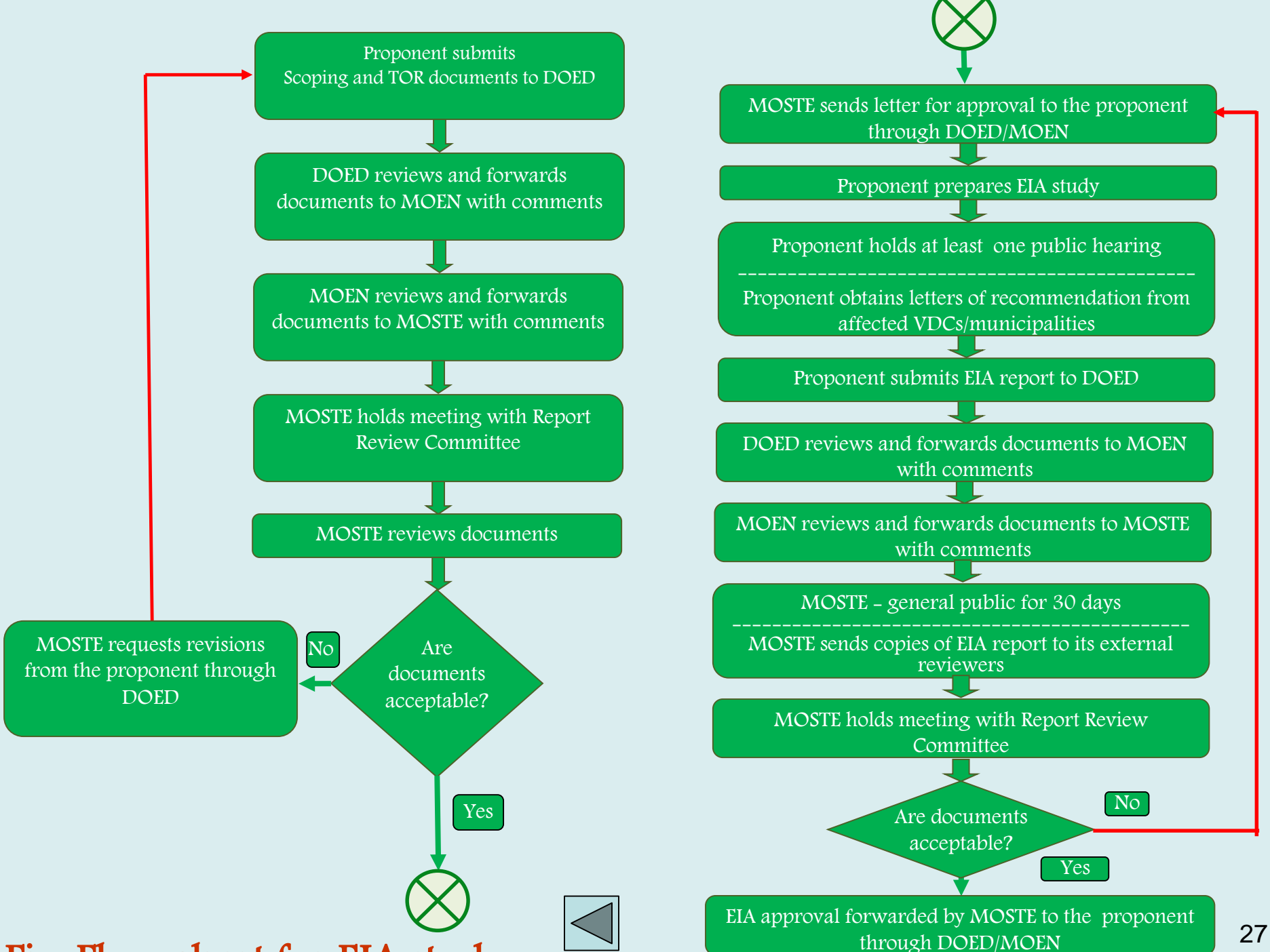
# Survey License Application





# Generation License Application





**Fig: Flow chart for EIA study**