

The Public Procurement Rules, 2064 (2007)

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Amendment

1. Public Procurement (First Amendment)

Regulation, 2065 (2008) 2065-8-9 (24 Nov. 2008)

2. Public Procurement (Second Amendment)

Regulation, 2065 (2008) 2065-9-2 (17 Dec. 2008)

In exercise of the powers conferred by Section 74 of the Public Procurement Act, 2063 (2007), the Government of Nepal has framed the following Rules.

Chapter – 1

Preliminary

1. **Short title and commencement:** (1) These Rules may be called as the "Public Procurement Rules, 2064 (2007)".

(2) This Rules shall come into force immediately.

2. **Definitions:** Unless the subject or the context otherwise requires, in these Rules,-

(a) "Act" means the Public Procurement Act, 2063 (2007);

(b) "multi-year contract" means a contract with the validity period of more than one year;

(c) "sealed quotation" means the statement, accompanied by the quoted price, in a sealed envelope, submitted by an interested person, firm, company or organization in respect of provision of any goods or works or other services in response to a notice of a public entity;

(d) "secretary" means the secretary at the Ministry, and this term also includes the chief secretary of the Government of Nepal and other officer of special class of the Government of Nepal who

perform functions equivalent to the secretary;

- (e) "pertinent higher office" means the office of higher level than the concerned office;
- (f) "Treasury and Accounts Comptroller Office" means the Treasury and Accounts Comptroller Office under the Office of Financial Comptroller General;
- (g) "rate fixation committee" means the committee as referred to in Rule 148;
- (h) "departmental head" means an office-bearer who acts as the chief of a department under any Ministry or other office equivalent thereto;
- (i) "Ministry" means a Ministry of the Government of Nepal, and this term also includes the Office of Prime Minister and Council of Ministers;
- (j) "standing list" means the list as referred to in Rule 18;
- (k) "user committee" means a committee formed by the persons directly benefited from construction works from amongst themselves so as to build, operate, repair and maintain such works;
- (l) "management contract" means the contract as referred to in Clause (f) of Schedule-4;
- (m) "evaluation committee" means the committee as referred to in Rule 147;
- (n) "bid price" means the price of a bid determined upon the evaluation of any tender;
- (o) "sub-contractor" means a construction entrepreneur, supplier, consultant or service provider who carries out any work under a procurement contract by entering into a separate contract with a construction entrepreneur, supplier, consultant or service provider

who has entered into such procurement contract;

- (p) "proprietary goods" means any subsidiary equipment and spare parts manufactured by a manufacturer of any goods, machines or equipment for the operation or repair and maintenance of such goods, machines or equipment;
- (q) "contract price" means the contract price set forth in a procurement contract, and this term also includes the price fixed upon the measurement of a work done as per a variation order, if any, issued under such contract and the cost price fixed by adjustment of price, if any, made;
- (r) "framework or unit rate contract" means the contract as referred to in Clause (b) of Schedule-3;
- (s) "work by force account" means any construction works to be carried out directly by a public entity itself;
- (t) "review committee" means the committee formed pursuant to Sub-section (1) of Section 48 of the Act;

Chapter-2

Preparation for Procurement Proceedings, Procurement Plan and Cost Estimate

- 3. Preparation for procurement proceedings:** Any public entity shall, in preparing for any procurement proceedings, do as follows:
- (a) To identify the need for procurement,
 - (b) To obtain information as to the procurement contract prevailing at the market in order to identify various technical solutions relating to procurement and ascertain the availability of supplier,
 - (c) Where goods, construction works or consultancy services or other services of similar nature were procured in the preceding years, to study the procedures of such procurement,

- (d) To define the description, quantity and scope of procurement,
- (e) To break up procurement into more convenient lots or include it in a package,
- (f) To cause the preparation of procurement plan,
- (g) To prepare the cost estimate of procurement,
- (h) To identify the source and amount of financing for procurement,
- (i) To choose the method of procurement, and
- (j) To determine whether tender qualification or pre-qualification proceedings are needed to be carried out in the case of any procurement other than the procurement of construction works valued at up to Six Million Rupees.

4. Prohibition on procurement without order of competent authority:

No one shall make, or cause to be made, any procurement without the written order of the competent authority.

5. To obtain requisition for procurement: (1) Prior to the initiation of the procurement proceedings of goods, the procurement unit of the concerned public entity shall obtain procurement requisition from its divisions and sections and get such requisition to be approved by the competent authority.

(2) The procurement requisition referred to in Sub-rule (1) shall contain the following matters:

- (a) Description relating to type, quality and quantity of goods,
- (b) Timing of procurement of goods,
- (c) Estimated cost of procurement, and
- (d) Source of financing.

6. Provision of budget and construction site: (1) No public entity shall initiate procurement proceedings unless necessary funds for

procurement have been allocated.

(2) Notwithstanding anything contained in Sub-rule (1), procurement proceedings may be initiated on the following conditions irrespective of the provision of budget:

- (a) In the case of procurement to be made under a multi-year contract, to initiate procurement proceedings for the other years after the provision of necessary budget for the first year, and
- (b) In view of being it imperative to make preliminary preparation for procurement, to do acts such as to make invitation for sealed quotations or tenders, invitation for prequalification applications, publish a notice for the preparation of a list of consultants and solicit proposals from consultants or provide sealed quotation forms, tender or prequalification documents and proposal documents.

(3) No public entity shall initiate the procurement proceedings of any construction works without making provision of the construction site.

7. **Preparation of master procurement plan:** (1) A public entity shall, in making procurement for a plan or project to be operated for more than one year or procurement valued at an amount in excess of One Hundred Million Rupees a year, prepare a master procurement plan.

(2) The master procurement plan referred to in Sub-rule (1) shall contain, *inter alia*, the following matters:

- (a) Type, quantity and tentative estimated value of procurement,
- (b) Method of procurement,

- (c) Where procurement is broken up into lots or a package for maximizing competition, provisions relating thereto,
- (d) Tentative number of contracts to be made for the completion of overall procurement proceedings and major activities that pertain to such procurement proceedings,
- (e) Matters relating to prequalification proceedings, if required, for procurement,
- (f) Tentative time schedule for procurement proceedings,
- (g) Such matters as may be determined from time to time by the Public Procurement Monitoring Office to be included in the master procurement plan.

(3) A master procurement plan prepared pursuant to this Rule shall be approved by the secretary of the public entity.

(4) The concerned public entity shall update in every financial year the master procurement plan approved pursuant to Sub-rule (3).

8. Preparation of annual procurement plan: (1) A public entity shall, if it is necessary to make procurement valued at an amount exceeding One Million Rupees a year, prepare an annual procurement plan for procurement to be made in the forthcoming financial year, in preparing the estimated annual program and budget for the forthcoming financial year. In so preparing the procurement plan, it shall be prepared also based on the master procurement plan, if any, prepared pursuant to Rule 7.

(2) The public entity shall set out the following matters in the annual procurement plan referred to in Sub-rule (1):

- (a) Description relating to the type of procurement,

- (b) Possible package of procurement,
- (c) Time schedule of procurement proceedings,
- (d) Method of procurement,
- (e) Type of contract to be entered into for procurement, and
- (f) Such matters as may be determined from time to time by the Public Procurement Monitoring Office to be included in the annual procurement plan.

(3) The time schedule referred to in Clause (c) of Sub-rule (2) shall specify the period of time for the completion of the following acts:

- (a) Preparation of specification if procurement of goods is made,
- (b) Preparation of cost estimate of procurement,
- (c) Preparation of sealed quotation forms, prequalification forms or tenders or preparation of documents relating to consultancy service proposals,
- (d) Publication of notice inviting sealed quotations, prequalification proposals, tenders or consultancy service proposals,
- (e) Evaluation of sealed quotations, prequalification proposals, tenders or consultancy service proposals,
- (f) Acceptance of sealed quotations, prequalification proposals, tenders or consultancy service proposals,
- (g) Entering into contract,
- (h) Commencement of work, and
- (i) Completion of work.

(4) The chief of public entity shall send a copy of the annual procurement plan prepared pursuant to these Rules, accompanied by the estimated annual program and budget for the forthcoming financial year to each of the pertinent higher office and the Ministry of Finance.

(5) The chief of public entity shall, upon receipt of the approved program and budget for the current financial year, accordingly revise the annual procurement plan prepared pursuant to this Rule and approve it, and send a copy of such plan to each of the pertinent higher office, Treasury and Accounts Comptroller Office and Public Procurement Monitoring Office.

(6) The pertinent higher office shall monitor whether procurement proceedings have been completed in the specified time or not.

9. Matters to be taken into account while preparing cost estimate: (1)

A public entity shall take into account the following matters while preparing the cost estimate of any procurement:

- (a) Whether all procurement acts can be done through the same procurement contract or separate procurement contract needs to be made for each item of work,
- (b) Whether the procurement contract is required to be renewed or not,
- (c) If there is any alternative to procurement, such alternative,
- (d) Maximum amount and time likely to be required for the completion of work referred to in the procurement contract, and
- (e) Such matters as may be determined from time to time by the Public Procurement Monitoring Office

to be taken into account while preparing the cost estimate by the public entity.

(2) A public entity shall, in preparing the cost estimate, make separate item of tender or performance guarantee, mobilization and demobilization cost, insurance, facilities to be provided to consultants, quality test, occupational health and security, as built design and commission for performance guarantee, etc. and include the same in the cost estimate.

10. Cost estimate of construction work: (1) A public entity shall prepare the cost estimate of any construction works, subject to Rule 9.

(2) In preparing the cost estimate of any construction works, the public entity shall prepare the cost estimate in consonance with the norms of construction works and underground works such as archaeological excavation and tunnel building, deep tube-well, petroleum research etc. if such norms are in force and, absent such norms, prepare necessary norms, get the same approved by the Government of Nepal, Council of Ministers and prepare the cost estimate in consonance with the approved norms.

Provided that in the course of performing work as per such norms, if specific type of norms shall be required for any specific work, the chief of the concerned public entity may get necessary norms prepared by the technician of the concerned body and, in the event of absence of such technician, by the concerned technician of another public entity and get such norms approved by the departmental head.

(3) In preparing a cost estimate pursuant to this Rule, the public entity shall do study whether the goods are available on site or not and specify the time required for the completion of the construction work.

(4) The public entity shall, in the course of preparing the cost estimate, fix the rate of cement, iron rods, brick, stones, soil, zinc sheets, bitumen and emulsion, fuels, polythene pipes, G.I. pipes, D.I. pipes,

sanitary goods, electrical goods, G.I. wires and similar other construction materials, rent of machines and equipment or wages of workers on the basis of the rate specified by the rate fixation committee.

Provided that, where the rate specified by the rate fixation committee is not available, it shall be fixed on the basis of the rate, rent or wages specified by the concerned governmental office or government owned corporation, authority or similar other organization near the construction site or provided by the chamber of commerce and industry.

(5) Where even the rate, rent or wages referred to in Sub-rule (4) shall not be available, such rate shall be fixed on the basis of the rate, rent or wages specified by the departmental head.

(6) The public entity shall cause the cost estimate of construction works prepared pursuant to this Rule, as well as design and drawing thereof, to be examined by the technician or group of technicians, one level higher in rank than the technician who has prepared such cost estimate and have mistakes, if any, corrected. If there is no higher level technician in such entity, the departmental head shall arrange for the examination of such cost estimate.

(7) The cost estimate of construction work shall be prepared in the format of Schedule-1.

11. Cost estimate of goods: (1) A public entity shall prepare the cost estimate of goods subject to Rule 9 and the specification of the goods concerned.

(2) The following matters shall be taken into account while preparing the cost estimate of goods pursuant to Sub-rule (1):

(a) Actual cost incurred in the procurement of the same nature by the concerned public entity or another public entity in the district where such public entity is situated in the current year or in previous years,

- (b) Rate prevailing at the local market,
- (c) Rate prevailing at other market and estimated transportation costs to the place of delivery of goods,
- (d) Rate issued by the chamber of commerce and industry.

12. Cost estimate of consultancy service: (1) A public entity shall prepare the cost estimate of consultancy service subject to Rule 9.

(2) The following matters shall be taken into account while preparing the cost estimate of consultancy service pursuant to Sub-rule (1):

- (a) Where the concerned Ministry has prepared the norms relating to the cost estimate of consultancy service, such norms,
- (b) Terms of reference of the concerned consultancy service,
- (c) Actual cost incurred in the procurement of the same nature by the concerned public entity or any other public entity in the current year or in previous years,

Provided that, in preparing the cost estimate based on this Clause, the cost estimate shall be prepared by adjusting the price at the rate of previous years.

(3) In preparing the cost estimate referred to in this Rule, a public entity shall set out the following costs:

- (a) Remuneration of key human resources and other human resources,

- (b) Travel costs, accommodation costs of human resources, office expenses, required goods, equipment and service costs, translation costs of reports and other documents and printing costs,
- (c) Where the consultant has to organize any training, symposium or travel, costs required for the same and other costs.

13. Cost estimate of other services: (1) A public entity shall prepare the cost estimate of other services subject to Rule 9.

(2) For the preparation of the cost estimate of rent of motor vehicles, machineries, equipment or goods to be hired, the chief of the concerned public entity shall form a committee consisting of a maximum of three competent technicians having knowledge as to such vehicles, machines, equipment or goods. If such entity has no such technical human resources, the pertinent higher office of such entity shall form such committee.

(3) The committee referred to in Sub-rule (2) shall, in preparing the cost estimate of rent, prepare the tentative cost estimate, taking into account the following matters:

- (a) Description, specification, condition and age of vehicles, machines, equipment or goods to be hired,
- (b) Prevailing market rate,
- (c) Period of rent,
- (d) Price and consumption of fuel, and
- (e) Such other matters as the committee considers to be appropriate,

(4) In preparing the cost estimate of transportation, the concerned public entity shall prepare a tentative cost estimate based on the rate fixed by the rate fixation committee in the case of a district level public

entity and based on the departmental rate and, absent even such departmental rate, based on the prevailing market rate in the case of a central level public entity.

(5) In preparing the cost estimate of repair and maintenance of any goods, the public entity shall get the cost estimate prepared by the expert or employee who is competent in that field if such expert or employee is available in such entity, and absent such employee, by a person, firm, company or organization carrying out such act.

(6) In preparing the cost estimate of house rent and service contract, tentative cost estimate shall be prepared based on the prevailing market rate and the norms, if any, issued by the Public Procurement Monitoring Office in that respect.

14. Approval of cost estimate: (1) The cost estimate prepared pursuant to Rules 10, 11 and 13 has to be approved by the following authority:

- (a) Gazetted third class chief of office, in the case of the cost estimate valued from twenty five thousand rupees to five million rupees,
- (b) Gazetted second class chief of office, in the case of the cost estimate valued up to ten million rupees,
- (c) Gazetted first class chief of office, in the case of the cost estimate valued up to thirty million rupees,
- (d) Departmental head, in the case of the cost estimate valued at any amount exceeding thirty million rupees.

(2) The cost estimate prepared pursuant to Rule 12 has to be approved by the following authority:

- (a) Gazetted third class chief of office, in the case of the cost estimate valued up to one hundred thousand rupees,

- (b) Gazetted second class chief of office, in the case of the cost estimate valued up to five hundred thousand rupees,
- (c) Gazetted first class chief of office, in the case of the cost estimate valued up to one million rupees,
- (d) Departmental head, in the case of the cost estimate valued at any amount exceeding one million rupees.

(3) Where the chief of public entity is not entitled to approve a cost estimate pursuant to this Rule, he or she has to get it approved by the one level higher authority.

(4) Notwithstanding anything contained elsewhere in this Rule, the secretary or administrative chief of a constitutional organ or body, ministry, secretariat and other office of similar nature may approve the cost estimate of procurement of whatever value to be made for his or her office.

15. Cost estimate to be updated: (1) Where procurement is not made as per the cost estimate approved pursuant to Rule 14, the public entity shall update such cost estimate each year by following the procedures set forth in these Rules.

(2) No public entity shall invite sealed quotations and tenders or request for proposals for consultancy service without updating the cost estimate pursuant to this Rule.

16. Functions of procurement unit: The functions of the procurement unit shall be as follows, in addition to the functions set forth in Sub-section (3) of Section 7 of the Act:

- (a) To coordinate activities relating to procurement proceedings,
- (b) To collect procurement requisitions and submit the same to the competent authority for approval,

- (c) To maintain the records of letters of credit referred to in Schedule-2.

Chapter-3

Procurement and Selection Procurement Contract

17. **Goods manufactured in Nepal to be procured:** A public entity shall, in making procurement by selecting any method set forth in these Rules, procure goods manufactured in Nepal despite that the cost of such goods is higher by up to ten percent than that of goods manufactured abroad.
18. **Provision relating to preparation of standing lists:** (1) For the purpose of maintaining records of information relating to various procurements pursuant to the Act or these Rules, the public entity shall prepare separate standing lists of suppliers, construction entrepreneurs, consultants or service providers according to the nature of procurement. In so preparing lists, a list of non-governmental organizations shall also be prepared for the purposes of Rule 19.
- (2) The public entity shall determine the qualification required for including in the standing lists on the basis of the qualification set forth in Sub-section (2) of Section 10 of the Act.
- (3) For the preparation of the standing lists, the concerned public entity may each year invite applications from interested persons, firms, organizations or companies by posting a notice indicating the following matters on the notice board of its office, the concerned district administration office, district development committee and Treasury and Accounts Comptroller Office or by posting such notice in a newspaper of national circulation, by giving a time limit of at least fifteen days for the submission of such applications:

- (a) Qualification of suppliers, construction entrepreneurs or service providers,
- (b) Classification of lists,
- (c) Procedures for updating lists, and
- (d) Validity period of lists.

(4) Any person, firm, organization or company in possession of the qualification set forth in Sub-rule (3) may make an application, accompanied by required documents, within the specified time limit for being included in the standing lists.

(5) If, in examining any application received pursuant to Sub-rule (4), the public entity is of the opinion that the applicant meets the qualification set forth in Sub-rule (2), it shall include such applicant in the standing list.

(6) The public entity shall promptly give written information thereof to the suppliers, construction entrepreneurs or service providers who are included in the standing list or removed from such list.

(7) The public entity shall update the existing lists in each financial year.

(8) No bidder or proponent who is not included in the standing lists shall be prevented from taking part in any sealed quotations, tenders or proposals invited or requested by the public entity.

19. Procurement to be made from permanent accounts number and value added tax registration certificate holder:

(1) The public entity shall, in making any procurement, make such procurement only from a person, firm, organization or company who has obtained permanent accounts number and value added tax registration certificate from the inland revenue office.

(2) Notwithstanding anything contained in Sub-rule (1), procurement may also be made from a person, firm, organization or

company who has not obtained the value added tax registration certificate on any of the following conditions:

- (a) Procuring goods or construction works valued at less than five thousand rupees,
- (b) Procuring goods exempted from valued added tax,
- (c) Procuring consultancy service valued at less than one hundred thousand rupees from one natural person in one financial year,
- (d) Procuring service contract valued at less than one hundred thousand rupees from one natural person in one financial year,
- (e) Hiring a motor vehicle, equipment or goods of which rent is less than one hundred thousand rupees from one natural person or firm in one financial year,
- (f) Procuring repair and maintenance of goods for wages less than one hundred thousand rupees from one natural person or firm in one financial year,
- (g) Renting a house, and
- (h) Procuring construction works with the involvement of consumers' committee or beneficiary community.

(2) Notwithstanding anything contained elsewhere in this Rule, where no firm or seller has obtained the valued added tax registration certificate from the concerned inland revenue office in a district specified by the Government of Nepal as a remote area, procurement valued at up to One Million Rupees from a supplier who is included in the list of suppliers prepared by the following committee for that district and is available in that district:

- (a) Chief, Treasury and Accounts
Comptroller Office -Chairperson
- (b) Representative (officer level),
District Administration Office -Member
- (c) Technician of District Technical
Office designated by the chairperson -Member
- (d) Representative, district chamber of
commerce and industry -Member
- (e) Officer level employee designated
by the chairperson -Member
secretary

(4) The Treasury and Accounts Comptroller Office shall act as the secretariat of the committee formed pursuant to Sub-rule (3).

(5) The Treasury and Accounts Comptroller Office shall send the list prepared pursuant to Sub-rule (3) to the concerned Inland Revenue office.

20. Selection of procurement contract: (1) After the selection of procurement method in relation to any procurement proceedings, the public entity shall select the type of procurement contract for the procurement, out of the procurement contracts referred to in Rule 21 in the event of the procurement of goods or other services, in Rule 22 in the event of the procurement of construction works and in Rule 23 in the event of procurement of consultancy services.

(2) The following matters shall be taken into account in selecting the procurement contract pursuant to Sub-rule (1):

- (a) Type and quantity of procurement,
- (b) Whether there is a possibility of making procurement of similar nature again,

- (c) Distribution of risks between the public entity and the supplier, construction entrepreneur or consultant and other party, and
- (d) Mode of supervision of the contract.

21. Procurement contract of goods or other services: (1) In making procurement of goods or other services, the public entity may make procurement by entering into any one contract out of the contracts referred to in Schedule-3.

(2) The contract referred to in Sub-rule (1) shall be entered into based on the technical specifications and period set forth in the tender documents.

(3) Those matters set forth in these Rules in relation to the procurement contract shall be governed by these Rules and those matters not set forth in these Rules by the prevailing laws on contract for sales of goods.

(4) The terms of the procurement contract of goods or delivery of goods pursuant to this Rule shall be prepared as per the international commercial terms (INCOTERM).

(5) Payment to be made under the contract referred to in this Rule shall be made by letters of credit on presentation of delivery documents by the supplier or through any mode set forth in the tender documents.

22. Procurement contract for construction works: The public entity may procure any construction works by entering into any one contract out of the contracts referred to in Schedule-4.

23. Procurement contract for consultancy services: The public entity may procure any consultancy service by entering into any one contract out of the contracts referred to in Schedule-5.

24. Prescription of terms: Where any terms other than the terms set forth in this Chapter in relation to any procurement contract, the public entity

may set forth such terms in the tender documents or proposal documents.

Chapter-4

Qualification Criteria, Technical Capacity and Technical Specification

25. **Criteria for qualification of bidder supplying goods:** (1) In determining the criteria of qualification of bidders or proponents of prequalification taking part in the procurement proceedings relating to the supply of goods, the public entity may determine such criteria having regard to any or all of the following matters as required:

- (a) Technical capacity,
- (e) In the event of installation of goods, expertise of technician to be involved in such installation,
- (f) Assurance that the goods to be supplied can function smoothly for a specific period of time,
- (g) Provision of repair and maintenance of goods,
- (h) Availability of services and reserve spare parts,
- (i) In the case of a supplier supplying goods, along with installation thereof, skills, mastery, experience and reliability of such supplier.

(2) In requesting for the submission of documents in support of the qualification and technical capacity of bidders or proponents pursuant to this Rule, the public entity may request for any or all of the following documents depending on the nature, quantity, importance or use of goods:

- (a) The nature, quantity of goods supplied by the bidders to governmental bodies or private organizations in the last three years, contract price, date thereof, and the names and addresses of such governmental bodies or private organizations,

- (b) If the goods to be procured are of complex or exceptional nature, documents showing a check carried out by the public entity itself or on its behalf by a qualified official body of the country in which the bidders or prequalification proponents are established on the production capacities of the bidders or prequalification proponents,
- (c) Certificates drawn up by official quality control institutes or agencies of recognized competence attesting the conformity of goods to be procured clearly identified by reference to specifications or standards on the basis of inspection of such goods,
- (d) Samples, supplementary descriptions or photographs required to certify the authenticity of the goods to be supplied,
- (e) Proportion of the supply work which the bidders intend to sub-contract.

(3) Where the bidders or prequalification proponents themselves do not make or manufacture the goods to be supplied, such bidders or proponents have to submit the documents substantiating that the manufacturer of such goods has duly and exclusively authorized them to submit tender or proposal for prequalification, supply the goods and install the same.

(4) Those bidders or prequalification proponents who do not carry on business, trade within Nepal have to submit documents substantiating that, if procurement contract is awarded to them, they shall be represented by an agent or authorized seller in Nepal equipped and able to carry out the maintenance, repair of goods supplied in accordance with such contract, provide after-sales service and perform the spare parts stocking and supplying obligations.

26. Criteria of qualification of construction entrepreneurs: (1) In determining the criteria of qualification of the bidder or proponent of prequalification taking part in procurement proceedings of a construction work valued at more than six million rupees, a public entity may determine such criteria having regard to any or all of the following matters, as required:

- (a) General experiences it has been engaged in exclusively in the role of prime contractor or management contractor or partner in a joint venture or sub-contractor,
- (b) A minimum average annual construction turnover at or above the level specified in the tender documents or prequalification documents either exclusively or as a partner in a joint venture,

Provided that, where a domestic open tender is invited, the maximum average annual turnover of any three years out of the turnover of ten years shall be taken as the basis.

- (c) Particular experience after having conducted construction works at least at the specified minimum monthly or annual rates set forth in the tender documents or prequalification documents and successfully completed such number of contracts of a nature, complexity and construction technology similar to the proposed procurement contract as set forth in such documents in the role of prime contractor or management contractor or partner of a joint venture or sub-contractor,
- (d) Economic and financial capabilities, having access to, or having availability of, liquid assets, lines of

credit and other financial resources (except any advances under any procurement contract) required to meet the cash flow requirements for the proposed construction works in the event of stoppage or other delays in payment of amount required to commence the construction works set forth in the procurement contract and for the completion of other construction works which the concerned bidder or proponent of prequalification is carrying out or has committed to carry out,

- (e) Qualified human resources as set forth in the tender documents or prequalification documents,
- (f) Key items of equipment as set forth in the tender documents or prequalification documents which are owned by the bidders or proponents of prequalification themselves or to which the bidders or proponents have access through hire, lease, agreement or other commercial means, in full working order and will be available for interrupted use during the period set forth in the procurement contract.

(2) In the case of a national construction entrepreneur, in calculating the amount referred to in Clauses (b) and (c) of Sub-rule (1), only the amount to be set by deducting the amount against the value added tax shall be calculated, and such amount shall be adjusted according to the updated price index of Nepal Rastra Bank.

(3) In requesting for documents substantiating the technical capacity of the construction entrepreneur pursuant to this Rule, a public entity may request for any or all of the following documents from the

bidder or proponent of prequalification according to the nature of construction works:

- (a) A list of the construction works carried out by it over the last ten years, indicating the value, date and site of the works,
- (b) Proportion of the proposed works which it intends to subcontract,
- (c) A statement of technical equipment and plant available to it for carrying out the proposed works.

27. Criteria of qualification of proponent of consultancy service: (1) In determining the criteria of qualification of the proponent taking part in procurement proceedings of a consultancy service, a public entity may determine such criteria having regard to any or all of the following matters:

- (a) If the proponent is a person, his or her experience, and if the proponent is a firm or organization, its institutional experience as required,
- (b) Required educational qualification of key staff of the proponent and required experience of work of similar nature,
- (c) Mode of performance of work, responsiveness to procedures, terms of reference, technology transfer and schedule of time,
- (d) Managerial capacity of the proponent,
- (e) Financial capacity of the proponent,
- (f) Where request for proposal is made internationally, participation of native human resources, and
- (g) Other matters as set forth in the tender documents.

(2) In requesting for the submission of documents in support of the technical capacity of the proponent pursuant to this Rule, the public entity may request for any or all of the following documents depending on the nature of the proposed consultancy service:

- (a) Description indicating the consultancy service of nature similar to the proposed consultancy service provided to public or private organizations in the past three years, values and dates thereof,
- (b) Description relating to key staff proposed for the completion of the proposed work,
- (c) Description of managerial staff of the proponent in the past three years and average annual human resources,
- (d) Proportion of the proposed consultancy service which the proponent intends to provide through a sub-contractor.

28. Criteria of qualification of joint venture: (1) Bidders may, for the purpose of taking part in any procurement proceedings, form a joint venture and submit bid.

Provided that one bidder may submit only one bid either as a partner of joint venture or individually.

(2) A public entity may specify in the tender documents the minimum share of a partner in a joint venture referred to in Sub-rule (1) and the minimum qualification of the principal partner and other partners.

(3) In determining the qualification pursuant to Sub-rule (2), a public entity shall determine the qualification in relation to the partner of such venture, having regard to the following matters:

- (a) Average annual turnover of the partner,

- (b) Particular experience of the partner and major works performed by the partner,
- (c) Cash flow available to the partner for the operation of construction works,
- (d) Human resource capacity of the partner,
- (e) Machine or equipment capacity of the partner.

(4) The qualification of all partners of a joint venture shall be added together to determine whether such joint venture has fulfilled the criteria of minimum qualification set forth in the tender documents.

(5) In determining the criteria of individual qualification of the partner of a joint venture, a public entity shall determine such criteria, having regard to the following matters:

- (a) General experience of the partner in the relevant field,
- (b) Adequacy of sources required to complete the work which the partner is doing or is going to do under another contract,
- (c) Financial competency, and
- (d) Past procurement related litigation and results thereof.

(6) If any joint venture is selected for a procurement contract, the concerned public entity shall require such joint venture to register permanent accounts number and value added tax with the Inland Revenue Office in a manner to have the joint liability of such venture as well as the personal liability of each partner of the joint venture.

(7) Where any joint venture is required to submit the bid guarantee while submitting a bid, such bid guarantee has to be issued in the name of all partners of the joint venture referred to in Sub-rule (1) and in such manner as to have liability of all partners.

(8) Other terms relating to the joint venture shall be as set forth in the tender documents.

29. Power to require documents disclosing economic and financial

capacity: (1) In requesting through the tender documents for the submission of documents proving the economic and financial capacity of the bidder, the public entity may request for any or all of the following documents, depending on the nature of construction works:

- (a) Bank statements of the bidder,
- (b) Financial statements of turnover relating to the business of the bidder,
- (c) Balance sheet indicating the assets, liabilities and profit and loss of the bidder,
- (d) Other matters indicating the economic and financial status of the bidder, and
- (e) Other details set forth in the tender documents.

(2) In requiring for the submission of balance sheet referred to in Clause (c) of Sub-rule (1), balance sheets of the last two to five financial years may be required according to nature of work.

30. Provisions relating to engagement of sub-contractors: (1) If a public

entity is to invite tenders allowing the carrying out of any construction works through a sub-contractor as well, it shall set down the following matters in the tender documents:

- (a) Matter that it can have the works performed by a sub-contractor,
- (b) Maximum percentage of the work to be carried out by a sub-contractor,
- (c) Criteria of qualification of a sub-contractor.

(2) Where the criteria of qualification are set down pursuant to Sub-rule (1), the bidder has to submit the documents supporting the

criteria of qualification of sub-contractor prior to entering into the procurement contract, as required.

Chapter-5

Provisions Relating to Tender

31. Procurement to be made through tender: (1) In making procurement of goods, services or any construction works valued at more than One Million Rupees, a public entity shall make such procurement through tender.

(2) In the case referred to in Section 15 of the Act, procurement of goods, construction works or other services shall be made by making invitation to international open bidding.

32. Matters to be set down in pre-qualification documents: Where invitation to bid is to be made by determining pre-qualification, such public entity has to prepare the pre-qualification documents prior to making invitation to bid. The following matters have to be set down in such pre-qualification documents:

- (a) Required qualification for the proposed work and the qualification of each partner in the case of a joint venture,
- (b) Documents and information required to be submitted by the proponents to prove their qualification and eligibility,
- (c) Where goods or construction works are to be procured in separate lots or packages, such lots or packages,
- (d) Instructions for preparing proposals,
- (e) Procedures for evaluating the pre-qualification proposals,
- (f) Principal terms and conditions of the procurement contract,
- (g) Such matters as may be determined from time to time by the Public Procurement Monitoring Office to be set down in the pre-qualification documents, and

(h) The manner, place, deadline and time for the submission of pre-qualification proposals.

33. Prequalification criteria to be approved: A public entity shall, prior to making invitation to prequalification proposals, have the prequalification criteria determined pursuant to Rule 25 or 26 approved by the departmental head.

34. Prequalification documents to be provided: (1) A public entity shall provide the prequalification documents by collecting a fee of One Thousand to Fifteen Thousand Rupees depending on the costs incurred in the preparation of the prequalification documents from an interested person, firm, organization or company.

(2) The documents referred to in Sub-rule (1) shall bear the signature of the chief of public entity or the employee designated by him or her and the seal of office. The prequalification documents may be provided by the concerned public entity or Two or more other bodies designated by that entity.

35. Selection of qualified applicants: (1) The evaluation committee shall make necessary examination of whether the prequalification applicant has meet each criterion of qualification set forth in the prequalification documents. Upon such examination, an applicant who meets all criteria of qualification shall be deemed to be selected on pre-qualification examination and an applicant who fails to meet all criteria of qualification shall be deemed not to be selected.

(2) Prequalification applicants selected on examination referred to in Sub-rule (1) shall be deemed qualified to submit bids in relation to the concerned procurement proceedings.

36. Report to be submitted: (1) The evaluation committee shall prepare a report containing a detailed analysis of examination carried out pursuant to Rule 35 and submit it to the public entity no later than Fifteen days after the date of commencement of evaluation.

(2) The evaluation committee shall set out the following matters in the report referred to in Sub-rule (1):

- (a) Applicant's name and address,
- (b) Document supporting each criterion of applicant's qualification,
- (c) Schedule, if required,
- (d) In the event of submission of proposal as a joint venture, whether document relating to the joint venture is complete or not and the share and liability of each partner of such venture,
- (e) Where procurement of goods or construction works are to be procured in separate lots or packages, the procedures followed to examine such lots and packages and the applicants selected to take part in the procurement proceedings of such lots and packages,
- (f) Reasons for the selection or non-selection of applicants.

37. Matters to be set down in tender documents: A public entity may set down in the tender documents the following matters, as required, in addition to the matters set forth in Section 13 of the Act:

- (a) Plans, drawings of proposed work,
- (b) Bill of quantities,
- (c) Quantity of goods,
- (d) Any incidental work to be performed by bidders,
- (e) Time for the delivery of goods and completion of construction works,
- (f) Provisions relating to warranty and repair and maintenance,

- (g) Required training to be given by bidders and type and quantity of supervision,
- (h) Requirement that the goods or spare parts to be delivered should be brand new and original,
- (i) Source of funding required for the proposed procurement.

38. Prohibition on discrimination: (1) Except in the case referred to in Clause (h) of Sub-section (2) of Section 13 of the Act, no public entity shall make discrimination against bidders as to their nationality in procurement proceedings.

(2) Where a bidder is not able to obtain any particular document required by the tender documents, the concerned public entity shall accept another document submitted by the bidder which is equivalent to such document.

39. Disclosure of agents: (1) If, in submitting a bid, a foreign bidder has appoint its agent in Nepal, it shall set down the following details about such agent:

- (a) The name and address of the agent,
- (b) The figure of commission payable to the agent, type of currency and mode of payment,
- (c) Any other condition agreed with the agent,
- (d) In the case of a local agent, a certified copy of the permanent accounts number registration of, and acceptance letter, of the local agent.

(2) In submitting a bid by an agent on behalf of a foreign bidder, the agent shall clearly state the matters set forth in Clauses (b) and (c) of Sub-rule (1).

(3) If a foreign bidder does not clearly state the matters set forth in Sub-rule (1) or if a bid submitted by such bidder stated that there is no local agent but it is proved thereafter that there exists such agent or if a

bid stated low commission payable to the agent but it is proved thereafter that the agent has received high commission, the public entity shall take action for blacklisting such bidder pursuant to Rule 141.

40. Criteria and documents on eligibility of bidders to be set forth: (1) A public entity shall also set forth in the tender documents the eligibility criteria of bidders and copies of documents required to be submitted by the bidders to prove such criteria.

(2) The documents referred to in Sub-rule (1) shall be as follows:

- (a) Firm, organization or company registration certificate,
- (b) Business registration license,

Explanation: For the purposes of this Clause, "business registration license" means a certificate obtained by a construction entrepreneur, under the prevailing laws relating to construction entrepreneur, with object to operate the construction business.

- (c) Value added tax registration certificate and permanent accounts registration number (PAN) certificate,
- (d) Tax clearance certificate obtained from the Inland Revenue Department or documents showing submission of tax returns for the period specified by the public entity,
- (e) Declaration made in writing by the bidder that it is not disqualified for taking part in the procurement proceedings, that it has no conflict of interests in the proposed procurement proceedings and that it has not been punished for an offense relating to the concerned profession or business,

- (f) Such other documents as the public entity considers necessary.

(3) If it is omitted to mention the documents referred to in Sub-rule (2) in the tender documents or such documents are not clearly mentioned or any other matter is to be amended therein, the public entity may mention such documents, make clarification or amendment by publishing a notice in a daily newspaper of national circulation and in an international communication means in the case of an international bidding, within the period for the submission of bids.

Provided that, where additional time is required for bidders to submit tenders by the reason of such notice, the dead line for the submission of tenders shall also be extended.

(4) The tender of a bidder who fails to submit the documents referred to in Sub-rules (1) and (2) shall not be entertained.

41. Language of tender: (1) Except as otherwise provided in the Act and these Rules, the prequalification documents, tender documents, request for proposal documents, notice of request for prequalification, tender or proposal and procurement contract shall be prepared in the Nepali language as far as possible and in the English language if it is not possible.

(2) Bidders may submit procurement related documents written or materials printed in the Nepali or English language to the public entity.

Provided that, the relevant portions of such documents or printed materials have to be translated in the English language by a competent body of the concerned country; and in the case of divergence between such documents or printed materials and such translated portions, the translated portions shall prevail.

42. Matters to be set down in technical specifications of goods: In setting down the technical specifications of goods in the tender documents, the public entity shall set down the following matters, as required:

- (a) Plans, drawings and designs of the proposed work,
- (b) Bill of quantities,
- (c) Relevant physical and chemical characteristics of goods and expected performance characteristics,
- (d) Technical configurations,
- (e) Whether required spare parts and specified service shall be available during the life of goods or not,
- (f) Descriptive literature or samples to be submitted along with the tender,
- (g) Description of expected performance or quality guarantee,
- (h) Provisions relating to warranty and repair and maintenance,
- (i) Environmental impacts, if any, caused from goods and standards to be adopted to mitigate such impacts,
- (j) Criteria and tests to be adopted to examine whether the goods delivered conform to the specifications set forth in the tender documents or not,
- (k) Such other necessary matters as determined by the public entity.

43. Matters to be set down in technical specifications of construction works: In setting down the technical specifications of construction works in the tender documents, the public entity shall set down the following matters, as required:

- (a) Scope and purpose of the proposed construction works,
- (b) Physical nature and conditions of the construction site,
- (c) Description of the proposed construction works in terms of design, building, installation of equipment (erection), production and installation,

- (d) A bill of quantities with estimated quantities of each individual item of the construction works,
- (e) Environmental impacts, if any, caused from the construction works and standards to be adopted to mitigate such impacts,
- (f) Specific technical descriptions as to items such as mechanical, sanitary and plumbing and electric installations, if such works are also to be carried out,
- (g) Detailed description of the equipment and spare parts to be supplied,
- (h) Description of expected performance or quality guarantee,
- (i) Inspection and testing to be conducted at various stages of the construction works,
- (j) Completion tests,
- (k) Technical documentation, as-built designs and operating manuals, as required, to be provided by the construction entrepreneurs after the completion of construction works,
- (l) Inspection and performance tests to be conducted by the public entity for the acceptance of the construction works,
- (m) Schedule of time for the commencement and completion of the construction works, and
- (n) Such other necessary matters as determined by the concerned public entity.

44. Matters to be set down in specifications of other service: In setting down the technical specifications of other service in the tender documents, the public entity shall set down the following matters, as required:

- (a) Scope and purpose of the service,
- (b) Expected performance, tasks and service to be provided by the service provider,

- (c) Descriptive literature or samples to be provided with the tender by the bidder,
- (d) Terms to be abided by the service provider,
- (e) Criteria and methods to evaluate the service provided by the service provider,
- (f) Inspection and quality testing of work or service,
- (g) Description of performance and quality guarantee,
- (h) Type and quantity of training and supervision to be provided by the service supplier,
- (i) Such other necessary matters as determined by the concerned public entity.

45. Documents to be included in tender documents: A public entity shall include the following documents, as required, in the tender documents having regard to the nature of the goods, construction works or other service to be procured:

- (a) Tender instructions and tender form,
- (b) Format of bid bond,
- (c) Format of performance guarantee,
- (d) Format of advance payment guarantee,
- (e) Terms and format of procurement contract,
- (f) Specifications and design,
- (g) Work schedule for the commencement and completion of work, currency in which payment is made, source and location wherefrom materials can be available, and
- (h) Other necessary documents.

- 46. Instructions for preparation and submission of tender: ^x.....** In giving instructions for preparing and submitting a tender, a public entity may give instructions on the following matters in the tender documents:
- (a) Language in which the tender is to be prepared,
 - (b) Manner in which the price is to be expressed according to international commercial terms (INCOTERMS) to be used in international trade,
 - (c) Required information as to any joint venture,
 - (d) List of documents to be submitted by the bidder along with the tender,
 - (e) Requirement that the bidder should provide samples of goods to the concerned public entity and number of such samples,
 - (f) Requirement that, in the case of procurement of goods, the bidder should submit a table of spare parts of such goods recommended by the manufacturer along with the manufacturer's stock number for each item, the quantity, unit price and indication of any escalation of prices for spare parts after the contractually guaranteed period for spare parts prices,
 - (g) Requirement that the bidder should state in the tender the country of origin of the goods to be supplied, the name of the manufacturer, the brand name, model and catalogue number,
 - (h) Name, title and address of the employee designated by the public entity to clarify any matter which the bidder is to inquire into with the public entity in relation to procurement proceedings,
 - (i) Where the bidder has to provide training to the employees of the public entity under the procurement contract or transfer technology to such entity, matters relating thereto,

^x Omitted by the Second Amendment

- (j) That the public entity reserves the right to accept or reject the tenders submitted, and
- (k) Such other matters as considered necessary by the concerned public entity.

47. Tender documents to be approved: After the tender documents and request for proposal documents have been prepared, the chief of the concerned public entity shall approve such documents.

48. Fees for tender documents: (1) Any person, firm, organization or company who wish to purchase the tender documents shall obtain the tender documents bearing the signature of the chief of the concerned public entity or of the employee designated by him or her from that entity or Two or more other bodies specified by that entity, upon payment of the following fees:

- (a) For more than one million and up to six million rupees One thousand rupees
- (b) For more than six million and up to sixty million rupees Three thousand rupees
- (c) For more than sixty million and up to one hundred million rupees Five thousand rupees
- (d) For more than one hundred million and up to twenty five hundred million rupees Six thousand rupees
- (e) For more than twenty five hundred million rupees Ten thousand rupees

(2) If any person, firm, company or organization makes a request in writing to send the tender documents or request for proposal documents upon payment of the fees referred to in Sub-rule (1) or courier fees, the concerned public entity shall send the tender documents by post or courier to such person, firm, company or organization.

Provided that, if such person, firm, company or organization is not able to receive the tender documents in time, the public entity shall not be responsible for the same.

49. Tender notice to indicate cost estimate: A notice of invitation to tender for a construction work valued up to six million rupees shall indicate the cost estimate.

50. Notice to be given: The concerned public entity shall give a notice of invitation to international tender or prequalification proposal to all foreign missions based in Nepal.

51. Site visits: (1) Bidders themselves or their employees or agents may make site visits at their own costs and responsibility for potential risks in order to collect information required to prepare tender and make the procurement contract.

(2) If the public entity has to give permission for site visits pursuant to Sub-rule (1), it shall give such permission.

(3) The public entity may arrange for such site visits before the pre-bid conference is held pursuant to Rule 52 for the purpose of providing the understanding of site realities to the bidders.

52. Pre-bid conference: (1) A public entity may organize a conference of bidders in advance of at least ten days prior to the deadline for the submission of tender in the case of a notice of invitation to national tender and in advance of at least fifteen days prior to such deadline in the case of a notice of invitation to international tender, for the purpose of briefing bidders on the tender documents, technical specifications, sites or similar other matters.

(2) A bidder may raise a question or query about the procurement proceedings before the public entity in a meeting referred to in Sub-rule (1); and such body shall provide promptly the responses to such question or query and the minutes of meeting to all bidders without identifying the sources of the questioners.

(3) If, following the conference held pursuant to Sub-rule (1), it appears necessary to amend any technical or commercial aspect of the tender documents; the public entity shall make according amendment to such documents and forward the contents of such amendment to all bidders who have purchased the tender documents no later than five days after such conference is held.

53. Tender securities: (1) A bidder shall furnish, along with a tender, a tender security in a sum to be set by at least Two point five percent of the tender price offered by the bidder in the tender in cash or a tender security equal to that amount issued by a commercial bank.

(2) The validity period of the tender security referred to in Sub-rule (1) shall extend for a period of at least Thirty days beyond the validity period of the tender.

(3) If a bidder requests the public entity making invitation to tender to confirm whether a tender security issued by any particular commercial bank or financial institution is acceptable or not, such public entity shall make an immediate response to that request.

(4) A tender security issued by a foreign bank has to be counter guaranteed by a commercial bank within Nepal.

(5) The public entity shall enter into the procurement contract within the validity period of the tender security. If, for any reason, the procurement contract cannot be entered into within that period, it shall send a letter to all bidders to extend the validity period of the tender.

(6) Bidders may make decision to or not to extend the validity period of the tender as per the letter referred to in Sub-rule (5). The tender security of a bidder who does not extend the validity period of tender shall not be forfeited. A bidder who extends the validity period of tender shall submit the bid security by extending the validity period by the concerned bank accordingly. If a bidder does not so extend the

period and submit the tender security, the validity period of tender shall not be deemed extended.

(7) In the event of forfeiture of the tender security of any bidder, the concerned public entity shall make a claim, within the validity period of security, with the bank issuing such security for the payment of the amount of security submitted by that bidder.

(8) The public entity shall return a tender security other than tender security liable to be forfeited pursuant to the Act or these Rules to the concerned bidder no later than three days after the procurement contract has been entered into.

54. Validity period of tenders: The public entity shall mention the following validity period of tender or proposal of consultancy service in the tender documents or request for proposal documents:

- (a) Ninety days in the case of a tender or proposal of consultancy service of which cost estimate does not exceed One Hundred Million Rupees.
- (b) One Hundred Twenty days in the case of a tender or proposal of consultancy service of which cost estimate exceeds One Hundred Million Rupees.

55. Required number of copies of tender to be submitted: In submitting a prequalification proposal, tender or proposal for consultancy service, a bidder or proponent shall submit such required copies thereof as set forth in the prequalification documents, tender documents or documents relating to invitation to proposals.

56. To maintain registers and give receipts: (1) A public entity shall maintain separate records of the sale and registration of the prequalification documents, tender documents or documents relating to invitation to proposals.

(2) If any bidders or proponents themselves or their agents submit the prequalification proposals, tenders or proposals for consultancy

service, the public entity shall acknowledge the same and give receipts indicating the date and time to them.

(3) The public entity shall mention in the outer envelope of a tender received pursuant to Sub-rule (2) the registration number entered in the register pursuant to Sub-rule (1).

(4) After the expiry of the time for sale and registration of tender, the chief of the concerned public entity or the officer employee designated by him or her shall sign and close the register referred to in Sub-rule (1).

57. Security of tenders: (1) The public entity shall keep all tenders or proposals for consultancy service received pursuant to these Rules in such a secure manner that does not permit such tenders or proposals to be opened by any one prior to the time for the opening of the tenders.

(2) The public entity shall keep the characteristics of samples submitted along with tenders in such a confidential and secure manner that such characteristics are not disclosed prior to the opening of tenders.

58. Withdrawal or modification of tenders: (1) If a bidder or proponent wishes to modify or withdraw its tender or proposal for consultancy service, it shall submit an application in a sealed envelope, setting out the following matters in the outer part of the envelope, to the concerned public entity prior to the deadline for the submission of tenders:

- (a) Subject of the tender or proposal for consultancy service,
- (b) Name and address of the public entity or authority inviting the tender or proposal for consultancy service,
- (c) Contents of the tender or proposal for consultancy service which are modified or withdrawn, and

- (d) Requirement that it be opened only on the day and in the time stipulated for the opening of the tender or proposal for consultancy service.

(2) If a sealed envelope referred to in Sub-rule (1) is received, the concerned public entity shall keep such envelope in a secure manner pursuant to Rule 57.

59. Opening of tenders: (1) The public entity shall open the tenders in presence of the bidders or their agents.

Provided that, nothing shall bar the opening of tenders by the reason only that any bidder or its agent is not present.

(2) Prior to opening tenders pursuant to Sub-section (1), the public entity shall make groupings of the envelopes of tenders received after the deadline, envelopes of applications made for the withdrawal or modification of tenders and envelopes of tenders duly registered and return the tenders received after the deadline to the concerned bidders. In so returning tenders, the report of procurement proceedings shall be prepared indicating, *inter alia*, the details, date and time thereof.

(3) After returning the tenders pursuant to Sub-rule (2), the public entity shall open the envelopes of tender marked withdrawal and announce the name of such bidder, and then open all envelopes marked modification and read out the contents in such envelopes.

(4) After reading out the contents referred to in Sub-rule (3), the public entity shall open each submitted tender in a sequential manner, read out the following matters of such tender and prepare a recognizance deed thereof, which has to be signed by the bidder present or its agent:

- (a) Name and address of bidder,
- (b) Tender price and each unit rate,
- (c) If the tender offers any discounts, contents thereof,

- (d) If any alternative to technical specification is proposed, tender price thereof,
- (e) Whether there is absence of tender security or not,
- (f) If there is a discrepancy between figures and words, details thereof,
- (g) Whether the tender form bears the signature of the bidder or its agent or not,
- (h) If the tender documents contain any correction or overwriting, amount so overwritten and details thereof,
- (i) Whether the bidder or its agent has signed or not,
- (j) If the bidder has mentioned any remarks in the tender form, contents thereof and requested for information of rate, details thereof, and
- (k) Such other matters as the public entity considers appropriate.

(5) No decision as to the acceptance or rejection of any tender shall be made at the time of opening of tenders pursuant to this Rule.

60. Examination of completeness of tenders: While examining the completeness of a tender, the evaluation committee shall examine the following matters, in addition to the matters set forth in Sub-section (3) of Section 23 of the Act:

- (a) Whether the bidder is involved individually or as a partner in a joint venture in more than one tender or not,
- (b) Whether the bidder is disqualified to take part in the procurement proceedings pursuant to Sub-sections (2) and (3) of Section 63 of the Act or not,

- (c) Whether the tender is submitted in the tender documents sold by the concerned public entity or other entity designated by the public entity or not,
- (d) Whether the concerned person, firm, organization or company has fill up the tender documents procured by itself and submitted the tender or not.

61. Evaluation of tenders: (1) Where the tender documents provide that the tender price may be expressed in various currencies in the case of an international tender, the evaluation and comparison of tenders shall be made by converting the tender prices of all tenders to a single currency according to the exchange rate and currency as set forth in the tender documents.

(2) Tenders shall be evaluated and compared by setting the tender price excluding the value added tax.

(3) Except as otherwise provided in the prevailing Act or these Rules, information relating to the examination of tenders, information sought or received from bidders in the course of making such examination and information relating to evaluation and comparison shall not be disclosed to any bidder or any other person who is not involved officially in the decision making process.

(4) In evaluating a tender included for evaluation pursuant to Sub-section (1) of Section 25 of the Act, the evaluation committee shall evaluate it in accordance with the procedures and criteria set forth in the tender documents of such tender.

(5) In evaluating a tender pursuant to Sub-rule (4), the technical, commercial and financial aspects of the tender shall be evaluated.

(6) A tender shall be regarded as a substantially responsive tender even if it contains minor deviations that do not materially alter and depart from the scope, quality, characteristics, terms, conditions, performance or other requirements set forth in the tender documents and

are acceptable to the public entity; and if the evaluation of such tender shall have any effect on the cost, the cost of such effect shall be added to the tender price to allow for tender comparison on an equal basis.

(7) The evaluated tender cost drawn out in accordance with Sub-rule (6) and Rules 62, 63 and 64 shall be used only for the purpose of comparing tender, and it shall not be included in the price of procurement contract.

(8) If there is a discrepancy in the price or other information between the original copy and a duplicate copy, the price or information set forth in the original copy shall prevail.

(9) The evaluation committee shall fix the cost of any minor deviations referred to in Sub-section (6) on the basis of the cost estimate of the concerned work or prevailing market price or interest rate. Where such cost estimate, prevailing market price or interest is not certain, such cost shall be fixed on the basis of the average price of the same item quoted in another substantially responsive tender.

(10) No consultation shall be made with the bidder in relation to the propriety of the cost to be fixed pursuant to this Rule.

62. Evaluation of technical aspects of tenders: (1) In evaluating the technical aspects of tenders pursuant to Sub-rule (5) of Rule 61, the evaluation committee shall evaluate the following matters:

- (a) Scope of supply of goods, construction works or other service,
- (b) Technical specifications of key items of goods, construction works or other service and operating and performance characteristics, and
- (c) Duration of warranty period.

(2) If any discrepancy between the matter set forth in the tender documents and the matter set forth by the bidder in the tender is found upon evaluation made pursuant to Sub-rule (1), the evaluation committee shall also set down such discrepancy.

(3) The value of discrepancy referred to in Sub-rule (2) shall be determined by making calculation in accordance with the criteria and methodology set forth in the tender documents.

63. Evaluation of commercial aspects of tenders: (1) In evaluating the commercial aspects of the tenders pursuant to Sub-rule (5) of Rule 61 after the evaluation of the technical aspects of tenders pursuant to Rule 62, the evaluation committee shall evaluate the following matters:

- (a) Period for the supply or completion of goods, construction works or other service,
- (b) Payment terms,
- (c) Liquidated damages payable for the failure to complete the work the bidder in time and bonus receivable for the early completion of the work,
- (d) Guarantee obligations of the bidder,
- (e) Obligations to be performed by the bidder,
- (f) Any other terms, if any, inserted by the bidder in the proposed procurement contract.

(2) If any discrepancy between the matter set forth in the tender documents and the matter set forth by the bidder in the tender is found upon evaluation made pursuant to Sub-rule (1), the evaluation committee shall also set down such discrepancy.

(3) The evaluation committee shall set the cost of the discrepancy referred to in Sub-rule (2) by calculating it based on the criteria and methodology set forth in the tender documents.

64. Evaluation of financial aspects of tenders: (1) After the evaluation of the technical and commercial aspects of tenders pursuant to Rules 62 and 63, the financial aspects of such tenders shall be evaluated.

(2) In evaluating the financial aspects of a tender pursuant to Sub-rule (1), the cost of tender shall be set by determining the cost of required aspects out of the technical and commercial aspects of the tender and of the following matters as well, as required, in accordance with the criteria and methodology set forth in the tender documents:

- (a) Inland transport costs,
- (b) Technical characteristics.

(3) In evaluating the technical characteristics pursuant to Clause (b) of Sub-rule (2), where a tender quotes the rate, capacity or output in excess of the minimum rate, capacity or output relating to procurement set forth in the tender documents, the evaluation committee shall evaluate only the minimum rate, capacity or output.

(4) If the tender documents provide that preference shall be given to domestic goods and local construction entrepreneurs, the evaluation committee shall, in evaluating the financial aspects of a tender, calculate the price of preference to be given to domestic goods or construction entrepreneurs and set the evaluated price by adding such price to the tender price of a foreign bidder.

(5) In evaluating a tender, the evaluation committee shall not consider about the spare parts recommended by the bidder.

65. Special evaluation of tenders for construction works: (1) In evaluating a tender for construction works, the evaluation committee shall evaluate the following matters, in addition to the matters set forth in Rules 62, 63 and 64:

- (a) Whether the work plan of construction works, performance schedule and timing of mobilization

are in consistent with those set forth in the tender documents or not,

- (b) Whether the per unit rate quoted by the bidder for the items listed in the bill of quantities is reliable or not,
- (c) Whether the tender price is unbalanced for the following reason:
 - (1) The bidder has quoted unusually high rate for items of work to be performed at an early stage of the procurement contract, or
 - (2) The bidder has quoted unusually high rate for any such items of the bill of quantities that it believes were underestimated in the bill of quantities.

(2)The evaluation committee shall assess whether there is a situation as referred to in Clause (c) of Sub-rule (1) or whether the bidder has quoted such low prices that it fails to complete the work satisfactorily or has quoted unrealistically low prices with or without misunderstanding of the scope or technical specifications of the construction works or whether the bidder has quoted high prices for the items of work to be performed at an early stage of construction (frontloading). In such a case of quoting low tender price, the evaluation committee shall seek explanation including rate analysis from such bidder.

(3) If the explanation sought pursuant to Sub-rule (2) is satisfactory, the evaluation committee may recommend to accept the tender by taking additional performance security equal to the sum to be set by eight percent of the tender price from such bidder; and if such explanation is not satisfactory, it may recommend the public entity to reject such tender.

(4) The additional performance guarantee taken pursuant to Sub-rule (3) shall be returned after the payment of the final bill.

66. Report to be submitted: The evaluation committee shall prepare a report indicating the detailed analysis of examination and evaluation carried out pursuant to Rules 60, 61, 62, 63, 64 and 65 and the following matters and submit the report to the public entity no later than fifteen days after the date of commencement of evaluation:

- (a) Names and addresses of bidders,
- (b) Total tender prices of bidders and currencies,
- (c) In the event of correction of an error pursuant to Sub-sections (8) and (9) of Section 23 of the Act, total tender prices set after the correction of such error, and currencies,
- (d) In the event that the recognizance deed on the opening of financial proposal mentions that the bidder offers to give any concessions, matter that the evaluation committee has adjusted the amount proposed for such concessions,
- (e) Amount set on the basis of the currency and the exchange rate of the stipulated date used to make comparison of tenders pursuant to Clause (f) of Sub-section (2) of Section 13 of the Act,
- (f) Criteria adopted in making examination pursuant to Sub-sections (2), (3), (4) and (6) of Section 23 of the Act,
- (g) The criteria and methodology of evaluation of the lowest evaluated substantially responsive tender pursuant to Sub-section (8) of Section 25 of the Act.

67. Authority to accept tender: (1) The following authorities shall have the authority to accept tenders valued at the following amounts:

- (a) Gazetted third class chief of office for up to Ten Million Rupees,

- (b) Gazetted second class chief of office for up to Thirty million Rupees,
- (c) Gazetted first class chief of office for up to Seventy Million Rupees,
- (d) Departmental head for more than Seventy Million Rupees.

(2) Notwithstanding anything contained in Sub-rule (1), the secretary or administrative chief of a constitutional organ or body, ministry, secretariat and any other office of similar nature may accept a tender for procurement of whatever value to be made for his or her office.

68. Samples of goods: (1) A bidder who has been unsuccessful upon the evaluation of tender may make a request in writing to the concerned public entity to return to the bidder the samples of goods submitted by the bidder.

(2) If a request is made pursuant to Sub-rule (1), the public entity shall, if such samples of goods have not been destroyed during examination, return such samples to the bidder on the condition that the bidder shall bear all expenses incurred in transportation and packaging of the same.

(3) For the purpose of comparing the samples of goods submitted by the bidder of accepted tender with the goods to be supplied, the public entity shall get such samples certified by the tender evaluation committee and keep them in a secure manner.

Chapter-6

Provisions Relating to Consultancy Services

69. Terms of reference to be prepared: The public entity shall, for the procurement of consultancy services, prepare the terms of reference indicating the following matters:

- (a) Background and objective of the assignment to be performed by the consultant,
- (b) Scope of work of the consultant and the assignment to be performed by the consultant,
- (c) Description of existing relevant studies and basic data, if any,
- (d) If the consultant is required to transfer any knowledge or skill to the public entity, description thereof,
- (e) If any training is to be provided, the number of employees to be trained,
- (f) Functions and qualifications of key personnel of the consultant and an estimated time required for the assignment to be performed by the consultant,
- (g) Time for the commencement and completion of assignment by the consultant,
- (h) Description of information, physical facilities and equipment to be provided by the public entity to the consultant, and
- (i) Description of reports, data, designs, survey reports etc. to be submitted by the consultant.

70. **Preparation of short list by making request for proposals publicly:**

(1) For the procurement of consultancy service that values more than one million rupees, the public entity shall publish a notice inviting letters of intent pursuant to Section 30 of the Act.

(2) If it is necessary to procure consultancy service the value of which exceeds thirty million rupees, international letters of intent shall be invited.

(3) The notice inviting the letters of intent pursuant to Sub-rules (1) and (2) shall indicate the following matters:

- (a) The name and address of the public entity,

- (b) General description of the proposed assignment or project,
- (c) The source of funding for the proposed assignment,
- (d) The qualification of the consultant submitting the letter of intent,
- (e) If the consultant submitting the letter of intent is a firm or company:
 - (1) A profile of the firm or company, its organization and staffing,
 - (2) If two or more firms or companies are to provide the consultancy service as a group, organization or joint venture, the names, addresses, profiles of such firms or companies and the name of the lead firm or company,
 - (3) Details of experience of similar assignments undertaken in the previous five years and their locations,
 - (4) Bio-data of key human resources to be involved in the proposed assignment.
- (f) In the case of an individual consultant, details of experience of similar assignment in the previous three years and their locations, and his or her bio-data,
- (g) Estimated time required for the completion of the proposed assignment,
- (h) Statement that only short listed persons, firms, organizations or companies shall be invited to

submit proposals on consultancy service procurement,

- (i) Documents required to be submitted by the consultant submitting the letter of intent, and
- (j) Instructions for the preparation of the letter of intent and the deadline and place for the submission of the letter of intent,
- (k) Contact address of the public entity and contact person.

(4) In inviting international letters of intent, the public entity shall obtain approval from the one level higher authority.

(5) The public entity shall select the consultant submitting the letter of intent who can provide such consultancy service by making evaluation, *inter alia*, of the qualification, experience and capacity of the consultants submitting the letters of intent.

(6) In selecting international consultants submitting the letter of intent, the public entity shall make selection of firms or companies including different nationalities, backgrounds and having one local agent.

(7) A renowned consultant who did not submit the letter of intent pursuant to the notice referred to in Sub-rule (1) may be included in the shortlist after making contact with such consultant.

(8) If, while selecting the consultants expressing the letter of intent pursuant to this Rule or including the name pursuant to Sub-rule (7), at least three consultants submitting the letter of intent cannot be selected, the public entity shall re-publish a notice inviting letters of intent.

(9) If, at least three letters of intent cannot be selected even upon the publication of notice for the second time pursuant to Sub-rule (8),

the list including only the selected consultants submitting the letter of intent may be maintained.

(10) The public entity shall give information of the list prepared pursuant to this Rule to all consultants who have submitted the letter of intent.

71. Request for proposals: (1) After the preparation of a short list pursuant to Rule 70, the public entity shall send the documents relating to proposal to the consultants submitting the letter of intent included in the list by post, courier or through person and invite them to submit proposals within at least thirty days. No fee shall be charged in respect of the documents relating to proposal to be so sent.

(2) The public entity shall set down the following matters in the documents relating to proposal, in addition to the matters set down in Section 31 of the Act:

- (a) Letter of invitation to proposals,
- (b) Requirement that the key human resources proposed by the proponent certify that their respective updated bio-data are accurate and complete,
- (c) Matter that financial proposals shall be opened only after the evaluation of technical proposals,
- (d) Minimum pass score to be obtained by the proponent on the technical proposal,
- (e) Whether the proponent is allowed to propose a separate action plan of its own and human resources for the concerned assignment,
- (f) Whether the proponent is allowed to comment on the terms of reference, and

- (g) Source of finance required for the proposed assignment.

(3) The public entity shall set down the weights of evaluation of proposals in the documents relating to proposal.

(4) In setting down the weights pursuant to Sub-rule (3), the same shall be set down in accordance with the following:

- (a) Where the proposal is to be selected by adopting the quality and cost based selection method, the weights shall be determined in such a manner that the total weight of the technical and financial proposals be one hundred according to the nature and complexity of the assignment and, out of that total score, the total weight for the technical proposal should be in the range of seventy to ninety and that for the financial proposal should be in the range of Thirty to Ten.
- (b) Where the proposal is to be selected by adopting the quality based selection method, budget ceiling selection method and least cost selection method, the weight for the technical proposal shall be so determined that the total weight should be one hundred.

(5) While inviting proposals for the selection of consultant by adopting the budget ceiling selection method, the available budget shall be indicated in the proposal.

(6) While indicating the weights in the documents relating to proposal for the selection of consultant, the public entity shall so indicate appropriate weights according to the nature and complexity of the assignment that such weights do not exceed the ceiling of weights as follows:

(a)	Consultant's specific experience	Up to 10 percent of total score
(b)	Methodology of performance and responsiveness to the terms of reference	20 to 50 percent of total score
(c)	Qualification and experience of key human resources	30 to 60 percent of total score
(d)	Technology transfer or training	Up to 10 percent to total score
(e)	Participation of native human resources	Up to 10 percent to total score
Total		Total score 100

(7) The weights set down in Clause (e) of Sub-rule (6) shall not apply to national proposals.

(8) All evaluation criteria set down in Sub-rule (6) shall be divided into three sub-criteria and weights shall also be determined for the same.

(9) While setting down the weights pursuant to Sub-rule (3), pass marks shall also be set down.

72. Power to procure consultancy service by soliciting proposals from

consultants included in standing list: (1) A public entity may procure a consultancy service of which value is less than One Million Rupees by soliciting technical and financial proposals in writing from the consultants included in the standing list prepared by its office.

(2) In soliciting proposals pursuant to Sub-rule (1), the documents relating to proposal shall be sent to six consultants, if

possible, and at least three consultants, soliciting technical and financial proposals in separate envelopes.

(3) The proposals referred to in Sub-rule (2) shall be evaluated according to the quality and cost based selection method.

73. Matters to be set down in directions for preparation of proposals:

The public entity shall set down the following matters in the instructions for proponents to prepare proposals referred to in Clause (c) of Sub-section (2) of Section 31 of the Act:

- (a) Standard forms for technical proposal and financial proposal,
- (b) The manner of preparation and submission of technical and financial proposals,
- (c) Phasing of the assignment and likelihood of follow-up assignment,
- (d) Where proponents are to obtain any information as to the documents relating to proposal, the procedures for obtaining such information,
- (e) Whether the consultant is allowed to sub-contract any portion of the proposed assignment,
- (f) Information about the notice, service, equipment to be provided by the public entity,
- (g) Statement whether a pre-proposal conference will be held or not,
- (h) Validity period of proposal,
- (i) Statement that the consultancy firm or any of its affiliates shall be disqualified from providing goods, construction work, other service or consultancy service related assignment under the proposed procurement proceedings if, in the opinion of the public entity, such activities constitute a conflict of interest with the proposed consultancy services,

- (j) Information as to tax to be paid by the proponent and its human resources and other authentic body which the proponent should contact if it wishes to obtain further information as to tax or any other matter,
- (k) Language of proposal,
- (l) Procedures for modification of the documents relating to proposal by the public entity,
- (m) Manner of submission of the proposal,
- (n) Manner of opening of proposal,
- (o) Conditions relating to confidentiality.

74. Methods for selection of proposals: (1) A public entity may procure the consultancy service for the following types of assignments by adopting the quality-based selection method:

- (a) Assignments of such nature as for which it is difficult to define precise terms of reference and the required inputs from the consultants such as economic or sectoral studies of the country, multi-sectoral feasibility studies, design of a hazardous waste remediation management plant or design of an urban master plan and financial sector reforms, and for which the public entity expects the consultants to demonstrate innovation in their proposals,
- (b) Such types of assignments which require high level of expertise and which have a serious and long-term impact in the future such as feasibility studies of large dams or of major infrastructures or structural engineering design, policy studies of

national significance and management studies of large government agencies,

- (c) Such types of assignments in which the value of the services depends on the quality of analysis such as management advice, sectoral and policy studies or that can be carried out by persons or organizations in substantially different ways and such that the cost of competing proposals are not comparable.

(2) Approval of the departmental head shall be required to select the quality based selection method pursuant to Sub-rule (1).

(3) The least cost selection method may be selected for assignments which are of standard or routine nature, which are well defined and in which the contract amount is small, such as audits, general engineering design and procurement agents.

- 75. Manner of opening proposals:** (1) The public entity shall, in opening proposals pursuant to Section 32 of the Act, open them in presence of the proponents or their agents.

Provided that, nothing shall bar the opening of proposals by the reason only that any proponent or its agent is not present.

(2) Prior to opening proposals pursuant to Sub-section (1), the public entity shall make groupings of the envelopes of proposals received after the deadline and the envelopes of proposals duly registered, and return the proposals received after the deadline to the concerned proponents without opening such proposals. The public entity shall mention in the report of procurement proceedings the details of such return, date and time thereof.

(3) After returning the proposals pursuant to Sub-rule (2), the public entity shall open the outer envelope of each duly registered proposal in a sequential manner and open the technical proposal inside

it, read out the following matters and prepare a recognizance deed thereof:

- (a) Name and address of the proponent,
- (b) Whether the proposal bears the signature of the proponent or its agent or not,
- (c) If the documents relating to proposal contain any correction or overwriting, whether it is initialed by the proponent or its agent or not,
- (d) Such other necessary matters as the public entity considers appropriate.

(4) The public entity shall get the recognizance deed referred to in Sub-rule (3) signed by the proponent or its agent present.

(5) The public entity shall promptly send the technical proposals opened pursuant to Sub-rule (3) to the evaluation committee.

76. Method of evaluation of technical proposals: (1) In evaluating the technical proposal, each member of the evaluation committee shall individually evaluate it based on the criteria set forth in Sub-rule (6) of Rule 71 and determine the score gained by the proponent.

(2) After ascertaining the score pursuant to Sub-rule (1), the committee shall draw up the average score secured by such proponent by calculating the score given by each member of the committee.

(3) After the evaluation pursuant to Sub-rules (1) and (2), the evaluation committee shall prepare a list of proponents who have gained pass score as referred to in Sub-rule (9) of Rule 71.

(4) The list referred to in Sub-rule (3) shall be prepared in order of the proponents who have secured highest scores.

(5) The evaluation committee shall not open financial proposals until the evaluation of technical proposals is completed.

(6) The financial proposals of only the proponents included in the list referred to in Sub-rule (3) shall be opened, in accordance with Rule 79.

(7) The proposals of the proponents who cannot be included in the list referred to in Sub-rule (3) shall be returned unopened to the concerned proponents.

77. Evaluation report to be prepared: (1) The evaluation committee shall, upon completion of the evaluation proceedings referred to in Rule 76, prepare a report on the quality of proposals.

(2) The report referred to in Sub-rule (1) shall indicate, *inter alia*, the following matters:

- (a) Names and addresses of proponents,
- (b) Whether proposals have been signed by proponents or their authorized agents or not,
- (c) Whether documents supporting that proponents are qualified to submit proposals as per laws have been submitted or not,
- (d) In the event of the requirement of a joint venture agreement, whether such agreement has been submitted or not,
- (e) Whether proposals are complete in conformity with the directions set forth in the documents relating to proposal for proponents or not, and
- (f) Relative strengths, weaknesses of and results of evaluation of each proposal.

78. Notice to be given to proponents selected upon evaluation of technical proposals: (1) The public entity shall give a notice indicating the place, date and time for opening the financial proposals and asking

them to be present at that date and time to the proponents who have been included in the list referred to in Sub-rule (3) of Rule 76.

(2) In giving a notice to the proponents pursuant to Sub-rule (1), a period of at least seven days and that of at least fifteen days shall be given in the case of a domestic proposal and an international proposal, respectively.

(3) The financial proposals of those proponents who fail to secure the pass mark shall be returned to them, accompanied by a notice setting out the reason why their technical proposals have not been selected.

79. Opening of financial proposals: (1) The evaluation committee shall open the envelopes of financial proposals in presence of the proponents or their agents.

Provided that, noting shall bar the opening of financial proposals by the reason that any proponent or its agent is not present.

(2) After opening the envelope of a financial proposal pursuant to Sub-rule (1), the evaluation committee shall announce the name of such proponent, the score secured by the proponent in the financial proposal and the service fee proposed in the financial proposal and prepare a recognizance deed setting out the following matters:

- (a) Name and address of the proponent,
- (b) Proposed service fee,
- (c) If the proposal offers any discount in the proposed service fee, contents thereof,
- (d) If there is a discrepancy between figures and words, details thereof,
- (e) Whether the financial proposal bears the signature of the proponent or its agent or not,

- (f) Where an matter or content of the financial proposal is corrected or overwritten, whether such correction or overwriting has been initialed by the proponent or its agent or not, and the amount and contents so corrected or overwritten,
- (g) Such other necessary matters as the public entity considers appropriate.

80. Evaluation of financial proposals: (1) Except as otherwise mentioned in the documents relating to proposal, for the purpose of evaluation of a financial proposal, the service fee quoted in the proposal shall be deemed to include the taxes leviable on the proponent under the prevailing laws other than the value added tax and reimbursable expenses such as travel of consultant, translation of the documents concerned, report printing or overhead costs.

(2) If, in evaluating the financial proposal of each proponent, the evaluation committee finds any arithmetical error in the proposal, the public entity may rectify such error; and if, in so rectifying the error, the unit rate and the total amount differ, the unit rate shall prevail and the total amount shall be rectified according to that rate. In the event of such rectification of error, information thereof shall be given to the concerned proponent.

(3) If there is a divergence between the figure and words of the amount quoted by a proponent in the financial proposal, the amount set forth in words shall prevail.

(4) If the recognizance deed on the opening of the financial proposal sets down that any proponent offers any concession on the proposed quoted price, the evaluation committee shall adjust the amount so proposed for concession.

(5) After the evaluation referred to in Sub-rules (2), (3) and (4), a list of the set quoted prices of all proponents shall be prepared.

81. Selection of proponent: (1) Where the quality and cost method has been used to select a proposal, the evaluation committee shall select a successful proponent by making evaluation of the technical and financial proposals as follows:

- (a) The figure of quotient to be derived by dividing the figure, which is drawn by multiplying the secured marks of the technical proposal of the proponent to be evaluated with the weight-age of marks allocated for the technical proposal, with one hundred shall be the net secured marks of the technical proposal.
- (b) The figure of quotient to be derived by dividing the figure, which is drawn by multiplying the lowest quoted price, out of the proposals which have been successful upon the evaluation of technical proposals with the weight-age of score allocated for the financial proposal, with the quoted price of the proponent to be evaluated shall be the net secured marks of the financial proposal.
- (c) As a proponent who secures the highest marks on the basis of a combined evaluation by adding the net secured marks of the financial proposal and that of the technical proposal shall be successful, that proponent shall be selected.

Example: (1) Total weight-age of marks allocated for the technical proposal=80

Scores gained by proponents A, B and C who have secured the specified pass marks:

$$A=90$$

$$B=85$$

$$C=80$$

The method of calculating the marks secured on the technical proposal based on the above scores:

$$A= \frac{90 \times 80}{100} = 72$$

$$100$$

$$B= \frac{85 \times 80}{100} = 68$$

$$100$$

$$C= \frac{80 \times 80}{100} = 64$$

$$100$$

(2) Total weight-age of marks allocated for the financial proposal=20

Price quoted in the financial proposal by proponents A, B and C who have succeeded in the technical proposal:

$$A=450,000/-$$

$$B=430,000/-$$

$$C=420,000/-$$

Therefore, the lowest quoted price=420,000/-

The method of calculating the marks to be secured on the financial proposal based on the above marks:

$$A= \frac{420,000 \times 20}{450,000} = 18.66$$

$$450,000$$

$$B= \frac{420,000 \times 20}{430,000} = 19.53$$

$$430,000$$

$$C= \frac{420,000 \times 20}{420,000} = 20.00$$

$$420,000$$

(3) Description of total marks to be secured upon the combined evaluation of the technical proposal and the financial proposal:

Proponent	Net marks secured on technical proposal	Net marks secured on financial proposal	Total score	Remarks
A	72	18.66	90.66	Proponent A has to be selected as A has secured the highest marks.
B	68	19.53	87.53	
C	64	20.00	84	

(2) Where the quality method has been used for the selection of proposals, the evaluation committee shall select only the proponent who has secured the highest marks in the technical proposal pursuant to Clause (b) of Sub-section (1) of Section 35 of the Act.

(3) Where the budget ceiling method has been used for the selection of proposals, the evaluation committee shall cancel a proposal whose cost is above the budget ceiling pursuant to Clause (c) of Sub-section (1) of Section 35 of the Act and select the proposal of a proponent whose cost is within the budget ceiling and who has secured the highest marks on the technical proposal.

(4) Where the least cost method has been used for the selection of proposals, the evaluation committee shall select the proposal of a proponent whose cost is the lowest, out of the proponents who have secured the minimum marks required to succeed in the technical proposal, pursuant to Clause (d) of Sub-section (1) of Section 35 of the Act.

(5) If negotiations are to be held with the proponent selected pursuant to this Rule, the public entity shall give a notice indicating the date, time and place for negotiations and inviting such proponent to appear therefor.

- 82. Procurement through direct negotiations:** Where it is required to procure services on such matters such as trainings, symposia and seminars which are useful and necessary for the public entity, the chief of the public entity may himself or herself procure a consultancy service the value of which does not exceed one hundred thousand rupees and, with the approval of one level higher authority, a consultancy service the value of which exceeds one hundred thousand rupees.
- 83. Other methods:** Any consultant may be appointed on the basis of qualification in the following circumstance:
- (a) Higher level of expertise is required to do any task, or
 - (b) Consultancy is needed for a short period of time or time is short for the appointment of a consultant, or
 - (c) Only some consultants are qualified to perform the required task, or
 - (d) Much time is needed to select a consultant but adequate time is not available.

Chapter-7

Other Provisions Relating to Procurement

- 84. Provisions relating to sealed quotations:** (1) Any goods, construction work or other service the value of which does not exceed one million rupees may be procured by means of sealed quotations.
- (2) The public entity shall set forth the following matters in addition to the matters set forth in Sub-section (2) of Section 40 of the Act in the sealed quotations form:
- (a) Specifications of the goods to be supplied, construction work to be completed or service to be provided,

- (b) Qualification of bidder submitting sealed quotation (except procurement of construction work),
- (c) Requirement of performance guarantee, if any,
- (d) Validity period of the sealed quotation,
- (e) Requirement that the sealed quotation form be duly signed by the bidder submitting sealed quotation,
- (f) Method for the evaluation of sealed quotations,
- (g) In the case of goods, warranty obligations and in the case of construction work, obligations up to the defect liability period.

(3) After preparing the form pursuant to Sub-rule (2), the public entity shall publish the notice referred to in Sub-section (3) of Section 40 of the Act for soliciting sealed quotations and set forth the following matters in such notice:

- (a) Place where sealed quotation forms can be obtained from and fees for the same,
- (b) If guarantee is required, type, amount and period thereof,
- (c) Manner for the submission of sealed quotations,
- (d) Name and address of the office or authority whom sealed quotations should be submitted to,
- (e) Deadline and time for the submission of sealed quotations,
- (f) Date, time and place for the opening of sealed quotations,
- (g) Other necessary matters.

(4) Any person, firm, organization or company wishing to submit a sealed quotation may purchase a sealed quotation form from the concerned public entity upon payment of three hundred rupees and submit the sealed quotation in that form.

(5) The sealed quotation form referred to in Sub-rule (4) has to bear signature of the chief of the concerned public entity or employee designated by him or her and the seal of that entity.

(6) A person, firm, company or organization who submits a sealed quotation shall furnish, along with the sealed quotation, a cash guarantee in a sum to be set by two point five percent of the price offered by it or a guarantee equal to that amount issued by a commercial bank with validity period of seventy five days.

(7) The validity period of the sealed quotation shall be Forty Five days.

(8) The public entity shall open sealed quotations, as far as possible, in presence of the sealed quotation bidders or their agents in the place specified in the notice soliciting sealed quotations immediately after the expiration of the deadline for the submission of sealed quotations.

(9) The evaluation committee shall examine and evaluate sealed quotations.

(10) The public entity shall accept a sealed quotation pursuant to Sub-section (5) of Section 40 of the Act no later than fifteen days after the date of opening of sealed quotations pursuant to Sub-rule (8) and give information thereof to all the sealed quotation bidders.

(11) The public entity shall give a notice to the concerned sealed quotation bidder to appear to enter into a procurement contract no later than seven days after the acceptance of the sealed quotation pursuant to Sub-rule (9).

(12) The sealed quotation bidder who receives the notice referred to in Sub-rule (10) shall enter into the procurement contract by furnishing a cash guarantee in a sum to be set by five percent of the price quoted by the bidder in cash or the performance guarantee issued by a commercial bank, no later than seven days after the date of receipt of the notice.

(13) The guarantee furnished by the sealed quotation bidder pursuant to Sub-rule (6) shall be forfeited in any of the following circumstances:

- (a) If the selected sealed quotation bidder fails to enter into the procurement contract,
- (b) If the bidder fails to furnish the performance guarantee set forth in the sealed quotation form within the time limit for entering into the procurement contract,
- (c) If the bidder acts contrary to the conduct referred to in Section 62 of the Act.

(14) Other procedures relating to sealed quotations shall be governed by the provisions set forth in Chapter 3.

85. Provisions relating to direct procurement: (1) Consumable goods or capital goods or consultancy or other service or construction work the value of which is up to one hundred fifty thousand rupees may be procured directly pursuant to Clause (a) of Sub-section (1) of Section 41 of the Act.

Provided that, while effecting a construction work pursuant to this Clause, no direct procurement shall be made from the same person, firm, company or organization more than once in one financial year.

(2) In the case of the procurement referred to in Sub-rule (1), such procurement may be made by entering into a framework or unit rate contract.

(3) Where only one supplier has the right to supply goods pursuant to Clause (c) of Sub-section (1) of Section 41 of the Act, such proprietary goods may be procured from that supplier or his authorized seller or agent.

(4) While procuring low-value items on a recurrent basis pursuant to Sub-rule (1), such procurement may be made by soliciting quotations or proposals from the suppliers, construction entrepreneurs, consultants or service providers included in the standing list referred to in Rule 18.

(5) Direct procurement of proprietary goods the value of which does not exceed thirty percent of the existing contract price may be made pursuant to Clause (d) of Sub-section (1) of Section 41 of the Act.

(6) In the case of direct procurement made in the circumstances set forth in the Clauses other than Clauses (a) and (e) of Sub-section (1) of Section 41 of the Act, the public entity shall publish a notice publicly, indicating the nature of, reason and ground for, such procurement and the name of construction entrepreneur, supplier, consultant or service provider.

(7) Approval of one level higher authority shall be obtained for making procurement in the circumstance referred to in Clause (d) of Sub-section (1) of Section 41 of the Act.

86. Matters to be ascertained prior to making direct procurement: (1)
Prior to making direct procurement, the public entity shall ascertain the following matters:

- (a) Whether the goods to be procured are available in store or not,

- (b) Whether the proposed construction entrepreneur, supplier, consultant or service provider possesses the qualifications required to perform the work set forth in the procurement contract or not,
- (c) Whether the proposal submitted by the proposed construction entrepreneur, supplier, consultant or service provider in response to solicitation by the public entity conforms to the specifications and technical qualities determined by such entity or not, and
- (d) Whether the price offered by the proposed construction entrepreneur, supplier, consultant or other service provider is reasonable or not.

(2) In order to ascertain whether the price referred to in Clause (d) of Sub-rule (1) is reasonable, the public entity may make price analysis based on market study, previous procurement price and cost estimate and enter into negotiations with the proposed construction entrepreneur, supplier, consultant or other service provider.

(3) The procurement contract referred to in Sub-section (3) of Section 41 of the Act may also be made by way of correspondences.

87. **Power to procure designs through design contest:** In procuring designs such as architectural designs or urban planning designs, the public entity may procure appropriate designs by preparing documents including detailed specifications on such designs and conducting a design contest in accordance with such documents.

Chapter-8

Provisions Relating to Ration Procurement

88. **Preparation and approval of cost estimate:** (1) The chief of each public entity required to manage ration shall prepare a cost estimate as

per the ration quota approved for his or her entity, on the basis of the consumer price index relative to the concerned sector published by the Nepal Rastra Bank, price index published by the governmental body responsible for determining the price of agro-products, road facilities, local market rate and the price rate of the procurement contract in last year and the manual, if any, issued by the Public Procurement Monitoring Office, no later than the last day of Bhadra (about September, 17) each year.

(2) The cost estimate prepared pursuant to Sub-rule (1) shall be submitted to the following committee for its approval:

- (a) Chief District Officer -Chairperson
- (b) Chief of Treasury and Accounts
Comptroller Office or authorized
representative of that Office -Member
- (c) Chief, District Agriculture
Development Office -Member
- (d) Representative, District Chamber of
Commerce and Industry -Member
- (e) Chief of the public entity required to
manage ration -Member
secretary

(3) In approving a cost estimate pursuant to this Rule, the committee referred to in Sub-rule (2) shall approve the cost estimate in the format set forth in Schedule-6, based on the matters set forth in Sub-rule (1).

(4) The public entity shall give information of the approval of the cost estimate pursuant to Sub-rule (3) to the pertinent higher office,

Regional Administration Office and Public Procurement Monitoring Office no later than Seven days.

89. Ration procurement: (1) The public entity required to manage ration may so manage ration by inviting sealed quotations or tenders pursuant to the Act and these Rules that the new supplier has to supply ration since the first day of Magha (14 January) each year.

(2) In soliciting sealed quotations or tenders pursuant to Sub-rule (1), the public entity shall set forth, *inter alia*, the following matters:

- (a) Type, quality of ration, *Sida*, feed, food item,
- (b) Daily required quantity,
- (c) Price escalation shall not be allowed during the period of contract, and
- (d) Provision that contract may be entered into only with a citizen of Nepal.

(3) Ration for a security body shall be managed as follows:

- (a) That sealed quotation forms or tender documents may also be sold by the concerned security body, District Administration Office and Treasury and Accounts Comptroller Office and such sealed quotation or tender may be submitted to the concerned security body shall be mentioned in the notice soliciting sealed quotations or tenders. The sealed quotation forms or tender documents shall also indicate the time and place for the opening of such sealed quotations or tenders.
- (b) The security body required to manage ration shall, before soliciting quotations and tenders, send at least fifty copies of the sealed quotation forms or

tender documents on ration management to the bodies referred to in Clause (a) for sale; and in the event of insufficiency, the concerned security body shall, on demand of any such body, shall send such forms or documents.

- (c) The bodies referred to in Clause (a) shall sell the forms or documents received pursuant to Clause (b) to interested sealed quotation bidders or bidders and send records thereof to the concerned public entity.
- (d) Sealed quotation bidders or bidders who purchase forms or documents pursuant to Clause (c) may duly fill up and seal such forms or documents and submit or send the same on their own or through their agents or by post or courier to the security body managing ration so that such forms or documents arrive at that body within the period specified in the notice soliciting such quotation or tender.
- (e) The security body shall acknowledge the sealed quotations or tenders received pursuant to Clause (d) and maintain records thereof.
- (f) The concerned security body shall open the sealed quotations or tenders received by its office at the time set forth in the sealed quotation forms or tender documents immediately after the last date and time for the submission of such sealed quotations or tenders.

Explanation: For the purposes of this Sub-rule, "security body" means the Nepal Army, Nepal

Police and Armed Police Force or such body as prescribed by the Government of Nepal.

(4) The concerned public entity shall prepare in the format referred to in Schedule-7 a comparative table of the sealed quotations or tenders opened pursuant to this Rule.

(5) The public entity shall accept the sealed quotation or tender of the lowest bidder by examining and evaluating the sealed quotations or tenders referred to in Sub-rule (4) in accordance with the Act and these Rules and enter into contract with such lowest bidder.

(6) If a sealed quotation bidder or bidder having submitted a sealed quotation or tender pursuant to this Rule has quoted the rate of two or more than two items of goods cent percent higher than the prevailing market price, the evaluation committee may recommend to cancel such sealed quotation or tender.

(7) The chief of public entity shall, no later than seven days after entering into the procurement contract pursuant to this Rule, prepare a report accompanied by a comparative table referred to in Sub-rule (4) and give information thereof to the pertinent higher office and the Public Procurement Monitoring Office.

(8) If there is a shortage of food items at the local market for procurement thereof by the supplier to manage ration pursuant to the procurement contract, the concerned Chief District Officer shall make contact with the food related bodies and provide required license for the provision of ration by procuring food items from another district.

(9) Where ration, *Sida* cannot be provided because of any kind of delay or any governmental loss or damage is caused, the chief of the concerned public entity shall be responsible for such loss or damage.

(10) The public entity required to manage ration shall manage ration by observing the matters which are set forth in this Chapter and

the provisions of the Act and these Rules in relation to the other matters.

90. To abide by direction: Where a procurement contract cannot be entered into for the management of ration or where the procurement contract, despite being entered into, is violated or where the public entity has violated the procurement contract as mentioned in the Act or these Rules, the chief of such entity shall write to the pertinent higher office for direction and provide ration as directed by that higher office.

91. Power to inspect: (1) The chief of public entity may make inspection as required as to whether the supplier has provided ration conforming to the quality set forth in the contract or not, and may take action for the termination of the procurement contract if the quality of ration supplied does not conform to the contract.

(2) In the event of the termination of the contract for the reason set forth in Sub-rule (1) or for any other reason, the supplier shall pay the advance if any due and payable and interest on such advance by ten percent per annum from the date of receipt of advance to the public entity. If the supplier does not pay such amount within thirty days after such termination of the contract, that amount shall be recovered from that supplier as a governmental due.

92. Advance against guarantee: (1) If the public entity managing ration has to pay an advance to the supplier after the procurement contract has been entered into, it may pay an advance of up to twenty five percent of the contract price by obtaining a bank guarantee issued by a commercial bank which covers such advance and which is valid for at least seven months.

(2) If the sanctioned budget balance is insufficient to pay the advance pursuant to Sub-rule (1), the concerned public entity shall make a request to the concerned Treasury and Accounts Comptroller Office for the sanction of additional amount, and whenever so requested, that

Office shall, subject to the approved budget limit, give sanction of additional amount.

(3) The public entity shall deduct by fifty percent the advance paid pursuant to Sub-rule (1) from the bills of the supplier each month and recover all the advances by the end of the current financial year.

(4) Upon the recovery of the advance paid to the supplier for the first time, the public entity may again pay advance of twenty-five percent of the contract price in the month of Shrawan (July/Aug) of the new financial year by obtaining from the supplier a guarantee with validity period of at least seven months; and the public entity shall recover the advance by the last day of the month of Poush (around 13 January) by deducting the advance so paid pursuant to Sub-rule (3).

(5) The supplier shall have in his warehouse a stock of ration equivalent to the advance paid pursuant to Sub-rules (1) and (4).

93. **Power to make other provisions for ration:** If the concerned central office gives direction to the concerned public entity required to manage ration to provide cash in lieu of ration, such entity may provide in cash an amount to be set as per the rate of cost estimate approved pursuant to Rule 88 and the approved quota.

Chapter-9

Provisions Relating to Renting of House and Land and Procuring Service on Contract

94. **Provisions relating to renting of house and land:** (1) In renting any house and land, the public entity shall solicit rent proposals by publishing a notice of a period of at least fifteen days in a newspaper of national circulation in the case of a central level public entity within Kathmandu Valley and by posting a notice of a period of at least seven days on the notice boards of a regional or district level public entity and

of the following offices, in the case of such regional or district level public entity:

- (a) District Administration Office,
- (b) District Development Committee, and
- (c) Treasury and Accounts Comptroller Office.

(2) The public entity shall set down the following matters in the notice referred to in Sub-rule (1):

- (a) Name and address of the concerned public entity,
- (b) Area or location where house and land is required,
- (c) Nature, area and other necessary details of house and land intended to be rented,
- (d) Matter that house and land can be rented only at the rate determined by the committee referred to in Sub-rule (4),
- (e) Manner for the submission of proposals by house and land owners and minimum details required to be submitted along with such proposals,
- (f) Place and deadline for the submission of proposals,
- (g) Terms of payment of rent of house and land and tax deduction, and
- (h) Such other matters as the public entity may consider appropriate.

(3) The public entity shall open the proposals on renting out of house and land submitted within the period referred to in Sub-rule (1) and submit them to the committee referred to in Sub-rule (4).

(4) There shall be a house and land rent fixation committee as follows in each district for the purpose of fixing the rent of house and land to be rented by a public entity:

- (a) Chief District Officer -Chairperson
- (b) Chief, Treasury and Accounts
Comptroller Office -Member
- (c) Chief, District Technical
Office -Member
- (d) Chief of the public entity
renting house and land -Member
- (e) An employee of the District
Administration Office (officer
level to the extent available)
designated by the Chief
District Officer -Member secretary

(5) Procedures relating to the meeting of the committee referred to in Sub-rule (4) shall be as determined by the committee on its own.

(6) The committee referred to in Sub-rule (4) shall evaluate the proposals submitted pursuant to Sub-rule (3) on the following grounds and fix the rent of house and land:

- (a) Area where the house and land is situated and facility of road,
- (b) Structure and area of the house and land,
- (c) Physical facilities,
- (d) Premises of the house and land,
- (e) Rent proposed by the house and land owner, and

(f) Prevailing rate of house rent.

(7) After the fixation of the house and land rent pursuant to Sub-rule (6), the house and land rent fixation committee shall give information thereof in writing to the concerned public entity.

(8) After the receipt of the information referred to in Sub-rule (7), the concerned public entity shall rent the house and land by entering into a contract with the concerned house and land owner.

(9) The contract referred to in Sub-rule (8) may be renewed with the consent of the house and land owner and the public entity.

(10) In the event of necessity to increase the rate of house and land, approval of the Ministry of Finance shall be obtained and submission made to the committee referred to in Sub-rule (4) for the fixation of house and land rent.

95. Procedures relating to procuring service on contract: (1) If it is required to procure on contract services required to run day-to-day activities of the public entity such as office security, messaging, sanitation, operation and taking care of telephone, electricity and water supply system, livestock service and agro-publicity, maintenance and taking care of gardens, typing or computer typing and driving, the public entity may procure such services on contract by entering into a contract with any person, firm, organization or company.

(2) In procuring the services referred to in Sub-rule (1), the concerned public entity shall prepare the need, type, period, quality of such services, mode of operation of services, tentative cost required and terms of reference and have the same approved by the chief of the concerned public entity.

(3) The public entity may procure a service of which service charge does not exceed one hundred thousand rupees by way of negotiations. In the case of a service of which service charge exceeds

that amount, the public entity may solicit proposals by publishing a notice of a period of fifteen days in a newspaper of national circulation in the case of a central level public entity within Kathmandu Valley and a central level public entity and by posting a notice of a period of fifteen days in a local newspaper and on the notice boards of a regional or district level public entity and of the following offices, in the case of such regional or district level public entity:

- (a) District Administration Office,
- (b) District Development Committee, and
- (c) Treasury and Accounts Comptroller Office.

(4) The public entity shall set down the following matters in the notice referred to in Sub-rule (1):

- (a) Name and address of the concerned public entity,
- (b) Nature, quantity, terms of service and other necessary matters,
- (c) Place and period for the provision of service,
- (d) Minimum details and documents required to be submitted by proponents along with proposals,
- (e) Place and deadline for the submission of proposals,
- (f) Terms of payment of service charge and tax deduction, and
- (g) Other necessary matters.

(5) The public entity shall open the proposals received within the time limit pursuant to Rule 59 and evaluate the proposals of proponents.

(6) In evaluating proposals pursuant to Sub-rule (5), the public entity shall accept the proposal of the proponent who meets the terms of

reference referred to in Sub-rule (2) and proposes the lowest service charge and enter into the service contract with such proponent.

(7) If the proponent of proposal accepted pursuant to Sub-rule (6) does not appear to enter into the service contract, the public entity may enter into the service contract with the proponent who proposes the lowest service charge next thereto.

(8) The public entity shall from time to time monitor the service provided by the service provider. If, upon such monitoring, the service is not found satisfactory or does not conform to the contract, the entity shall give a notice to the service provider to upgrade the service; and in the event of the failure to upgrade the service despite such notice, the entity shall cancel the service contract and provide for another service contract.

⁺ (9) Notwithstanding anything contained elsewhere in this Rule, while performing the functions, which are to be performed by classless posts responsible for carrying out assisting functions pursuant to the Civil Service Act, 2049 (1992 A.D.), through service contract to be entered into with any person or organization, specifying minimum remuneration, the provisions contained in that Act shall be applicable.

96. Procedures for procuring repair and maintenance of goods: (1) If it is required to repair and maintain any goods of a public entity, the user of such goods shall give information thereof in writing to the chief of that entity. Upon receipt of such information, the chief shall cause to be prepared a cost estimate pursuant to Sub-rule (5) of Rule 13 and approve the cost estimate.

(2) After the approval of the cost estimate pursuant to Sub-rule (1), the public entity shall have such goods repaired and maintained by the workshop or repair center if the public entity has its own such

⁺ Inserted by the First Amendment

workshop or repair center. If, in having such repair and maintenance, any goods, equipment or spare parts are to be replaced, such goods, equipment or spare parts shall be obtained from stock and procured in accordance with the procedures set forth in the Act and these Rules if such goods, equipment or spare parts are not in stock.

(3) In the event of procurement of equipment or spare parts pursuant to Sub-rule (2), the public entity shall make entry of such goods or equipment in inventories and maintain records of the equipment or spare parts, the per unit value of which exceeds five thousand rupees; and the replacement of such spare parts for the old equipment or spare parts shall be certified by the concerned technician and old goods shall be entered in inventories.

(4) A public entity which does not have a workshop or repair center of its own shall procure repair and maintenance of goods by adopting the procedures set forth in the Act and these Rules.

(5) Notwithstanding anything contained elsewhere in these Rules, a public entity which has a workshop or repair center of its own may approve the cost after making repair by maintaining records in the job card of repair and maintenance.

97. Procedures for procurement through user committees or beneficiary communities:

(1) Notwithstanding anything contained elsewhere in these Rules, a construction work or service incidental thereto, the cost estimate of which does not exceed ^eSix million rupees, may be done through or obtained from a user committee or beneficiary community.

(2) For the purposes of Sub-rule (1), the public entity may solicit proposals by publishing a public notice setting out the nature, quantity and cost of the concerned work or service, amount that a user committee

^e Amended by the Second Amendment

or beneficiary community is to bear or should bear and other necessary matters or such committee or community may itself submit a proposal or application.

(3) Upon receipt of a proposal or application referred to in Sub-rule (2), the concerned public entity and such user committee or beneficiary community shall hold discussions, negotiations or make site visits, as required, and enter into the procurement contract in relation to such work or service. Such contract shall set down the following matters:

- (a) Nature, quantity and cost estimate of the construction work or service, amount that the user committee or beneficiary community is to bear or should bear, period for the completion of the work or service,
- (b) The public entity is to prepare and approve the design, cost estimate of the concerned work, give technical advice, make measurement, test and clearance, provide other required technical assistance, and make supervision and quality control,
- (c) The construction work or service is to be completed or provided with the participation of the public entity and the user committee or beneficiary community,
- (d) The user committee or beneficiary community shall be responsible for the operation or repair and maintenance of the completed construction work,
- (e) Advance to be provided by the public entity to the user committee or beneficiary community,

- (f) Terms and mode of payment for the completed construction work or service,
- (g) Other necessary matters.

(4) In providing the task of construction work or service to a user committee or beneficiary community, payment shall be made only after deducting the value-added tax, overhead contingency amount and portion of public participation set forth in the cost estimate referred to in Clause (b) of Sub-rule (3).

(5) After the conclusion of the procurement contract pursuant to Sub-rule (3), the public entity may make an advance of amount not exceeding one third of the contract price to such committee or community. The public entity shall make settlement prior to making payment of the final installment of advance so made.

(6) The user committee or beneficiary community shall get the technical evaluation of each installment, bills, receipts and other documents substantiating expenses endorsed by the meeting of such committee or community and submit the same to the concerned public entity.

(7) The user committee or beneficiary community shall post the information of expenses made by it in each installment on a public place.

(8) If the public entity is not able to provide technical assistance to the user committee or beneficiary community for the concerned task, the committee or community itself may appoint on contract the technical human resources required for that task. Remuneration to be paid to the technician so appointed shall be paid from the contingency deducted by the public entity. Provided that such remuneration shall not exceed three percent of the cost estimate.

(9) Heavy machines such as a loader, excavator, roller, dozer, grader bitumen distributor and bitumen boiler shall not be used in a construction work to be conducted by a user committee or beneficiary community.

(10) A user committee or beneficiary community shall itself complete the work provided to it; and such work shall not be sub-contracted to any construction entrepreneur or sub-contractor. If for any reason the committee or community is not able to complete that work itself in time, it shall give information thereof to the public entity. Upon receipt of such information, the public entity shall make necessary inquiry there into, break the contract entered into with such committee or community and procure the remaining work in accordance with the Act and these Rules.

(11) After the user committee or beneficiary community has completed the construction work, it shall get the work checked and cleared by the technical employee deputed by the concerned public entity and submit statements of total expenses including the amount received from such entity and labor, cash or in-kind contributed from public participation to that entity. The concerned public entity shall maintain records of the statements so received.

(12) After the completion of a construction work pursuant to Sub-rule (11), the public entity shall transfer the ownership of project to the user committee or beneficiary community, also specifying the responsibility for the repair, maintenance and care of such project.

(13) If a user committee or beneficiary community is found to have abused any amount received by it, the concerned public entity shall inquire into the matter and recover such amount from the office-bearers of the user committee on pro rata, as a governmental due. It shall be the duty of the concerned Chief District Officer to render assistance to such entity in the recovery of such amount.

(14) The Public Procurement Monitoring Office may determine the procedures to be adopted by a public entity in relation to the following matters in procuring work from a user committee or beneficiary community pursuant to this Rule:

- (a) Determination of labor-intensive work,
- (b) Mode of formation and functions, duties and powers of a user committee or beneficiary community,
- (c) Method of enhancing economy, quality, sustainability of work or service,
- (d) Maintenance of records of incomes and expenses,
- (e) Supervision and monitoring of work or service,
- (f) Clearance, test and acceptance of construction work, and
- (g) Other necessary matters.

(15) A user committee or beneficiary community may specify the service charge to be paid by users for using the service of a project transferred pursuant to Sub-rule (12) and shall establish any fund to which such charge is credited and operate and maintain such construction work from that fund.

98. Procurement of construction work by or through force account: (1)

A public entity shall obtain prior approval of one level higher authority in order to procure a work through force account.

(2) While doing a work through force account, the public entity shall procure the technical service and construction materials required for that work in accordance with the procedures set forth in the Act and these Rules and get the work done on wage basis.

(3) If it is required to procure a construction work through force account pursuant to these Rules, such work can be procured through

negotiations in several lots not exceeding one hundred thousand rupees or construction related work can be contracted out on wage basis, by providing required construction materials.

99. Provisions relating to procurement of work from non-governmental

organizations: (1) For procuring a work from a non-governmental organization pursuant to Section 46 of the Act, the terms of reference including the need, type, period of such work, quality of work, human resources, modus operandi and a tentative estimate of required cost shall be prepared.

(2) For procuring the work referred to in Sub-rule (1), a public entity shall solicit proposals from the non-governmental organizations included in the standing list referred to in Rule 18, by publishing a notice giving a period of at least fifteen days.

(3) The notice referred to in Sub-rule (3) shall indicate the following matters:

- (a) Name and address of the public entity soliciting proposals,
- (b) Nature, quantity and other necessary matters of the proposed work,
- (c) Place where the proposed work is to be done and period for the completion of such work,
- (d) Place and deadline for the submission of proposals,
- (e) Format of proposal,
- (f) Documents required to be submitted by proponents along with proposals,
- (g) Terms of payment and tax deduction, and
- (h) Such other matters as the public entity may consider necessary.

(4) The public entity shall open the proposals submitted in response to the request referred to in Sub-rule (3) in presence of proponents and execute a recognizance deed to that effect.

(5) The evaluation committee shall recommend the proposal of the proponent who meets the terms of reference referred to in Sub-rule (1) and offers the lowest price to the public entity for acceptance.

(6) If it considers appropriate the proposal recommended pursuant to Sub-rule (5), the public entity shall accept such proposal and give a notice indicating the date to the concerned proponent to appear to enter into contract; and it shall enter into contract with the proponent if the proponent appears on that date.

(7) If the proponent who has been notified pursuant to Sub-rule (6) does not appear to enter into contract, contract may be entered into with the proponent next to that proponent, who proposes the lowest price and meets the terms of reference referred to in Sub-rule.

Chapter-10

Provisions Relating to Review

100. Matters to be set out in application to be made to chief of public entity: A bidder or proponent who wishes to make an application to the chief of public entity pursuant to Section 47 of the Act for the review of procurement proceeding or decision shall set out the following matters in and sign such application:

- (a) The name, address, telephone, fax number and e-mail address of the applicant,
- (b) In the case of a body corporate, authorization letter granted by that body to make such application,
- (c) Tender number,
- (d) Legal and factual grounds of the application,
- (e) Copies of relevant documents.

101. Threshold of value: For the purposes of Sub-section (8) of Section 47 of the Act, no application may be made to the review committee in relation to the procurement proceedings the value of which is less than thirty million rupees.

102. Information to be submitted: The chairperson or member of the review committee shall, prior to assuming the duties of his or her office, submit information of the following matters to the Government of Nepal through the Public Procurement Monitoring Office:

- (a) Bio-data including educational qualification and experience in the related field,
- (b) In the event of involvement in any trade, business, details thereof,
- (c) Details of property held in his or her name and in the name of his or her family.

103. Matters to be set out in application to be made for review of procurement contract: (1) A bidder or proponent wishing to make an application for review pursuant to Section 49 of the Act in relation to a procurement contract shall set out the following matters in and sign the application:

- (a) The name, address, telephone number, fax number and e-mail address of the applicant,
- (b) In the case of a body corporate on behalf of which application is made, authorization letter granted by that body to make such application,
- (c) Short description of tender proceeding,
- (d) Where the procurement contract has already been entered into, the date of such contract, the supplier, construction entrepreneur, consultant or service provider whom the contract has been awarded,

- (e) Legal and factual grounds on which the applicant should be awarded the procurement contract,
- (f) Legal and factual grounds on which the one who has been awarded the procurement contract should not get the contract,
- (g) If the review committee has to take any special measures for handling proprietary, commercial and other confidential information of the applicant, such special measures, and
- (h) Actual loss and damage which the applicant has suffered or is likely to suffer as a result of non-awarding of contract to that applicant.

(2) The applicant has to attach the copies of documents in support of the claim made by him or her with the application referred to in Sub-rule (1). If such documents are of such nature that they cannot be available to him or her, he or she may request the review committee to procure such documents from the concerned public entity.

(3) If the applicant wishes to have hearings as to the matters set forth in the application referred to in Sub-rule (1) before the review committee, he or she has to set out the reasons and grounds for such hearings.

104. Guarantee to be furnished: (1) An applicant who makes an application pursuant to Section 50 of the Act shall furnish in cash a sum that is equal to the amount to be set by zero point five (0.5) percent of the price offered by that applicant in the tender or proposal or a bank guarantee of that amount with a validity period of at least ninety days.

(2) In the event of failure to furnish the cash amount or bank guarantee referred to in Sub-rule (1), the review committee shall not entertain the application made to it.

(3) If the application is sustained upon making decision pursuant to the Act and these Rules, the review committee shall return the amount of such guarantee to the applicant no later than seven days after the date of such decision.

105. Manner of sending application for review: (1) Bidders or proponents may themselves deliver or send by post, courier or electronic means an application to be made to the chief of public entity or the review committee for review.

(2) If an application sent by post, courier or electronic means pursuant to Sub-rule (1) does not reach the review committee within the period specified in the Act or these Rules, such application shall not be entertained.

106. Matters to be set down in information and comments: (1) The information and comments to be provided by a public entity to the review committee pursuant to Sub-section (3) of Section 50 of the Act shall be accompanied by the factual details relating to the claim made in the application, legal basis of procurement proceeding and copies of relevant documents.

(2) The review committee may order the public entity to submit appropriate documents or any portion thereof, out of the documents related with the procurement.

(3) The review committee may, if it considers necessary, also permit the bidder or proponent who has not even submitted an application for review, to submit relevant documents and evidences.

107. Review hearings: (1) If the review committee considers necessary to inquire both the applicant and the concerned public entity, it may inquire them after the public entity has provided information, comments and documents referred to in Rule 106.

(2) If an inquiry is to be made pursuant to Sub-rule (1), the review committee shall notify the concerned parties to make presence within the period specified by it.

(3) The review committee shall maintain records of the proceedings referred to in this Rule, and the concerned party may obtain copies of such records by making payment of the fees chargeable under the prevailing laws.

- 108. Records of decisions on applications:** The concerned public entity shall maintain records of decisions made by the public entity, review committee or other body in relation to review and of remedial steps taken in relation to such decisions.

Chapter-11

Provisions Relating to Procurement Contract

- 109. Budget symbol to be mentioned:** The public entity shall mention the budget symbol in the procurement contract.
- 110. Performance guarantee to be furnished to enter into contract:** (1) In furnishing performance guarantee pursuant to Sub-section (4) of Section 27 of the Act, the bidder of successful tender shall furnish the performance guarantee issued by a commercial bank in the form set forth in the tender documents within the time limit referred to in Sub-section (3) of Section 27 of the Act.
- (2) The amount of the performance guarantee referred to in Sub-rule (1) shall be five percent of the price of procurement contract.
- (3) In the case of a procurement contract which does not indicate the contract price pursuant to Sub-rule (2), the performance guarantee specified by the public entity in the tender documents shall be furnished.
- (4) Except as otherwise provided in the procurement contract, the validity period of the performance guarantee referred to in Sub-rule (1) shall extend at least one month beyond the latest of the time of delivery

or handing over of goods or beyond the warranty period or the defects liability period.

(5) The performance guarantee issued by a foreign bank shall be valid only where it is counter guaranteed by any commercial bank established in Nepal.

111. Provisions relating to implementation of contract: (1) A public entity shall do the following acts, as required, while implementing a procurement contract:

- (a) To hold a post bid conference with the concerned supplier, consultant, service provider or construction entrepreneur, where necessary,
- (b) To prepare an action plan and work schedule on contract implementation,
- (c) To make provision for opening letters of credit in time in accordance with the terms of contract,
- (d) To form a contract implementation team, where necessary,
- (e) To monitor progress in the implementation of procurement contract according to the contract administration work plan and inspect and examine quality aspects,
- (f) To arrange for handing over the construction site to the construction entrepreneur and access to the site, and manage procurement contract modifications, variation orders, price adjustment, suspension or termination of procurement contract, work completion certification, payment, among others,
- (g) To adopt dispute settlement procedures set forth in the procurement contract if there arises any dispute between the public entity and the supplier,

consultant, service provider or construction entrepreneur; in the event of breach of the procurement contract, to initiate action in accordance with provisions of remedies set forth in the contract,

- (h) To manage financial aspects of contract implementation including budgetary and cost accounting aspects,
- (i) To maintain documents related with contract implementation in a sequential and systematic manner,
- (j) To accept the work performed, and
- (k) To submit periodic reports on the contract implementation to the one level higher authority.

(2) Notwithstanding anything contained elsewhere in these Rules, any public entity or other body supervising the implementation of procurement contract may supervise as to whether the procurement contract has been implemented in accordance with the layouts, specifications and conditions set forth in the procurement contract without prejudice to the rights of the supplier, consultant, service provider or construction entrepreneur set forth in the procurement contract.

112. Insurance: (1) Except as otherwise provided in a procurement contract, a construction entrepreneur carrying out a construction work the value of which exceeds one million rupees shall procure insurance of the following:

- (a) Full replacement cost of the construction work including construction materials, machines, equipment or plant for incorporation therein,

Explanation: For the purposes of this Clause, the expression "cost" includes profit.

- (b) A sum of fifteen percent of the replacement costs referred to in Clause (a) or an additional amount as set forth in the procurement contract to cover professional fees, costs to be incurred in the demolition or removal of any part of the construction work and removal of debris or waste materials, as well as costs of and incidental to the rectification of loss or damage,
- (c) A sum sufficient to provide for replacement in the construction site of the construction entrepreneur's equipment and other things brought onto the construction site by the entrepreneur,
- (d) All loss of or damage to any portion or part of the construction work arising from whatever cause other than that set forth in Sub-rule (2) from the date of handing over of the site to the construction entrepreneur to the date of issue of the taking-over certificate,
- (e) The following liabilities of construction entrepreneurs:
 - (1) Loss or damage arising in the course of performing his or her liabilities by the construction entrepreneur during the defects liability period, and
 - (2) Loss or damage occasioned during the defects liability period from any cause having arisen prior to the commencement of the defects liability period.

(2) Notwithstanding anything contained elsewhere in this Rule, the construction entrepreneur shall not be obliged to bear liability from the insurance referred to in Clause (d) of Sub-rule (1) for a loss or damage caused by:

- (a) War, hostility or invasion,
- (b) Rebellion, revolution, mutiny or military rule or civil war,
- (c) Ionizing radiation, contamination by radio activity from any nuclear fuel or nuclear waste from the combustion of nuclear fuel or radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, and
- (d) Pressure waves caused by aircraft or other aerial devices at sonic or super-sonic speeds.

(3) Except as otherwise provided in the procurement contract, the construction entrepreneur shall indemnify against claims for compensation in respect of the following loss and damage which has arisen out of the execution of the construction work or the remedying of any defects therein or in consequence of such work and bear all expenses and charges incurred in proceedings relating to such claims:

- (a) Injury to or death of any person, or
- (b) Loss of or damage to any property in the course of the execution and completion of the work, other than the construction work.

(4) There shall be procured an insurance in a sum equivalent to at least 110 percent of the carriage and insurance paid to (CIP) value of procurement of goods to cover all risks including war, strike and fire, from warehouse to warehouse.

(5) No conditions of the insurance shall be changed except with the written approval of the chief of the concerned public entity.

113. Provisions relating to payment and settlement of advances: (1)

Advance payment may be made to a supplier, consultant, service provider or construction entrepreneur in accordance with the provisions set forth in this Rule, tender documents and procurement contract.

(2) In making advance payment pursuant to Sub-rule (1), a public entity shall not make such payment in excess of twenty percent of the procurement contract price.

(3) In making advance payment pursuant to Sub-rule (1), such advance shall be made by obtaining from the supplier, consultant, service provider or construction entrepreneur a bank guarantee issued by a commercial bank which covers such advance amount and promises payment to such entity immediately on demand by that entity if such supplier, consultant, service provider or entrepreneur does not perform in accordance with the contract.

(4) The validity period of a bank guarantee referred to in Sub-rule (3) shall extend at least one month beyond the period for the settlement of advance as set forth in the procurement contract.

(5) The public entity shall deduct the advance paid pursuant to Sub-rule (1) from each running bill or any other bill and invoice as set forth in the procurement contract.

(6) If an advance referred to in this Rule is not settled by the reason of the failure of the supplier, consultant, service provider or construction entrepreneur to perform the work referred to in the procurement contract within the period set forth in such contract, the public entity shall settle such advance by obtaining the bank guarantee amount referred to in Sub-rule (3) from the concerned bank and also recover an interest to be set by ten percent of such advance.

(7) In procuring goods through a letter of credit, any public entity

shall settle the advance amount of opening of the letter of credit within thirty days after the date of receipt of goods by its office.

(8) If goods cannot be provided by the concerned supplier required to provide such goods or if the goods are not received within the time specified for the provision of such goods, the letter of credit shall generally be canceled and the advance amount of opening of the letter of credit shall be settled by withdrawing the amount deposited in the bank for the same.

114. Pre-shipment inspection: (1) If it is required to make pre-shipment inspection of goods being procured from abroad, a public entity may appoint its agent in that country for such inspection.

(2) In appointing the agent pursuant to Sub-rule (1), such appointment shall be made in accordance with the procedures set forth in the Act and these Rules.

115. Inspection and acceptance of goods: (1) A public entity shall inspect or examine, or cause to be inspected or examined, whether the goods supplied conform to the technical specifications and quality standards set forth in the contract.

(2) Inspection or examination referred to in Sub-rule (1) shall be made in accordance with the prevailing laws, if any, on the inspection or examination of goods and with the procedures set forth in the procurement contract if there are not such laws in force. If even such procedures are not stipulated, the public entity shall make such inspection or examination in accordance with such procedures as the public entity considers appropriate.

(3) For the purposes referred to in Sub-rule (1), the concerned public entity may designate one or more than one body or authority or form a committee consisting of a maximum of three experts in the concerned goods for the purpose of making such inspection or examination.

(4) In inspecting or examining the goods supplied, the body, authority or committee referred to in Sub-rule (3) shall inspect or examine such goods by comparing them with the samples and specialties of the goods, if any, sealed and held by such public entity. In making such examination, those goods which conform to such samples and specialties shall be accepted and those which do not shall be returned to the supplier.

(5) Inspection or examination referred to in Sub-rule (4) may be made by selecting all goods or samples thereof, as required.

(6) After making inspection or examination pursuant to Sub-rules (4) and (5), the body, authority or committee making such inspection or examination shall prepare an inspection report setting out the details of accepted and rejected goods. Such report shall set forth the name, percentage, specification of the goods examined, and the results of inspection or examination; and the public entity shall include such report in the records of procurement proceedings.

(7) If, in the course of making inspection or examination of goods pursuant to this Rule, there arises any dispute between the body, authority or committee making inspection or examination and the supplier, such dispute shall be settled in accordance with the dispute settlement procedures set forth in the procurement contract.

(8) Notwithstanding anything contained elsewhere in this Rule, the chief of store section of the public entity may make necessary inspection or examination of the goods valued up to twenty five thousand rupees and receive such goods.

116. Auction of goods and recovery of proceeds: (1) If the supplier does not immediately take back the goods rejected pursuant to Sub-rule (4) of Rule 115, the public entity shall give information in writing to the supplier to take back such goods and supply the goods conforming to the

specifications in lieu of such goods within the period specified in the procurement contract.

(2) If the public entity is to send the information referred to in Sub-rule (1) through postal or courier service, a letter with acknowledgment receipt shall be sent.

(3) If the supplier refuses to receive the goods within the period of the notice referred to in Sub-rule (1) or does not take back them within the period specified in the procurement contract, the concerned public entity shall auction such goods publicly and return to the supplier the amount that remains upon deducting the expenses incurred in storing such goods and other expenses incidental thereto, due advance amount, liquidated damages and other amounts, if any, payable by the supplier to the public entity from the proceeds of such auction.

(4) Amounts that cannot be recovered also from the proceeds of auction made pursuant to Sub-rule (3) shall be recovered from the supplier as a governmental due, in accordance with the prevailing laws.

117. Acceptance report: (1) In accepting a construction work completed, goods supplied or service provided, a public entity shall prepare a report thereof.

(2) The report referred to in Sub-rule (1) shall contain the following matters:

- (a) Number of procurement contract,
- (b) Description of construction work completed, goods or service received,
- (c) Date of completion of construction work or receipt of goods or service,
- (d) Date of acceptance of construction work completed, goods or service received.

(3) After the preparation of the report referred to in Sub-rule (2), the public entity shall promptly write to the concerned financial administration section or body for payment upon fulfilling the required procedures.

118. Variation order: (1) If, after the commencement of work pursuant to the procurement contract, it is necessary because of a technical reason to make alteration in or add a new item to or replace an item in the quantity of such work, the following authority may issue a variation order as follows, subject to Section 54 of the Act, by preparing a cost estimate of such alteration and new item:

(a) If it is not required to change the drawing, design and specification, among others, of the construction work but the quantity of work is altered, the gazetted second class chief of the public entity may issue an variation order the value of which does not exceed five percent of the contract price, by making technical clarifications,

(b) Irrespective of whether or not it is required to change the drawing, design and specification, among others, of the construction work, the gazetted second class chief of the public entity may, with the approval of one level higher authority, issue an variation order the value of which does not exceed ten percent of the contract price, by making technical clarifications; and the departmental head may issue a variation order the value of which does not exceed fifteen percent of the contract price, by making technical clarifications,

(c) In the case of procurement of goods and other services, the chief of the concerned public entity

may issue a variation order the value of which does not exceed fifteen percent of the contract price, by making technical clarifications, and

- (d) In the case of procurement of consultancy service, the chief of the concerned public entity may issue a variation order the value of which does not exceed ten percent of the contract price, by making technical clarifications, and the departmental head may issue a variation order the value of which does not exceed fifteen percent of the contract price, by making technical clarifications.

(2) If it is required to issue a variation order the value of which exceeds fifteen percent of the contract price pursuant to Sub-rule (1), a proposal, accompanied by the recommendation of a committee chaired by the concerned secretary and consisting of the chief of financial administration section, concerned departmental head and one officer or expert in the related field designated by the secretary, shall be submitted to the Government of Nepal, Council of Ministers, in the case of a public entity referred to in sub-Clause (1) of Clause (b) of Section 2 of the Act, and in the case of other public entity, to the supreme executive body of such entity.

(3) No variation order shall be so issued as to increase the rate set forth in the procurement contract. If it is required to issue a variation order to increase the rate, an analysis of item rate shall be made and got approved by one level higher authority.

(4) If it is required to add a new item in the construction work referred to in the procurement contract, the public entity shall fix the rate by also making an analysis of the rate of such new item.

(5) In issuing a variation order under this Rule, there shall be clearly set out the nature of variation, big items, small items, whether

time extension is required or not, if required, duration thereof, whether the rate of variation item is more or less than the rate of item indicated in the bill of quantities, the value of latest variation in terms of the percentage of the total contract price, from where and how the additional amount for the work to be done as per the variation order is to be managed and the post variation order total amount in terms of the percentage of the original contract price.

(6) If it is required to procure an additional work immediately due to the lack of time for any reason or necessity to do an unforeseen act, the public entity may proceed the variation work by obtaining prior approval of the one level higher authority.

119. Price adjustment: (1) A public entity shall set forth in the procurement contract that price adjustment may be made.

(2) A price adjustment provision in the procurement contract shall stipulate, *inter alia*, the following matters:

- (a) Conditions when price adjustment is made,
- (b) Formula for determining price adjustment,

In determining a formula pursuant to this Clause, it shall be determined allowing for the price adjustment of only the labor, materials and equipment used in the work completed.

- (c) Maximum amount of price adjustment,
- (d) Components of price to be used in the formula referred to in Clause (b) (cost of labor, equipment, materials, fuel, etc.),
- (e) Relevant indices to which reference is to be made in applying the price adjustment provision for each component of price,

- (f) Manner in which any exchange rate fluctuations between the currency in which indices are denominated and the payment currency are to be measured,
- (g) Base line date of reference for the application of price adjustment formula,
- (h) Intervals at which the application of price adjustment formula is to take place, and
- (i) Minimum increments of price difference that have to be demonstrated by the application of price adjustment formula and other conditions and restrictions precedent to the application of the price adjustment provision.

(3) The maximum amount of price adjustment to be made pursuant to this Rule shall not generally exceed twenty five percent of the original contract price. The procurement contract may also provide that if the value of price adjustment exceeds that price, the public entity may terminate the procurement contract, negotiate with the construction entrepreneur, supplier, service provider or consultant in order to keep the contract price within the approved budget or adopt other measures to minimize costs or arrange for additional budget.

120. **Extension of period of procurement contract:** (1) Where it is not possible to complete the work set forth in a procurement contract within the period of such contract owing to the occurrence of event set forth in Section 56 of the Act, the concerned construction entrepreneur, supplier, service provider or consultant has to make an application, accompanied by the reason therefor, to the concerned public entity for the extension of period, in advance of at least Seven days of the expiration of the period of the procurement contract.

(2) Upon receipt of an application pursuant to Sub-rule (1), the concerned competent authority may make, or cause to be made, necessary inquiry thereinto. In making, or causing to be made, such inquiry, the authority shall have regard to the following matters:

- (a) Whether or not the concerned construction entrepreneur, supplier, service provider or consultant has made its best possible efforts to complete the work set forth in the procurement contract,
- (b) Whether or not the concerned public entity has provided such things as required to be provided to the concerned construction entrepreneur, supplier, service provider or consultant in accordance with the contract, and
- (c) Whether or not the delay in work has occurred owing to a force majeure event.

(3) If, while making an inquiry pursuant to Sub-rule (2), the reason set forth in the application appears to be reasonable, the tender approving authority may extend a period not exceeding Six months and the departmental head may extend a period exceeding six months.

121. Liquidated damages: A procurement contract may contain the following provisions in relation to liquidated damages:

- (a) In the event of non-completion of a work set forth in the procurement contract within the period set forth in the contract owing to delay caused by the construction entrepreneur, supplier, service provider or consultant, such entrepreneur, supplier, provider or consultant shall pay liquidated damages in a sum to be set by zero decimal zero five percent of contract price per day but not exceeding ten percent of the contract price to the public entity. Provided that such entrepreneur, supplier, service provider

or consultant shall not be liable to pay such liquidated damages when the delay in performance or delivery is due to a force majeure event or without the fault or negligence on his or her part, and

- (b) That the concerned construction entrepreneur, supplier, service provider or consultant shall not be relieved of the liability to perform the work set forth in the procurement contract by virtue of payment of liquidated damages referred to in Clause (a).

122. Matters to be set forth in bills or invoices: (1) A construction entrepreneur, supplier, service provider or consultant shall set down the following matters, at a minimum, in a running bill or any other bill or invoice to be submitted for payment pursuant to this Rule:

- (a) Date of bill or invoice,
- (b) Name, address of construction entrepreneur, supplier, service provider or consultant,
- (c) Procurement contract,
- (d) Description of the goods or service supplied or measurement, size, quantity and value of the construction work completed,
- (e) Shipment and payment terms,
- (f) Documents required to be submitted with the bill or invoice pursuant to the procurement contract,
- (g) In the case of procurement of goods, shipping or other required documents in the format specified by the public entity in accordance with the instructions given in the purchase order, letter of acceptance of tender or procurement contract, and
- (h) Contact address.

(2) Upon receipt of a bill or invoice pursuant to Sub-rule (1), the public entity shall examine whether such bill or invoice conforms to the provisions set forth in the procurement contract, and shall forthwith give information thereof to the concerned construction entrepreneur, supplier, service provider or consultant if such bill or invoice does not conform to such provisions.

123. Payment of bill or invoice: (1) A procurement contract may provide that a public entity may make payment of a running bill or any other bill or invoice on any or all of the following bases in accordance with the terms of the contract:

- (a) On monthly basis,
- (b) On the basis of the actual performance stated in the measurement book post technical measurement and checking,
- (c) Where the procurement contract specifies the indicators for measuring the completed work, after receipt of such indicators, and failing such indicators, on the basis of the work completed,
- (d) On the basis of the quantity of a work transferred or completed, and
- (e) In accordance with Sub-rule (1) of Rule 122 or on the basis of the terms of letter of credit.

(2) In order to receive payment of a running bill or any other bill or invoice, the construction entrepreneur, supplier, service provider or consultant shall submit required documents pursuant to the procurement contract.

(3) No later than Thirty days after the concerned authority has approved the running bill or any other bill or invoice and documents

submitted pursuant to Sub-rule (1), the public entity shall make payment of such bill or invoice in accordance with the procurement contract.

(4) The public entity shall, in making payment pursuant to Sub-rule (1), deduct Five percent amount of the amount indicated in the running or other bill or invoice for the retention money.

(5) If the procurement contract provides that if the public entity makes prompt payment of the amount contained in a bill or invoice, the construction entrepreneur, supplier, service provider or consultant shall make discount of a certain amount or percent of such payment, the public entity shall, in making such payment, make payment only upon deducting the discount.

(6) A public entity may make the following provisions in a procurement contract:

- (a) If it is required to correct the payment amount by virtue of the fact that the matters contained in any previous running bill or any other bill or invoice have been set forth for any reason or by mistake, the public entity may, on its own motion or at the request of the concerned supplier, construction entrepreneur, service provider or consultant, correct or alter such payment amount in the subsequent running bills or any other bills or invoices, and
- (b) In the event of the failure of the supplier, construction entrepreneur, service provider or consultant to perform the work in accordance with the terms of the procurement contract, the public entity may refuse to make payment or deduct payment of a running bill or any other bill or invoice.

(7) The public entity shall make payment referred to in Sub-rule (1) within the period set forth in the procurement contract. In the event of failure to make payment within that period, interest as referred to in the procurement contract shall be paid.

(8) In making payment of more than Twenty Five Thousand Rupees to the supplier, construction entrepreneur, service provider or consultant pursuant to Clauses (a), (b), (c) and (d) of Sub-rule (1), such payment shall be made through account payee cheque.

124. Final payment: (1) Once a work completed in accordance with the procurement contract has been accepted by the public entity, final payment shall be made to the supplier, construction entrepreneur, service provider or consultant in accordance with the terms of the contract.

(2) In making final payment pursuant to Sub-rule (1), the performance guarantee and fifty percent of the retention money deducted pursuant to Sub-rule (4) of Rule 123 shall be returned after the expiry of the defects liability period in the event of a construction work. The remaining fifty percent of the retention money shall be returned upon submission by the concerned supplier, construction entrepreneur, service provider or consultant of an evidence issued by the concerned Inland Revenue office that income returns have been submitted.

Provided that, if the concerned construction entrepreneur fails to rectify defects within the defects liability period, the public entity may rectify such defects by using the retention money or amount of guarantee.

(3) A procurement contract may provide that the supplier, construction entrepreneur, service provider or consultant shall not make any claims other than the following claims against the public entity for receiving final payment pursuant to Sub-rule (1):

(a) Special claims,

- (b) Supplier, construction entrepreneur, service provider or consultant's liability to third parties which has arisen or will arise from the performance of procurement work, and
- (c) Claims for reimbursement of costs based on liability incurred to third parties in performance of the procurement contract by the supplier, construction entrepreneur, service provider or consultant but which are not made against the public entity and not known in time.

125. Work completion report to be submitted: (1) No later than thirty days after the completion of a construction work pursuant to the procurement contract, the concerned construction entrepreneur shall submit an as-built drawing of the work.

(2) After the expiry of the defects liability period following the completion of a construction work, the chief of public entity shall have a technical employee examine and inspect whether such construction work is in compliance with the accepted drawings, designs or specifications and prepare a work completion report.

(3) The technical employee making examination and inspection pursuant to Sub-rule (2) shall examine whether the completed construction work is in compliance with the accepted drawings, designs or specifications and submit a report to the public entity.

(4) The concerned public entity shall submit the as-built design referred to in Sub-rule (1) and the work completion certificate submitted pursuant to Sub-rule (3) to the tender approving authority, and to the one level higher authority if the chief of public entity and the tender approving authority is one and the same.

(5) If the authority referred to in Sub-rule (4) considers necessary, he or she may himself or herself examine and inspect, or cause any

technical employee or a team of technical employees to examine and inspect, the matters set forth in the work completion certificate.

(6) If, upon an inspection and examination pursuant to Sub-rule (5), the completed construction work is found to be in compliance with the accepted drawings, designs or specifications, such authority shall accept such construction work.

(7) Notwithstanding anything contained in Sub-rule (6), if inspection and examination to be made pursuant to Sub-rule (5) is not complete within Forty Five days after the date of submission of the work completion report pursuant to Sub-rule (4), such construction work shall be deemed to have *ipso facto* been accepted.

(8) Notwithstanding anything contained elsewhere in this Rule, if the work completion report submitted pursuant to Sub-rule (3) is in relation to a construction work costing up to Ten Million Rupees, the chief of public entity himself or herself may examine and inspect it if he or she is a technician and cause another technical employee to examine and inspect it if he or she is not a technician. If upon such examination or inspection such construction work is found to be in compliance with the accepted drawings, designs or specifications, he or she shall accept the work completion report and give information on the completion of work to the one level higher authority.

(9) After accepting the work completion report pursuant to this Rule, the public entity shall give the work completion certificate to the concerned construction entrepreneur.

126. Power to provide early completion bonus: (1) It may be provided that a public entity may provide a bonus to a construction entrepreneur who completes the work earlier than the period set forth in the procurement contract.

(2) In determining the amount of bonus referred to in Sub-rule (1), such amount shall be determined on the bases referred to in Sub-rule

(3) for the days by which the completion was earlier than the time set forth in the procurement contract.

(3) In determining the rate referred to in Sub-rule (2), the amount of daily bonus shall be the same as the amount of daily liquidated damages payable to the public entity for the failure to complete the work within the period specified in the contract.

(4) Notwithstanding anything contained elsewhere in this Rule, the total amount of bonus shall not exceed Ten percent of the contract price.

127. Payment to be made while terminating procurement contract by

convenience: (1) If a public entity terminates a contract by convenience for public interest pursuant to Sub-section (4) of Section 59 of the Act, the entity shall pay the following amounts to the concerned supplier, construction entrepreneur, service provider or consultant. If any advance has been paid to him or her, such payment shall be made only after deducting such advance:

- (a) Payment, if any, due and payable for the value of work, supplies or services completed or provided acceptably,
- (b) Value of the goods produced and materials brought on the construction site for the purposes of the public entity pursuant to the procurement contract,
- (c) Reasonable cost of removal of equipment from the site,
- (d) Repatriation of expatriate personnel employed solely on the construction work, and
- (e) Cost of protection and security of the construction work, if required.

(2) Notwithstanding anything contained in Sub-rule (1), the public entity shall accept at the terms and prices set forth in a

procurement contract the goods which are ready and will be ready for shipment within Seven days after the receipt by the supplier of the notice given by that entity to terminate the contract by convenience for public interest.

(3) In relation to the goods other than the goods set forth in Sub-rule (2), the public entity may do as follows:

- (a) To have any portion of goods completed and delivered at the terms and prices set forth in the contract, or
- (b) To cancel the order for the supply of remaining goods and pay to the supplier a mutually agreed amount for partially completed goods or services and for materials or spare parts procured by the supplier prior to the termination of the contract.

128. Remedies for breach of procurement contract: (1) A procurement contract shall specify remedies available to the public entity in the event of the breach of the procurement contract by the supplier, construction entrepreneur, service provider or consultant.

(2) The remedies referred to in Sub-rule (1) may include the following remedies, in addition to those set forth in Section 59 of the Act:

- (a) To reject defective work,
- (b) To immediately remove defective goods and require the concerned supplier, construction entrepreneur, service provider or consultant to make replacement,
- (c) Liquidated damages for delay in performance,
- (d) To terminate the contract and have such work completed at the expense of the defaulting supplier,

construction entrepreneur, service provider or consultant,

- (e) Remedies for consequential damages, and
- (f) Such other remedies as may be available pursuant to the prevailing laws or the procurement contract.

Chapter-12

Provisions Relating to Dispute Settlement

129. Dispute settlement mechanism: (1) A procurement contract may provide for a dispute settlement mechanism for the settlement of disputes, if any, arising between the public entity and the supplier, construction entrepreneur, service provider or consultant in the course of implementation of the procurement contract.

(2) The dispute settlement mechanism referred to in Sub-rule (1) may provide that any dispute arising out of the procurement contract the price of which does not exceed One Hundred Million Rupees shall be settled by an adjudicator and any dispute arising out of the procurement contract the price of which exceeds the said amount by a Three-member dispute settlement committee.

130. Appointment of adjudicator and formation of dispute settlement committee: (1) The adjudicator referred to in Sub-rule (2) of Rule 129 shall be appointed with the consent of the public entity and the concerned construction entrepreneur.

(2) The dispute settlement committee referred to in Sub-rule (2) of Rule 129 shall consist of one member each appointed by the construction entrepreneur and the public entity, and the third person appointed by these Two members shall be the chairperson.

(3) If the public entity and the concerned construction entrepreneur fail to reach an understanding about the appointment of the

adjudicator and the dispute settlement committee referred to in Sub-rule (1) or (2) or any party fails to appoint a member to the dispute settlement committee, appointment of the adjudicator or the member of dispute settlement committee may be made in accordance with the prevailing laws on arbitration, except as otherwise provided in the procurement contract.

(4) A person who becomes the adjudicator or a member of the dispute settlement committee referred to in Sub-rule (1) shall be a technical person with expertise in works similar to the nature of dispute and at least Five years of experience.

131. Functions, duties and powers of adjudicator or dispute settlement committee:

The functions, duties and powers of the adjudicator and the dispute settlement committee shall be as specified in the letter of appointment; and in specifying financing of such functions, duties and powers, the public entity shall specify, *inter alia*, that the adjudicator or dispute settlement committee shall visit the site of works in every Six months.

132. Remuneration and facilities: (1) The remuneration and other facilities of the adjudicator or chairperson and member of the dispute settlement committee and source of financing of such remuneration and facilities shall be as set forth in the procurement contract.

(2) The public entity and the construction entrepreneur shall bear the obligations of remuneration and facilities referred to in Sub-rule (1) on equal basis.

133. Power to refer dispute: (1) The public entity shall specify in the procurement contract the procedures for referring the dispute, if any, arising in connection with the implementation of that contract.

(2) In specifying the procedures referred to in Sub-rule (1), provisions may be made that if any dispute cannot be resolved mutually between the public entity and the construction entrepreneur, supplier,

service provider or consultant, either of the public entity or the construction entrepreneur, supplier, service provider or consultant may refer such dispute to the adjudicator or the dispute settlement committee depending on the contract price.

(3) In referring a dispute pursuant to Sub-rule (2), the concerned party shall submit a claim in writing setting out the matter of dispute that could not be settled through mutual consent and documents in substantiation of such claim.

134. Decision on dispute: (1) No later than three days of the receipt of a claim referred to in Rule 133, the adjudicator or dispute settlement committee shall send such claim and duplicate copies of documents to the concerned party, thereby requiring that party to submit comments thereon.

(2) The adjudicator or the dispute settlement committee may also make inquiries into the matter also making on-site visits in relation to the claim referred to in Sub-rule (1).

(3) Having regard to, *inter alia*, the comments referred to in Sub-rule (1) and inquiries referred to in Sub-rule (2), the adjudicator or the dispute settlement committee shall make decision no later than thirty days of the submission of the dispute to such adjudicator or committee.

(4) The decision referred to in Sub-rule (3) shall also stipulate the reasons and grounds for substantiation or non-substantiation of the concerned party's claim.

135. Settlement of dispute by arbitration: A person who is dissatisfied with a decision referred to in Rule 134 shall, no later than thirty days of the date of such decision, initiate proceedings for the settlement of such dispute by arbitration in accordance with the procedures, if any, specified in the procurement contract and, failing such procedures, in accordance with the prevailing laws.

Chapter-13

Provisions Relating to Transparency and Conduct

136. Documents relating to procurement proceedings to be provided: If a body competent to carry out audit, monitoring, investigation or inspection pursuant to the prevailing laws demands any documents relating to procurement proceedings, the concerned public entity shall provide such documents in due course of time.

137. Public notice of procurement contract: (1) The concerned public entity shall, no later than three days of the conclusion of a procurement contract, post a notice thereof on its notice board and arrange for posting such notice also on the notice boards of the District Development Committee, District Administration Office and Treasury and Accounts Comptroller Office.

(2) The concerned public entity may arrange for the publication of the notice referred to in Sub-rule (1) on its website, if any, and on the website of the Public Procurement Monitoring Office if that entity has not its website.

(3) The public entity shall set forth, in the notice referred to in Sub-rule (1), the results of evaluation of tender or consultancy service, the date of publication of notice inviting tenders, proposals or sealed quotations, the name of newspaper, the reference number of notice, the item of procurement, the name and address of bidder, proponent or sealed quotation bidder making contract and the contract price, among other things.

138. Prohibition on making conflicts of interest: (1) A consultant shall provide professional, objective and impartial consultancy service in the best interest of the public entity procuring consultancy.

(2) In providing consultancy service, the consultant shall not so carry out the assignment that it would be in conflict with his or her other current or future assignments.

(3) A consultant shall not be appointed for any consultancy service assignment that would by its nature be in conflict with his or her prior or current obligations to any other clients or that may place him or her in a position of not being able to carry out the assignment in the best interest of the concerned public entity.

Example: A consultant appointed to prepare engineering design of any project shall not be appointed as a consultant to prepare environmental assessment of the same project or a consultant on the privatization of any enterprise owned by the government shall not be appointed as a consultant of the buyer of such assets nor shall such consultant be allowed to purchase such assets in the name of his or her close relative or a partner in his or her firm.

Provided that, this provision shall not apply to a turnkey contract or design and build contract.

(4) A firm and other organization or person affiliated with that firm engaged to provide goods or construction works for any project shall be disqualified to provide consultancy services for the same project; and a consultancy firm or other organization or person affiliated with that firm appointed for the preparation or implementation of any plan shall be disqualified from supplying goods for such project.

139. Disclosure of inducement, corrupt or fraudulent practices: If any office-bearer of the public entity is offered an inducement by any bidder or proponent or becomes aware of any other corrupt or fraudulent practice engaged in, such office-bearer shall give information thereof to the chief of such entity or the Public Procurement Monitoring Office.

140. Power to make supervision and inquiry: The pertinent higher office may make supervision and inquiry from time to time as to whether or not the office-bearers involved in procurement proceedings have observed the procedures set forth in the Act and these Rules.

141. To blacklist: (1) If the public entity is required to blacklist any bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company pursuant to Section 63 of the Act, it shall make a submission to the Public Procurement Monitoring Office, accompanied by detailed description pertaining thereto and reasons for the same and relevant documents, as well.

(2) When a submission is made pursuant to Sub-rule (1), if, having regard to such description, reasons and documents, the Public Procurement Monitoring Office is of the opinion that such bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company should be restrained immediately from taking part in public procurements for three years, it may impose such restraint until the procedures set forth in this Rule are fulfilled.

(3) If the Public Procurement Monitoring Office makes a decision to impose restraint pursuant to Sub-rule (2), it shall give a notice to the concerned bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company no later than seven days of such decision and publish a notice publicly.

(4) Except in cases where, upon a submission made pursuant to Sub-rule (1), it is required to immediately prevent the procurement proceedings pursuant to Sub-rule (3), the Public Procurement Monitoring Office shall send to his or her office or house a three-day written notice, accompanied by the description, reasons and copies of documents so received, requiring him or her to submit grounds or explanations, if any, for not being blacklisted.

(5) Upon receipt of a notice pursuant to Sub-rule (4), the concerned bidder, proponent, consultant, service provider, supplier,

construction entrepreneur or other person, firm, organization or company shall submit to the Public Procurement Monitoring Office his or her explanation along with relevant documents, setting out the grounds and reasons, if any, for not being blacklisted.

(6) In submitting explanation pursuant to Sub-rule (5), the concerned bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company may request the Public Procurement Monitoring Office to make joint hearings between him or her and the concerned public entity.

(7) If a request is made for joint hearings pursuant to Sub-rule (6) and the Public Procurement Monitoring Office considers appropriate to so make hearings, it shall send a written notice indicating the place and time for making such hearings to the concerned public entity and the bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company.

(8) The public entity and the bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company receiving the notice referred to in Sub-rule (7) shall appear before the Public Procurement Monitoring Office within the period specified in the same Sub-rule.

(9) If both parties appear within the period referred to in Sub-rule (8), the Public Procurement Monitoring Office shall provide both parties with an opportunity to present their respective written or oral explanations and statements.

Provided that, hearings shall not be prevented only by the reason the any party is absent.

(10) Having regard to, *inter alia*, the hearings, if any, held pursuant to Sub-rule (9), and based on the documents submitted by the public entity and the concerned bidder, proponent, consultant, service

provider, supplier, construction entrepreneur or other person, firm, organization or company, the Public Procurement Monitoring Office shall make decision to or not to blacklist him or her.

(11) If the Public Procurement Monitoring Office makes a decision to blacklist pursuant to Sub-rule (10), it shall give written information thereof to the concerned public entity and the bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company and publish it in a newspaper of national circulation.

(12) If the Public Procurement Monitoring Office makes a decision not to blacklist pursuant to Sub-rule (11), the restraint, if any, imposed pursuant to Sub-rule (2) shall *ipso facto* be lifted, and that Office shall publicly publish information thereof.

(13) If decision is made pursuant to Sub-rule (10) to blacklist the bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company restrained pursuant to Sub-rule (2), in calculating the time for blacklisting him or her, such time shall be calculated from the time when such restraint is imposed.

(14) The Public Procurement Monitoring Office shall complete the proceedings relating to blacklisting pursuant to these Rules no later than six months after the date of receipt of submission pertaining thereto.

(15) If any public body has blacklisted or decided to blacklist any bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company prior to the commencement of these Rules, it shall forward information thereof to the Public Procurement Monitoring Office no later than thirty days after the commencement of these Rules.

142. To release from blacklist: (1) The Public Procurement Monitoring Office shall set criteria for delisting the name of the bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company included in the blacklist pursuant to Section 63 of the Act.

(2) If, as per the criteria referred to in Sub-rule (1), any bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company included in a blacklist has to be delisted from the blacklist, the Public Procurement Monitoring Office shall make delisting pursuant to the said criteria.

143. To maintain records: The Public Procurement Monitoring Office shall maintain in its office and on its website updated records of restraining any bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company from taking part in the procurement proceedings, *ipso facto* lifting of such restraint, black listing and delisting from blacklist pursuant to these Rules.

Chapter-14

Provisions Relating to Monitoring of Procurement

144. Functions, duties and powers of Public Procurement Monitoring Office: The functions, duties and powers of the Public Procurement Monitoring Office shall, in addition to the functions, duties and powers set forth in Section 65 of the Act, be as follows:

- (a) To monitor public procurement activities by making an observation visit of procurement proceedings of the concerned public entity or seeking reports and information relating to procurement activities from the public entity,

- (b) To give directive to the public entity in relation to the information and data to be included in the reports relating to procurement activities and the period for the submission of such reports,
- (c) To launch such programs as may be facilitative to the public entity to conduct procurement proceedings and the bidder, proponent, sealed quotation bidder and supplier to take part in procurement proceedings,
- (d) To make procurement proceedings simple and easy,
- (e) To establish a central data bank and maintain records of procurement contract implementation performance,
- (f) To develop methods for the dissemination of information relating to public procurement,
- (g) To do studies and research works on policies, laws, experiences and practices adopted by other countries in relation to procurement proceedings for bringing about improvements in public procurement system,
- (h) To develop plans for provision in the public entity of employees with capacity or competency and professional efficiency in the field of procurement,
- (i) To ascertain whether the persons to be appointed to the procurement unit, evaluation committee of the public entity and the Public Procurement Monitoring Office as per the plans referred to in Clause (h) fulfill the required expertise and professional efficiency,
- (j) To prepare descriptions of functions, duties and powers and responsibilities of the chief of public entity, employees of the procurement unit of such entity and members of tender evaluation committee,

- (k) To render assistance in the launching of training programs required to enhance professional efficiency of the employees involved in procurement activities of the public entity, and
- (l) To launch such training programs as may be required to enhance professional efficiency of employees.

Chapter-15

Miscellaneous

145. Provisions relating to procurement in special circumstance: (1) In making procurement pursuant to Section 66 of the Act, a public entity shall prepare descriptions such as written descriptions of the need, quality standards, quantity, terms of procurement and period for performance and make procurement only in such quantity and for such period as required to meet exigencies by way of having competition as far as possible or soliciting written quotation or proposal from only one construction entrepreneur, supplier, consultant or service provider and holding negotiations for fair and reasonable price.

(2) In the event of procurement made pursuant to Sub-rule (1), the documents setting out the following matters shall be included in the records referred to in Rule 149:

- (a) Description relating to special circumstance,
- (b) Crisis that might occur in public security, interest and community health if procurement is not made immediately,
- (c) Reasons and grounds why other methods of procurement cannot be followed.

(3) If a public entity makes procurement the value of which exceeds one million rupees pursuant to Sub-section (1), such entity shall publish a public notice of such procurement details and send information thereof to the Public Procurement Monitoring Office.

146. Use of electronic communication means: (1) For the purposes of Sub-section (2) of Section 14 of the Act, a public entity shall send the notice of tender by email to the Public Procurement Monitoring Office and may register its name on ^ewww.ppmo.gov.np and directly place such notice thereon.

(2) A public entity may carry out, or cause to be carried out, the purchase and submission of tenders through electronic communication means as far as possible.

147. Evaluation committee: (1) The formation of the evaluation committee referred to in Section 71 of the Act shall be as follows:

- (a) Chief of public entity or senior officer designated by him or her (technical employee, if possible) -Chairperson
- (b) Chief of financial administration section of the concerned public entity -Member
- (c) Technical expert related in the field (officer level, if possible) -Member
- (d) If there is a position of law officer in the public entity, law officer of the public entity -Member

(2) The chief of procurement unit shall act as the secretary of the committee referred to in Sub-rule (1).

(3) The evaluation committee referred to in Sub-rule (1) may, with the approval of the chief of public entity, invite a subject expert in the governmental or non-governmental sector at its meeting.

(4) If the committee referred to in Sub-rule (1) is in need of the assistance of consultant, the public entity may appoint a consultant

^e Amended by the Second Amendment

subject to the approved program and budget, and in accordance with the procedures set forth in the Act and these Rules.

(5) The committee referred to in Sub-rule (1) may form a sub-committee to assist it in the evaluation of quotations, tenders or proposals.

(6) The secretary of the evaluation committee shall prepare minutes of meetings of the committee and maintain a file of all matters discussed by the committee.

(7) The evaluation committee may itself determine its rules of procedure.

(8) The evaluation committee shall submit an evaluation report to the chief of public entity as set forth in this Rule.

148. Rate fixation committee: (1) There shall be a rate fixation committee in each district, consisting of the following members to ascertain the rate of construction materials and transportation, rent of machines and equipment and wages of workers, to be applicable throughout the district or distinctly in any part of the district:

(a)	Chief District Officer	-Chairperson
(b)	Local Development Officer	-Member
(c)	Chief, Treasury and Accounts Comptroller Office	-Member
(d)	One member of District Development Committee designated by District Development Committee	-Member
(e)	Representative, Federation of Nepal Construction Entrepreneurs	-Member
(f)	Representative, Chamber of	-Member

	Commerce and Industry	
(g)	Chief, District Technical Office	-Member Secretary

(2) The rate fixation committee shall, in fixing the rate of construction materials or transportation, fix it on the basis of the prevailing market rate. The rate to be so fixed has to be fixed within the month of Shrawan (July/August).

Provided that, if the rate of construction materials or transportation increases by more than ten percent of the then rate in any financial year, the committee may determine it accordingly.

(3) The rate fixation committee shall also specify the rate of transportation of the means of transportation in use in the district each year.

(4) The concerned Chief District Officer shall give a notice of the rate fixed pursuant to this Rule to all the offices within his or her district and an information thereof to Public Procurement Monitoring Office, Department of the Auditor General and the concerned Treasury and Accounts Comptroller Office.

(5) The procedures relating to its meeting shall be as determined by the rent fixation committee itself.

149. Records of public procurement: (1) A public entity shall open and maintain a separate file for each procurement proceeding.

(2) The public entity shall include the following documents, in addition to other documents, in the file referred to in Sub-rule (1):

- (a) Contract file index,
- (b) Notice of invitation to tender or prequalification,
- (c) Documents relating to invitation to tender, prequalification or proposal,

- (d) Requests by bidders for clarification as to the tender documents, prequalification documents or documents relating to proposal and responses sent by the public entity on such requests to all participating bidders or proponents,
- (e) Minutes of pre-tender meeting with bidders or consultants and evidence of circulation by the public entity of copies of the minutes to all participating bidders or proponents,
- (f) Minutes of tender opening,
- (g) Originals of tenders,
- (h) Questions asked by the tender evaluation committee to bidders or proponents in the course of evaluation of tender and responses sent by the concerned bidder or proponent to the public entity,
- (i) Report of evaluation of qualification of bidders pre-qualified,
- (j) List of bidders, pre-qualified,
- (k) Minutes of negotiations, if any,
- (l) Copy of preliminary notice of acceptance sent to successful bidder,
- (m) Copy of notice sent to unsuccessful bidders,
- (n) All notices published in relation to procurement,
- (o) Application made to the chief of public entity and the review committee for review and opinions, comments, information submitted by the public entity in that regard and decision made thereon,
- (p) Procurement contract,

- (q) Documents related with the implementation of procurement contract such as progress report, invoice and inspection report,
- (r) Documents relating to amendments, if any, to procurement contract,
- (s) Documents including those relating to receipt, inspection and acceptance of goods,
- (t) All correspondences made with construction entrepreneur, supplier, consultant or service provider,
- (u) Requests by sub-contractor and responses made by the public entity to such requests,
- (v) Evaluation report and all documents pertaining thereto, and
- (w) Documents related with the proceedings made for the settlement of disputes arising out of the procurement contract.

(3) The public entity shall preserve the records referred to in Sub-rule (1) for at least seven years after the conclusion of procurement proceedings.

(4) In maintaining records pursuant to this Rule, such records shall be maintained in the format, if any, prescribed in these Rules to that effect, and failing such format, in the format determined by the Public Procurement Monitoring Office.

(5) In maintaining records pursuant to this Rule, the public entity shall maintain records of each physical property.

(6) In maintaining records pursuant to Sub-rule (5), if the value of such property is more than Five Million Rupees, the records shall

include the description of cost price, depreciation and repair and maintenance costs of that property.

150. Delegation of powers: (1) No powers to revise a cost estimate, amend a procurement contract, extend the period of a procurement contract and issue a variation order as provided in the Act and these Rules shall be delegated.

(2) The competent authority empowered to exercise powers as provided in these Rules, other than those set forth in Sub-rule (1), may delegate such powers to any of his or her subordinate officer employees.

(3) The authority making such delegation of powers shall remain responsible for the powers delegated pursuant to Sub-rule (2).

(4) The authority making delegation of powers pursuant to Sub-rule (2) shall, from time to time, obtain required information from the concerned authority in relation to acts done under the powers delegated by that authority.

151. Power to prescribe format: The Government of Nepal may, on recommendation of the Public Procurement Monitoring Office, and by a notification in the Nepal Gazette, prescribe the format of any matter referred to in these Rules including that of cost estimate of goods, cost estimate of consultancy service and cost estimate of other service.

152. Alteration or revision in schedules: The Government of Nepal may, by a Notification in the Nepal Gazette, make necessary alteration or revision in schedules.

153. Repeal and saving: (1) Chapters-7, 8, 13 and 17 of the Financial Administration Rules, 2056 (1999) are, hereby, repealed.

(2) Any act and action done and taken under the provisions repealed pursuant to Sub-rule (1) shall be deemed to have been done and taken pursuant to these Rules.

Schedule-1

(Relating to Sub-rule (7) of Rule 10)

Method of calculating cost estimate of construction works

Item	Unit	Total rate of item	Total quantity of item	Total cost of item
Item (1)		(f)	(k)	(f) x (k)
Item (2)		(g)	(l)	(g) x (l)
Item (3)		(h)	(m)	(h) x (m)
etc.				

Total = (t) = (f) x (k) + (g) x (l) + (h) x (m) +.....

Work chart staff cost: 2.5 percent of (t) = 0.025 x (u)

Other minor costs: 2.5 percent of (t) = 0.025 x (u)

Total cost estimate: 1.05 x (u)

Note: Cost estimate figure (u) shall be taken as the basis while comparing the tender price.

Method of calculating total rate of item

Labor cost.....(a)

Construction materials cost:.....(b)

Mechanical equipment rent (including lubricants).....(c)

Actual rate (a + b + c) = (d)

Bidder's overhead: 15 percent of (d) - 0.15 x (e)

Total rate (e) = 1.15 x (d)

Note: After preparing a cost estimate as above, the cost estimate shall, for the purpose of budget management, be prepared also including 10 percent for price adjustment contingency, 10 percent for physical contingency and value added tax amount, as required.

Schedule-2
(Relating to Clause (c) of Rule 16)

Government of Nepal

-----Ministry

-----Office

Letter of credit record ledger

Ledger folio No.

SN	Name of firm opening L/C	Number and date of L/C	Amount	Subject	Period	Name and address of bank opening L/C	Date of closing	Date of extension of validity	Date of closure	Advance account folio No.	Origin of goods		Remarks
											Country	Date of manufacture and model	

Records entered by:

Name, surname:

Signature:

Date:

Certified by:

Name, surname:

Signature:

Date:

Schedule-3

(Relating to Sub-rule (1) of Rule 21)

Procurement contract of goods or other services

Goods or other services may be procured by entering into any one contract out of the following contracts:

(a) **Contract for supply of specific goods or other services:**

A contract for the supply of specific goods or other services may be used for the procurement of raw materials, equipment required for any specific purpose, pharmaceuticals, drugs, tools or similar other goods of specific nature.

(b) **Framework or unit rate contract:**

A framework or unit rate contract may be used for obtaining the goods or other services set forth in the procurement contract from one or more than one supplier at the prices and terms specified in the procurement contract as and when a demand is placed by the public entity.

This contract shall specify the minimum and maximum quantity of goods or other services to be procured by the public entity.

The term of this contract shall normally not exceed one year.

(c) **Multi-year contract:**

A multi-year contract can be entered into in the following circumstances:

- (a) If procurement under a multi-year contract would result in substantial savings to the public entity as compared to procurement under an annual contract,
- (b) If the quantity of procurement remains substantially unchanged during the period of procurement contract,

- (c) If the design of goods to be procured remains unchanged during the period of procurement contract, and
- (d) If the technical risks associated with the supplies of goods are not excessive.

(d) Design, supply and erection contract:

A design, supply and erection contract may be used for designing of goods involving state-of-art or complex technology such as big power plants or pumping stations, delivering such goods at the construction sites, assembling thereof, testing and commissioning the same and providing training, as required, to the employees of the concerned public entity for handling such goods. Such contract may also be entered into for any two works out of design, supply and erection.

(e) Turn-key contract:

A turn-key contract may be entered into for designing, supplying, building and erecting an industrial plant involving state of art technology such as fertilizer plant and milk processing plant in accordance with the procurement contract, specifying the performance capacity of such plant, and then transferring the plant to the public entity.

Note: The contracts referred to in Clauses (a), (b), (d) and (e) may also be multi-year contracts.

Schedule-4

(Relating to Rule 22)

Procurement contract for construction works

A public entity may enter into any of the following contracts for procuring any construction works:

(a) **Unit price contract:**

An unit price contract may be entered into where the quantity of a construction work is difficult to be ascertained or where a construction work is to be procured on the basis of unit price set forth in the bill of quantity. The bidder has to include in such unit price the materials, labor and other matters required to complete the proposed construction work.

In making payment for work done under this contract, the public entity shall make such payment on the basis of the unit of work actually done and measured in the field.

(b) **Lump sum contract:**

A lump sum contract may be entered into for procuring a construction work such as ground water pipeline installation, the quantities of which are difficult to measure or a construction work such as superstructure of bridge, the quantities of which can be measured. Such contract shall specify that the construction entrepreneur shall be responsible for all types of risks and liabilities associated with the construction work.

Provided that if the financial liabilities of the construction entrepreneur increases as a consequence of an order issued by the public entity that involves any type of change in the construction work after the commencement of work upon making the contract, the public entity shall bear such liabilities.

(c) **Cost reimbursement contract:**

A cost reimbursement contract may be entered into for procuring a construction work involving high risks and unpredictable conditions, when it is likely that a construction entrepreneur would refuse to, or be unable to, perform the work under a unit price contract. While making payment to the construction entrepreneur for the construction work procured under this contract, such payment may include the costs actually incurred by that entrepreneur, overheads of that work plus profits set forth in the approved cost estimate. In procuring a construction work under this contract, the chief of public entity shall establish the ceiling of maximum amount of cost reimbursement; and approval of the departmental head shall be required to make reimbursement of cost in excess of that ceiling.

(d) **Time and materials rate contract:**

Where the labor and materials required for the repair and maintenance of any construction work cannot be predicted at the time of entering into a procurement contract, a time and materials rate contract can be entered into for procuring work by calculating labor on the basis of time and materials on the basis of unit price. This contract shall clearly provide for payment as follows to the construction entrepreneur:

- (a) Amount to be set by adding overheads and profits set forth in the approved cost estimate to the amount set by dividing the construction entrepreneur's labor on the basis of per hour or per day or per month, and
- (b) Amount paid for the materials used in the repair and maintenance subject to the ceiling set forth in the procurement contract.

(e) **Design and build contract:**

A design and build contract may be entered for procuring the design and build of any construction work from the same construction entrepreneur. The work set forth in this contract shall commence only after the public entity has through its technician or a group of technicians examined and approved the design of construction work. The technician or group of technician who so examines the design shall, in examining and accepting such design, drawing and cost estimate, examine and accept in accordance with the procedures to be adopted for making examination and acceptance.

(f) **Management contract:**

Under a management contract, the construction entrepreneur entering into procurement contract with a public entity, while undertaking full legal and contractual liabilities for time and quality of a construction work, shall execute the work through a number of sub-contractors managed and supervised by that entrepreneur.

Payments for work set forth in this contract shall be made only to the construction entrepreneur entering into contract with the public entity.

(g) **Performance based maintenance or management contract:**

A performance based maintenance or management contract may be entered into for the procurement of any construction work by specifying only the final performance without specifying the equipment and various item-wise works required for the maintenance or management of such work.

(h) **Piece work contract:**

A piece work contract, which establishes a list of prices of construction work, may be entered into for procuring commonly occurring minor items of construction work to be used as and when the need arises.

The validity period of this contract shall not normally exceed one year.

Schedule-5

(Relating to Rule 23)

Procurement contract for consultancy services

A public entity may enter into any of the following contracts for procuring consultancy services:

(a) **Lump sum contract:**

A lump sum contract may be entered into for procuring consultancy service for a clearly defined assignment, the quality of which can be readily assessed, with minimum risks to the consultant, such as feasibility studies, project design and preparation of tender documents. This contract shall provide that the consultant is to submit a report to the public entity upon performing the assignment of specified technical characteristics set forth in the terms of reference within the specified period and the entity is to pay remuneration to the consultant for the same.

(b) **Time based contract:**

Where it is difficult to estimate the period of consultancy service such as supervision of construction works, management of complex business institutions or design of complex structures such as dams and tunnels, a time based contract may be entered into for such service. This contract shall provide that the consultant's remuneration shall be based on:

- (a) Amount to be set upon multiplying the rate of remuneration set forth in the contract by the actual time spent by the consultant in executing the assignment,
- (b) Reimbursable expenses using actual expenses supported by bills, receipts.

(c) **Performance based remuneration contract:**

If it is required to procure consultancy service on conditions that the consultant shall be called as and when required to perform the

assignment set forth in the procurement contract or remuneration is to be paid based on the assignment executed by the consultant, a performance based remuneration contract may be entered into. The remuneration of the consultant shall be as set forth in such contract.

(d) Percentage contract:

A percentage contract may be entered into for procuring goods inspection service, architect service, supervision or monitoring service or similar other service. This contract shall provide that consultant's remuneration is to be paid on the basis of the percentage of the estimated or actual cost of the concerned construction work or project or the cost of goods procured or inspected.

(e) Indefinite delivery contract:

An indefinite delivery contract may be entered into for the procurement of a consultancy service as and when required on a particular activity such as adviser required from time to time for the implementation of a construction work, adjudicator or arbitrator for the settlement of any dispute relating to the procurement contract, adviser on institutional reforms or procurement and technical problem shooter.

This contract shall provide for the following matters:

- (a) The contractor shall perform the assignment set forth in the contract at the rates stipulated in the procurement contract as and when the public entity so requires,
- (b) Remuneration shall be paid on the basis of the time actually used by the consultant in the performance of assignment.

Schedule-6
(Relating to Sub-rule (3) of Rule 88)
Government of Nepal
Ministry
Department/Office
Description of cost estimate of ration

Office requiring ration:

Location of office:

SN	Description of food	Type/ quality of ration	Unit	Qty.	Approved rate of last FY	Price index of NRB	Local market rate	Rate of governmental office determining the price of agro-products	Approved cost estimate		Remarks
									Per unit rate	Total cost estimate	

Signature:

Chief District Officer:

District Administration Office:

Schedule-7
(Relating to Sub-rule (4) of Rule 89)

Government of Nepal

.....Ministry

.....Department/Office

Comparative table on procurement of ration

District:

Location:

SN	Description of food	Unit	Required Qty	Contract rate of last year	Approved rate of cost estimate	Contract of this year								Remarks
						1		2		3				
						Rate	Total amount	Rate	Total amount	Rate	Total amount	Rate	Total amount	