

## **The Public Procurement Regulation, 2007**

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

### **Chapter-1**

#### **Preliminary**

1. **Short Title and Commencement:** (1) These Rules may be cited as the "Public Procurement Regulation, 2007."  
(2) This Regulation shall come into force at once.
  
2. **Definition:** Unless the subject or context otherwise requires in this Regulation,-
  - (a) "Act" means the Public Procurement Act, 2007.
  - (b) "Multi-year Contract" means a contract for a period of more than one year.
  - (c) "Sealed Quotation" means the description along with quoted price submitted in a sealed envelope by a person, firm, company or organization willing to carry out any construction work or make available goods or other services as per the notice of the Public Entity.
  - (d) "Secretary" means the secretary of a ministry and also includes the chief secretary of the Government of Nepal and other

special class officer of the Government of Nepal performing the works equivalent to that of a Secretary.

- (e) "Superior Office" means a higher level office than the concerned office.
- (f) "Treasury and Controller Office" means the Treasury and Controller Office under the Office of the Financial Comptroller General.
- (g) "Rate Fixation Committee" means the committee under Rule 148.
- (h) " Departmental Chief " means an official working as the chief of a department or any other office equivalent to it under any ministry .
- (i) "Ministry" means a ministry of the Government of Nepal and also includes the Office of the Prime Minister and Council of Ministers.
- (j) "Standing List" means the list under Rule 18.
- (k) "Users' Committee" means a committee to construct, operate, and maintain any construction work formed by the persons from among themselves to be directly benefited from a construction work,.
- (l) "Management Contract" means the contract as referred to in clause (f) of Schedule-4.
- (m) "Evaluation Committee" means the committee under Rule 147.
- (n) "Bid Price" means an amount fixed after examination of a bid.
- (o) "Sub-contractor" means a construction entrepreneur, supplier, consultant or service provider who, after signing a separate contract with a construction entrepreneur, supplier, consultant or service provider having concluded a procurement contract ,carries out a work under such contract.

- (p) "Proprietary Goods" means any accessory equipment and parts manufactured by a manufacturer of any goods, machine or equipment to operate or repair such goods, machine or equipment.
- (q) "Contract Price" means the procurement price as stipulated in a procurement contract and also includes, where a variation order is issued under such a contract, the price fixed from the measurement of the work carried out under such an order and where price is adjusted, the procurement price fixed from such adjustment.
- (r) "Framework or Unit Rate Contract" means the contract under clause (b) of Schedule-3.
- (s) "Force Account" means any construction work to be carried out 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 of Procurement proceedings, Procurement Planning and Cost Estimate**

3. **Preparation to be Made for Procurement Proceedings:** In making preparation for a procurement proceedings, a Public Entity shall have to do as follows:-
- (a) To identify procurement requirements,
  - (b) To take information of the procurement contract in practice in the market in order to resolve various technical matters pertaining to procurement and to ascertain the availability of supplier,

- (c) If goods, construction work or consultancy service or other service of similar nature was procured in the previous year, to study such procurement proceedings,
- (d) To ascertain the details, quantity and scope of procurement,
- (e) Dividing the procurement into a more convenient group or including into package,
- (f) To cause the procurement plan to be prepared,
- (g) To prepare cost estimate of procurement,
- (h) To identify financial source and amount of procurement,
- (i) To select procurement method, and
- (j) To ascertain, in the case of a procurement other than the procurement of a construction work of up to six million Rupees, whether the bid qualification or pre-qualification proceedings requires to be carried out or not.

4. **Procurement not to be Made Without Order of Competent Authority:** No procurement shall be made or caused to be made without a written order of the competent authority.

5. **Procurement Requisition to be Received:** (1) Prior to initiating procurement proceedings of goods, procurement unit of the concerned Public Entity shall receive a procurement requisition from the divisions and sections and have the same approved by the competent authority.

(2) The procurement requisition under Sub-rule (1), shall contain the following matters:-

- (a) Description regarding the type, quality, quantity of the goods,
- (b) The timing of the requirements of goods,

- (c) Estimated price of the procurement, and
- (d) Source of the price to be borne .

6. **Arrangement of Budget and Construction Site:** (1) A Public Entity shall not initiate procurement proceedings unless there is a provision of required budget for procurement.

(2) Notwithstanding anything contained in Sub-rule (1), procurement proceedings may be initiated in the following circumstances even if the budget provision has not been arranged:-

- (a) In the case of a procurement to be made under a multi-year contract, in order to carry out procurement proceedings for other years after the budget provision required for the first year has been made, and
- (b) Due to the urgency for preliminary preparation for procurement proceedings, to carry out such work as inviting sealed quotation or bid, to invite pre-qualification application, to publish a notice to prepare short list of consultants, to invite proposals from consultants or to make available sealed quotation form, bidding documents or pre-qualification documents or documents relating to proposal.

(3) A Public Entity shall not initiate procurement proceedings of a construction work unless the provision for construction site is made.

7. **Master Procurement Plan to be Prepared:** (1) A Public Entity shall, in procuring for a plan or project to be operated for a period more than one year or in making a procurement annually of an amount exceeding one hundred million Rupees, have to prepare a master plan of procurement .

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

- (a) Type, quantity and tentative estimated cost of procurement,
- (b) Procurement method,
- (c) If , for maximizing competition, procurement is to be made by the use of slice or package, provision relating thereto,
- (d) Tentative numbers of contracts to be concluded in order to complete the whole procurement proceedings and major functions relating to such procurement proceedings,
- (e) If pre-qualification proceedings requires to be carried out for procurement, matters relating thereto,
- (f) Tentative time-table of procurement proceedings,
- (g) The matters specified by the Public Procurement Monitoring Office from time to time as required to be included in a master procurement plan.

(3) The master plan of procurement prepared under this Rule shall have to be approved by the secretary of the Public Entity.

(4) The concerned Public Entity shall have to up date in each fiscal year the master plan of procurement approved pursuant to Sub-rule (3).

**8. Annual Procurement Plan to be Prepared:** (1) Where a Public Entity requires to make a procurement annually of an amount exceeding one million Rupees, it shall have to prepare, while preparing estimated annual program and budget of the next fiscal year, an annual procurement plan for the procurement to be made in the next fiscal year. While so preparing procurement plan ,such a procurement plan shall be based upon the master plan of procurement under Rule 7, where such plan is prepared.

(2) The Public Entity shall have to state the following matters in the annual procurement plan under Sub-rule (1):-

- (a) Description relating to the types of procurement,
- (b) Possible package of procurement,
- (c) Time table of procurement proceedings,
- (d) Procurement method,
- (e) Types of contracts to be concluded for procurement, and
- (f) The matters specified by the Public Procurement Monitoring Office, from time to time ,as required to be included in the annual procurement plan.

(3) The timetable under clause (c) of Sub-rule (2) shall contain the time period for carrying out the following works:-

- (a) To prepare specifications, if goods are to be procured,
- (b) To prepare cost estimate of procurement,
- (c) To prepare sealed quotation form, documents relating to pre-qualification proposal or to invite a bid or proposal for consultancy service,
- (d) To publish a notice for invitation to sealed quotation, pre-qualification proposal, bid or request for the proposal of consultancy services,
- (e) To evaluate sealed quotation, pre-qualification proposal, bid or proposal for consultancy service,
- (f) To accept sealed quotation, pre-qualification proposal, bid or request for proposal for consultancy service,
- (g) To conclude a contract,
- (h) To commence a work, and
- (i) To complete a work.

(4) The chief of the Public Entity shall have to send a copy of the annual procurement plan prepared under this Regulation along with the estimated annual program and budget of the next fiscal year to the superior office and the Ministry of Finance.

(5) The chief of the Public Entity shall, after receiving the approved program and budget of the current fiscal year, have to revise accordingly the annual procurement plan prepared pursuant to this Rule and approve it and send one copy each of such plan to its superior office, Treasury and Controller Office and Public Procurement Monitoring Office.

(6) The superior office shall have to monitor whether procurement proceedings are completed on time or not.

9. **Matters to be Taken into Account in Preparing Cost Estimate:** (1) A Public Entity shall have to take the following matters into account in preparing cost estimate of any procurement:-

- (a) Whether the whole procurement works may be carried out through a single contract or a separate contract requires to be concluded for each work,
- (b) Whether the procurement contract requires to be renewed or not,
- (c) Other options to procurement, if any,
- (d) Maximum time and cost that may require to complete the work under the procurement contract, and
- (e) Other matters specified by the Public Procurement Monitoring Office as required to be taken into account by a Public Entity in preparing cost estimate.

(2) While preparing cost estimate, the Public Entity shall have to prepare a separate item for mobilization and demobilization cost, insurance, facilities to be provided to the consultant, quality testing, profession related health and safety, as



-built drawing, commission cost for performance security etc including the bid or performance security and include into cost estimate .

**10. Cost Estimate of Construction Works:** (1) A Public Entity shall have to prepare cost estimate of construction works, subject to Rule 9.

(2) In preparing the cost estimate of a construction work, cost estimate shall be prepared as per the norms concerning construction work, archaeological excavation, underground works such as tunnel digging, deep tube-well, petroleum exploration, where there exist such norms and where there is no such norms, the required norms shall be prepared and cause to be approved from the Government of Nepal, Council of Ministers and the cost estimate shall be prepared accordingly.

Provided that if ,while carrying out the work according to such norms, a specific type of norm is required for a specific work, the chief of the concerned Public Entity shall cause to prepare the required norms from the technician of such entity and if the entity does not have such a technician, from the concerned technician of other Public Entity and may cause such norms to be approved from the chief of the Department. The norms so approved shall be sent to the Construction Entrepreneur Development Council within a period of one year.

(3) While preparing cost estimate pursuant to this Rule, the Public Entity shall have to fix the time period to be required to complete construction work by studying whether the goods are available at the site or not.

(4) The Public Entity shall, in the course of preparing cost estimate, have to fix the rate and price of cement, iron rod, bricks, stone, soil, corrugated sheet, bitumen, and emulsion, fuel, polythene pipe, G.I. pipe, D.I. pipe, sanitary goods, electrical goods, G.I. wire and similar other construction materials, the rent of machine and equipment or the wages of laborer on the basis of the rate fixed by the Rate Fixation Committee.

Provided that if the rate of Rate Fixation Committee is not available, the rate shall be fixed on the basis of the rate fixed by the concerned government office or organization, corporation of government undertaking, authority or other organization of similar nature nearby the construction site or the rate, rent or wage provided by the Chamber of Industry and Commerce.

(5) In cases the rate and price, rent or wage under Sub-rule (4) too is not available, such rate shall be fixed on the basis of the rate, rent or wages specified by the Departmental chief.

(6) The Public Entity shall have the cost estimate including the drawing and design of construction work prepared pursuant to this Rule examined from a technician or a group of technicians one level higher in rank than the technician who has prepared such cost estimate and if any error is found, they shall have such error corrected. If such entity does not have such higher level technician, the Departmental chief shall have to make arrangement for the examination of such cost estimate.

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

**11. Cost estimate of Goods:** (1) A Public Entity shall, while preparing cost estimate of goods, have to prepare subject to Rule 9 and the specifications of the concerned goods.

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

- (a) Actual cost incurred on the procurement of the same nature made in the current or previous years by the concerned Public Entity or other Public Entity of the district where such Public Entity is located,
- (b) Prevailing rate in the local market,

- (c) Prevailing rate of other markets and estimated transportation cost up to the destination of delivery of goods,
- (d) The rate issued by Chamber of Industry and Commerce.

**12. Cost Estimate of Consultancy Service:** (1) A Public Entity shall have to prepare the cost estimate of consultancy service subject to Rule 9.

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

- (a) The norms, if any, relating to cost estimate of consultancy service prepared by the concerned ministry,
- (b) Terms of reference of the concerned consultancy service,
- (c) Actual cost incurred on the procurement of the same nature made in the current or previous years by the concerned Public Entity or other Public Entity.

Provided that while preparing cost estimate under this clause, cost estimate shall be prepared by adjusting price to the rate of previous years.

(3) In preparing cost estimate under this Rule the Public Entity shall have to specify the following costs:-

- (a) Remuneration of key manpower and other manpower,
- (b) Travel expenses, residential expense for manpower, office expense, necessary goods, equipment and services expenses, translation of report and other documents, printing expense,
- (c) If the consultant has to organize a training, seminar and travel, the expenses required for such works and other expenses.

**13. Cost Estimate of Other Services:** (1) A Public Entity shall have to prepare the cost estimate of other services, subject to Rule 9.

(2) In preparing the cost estimate of rent of the vehicles, machinery tools, equipments or goods to be hired, the chief of the concerned Public Entity shall constitute a committee comprising of maximum three skilled technicians having knowledge of such vehicles, tools equipment or goods. Where such entity does not have such technical manpower, the superior office of such an entity shall have to form such a committee .

(3) The committee under Sub-rule (2) shall, while preparing cost estimate of the rent , have to prepare a tentative cost estimate of the rent by taking into account the following matters:-

- (a) ~~Details~~ Description of the vehicles, machinery tools, equipment or goods to be hired and specifications, conditions and life thereof ,
- (b) Prevailing market rate,
- (c) Period of hiring,
- (d) Price and consumption of fuel, and
- (e) Other matters considered appropriate by the committee.

(4) The Public Entity shall, while preparing the cost estimate of carriage, have to prepare a tentative cost estimate on the basis of the rate fixed by the rate fixation committee in the case of a district level Public Entity and on the basis of departmental rate in the case of a central level Public Entity and in cases where there is no such departmental rate-, on the basis of prevailing market rate.

(5) The Public Entity shall, in preparing the cost estimate of repair and maintenance of any goods, cause such cost estimate to be prepared by an expert or skilled employee on such matter of such entity, if available, and where such an expert or employee is not available, by an individual, firm, company or organization carrying out such a work.

(6) The Public Entity shall, in preparing the cost estimate of house rent and service contract, have to prepare a tentative cost estimate according to the

prevailing market rate and the norms relating thereto issued, if any, by the Public Procurement Monitoring Office.

**14. Approval of Cost Estimate:** (1) The cost estimate prepared under Rules 10, 11 and 13 shall be required to be approved by the following authority:-

- (a) Cost estimate from twenty five thousand Rupees to five million Rupees- by the chief of the Office of Gazetted Third Class
- (b) Cost estimate of up to ten million Rupees- by the chief of the Office of Gazetted Second Class
- (c) Cost estimate of up to thirty million Rupees- by chief of the Office of Gazetted First Class
- (d) Cost estimate of an amount whatsoever above thirty million Rupees by the Departmental chief.

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

- (a) Cost estimate of up to one hundred thousand Rupees- by the Chief of the Office of gazetted third class,
- (b) Cost estimate of up to five hundred thousand Rupees- by the Chief of the Office of gazetted second class,
- (c) Cost estimate of up to one million Rupees- by the Chief of the Office of gazetted first class,
- (d) Cost estimate of an amount whatsoever above one million Rupees- by the chief of the Department

(3) If the Chief of the Public Entity is not authorized to approve the cost estimate under this Rule, he/she shall have to cause the same to be approved by 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 offices of similar nature may approve the cost estimate of any amount whatsoever for the procurement of his/her office.

**15. Cost Estimate to be Updated:** (1) Where a procurement is not made as per the cost estimate approved pursuant to Rule 14, a Public Entity shall have to update such cost estimate in each fiscal year in pursuance of the process of this Regulation.

(2) The Public Entity shall not make invitation to sealed quotation and bid or proposal for consultancy service without updating the cost estimate pursuant to this Rule.

**16. Function of Procurement Unit:** The functions of the procurement unit, in addition to the functions referred to in Sub-section (3) of Section 7 of the Act, shall be as follows:-

- (a) To coordinate the functions related to procurement proceedings,
- (b) To collect the procurement requisition and submit to the competent authority for approval,
- (c) To keep the record of letter of credit under Schedule-2.

### **Chapter-3**

#### **Procurement and Selection of Procurement Contract**

**17. Goods Manufactured in Nepal to be Procured:** A Public Entity shall, in procuring goods by selecting any method as referred to in this Regulation, have to procure Nepali goods even if the price of the goods produced in Nepal is higher by up to ten percent than the foreign goods.

**18. Provision Concerning Preparation of Standing List:** (1) For the purpose of keeping records of information relating to various procurements under the Act or

this Regulation, a Public Entity shall have to prepare, a separate standing list of suppliers, construction entrepreneurs, consultants or service providers according to the nature of the procurement. In so preparing the list, a list also of the non-governmental organizations shall be prepared for the purpose of Rule 99.

(2) The Public Entity shall have to specify the qualification required for inclusion in the standing list on the basis of the qualification criteria set forth in Sub-section (2) of Section 10 of the Act.

(3) The concerned Public Entity may, for preparation of a standing list, invite every year an application from the interested individual, firm, company or organization, by displaying on the notice board of its own office, the concerned District Administration Office, District Development Committee and Treasury and Controller Office or by publishing in a newspaper of national circulation a notice providing fifteen days' period and containing the following matters:-

- (a) Qualification of the supplier, construction entrepreneur or service provider,
- (b) Classification of list,
- (c) Procedure of updating list, and
- (d) Validity period of list.

(4) In order to be enlisted in the standing list, an individual, firm, organization or company meeting the qualification under Sub-rule (3) may apply along with the required documents within the period specified

(5) The Public Entity shall, if an applicant is found to have met the qualification under Sub-rule (2) , while examining the application received pursuant to Sub-rule (4), have to include such applicant in the standing list.

(6) The Public Entity shall have to provide a notice in writing at the earliest to the supplier, construction entrepreneur or service provider of their inclusion or removal from the standing list.

(7) The Public Entity shall have to up date the standing list in each fiscal year.

(8) A bidder or proponent not listed in the standing list shall not be deprived of participating in a sealed quotation, bid or proposal invited by the Public Entity.

**19. Procurement to be Made from Those Who have Obtained Permanent Account Number and Value Added Tax Registration Certificate:** (1) A Public Entity shall have to procure only from the individual, firm, organization or company who have obtained Permanent Account Number and Value Added Tax registration certificate from the Inland Revenue Office.

(2) Notwithstanding anything contained in Sub-rule (1), procurement may be made also from an individual, firm, organization or company who has not obtained a Value Added Tax Certificate in the following circumstances:-

- (a) In procuring goods or having a construction works carried out of an amount valuing less than five thousand Rupees,
- (b) In procuring goods on which value added tax is not applicable,
- (c) In receiving consultancy service from a natural person of an amount valuing less than one hundred thousand Rupees in a fiscal year,
- (d) In receiving service on contract from a natural person of an amount valuing less than one hundred thousand Rupees in a fiscal year,
- (e) In hiring a motor vehicle, equipment or goods from a natural person or firm by paying the rent less than one hundred thousand Rupees within a fiscal year,



- (f) In having goods repaired and made maintenance from a natural person or firm in a fiscal year upon payment wage of an amount less than one hundred thousand Rupees,
- (g) In renting a house, and
- (h) In having a construction work carried out in participation of users' group and beneficiary community.

(3) Notwithstanding anything contained elsewhere in this Rule, if there does not exist any firm or seller having obtained a Value Added Tax Registration Certificate from the concerned Inland Revenue Office in a district declared as remote area by Government of Nepal, procurement of up to one million Rupees may be made from a supplier listed in the list of available suppliers in the district prepared by the following committee for that district:-

- |   |                   |
|---|-------------------|
| (a) Chief, Treasury and Controller Office                                   | -Chairperson      |
| (b) Representative (officer level), District Administration Office          | - Member          |
| (c) A technician of District Technical Office designated by the Chairperson | -Member           |
| (d) Representative, District Chamber of Industry and Commerce               | -Member           |
| (e) An officer level employee designated by the Chairperson                 | -Member-Secretary |

(4) The Treasury and Controller Office shall act as the secretariat of the committee formed under Sub-rule (3).

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

**20. Selection of Procurement Contract:** (1) A Public Entity shall, after the selection of procurement method in regard to any procurement proceedings, have to select a procurement contract by which the procurement is to be made out of the contracts as referred to in Rule 21, if goods or other services are to be procured, in Rule 22 if a construction work is to be procured, in Rule 23 if consulting service is to be procured.

(2) While selecting a procurement contract under Sub-rule (1), it shall be selected by taking the following matters into account:-

- (a) The type and quantity of procurement,
- (b) *Whether or not the likelihood of re-procurement of the same nature,*
- (c) Distribution of risk between the Public Entity and the supplier, construction entrepreneur or consultant and other party, and
- (d) Method of supervising the procurement contract.

**21. Procurement Contract of Goods or Other Services:** (1) A Public Entity may procure goods or other services by concluding any contract out of the contracts as referred to in Schedule-3.

(2) While concluding a contract, the contract under Sub-rule (1) shall be based upon the technical specifications and period set forth in the bidding documents.

(3) Procurement contract shall be governed by the provisions of this Regulation to the matters provided for in this Regulation and by the provision of law in force on Sale of Goods Contract in the matters not provided for in this Regulation.

(4) The procurement contract of goods or the conditions of delivery of goods shall have to be prepared in accordance with the International Commercial Terms (INCOTERMS).

(5) While making payment under this contract it shall be made, generally after submission of documents by the supplier having supplied the goods, through the letter of credit or through the medium set forth in the bidding documents

22. **Procurement Contract for Construction Works:** A Public Entity may, in order to implement a construction work, conclude any contract out of the contracts set out in Schedule-4 .
23. **Procurement Contract for Consultative Services:** A Public Entity may conclude any contract out of the contract set out in Schedule-5 to procure consultative services.
24. **Conditions May be Specified:** If any other conditions in addition to the conditions specified in this chapter require to be specified in respect of any procurement contract, a Public Entity may specify such terms and conditions in the bidding documents or documents relating to proposal.

#### **Chapter-4**

##### **Qualification Criteria, Technical Capability and Technical Specifications**

25. **Qualification Criteria for Bidders Supplying Goods:** (1) A Public Entity may, while specifying the qualifications criteria for a bidder or proponent of a pre-qualification proposal participating in the procurement proceedings for supply of goods , specify the same taking into account any or all matters out of the following matters:-
  - (a) Technical capacity,
  - (b) Manufacturing records of goods ,
  - (c) Technical specifications of goods,
  - (d) Economic and financial capability,

- (e) If the goods are to be installed , competency of the technician to be involved in the installation,
- (f) Guarantee of trouble free operation of the goods to be supplied up to\_ a specific period,
- (g) Provision of repair and maintenance of goods,
- (h) Availability of services and spare parts,
- (i) In the case of a supplier supplying goods including installation, his/her skill, efficiency, experience and reliability.

(2) In asking the documents that prove the qualification and technical capacity of a bidder or proponent pursuant to this Rule, the Public Entity may ask any or all of the following documents according to the nature, quantity, importance or use of the goods:-

- (a) The nature *of the goods*, quantity, contract amount, date supplied by the bidder to the governmental entity or a private organization during the past three years and the name and address of such a governmental entity or a private organization ,
- (b) If the goods to be procured are of complex and exceptional nature, documents of having examined the production capabilities of the bidder or proponent of pre-qualification by the concerned Public Entity itself or on its behalf by the competent authority of the country in which the bidder or proponent is established,
- (c) A certificate issued after inspecting the goods to be procured by the competent quality control authority or recognized agency in respect of the specifications and quality of such goods,

- (d) Sample, supplementary details or photographs required to prove the authenticity of the goods to be supplied,
- (e) Proportion of the work regarding supply intended to be made through a sub-contractor.

(3) If the bidder or the proponent himself/herself does not manufacture or produce goods to be supplied, he/she shall have to submit a certificate provided by the manufacturer to the effect that he/she has been duly and exclusively authorized by the manufacturer of such goods to submit the bid or pre-qualification proposal for supplying and installing goods.

(4) A bidder or pre-qualified proponent not carrying out trade or business within Nepal, shall be required to submit a document proving that if he/she obtains procurement contract, his/her agent or authorized seller capable of discharging the liability relating to repair and maintenance of the goods supplied as per such a contract, providing after sales service and stocking and supplying necessary spare parts shall be present in Nepal

**26. Criteria for Qualification of a Construction Entrepreneur:** (1) A Public Entity may, in specifying the criteria for qualification of a bidder or a pre-qualified proponent participating in a procurement proceeding of a construction work above six million Rupees, specify such criteria by taking into account any one or all of the following matters according to necessity:-

- (a) General experience of having carried out works solely as a prime contractor or under management contract or partner in a joint venture or sub-contractor,
- (b) A minimum average annual ~~turnover~~ ~~ansveractio~~ for construction works of or above the threshold as referred to in the bidding documents or the prequalification documents

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completed solely or including the work carried out as a partner in a joint venture .

Provided that in cases where a national level open bidding is invited, any three years maximum average turnover out of ten years transaction shall be taken as criteria.

- (c) Special experience of having carried out monthly or annually a construction work equivalent to the minimum amount set forth in the bidding documents or prequalification documents solely or by concluding a management contract or as a partner of joint venture or sub-contractor and having completed successfully procurement contract of the nature, complexity and construction technology similar to the proposed contract in the number specified in such documents,
- (d) Economic and financial capacity of having or access to liquid assets, loan facilities and other financial source (excluding advance payment under any procurement contract) sufficient to meet the cash flow required to complete the proposed construction work and other construction works being carried out or committed to be carried out by the concerned bidder or proponent of prequalification, in the event of stoppage or delays in payment of money required to start up construction work under a procurement contract
- (e) Skilled manpower as set out in the bidding documents or prequalification documents,
- (f) Main equipment as set out in the bidding documents or prequalification documents in full working order of the ownership of the bidder or proponent of pre-qualification

himself/herself or to be so available through rent, lease, contract or other commercial means as can be used freely during the procurement contract period.

(2) In computing the amount of clauses (b) and (c) of Sub-rule(1) in the case of a national construction entrepreneur, only the amount found after deducting the amount for value added tax shall be computed and such amount shall be adjusted according to up ~~to~~-dated price index of the Nepal Rastra Bank.

(3) In asking documents that prove the technical competence of a construction entrepreneur pursuant to this Rule, the Public Entity may ask from the bidder or the proponent of pre-qualification any or all of the following documents, according to the nature of construction work:-

- (a) Details of the price, date and location of the construction work completed by him/her during the last ten years' period,
- (b) Proportion of the work intended by him/her to carry out through a sub-contractor,
- (c) Details of the technical equipment and plant available with him/her to complete the proposed work.

**27. Criteria for Qualification of Proponent of Consultancy Service:** (1) A Public Entity may, while specifying the criteria for qualifications of the proponent participating in a procurement proceedings relating to consultancy service, specify the same by taking into account any one or all of the following matters:-

- (a) If the proponent is an individual, his/her work experience and if a firm or organization, required institutional work experience,
- (b) Proponent's key staff's required academic qualification and work experience in the works of similar nature,
- (c) Method, procedure of performance of work, responsiveness to the terms of reference, technology transfer and the timetable,

- (d) Managerial capacity of the proponent,
- (e) Financial capacity of the proponent,
- (f) Involvement of domestic manpower, if the proposal has been invited in an international level,
- (g) Other matters as specified in the bidding documents.

(2) In asking documents that prove the technical capacity of a proponent pursuant to this Rule, a Public Entity may ask any or all of the following documents, according to the nature of the proposed consultancy service:-

- (a) Details of the consultancy service identical to the proposed consultancy service having been provided to a public or private organization in the last three years, amount and dates,
- (b) Details of qualification of the key staff proposed for completion of the proposed work,
- (c) Details of his/her managerial staff and average annual manpower for the last three years, and
- (d) Portion of the proposed consultancy service intended to be performed through a sub-contractor.

**28. Criteria of Qualification for Joint Venture:** (1) Bidders may, for the purpose of participating in any procurement proceedings, submit bids by forming a joint venture.

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

(2) A Public Entity may specify in the bidding documents the minimum share of the partners under the joint venture under Sub-rule (1) and the minimum qualification of the principal partner and other partners.



(3) The Public Entity shall, while specifying the qualifications under Sub-rule (2), shall specify the same by taking into account the following matters in respect the partner under such venture:-

- (a) His/her average annual ~~transaction~~turnover,
- (b) His/her particular experience and the main work performed by him/her,
- (c) Cash flow available with him/her to carry out the construction work,
- (d) His/her manpower capacity, and
- (e) His/her tools or equipment capacity .

(4) In order to ascertain whether a joint venture has fulfilled criteria for the minimum qualification as specified in the bidding documents or not, the qualification of all partners of such joint venture shall be calculated.

(5) The Public Entity shall specify the individual qualification of a partner of a joint venture by taking into account the following matters:-

- (a) His/her general experience in the concerned work,
- (b) Adequacy of resources required to complete the work being carried out or to be carried out by him/her as per other contract,
- (c) Financial capacity , and
- (d) Past procurement litigation and result thereof.

(6) If a joint venture is selected for a procurement contract, the concerned Public Entity shall have to cause such joint venture to be so registered in the Permanent Account Number and Value-Added Tax in the Inland Revenue Office as the partners of such joint venture to be jointly and severally responsible.

(7) Where a joint venture has to submit ,while submitting a bid, a bid security as well, such a bid security must have been issued in the name of all the

partners of such a joint venture under Sub-rule (1), subject to the condition that all partners bear the liability.

(8) Other conditions concerning joint venture shall be as specified in the bidding documents.

**29. Documents Showing Economic and Financial Capacity may be Asked:** (1) In asking the documents that prove the economic and financial capacity in the bidding documents, a Public Entity may ask, according to the nature of the construction work, any or all of the following documents,:-

- (a) His/ her bank statement,
- (b) Financial statement of his/her business related transaction,
- (c) Balance sheet showing the statement of his/her assets, liabilities and profit and loss,
- (d) Other matters showing his /her economic and financial status, and
- (e) Other matters as specified in the bidding documents.

(2) In asking balance sheet under clause (c) of Sub-rule (1), balance sheet of the past two to five fiscal years period may be asked according to the nature of the work.

**30. Provision Concerning Carrying out the works by Sub-contractor :** (1) If a Public Entity is to invite a bid providing that the work may be carried out through a sub-contractor as well, it shall have to specify the following matters in the bidding documents:-

- (a) Statement that he/she may cause the work to be carried out from a sub-contractor,
- (b) Maximum percentage of the work to be caused to be carried out through a sub-contractor,

(c) Qualification criteria of the sub-contractor, according to necessity.

(2) Where the criteria of qualification are specified pursuant to Sub-rule (1), the bidder shall have to submit the documents that prove the qualification criteria of the sub-contractor before concluding the procurement contract.

## Chapter-5

### **Provision Relating to Bidding**

**31. Procurement to be Made through Bidding:** (1) A Public Entity shall have to procure goods, services or a construction work valuing above one million Rupees through a bid.

(2) In the conditions set forth in Section 15 of the Act, goods, construction works and services shall have to be procured by inviting an open international level bidding.

**32. Matters to be Stated in Pre-qualification Documents:** If a Public Entity is to invite a bid by determining pre-qualification, it shall have to prepare pre-qualification documents before inviting a bid. Such pre-qualification documents shall contain the following matters:-

- (a) Qualification required for the proposed work and in the case of a joint venture, the qualification of the partners,
- (b) Documents and information to be submitted by a bidder to prove his/her qualifications and eligibility,
- (c) If procurement requires to be made by making separate lot or package of goods or construction work, such lot or package,
- (d) Method of preparing proposal,
- (e) Process of evaluating pre-qualification proposal,
- (f) Major conditions of procurement contract,

(g) Such matters specified from time to time by the Public Procurement Monitoring Office as required to be included into the pre-qualification documents, and

(h) Method, place, deadline for submitting pre-qualification proposal.

**33. Pre-qualification Criteria Required to be Approved:** Prior to inviting a pre-qualification proposal, a Public Entity shall have to get approved the pre-qualification criteria as specified pursuant to Rules 25 and 26 from the Departmental chief.

**34. Pre-qualification Documents to be Made Available:** (1) A Public Entity shall have to make available pre-qualification documents to an interested individual, firm, organization or a company by charging, on the basis of the cost incurred to prepare such documents, from one thousand to fifteen thousand Rupees.

(2) The documents under Sub-rule (1) shall bear the signature of the chief of the Public Entity or an employee designated by him/her and marks of the seal of the office. The pre-qualification documents may be made available by the concerned Public Entity or from two or more other entities specified by it.

**35. Selection of Qualified Applicant:** (1) The evaluation committee shall make necessary examination as to whether the applicant for pre-qualification has fulfilled each qualification criteria set forth in the pre-qualification documents or not. In so examining, an applicant who has fulfilled all the criteria of qualification shall be deemed to have been selected in the qualification examination and an applicant who has not fulfilled all the criteria of qualification shall be deemed not to have been selected.

(2) An applicant for pre-qualification selected from the examination under Sub-rule (1) shall be deemed to be qualified to submit a bid for procurement proceedings.

**36. Report to be Submitted:** (1) The evaluation committee shall ,within fifteen days from the date on which it had started evaluation work, prepare a report together with the detailed analysis of the examination carried out by it pursuant to Rule 35 and submit to the Public Entity .

(2) The evaluation committee shall specify the following matters in the report under Sub-rule (1):-

- (a) Name and address of the applicant,
- (b) Documents that prove each criterion of the qualifications of the applicant,
- (c) Table, if such a table is required,
- (d) If the proposal is submitted as a joint venture, whether the documents relating to the joint venture are complete or not and the share and liability of each partner of such a joint venture,
- (e) If procurement requires to be made by making separate lot or package of goods or construction work, the process adopted to examine such a lot or package and the applicant selected for participating in the procurement proceedings of such a lot and package.
- (f) Reason for selecting or not selecting the applicant.

**37. Matters to be Specified in Bidding Documents:** A Public Entity may, in addition to the matters referred to in Section 13 of the Act, specify the following matters in the bidding documents ,according to necessity:-

- (a) Plan, drawing of the proposed work,
- (b) Bill of quantities,
- (c) Quantity of goods,
- (d) Incidental work to be done by the bidder,

- (e) Time of supplying goods, completing construction work,
- (f) Provision concerning warranty and repair and maintenance,
- (g) Type and quantity of necessary training and supervision to be provided by the bidder,
- (h) matter that the goods or spare parts to be supplied must be new and original,
- (i) Source of funding required for proposed procurement.

**38. Discrimination not to be Made:** (1) Except in the conditions set forth in clause (h) of Sub-section (2) of Section 13 of the Act, a Public Entity shall not discriminate a bidder in procurement proceedings on the grounds of nationality.

(2) Where a bidder is unable to obtain any document required as per the bidding documents, the concerned Public Entity shall validate other document submitted by him/her equivalent to such a document.

**39. Details of Agent to be Specified :** (1) In cases where a foreign bidder has appointed his/her agent in Nepal in submitting a bid, he/she shall have to specify the following details in respect of such an agent:-

- (a) Name and address of the agent,
- (b) Figure of the commission the agent is entitled to, type of currency and the mode of payment,
- (c) Any other conditions with the agent,
- (d) If he/she is a local agent, the attested copy of his/her Permanent Account Number Registration Certificate and a letter of acceptance by him/her to become an agent.

(2) If a bid is submitted by an agent on behalf of a foreign bidder, he/she shall clearly state the matters as referred to in clauses (b) and (c) of Sub-rule (1).

(3) If a foreign bidder fails to clearly specify the matters referred to in Sub-rule (1) or where he/she has submitted a bid specifying that he/she has no local agent but *it* is proved later on having an agent or has quoted less amount of commission to be given to the agent and if it is proved later on that the agent has received more commission, the Public Entity shall carry out proceedings to blacklist such a bidder according to Rule 141.

**40. Criteria and Document Relating to Bidder's Eligibility to be Mentioned: (1)**

A Public Entity shall have to mention in the bidding documents the criteria for a bidder's eligibility and the copy of the document to be submitted by the bidder to prove such eligibility.

(2) The documents under Sub-rule (1) shall be as follows:-

- (a) Registration certificate of a firm, organization or company,
- (b) Business registration license,

Explanation: For the purpose of this clause, the term "business registration license" means a certificate obtained by a construction entrepreneur pursuant to the law in force relating to construction enterprises with the objective of carrying out a construction business.

- (c) Value Added Tax registration certificate and Permanent Account Number (PAN) registration certificate,
- (d) Tax clearance certificate or the document of having submitted tax returns of the period specified by the Public Entity obtained from the Inland Revenue Office,
- (e) A written declaration made by the bidder with a statement that he/she is not ineligible to participate in the procurement proceedings; has no conflict of interest in the proposed

procurement proceedings, and has not been punished for a profession or business related offense.

(f) Other documents considered necessary by the Public Entity.

(3) If the bidding documents omits to specify or does not specify clearly about the documents under Sub-rule (2) or require amendment in some respect, the Public Entity may state, clarify or amend such documents by publishing a notice within the time for submission of bids in a newspaper of national circulation and in the case of international level bidding in an international media.

Provided that ,in so publishing a notice, if the bidder requires additional time to submit his/her bid, the deadline for submission of bids shall also be extended.

(4) No action shall be taken upon a bid of the bidder who fails to submit the document under Sub-rules (1) and (2).

**41. Language of Bid:** (1) Except the Act and this Regulation otherwise provide, pre-qualification documents, bidding documents, documents relating to request for proposal, notice for invitation to pre-qualification, bid or proposal and procurement contract shall be prepared as far as possible in Nepali language and in case it is not possible in English language.

(2) A bidder may submit a document or any printed materials relating to procurement to the Public Entity either in Nepali or in English language.

Provided that the concerned portion of such document or printed materials must have been translated into English language from the authorized organization of the concerned country and if any doubt arises between such a document or printed materials and translated portion, the translated portion shall *prevail*.



42. **Matters to be Specified in the Technical Specifications of Goods:** In specifying the technical specifications of goods in the bidding documents, a Public Entity shall have to specify the following matters according to necessity:-

- (a) Plan, drawing and design of the proposed work,
- (b) Bill of quantities,
- (c) Relevant physical and chemical characteristics and anticipated performance characteristics of goods,
- (d) Technical configuration,
- (e) Whether the spare parts and the referred services required during the life of goods will be available or not,
- (f) Descriptive booklet or sample of goods to be submitted together with the bid,
- (g) Details of the guarantee of anticipated performance and quality,
- (h) Provision concerning warranty and repair and maintenance,
- (i) If the goods may cause any environmental impact, such an impact and measures to be taken to mitigate such an impact,
- (j) The criteria and method to be applied to test whether the goods supplied are consistent with the specifications set forth in the bidding documents or not, and
- (k) Other necessary matters specified by the Public Entity.

43. **Matters to be Specified in Technical Specifications of Construction Works:**

In specifying the technical specifications of a construction work in the bidding documents, a Public Entity shall have to specify the following matters according to necessity:-

- (a) Scope and objectives of the proposed construction work,
- (b) Physical nature and conditions of the construction site,

- (c) Description of such work as design, construction, erection of equipment, production, installation of the proposed construction work,
- (d) Bill of quantities containing the estimated quantity of each item of the construction work,
- (e) If the construction work *may* cause environmental impact, its description and the measures to be taken to mitigate such an impact,
- (f) If the work also involves the mechanical, sanitary and plumbing and electricity installation works, special technical specifications thereof,
- (g) Detailed description of the equipment and spare parts to be supplied,
- (h) Details of the guarantee of anticipated performance or quality,
- (i) Inspection and test to be carried out at various stages of construction work,
- (j) Work completion test,
- (k) Technical document, as built drawings, the equipment operating manual ,according to necessity, required to be provided by the construction entrepreneur upon completion of the construction work,
- (l) Inspection and performance test to be carried out by the Public Entity for acceptance of the construction work,
- (m) Schedule of time for commencing and completing of the construction work, and
- (n) Other necessary matters specified by the concerned Public Entity.

44. **Matters to be Specified in Specifications of Other Services:** In specifying the specifications of other services, the bidding document shall specify the following matters according to necessity:-

- (a) The purpose and scope of the service,
- (b) Anticipated performance, the work to be discharged and services to be rendered by the service provider,
- (c) descriptive booklet or sample to be provided by the bidder together with bid,
- (d) Conditions to be complied with, by the service provider,
- (e) Criteria and method to evaluate the services provided by the service provider,
- (f) Quality testing and inspection of the work or service,
- (g) Details of the guarantee of performance and quality,
- (h) Type and quantity of the training to be provided and supervision to be made by the service provider, and
- (i) Other necessary matters specified by the Public Entity.

45. **Documents to be Included in Bidding Documents** : A Public Entity shall have to include the following documents in the bidding documents according to necessity by taking into account the nature of the goods, construction work and other services to be procured:-

- (a) Instruction to bidder and bid form,
- (b) Format of the bid security,
- (c) Format of the performance security,
- (d) Format of the advance payment security,
- (e) Conditions and sample of procurement contract,
- (f) Specifications and drawings,

- (g) Time schedule of commencement and completion of work, currency of payment, source from which and place where materials may be available, and
- (h) Other necessary documents.

**46. Instruction to Prepare and Submit Bid:** (1) A Public Entity may, in providing instructions in the bidding documents for preparing and submitting the bid, provide instructions in respect of the following matters:-

- (a) The language in which the bid is to be prepared,
- (b) Manner of expressing price in accordance with the International Commercial Terms (INCOTERMS) to be used in International Trade,
- (c) Necessary information on joint venture,
- (d) A list of the documents to be submitted along with the bid by the bidder,
- (e) Sample of goods and number of samples to be submitted by the bidder to the concerned Public Entity,
- (f) In the case of procurement of goods, whether there requires to be specified the list of spare parts of such goods recommended by the manufacturer and the quantity of stock with him/her of each spare parts, their per unit price and whether the price of these spare parts will escalate or not after the expiry of the contract or not,
- (g) Requirements that the bidder shall state in his/her bid the manufacturer of the goods to be supplied, country of manufacture, brand, model and catalog number,
- (h) The name, position and address of the contact employee designated by the Public Entity to clarify any matters on procurement proceedings if the bidder wants to inquire from it,

- (i) If the bidder has to provide training to the employees of the Public Entity or transfer technology to such an entity as per the procurement contract, matters relating thereto,
- (j) Statement that the Public Entity reserves the right to accept or reject the submitted bid, and
- (k) Other matters as considered necessary by the Public Entity.

47. **Bidding Documents to be Approved:** After preparation of bidding documents, document relating to invitation to proposal, the chief of the concerned Public Entity shall have to approve such documents.

48. **Charges for Bidding Documents:** (1) An individual, firm, organization or company interested to purchase bidding documents shall obtain the bidding documents signed by the chief of the concerned Public Entity or an employee designated by him/her and having seal of the office, from that entity or two or more entities specified by it, upon payment of the following fee:-

- (a) For an amount above one million but not exceeding six million - One thousand Rupees
- (b) For an amount above six million but not exceeding sixty million Rupees - Three thousand Rupees
- (c) For an amount above sixty million but not exceeding one hundred million Rupees - Five thousand Rupees
- (d) For an amount above one hundred million but not exceeding two hundred fifty million Rupees Six thousand Rupees
- (e) For any amount whatsoever above two Ten thousand Rupees

hundred fifty million Rupees

(2) If any individual, firm, company or organization requests in writing by paying charges under Sub-rule (1) and applicable fees for postage or courier to send the bidding documents or documents relating to request for proposal, the concerned Public Entity shall send bidding document to such an individual, firm, company or organization through post or courier.

Provided that if, in so sending, such an individual, firm, company or organization does not receive bidding document in time, the Public Entity shall not be responsible for it.

- 49. Cost Estimate to be Specified in a Notice of Bidding:** The cost estimate of a construction work of up to six million Rupees shall be specified in the notice of invitation to bid.
- 50. Notice May be Given:** The concerned Public Entity shall have to provide a notice of invitation to bid or pre-qualification proposal of international level to all foreign embassies accredited in Nepal.
- 51. Visit of Construction Site:** (1) A bidder may, in order to obtain necessary information for preparing bid or concluding procurement contract, himself/herself visit or cause his/her personnel or agent to visit the construction site at his/her own expense and at his/her responsibility for the possible risk.
- (2) If the Public Entity has to grant permission for the visit of the construction site under Sub-rule (1), it shall grant such a permission.
- (3) In order to provide actual information about the construction site, the Public Entity may arrange a visit of the construction site for the bidders prior to the meeting to be held pursuant to Rule 52.

52. **Pre-bid Meeting:** (1) A Public Entity may, in order to provide information relating to bidding documents, technical specifications, construction site and the like matters, organize a meeting of bidders in the case of a notice for invitation to national level bidding, at least ten days before and in the case of a notice for invitation to international level bidding, at least fifteen days before the deadline for submission of bid

(2) A bidder may, in the meeting under Sub-rule (1), raise any question or query concerning procurement proceedings to the Public Entity and such an Entity shall be required to make available as soon as possible the answer of such a question or query without divulging the source of questioners and the minute of the meeting to all bidders.

(3) If, from the meeting held pursuant to Sub-rule (1), any technical or commercial aspects of the bidding documents require to be changed, the Public Entity shall, after changing the documents accordingly, send within five days of such a meeting a notice of such a change to all the bidders who have purchased bidding documents.

53. **Bid Security:** (1) A bidder shall have to submit along with a bid, a bid security of at least 2.5 percent of the quoted amount of his/her bid in cash or the bid security issued by a commercial bank equivalent to that amount.

(2) The validity period of the bid security under Sub-rule (1) shall exceed to the validity period of bid at least by thirty days.

(3) If any bidder requests the Public Entity inviting a bid to clarify whether the bid security issued by a particular commercial bank or financial institution is acceptable or not, such a Public Entity shall forthwith answer that request.

(4) A bid security issued by a foreign bank must be counter-guaranteed by a commercial bank situated in Nepal.

(5) A Public Entity shall have to conclude procurement contract within the validity period of bid. If, for any reason, procurement contract cannot be concluded within that time, the Public Entity shall send a letter to all the qualified bidders to extend the validity period of bid.

(6) Bidders may decide whether to extend or not the validity period as per the letter under Sub-rule (5). The bid security of a bidder who does not extend the validity period of bid, shall not be forfeited. Those bidders who extend the validity period of bid shall submit bid security accordingly by extending the validity period as well from the concerned bank. If a bidder fails to submit a bid security by so extending validity period, he/she~~lel~~ shall not be deemed to have extended the validity period of bid.

(7) In cases where the bid security of a bidder is forfeited, the concerned Public Entity shall make a claim within the validity period of bid security before the bank issuing such a security for payment to such an entity of the amount of bid security furnished by him/her.

(8) Except a bid security liable to forfeiture under the Act or this Regulation, the Public Entity shall have to return bid security to the concerned bidders within three days of conclusion of procurement contract.

**54. Bid Validity Period:** A Public Entity shall, in setting out bid-validity period of a bid or a proposal of consultancy service in the bidding documents or document relating to request for proposal, set out the period as follows:-

(a)	For a bid or proposal of consultancy service with cost estimate of up to one hundred million Rupees,	- Ninety days
(b)	For a bid or proposal of a consultancy service with cost estimate whatsoever above one hundred million Rupees	- One hundred and twenty days



55. **Necessary Copies of bid to be submitted:** While submitting a pre-qualification proposal, bid or a proposal for consultancy services, a bidder or proponent shall have to submit in the number of copies as specified in the pre-qualification document, bidding documents or documents relating to request for proposal.
56. **Registration Book to be Maintained and Receipt to be Provided:** (1) A Public Entity shall have to separately maintain the records of sale and registration of pre-qualification document, bidding documents or the proposal for consultancy services.
- (2) If a bidder or proponent personally or by his/her agent submits a pre-qualification proposal, bidding documents or proposal for consultancy services, the Public Entity shall receive it and issue him/her a receipt having specified date and time.
- (3) The Public Entity shall mention the registration number registered in the registration book pursuant to Sub-rule (1) onto the outer side of the envelop of the bid received pursuant to Sub-rule (2).
- (4) After expiry of the time for sale and registration of bid, the chief of the concerned Public Entity or an employee designated by him/her shall sign the book under Sub-rule (1) and close such a book.
57. **Safety of Bid:** (1) A Public Entity shall have to keep the bid or the proposal for consultancy services received as per this Regulation in such a safe manner that it can not be opened by any one prior to the time for opening such a bid.
- (2) The Public Entity shall keep the characteristics of the sample submitted along with a bid in such a confidential and safe manner that it can not be made public prior to opening the bid.

**58. Withdrawal or Amendment of Bid:** (1) If a bidder or proponent wants to withdraw or amend a bid or a proposal for consultancy service submitted by him/her, he/she shall have to submit an application to the concerned Public Entity within the deadline for submission of bid in a sealed envelop by mentioning the following matters in the outer part of such envelop:-

- (a) The matter of the bid or the proposal for consultancy service,
- (b) Name and address of the Public Entity or authority inviting bid or proposal for the consultancy service,
- (c) The matter that the bid or proposal for consultancy service is amended or a request is made for withdrawal, and
- (d) Statement that it shall be opened only on the day and time of opening bid or proposal for consultancy service.

(2) If a sealed envelop under Sub-rule (1) is received, the concerned Public Entity shall keep such an envelop safely pursuant to Rule 57.

**59. Opening of a Bid:** (1) A Public Entity shall have to open a bid in the presence of the bidder or his/her representative.

Provided that there shall be no hindrance for opening a bid merely for reason of absence of a bidder or his/her representative.

(2) The Public Entity shall, before opening a bid pursuant to Sub-rule (1), separate the envelop of the bid received after the deadline of bid submission, the envelop containing an application given for amendment or withdrawal of bid and the envelop of the bid duly registered and return back unopened the bid received after the deadline of bid submission to the concerned bidders. In so returning, a report on procurement proceedings, having content thereof, the date and time, shall be prepared.

(3) The Public Entity shall ,after returning back bids pursuant to Sub-rule (2), open the envelop of the bid requested by the bidder for withdrawal and read

out the name of such a bidder and then open all envelopes submitted for amendment of bid and read out the content inside such an envelop.

(4) The Public Entity shall ,after reading out the content under Sub-rule (3), open, the bids submitted, respectively, and read out the following contents of such a bid, then prepare a *Muchulka* (minute) thereof and shall cause to be signed such *Muchulka* (minute) by the concerned bidder or his/her agent who are present:-

- (a) Name and address of the bidder,
- (b) Quoted price of bid and each unit rate,
- (c) If any discount is offered to be given in the bid, statement thereof,
- (d) If any alternative to technical specifications is offered, quoted price thereof,
- (e) Statement on whether bid security is accompanied or not,
- (f) If there is discrepancy between figure and words, details of such discrepancy,
- (g) Whether the bid form contains the signature of bidder or his/her agent or not,
- (h) Where the bidding documents is corrected or effaced, the amount and statement written after such efface,
- (i) Whether the bidder or his/her representative has signed or not,
- (j) If the bidder has stated any remarks on the bid form, content thereof and if he/she has asked the rate, details thereof, and
- (k) Other necessary matters considered appropriate by the Public Entity.

(5) At the time of opening bid pursuant to this Rule, no decision may be made of accepting or rejecting a bid.

**60. Examination of Completeness of Bids:** The evaluation committee shall, in examining the completeness of a bid, examine, in addition to the matter set forth in Sub-section (3) of Section 23 of the Act, the following matters:-

- (a) Whether the bidder is involved individually or as a partner of a joint venture in more than one bid or not,
- (b) Whether the bidder is disqualified for participation in procurement proceedings pursuant to Sub-sections (2) and (3) of Section 63 of the Act or not,
- (c) Whether the bid is submitted in the bidding documents sold from the concerned Public Entity or other bodies designated by it or not,
- (d) Whether the concerned individual, firm, organization or company has filled in and submitted the same bidding documents purchased by itself or not.

**61. Evaluation of Bids:** (1) Where, in an international level bidding, the bidding documents provide that the bid price may be expressed in various currencies, the evaluation and comparison of bid shall have to be made by converting the price of such bids into a single price according the exchange rate and currency as specified in the same document.

(2) In evaluating and comparing a bid, comparison shall have to be made after fixing the quoted price by excluding Value Added Tax.

(3) Except as provided for in the law in force and this Regulation, information relating to the examination of bid, the information asked or received from the bidder in the course of such an examination and the information relating to evaluation and comparison shall not be provided to any bidder or any other person not involved officially in the decision process.

(4) The evaluation committee shall have to evaluate the bid included for evaluation pursuant to Sub-section (1) of Section 25 of the Act in accordance with the criteria and method set forth in the bidding documents of such a bid.

(5) While evaluating a bid pursuant to Sub-rule (4), the technical, commercial and financial aspect of such a bid shall be evaluated.

(6) Bids having minor deviations having no material deviation with and serious effect upon the scope, quality, characteristics, conditions, performance or any other requirements and acceptable to the Public Entity shall be deemed to be substantially responsive bids and, if, in evaluating such bid, any effect is caused to the cost, the evaluated amount of bid shall be found out by ascertaining the price of such effect on an equal basis and then by adjusting the same (price) to the quoted price of the bid.

(7) The evaluated price of a bid found out pursuant to Sub-rules (6) and Rules 62, 63 and 64 shall be used only for the purpose of comparing bid and shall not be included in procurement contract price.

(8) If discrepancy of price or any other matter is found in the original copy and the duplicate copy of a bid, the price or matter set out in the original copy shall be valid.

(9) The evaluation committee shall, while fixing the price of minor deviation pursuant to Sub-rule (6), fix 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 and interest rate are not definite, the price shall be determined on the basis of average price of the same items stated in other substantially responsive bids.

(10) A bidder shall not be consulted in respect of the rationality of the price to be determined pursuant to this Rule.

**62. Evaluation of Technical Aspect of Bids:** (1) The evaluation committee shall, while evaluating the technical aspect of a bid pursuant to Sub-rule (5) of Rule 61, have to evaluate the following matters:-

- (a) Scope of the supply of goods , construction works or other services,
- (b) Technical specifications and operating and performance characteristics of key goods, construction works or other services, and
- (c) Warranty period.

(2) If, in evaluating a bid pursuant to Sub-rule (1), any discrepancy is found, between the matters set out in the bidding documents and the matter stated by the bidder in the bid, the evaluation committee shall have to note such a discrepancy as well.

(3) The price of the discrepancy under Sub-rule (2) shall be fixed by computing in accordance with the criteria and method set out in the bidding documents.

**63. Evaluation of Commercial Aspect of Bids:** (1) The evaluation committee shall, after the technical aspect of a bid is evaluated pursuant to Rule 62, while evaluating the commercial aspect of such bid pursuant to Sub-rule (5) of Rule 61 ,have to evaluate the following matters:-

- (a) Period for supply of goods or completion of construction works or other services,
- (b) Conditions of payment,
- (c) Liquidated damages to be paid by the bidder for not completing work on time and the bonus entitled to for completing the work before time by the bidder,
- (d) Bidders liability towards warranty,

- (e) Liability to be fulfilled by the bidders,
- (f) If the bidder has added any other conditions to the proposed procurement contract, such conditions,

(2) If, in evaluating pursuant to Sub-rule (1), a discrepancy is found between the matter stated in the bidding documents and in the matter stated by the bidder in bid, the evaluation committee shall note such discrepancy as well.

(3) The evaluation committee shall, while fixing the price of discrepancy under Sub-rule (2), fix the price of discrepancy by computing as per the criteria and method set out in the bidding documents.

**64. Evaluation of Financial Aspect of Bids:** (1) After completion of the evaluation of technical and the commercial aspects of a bid pursuant to Rules 62 and 63, financial aspect of such a bid shall have to be evaluated.

(2) In evaluating financial aspect pursuant to Sub-rule (1), the evaluated price of a bid shall be fixed by determining the price of the necessary matters out of the matters of technical and financial aspects and, according to necessity, of the following matters as well in accordance with the criteria and method set forth in the bidding documents:-

- (a) Inland transport cost,
- (b) Technical features.

(3) While evaluating technical ~~characteristics~~ features pursuant to clause (b) of Sub-rule (2), the evaluation committee shall evaluate only the minimum rate, capacity or output where a bid is submitted quoting the rate, capacity and output higher than the rate, capacity and output relating to procurement set forth in the bidding documents.

(4) Where the bidding documents provide that preference shall be given to domestic goods and local construction entrepreneur, the evaluation committee shall, in evaluating financial aspect of bid, have to fix the evaluated bid price by

computing the amount of the preference to be given to the domestic goods and construction entrepreneur and then adding such amount to the quoted price of a foreign bidder.

(5) The evaluation committee shall, in evaluating a bid, not consider the spare parts recommended by the bidders.

**65. Special Evaluation of Bids of Construction Work:** (1) The evaluation committee shall, in evaluating a bid of a construction work, evaluate the following matters in addition to the matter set out in Rules 62, 63 and 64:-

- (a) Whether the work plan, performance schedule and mobilization time of the construction work is consistent with the bidding documents or not,
- (b) Whether the per unit rate stated by the bidder for items contained in the bill of quantities is reliable or not,
- (c) Whether the quoted price is imbalanced or not for the following reasons:-
  - (1) the bidder having quoted unusual high rate for an item of the work to be carried out at the initial stage of the procurement contract, or
  - (2) the bidder having quoted unusual high rate for an item in the bill of quantity believed by him/her to have been underestimated

(2) The evaluation committee shall carry out an examination in the condition referred to in clause (c) of Sub-rule (1) or in the matter whether or not the bidder has quoted so low bid price that he/she cannot complete the work satisfactorily or has quoted low price by wrongly understanding or misunderstanding the scope or technical specifications of construction works or has stated higher front loading for the work to be carried out at the preliminary



stages. Where low price is so quoted, the evaluation committee shall have to ask a clarification along with a rate analysis from such a bidder.

(3) The evaluation committee may recommend the Public Entity for acceptance of a bid by taking additional performance security equivalent to an amount of eight percent of his/her quoted bid price if the clarification asked pursuant to Sub-rule (2) is found to be satisfactory and for rejection of such bid if the clarification is not found to be satisfactory.

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

**66. Report to be Submitted:** The evaluation committee shall prepare a report of the examination and evaluation carried out by it pursuant to Rules 60, 61, 62, 63, 64 and 65 containing detailed analysis thereof and the following matters and shall have to submit such a report to the Public Entity within fifteen days of the start of evaluation work:-

- (a) Name and address of the bidder,
- (b) Total quoted price of the bidders and currency,
- (c) If an error has been corrected pursuant to Sub-sections (8) and (9) of Section 23 of the Act, the total quoted price fixed after the correction of error and the currency,
- (d) If the *muchulka* (minute) of the opening of a financial proposal mentions that a bidder has offered to provide any discount, the matter that the evaluation committee has adjusted the amount so offered for discount,
- (e) Currency used for comparison pursuant to clause (f) of Sub-section (2) of Section 13 of the Act and the amount fixed on the basis of the exchange rate of the referred date,

- (f) Grounds found from the examination made pursuant to Sub-sections (2), (3), (4), and (6) of Section 23 of the Act,
- (g) Criteria and methodology for evaluation of the lowest evaluated substantially responsive bid pursuant to Sub-section (8) of Section 25 of the Act.

**67. Authority to Approve the Bid:** (1) The power to approve the bid for the following amount shall be of the following officials:-

(a)	Up to ten million Rupees	Chief of the Office of Gazetted Third Class
(b)	Up to thirty million Rupees	Chief of the Office of Gazetted Second Class
(c)	Up to seventy million Rupees	Chief of the Office of Gazetted First Class
(d)	More than seventy million Rupees	Chief of Department

(2) Notwithstanding anything contained in sub Rule (1), the secretary or administrative chief of a constitutional organ or body, ministry, secretariat and other offices of such nature may approve a bid of any amount whatsoever for the procurement of his/her office.

**68. Sample of Goods:** (1) A bidder who is unsuccessful in evaluation of a bid may request in writing to the concerned Public Entity within seven days from the date of conclusion of a procurement contract for returning the sample of the goods submitted by him/her.

(2) Where a request is made pursuant to Sub-rule (1), the Public Entity shall have to return to the bidder the sample, if it is not destroyed during the examination subject to the conditions that the expenses including transportation and packaging shall be borne by him/her.

(3) The sample of the goods submitted by the bidder whose bid has been approved shall be retained safely by the Public Entity by getting it certified by the bid evaluation committee for the purpose of comparing with the goods to be supplied.

## **Chapter-6**

### **Provision Relating to Consultancy Services**

**69. Terms of Reference to be Prepared:** A Public Entity shall, in order to procure a consultancy service, have to prepare terms of reference containing the following matter as well:-

- (a) Background and objective of the assignment to be performed by the consultant,
- (b) Scope of the consultant and the assignment to be performed by him/her,
- (c) If the study and the basic data concerning the assignment is available, details thereof,
- (d) If the consultant is required to transfer any knowledge or skill to the Public Entity, details thereto,
- (e) If training is to be provided, number of the employees to be trained,
- (f) The functions and qualifications of the key personnel of the consultant and the estimated time required for the work to be performed by them,

- (g) Time for commencement and completion of assignment by the consultant,
- (h) Details of the information, physical facilities and equipment to be provided by Public Entity to the consultant, and
- (i) Details of the report, data, drawing and survey report etc. to be submitted by the consultant.

**70. Short List to be Prepared by Inviting Open Expression of Interest:** (1) To procure a consultancy service valuing more than one million Rupees, a Public Entity shall have to invite a expression of interest by publishing a notice pursuant to Section 30 of the Act.

(2) If a consultancy service of an amount valuing more than thirty million Rupees requires to be procured, generally an international level expression of interest shall be invited.

(3) The notice inviting the expression of interest pursuant to Sub-rules (1) and (2) shall contain the following matters:-

- (a) Name and address of the Public Entity,
- (b) General descriptions of the proposed assignment and project,
- (c) Source of funding for the proposed assignment,
- (d) Qualifications of the proponent,
- (e) If the proponent is a firm or company,
  - (1) Descriptions, organization and employees of the firm or company,
  - (2) If two or more firms or companies are to provide consultancy service as a group, organization or a joint venture, the name, address, profile of such firm or company and the name of lead firm or company ,

(3) Details of the assignments of similar nature performed in the past five years and their location,

(4) Curriculum vitae of the key personnel to be involved in the proposed assignment,

(f) In the case of an individual consultant, descriptions of the assignment of similar nature performed in the past three years and their location and his/her curriculum vitae,

(g) Estimated time required for completion of the proposed assignment,

(h) Statement that the proposal relating to procurement of consultancy service shall be invited only from the short listed individual, firm, organization or company,

(i) Documents to be submitted by the person submitting expression of interest,

(j) Instruction to prepare the expression of interest and deadline and place for submission of expression of interest, and

(k) Address for contact to the Public Entity and the contact person.

(4) A Public Entity shall, in inviting an international level expression of interest, have to seek the approval from one level higher authority.

(5) The Public Entity shall have to select a consultant capable of providing such consultancy service after evaluating the qualifications, experience and capability as well of those who have submitted application pursuant to this Rule.

(6) The Public Entity shall ,while selecting an international level consultant, have to select a firm or company from various country, backgrounds and having a local agent.

(7) The name of a renowned consultant who has not submitted expression of interest pursuant to the notice under Sub-rule (1) may be included in the short list by contacting him/her.

(8) If at least three consultants fail to be selected in selecting consultants pursuant to this Rule or ~~it~~ including name into short list pursuant to Sub-rule (7), the Public Entity shall have to invite expression of interest by re-publishing notice.

(9) If at least three consultants fail to be selected even after publishing a notice for the second time, the short list may be prepared of only the consultants to the extent selected.

(10) The Public Entity shall have to provide information of the list prepared as per this Rule to all the persons who have submitted expression of interest.

**71. Invitation to Proposal:** (1) Once a short list has been prepared pursuant to Rule 70, a Public Entity shall have to invite request for proposal from the short listed persons by sending them the documents relating to proposal by post, courier or an individual by providing thirty days' period. No cost shall be charged for sending the documents relating to proposal.

(2) The Public Entity shall, in the documents relating to proposal, have to state the following matters in addition to the matters referred to in Section 31 of the Act:-

- (a) Request for proposal,
- (b) Statement that the key personnel offered by the proponent must have certified that their current curriculum vita is true and complete,
- (c) Statement that financial proposal shall be opened only after the technical proposal has been evaluated,
- (d) Pass marks to be secured by the proponent in the technical proposal,

- (e) Whether the proponent can offer his/her separate work plan and manpower for the concerned assignment or not,
- (f) Whether the proponent can make a comment in the terms of reference or not, and
- (g) Source of funding required for carrying out the proposed work.

(3) The Public Entity shall have to state the weightage marks for evaluation of proposal in the documents relating to proposal,

(4) While specifying the weightage marks under Sub-rule (3), it shall be mentioned as follows:-

- (a) If the proposal is to be selected by application of the quality and cost based selection method, weightage marks shall be so determined according to the nature and complexity of the assignment that the total weightage marks of the technical and financial proposal is one hundred and out of such total weightage marks, the total weightage marks of technical proposal is in the range of seventy to ninety and the weightage marks of the financial proposal is in the range of ~~ten to~~ thirty to ten,
- (b) If the proposal is to be selected by application of quality based selection method, fixed budget selection method and the least cost selection method, weightage marks of the technical proposal shall be so determined as to be one hundred.

(5) While inviting a proposal to select a consultant by fixed budget selection method, the available budget shall be required to be mentioned in the proposal.

(6) While providing the weightage marks for selection of consultant in the documents relating to proposal, the Public Entity shall have to provide, according to the nature of assignment and complexity, appropriate marks not exceeding the following marks:-

(a) Proponent's experience of specific assignment,	Up to ten percent of the total marks
(b) Method of performance and responsiveness to the. terms of reference	Twenty to fifty percent of the total marks
(c) Qualifications and experience of the key personnel	Thirty to sixty percent of the total marks.
(d) Technology transfer or training	Up to ten percent of the total marks
(e) Participation of domestic manpower	Up to ten percent of the total marks

Total

Total Marks --100

(7) The weightage marks as stated in clause (e) of Sub-rule (6) shall not be applicable to the national level proposal.

(8) All criteria of evaluation set forth in Sub-rule (6) shall be divided into three sub-criteria and the marks therefor shall also be determined.

(9) In stating weightage marks pursuant to Sub-rule (3), the pass marks shall also be stated.

**72. Consultancy Service may be Obtained by Inviting Proposal From**

**Consultants under Standing List:** (1) A Public Entity may procure a consultancy service valuing less than one million Rupees by inviting written technical and financial proposal from the consultants under standing list prepared in its office.



(2) While inviting a proposal pursuant to Sub-rule (1), technical and financial proposal shall be invited in separate envelop by sending documents relating to proposal to six, as far as possible, and at least to three consultants.

(3) The proposal under Sub-rule (2) shall be selected by application of quality and cost based selection method.

**73. Matters to be Specified in Instructions to be given to Prepare a Proposal:** A Public entity shall have to specify the following matters in the instructions to be given to prepare a proposal pursuant to clause (c) of Sub-section (2) of Section 31 of the Act:-

- (a) Format of technical and financial proposal,
- (b) Method of preparing and submitting technical and financial proposal,
- (c) Number of the stages in which the assignment will be completed and whether further assignment can be assigned or not,
- (d) If the proponent requires to obtain any information about the documents relating to proposal, the manner of obtaining such information,
- (e) Statement on whether the consultant can sub-contract a portion of the proposed assignment or not,
- (f) Information on the notice, services or equipment to be provided by the Public Entity,
- (g) Statement whether pre-proposal meeting will take place or not,
- (h) Validity period of the proposal,
- (i) Statement that if the Public Entity considers that the award to the consultancy firm or an individual or organization affiliated with it any work relating to the supply of goods, construction works, other services or consultancy service to be created under the

proposed procurement proceedings may constitute conflict of interest with the proposed consultancy service, such a work cannot be awarded to such a proponent or individual,

- (j) Information about the tax to be paid by the proponent and his/her manpower and the competent body to be contacted by the proponent if he/she wants to obtain further information on tax or any other matters,
- (k) Language of the proposal,
- (l) Procedure for amending documents relating to the proposal by the Public Entity,
- (m) Method of submitting a proposal,
- (n) Method of opening a proposal,
- (o) Conditions of confidentiality.

**74. Method of Selecting a Proposal:** (1) A Public Entity may procure a consultancy service for the following assignments by selecting a quality based selection method:-

- (a) An assignment the nature of which is incapable of being defined clearly the input expected from the consultant and in respect of which the Public Entity expects an innovated proposal from the consultant, such as the economic and sectoral study of the country, multi-sector feasibility study, design of a mechanism of managing and disposing hazardous wastes, design of urban master plan,
- (b) An assignment of a type that requires higher expertise and that causes serious and long term impact in future, such as feasibility study or structural engineering design of large dams or major infrastructure construction or policy studies of

national importance, management study of large governmental bodies,

- (c) An assignment of a type service charges of which depends upon the quality of work or that may be performed substantially in different ways by each individual or organization and the cost of competitive proposal of which cannot be compared, such as management consultancy or sectoral and policy studies.

(2) Approval of the Departmental chief 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 the assignment well practiced, of regular nature and requiring least cost, such as auditing, general engineering design and procurement agent.

75. **Manner To Open a Proposal:** (1) A Public Entity shall, while opening a proposal pursuant to Section 32 of the Act, open in the presence of a proponent or his/her representative.

Provided that there shall be no hindrance for opening a proposal for a reason that the proponent or his/ her representative is not present.

(2) Prior to opening a proposal pursuant to Sub-rule (1), the Public Entity shall have to separate envelop of a proposal received after the deadline of submission and the envelop of a proposal duly registered and return unopened the proposal received after the deadline to the concerned proponents. The Public Entity shall mention in the report of procurement proceedings the statement of such return, date and time.

(3) After returning proposal pursuant to Sub-rules (2), the Public Entity shall open, respectively, the outer envelop of the proposal duly registered and the

envelop of technical proposal lying inside such an envelop and read out the following matters and then prepare a *Muchulka* (minute) thereof:-

- (a) Name and address of the proponent,
- (b) Whether the proposal is signed by the proponent or not,
- (c) Where the documents relating to proposal is corrected or effaced whether the proponent or his/her representative has signed such correction and efface or not,
- (d) Other necessary matters considered appropriate by the Public Entity,

(4) The Public Entity shall have to cause the *Muchulka* (minute) under Sub-rule (3) to be signed by the proponent or his/her agent present.

(5) The Public Entity shall send as soon as possible the technical proposal opened pursuant to Sub-rule (4) to the evaluation committee.

**76. Manner of Evaluating Technical Proposal:** (1) While evaluating a technical proposal, each member of the evaluation committee shall separately evaluate in accordance with the criteria set forth in Sub-rule (6) of Rule 71 and fix the marks obtained by a proponent.

(2) After the marks have been fixed pursuant to Sub-rule (1), the evaluation committee shall find out average marks obtained by such proposal by computing the marks given by each member of the committee.

(3) After the evaluation under Sub-rules (1) and (2) is completed, the evaluation committee shall prepare a list of the proponents who have obtained the pass marks under Sub-rule (9) of Rule 71.

(4) The list under Sub-rule (3) shall be prepared respectively in descending order starting from the proponent securing the highest marks.

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

(6) The financial proposal of only the proponent fallen under the list under Sub-rule (3) shall be opened pursuant to Rule 79.

(7) The proposal of the proponent failed to be included into the list under Sub-rule (3) shall be returned unopened to the concerned proponent.

**77. Evaluation Report to be Prepared:** (1) The evaluation committee shall, after completing the evaluation proceedings under Rule 76, prepare a report on the quality of the proposal.

(2) The report under Sub-rule (1) shall contain the following matters as well:-

- (a) Name and address of the proponent,
- (b) Whether the proponent or his/her authorized representative has signed or not,
- (c) Whether the documents that prove the proponent is qualified under law to submit proposal are submitted or not,
- (d) Where the joint venture agreement is required, whether such an agreement is submitted or not,
- (e) Whether or not the proposal is complete as per the instruction to the proponent given in the documents relating to proposal, and
- (f) Relative strength, weakness and the result of evaluation of each proposal.

**78. Notice to be Given to the Proponent Selected from Evaluation of a Technical Proposal:** (1) A Public Entity shall have to serve a notice containing the place, date and time of opening of a financial proposal to the proponent falling into the list under Sub-rule (3) of Rule 76 for presence in that time and place.

(2) In serving a notice to the proponent for presence pursuant to Sub-rule (1), a period of at least seven days shall be given in the case of a national level proposal and of at least fifteen days in the case of an international level proposal.

(3) The financial proposal of the proponent failing to obtain the pass marks shall be returned to him/her with a notice containing the grounds of failure of his/her technical proposal to be selected.

**79. Financial Proposal to Open :** (1) The evaluation committee shall have to open the envelop of financial proposal in the presence of the proponent or his/her representative.

Provided that there shall be no hindrance for opening a financial proposal for the reason of absence of the proponent or his/her representative.

(2) After opening the envelop of the financial proposal pursuant to Sub-rule (1), the evaluation committee shall have to read out the name of the proponent, the marks obtained in the technical proposal and the service charge proposed by him/her in the financial proposal and prepare a *Muchulka* (minute) having the following content:-

- (a) Name and address of the proponent,
- (b) Proposed service charge,
- (c) If any offer is made to give discount to the proposed service charge, details thereof,
- (d) Description of the discrepancies, if any, between figure and words,
- (e) Whether the proponent or his/her agent has signed the financial proposal or not,
- (f) If any matter or content of the financial proposal is effaced whether such efface is signed by the proponent or his/her

representative or not and the details of the amount and the content effaced,

- (g) Other necessary matters considered appropriate by the Public Entity.

**80. Evaluation of Financial Proposal:** (1) Except where the documents relating to proposal otherwise provide, for the purpose of evaluation of a financial proposal, the service charges in such a proposal shall be deemed to have also been included such reimbursable expense as tax payable by the consultant pursuant to the law in force other than Value Added Tax, consultant's travel, translation of the concerned documents, report printing or overhead cost.

(2) If the evaluation committee finds any arithmetical error while evaluating financial proposal of each proponent, the Public Entity may correct such an error and if, in so correcting the error, any discrepancy is found in the unit rate and the total amount, the unit rate shall prevail and the total amount shall be corrected as per the same rate. Where an error is so corrected, information thereof shall be given to the concerned proponent.

(3) If any discrepancy is found in number and words in the amount quoted by the proponent, the amount quoted in words shall prevail.

(4) If the *Muchulka* (minute) of opening a financial proposal provides that a proponent has offered to provide discount to the proposed quoted price, the evaluation committee shall adjust the amount so proposed to be discounted.

(5) After completion of evaluation under Sub-rules (2), (3) and (4), a list of the fixed quoted price of all the proponents shall be prepared.

**81. Selection of Proponent:** (1) If the quality and cost based method is applied to select a proposal, the evaluation committee shall have to select the successful

proponent by evaluating as provided hereunder the technical and financial proposal:-

- (a) The obtained net marks of technical proposal shall be the quotient to be found out by dividing by one hundred, the product obtained from multiplying the score of the technical proposal by the weightage marks allocated for the technical proposal.
- (b) The obtained net marks of a financial proposal shall be the quotient marks to be found out by dividing by the quoted price of the proponent to be evaluated the product obtained from multiplying the lowest quoted price out of the proposal successful from the evaluation of a technical proposal by the weightage marks assigned for the financial proposal.
- (c) A bidder who obtains the highest marks in making joint evaluation after adding the net score of the technical and financial proposals shall be considered successful and he/she shall be selected.

**Example:** (1) Total weightage marks allocated for technical proposal =80

Marks obtained in the technical proposal by proponent a., b. and c having obtained the determined pass marks:-

a = 90

b = 85

c = 80

Method of computing the marks to be obtained by the technical proposal on the basis of above marks:-

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



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

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

(2) The weightage of marks allocated for financial proposal = 20.

The amount quoted in the financial proposal by the bidders a, b and c who are passed in the technical proposal:-

$$a = 4,50,000.00$$

$$b = 4,30,000.00$$

$$c = 4,20,000.00$$

Therefore, the lowest quoted amount = 4,20,000.00

The method of computing the marks to be obtained by the financial proposal on the basis of the above marks:-

$$a = \frac{4,50,000 \times 20}{4,20,000} = 18.66$$

$$4,50,000$$

$$b = \frac{4,20,000 \times 20}{4,30,000} = 19.53$$

$$4,30,000$$

$$c = \frac{4,20,000 \times 20}{4,20,000} = 20.00$$

$$4,20,000$$

(3) Details of the total marks to be obtained from the joint evaluation of technical and financial proposals:-

Proponent	Net score of the technical proposal	Net score of the financial proposal	Total marks	Remarks
				Proponent 'a' who has

a	72	18.66	90.66	scored the highest marks shall be selected.
b	68	19.53	87.53	
c	64	20.00	84.00	

(2) If the quality based method is applied to select a proposal, the evaluation committee shall have to select only the proponent who has obtained the highest marks in the technical proposal pursuant to clause (b) of Sub-section (1) of Section 35 of the Act.

(3) If the fixed budget method is applied to select a proposal, the evaluation committee shall cancel the proposal having cost exceeding the ceiling of such budget pursuant to clause (c) of Sub-section (1) of Section 35 of the Act and select the proposal of the proponent who has scored the highest marks in the technical proposal after falling under such ceiling.

(4) If the least cost method is applied to select a proposal, the evaluation committee shall select a proposal having the lowest cost out of the proponents who have scored minimum marks specified for being successful in the technical proposal pursuant to clause (d) of Sub-section (1) of Section 35 of the Act.

(5) If a negotiations is to be held with the proponent selected pursuant to this Rule, a Pubic Entity may give notice containing date, time and place to such proponent, to come to hold negotiations.

**82. Procurement through Direct Negotiations:** If a service requires to be obtained for such matters as training, workshop and seminar which are useful and necessary for the Public Entity such services may be procured by direct

negotiations by the chief of the Public Entity himself/herself in the case of a service valuing less than one hundred thousand Rupees and by the approval of one level higher official in the case of the service valuing above it.

**83. Other Method:** A consultant may be appointed on the basis of qualification in the following conditions: -

- (a) If high level expertise is required to carry out a work, or
- (b) If the consultancy service is required for a short period or if there is less time to appoint a consultant, or
- (c) If only a few consultants are qualified to complete the required work,
- (d) If appointment of consultant takes long time but there is inadequate time for it.

**Chapter-7**  
**Other Provisions Relating to Procurements**

**84. Provisions Concerning Sealed Quotation:** (1) Goods, construction works and other services valuing up to one million Rupees may be procured by inviting a sealed quotation.

(2) A Public Entity shall, in a sealed quotation form, have to specify the following matters in addition to the matters set out in Sub-section (2) of Section 14 of the Act:-

- (a) Details of the goods to be supplied, construction works to be completed or the service to be provided,
- (b) Qualification of the sealed quotation giver (except in the case of procurement of construction),
- (c) Performance security, if required,
- (d) Validity period of sealed quotation,
- (e) Statement that sealed quotation form shall be duly signed by the sealed quotation giver,
- (f) Method of evaluation of a sealed quotation,
- (g) Warranty related liability in the case of goods and defect liability in the case of construction work .

(3) After the form is completed pursuant to Sub-rule (2), the Public Entity shall, in order to invite a sealed quotation, publish a notice pursuant to Sub-section (3) of Section 40 of the Act and such a notice shall contain the following matters:-

- (a) Place where the sealed quotation form is available and the charges applicable for it,

- (b) If security is required, type, amount and period thereof,
- (c) Manner for sending the sealed quotation,
- (d) Name and address of the office to which or the official to whom the sealed quotation shall be sent,
- (e) Deadline for submission of sealed quotation,
- (f) Date, place and time of opening sealed quotation,
- (g) Other necessary matters.

(4) An individual, firm, organization or company willing to submit a sealed quotation shall have to purchase a quotation form from the concerned Public Entity upon payment of Rupees three hundred and submit sealed quotation in the same form.

(5) The sealed quotation form under Sub-rule (4) shall bear the signature of the chief of the concerned Public Entity or an employee designated by him/her and the seal of the office.

(6) An individual, firm, organization or company submitting the sealed quotation shall have to submit along with sealed quotation cash security or bank guarantee issued from a commercial bank with validity period of seventy five days of an amount equivalent to two and half percent of the amount quoted by him/her.

(7) The validity period of a sealed quotation shall be of forty five days.

(8) The Public Entity shall open the sealed quotation form immediately after expiry of the last time for submitting sealed quotation at the place specified in the notice inviting sealed quotation in the presence of, as far as possible, the sealed quotation giver or his/her agent

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

(10) The Public Entity shall accept the sealed quotation pursuant to Sub-section (5) of Section 40 of the Act within fifteen days from the date of the opening of the sealed quotation pursuant to Sub-rule (8) and the notice thereof shall be given to all those who have submitted sealed quotation.

(11) A Public Entity shall, within seven days of acceptance of sealed quotation pursuant to Sub-rule (9), give a notice to the concerned sealed quotation giver to come to conclude the procurement contract .

(12) The sealed quotation giver receiving the notice under Sub-rule (10) shall conclude a procurement contract within seven days of receipt of such a notice, by furnishing five percent amount of the figure quoted by him/her in cash or the performance security issued by a commercial bank.

(13) The security provided by the sealed quotation giver pursuant to Sub-rule (6) shall be forfeited in the following conditions:-

- (a) If the selected sealed quotation giver does not conclude procurement contract,
- (b) If one fails to provide the performance guarantee specified in the sealed quotation form within the time of concluding procurement contract,
- (c) If one commits an act contrary to the conduct referred to in Section 62 of the Act.

(14) Other procedure concerning sealed quotation shall be as per the provision referred to in Chapter three.

**85. Provision Concerning Direct Procurement:** (1) Expendable or capital goods, or consultancy or other services or construction work valuing up to one hundred fifty thousand Rupees may be directly procured pursuant to clause (a) of Sub-section (1) of Section 41 of the Act

Provided that a construction work under this Section cannot be directly procured from the same individual, firm, company or organization more than one time in a fiscal year.

(2) The procurement under Sub-rule (1) may be made by concluding a structural or unit rate contract

(3) In cases where a sole supplier has, pursuant to clause (c) of Sub-section (1) of Section 41 of the Act, the exclusive right to supply such proprietary goods may be procured from such a supplier or through his/her authorized dealer or agent.

(4) The low-value procurement under Sub-rule (1) may be made by inviting a sealed quotation or proposal from the suppliers, consultants and service providers of the standing list under Rule 18.

(5) Proprietary goods under clause (d) of Sub-section (1) of Section 41 of the Act may directly be procured up to thirty percent price of the previous contract price.

(6) The Public Entity shall have to publicly publish a notice of the procurement made in the conditions other than those referred to in clause (a) and (e) of Sub-section (1) of Section 41, by disclosing name of the supplier, construction entrepreneur, consultant or the service provider together with the nature, reason and grounds of such procurement .

(7) Approval of one level higher authority shall be obtained to make procurement under the conditions of clause (d) of Sub-section (1) of Section 41 of the Act.

**86. Matters to be Ascertained Before Making Direct Procurement:** (1) A Public Entity shall have to ascertain the following matters before making direct procurement:-

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

- (b) Whether the proposed construction entrepreneur, supplier, consultant or service provider possesses the qualifications required to perform the work under the procurement contract or not,
- (c) Whether the proposal submitted by the proposed construction entrepreneur, supplier, consultant or service provider as per the demand of the Public Entity is consistent with the specifications and technical quality determined by such an entity or not, and
- (d) Whether the price proposed by the proposed construction entrepreneur, supplier, consultant or other service provider is proper or not.

(2) In order to ascertain whether the price under clause (d) of Sub-rule (1) is proper or not, the Public Entity may, after making rate analysis on the basis of market study, previous procurement price, the cost estimate, hold negotiations with the construction entrepreneur, supplier, consultant or other service provider ,as the case may be.

(3) The procurement contract under Sub-section (3) of Section 41 may also be concluded through corresponding.

87. **Design May be Procured Through Competition:** In procuring a design of such matters as architectural or urban planning, a Public Entity shall prepare a document together with detailed description relating to such design and may procure an appropriate design by having a competition made as per such documents.

## **Chapter -8**

### **Provision Relating to Procurement of Ration**



**88. Preparation of Cost Estimate and Approval:** (1) The chief of every Public Entity requiring to make arrangements of ration shall have to prepare, by the last day of the month of Bhadra (mid August) of each year, as per the ration quota approved for his/ her office, a cost estimate on the basis of consumer price index of the concerned area to be published by the Nepal Rastra Bank, the price index published by the governmental body responsible for fixing the price of agricultural products, road facilities, local market rate, procurement contract rate of the previous year and the guidelines, if any, issued by the Public Procurement Monitoring Office.

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

(a)	Chief District Officer	- Chairperson
(b)	Chief, Treasury and Controller Office or officer level representative of that office	- Member
(c)	Chief, District Agricultural Development Office	- Member
(d)	Representative, District Chamber of Industry and Commerce	- Member
(e)	Chief of the Public Entity requiring to make arrangements for ration	- Member-secretary

(3) In approving the cost estimate pursuant to this Rule by the committee under Sub-rule (2), it shall approve in the format of Schedule-6 taking into account the matters referred to in Sub-rule (1).

(4) The Public Entity shall have to send a notice of the approval of the cost estimate as per Sub-rule (3) to the superior office, Regional Administration Office and the Public Procurement Monitoring Office within seven days.

**89. Procurement arrangements for Ration:** (1) A Public Entity requiring to make arrangements of ration may procure ration by inviting a sealed quotation or a bid pursuant to the Act and this Regulation, subject to the condition that the new supplier shall supply ration from the first day of the month of Magh (mid January) of every year.

(2) While inviting the sealed quotation or bid to be invited pursuant to Sub-rule (1), the Public Entity shall have to specify the following matters as well :-

- (a) Type and quality of ration, *sida* feeds and fodder,
- (b) Quantity needed daily,
- (c) Statement that price increment shall not be given during the contract period, and
- (d) Statement that contract can be concluded only with the Nepalese citizens.

(3) Ration arrangements for a Security Entity shall be made as provided hereunder:-

- (a) Sealed quotation form or bidding documents may be sold from the concerned Security Entity, District Administration Office and the Treasury and Controller Office as well and the notice for invitation to sealed quotation or bid shall state that such a form can be submitted to the concerned Security Entity. The sealed quotation form or bidding documents shall also specify the time and place of opening such sealed quotation or bid, as the case may be .

- (b) Prior to inviting a sealed quotation or bid, the Security Entity responsible for arrangement of ration shall send at least fifty copies of the sealed quotation form or bidding documents relating to ration arrangements each to the entity under clause (a) for sale and in case of shortfall of such form or documents, the concerned Security Entity shall send such form or documents to such entities as per their request.
- (c) The entity under clause (a) shall sell the forms and bidding documents received pursuant to clause (b) to the interested sealed quotation giver and bidders and send records thereof to the concerned Security Entity.
- (d) The sealed quotation giver or bidder buying such sealed quotation form or bidding documents may, after duly filling such form or documents and sealing them, so send or deliver to the concerned Security Entity personally or through his/her representatives or through postal or courier service as to reach within the time specified in the notice inviting sealed quotation or bid.
- (e) The Security Entity shall receive the sealed quotation form or bids ,as the case may be, received pursuant to clause (d) and maintain records thereof.
- (f) The concerned Security Entity shall open the sealed quotation or bid received in its office immediately after the deadline for submission of such sealed quotation or bid , as the case may be, in the time specified in the sealed quotation form or the bidding documents.

**Explanation:** For the purpose of this clause, "Security Entity" means the Nepal Army, Nepal Police, Armed Police Force or an entity specified by the Government of Nepal.

(4) The concerned Public Entity shall have to prepare a comparative chart of the sealed quotation or bid , as the case may be, opened pursuant to this Rule in the format of Schedule-7.

(5) The Public Entity shall examine and evaluate the sealed quotation or bid ,as the case may be, under Sub-rule (4) pursuant to the Act and this Regulation and accept the sealed quotation or bid having the lowest rate and then conclude contract with such a lowest rate provider.

(6) If a sealed quotation giver or bidder submitting sealed quotation or bid pursuant to this Rule is found to have mentioned more than one hundred percent rate of the prevailing market rate in two or more items of goods, the evaluation committee may recommend for cancellation of such sealed quotation or bid , as the case may be..

(7) Within seven days of conclusion of procurement contract pursuant to this Rule, the chief of the Public Entity shall prepare a report together with the comparative chart under Sub-rule (4) and inform the superior office and the Public Procurement Monitoring Office

(8) If, in buying the food grain by the supplier to arrange ration as per the procurement contract, the local market faces shortage of food grain , the concerned Chief District Officer shall, by contacting the agencies concerned with food ,cause to be made available the necessary permit for managing ration by purchasing from other districts.

(9) If an arrangement for ration provision fails to be made or loss or damage is caused to government due to delay of any kind, the chief of the concerned Public Entity shall , personally, be responsible for such loss and damage.

(10) The Public Entity responsible for arrangement for ration shall have to arrange ration pursuant to the provision of this chapter to the extent provided for in this chapter and in other respect the provision of the Act and this Regulation shall have to comply with.

**90. Direction to be Complied with:** If a procurement contract for ration arrangements could not be concluded or where such contract, even if concluded, is violated or where the Public Entity has forfeited the procurement contract pursuant to the Act or this Regulation, the chief of such an entity shall request the superior office in writing for direction and shall provide ration as directed by the superior office.

**91. Inspection May be Made:** (1) The chief of the concerned Public Entity may, according to necessity, make an inspection as to whether the supplier has supplied ration of the quality specified in the contract or not and if the ration supplied is not found to be of the quality specified in the contract, he/she may initiate an action to forfeit the contract.

(2) Where a contract is forfeited pursuant to Sub-rule (1) or for any other reason, the supplier shall have to pay the Public Entity the outstanding advance money, if any, due to the Public Entity together with an annual interest at the rate of ten percent thereon effective from the date on which the advance was taken. If the supplier does not pay such an amount within thirty days of such contract being forfeited, that amount shall be recovered from him/her as governmental dues.

**92. Security to be Taken for Advance :** (1) If a Public Entity making arrangements for ration requires to give advance to the supplier after concluding a procurement contract, it may provide an advance up to twenty-five percent of the quoted price

against a bank guarantee that covers such advance amount and issued by a commercial bank having a validity period of at least seven months.

(2) If the released budget amount is insufficient to provide advance pursuant to Sub-rule (1), the concerned Public Entity shall request the concerned Treasury and Controller Office to release additional amount and where such request is made, that office shall also have to release additional amount subject to the approved budget.

(3) The Public Entity shall have to recover by the end of the current fiscal year the whole advance amount given pursuant to Sub-rule (1) by deducting an amount at the rate of fifty percent from every month's bill of the supplier.

(4) Once the advance amount given to the supplier for the first time has been recovered, the Public Entity may again provide an advance amount of twenty five percent of the quoted price in the month of Shrawan (mid August) of the new fiscal year against a security having validity period at least of seven months and shall have to recover the advance amount so given by the end of the month of Paush (mid January) of the same fiscal year by deducting such an amount pursuant to Sub-rule (3).

(5) The supplier shall have to keep in the stock the ration equivalent to the advance payment given pursuant to Sub-rules (1) and (4) in his/her warehouse.

93. **Other Arrangement May be Made for Ration:** If the concerned central office instructs the Public Entity responsible for making ration arrangement to make available cash instead of ration, such an entity may make available an amount in cash to be calculated on the basis of the rate of the approved cost estimate pursuant to Rule 88 and approved position.

## Chapter -9

### Provision on Renting a House or Land and Service Contract

94. **Provision on Renting a House and Land**: (1) If a Public Entity requires a house or land on rent, it shall have to call for a proposal of a rent by publishing a fifteen days' notice in a newspaper of national circulation in the case of a central level Public Entity located within the Kathmandu Valley and by displaying a seven days' notice on the notice boards of the following offices in the case of a regional and district level Public Entity:

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

(2) In the notice under Sub-rule (1), the Public Entity shall have to specify the following matters:-

- (a) Name and address of the concerned Public Entity,
- (b) Area or location in which the house or land is required,
- (c) Nature, area and other necessary details of the house or land sought to be taken on rent,
- (d) Information that the house or land shall be taken on rent only at the rate fixed by the committee specified in Sub-rule (4),
- (e) Procedures to be followed by the house or land owner to submit a proposal and other essential matters to be enclosed with the proposal,
- (f) Place for submitting the proposal and the last date of submission,
- (g) Conditions for payment of house or land rent and deduction of tax, and

(h) Other matters considered appropriate by the concerned Public Entity.

(3) The Public Entity shall have to open the proposal on providing house or land on rent received within the time frame as specified in Sub-rule (1) and submit to the committee under Sub-rule (4).

(4) There shall be a House Rent Fixation Committee consisting of the following persons in each district to fix the rent of the house or land to be taken on rent by a Public Entity:-

(a)	Chief District Officer	- Chairperson
(b)	Chief, Treasury and Controller Office	- Member
(c)	Chief, District Technical Office	- Member
(d)	Chief of the Public Entity taking house or land on rent	- Member
(e)	Employee of the District Administration Office designated by the Chief District Officer (Officer level so far as available)	- Member- secretary

(5) The procedure of the meeting of the committee under Sub-rule (4) shall be as determined by the committee itself.

(6) The committee under Sub-rule (4) shall fix the rent of the concerned house or land by evaluating the proposal submitted pursuant to Sub-rule (3) on the following basis:-

- (a) Location of the house or land and the road accessibility,
- (b) Structure and area of the house or land,



- (c) Physical facilities,
- (d) Premises of the house or land ,
- (e) The amount of rent proposed by the owner of the house or land, and
- (f) The prevailing rate of rent of the house or land.

(7) After fixing the rent of the house or land pursuant to Sub-rule (6), the House Rent Fixation Committee shall have to provide information thereof to the concerned Public Entity in writing.

(8) After receiving the information under Sub-rule (7), the concerned Public Entity shall take the house or land on rent by concluding a contract with the concerned owner.

(9) The contract concluded under Sub-rule (8) may be renewed with the consent of the owner of the house or land and the concerned Public Entity.

(10) If the rate of rent of the house or land requires to be increased, a proposal shall be submitted to the House Rent Fixation Committee under Sub-rule (4) for fixation of house or land rent after obtaining the approval of the Ministry of Finance

95. **Procedure Relating to Service Contract:** (1) If a Public Entity requires to take services on service contract to operate its day-to-day works such as office security, transportation of letters, sanitation, operation and supervision of telephone, electricity and water supply, animal health and agricultural ~~dissemination~~extension, maintenance and caring of garden, typing or computer type, driving, it may take such services by concluding a contract with an individual, firm, organization or company.

(2) In taking services on service contract under Sub-rule (1), there shall be prepared requirements, type, duration, quality, service operation method,

tentative expense to be incurred and the terms of reference of such service and the same shall be approved by the chief of the concerned Public Entity.

(3) The Public Entity may procure by negotiations a service costing service fees up to one hundred thousand Rupees. In the case of the services costing service fees in excess of that , the Public Entity located in Kathmandu Valley and the Central-level Public Entities, by publishing a notice in newspapers of national circulation providing the time period of fifteen days, and in the case of Regional as well as District-level entities, by publishing a notice in local newspapers providing the time period of fifteen days and by displaying a notice on the notice board of those entities and of the following offices, may call for proposal:-

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

(4) The Public Entity shall have to specify the following matters in the notice under Sub-rule (3):-

- (a) Name and address of the concerned Public Entity,
- (b) Nature, quantity, conditions of service and other necessary matters,
- (c) Place and duration of the service to be provided,
- (d) Minimum documents and details to be submitted by the proponent along with proposal,
- (e) The place and last date to submit the proposal,
- (f) Conditions of the payment of service fees and the matter of tax deduction, and
- (g) Other necessary matters.

(5) The Public Entity shall have to open the proposals pursuant to Rule 59 received within the time period and evaluate the proposal of the proponent.

(6) While evaluating proposals pursuant to Rule (5), the Public Entity shall have to accept the proposal of the proponent who has offered the lowest service charge by fulfilling the terms of reference under sub-Rule (2) and conclude service contract agreement.

(7) If a proponent whose proposal has been accepted pursuant to Sub-rule (6) does not come to conclude service contract, a service contract may be concluded with the proponent offering the next lowest service charge.

(8) The Public Entity shall have to monitor, from time to time, the service rendered by the service provider. In so monitoring if the service is not found to be satisfactory or is not consistent with the contract, such an Entity shall have to inform the service provider to upgrade the level of service and if the level of service is not upgraded even after providing such a notice, another service contract is to be arranged by canceling the service contract.

**96. Procedure for Repair and Maintenance of Goods:** (1) If any goods existing in the Public Entity requires to be repaired or maintained, the user of such goods shall have to provide written information thereof to the chief of such an entity. Upon receipt of such an information, he/she shall have a cost estimate prepared pursuant to Sub-rule (5) of Rule 13 and approve the same.

(2) After the cost estimate is prepared pursuant to Sub-rule (1), the Public Entity shall have the goods repaired from its workshop or repair center where it has such workshop or repair center. If in so having goods repaired or maintained, any goods, equipment or spare parts requires to be altered, such goods, equipment or spare parts shall be obtained from stock, where there is such a stock, and where there is no such a stock, be procured by application of the process of the Act and this Regulation.

(3) Where equipment or spare parts is procured pursuant to Sub-rule (2), the Public Entity shall cause such goods to be entered into store and keep records of the equipment or spare parts costing more than five thousand Rupees per unit price and such old goods shall be certified to the effect that such spare parts are replaced for the old equipment or spare parts.

(4) The Public Entity which does not have its workshop or repair center shall have to repair and maintain the goods repaired by application of the process of the Act and this Regulation.

(5) Notwithstanding anything contained elsewhere in this Rule, the Public Entity having its own workshop or center may approve cost estimate after repair by recording repair work in the job card.

**97. Procedures of Carrying Out Work Through Users' Committee or Beneficiary**

**Community:** (1) Notwithstanding anything contained elsewhere in this Regulation, a construction work or service related thereto with cost estimate up to thirty five hundred thousand Rupees may be caused to be carried out or obtained from users' committee or beneficiary community.

(2) For the purpose of Sub-rule (1), a Public Entity may invite a proposal by publishing a public notice disclosing therein the nature, quantity of the concerned work or service, required amount, the amount to be borne by the users' committee and other necessary matters or such committee or community itself may submit a proposal or an application.

(3) Upon receipt of the proposal or application pursuant to Sub-rule (2), the concerned Public Entity and such users' committee or beneficiary community shall conclude procurement contract in respect of such work or services by discussing, negotiating or visiting construction site, according to necessity. Such a contract shall contain the following matters:-

- (a) Nature, quantity of the construction work or services, cost estimate, the amount that the users' committee will bear or require to bear, period of completion of the work or services,
- (b) Statement that the Public Entity shall carry out the work of preparing and approving the design and cost estimate of the concerned work, providing technical advice, carrying out measurement, final acceptance and make available other necessary technical assistance, supervision and quality control,
- (c) Statement that the construction work or services shall be completed or made available by participation of the Public Entity ~~or~~ and the users' committee or beneficiary community,
- (d) Statement that the users' committee or beneficiary community shall operate or repair the completed ~~the~~ construction work,
- (e) The advance payment to be made available by the Public Entity to the users' committee or beneficiary community,
- (f) Conditions and mode of payment for the completed construction work or services, and
- (g) Other necessary matters.

(4) In awarding the construction work or services to the users' committee or beneficiary community, payment shall be made only after deducting value added tax, overhead contingency amount and portion of peoples' participation from the cost-estimate under clause (b) of Sub-rule (3).

(5) Once the procurement contract is concluded pursuant to Sub-rule (3), the Public Entity may give earlier advance payment of up to one third amount of the contract amount in maximum to such committee or community. The Public Entity shall have to settle the advance so given before the final installment payment.

(6) The users' committee or beneficiary community shall have the technical evaluation, bill, receipt and other document proving the expenditure of the work of each installment endorsed from its meeting and submit to the concerned Public Entity.

(7) The users' committee or beneficiary community shall have to display a notice in public place of the expenditure made by it in each installment.

(8) If the Public Entity is unable to make available technical assistance to the users' committee or beneficiary community for the concerned work, such a committee or community itself may appoint technical manpower required for the concerned work. The remuneration required to be paid to such a technician so appointed shall be paid from the contingency deducted by the Public Entity.

Provided that such remuneration shall not be more than three percent of the cost estimate.

(9) Heavy machines such as loader, excavator, roller, dozer, grader, bitumen distributor, and bitumen boiler cannot be used in the construction work to be carried out by users' committee or beneficiary community.

(10) The users' committee or beneficiary community itself shall have to complete the work obtained by it and cannot cause such work to be carried out from a construction entrepreneur or a sub-contractor. If, for any reason, such a committee itself cannot complete that work in time, it shall provide notice thereof to the Public Entity. Upon receipt of such notice, the Public Entity shall, after making necessary inquiry in respect thereof, terminate the contract concluded with such a committee or community and have the remaining work carried out as per the Act and this Regulation.

(11) After completing the construction works, the users' committee or beneficiary community shall have to cause such work to be finally accepted from a technical employee deputed by the concerned Public Entity and submit to that entity the statement of the total expenditure out of the money received from such

an entity and also the cost of labor, cash or goods-in-kind provided from peoples' participation. The concerned Public Entity shall have to keep the records of the statement so received.

(12) Once the construction work is completed pursuant to Sub-rule (11), the Public Entity shall have to transfer the ownership of the project to the users committee or beneficiary community by specifying the responsibility also of care taking, repair and maintenance thereof.

(13) If a users' committee or beneficiary committee is found to have misused any money received by it, the concerned Public Entity shall have to recover such amount as government dues on pro-rata basis from the users' committee. It shall be the duty of the concerned Chief District Officer to provide assistance to such entity in the act of such recovery.

(14) The Public Procurement Monitoring Office may lay down the procedures to be applied by a Public Entity in having a work carried out from the users' committee or beneficiary community regarding the following matters: -

- (a) Determination of labor-intensive work,
- (b) Method of the formation, and functions, duties and powers of the users' committee or beneficiary community,
- (c) Manner of increasing cost effective , quality sustainability in the work or services,
- (d) Keeping the record of income and expenditure,
- (e) Supervision and monitoring the work or services,
- (f) Settlement and final acceptance of construction work, and
- (g) Other necessary matters.

(15) The users' committee or beneficiary community may fix the service charge to be paid by a user for using the service transferred pursuant to Sub-rule (12) and shall establish a fund to collect such charges and shall repair and maintain such construction work from such fund.

98. **To Carry out Construction Work Through Force Account:** (1) A Public Entity shall have to obtain prior approval of one level higher authority to carry out a work through force account.

(2) If the Public Entity requires to carry out a construction work through force account, it shall have to carry out the work on wage by procuring technical service and construction materials in accordance with the process set forth in the Act and this Regulation.

(3) If a construction work requires to be carried out through force account pursuant to this Regulation, such work may, after breaking into piece of not exceeding one hundred thousand Rupees, be caused to be carried out through negotiations or be awarded on wage by making available necessary construction materials.

99. **Provision Concerning Carrying out Work from a Non-governmental Organization:** (1) In order to have a work carried out from a non-governmental organization pursuant to Section 46 of the Act, a terms of reference together with the requirement, type, period, quality of work, manpower, work operation procedure of such work and a tentative estimate of the required money shall be prepared.

(2) In order to have the work under Sub-rule (1) carried out, the Public Entity shall request a proposal from a non-government organization registered pursuant to the law in force with the objective of carrying out such work and included in the standing list under Rule 18, by publishing a notice giving a period at least of fifteen days to such organization.

(3) The notice under Sub-rule (3) shall contain the following matters: -

(a) Name and address of the Public Entity calling the proposal,



- (b) The nature, quantity and other necessary details of the proposed work,
- (c) Place of performance and period of completion of the proposed work,
- (d) Deadline and place for submission of a proposal,
- (e) Format of proposal,
- (f) Documents to be submitted by the proponent along with the proposal,
- (g) Conditions of payment and tax deduction, and
- (h) Other matters considered necessary by the Public Procurement Monitoring Office.

(4) The Public Entity shall open the proposals received pursuant to the call made under Sub-rule (3) in the presence of the proponents and prepare a Muchulka (minute) therefor.

(5) The evaluation committee shall have to recommend to the Public Entity for approval of the proposal of a proponent offering minimum amount after fulfilling the terms of reference under Sub-rule (1).

(6) If the proposal recommended pursuant to Sub-rule (5) is found to be appropriate, the Public Entity shall accept the proposal and give a notice containing a date to the concerned proponent to come to conclude a contract and conclude a contract with him/her if he /she appears on such date.

(7) If the proponent to whom a notice was given pursuant to Sub-rule (6) fails to come to conclude a contract, such a contract may be concluded with the proponent offering the next lowest amount to him/her by fulfilling the conditions under Sub-rule (1).

**Provision Relating to Review**

**100. Matters to be Specified in an Application to be Filed Before Chief of Public**

**Entity:** A bidder or proponent desiring to file an application pursuant to Section 47 of the Act for review of procurement proceedings or decision shall specify the following matters in the application and sign it: -

- (a) Name, address, telephone, fax number and e-mail of the applicant,
- (b) If the applicant is a corporate body, power of attorney provided by that body to file such an application,
- (c) Bid number,
- (d) Factual and legal grounds for filing an application,
- (e) Copy of the relevant document.

**101. Limitation of the Amount:** For the purpose of Sub-section (8) of Section 47 of the Act, no application may be filed before the Review Committee in respect of the procurement proceedings amount of which is less than thirty million Rupees.

**102. Details to be Submitted:** Before assuming office, the chairperson and members of the Review Committee shall have to submit the following details to the Government of Nepal through the Public Procurement Monitoring Office: -

- (a) Curriculum vitae including educational qualifications and experience in the concerned field,
- (b) If he or she is involved in any trade, business, details thereof,
- (c) Details of the property in his/her name and family's name.

**103. Matters to be Specified in an Application to be Filed for Review of Procurement Contract:** (1) A bidder or proponent desiring to file an application

for review in the matter of procurement contract pursuant to Section 49 of the Act, shall have to specify the following matters in the application and sign it :-

- (a) Name, address, telephone number, fax number and e-mail address of the applicant,
- (b) If application is to be filed on behalf of a corporate body, document providing authority to so file an application,
- (c) Brief description of procurement proceedings,
- (d) Where procurement contract has already been concluded, date of conclusion of such a contract and the supplier, construction entrepreneur, consultant or service provider who has received such a contract,
- (e) Factual and legal grounds for receiving procurement contract by the applicant,
- (f) Factual and legal grounds for not receiving the contract by the receiver of the procurement contract,
- (g) If the Review Committee has to undertake special measure to protect the proprietary, trade and confidential information of the applicant, such special measures, and
- (h) The actual loss and damages caused to or likely to be caused to the applicant for not having received the contract.

(2) The applicant shall, with the application under Sub-rule (1) ,have to attach the copies of the documents substantiating the claim made by him/her. If the document is of the nature he or she cannot possess, he/she may request the Review Committee to have such document produced from the concerned Public Entity.

(3) If the applicant wants the Review Committee to make hearing regarding the matter stated in the application under Sub-rule (1), he or she shall have to state the reasons and grounds relating thereto.

**104. Security to be kept:** (1) An applicant filing application pursuant to Section 50 of the Act shall have to submit cash amount or bank guarantee having validity period at least of ninety days equivalent to 0.5 (five after decimal) percent amount of the amount quoted in his /her bid or proposal.

(2) If the cash amount or bank guarantee under Sub-rule (1) is not submitted, the Review Committee shall not take action upon the application filed before it.

(3) If the claim made in the application is sustained in making a decision pursuant to the Act and this Regulation, the Review Committee shall have to return such security to the applicant within seven days of such a decision being made.

**105. Method of Sending Application for Review:** (1) A bidder or proponent may himself deliver or send through post, courier service or electronic means the application to be filed for review before the chief of the Public Entity or Review Committee.

(2) If the application sent through post, courier service or electronic means pursuant to Sub-rule (1) does not reach within the time period specified in the Act or this Regulation, no action shall be taken upon such an application.

**106. Matters to be Stated in Information and Comments:** (1) The information and comments to be given by a Public Entity pursuant to Sub-section (3) of Section 50 of the Act shall contain the factual statement of claim, legal grounds of procurement proceedings, and the copy of the relevant documents.

(2) The Review Committee may order the Public Entity to submit the appropriate document or portion thereof out of the document relating to procurement.

(3) The Review Committee may, if it considers necessary, grant a permission to the bidder or proponent who has not submitted application –for-review, to submit relevant document and evidence.

**107. Hearing Concerning Review:** (1) The Review Committee may, if it considers necessary to inquire both the applicant and the concerned Public Entity, inquire after the Public Entity submits the information, comments and documents pursuant to Rule 106.

(2) If an inquiry requires to be conducted pursuant to Sub-rule (1), the Review Committee shall have to notify the concerned party for appearing by specifying time.

(3) The Review Committee shall have to keep records of the proceedings under this Rule ,and the concerned party may take copy thereof upon payment of applicable charges.

**108. Record of the Decision on Complaint:** The concerned Public Entity shall have to maintain the records of the decision made by it, Review Committee or other body with respect to the review and remedial measures taken as regard to such decision.

## Chapter- 11

### **Provision Relating to Procurement contract**

**109. Budget Code to be Mentioned:** A Public Entity shall have to mention budget code in the procurement contract.

**110. Performance Security to be Furnished for conclusion of a Contract:** (1) A bidder whose bid is accepted shall, while submitting a performance security

pursuant to Sub-section (4) of Section 27 of the Act, submit the performance security issued by a commercial bank in the format as specified in the bidding documents within the time specified under Sub-section (3) of Section 27 of the Act

(2) The amount of the performance security under Sub-rule (1) shall be five percent of the procurement contract amount.

(3) In the case of a procurement contract which does not disclose the amount pursuant to Sub-rule (2), the performance security shall be submitted as stipulated in the bidding documents by the Public Entity

(4) Unless otherwise provided in the procurement contract, the validity period of the performance security under Sub-rule (1) shall have to exceed at least more than one month's period to the last period for supply or delivery of the goods or warranty period or defects liability period of construction works as referred to in such contract.

(5) The performance security issued by a foreign bank shall be valid only if it is counter-guaranteed by a commercial bank established in Nepal.

**111. Provision Concerning Execution of Contract:** (1) A Public Entity shall ,while executing a procurement contract, have to carry out ,according to necessity, the following acts,:-

- (a) To hold ,if necessary, post-bid conference with the concerned supplier, consultant, service provider or construction entrepreneur
- (b) To prepare work plan and work-schedule relating to contract execution,
- (c) To make an arrangement for opening letter of credit within the time as per the conditions of the contract,
- (d) To form a contract execution team, if necessary,

- (e) To monitor the progress of the execution of procurement contract in accordance with the procurement administration work plan and to inspect and test quality aspects,
- (f) To hand over the possession of the construction site to the construction entrepreneur and to make arrangements for access thereto, to manage procurement contract modification, variation order, price adjustment, suspension or termination of procurement contract, work completion certification, payment etc,
- (g) If any dispute arises between the Public Entity and the supplier, consultant, service provider, or construction entrepreneur, to apply the mechanism of dispute settlement referred to in such contract; where the contract is breached, to start proceedings as per the provision relating to remedy referred to in the contract,
- (h) To manage the financial aspects of the contract implementation including the budget and cost accounting aspect,
- (i) To keep the documents relating to contract implementation orderly and systematically,
- (j) To accept the performed work, and
- (k) To submit the periodic report of contract implementation to one level higher authority.

(2) Notwithstanding anything contained elsewhere in this Regulation, a Public Entity or other entity involved in supervising the execution of procurement contract may, without prejudicing the rights of the supplier, consultant, service provider or construction entrepreneur under the procurement contract, supervise whether the procurement contract is executed in accordance with the drawing, specifications and terms and conditions set forth in the procurement contract or not.

**112. Insurance to be Made:** (1) Except otherwise provided in the procurement contract, a construction entrepreneur carrying out a construction work, the price of which is above than one million Rupees shall have to insure the following matters:-

(a) Full replacement cost of construction works including construction materials, machine, equipment or plant to be used,

**Explanation:** For the purpose of this clause "cost" shall include profit as well.

(b) Fifteen percent amount of the replacement cost under clause (a) or the additional amount as referred to in the procurement contract to rectify the cost to be incurred for loss or damage occurred or incidental cost relating thereto including the cost required for professional fees, demolishing, removing any part of the construction work and for removing debris or wasted materials,

(c) Adequate amount required for replacement in the construction site of the equipment or other things brought onto the construction site by construction entrepreneur,

(d) All loss and damage in any part or portion of the construction work by whatsoever reasons other than those referred to in Sub-rule (2), arising from the date of the handing over of construction site till the date of issuance of a Taking Over Certificate to the construction entrepreneur,

(e) The following liabilities of the construction entrepreneur:

(1) Loss and damage caused in the course of discharging construction entrepreneur's obligation during the defects liability period, and



- (2) Loss and damage caused during the defects liability period by any reason arisen prior to commencement of the defects liability period.

(2) Notwithstanding anything contained elsewhere in this Regulation, a construction entrepreneur shall not bear the obligation for the loss and damage from the insurance under clause (d) of Sub-rule (1) caused for the following reasons:-

- (a) War, enmity or invasion,
- (b) Rebellion, revolution, insurrection, or military Rule or civil war,
- (c) Ionizing radiations, radiation of nuclear fuel or nuclear waste originated from the combustion of nuclear fuel or explosion of radioactive toxic or explosion of other hazardous elements or nuclear assembly or pollution of nuclear portion thereof, and
- (d) Pressure wave caused by aircraft or aerial devices that flies at sonic or supersonic speeds.

(3) Except otherwise provided for in the procurement contract, the construction entrepreneur shall have to bear the cost against the claim for the following loss and damage occurred while carrying out a construction work or while correcting any defect underlying therein or resulted from such work and the cost and charges expended for conducting the proceedings relating to such claim:-

- (a) If a person gets bodily injuries or dies or,
- (b) The loss and damage caused to any property except construction work in the course of work operation and completion .

(4) In procuring goods, insurance shall be so made, from go-down to go-down as to cover all risks including war, strike and arson, of an amount equal to at least 110 percent of the CIP (Carriages and Insurance Paid to) price.

(5) The conditions of insurance cannot be changed without a written approval of the chief of the concerned Public Entity.

**113. Provision of Advance Payment and Settlement:** (1) Advance payment may be made to a supplier, construction entrepreneur, service provider or consultant, as the case may be, as provided for in this Regulation, bidding documents and procurement contract.

(2) In making advance payment pursuant to Sub-rule (1), a Public Entity shall not so make an advance as to exceed twenty percent of the procurement contract price.

(3) In making advance payment pursuant to Sub-rule (1), the advance payment shall be made after obtaining from the supplier, construction entrepreneur, service provider or consultant, as the case may be, a bank guarantee issued by a commercial bank securing such an advance and on the condition that if he or she does not carry out the work, payment to such an entity shall immediately be made upon request by such entity.

(4) The validity period of the bank guarantee under Sub-rule (3) shall exceed by at least one month to the advance settlement period specified in the procurement contract.

(5) The Public Entity shall deduct the advance given pursuant to Sub-rule (1) contract from every running bill or other bill/invoice as provided for in the procurement.

(6) If the advance under this Regulation fails to be settled due to non-performance of the work under the procurement contract by a supplier, construction entrepreneur, service provider or consultant within the time period set forth in such a contract, the Public Entity shall have to settle the advance by obtaining the bank guarantee amount under Sub-rule (3) from the concerned bank and shall also have to recover from him/her an interest by ten percent on such advance amount.

(7) The Public Entity shall, while importing goods through a letter of credit, have to settle the advance amount applied for opening the letter of credit, within thirty days of receipt of goods into its office.

(8) If the concerned supplier cannot supply goods or goods fails to be obtained within the time fixed for delivery, generally, letter of credit shall be cancelled and the advance for the opening of letter of credit shall be settled by taking back the amount collected in the bank for it (letter of credit).

**114. Pre-shipment Inspection:** (1) If pre-shipment inspection is to be made of the goods to be procured from a foreign country, a Public Entity may have such an inspection by appointing its agent in that country.

(2) In appointing an agent under Sub-rule (1), the procedures under the Act and this Regulation shall have to be applied.

**115. Inspection and Acceptance of Goods:** (1) A Public Entity shall have to inspect or examine or cause to be inspected or examined whether the supplied goods are consistent with the technical specifications and quality or not.

(2) The inspection or examination under Sub-rule (1) shall be made or cause to be made pursuant to the law in force relating to inspection or examination of goods, if any, and, if not, in accordance with the procedure set forth in the procurement contract. If there is no even such procedure, it shall be done pursuant to the procedure as considered appropriate by the Public Entity.

(3) For the purpose of Sub-rule (1), the concerned Public Entity may, for the purpose of such inspection or examination, designate one or more entity or authority or form a committee consisting of maximum three experts in the field of concerned goods.

(4) The entity, authority or committee under Sub-rule (3) shall, while inspecting or examining supplied goods, inspect or examine the goods by

comparing with the sample and specialties kept sealed, if any, by such Public Entity. In so examining those goods which are consistent with such sample and specialties shall be accepted and those which are not consistent with the sample and specialties shall be returned back to the supplier.

(5) In inspecting or examining pursuant to Sub-rule (4), all goods or selected sample thereof may be inspected or examined according to necessity.

(6) Once the inspection or examination is made pursuant to Sub-rule (4) and (5), the inspecting or examining entity, authority or committee shall prepare an inspection report containing the description of accepted and rejected goods. Such a report shall contain the name, percentage, specifications, the result of the inspection or examination of the examined goods; and the Public Entity shall keep such a report as the record of the procurement proceedings.

(7) If any dispute arises between the inspecting or examining entity, authority or committee and the supplier in inspecting or examining goods pursuant to this Rule, such a dispute shall be resolved pursuant to the dispute resolution mechanism set out in the procurement contract.

(8) Notwithstanding anything contained elsewhere in this Rule, the chief of the store section of the Public Entity may take over the goods of up to twenty five thousand Rupees after making necessary inspection or examination.

**116. Auction of Goods and Recovery of Amount:** (1) If the supplier does not forthwith take back the goods rejected pursuant to Sub-rule (4) of Rule 115, the Public Entity shall inform in writing to the supplier to take back such goods within the specified period in the procurement contract and supply in lieu thereof the goods as per the specifications.

(2) If the Public Entity sends the information under Sub-rule (1) through post or courier service, it shall send a letter along with return receipt.

(3) If the supplier refuses to take over the goods within the period of the notice under Sub-rule (1) or does not remove the goods within the time period specified in the procurement contract, the concerned Public Entity shall sell such goods by public auction and return back the amount balance after deducting from the auction sale amount the cost incurred for storage of the goods and other incidental expense related thereto, the outstanding advance amount, liquidated damages and also other amount, if any, to be paid by him/her to the Public Entity.

(4) The amount not recovered also from the amount obtained from the auction under Sub-rule (3) shall be recovered from the supplier as government dues according to law in force.

**117. Work Acceptance Report:** (1) A Public Entity shall, in accepting a completed construction work, goods delivered or services rendered, have to prepare a report thereof.

(2) The report under Sub-rule (1) shall contain the following matters:-

- (a) Procurement contract number,
- (b) Details of the construction work completed, goods or services received,
- (c) Date of completion of construction works, or receipt of goods or services,
- (d) Date of acceptance of the construction works completed, goods or services received.

(3) Once the report under Sub-rule (2) is prepared, the Public Entity shall, by completing necessary process, request in writing without any delay to the concerned financial administration section or body for payment.

**118. Variation Order:** (1) Once a work under a procurement contract has already been started, if alteration in or addition of new item to or replacement to the

quantity of such work is required due to technical reasons, the following authority may, after preparing the cost estimate of such alteration and new item, issue a variation order as follows ,subject to the provision of Section 54 of the Act:-

- (a) In cases where the drawing, design and specifications etc. of the construction work need not require to be changed but the quantity of the work will be altered, a variation order of up to five percent of the contract price by the chief of the public entity of gazetted second class, by assigning technical justification,
- (b) A variation order of up to ten percent of contract price, whether the drawing, design and specifications of construction work requires to be changed or not, by the chief of the Public Entity of the gazetted second class , by assigning technical justification ,after obtaining the approval of one level higher authority, and variation order of up to fifteen percent by the Departmental chief by assigning technical justification,
- (c) In the case of procurement of goods and other services, a variation order of up to fifteen percent of the contract price, by the chief of the concerned Public Entity by assigning technical justification, and
- (d) In the case of procurement of consultancy services, a variation order of up to ten percent of the contract price, by the chief of the concerned Public Entity by assigning technical justification and a variation order of up to fifteen percent by the Departmental chief by assigning technical justification.

(2) If a variation order exceeding fifteen percent of the contract price requires to be issued pursuant to Sub-rule (1), a proposal shall be submitted on the recommendation of a committee consisting of chief of the financial

administration section, chief of the concerned Department and one officer or expert concerned with this matter designated by the secretary under the chairpersonship of the concerned secretary in the case of the Public Entity under sub-clause (1) of clause (b) of Section 2 of the Act to the Government of Nepal, Council of Ministers and in the case of other Public Entity to the supreme executive body of that entity.

(3) No variation order shall be issued with a rate exceeding the rate referred to in the procurement contract. If a variation order requires to be issued in excess of the rate, an approval shall be obtained from one level higher authority after making the rate analysis as well.

(4) If a new item requires to be added to the construction works under the procurement contract, the Public Entity shall have to determine the rate by analyzing the rate as well of such a new item.

(5) In issuing a variation order pursuant to this Rule, the nature of variation, large item, small item, whether time requires to be extended or not; if time requires to be extended how many days are to be extended, whether the rate of variation item is lower or higher than that of bill of quantities, what is the percentage of the total contract price in terms of up ~~to~~-dated modification, the source to be mobilized to meet additional amount for the work required to be carried out under the variation order; what will be the percentage of the initial contract price in terms of the amount after variation order, shall be clearly specified.

(6) If any additional work requires to be done immediately due to lack of time for any reasons or due to occurrence of a condition requiring a sudden work to be done, 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, in the procurement contract, have to provide that price adjustment may be made.

(2) While providing the price adjustment provision in the procurement contract, it shall contain the following matters as well:-

- (a) Circumstances on which price adjustment may be made,
- (b) Formula to determine,  
In determining a formula pursuant to this clause, a formula shall be so formulated as to adjust the price only of the labor, materials and equipment used in the work completed,
- (c) Maximum amount of price adjustment,
- (d) Component of price to be used in the formula under clause (b),  
(the price of labor, equipment, materials, fuel etc.),
- (e) The relevant price indices to be used to adjust each price component,
- (f) the manner of measuring fluctuation of exchange rate between the currency to be used to refer price indices and the currency to be used for making payment,
- (g) Baseline date to be taken for application of price adjustment formula,
- (h) Interval of time for application of price adjustment formula, and
- (i) Minimum price escalation to be demonstrated by the use of price adjustment formula and other conditions and restrictions to be fulfilled for application of the provision relating to price adjustment.

(3) The maximum amount of price adjustment to be made pursuant to this Rule shall not ,generally ,be more than twenty five percent of the initial contract prices. The procurement contract may provide that if the amount of price adjustment exceeds to that price, the Public Entity may terminate the procurement



contract or negotiate with the construction entrepreneur, supplier, service provider or consultant, as the case may be, in order to limit the contract price within the approved budget or may pursue other measures or that additional budget shall be arranged.

**120. Time of Procurement Contract may be Extended:** (1) If the work under the procurement contract cannot be completed within the time of such a contract due to the occurrence of conditions set out in Section 56 of the Act, the concerned construction entrepreneur, supplier, service provider or consultant, as the case may be, shall have to make an application, for extension of time, stating reasons thereof, to the concerned Public Entity at least seven days before the time of such contract expires.

(2) Upon receipt of the application pursuant to Sub-rule (1), the concerned competent authority may conduct or cause to be conducted necessary inquiry in respect thereof. In so conducting or causing to be conducted inquiry he /she must take into account the following matters:-

- (a) Whether the concerned construction entrepreneur, supplier, service provider or consultant, as the case may be, had made, to his/her best efforts, to complete the work under the procurement contract on time or not,
- (b) Whether the concerned Public Entity had made available to the construction entrepreneur, supplier, service provider or consultant, as the case may be, the matters to be made available as per the contract or not,
- (c) Whether the work is delayed due to *force majeure* circumstances or not,

(3) If, upon an inquiry made pursuant to Sub-rule (2), the grounds referred to in the application are found to be reasonable, the authority accepting the bid

may extend a period of up to six months and the chief of Department may extend a period above it.

**121. Liquidated Damages:** A procurement contract may provide the following provision in respect of liquidated damages:-

- (a) If the work under the procurement contract could not be completed within the time specified in the contract due to the delay of the supplier, consultant, service provider or construction entrepreneur, as the case may be, he/she shall have to pay to the Public Entity liquidated damages, generally of zero decimal zero five (0.05) percent of the contract price per day not exceeding ten percent of the contract price; however, he/she does not need not to pay liquidated damages if the performance of work or delivery of goods is delayed due to occurrence of *force majeure* or without any fault or negligence on his/her part,
- (b) The concerned construction entrepreneur, supplier, service provider or consultant ,as the case may be, shall not be relieved of the obligation of performing the work under the procurement contract even upon payment of the liquidated damages under clause (a).

**122. Matters to be Included in a Bill or Invoice:** (1) A construction entrepreneur, supplier, service provider, or consultant ,as the case may be, shall have to include at least the following matter in a running bill, any other bill or invoice to be presented by him/her for payment under this Rule:-

- (a) Date of bill or invoice,
- (b) Name, address of the supplier, construction entrepreneur, service provider or consultant, as the case may be,

- (c) Procurement contract,
- (d) Details of the delivered goods or services or measurement, size, quantity and price of the works completed,
- (e) conditions of shipment and payment,
- (f) Necessary documents to be submitted along with the bill or invoice as per the procurement contract,
- (g) In the case of procurement of goods, the bill or invoice accompanied by shipping or other required documents in the format prescribed by the Public Entity, in accordance with the instructions provided in the procurement order, letter of acceptance of bid and procurement contract, and
- (h) His /her contact address.

(2) Upon receipt of the bill or invoice pursuant to Sub-rule (1), a Public Entity shall examine whether the bill or invoice meets the requirements of the provision referred to in the procurement contract, and if does not meet the requirements, it shall forthwith notify the information thereof to the concerned supplier, construction entrepreneur, service provider or consultant, as the case may be .

**123. Payment of Bill or Invoice:** (1) A procurement contract may provide that in making payment of a running bill, any other bill or invoice, the Public Entity may, as per the conditions of contract, make payment on any or all of the following basis:-

- (a) On monthly basis,
- (b) On the basis of actual work performed as technically measured and recorded in the measurement book,

- (c) If the procurement contract sets out work performance indicator, upon receipt of such indicator and if such indicator is not set out, on the basis of the work performed,
- (d) On the basis of the quantity of the work handed over or completed,
- (e) Pursuant to Sub-rule (1) of Rule 122 or on the basis of conditions of the letter of credit.

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

(3) The Public Entity shall have to make payment, as per the procurement contract, against the bill or invoice submitted pursuant to Sub-rule (1) within thirty days of approval of such running bill, any other bill or invoice and documents by the concerned authority.

(4) A Public Entity shall, in making payment pursuant to Sub-rule (1), have to deduct, for retention money, five percent of the amount specified in the running bill or invoice and keep the same.

(5) Where a procurement contract provides that upon prompt payment of the amount under bill or invoice by the Public Entity, the supplier, construction entrepreneur, service provider or consultant, as the case may be, will provide discount of a certain amount or percentage of such payment, the Public Entity shall provide such payment only after deducting such discount.

- (6) A Public Entity may, in a procurement contract, provide the following:-
- (a) That if a payment amount requires to be corrected for reason that anything written in a previous running bill or any other bill or invoice was written for any reason or erroneously, the Public Entity itself or at the request of the concerned supplier,

construction entrepreneur, service provider or consultant, may correct or alter such payment amount in the running bill or any other bill thereafter, and

- (b) That if the supplier, construction entrepreneur, service provider or consultant, as the case may be, does not perform the work in accordance with the conditions of the procurement contract, the Public Entity may deny or deduct the payment under a running bill or any other bill or invoice.

(7) The Public Entity shall have to make the payment under Sub-rule (1) within the period specified in the procurement contract. If it does not make payment within that period, it shall have to pay interest thereon as per the procurement contract.

(8) While making payment under clauses (a), (b), (c) and (d) of Sub-rule (1) to the supplier, construction entrepreneur, service provider or consultant, as the case may be, of an amount exceeding twenty five thousand Rupees, it shall be made through an account payee cheque.

**124. Final Payment:** (1) After a work completed as per a procurement contract has been accepted by a Public Entity, the final payment to the supplier, construction entrepreneur, service provider or consultant, as the case may be, shall be made as per the conditions of the contract.

(2) In giving final payment pursuant to Sub-rule (1), in the case of a construction work, the performance security and fifty percent amount of the retention money deducted pursuant to Sub-rule (4) of Rule 123 shall be returned back after expiry of the defects liability period. The remaining fifty percent amount of the retention money shall be paid after the concerned supplier, construction entrepreneur or service provider, as the case may be, submits

evidential documents of having submitted income return issued from the concerned Inland Revenue Office.

Provided that if the concerned construction entrepreneur does not correct the defects within the defects liability period, the Public Entity may correct the defects by using the retention money or the amount for security.

(3) A procurement contract may provide that a construction entrepreneur, supplier, service provider, or consultant, as the case may be, shall, for obtaining final payment, not make any claim other than the following one:-

- (a) Special claim,
- (b) The liability of the construction entrepreneur, supplier, service provider or consultant, as the case may be, to a third party arisen or likely to arise in carrying out procurement works, and
- (c) Claim for the reimbursement relating to the liability borne by a construction entrepreneur, supplier, service provider or consultant, as the case may be, in respect of a third party while performing procurement contract, but not claimed with the Public Entity and not having information in time.

**125. Work Completion Report to be Submitted:** (1) The concerned construction entrepreneur shall have to submit as -built ~~map~~-drawing to the Public Entity within thirty days of completion of construction work as per the procurement contract.

(2) The chief of the Public Entity shall, after expiry of defects liability period of a completed construction work, prepare a work completion report having caused to be examined by a technical staff whether or not such construction work is carried out as per the approved drawing, design or specifications.

(3) A technical staff examining pursuant to Sub-rule (2) shall have to examine whether the completed work has been completed as per the approved drawing, design or specifications or not and shall have to submit a report thereof to the Public Entity.

(4) The concerned Public Entity shall have to submit the as- built ~~map~~ drawing under Sub-rule (1) and the work completion report submitted pursuant to Sub-rule (3) to the bid accepting authority and in cases where the chief of the Public Entity and the bid accepting authority is one and the same person, to one level higher authority to him/her.

(5) The authority under Sub-rule (4), if it considers necessary, he/she himself/herself may examine or cause to be examined through a technical staff or a team of technical staff the matter referred to in the work completion report.

(6) If, in examining pursuant to Sub-rule (5), the completed construction work is found to be consistent with the approved drawings, design or specifications, such an authority shall have to approve such construction works.

(7) Notwithstanding anything contained in Sub-rule (6), if the examination work under Sub-rule (5) is not completed within forty five days from the date of submission of work completion report pursuant to Sub-rule (4), such construction work shall, *ipso facto* be, deemed to have been accepted.

(8) Notwithstanding anything contained elsewhere in this Rule, where the work completion report submitted pursuant to Sub-rule (3) is in respect of the construction work of up to one million Rupees, the chief of the concerned Public Entity may examine himself/herself, if he/she is a technical staff and if he/she is not a technical staff may cause other technical employees to examine. In so examining or causing to be examined, if such a construction work is found to have been constructed as per the approved drawing, design, he/she shall have to approve the work completion report, and give information on the approval of work completion to one level higher authority.

(9) After the work completion report is approved pursuant to this Rule, the Public Entity shall have to give work completion certificate to the concerned construction entrepreneur.

**126. Reward May be Given to Those Who Complete Work Prior to Time:** (1) A Public Entity may provide that it may reward a construction entrepreneur who completes a work prior to the time specified in the procurement contract.

(2) The reward amount under Sub-rule (1) shall be determined on the basis of Sub-rule (3) for the extent of the number of days by which the work was completed before the time specified in the procurement contract.

(3) While determining the rate under Sub-rule (2), a rate shall be determined equivalent to the same amount that a construction entrepreneur requires to pay liquidate damages to the Public Entity on daily basis for failure to complete the work within the period specified in the procurement contract.

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

**127. Payment to be Made in Termination of Contract on Convenience Ground:** (1) Where a Public Entity has terminated a contract on the grounds of convenience for public interest pursuant to Sub-section (4) of Section 59 of the Act, it shall have to pay the following amount to the concerned supplier, construction entrepreneur, consultant or service provider, as the case may be. In making payment so, where he /she has taken any advance amount, payment shall be made only after deducting such advance.

- (a) Payment of due amount to be paid for the work, supply or service that has been completed to the acceptable conditions, if any,



- (b) The price of the goods manufactured for the purpose of the Public Entity as per the procurement contract, construction materials brought onto the construction site,
- (c) A reasonable cost to be incurred for removal of equipment from the construction site,
- (d) Repatriation expense for expatriate employees employed only in construction work, and
- (e) If necessary, cost for safety, protection of the construction work.

(2) Notwithstanding anything contained in Sub-rule (1), the Public Entity shall have to accept goods prepared or to be prepared for shipment within seven days of the receipt by the supplier of the notice given by it for termination of procurement contract on grounds of convenience, at the conditions and price of such contract.

(3) In respect of the goods other than those referred to in Sub-rule (2), the Public Entity may do as follows:-

- (a) Obtain whole portion of the goods after causing them to be completed on the conditions and price referred to in the procurement contract, or
- (b) Cancel the supply order of remaining goods, and make payment of an amount agreed by mutual consent to the supplier for the goods or services partially prepared by him/her and materials or spare parts purchased by him/her prior to termination of contract.

**128. Remedies to be Available upon Breach of a Procurement Contract:** (1) A procurement contract shall have to contain a provision of the remedy to be available to the Public Entity upon breach of procurement contract by the supplier, construction entrepreneur, and consultant or service provider, as the case may be.

(2) The remedy under Sub-rule (1), in addition to the remedies referred to in Section 59 of the Act, may be as follows:-

- (a) To reject a defective work,
- (b) To remove forthwith the defective goods and to cause the concerned supplier, construction entrepreneur, consultant or service provider to replace them,
- (c) To obtain liquidated damages for not completing the work on time,
- (d) To terminate the contract and to have such work completed at the cost of the supplier, construction entrepreneur, service provider or consultant, as the case may be, who did not perform the work under the contract,
- (e) To recover consequential damages,
- (f) Other remedies to be available under the law in force or the procurement contract.

## **Chapter-12**

### **Provision Relating to Dispute Resolution**

**129. Mechanism Relating to Dispute Resolution:** (1) A procurement contract may provide a mechanism for a resolution of dispute that may arise between the Public Entity and the construction entrepreneur, supplier, service provider or consultant, as the case may be, in the course of implementation of such a procurement contract.

(2) In providing mechanism for resolution of dispute pursuant to Sub-rule (1), it may be referred that a dispute of the procurement contract having contract price up to one hundred million Rupees shall be resolved by an adjudicator and a

dispute of the procurement contract having contract price more than that amount shall be resolved by a three-member dispute resolution committee.

**130. Appointment of Adjudicator and Formation of a Dispute Resolution**

**Committee:** (1) The adjudicator referred to in Sub-rule (2) of Rule 129 shall be appointed by the agreement between the Public Entity and the concerned construction entrepreneur.

(2) The dispute resolution committee referred to in Sub-rule (2) of Rule 129 shall consist of one member each appointed by the concerned construction entrepreneurs and the Public Entity and a third person as the chairperson appointed by two members so appointed.

(3) If an agreement could not be reached between the Public Entity and the concerned construction entrepreneur in respect of appointment, of adjudicator and formation of a dispute resolution committee under Sub-rule (1) or (2) or any party fails to appoint a member on the dispute resolution committee, appointment of the adjudicator or the member of the dispute resolution committee may, unless otherwise provided for in the procurement contract, be made pursuant to the arbitration law in force.

(4) The person to be an adjudicator or a member of the dispute resolution committee, as the case may be, under Sub-rule (1) shall have to gain specialty in the work corresponding to the nature of the dispute and shall be a technical person having experience of at least five years.

**131. Functions, Duties and Powers of Adjudicator or Dispute Resolution**

**Committee:** The functions, duties and powers of Adjudicator and dispute resolution committee shall be specified in his/her appointment letter, and in so specifying the functions, duties and powers, the Public Entity shall also specify ,

*inter alia*, that the adjudicator or dispute resolution committee shall visit the construction site in every six month.

**132. Remuneration and Facility:** (1) The remuneration and other facilities of the adjudicator or the chairperson and members of the dispute resolution committee and the source to meet such remuneration and facilities shall be as referred to in the procurement contract

(2) The liability of the remuneration and facility under Sub-rule (1) shall be equally borne by the Public Entity and the construction entrepreneur.

**133. Dispute May be Lodged:** (1) A Public Entity shall have to specify in the procurement contract the manner of lodging a dispute, if any, arisen, in respect of the implementation of such a contract.

(2) The procurement contract may, while specifying the manner under Sub-rule (1), provide that any dispute that could not be resolved amicably between the Public Entity and the construction entrepreneur, supplier, service provider or consultant, as the case may be, may be lodged before the adjudicator or dispute resolution committee, as the case may be, according to the contract price, by any one party out of such Public Entity or construction entrepreneur, supplier, service provider or consultant.

(3) In lodging a dispute pursuant to Sub-rule (2), the concerned party shall have to submit a claim in writing by stating the matter of dispute failed to be resolved amicably and the documents substantiating such a claim.

**134. Award Over Dispute:** (1) The adjudicator or dispute resolution committee shall, within three days of receipt of a claim under Rule 133, have to ask a comment in respect thereof from the concerned party by sending the copy of such a claim and documents.

(2) The adjudicator or dispute resolution committee may also carryout an inquiry by making site inspection in regard to the claim under Sub-rule (1).

(3) The adjudicator or dispute resolution committee shall, considering the comment under Sub-rule (1) and the inquiry under Sub-rule (2), deliver an award within thirty days of submission of a dispute before him or it, as the case may be.

(4) The award referred to in Sub-rule (3) shall also state the reasons and grounds for sustaining and not sustaining the claim of the concerned party.

135. **Dispute to be Resolved by Means of an Arbitration:** A party that is not satisfied with an award referred to in Rule 134 shall, within thirty days of such an award being delivered, initiate the proceedings of resolving such a dispute by means of an arbitration in accordance with the procedures set forth, if any, in the procurement contract and, if not so set forth, pursuant to law in force..

### Chapter-13

#### **Provision Relating to Transparency and Conduct**

136. **Documents Relating to Procurement Proceedings to be Made Available:** If an entity with authority under the law in force to audit, monitor, investigate or inspect, asks for any document relating to procurement proceedings, the concerned Public Entity shall have to make available such documents in reasonable time.

137. **Public Notice of a Procurement Contract:** (1) Within three days of concluding a procurement contract, the concerned Public Entity shall display a notice on its notice board and make arrangement for causing such a notice to be displayed on

the notice board also of the District Development Committee, District Administration Office, and Treasury and Controller Office.

(2) The concerned Public Entity may make arrangements for putting the notice under Sub-rule (1) into its website, if any ; and if it does not have, into the website of the Public Procurement Monitoring Office.

(3) The Public Entity shall, in the notice referred to in Sub-rule (1), have to specify in addition to the result of evaluation of bid or consultancy services, date of publication of a notice concerning bid, proposal or sealed quotation, name of the newspaper, notice number, matter of procurement, name and address of the bidder, proponent or sealed quotation giver who has concluded the contract and contract price.

**138. Consultant to Avoid Conflict of Interest:** (1) A consultant shall have to provide professional, objective and impartial consultancy service so as to serve the paramount interest of the Public Entity taking consultancy service.

(2) A consultant shall ,while providing consultancy services, not so serve as to conflict interest with his/her other present or future works.

(3) If the nature of the work relating to consultancy services is of the type of conflicting interest with his/her past or present obligation towards any other clients or of preventing him/her to complete the work as to serve the best interest of the concerned Public Entity, he/she may not be appointed as a consultant.

Example: A consultant appointed for preparation of engineering design of a project cannot be appointed as a consultant for environmental evaluation of the same project or a consultant relating to privatization of any government owned institution cannot be appointed as a consultant of the person purchasing such property nor a permission can be granted to him/her or his nearer relative or the partner of his/her organization to procure such property.

Provided that this provision shall not be applicable in the case of a turn key contract or design and construction contract.

(4) No firm supplying goods or carrying out construction works for a project or other organization or person associated with it may provide consultancy services to that project and no consultancy firm appointed for the work of preparation or implementation of a project or any other organization or person association with it can supply goods for such a project.

**139. Information of Inducement, Corruption or Fraudulent Practice:** If any official of the Public Entity is offered any inducement by a bidder or proponent or has the knowledge of commission of any corrupt or fraudulent practice ,he/she shall have to provide information thereof to the chief of such a body or Public Procurement Monitoring Office.

**140. Supervision and Examination May be Made:** A superior office may make from time to time supervision and examination in respect of whether an official involved in the procurement proceedings have complied with the procedures referred to in the Act or this Regulation or not.

**141. Blacklisting:** (1) If a Public Entity requires to blacklist a bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company pursuant to Section 63 of the Act, it shall have to request in writing with details of statement and reasons related thereto along with relevant document, to the Public Procurement Monitoring Office.

(2) Upon receipt of the request pursuant to Sub-rule (1), the Public Procurement Monitoring Office may, if, in considering such statement, reasons and documents found that such a bidder, proponent, service provider, consultant, supplier, construction entrepreneur, or any other person, firm ,organization or

company, as the case may be, requires to be immediately debarred from participating in public procurement up to three years, debar until the process under this Regulation is completed.

(3) If the Public Procurement Monitoring Office decides to debar pursuant to Sub-rule (2), it shall have to give a notice thereof within seven days of such a decision being made to the concerned bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company and shall publish a notice publicly.

(4) Upon receipt of the request pursuant to Sub-rule (1), except in cases where a debarment is to be imposed forthwith pursuant to Sub-rule (3), the Public Procurement Monitoring Office shall have to send a notice in writing to the concerned bidder, proponent, consultant, service provider, supplier, construction entrepreneur, or other person, firm, organization ~~and or~~ company, as the case may be, giving a period of thirty days enclosing therewith the copy of the statement, reason and documents so received, to submit the grounds and clarification, if any, for not enlisting the name in blacklist.

(5) Upon receipt of a notice referred to in Sub-rule (4), the concerned bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company, shall have to submit its clarification to the Public Procurement Monitoring Office together with relevant documents, by stating reasons and grounds, if any, for not blacklisting .

(6) The concerned bidder, proponent, consultant, service provider, supplier, construction entrepreneur, or other person, firm, organization or company may ,while submitting an explanation pursuant to Sub-rule (5), request the Public Procurement Monitoring Office for conducting joint hearing in the presence of him/her and the concerned Public Entity.

(7) Where a request is made pursuant to Sub-rule (6) for a hearing and the Public Procurement Monitoring Office considers it appropriate to conduct such a



hearing, it shall have to serve a written notice as to time and place of such a hearing to the concerned Public Entity and the bidder, proponent, consultant, service provider, supplier, construction entrepreneur and other person, firm organization or company, as the case may be.

(8) The Public Entity and the bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company, as the case may be, that receives a notice pursuant to Sub-rule (7) shall have to appear before the Public Procurement Monitoring Office within the period specified pursuant to the said Sub-rule.

(9) If both the parties appear in the period under Sub-rule (8), the Public Procurement Monitoring Office shall have to provide both the parties an opportunity to present their respective written or oral explanation and statement .

Provided that the hearing shall not be adjourned for merely the reason that any party has not appeared.

(10) The Public Procurement Monitoring Office shall, having considered also to the hearing, where a hearing is made pursuant to Sub-rule (9) and where such hearing is not made, on the basis of 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, as the case may be, have to make a decision of blacklisting or not blacklisting.

(11) Where the Public Procurement Monitoring Office, while making a decision pursuant to Sub-rule (10), decides to keep blacklisting, it shall have to give information in writing thereof to the concerned Public Entity and the bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company, as the case may be, and publish in a newspaper of national circulation.

(12) Where the Public Procurement Monitoring Office, in making a decision pursuant to Sub-rule (11), decides not to blacklist, the debarment, if any,

imposed pursuant to Sub-rule (2) shall, *ipso facto* ,be removed and *such an* office shall have to publicly publish a statement to that effect.

(13) Where a decision is made pursuant to Sub-rule (10) to blacklist a bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company, as the case may be, debarred pursuant to Sub-rule (2) , the time of blacklisting shall be computed from the date on which such debarment was made pursuant to Sub-rule (2).

(14) The Public Procurement Monitoring Office shall have to complete the proceedings of blacklisting pursuant to this Regulation within six months of receipt of a request relating thereto.

(15) If a Public Entity had blacklisted or decided to blacklist a bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or a company, as the case may be, prior to commencement of this Regulation , such an entity shall have to send information thereof to the Public Procurement Monitoring Office within thirty days of commencement of this Regulation .

**142. Release From Blacklist:** (1) The Public Procurement Monitoring Office shall have to prepare criteria for releasing a bidder, proponent, consultant, service provider, supplier, construction entrepreneur standing in the blacklist pursuant to Section 63 of the Act from such blacklist.

(2) If a bidder, proponent, consultant, service provider, supplier, construction entrepreneur, or other person, firm, organization or company, as the case may be, requires to be released from blacklist, the Public Procurement Monitoring Office shall have to so release as per the criteria referred to in Sub-rule (1).

143. **Records to be Kept:** A Public Procurement Monitoring Office shall have to keep in its office and web-site the updated records of having debarred a bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company, as the case may be, from participating in the procurement proceedings, *ipso facto* release from such debarment maintaining blacklisting and having released from the blacklist.

#### Chapter-14

##### **Provision Relating to Monitoring of Procurement Proceedings**

144. **Functions, Duties and Powers of Public Procurement Monitoring Office:** The functions, duties and powers of the Public Procurement Monitoring Office, in addition to the functions, duties and powers referred to in Section 65 of the Act, shall be as follows:-

- (a) To monitor the public procurement activities by making observation visit of procurement proceedings of the concerned Public Entity or by asking the report and information relating to procurement activities from public entities,
- (b) To give direction to Public Entities in respect of the information, data to be incorporated into the report relating to procurement activities and the period of submitting such a report,
- (c) To operate programs that assist Public Entities to conduct procurement proceedings and a bidder, proponent, sealed bidder, supplier to participate in procurement proceedings,
- (d) To simplify and facilitate procurement proceedings,
- (e) To maintain the records of the performance of work relating to contract implementation by establishing a central data bank,

- (f) To develop the methods of disseminating information relating to public procurement,
- (g) To conduct study, research on the policy, law, experiences, practice relating to procurement proceeding of other countries, in order to improve public procurement system,
- (h) To prepare plan for arrangements for employees having capability or expertise and professional efficiency in procurement in Public Entities,
- (i) To ascertain whether the persons to be appointed to the procurement unit of Public Entities, evaluation committee and the Public Procurement Monitoring Office have acquired necessary professional efficiency as per the plan under clause (h), or not,
- (j) To prepare the description of the functions, duties, and powers and responsibilities of the chief of Public Entities, staff of the procurement unit of such entity and member of the evaluation committee,
- (k) To render assistance to conduct training programs required to enhance the professional skill of the employee engaged in the procurement activities of the Public entities, and
- (l) To conduct training program required for enhancing professional expertise of employees.

## **Chapter-15**

### **Miscellaneous**

- 145. Provision Concerning Procurement in Special Circumstances:** (1) A Public Entity shall, in making a procurement pursuant to Section 66 of the Act, have to prepare written details of the procurement requirements, quality, quantity,

conditions and period of completion of work and shall procure only the quantity and for the period required to face the contingent circumstances by having a competition made so far as practicable or by concluding negotiations for fair and proper price after receiving written quotation or proposal from a single construction entrepreneur, supplier, consultant or service provider, as the case may be.

(2) Where a procurement has been made pursuant to Sub-rule (1), documents containing the following matters shall have to keep in the records under Rule 149:-

- (a) Description relating to special circumstances,
- (b) The crisis to be occurred in public security, interest and community health, if procurement is not made immediately,
- (c) Reasons and grounds for not adopting the other methods of procurement.

(3) Where a Public Entity has made a procurement exceeding one million Rupees pursuant to Sub-rule (1) it shall have to publish a public notice of the details of the procurement so made and send information thereof to the Public Procurement Monitoring Office.

**146. Use of Electronic Communication Means:** (1) A Public Entity shall, for the purpose of Sub-section (2) of Section 14 of the Act, have to send a notice of a bid through e-mail to the Public Procurement Monitoring Office and such a notice may directly be kept by registering the entity's name in [www.bolpatra.gov.np](http://www.bolpatra.gov.np)

(2) A Public Entity may, as far as practicable, carry and cause to be carried out the act of procuring and submitting bid through the electronic communications means.

**147. Evaluation Committee:** The evaluation committee referred to in Section 71 of the Act shall comprise of the following:-

- (a) The chief of the Public Entity or a senior officer designated by him/her (a technical staff as far as possible) - Chairperson
- (b) Chief of the Financial Administration Section of the concerned Public Entity - Member
- (c) Technical expert concerned with the subject matter (Officer level as far as possible) - Member
- (d) Law officer of the concerned Public Entity, where such a position exist - Member

(2) The chief of the 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 approval of the chief of the Public Entity, invite in its meeting the expert in the subject matter of governmental or non-governmental sector.

(4) If the committee referred to in Sub-rule (1) requires the assistance of a consultant, the Public Entity may, subject to the approved program and budget, appoint a consultant by application of the procedure set forth in the Act and this Regulation.

(5) The committee referred to in Sub-rule (1) may form a sub-committee for rendering assistance to it in the work of evaluation of quotation, bid or proposal.

(6) The secretary of the evaluation committee shall have to prepare and keep the Muchulka (minute) of the meeting and keep a file of all the agenda discussed in the meeting.

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

(8) The evaluation committee shall have to submit an evaluation report as referred to in this Regulation to the chief of the Public Entity.

**148. Rate Fixation Committee:** (1) In every district there shall be a rate fixation committee consisting of the following members, in order to fix the rate of construction materials and carriage, rent of machine and equipment and the wage of labor to be applicable to the whole district or any part thereof:-

- |   |                   |
|---|-------------------|
| (a) Chief District Officer  | -Chairperson      |
| (b) Local Development Officer   | -Member           |
| (c) Chief, Treasury and Controller Office   | -Member           |
| (d) One member of the District Development Committee designated by the District Development Committee | -Member           |
| (e) Representative, Nepal Federation of Construction Entrepreneurs                                    | -Member           |
| (f) Representative, Chamber of Industry and Commerce  | -Member           |
| (g) Chief, District Technical Office  | -Member-secretary |

(2) The rate fixation committee shall, while fixing the rate of construction materials or carriage, have to fix on the basis of prevailing market rate. The rate to be so fixed shall have to fix within the month of Shrawan (mid July).

Provided that where the rate of construction materials or carriage has increased in any fiscal year by more than ten percent of existing price, the committee may fix the rate accordingly.

(3) The rate fixation committee shall also have to fix every year the carriage rate of the means of carriage in use in the district.

(4) The concerned Chief District Officer shall have to send the notice of the rate fixed pursuant to this Rule to all the offices in his/her district and give a

notice thereof to the Public Procurement Monitoring Office, Auditor General's office and concerned Treasury and Controller Office.

(5) The procedure concerning the meeting of the rate fixation committee shall be as determined by the committee itself.

**149. Records of Procurement Proceedings:** (1) A Public Entity shall have to maintain a separate file for each procurement proceedings.

(2) The Public Entity shall have to file, *inter alia*, the following documents in the file referred to in Sub-rule (1):-

- (a) Register of contract file,
- (b) Notice for invitation to bid or prequalification,
- (c) Documents relating to invitation to bid, pre-qualification or proposal,
- (d) Request made by the bidder for clarification with respect to bidding documents, prequalification documents or proposals; and the answers sent by the Public Entity in respect thereof to all participating bidders or proponents,
- (e) Minute of the pre-bidding conference held with the bidder or consultant and the evidence of the Public Entity having sent the copy of such minute to all participating bidders or proponents ,
- (f) Minute of opening bid,
- (g) Original copy of the bid,
- (h) Questions asked to the bidder or proponent by the bid evaluation committee in the course of bid evaluation and the answers sent by the concerned bidder or proponent to the Public Entity,
- (i) Report on the evaluation of qualifications of the pre-qualified bidder,



- (j) List of the pre-qualified bidders,
- (k) If negotiations were held, minute thereof,
- (l) Copy of the preliminary notice of the acceptance sent to the successful bidders,
- (m) Copy of the notice sent to the unsuccessful bidders,
- (n) All notices published in respect of procurement,
- (o) Application filed before the chief of the Public Entity and the Review Committee and the opinion, comment and information submitted by the concerned Public Entity in respect thereof and decision made over it,
- (p) Procurement contract,
- (q) Documents relating to implementation of procurement contracts such as progress report, invoice and inspection report,
- (r) If the procurement contract is amended, document relating thereto,
- (s) Documents concerning receipt, inspection and also acceptance of goods,
- (t) All correspondences made with the construction entrepreneurs, supplier, consultant or service provider, as the case may be,
- (u) Request made by sub-contractor and the answer given by the Public Entity in respect thereof,
- (v) Evaluation report and all documents relating thereto, and
- (w) Documents relating to the proceedings carried out to resolve the dispute relating to procurement contract.

(3) The records under Sub-rule (1) shall be kept safely up to at least seven years of the completion of the procurement proceedings.

(4) The records under this Rule shall be kept in the format specified, if any, by this Regulation; if it is not so specified, in the format as specified by the Public Procurement Monitoring Office.

(5) In keeping the records pursuant to this Rule, the Public Entity shall have to keep records of every physical property.

(6) In keeping the records under rule (5), if the value of the property exceeds five million Rupees, the records shall state the details of such property along with its cost price, depreciation and maintenance cost.

**150. Delegation of Authority :** (1) No power conferred by the Act and this Regulation for amending the cost estimate, amending procurement contract, extending time of procurement contract and issuing variation order may be delegated.

(2) Except the powers referred to in Sub-rule (1), other powers conferred by this Regulation may be delegated by the authority competent to exercise those powers to any officer subordinate to him/her.

(3) The authority delegating power pursuant to Sub-rule (2) shall remain responsible for the powers so delegated.

(4) The authority delegating power pursuant to Sub-rule (2) shall have to seek the information on the work carried out as per the power delegated by him, from the concerned official from time to time.

**151. Format May be Specified:** Government of Nepal may, on recommendation of the Public Procurement Monitoring Office, by a notification published in the Nepal Gazette, specify a format of any matter under this Regulation including that of the cost estimate of goods, cost estimate of consultancy service, cost estimate of other service.

**152. Change or Alteration in Schedule:** Government of Nepal may, by a notification published in the Nepal Gazette, make necessary change or alteration in the Schedule.

**153. Repeal and Saving** (1) The chapters 7, 8, 13 and 17 of the Financial Administration Regulation, 1999 are hereby repealed.

(2) The act and activities carried out pursuant to the provision repealed pursuant to Sub-rule (1) shall be deemed to have been carried out under this Regulation.

### Schedule-1

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

#### Method of finding out cost estimate of construction work

Item	Units	Total rate of items	Total quantity of items	Total cost of items
item (1)		(f)	(k)	(f) x (k)
item (2)		(g)	(L)	(g) x (L)
(item (3)		(h)	(m)	(h) x (m)
etc				

$$\text{Total} = (zc) = f \times k + g \times L + h \times m + \dots$$

Work chart staff cost- by 2.5 percentage of (zc) =  $0.025 \times (zc)$

Other small cost- by 2.5 percentage of (zc) =  $0.025 \times (zc)$

Total cost estimate figure =  $1.05 \times (zc)$

Note:- In comparing bid figure, figure (zc) shall be taken as cost estimate figure.

Method of finding out total rate of item:-

laborers' cost- (a)

construction material cost- (b)

rent of mechanical equipment (c)

(including oily matters)

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

bidder's overhead (15 percentage of (d)-  $0.15 \times (d)$

total rate (e) =  $1.15 \times (d)$

Note:- After the cost estimate has already been prepared as stated above, cost estimate shall be fixed by adding , according to necessity, to the total cost estimate

amount, by ten percent for price adjustment contingency, by ten percent for physical contingency and the value added tax, for management of budget.

**Schedule-2**

(Relating to clause (c) of Rule 16)

Government of Nepal

.....Ministry

.....Office

**Letter of credit Ledger**

Ledger page No.

S. No.	Name of the firm for which letter of credit will be opened	Number and date of letter of credit	Amount	Subject	Period	Name and address of the bank in which letter of credit is opened	Date of closing	Date of extension of time	Close date	Advance ledger page No.	Goods originated	Remarks
											Country	Date of manufacture and model

Name and surname of the Person who has prepared:-

Name and surname of the person who has certified:-

Signature:-

Signature:-

Date:-

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 concluding any of the following contracts:-

- (a) **Contract for Supply of specific goods or other service:** Contract for supply of specific goods or other services may be concluded to procure raw materials, equipment, pharmaceuticals, medicines, tools or other specific goods of similar nature required for a specific work.
- (b) **Framework or unit rate contract:-** A framework or unit rate contract may be concluded to make arrangements for obtaining the goods or other services set out in the procurement contract at the time when the demand is made by a Public Entity from one or more suppliers as per the rate and conditions set forth in the procurement contract.

This contract shall have to specify the minimum and maximum quantity of the goods or other services to be procured by the Public Entity.

The period of this contract shall not generally be more than one year.

- (c) **Multi-year contract:** A multi-year contract may be concluded in the following circumstances:-
  - (a) Where the Public Entity obtains substantial benefit in procuring by multi-year contract than by annual procurement contract,
  - (b) If the quantity of procurement will not be substantially altered during the procurement contract period,
  - (c) If the design of the goods to be procured will not be changed during the procurement contract period, and,
  - (d) If the technical risk relating to the supply of goods is not higher.
- (d) **Design, supply and installation contract:-** A design, supply and installation contract may be concluded for making arrangement for designing goods of



high or complex technology such as large power plant or pumping station, supplying to construction site, installing , testing, operating and providing training, according to necessity, to the employees of the concerned Public Entity to operate such goods. Such a contract may also be concluded to carry out any two works out of the design, supply and installation works.

- (e) **Turn Key contract:** A turn key contract may be concluded for making arrangements for completing the work of design, supply and installation of an industrial plant of high technology such as fertilizer production plant, milk processing as provided for in the procurement contract by mentioning the performance capacity of such a plant and transfer the same to a Public Entity

Note:- A contract under clause (a), (b), (d) and (e) may also be a multi-year contract.

Schedule-4  
(Relating to Rule 22)

**Procurement contract of construction work**

A Public Entity may, in order to carry out a construction work , conclude any of the following contracts:-

- (a) **Unit rate contract** : In order to carry out a construction work the quantity of which is not ascertained at the time of conclusion of procurement contract or to provide the per unit activity of a construction work at the rate referred to in the Bill of Quantities, a unit rate contract may be concluded. In such a unit rate the bidder shall have to include the materials, labor and other things required to complete the proposed construction work.

In making payment for the work done pursuant to this contract, payment shall be made of the amount to be found from computing the quantity of construction work as ascertained from measurement of construction site by per unit rate.

- (b) **lump sum contract**: In order to carry out a construction work which is difficult to measure such as installation of underground water pipeline or a construction work that can be measured such as structure of a bridge, a lump sum contract may be concluded. This contract shall be concluded in such a way that all risk and liability relating to the construction work shall remain on construction entrepreneur.

Provided that if the financial liability of the construction work is increased for the reason that the Public Entity has ordered to make a change of any type in the construction after commencement of the construction work upon conclusion of the procurement contract, the Public Entity shall have to bear such liability.

- (c) **Cost-reimbursement contract**:- In order to carry out a construction work nature of which is high risky and unpredictable conditions of work and a construction entrepreneur does not agree to carry out or cannot carry out under the unit rate contract, cost-reimbursement contract may be concluded. In making payment to the construction entrepreneur for the construction work to be carried out by concluding this contract, payment may be made for the actual incurred cost for carrying out such a construction work, overhead cost thereof in addition to the profit as stated in the approved cost estimate. In having a construction work carried out by concluding this contract, the chief of the Public Entity shall have to fix the maximum amount of cost-reimbursement and if an amount exceeding such limit is to be paid he /she shall have to obtain the pre-approval of the Departmental chief.
- (d) **Time and material rate contract**:- In order to carry out a work by computing the labor on the basis of time and the materials on the basis of unit rate due to unpredictability at the time of conclusion of procurement contract of the labor and materials required for the repair and maintenance of a construction work, a time and material rate contract may be concluded. This contract shall clearly mention that payment shall be made to a construction entrepreneur as follows:-
- (a) The amount found out after adding to the overhead cost and the profit referred to in the approved cost estimate to the sum find out by dividing the labor of the construction entrepreneur on the basis of per hour or per day or per month, and
  - (b) The paid amount of the price of the material used for maintenance, subject to the limitation of the amount referred to in the procurement contract.

- (e) **Design and build contract:** A design and build contract may be concluded in order to have a design and construction of a construction work to be carried out by the same construction entrepreneur. A Public Entity shall have to start the work under this contract only after causing the design of construction work to be examined and approved by a technician or a team of technicians. The technician or the team of technicians who so examines the design shall have to examine and approve such design, drawing and cost estimate by application of the procedure set forth in this Regulation for examination and approval.
- (f) **Management contract:** A management contract may be concluded in order to have a construction work carried out through different sub-contractors subject to the conditions that legal and contractual obligation relating to the quality and completion period of construction work shall be undertaken by the construction entrepreneur himself/herself with whom the Public Entity concludes procurement contract and such work is carried out under his/her management and supervision.

The payment for the work under this contract shall be made only to the construction entrepreneur who has concluded procurement contract with the Public Entity.

- (g) **Performance based maintenance or management contract:** A performance based maintenance or management contract may be concluded in order to carry out a construction work without mentioning the equipment required to maintain and manage a construction work and item wise work and by mentioning only the final performance.
- (h) **Piece -work contract:** In order to carry out a construction work related to small scale maintenance and repair which requires to be carried out frequently as and when required, a piece- work contract may be concluded by establishing the list of price of such work.

Generally, the period of this contract shall not exceed one year.

## Schedule-5

(Relating to Rule 23)

### **Procurement contract of consultancy service**

A Public Entity may procure a consultancy service by concluding any of the following contracts:-

- (a) **lump sum contract:** In order to take consultancy services for a work clearly identified, having low risk to the consultant and the quality of which can be easily measured such as feasibility study, project design, preparing bidding documents, a lump sum contract may be concluded. This contract shall provide that the consultant shall have to submit a report to the public entity within a specified time upon concluding a work having technical characteristics as referred to in the terms of reference and for that he/she shall be entitled to the service fee.
- (b) **Time-based contract:** If the period of consultancy service such as supervision of construction work, management of large professional organization or design of complex structure such as dam, tunnel cannot be predicted, a time- based contract may be concluded for such a work. This contract shall provide that the consultant's service fee shall be determined as follows:-
  - (a) The amount to be found out after multiplying the rate of remuneration referred to in the procurement contract by the time actually consumed by the consultant to do the work under the procurement contract,
  - (b) Reimbursement amount of the actual miscellaneous expense as supported by the bill or receipt.
- (c) **Performance-based fee paying contract:** Where a consultancy service is to be taken on the condition that the consultant shall be called to do the

work as and when required or that service fee shall be provided on the basis of the work s/he has completed, a performance- based fee paying contract may be concluded. The service fee of such consultant shall be as stated in the procurement contract.

- (d) **Percentage based contract:** A percentage based contract may be concluded to procure such service as inspection of goods, architect's services, supervision or monitoring service or other services of similar nature. This contract shall provide that payment to the consultant shall be made according to 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 service period contract:** An indefinite service period contract may be concluded in order to take consultancy services in respect of specific work as and when basis and service period of which is not definite such as a consultant required from time to time to bring a construction work into operation, a adjudicator or arbitrator of a dispute relating to procurement contract, consultant for institutional reform or procurement, technical trouble shooter. This contract shall have to provide the following matters:-
  - (a) The consultant shall have to carry out the work referred to in the contract as and when necessary for the Public Entity at the rate referred to in the procurement contract.
  - (b) Remuneration shall be paid on the basis of actual time consumed by the consultant to carry out the work.

**Schedule-6**

(Relating Sub-rule (3) of Rule 88)

Government of Nepal

.....Ministry

.....Department / Office

**Description of cost estimate of ration**

Office for which ration is required:

Location of office:

S.N.	Description of food	Type/ quality of ration	Unit	Quantity	Approved rate of the last fiscal year	Price index of Nepal Rastra Bank	Local market rate	Rate of the government body that determines the price of the concerned agricultural products	Approved cost estimate		Remarks
									Per unit rate	Total cost estimate	





**Schedule-7**

(Relating to Sub-rule (4) of Rule 89)

Government of Nepal

.....Ministry

.....Department/Office

**Comparison chart of ration procurement**

District.....

Place.....

S.N.	Description of food	Unit	Required quantity	Contract rate of the last year	Approved cost estimate rate	This year's contract								Remarks
						1		2		3				
						Rate	Total amount	Rate	Total amount	Rate	Total amount	Rate	Total amount	

