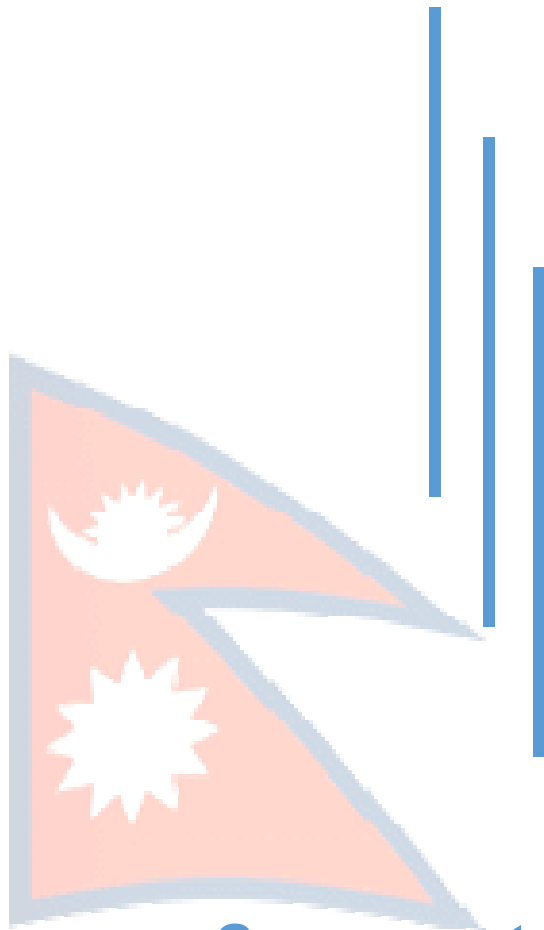


The Public Procurement Regulations, 2007



Government of Nepal

**Date of Publication in the Nepal Gazette
20 August 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) These Regulations shall come into force at once.

2. **Definition:** Unless the subject or context otherwise requires in these Regulations,-
 - (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 statement along with the quoted price as well 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 this term 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 concerning 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 Head" means an official working as the chief of a department under any ministry or other offices equivalent to it.
- (i) "Ministry" means a ministry of the Government of Nepal and the term 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 formed by the persons from among themselves to be directly benefited from a construction work to construct, operate, and maintain any 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 the amount determined following the examination of a bid.
- (o) "Sub-contractor" means a construction entrepreneur, supplier, consultant or service provider who having signed a separate contract with a construction entrepreneur, supplier, consultant or service provider, a signatory to the procurement contract, carries out any work under such procurement contract.
- (p) "Proprietary Goods" means any accessory equipment or parts manufactured by a manufacturer of any goods, machine or equipment

required in order to operate or repair such goods, machine or equipment.

- (q) "Contract Price" means the procurement price as stipulated in the procurement contract and the term also includes, where a variation order is issued under such contract, the price worked out from the measurement of the work carried out under such order and where price is adjusted, also the procurement price determined 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) Identifying the procurement requirements,
 - (b) Acquire information on the procurement contracts in practice in the market in order to resolve the various technical matters pertaining to procurement contract 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 studying such procurement proceedings,
 - (d) Ascertaining the details, quantity and scope of procurement,
 - (e) Dividing the procurement into a more convenient groups or including into packages,
 - (f) Causing the procurement plan to be prepared,
 - (g) Preparing cost estimate of procurement,
 - (h) Identifying financial source and amount of procurement,
 - (i) Selecting procurement method; and
 - (j) In the case of procurement, other than the procurement of a construction work of up to six million Rupees, ascertaining 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 one shall make or cause to be made any procurement without a written order of the competent authority.

5. **Procurement Requisition to be Received:** (1) Prior to initiating procurement proceedings of goods, the procurement unit of the concerned Public Entity shall receive the procurement requisition from the divisions and sections, 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 funding.

6. **Arrangement of Budget and Construction Site:** (1) A Public Entity shall not initiate procurement proceedings without making arrangements of required budget for procurement.

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

- (a) In the case of the procurement to be made under a multi-year contract in order to carry out procurement proceedings for subsequent years after the arrangement of budget required for the first year has been made, and
- (b) Due to the urgency of making preliminary preparation for procurement proceedings to carry out the work of inviting sealed quotation or bid, inviting pre-qualification application, publishing a notice to prepare short list of consultants, inviting proposal from consultant or making available sealed quotation

form, bidding documents or pre-qualification documents or documents relating to proposal and the like.

(3) A Public Entity shall not initiate procurement proceedings of a construction work prior to making arrangement for construction site.

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

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

- (a) Type, quantity and tentative estimated cost of procurement,
- (b) Procurement method,
- (c) If procurement is to be made by the use of slice or package for maximizing competition, provision relating thereto,
- (d) Tentative numbers of contracts to be concluded in order to complete the entire procurement proceedings and major activities 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 prescribed by the Public Procurement Monitoring Office from time to time as required to be included in the master procurement plan.

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

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

8. **Annual Procurement Plan to be Prepared:** (1) In the cases where a Public Entity requires to make procurement of an amount exceeding one million Rupees annually, 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. Such procurement plan shall also be based upon the master procurement plan prepared under Rule 7, where such plan is prepared, if any,

(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 prescribed 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 frame for carrying out the following works:-

- (a) Preparing specifications if goods are to be procured,
- (b) Preparing cost estimate of procurement,
- (c) Preparing sealed quotation form, documents relating to pre-qualification proposal or inviting a bid or proposal for consultancy service,
- (d) Publishing notice for invitation to sealed quotations, pre-qualification proposals, bid or request for the proposals of consultancy services,

- (e) Evaluating sealed quotations, pre-qualification proposals, bids or proposals for consultancy service,
- (f) Accepting sealed quotation, pre-qualification proposal, bid or request for proposal for consultancy service,
- (g) Concluding contract,
- (h) Commencing the work, and
- (i) Completing the work.

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

(5) After receiving the approved program and budget for the current fiscal year, the chief of the Public Entity shall have to revise accordingly the annual procurement plan prepared pursuant to this Rule and approve it and then send one copy of such plan each to its superior office, Treasury and Accounts Comptroller's 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 procurement options , if any,

- (d) Maximum cost and time that may require to complete the work under the procurement contract; and
- (e) Other matters prescribed by the Public Procurement Monitoring Office as required to be taken into account by the Public Entity in preparing cost estimates.

(2) While preparing cost estimates, the Public Entity shall have to prepare and include separate items 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

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

(2) While preparing the cost estimate of a construction work for construction related works items like , archaeological excavation, underground works such as tunneling, deep tube-well, petroleum exploration, where there exist norms these to be used and where there are no such norms, the required norms shall be prepared, and get approved from the Government of Nepal, Council of Ministers and the cost estimates shall be prepared accordingly.

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

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

(4) In the course of preparing cost estimate, the Public Entity shall 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 such other construction materials, rent of machine and equipment or the wages of laborer on the basis of the rates 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 nearby government office or an institution, authority, corporation of government undertaking or other organization of similar nature or the rate, rent or wage provided by the Chamber of Industry and Commerce.

(5) In cases where 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 head.

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

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

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

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

- (a) The 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 carriage 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 services,
- (c) The actual cost incurred on the procurement of the same nature made in the current or previous year by the concerned Public Entity or other Public Entity.

Provided that the cost estimate under this clause 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 mention the following cost:-

- (a) Remuneration of key manpower and other manpower,
- (b) Travel expenses, lodging 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 training, seminar and travel, the expenses required for such activities and other expenses.

13. Cost Estimated 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 entity shall have such committee formed.

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

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

(4) While preparing the cost estimate of carriage, the Public Entity shall 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 too, on the basis of prevailing market rate.

(5) In preparing the cost estimate of repair and maintenance of any goods, the Public Entity shall 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 work.

(6) In preparing the cost estimate of house rent and service contract, the Public Entity shall 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 Gazetted Third Class Office chief,
- (b) Cost estimate of up to ten million Rupees- by the Gazetted Second Class Office chief,
- (c) Cost estimate of up to thirty million Rupees- by the Gazetted First Class Office chief,
- (d) Cost estimate of an amount whatsoever above thirty million Rupees by the Departmental head.

(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 Departmental head.

(3) If the Chief of the Public Entity is not authorized to approve the cost estimate under this Rule, s/he shall have the same 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 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 to the process of these Regulations.

(2) The Public Entity shall not be allowed to invite sealed quotations and bids or proposals for consultancy services 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 as referred to in Sub-section (3) of Section 7 of the Act, shall be as follows:-

- (a) Coordinating the functions related to procurement proceedings,
- (b) Collecting the procurement requisition and submit to the competent authority for approval,
- (c) Keeping the record of letter of credit as per Schedule-2.

Chapter-3

Procurement and Selection of Procurement Contract

17. **Goods Manufactured in Nepal to be Procured:** In procuring goods by selecting any method as referred to in these Regulations, a Public Entity shall 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 for Preparing Standing List:** (1) For the purpose of keeping records of information relating to various procurements under the Act or these Regulations, 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 organization shall be prepared for the purpose of Rule 99.
- (2) The Public Entity shall have to prescribe 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) For the preparation of a standing list, the concerned Public Entity may invite every year an application from the interested individuals, firms, companies or organizations, by pasting on the notice board of its own office, the concerned District Administration Office, District Development Committee and Treasury and Controller Office or by publishing a notice in a newspaper of national circulation providing fifteen days' period and containing the following matters:-
- (a) Qualification of the supplier, construction entrepreneur or service provider,
 - (b) Classification of the list,
 - (c) Procedure of updating the list, and

(d) Validity period of the list.

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

(5) If an applicant is found to have met the qualification under Sub-rule (2), from the examination of the application received pursuant to Sub-rule (4), the Public Entity shall 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) The bidders or proponents not enlisted in the standing list shall not be deprived of participating in sealed quotations, bids or proposals invited by the Public Entity.

19. Procurement to be Made from Those Who have Obtained Permanent

Account Number and Value Added Tax 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 conditions:-

- (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 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 maintained from a natural person or firm in a year upon payment wage of an amount less than one hundred thousand Rupees,
- (g) In renting a house, and
- (h) In carrying out the construction work in participation of users' committee and beneficiary community.

(3) Notwithstanding anything contained elsewhere in this Rule, if there is no any firm or seller which has 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 enlisted 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, select a procurement contract after the selection of procurement method in regard to any procurement proceedings through 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 and in Rule 23 if consulting services is to be procured..

(2) The procurement contract under Sub-rule (1) shall have to be selected by taking the following matters into account:-

- (a) The type and quantity of procurement,
- (b) 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 procurement contract.

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

(2) 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 these Regulations to the extent provided by these Regulations and by the provision of prevailing law of Sale of Goods Contract in the matters not provided by these Regulations.

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

(5) Payments to contracts in accordance with this Rule shall be made through a letter of credit or the means set forth in the bidding documents generally after the submission of documents by the supplier having supplied the goods.

22. **Procurement of Contract for Construction Works:** A Public Entity may conclude any contract out of the contracts set forth in Schedule-4 to carry out a construction work.

23. **Procurement Contract for Consultative Services:** A Public Entity may conclude any contract out of the contracts set forth in Schedule-5 to procure consultative services.

24. **Terms and Conditions May be Specified:** If any other terms and conditions in addition to the conditions specified in this chapter require to be specified in respect of any procurement contract, the 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 the Bidders Supplying Goods:** (1) A Public Entity may prescribe the qualifications criteria for a bidder or on applicant of a pre-qualification proposal participating in the procurement proceedings for supply of goods by taking into account any or all the matters out of the following matters:-

- (a) Technical competence,
- (b) Manufacturing records,
- (c) Technical specifications of goods,
- (d) Economic and financial capability,
- (e) If the goods are to be erected, competence of the technician to be involved in the erection,
- (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 evidence of proving the qualification and technical competence 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, quantity, contract amount, date of the goods supplied by the bidder to the governmental entity or private institution during the past three years and the name and address of such governmental entity or private institution,

- (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) Certificate drawn up following inspection of the goods being procured, by the competent quality control institution or recognized agency in respect of the specifications and quality of such goods,
- (d) Sample, supplementary description or photographs required to prove the authenticity of the goods to be supplied,
- (e) Proportion of the work regarding supply intended to be carried out through sub-contractor.

(3) If the bidder or the proponent himself/herself does not manufacture or produce goods to be supplied, s/he shall have to submit a certificate provided by the manufacturer that s/he 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) In the case of a bidder or proponent of pre-qualification proposal not doing trade or business within Nepal, s/he shall be required to submit a document proving that if s/he 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 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) In prescribing the criteria for qualification of a bidder or a proponent of prequalification

participating in a procurement proceeding of a construction work valuing above six million Rupees, the Public Entity may, as necessary, prescribe such criteria by taking into account any or all of the following matters:

- (a) General experience of having carried out works solely as a prime contractor or worked as a management contractor or partner in a joint venture or subcontractor,
- (b) A minimum average annual construction turnover of or above the threshold as referred to in the bidding documents or the prequalification documents including the work completed solely or carried out as a partner in a joint venture as well,

Provided that where a national level open bidding is invited, any three years maximum average turnover out of ten years turnover shall be taken as the basis

- (c) Particular 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) In the event being ineligible to or delays in payment of money required to start up construction work under a procurement contract, economic and financial capacity of having available 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,

- (e) Skilled manpower as set forth in the bidding documents or prequalification documents,
- (f) Main equipment as set forth 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 clause (b) and (c) of Sub-rule(1) in the case of a national construction entrepreneur, only the net amount worked out after deducting the amount for value added tax shall be computed and such amount shall be adjusted according to the updated price index of the Nepal Rastra Bank.

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

- (a) Description of the price, date and location of the construction works completed by him/her during the past ten years,
- (b) Proportion of the work intended by him/her cause to be carried out through a sub-contractor,
- (c) Description of the technical equipment and plant available to him/her to complete the proposed work.

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

- (a) If the proponent is an individual, his/her personal work experience and if a firm or organization, required institutional work experience,
- (b) Required academic qualification and work experience of the key staff of the proponent in the works of similar nature,
- (c) Method of performance of work, procedure, 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 internationally,
- (g) Other matters as specified in the bidding documents.

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

- (a) Description of consultancy services of nature similar to the proposed consultancy services provided to a public or private organization in the past three years and the amount and dates,
- (b) Educational qualification and experience in similar work of the proposed key staff by the proponent.
- (c) Description of his/her managerial staff and average annual manpower for the past 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 submit bids by forming a joint venture for the purpose of participating in any procurement proceedings.

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

(2) The 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 and other partners.

(3) While prescribing the qualification of the partner under Sub-rule (2) in such venture, the Public Entity shall prescribe the qualification by taking into account the following matters:-

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

(4) The qualification of all the partners of a joint venture shall be counted together to determine whether such joint venture has fulfilled criteria for the minimum qualification as specified in the bidding documents or not.

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

- (a) His/her general experience of the concerned work,

- (b) Adequacy of resource required to complete the work being carried out or to be carried out by him/her as per other contract,
- (c) Financial capabilities, and
- (d) Past procurement related 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 registered with the Inland Revenue Office for the Permanent Account Number and Value-Added Tax in the manner ensuring that the partners of such joint venture are jointly and severally responsible.

(7) If a bid security is also required to be submitted while submitting a bid by a joint venture, such bid security must have been issued in the name of all the partners of such joint venture as of Sub-rule (1), subject to the condition that all partners shall bear the liability.

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

- 29. Documents Showing Economic and Financial Capability may be Asked: (1)** With the stipulation in the bidding documents, in asking for the documents proving the economic and financial capabilities, the Public Entity may, according to the nature of the construction work, ask 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 years period may be asked according to the nature of the work.

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

- (a) Statement of work that he/she may cause to be carried out by a sub-contractor,
- (b) Maximum percentage of the work 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 proving 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 bidding.

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

32. Matters to be Stated in the Pre-qualification Documents: If a Public Entity is to invite a bid by prescribing pre-qualification, it shall have to prepare pre-qualification documents before inviting bids. 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 bidders to prove their qualifications and eligibility,
- (c) If procurement requires to be made by making separate lots or package of goods or construction work such lots or packages,
- (d) Method of preparing proposal,
- (e) Procedure of evaluating pre-qualification proposal,
- (f) Major terms and conditions of procurement contract,
- (g) Such matters prescribed from time to time by the Public Procurement Monitoring Office as required to be included in the pre-qualification documents, and
- (h) Method, place, deadline for submitting pre-qualification proposals.

33. **Pre-qualification Criteria Required to be Approved:** The Public Entity shall, prior to inviting a pre-qualification proposal, have to get approval from the Departmental head to the pre-qualification criteria as prescribed pursuant to Rules 25 and 26
34. **Pre-qualification Documents to be Made Available:** (1) The Public Entity shall have to make available pre-qualification documents to the interested individual, firm organization or a company by charging from one thousand to fifteen thousand Rupees on the basis of the cost incurred to prepare such documents.
- (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 the seal mark 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 the 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 and the one who has not fulfilled all the criteria of qualification shall be deemed not to have been selected.
- (2) An applicant selected for pre-qualification 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 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 within fifteen days from the date on which it had started evaluation work.

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

- (a) Name and address of the applicant,
- (b) Document providing each criterion of the qualifications of the applicant,
- (c) Table, if 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 the partner of such joint venture,
- (e) If procurement requires to be made by making separate lots or package of goods or construction work, the process adopted to examine such lots or package and the applicant selected for participating in the procurement proceedings of such lots and package.
- (f) Reason for selecting or not selecting the applicant.

37. **Matters to be Stated in Bidding Documents:** The Public Entity may state the following matters, in addition to the matters referred to in Section 13 of the Act, 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 regarding warranty and repair and maintenance,
- (g) Type and quantity of necessary training and supervision to be provided by the bidder,

- (h) Provision that the goods or spare parts to be supplied must be new and original,
- (i) Source of financing 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, the 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 document.

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

- (a) Name and address of the agent,
- (b) Figure of commission which the agent is to receive, the type of currency and the mode of payment,
- (c) Any other terms and conditions with the agent,
- (d) If s/he 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 agent,

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

(3) If a foreign bidder fails to clearly state the matters referred to in Sub-rule (1) or where s/he has submitted a bid stating that s/he has no local agent but it is later proved to have an agent or has quoted less amount of commission to be given to the agent and later on if it is proved that the agent has received more

commission, the Public Entity shall carry out proceedings to blacklist such bidder according to Rule 141.

40. Criteria and Document Relating to Bidder's Eligibility to be Stated: (1) The Public Entity shall have to state 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 stated under Sub-rule (1) shall be as follows:-

- (a) Registration certificate of 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 prevailing law 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 s/he 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 leave out to state or do not state clearly about the documents referenced 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 bidders require additional time to submit their bids, the deadline for submission of bids shall also be extended.

(4) The bids of the bidders who fail to submit documents stated under Sub-rule (1) and (2), shall not be processed.

41. Language of Bid: (1) Except the Act and these Regulations 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 the 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 institution of the concerned country and if any doubt arises between such document or printed materials and translated portion, the translated portion shall be authentic.

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

- (a) Plan, drawing and design of the proposed work,
- (b) Bill of quantities,
- (c) Relevant physical and chemical properties and anticipated performance characteristics of goods,

- (d) Technical configuration,
- (e) Whether the spare parts and the specified services required during the life span of goods will be available or not,
- (f) Descriptive booklet or sample of goods to be submitted together with the bid,
- (g) Description of the guarantee of anticipated performance and quality,
- (h) Provision for warranty and maintenance,
- (i) If the goods cause any environmental impact, such impact and measures to be taken to mitigate such impact,
- (j) The criteria and method to be applied to test whether the supplied goods are in compliance with the specifications set forth in the bidding documents or not, and
- (k) Other necessary matters prescribed by the Public Entity.

43. **Matters to be Stated in Technical Specifications of Construction Works:** In stating technical specifications of a construction work in the bidding documents, the Public Entity shall, according to necessity, state the following matters:-

- (a) The scope and objectives of the proposed construction work,
- (b) Physical nature and condition 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 causes environmental impact, its description and the measures to be taken to mitigate such 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) Description 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) The technical document, as built drawings, the operating manual according to necessity required to be provided by the construction entrepreneur upon completion of the construction work,
- (l) The 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 the construction work, and
- (n) Other necessary matters prescribed by the concerned Public Entity.

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

- (a) The purpose and scope of the service,
- (b) Anticipated performance, the work and services to be discharged by the service provider,

- (c) The descriptive booklet or a sample to be provided by the bidder together with bid,
- (d) Terms and conditions to be complied 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) Description 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 prescribed 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 consideration the nature of the goods, construction work and other services to be procured:-

- (a) Instructions to bidders and bid form,
- (b) Format of bid security,
- (c) Format of performance security,
- (d) Format of advance payment security,
- (e) The conditions and the sample of procurement contract,
- (f) Specifications and drawings,
- (g) 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 the Bid: (1) In providing instructions in the bidding documents for preparing and submitting the bid, a Public Entity may 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) used in International Trade,
- (c) Necessary information on joint venture,
- (d) List of the documents to be submitted along with bid by the bidder,
- (e) The sample of goods and number of samples to be submitted by the bidder to the concerned Public Entity,
- (f) For procurement of goods, whether or not there requires to be stated 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 indication of whether the price of these spare parts will escalate or not after the expiry of the contract,
- (g) Requirements for the bidder to 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 employee designated by the Public Entity to clarify any matters on procurement proceedings 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 entity as per the procurement contract, matters relating thereto,
- (j) Statement that the Public Entity reserves the right to accept or reject the submitted bids; and
- (k) Other matters considered necessary by the Public Entity.

47. **Bidding Documents to be Approved:** After preparation of bidding documents, document relating to invitation to proposal is completed, the chief of the concerned Public Entity shall have to approve such documents.
48. **Fee for Bidding Documents:** (1) An individual, firm, organization or company interested to buy 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 the 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 hundred fifty million Rupees | Ten thousand Rupees |

(2) If any individual, firm, company or organization requests in writing by paying fees prescribed under Sub-rule (1) and applicable charges 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 individual, firm, company or organization through post or courier.

Provided that if, in so sending, such 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 Stated in the Notice of Bidding:** The cost estimate of a construction work of up to six million Rupees shall be stated in the notice of invitation to bid.
50. **Notice May be Given:** The Public Entity shall have to provide a notice of invitation to bid or pre-qualification proposal of international level to all foreign embassies based in Nepal.
51. **Visit to Construction Site:** (1) In order to obtain necessary information for preparing bid or concluding procurement contract, a bidder may himself/herself visit or cause his/her personnel or agent to visit the construction site at his/her own expense and risk.
- (2) If the Public Entity requires granting permission for the visit of the construction site as under Sub-rule (1), it shall grant such permission.
- (3) In order to provide actual information about the construction site, the Public Entity may arrange a visit to the construction site for the bidders prior to the meeting pursuant to Rule 52.
52. **Pre-bid Meeting:** (1) The Public Entity may 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 bids to provide information relating to bidding documents, technical specifications, construction site and the like matters.

(2) In the meeting held pursuant to Sub-rule (1), a bidder may raise any question or curiosity concerning procurement proceedings to the Public Entity and such Entity shall be required to make available as soon as possible the answer to such question or curiosity 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 amended, the Public Entity shall, after amending the documents accordingly inform all the bidders who have purchased bidding documents of such amendments within five days of such meeting.

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

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

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

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

(5) The 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) A bidder may decide on the matter whether or not to extend 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 bids shall submit bid security by extending correspondingly the validity period through the concerned bank. If a bidder does not submit bid security by so extending validity period, s/he shall not be deemed to have extended the validity period of the bid.

(7) Where the bid security of any bidder is forfeited, the concerned Public Entity shall make a claim within the validity period of bid security before the bank issuing such security to pay to such entity the amount of bid security furnished by him/her.

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

54. **Bid Validity Period:** In setting out the bid-validity period of the bids or the proposals of consultancy services in the bidding documents or documents relating to request for proposals, the Public Entity shall set out the period as follows:-

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

55. **Necessary Copies of bid to be submitted:** While submitting pre-qualification proposal, bid or the 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 maintain separate 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 through his/her agent, submits a pre-qualification proposal, bidding documents or proposal for consultancy services, the Public Entity shall receive it and give him/her a receipt having date and time.

(3) The Public Entity shall mention the registration number registered in the registration book pursuant to Sub-rule (1) on 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 bids, 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 book.

57. Safety of Bids: (1) A Public Entity shall have to keep the bids or the proposals for consultancy services received as per these Regulations in such a secured manner as not to be opened by any one prior to the time for opening such bid.

(2) The Public Entity shall keep confidently the characteristics of the sample submitted along with a bid in such a manner as not be made public prior to opening the bids.

58. Withdrawal or Amendment of Bid: (1) If a bidder or proponent wishes to withdraw or amend the bid or the proposal for consultancy services submitted by him/her, s/he 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) Subject 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 (envelop) shall be opened only on the date 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 envelop secured pursuant to Rule 57.

59. Opening of 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 constraint for opening bid only for the reason of absence of bidder or his/her representative.

(2) Before opening a bids pursuant to Sub-rule (1), the Public Entity shall separate the envelops of the bids received after the deadline of bid submission, the envelops containing an application given for amendment or withdrawal of bids and the envelops of the bid duly registered; and return unopened the bids 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) After returning bids pursuant to Sub-rule (2), the Public Entity shall open the envelop of the bid requested by the bidder for withdrawal and read out the name of such bidder and then open all envelops submitted for amendments of bid and read out the content inside such envelops.

(4) After reading out the contents under Sub-rule (3), the Public Entity shall open respectively, the bids submitted and read out the following contents of such bids, then prepare a Muchulka (minute) thereof and have such Muchulka (minute) signed 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) Particulars of any discount offered in the bid, if any
- d) Alternative to technical specifications, if offered, quoted price thereof,
- (e) Whether bid security is accompanied or not,
- (f) If there is discrepancy between figure and words, description of such discrepancy,
- (g) Whether the bid form is signed by the 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 details of the rates if were asked for
- (k) Other necessary matters considered appropriate by the Public Entity.

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

60. Examination of Completeness of Bids: In examining the completeness of a bids, the evaluation committee shall, in addition to the matter set forth in Sub-section (3) of Section 23 of the Act, examine 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-section (2) and (3) of Section 63 of the Act or not,

- (c) Whether the bid is submitted in the bidding documents sold by the concerned Public Entity or other bodies designated by it or not,
- (d) Whether the concerned individual, firm, organization or company has submitted the same bidding documents purchased by himself/herself 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 done 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 by fixing the quoted price excluding Value Added Tax.

(3) Except as provided by the prevailing laws and these Regulations, information relating to the examination of bid, the information asked or received from the bidders in the course of such examination and the evaluation and comparison shall not be provided to any bidder or any other person not involved in the decision making process officially.

(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 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) A bid having minor deviations, and having no material deviations to cause any serious effect upon the scope, quality, characteristics, terms and conditions, performance or any other requirements stated in the bidding documents and if acceptable to the Public Entity shall be considered to be

substantially responsive bid and if, in evaluating such bid, any effect is caused to the cost, the evaluated amount of bid shall be worked out by ascertaining the price of such effect on an equal basis and by adjusting the same to the quoted price of the bid.

(7) The evaluated price of a bid found out pursuant to Sub-rule (6) and Rule 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 forth in the original copy shall be valid.

(9) While ascertaining the price of minor deviation pursuant to Sub-rule (6), the evaluation committee shall ascertain 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) While evaluating the technical aspect of a bid pursuant to Sub-rule (5) of Rule 61, the evaluation committee shall 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 any discrepancy is found, in evaluating a bid pursuant to Sub-rule (1) between the matters set forth in the bidding documents and the matter stated by the bidder in the bid, the evaluation committee shall have to note such discrepancy as well.

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

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

- (a) Period for supply or completion of goods, construction works or other services,
- (b) Terms and 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 obligations towards warranty,
- (e) Obligations to be fulfilled by the bidders,
- (f) If the bidder has added any terms and conditions to the proposed procurement contract, such terms and conditions,

(2) While evaluating pursuant to Sub-rule (1), if a discrepancy is found in 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 ascertain the price of discrepancy under Sub-rule (2) by computing as per the criteria and method set forth in the bidding documents.

64. Evaluation of Financial Aspect of Bids: (1) After completion of the evaluation of the technical and the commercial aspects of a bid pursuant to Rule 62 and 63, financial aspect of such 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 feature 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 aspects of bid, have to ascertain 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 foreign bidders.

(5) In evaluating bids, the evaluation committee shall not consider the spare parts recommended by the bidders.

65. Special Evaluation of Bids of Construction Work: (1) In evaluating the bid of a construction work, the evaluation committee shall evaluate the following matters in addition to the matter set forth 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 unit rates stated by the bidder for items contained in the bill of quantities is reliable or not,
- (c) Whether or not the quoted price is imbalanced for the following reasons:-
 - (1) For the reason of unusual high rate quoted by the bidder for an item of the work to be carried out at the initial stage of the procurement contract, or
 - (2) For the reason of unusual high rate quoted by the bidder 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 respect of whether or not the bidder has quoted so low bid price that s/he 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 for clarification along with a rate analysis from such bidder.

(3) The evaluation committee may recommend the Public Entity, for acceptance of bid by taking additional performance security equivalent to an amount of eight percent of his/her quoted bid price if the clarification sought 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 report to the Public Entity within fifteen days of the start of evaluation work:-

- (a) Name and address of the bidder,
- (b) The total quoted price of the bidders and currency,
- (c) If an error has been corrected pursuant to Sub-section (8) and (9) of Section 23 of the Act, the total quoted price ascertained after the correction of error and the currency,
- (d) If the Muchulka (minutes) of the opening of financial proposal mentions that a bidder has offered to provide any discount, the statement that the evaluation committee has adjusted the amount so offered for discount,
- (e) The price used for comparison pursuant to clause (f) of Sub-section (2) of Section 13 of the Act and the amount determined based on 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) The criteria and methodology 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	Gazetted Third Class
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		Office Chief,
(b)	Up to thirty million Rupees	Gazetted Second Class Office Chief,
(c)	Up to seventy million Rupees	Gazetted First Class Office Chief,
(d)	More than seventy million Rupees	the Departmental head.

(2) Notwithstanding anything written 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 the bid for any amount whatsoever for the procurement of his/her office.

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

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

(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:** In order to procure a consultancy services, a Public Entity shall 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, descriptions thereof,
 - (d) If the consultant is required to transfer any knowledge and skill to the Public Entity, descriptions relating 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) Description of the information, physical facilities and equipment to be provided by Public Entity to the consultant, and
 - (i) Description 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 an expression of interest by publishing a notice pursuant to Section 30 of the Act.

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

(3) The notice inviting the expression of interest pursuant to Sub-rule (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 intending proponents,
- (e) If the intending 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 company or firm,
 - (3) Descriptions of the assignments of similar nature completed 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 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) In inviting an international level expression of interest, the chief of the Public Entity shall have to obtain the approval from one level higher authority.

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

(6) While selecting an international level consultant, the Public Entity shall have to select firms or companies from different countries, 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) While selecting intending proponents pursuant to this Rule or for inclusion of names in the short list pursuant to Sub-rule (7), if at least three do not get selected, the Public Entity shall have to invite expression of interest by re-publishing a notice.

(9) If at least three consultants fail to be selected even after publishing a notice for the second time, the shortlist 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) After a short list has been prepared pursuant to Rule 70, the Public Entity shall have to invite request for proposals by sending the documents relating to proposal by post, courier or individual to the person included in such list by providing thirty days period. No cost shall be charged for sending the documents relating to proposal.

(2) In the documents relating to proposal, the Public Entity shall 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 key personnel offered by the proponent must have certified that his/her 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 on 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) The weightage marks under Sub-rule (3) shall be mentioned as follows:-

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

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

(6) While providing the weights for selection of consultant in the documents relating to proposals, the Public Entity shall have to provide an appropriate marks, according to the nature of assignment, 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 weight- marks pursuant to Sub-rule (3), the pass marks shall also be stated.

72. Consultancy Services 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 proposals pursuant to Sub-rule (1), technical and financial proposals shall be invited in separate envelops by sending documents relating to proposals to six, if possible, and at least to three consultants.

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

73. Matters to be Mentioned in Instructions to Prepare Proposal: A Public entity

shall have to mention 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 conference 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 s/he wants to obtain further information on tax or any other matters,

- (k) Language of the proposal,
- (l) The procedure of amending documents relating to the proposal by the Public Entity,
- (m) Method of submitting proposal,
- (n) Method of opening proposal,
- (o) Terms and conditions of confidentiality.

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

- (a) A task of the nature 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) A task of the type requiring higher expertise and causing 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) A task of which service cost 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 head is required to select the quality based selection method under 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 of Opening Proposal: (1) While opening proposals pursuant to Section 32 of the Act, the Public Entity shall open in the presence of a proponent or their representatives.

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

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

(3) After returning proposals pursuant to Sub-rule (2), the Public Entity shall open, respectively the outer envelop of the proposals duly registered and the envelopes of technical proposals lying inside such 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 matters considered appropriate by the Public Entity,

(4) The Public Entity shall have to get the Muchulka (minute) under Sub-rule (3) signed by the proponents or their agents present.

(5) The Public Entity shall send as soon as possible the technical proposals 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 evaluate in accordance with the criteria set forth in Sub-rule (6) of Rule 71 and ascertain the marks obtained by a proponent.

(2) After the marks are ascertained 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-rule (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 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 proposals only of the proponents included in the list prepared under Sub-rule (3) shall be opened pursuant to Rule 79.

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

77. Evaluation Report to be Prepared: (1) After completing the evaluation proceedings under Rule 76, the evaluation committee shall 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 its authorized representative has signed or not,
- (c) Whether the documents evincing that the proponent is qualified under law to submit proposal are submitted or not,
- (d) Where the joint venture agreement is required, whether such agreement is submitted or not,
- (e) Whether or not the proposal is complete as per the instructions issued to the proponents contained in the documents relating to proposals; and
- (f) Relative strength and weakness of each proposal and the result of evaluation.

78. Notice to be Given to the Proponent Selected from the Evaluation of

Technical Proposal: (1) A Public Entity shall have to serve notice to the proponent containing the place, date and time of opening financial proposal included into the list under Sub-rule (3) of Rule 76 to be present in that time and place.

(2) In serving a notice to the proponents 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 proposals of the proponents failing to secure the pass marks shall be returned to him/her with a notice containing the grounds of failure of his/ her technical proposal.

79. Opening of Financial Proposal: (1) The evaluation committee shall have to open envelop of financial proposals in the presence of the proponent or their representatives.

Provided that there shall be no constraint for opening financial proposal for the reason of absence of the proponents or their representatives.

(2) After opening the envelop of the financial proposal pursuant to Sub-rule (1), the evaluation committee shall have to read out the names of the proponents, the marks obtained in the technical proposals and the service charges proposed by them in the financial proposals and prepare a Muchulka (minutes) having the following contents:-

- (a) Name and address of the proponents,
- (b) Proposed service charges,
- (c) Particulars of any discount offered in the proposed service charges, if any
- (d) Description of the discrepancies, if any, between figures 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 description 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 financial proposal, the service charge in such proposal shall be deemed to have also been included taxes, except the Value Added Tax payable by the consultant pursuant to prevailing law, and such reimbursable expense as consultant's travel, translation of the concerned documents, report printing or overhead cost.

(2) If the evaluation committee finds out any arithmetical error while evaluating financial proposal of each proponent, the Public Entity may correct such error if any, and in so correcting the error, if 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 there of 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 (minutes) of opening a financial proposals states that a proponent has offered to provide a discount to the proposed quoted price, the evaluation committee shall adjust the amount taking into account the offered discount.

(5) After completion of evaluation under Sub-rule (2), (3) and (4), a list of the ascertained 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 the technical and financial proposal as provided hereunder:-

(a) The obtained marks of the technical proposal shall be the quotient found out by dividing by one hundred, the product obtained from multiplying the score of the technical proposal by the weightage marks assigned for the technical proposal.

(b) The obtained marks of the 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 technical proposal by the weightage marks assigned for the financial proposal.

- (c) The 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 s/he shall be selected.

Example: (1) Total weightage marks assigned 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:-

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

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

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

(2) The weightage of marks assigned 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:-

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

$$4, 50\,000$$

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

$$4, 30\,000$$

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

$$4, 20\,000$$

(3) Description 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
a	72	18.66	90.66	Proponent 'a' who has 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 prescribed 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 Public Entity may give notice setting out 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 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 more time but there is inadequate time for it.

Chapter-7

Other Provisions Concerning 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) In the sealed quotation form, the Public Entity shall have to state the following matters in addition to the matters set forth in Sub-section (2) of Section 14 of the Act:-

- (a) Description of the goods to be supplied, construction work to be completed and 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) Requirement 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.

(3) When 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 its applicable charge,
- (b) If security is required, its type, amount and period thereof,

- (c) Manner of 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) The 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 buy 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 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 forty five days.

(8) The Public Entity shall open the sealed quotations immediately after expiry of the deadline for submitting sealed quotations at the place specified in the notice inviting sealed quotations in the presence of, as far as possible, the sealed quotation givers or their agents

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

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

(12) The sealed quotation giver receiving the notice under Sub-rule (10) shall, within seven days of receipt of such notice, conclude a procurement contract by providing 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 he/she fails to provide the performance guarantee specified in the sealed quotation form within the time of concluding procurement contract,
- (c) If he/she commits an act contrary to the conduct under 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 framework or unit rate contract

(3) In cases where a sole supplier has the exclusive right to supply pursuant to clause (c) of Sub-section (1) of Section 41 of the Act, such proprietary goods may be procured from such 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 can be directly 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, other than the procurement under the condition of 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 in the stock 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 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 entity or not, and
- (d) Whether the price proposed by the 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 preparing 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.

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

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

Chapter -8

Provision Relating to Procurement of Ration

88. **Preparation and Approval of Cost Estimate:** (1) The chief of every Public Entity requiring to make arrangements of ration shall have to prepare, within the last day of the month of Bhadra (mid July to mid August), 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 making arrangement for ration	- Member-secretary

(3) While approving the cost estimate pursuant to this Rule the committee under Sub-rule (2) 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 pursuant to Sub-rule (3) to the superior office, Regional Administration Office and the Public Procurement Monitoring Office within seven days.

89. Procurement Contract for Ration: (1) The Public Entity responsible for arrangement of ration may procure ration by inviting a sealed quotation or a bid in accordance with the Act and these Regulations, subject to the condition that the

new supplier shall supply ration from the first day of the month of Magh (mid January).

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

- (a) Type and quality of ration, feeds and fodder,
- (b) Quantity needed daily,
- (c) No price increment shall be given during the contract period, and
- (d) 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.
- (b) Prior to inviting 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 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 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 the 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 opened pursuant to this Rule in the format of Schedule-7.

(5) The Public Entity shall examine and evaluate the sealed quotation or bid under Sub-rule (4) pursuant to the Act and these Regulations and accept the sealed quotation or bid having the lowest rate and then conclude contract with such lowest rate provider.

(6) If the sealed quotation giver or bidder submitting sealed quotation or bid pursuant to this Rule is found to have mentioned more than 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.

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

(8) In buying the food grain by the supplier to arrange ration as per the procurement contract, if the local market faces shortage of food grain in, the concerned Chief District Officer by contacting the agencies concerned with food shall 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 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 pursuant to the provision of the Act and these Regulations.

90. Direction to be Complied with: If a procurement contract fails to be concluded for ration arrangements or where such contract, even if concluded, is violated or where the Public Entity has breached the procurement contract pursuant to the Act or these Regulations, the chief of such 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 make an inspection as to whether the supplier has supplied the 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, s/he may initiate an action to breach the contract.

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

92. Security to be Taken for Advance Payment: (1) If the Public Entity making arrangement for ration requires to give advance payment to the supplier after conclusion of procurement contract, it may provide advance payment up to twenty percent of the quoted price by taking a bank guarantee covering 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 payment pursuant to Sub-rule (1), the concerned Public Entity shall request to the concerned Treasury and Controller Office to release additional amount and where such request is made, that office shall also to have release additional amount subject to the approved budget.

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

(4) After recovering the advance given to the supplier for the first time, the Public Entity may again provide twenty five percent advance payment of the

quoted price in the month of Shrawan (mid July to mid August) of the new fiscal year by taking 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 December to mid January) of the same fiscal year by deducting such amount pursuant to Sub-rule (3).

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

- 93. Other Arrangement May be Made for Ration:** If the concerned central office instructs to make available cash instead of ration to the Public Entity responsible for making ration arrangement, such entity may make available 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 of House/Land Renting and Service Contract

- 94. Provision of House/Land Renting:** (1) If a Public Entity requires house/land on rent, it shall have to call for a proposal by publishing fifteen a days' notice in a newspaper of national circulation in the case of a central level Public Entity located within the Kathmandu Valley and by pasting up 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) Office of the 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 and location in which the house/land is required,
- (c) Nature, area and other details of the house/to be taken on rent,
- (d) Information that the house/land can be taken on rent only at the rate fixed by the committee specified in Sub-rule (4),
- (e) Procedures to be followed by the landowner to submit proposal and other essential matters to be enclosed with the proposal,
- (f) Place for submitting the proposal and the last date of submission,
- (g) Terms and conditions for payment of rent and deduction of tax, and
- (h) Other matters deemed appropriate by the concerned Public Entity.

(3) The Public Entity shall have to open the proposal received within the time frame as specified in Sub-rule (1) and shall have to 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/land to be taken on rent by the 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 being Taken	- Member

	House/land on rent	
(e)	Employee of the District Administration Office designated by the Chief District Officer (Officer level as 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/land by evaluating the proposal submitted pursuant to Sub-rule (3) on the following basis:-

- (a) Location of the house/land and the road accessibility,
- (b) Structure and area of the house/land,
- (c) Physical facilities,
- (d) Premises of the house,
- (e) The amount of rent proposed by the owner of the house/land,
and
- (f) The prevailing rate of rent of the house/land.

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

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

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

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

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, 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) While taking the services on contract under Sub-rule (1), there shall be prepared requirements, type, duration, quality, service operation method, required tentative expense 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 thereof, the Public Entity based 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 pasting the 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 state 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 descriptions to be submitted by the proponent along with proposal,
- (e) The place and last date to submit the proposal,
- (f) Terms and 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 received within the time period pursuant to Rule 59 and evaluate the proposal of the proponent.

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

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

(8) The Public Entity shall have to monitor the service from time to time, 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 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 notice, another service contract is to be arranged by canceling the service contract.

96. Procedure of Repair and Maintenance of Goods: (1) If any goods owned by the Public Entity require repair or maintenance, the user of such goods shall have to provide written information thereof to the chief of that entity. Upon receipt of such information s/he 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 center where it has such workshop or 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, and if they are not in the stock, the same shall be procured by following the procedure of the Act and these Regulations.

(3) Where equipment or spare parts are 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 and then the old goods shall be submitted to store after causing a statement to 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 the goods repaired by application of the procedure of the Act and these Regulations.

(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 these Regulations, a construction work or service related thereto with cost estimate up

to thirty five hundred thousand Rupees may be carried out or obtained from users committee or beneficiary community.

(2) For the purpose of Sub-rule (1), the 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) After the proposal or application pursuant to Sub-rule (2) is received, the 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 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 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 users' committee or beneficiary community,
- (d) Statement that the users' committee or beneficiary community shall operate or repair the construction work,
- (e) The advance payment to be made available by the Public Entity to the users' committee or beneficiary community,

- (f) Terms and 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) After the procurement contract is concluded pursuant to Sub-rule (3), the Public Entity may give earlier advance 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 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 paste 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 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 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, breach the contract concluded with such committee or community and have the remaining work carried out as per the Act and these Regulations.

(11) After completing the construction works, the users' committee or beneficiary community shall have to obtain the final acceptance of such work 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 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) After 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 itself 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 determine the procedure to be applied by the 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) Procedure of the formation, and functions, duties and powers of the users' committee of beneficiary community,
- (c) Manner of enhancing economy, quality sustainability in the work or services,
- (d) Maintaining 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 specify the service charges to be paid by users for using the services available from the project handed over 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. Construction Work Through Force Account: (1) The 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 carrying out a construction work through force-account, it shall have to carry out the work on wage basis by procuring technical services and construction materials in accordance with the procedure set forth in the Act and these Regulations.

(3) If a construction work requires to be carried out through force account pursuant to these Regulations, 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 basis making available necessary construction materials.

99. Provision Concerning Carrying out Work from Non-governmental

Organization: (1) In order to have a work carried out through 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 proposals from a non-government organizations registered pursuant to prevailing law 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 organizations.

(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 description of the proposed work,
- (c) Place of performance and period of completion of the proposed work,
- (d) Last date and place for submission of proposal,
- (e) Format of proposal,
- (f) Documents to be submitted by the proponent along with the proposal,
- (g) Terms and 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 under Sub-rule (3) in the presence of the proponents and prepare a Muchulka (minute).

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

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

(7) If the proponent to whom notice was given pursuant to Sub-rule (6) does not come to conclude the contract, the contract may be concluded with the proponent offering the next lowest amount to him/her fulfilling the terms and conditions under Sub-rule (1).

Chapter-10

Provision Relating to Review

100. Matters to be Stated in the Application to be Filed Before the 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 state 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,
- (c) Bid number,
- (d) Factual and legal grounds for filing application,
- (e) Copy of the relevant document.

- 101. Limitation of Amount:** For the purpose of Sub-section (8) of Section 47 of the Act, an application cannot be filed in respect of the procurement proceedings of an amount less than thirty million Rupees.
- 102. Description to be Submitted:** Before assuming the office the chairman and members of the Review Committee shall have to submit the following description 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 involved in any trade, business, description thereof,
 - (c) Description of the property in his/her name and family's name.
- 103. Matters to be Stated in the 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 sign such application after stating the following matters: -
- (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 application,
 - (c) Brief description of procurement proceedings,
 - (d) Where procurement contract has been concluded, date of conclusion of such contract and the supplier, construction entrepreneur, consultant or service provider who has received such 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 is expected to take special measure to protect the proprietary, commercial and confidential information of the applicant, such measures; and
- (h) The actual loss and damages caused to or likely to be caused to the applicant for not receiving the contract.

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

(3) If the applicant wants the Review Committee to conduct hearing on the matter stated in the application filed under Sub-rule (1), s/he shall have to state the causes and grounds relating thereto.

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

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

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

105. Method of Sending Application for Review: (1) A bidder or proponent may himself deliver or send the application to be filed for review before the chief of

the Public Entity or Review Committee through post, courier service or electronic means.

(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 these Regulations, such application shall not be processed.

106. Matters to be Stated in the Information and Comments: (1) The information and comments to be provided by the Public Entity to the Review Committee 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 copies of the relevant documents.

(2) The Review Committee may instruct the Public Entity to submit the appropriate documents or any portion thereof out of the documents related to procurement.

(3) If the Review Committee considers necessary, it may also grant permission to the bidder or proponent who has not submitted application for review to submit relevant document and evidence

107. Hearing Relating to Review: (1) If the Review Committee considers necessary to hear both the applicant and the concerned Public Entity, it may conduct hearing after the Public Entity submits the information, comments and documents pursuant to Rule 106.

(2) If a hearing requires to be made pursuant to Sub-rule (1), the Review Committee shall have to notify to the concerned parties specifying time for appearing,

(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 keep the records of the decision made by it, Review Committee or other body with respect to the review and remedial measures taken as regards such decision.

Chapter- 11

Provision Relating to Procurement contract

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

- 110. Performance Security to be Furnished for conclusion of Contract:** (1) A bidder whose bid is accepted shall, while submitting 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-section (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-section (2), the performance security shall be submitted as stipulated in the bidding documents by the Public Entity

(4) Except otherwise provided in the procurement contract, the validity period of the performance security under Sub-rule (1) shall exceed at least by the period of one month beyond the last period for supply or delivery of the goods or the period of warranty or the period of defects liability 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) While executing a procurement contract, the Public Entity shall be required to carry out the following activities, according to necessity:-

- (a) Holding post-bid conference after concluding the procurement contract with the concerned supplier, consultant, service provider or construction entrepreneur if necessary,
- (b) Preparing work plan and work-schedule relating to contract execution,
- (c) Making arrangements for establishing letter of credit within the time as per the terms and conditions of the contract,
- (d) Constituting contract execution team, if necessary,
- (e) Monitoring the progress of the execution of procurement contract in accordance with the contract administration work plan and inspecting and testing of quality aspects,
- (f) Entrusting the possession of the construction site to the construction entrepreneur and making arrangements for access thereto, to manage modification of procurement contract, variation order, price adjustment, suspension or termination of procurement contract, work completion certification, payment etc,
- (g) If a 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 set forth the provision relating to remedy referred to in the contract,

- (h) Managing the financial aspects of the contract implementation including the aspect of budget and cost accounting,
- (i) Keeping the documents relating to contract implementation orderly and systematically,
- (j) Accepting the performed work, and
- (k) Submitting the periodic report of contract implementation to one level higher authority.

(2) Notwithstanding anything contained elsewhere in these Regulations, the Public Entity or other body 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 or not the procurement contract is executed in accordance with the drawing, specifications and terms and conditions set forth in the procurement contract.

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

- (a) Full replacement cost of construction works including construction materials, machine, equipment or plants to be used,
Explanation: For the purpose of this clause "cost" shall include the 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 of the equipment or other things brought to the construction site by construction entrepreneur,
- (d) All losses and damages to any part or portion of the construction work from whatsoever causes other than the ones referred to in Sub-rule (2), arising from the date of the handing over of construction site to the construction entrepreneur until the date of issue of Taking Over Certificate,
- (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 a cause arisen prior to commencement of the defects liability period.

(2) Notwithstanding anything contained elsewhere in these Regulations, a construction entrepreneur shall not be required to bear obligation for the insurance under clause (d) of Sub-rule (1) for the loss and damage caused due to 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 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,

(b) The loss and damage caused to any property in the course of work operation and completion except in construction work.

(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 provided in these Regulations, bidding documents and the procurement contract.

(2) In making advance payment pursuant to Sub-rule (1), the 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 a bank guarantee issued by commercial bank securing such advance and on the condition that if s/he does not carryout the work payment to such entity shall be made immediately upon request by such entity.

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

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

(6) If the advance under these Regulations 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 contract, the Public Entity shall be required to settle the advance by obtaining from the concerned bank the bank guarantee amount under Sub-rule (3) and also shall have to recover from him/her an interest as well on such advance amount at the rate of ten percent.

(7) While importing goods through a letter of credit, the Public Entity shall have to settle the advance amount within thirty days of receipt of goods by its office.

(8) If goods cannot be supplied from the concerned supplier or obtained within the time fixed for delivery or goods, 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 from the bank.

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

(2) In appointing the representative under Sub-rule (1), the procedures under the Act and these Regulations shall have to be followed.

115. Inspection and Acceptance of Goods: (1) The Public Entity shall have to inspect or examine or cause to be inspected or examined whether the supplied goods are in conformity 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 existing law relating to inspection or examination of goods, if there exists any, if not, in accordance with the procedure set forth in the procurement contract; if such procedure too does not exist, pursuant to the procedure considered appropriate by the Public Entity.

(3) For the purpose of Sub-rule (1), the concerned Public Entity may designate one or more entity or authority or form a committee consisting of maximum three experts on the subject goods.

(4) The entity, authority or committee referred to under Sub-rule (3) shall inspect or examine the supplied goods by comparing with the sample and specialties kept sealed, if any, by such Public Entity. In so examining 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, as necessary.

(6) After 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 report shall contain the name, percentage, specifications of the examined goods; the result of the inspection or examination and the Public Entity shall keep such report as the record of the procurement proceedings.

(7) If any dispute arises in inspecting or examining goods pursuant to this Rule, between the inspecting or examining entity, authority or committee and the

supplier such 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 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 take back the goods within the time period specified in the procurement contract, the concerned Public Entity shall sell such goods by public auction and return the balance amount after deducting from the auction sale amount the cost incurred for storage of the goods and other incidental expenses 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 that could not be recovered, including from the amount obtained from the auction under Sub-rule (3), shall be recovered from the supplier as government dues according to prevailing law.

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

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

- (a) Procurement contract number,
- (b) Description 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) After the report under Sub-rule (2) is prepared, the Public Entity shall, by completing necessary process, promptly request in writing to the concerned financial administration section for payment.

118. Variation Order: (1) After having started the work in accordance with the procurement contract, if there is required addition to and reduction in the quantity or addition of new item to or substitution in such work due to technical reasons, the following authority may, after preparing the cost estimate of such alteration and new item, issue a variation order subject to the provision of Section 54 of the Act as hereunder:-

- (a) In cases where the drawings, design and specifications etc. of the construction work need not be changed but the quantity of the work will be altered, the variation order of up to five percent of the contract price by the chief of the public entity of gazetted second class rank.
- (b) 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 obtaining the approval of one level higher authority, and variation order of up to fifteen percent by the Departmental head by assigning technical justification,

- (c) In the case of procurement of goods and other services, 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, variation order of up to ten percent of the contract price, by the chief of the concerned Public Entity by assigning technical evidence and variation order of up to fifteen percent by the Departmental head 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, with the recommendation of a committee consisting of chief of the financial administration section, concerned Departmental head and one officer concerned with subject matter or expert 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 Council of Ministers, Government of Nepal and in the case of other Public Entity to the supreme executive body of that entity.

(3) A variation order shall not be issued with rates exceeding the rates stated in the procurement contract. If a variation order requires to be issued with higher rates, 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 new item.

(5) In issuing a variation order pursuant to this Rule, there shall be clearly stated the nature of variation, large item, small item, whether time requires to be extended or not; if time requires to be extended how much time is to be

extended, whether the rate of variation item is lesser or higher than that of stated in the bill of quantities, what is the percentage of the total contract price in terms of updated modifications, the source to meet additional amount for the work required to be carried out under the variation order; what will be the percentage of the total sum after variation compared to the initial contract price.

(6) If any additional work requires to be done immediately due to lack of time for any reasons or due to occurrence of conditions requiring an emergency work to be done, if any, the Public Entity may further the proceedings of variation order by obtaining prior approval of the one level higher authority.

119. Price Adjustment: (1) The Public Entity has to provide a statement in the procurement contract that price adjustment can be carried out.

(2) The price adjustment provision in the procurement contract shall contain the following matters as well:-

(a) Condition of price adjustment,

(b) Formula to determine,

In determining formula pursuant to this clause, formula shall be so formulated as to adjust the price only of the labor, materials and equipment used on the works completed,

(c) Maximum amount of price adjustment,

(d) Composition 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 the price of each component,

(f) the method of measuring fluctuation of exchange rate between the currency used for the indices and the currency to be used for making payment,

- (g) Baseline date to be used for application of price adjustment formula,
- (h) Interval of time for application of price adjustment formula, and
- (i) Minimum price escalation to be determined by the use of price adjustment formula and other terms and 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 in order to limit the contract price within the approved budget or may pursue other measures or arrange for additional budget.

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

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

- (a) Whether the concerned construction entrepreneur, supplier, service provider or consultant had made, to the extent of

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 the matters to be made available as per the contract or not,

(c) Whether the work is delayed due to *force majeure* or not,

(3) If, upon an inquiry made pursuant to Sub-rule (2), the causes 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 Departmental head may extend a period above it.

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

(a) If the works under the procurement contract fail to be completed within the time specified in the contract due to the delay of the supplier, consultant, service provider or construction entrepreneur, s/he 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, s/he does not need not to pay liquidated damages if the performance of work or delivery of goods is delayed due to *force majeure* or without any fault or negligence on his/her part,

(b) The concerned construction entrepreneur, supplier, service provider or consultant 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. Information to be Included in Bill or Invoice: (1) A construction entrepreneur, supplier, service provider, or consultant shall have to include at least the following information in the 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,
- (c) Procurement contract,
- (d) Description of the delivered goods or services or measurement, size, quantity and price of the works completed,
- (e) Terms and conditions of shipment and payment,
- (f) Necessary documents to be attached 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 prescribed format by the Public Entity, in accordance with the instructions provided in the purchase 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), the Public Entity shall examine whether the bill or invoice meets the requirements 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 .

123. Payment of Bill or Invoice: (1) The procurement contract may provide that in making payment of running bill, any other bill or invoice, the Public Entity may,

as per the terms and conditions of contract, make payment in accordance with 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 forth work performance milestones, upon receipt of such milestones and if such milestone are not set forth, on the basis of the work performed,
- (d) On the basis of the quantity of work handed over or completed,
- (e) Pursuant to Sub-rule (1) of Rule 122 or on the basis of terms and 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 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) In making payment pursuant to Sub-rule (1), the Public Entity shall have to deduct, for retention money, five percent amount of the amount stated 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 and invoice by the Public Entity, the supplier, construction entrepreneur, service provider or consultant 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) In a procurement contract, the Public Entity may provide the following:-

- (a) That if in any previous running bill of the procurement contract or any other bill or invoice anything was for any reasons or mistakenly stated necessitates correction of the payment, the Public Entity may, itself or at the request of the concerned supplier, construction entrepreneur, service provider or consultant, correct or change such payment amount in the running bill or any other bill thereafter, and
- (b) That if the supplier, construction entrepreneur, service provider or consultant does not perform the work in accordance with the terms and 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 as provisioned 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 provision.

(8) The payments under clause (a), (b), (c) and (d) of Sub-rule (1) to the supplier, construction entrepreneur, service provider or consultant of an amount exceeding twenty five thousand Rupees shall be made through account payee cheque.

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

(2) In giving final payment pursuant to Sub-rule (1), in the case of 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 submits evidential documents issued from the concerned Inland Revenue Office of having submitted income return.

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 security amount.

(3) A procurement contract may provide that the construction entrepreneur, supplier, service provider, or consultant 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 to a third party arisen or likely to arise in carrying out procurement works, and
- (c) Claim of the reimbursement relating to the liability borne by a construction entrepreneur, supplier, service provider or consultant 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 drawing to the Public Entity within thirty days of completion of construction works as per the procurement contract.

(2) After the expiry of defects liability period, the chief of the Public Entity shall prepare a work completion report by causing a technical staff to examine whether or not such construction works are carried out as per the approved drawing, design or specifications.

(3) The technical staff examining pursuant to Sub-rule (2) shall 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 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) If the authority under Sub-rule (4) deems it necessary, s/he 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 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 be *ipso facto* 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 s/he is a technical staff and if s/he is not a technical staff may cause other technical employees to examine. In so examining or causing to be examined, if such construction work is found to have been constructed as per the approved drawing, design, s/he 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) The Public Entity may provide that it may reward to 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 for the extent of the number of days by which the work was completed before the time specified in the procurement contract on the basis set out in Sub-rule (3).

(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 on Termination of Contract on Convenience Ground:

(1) Where the Public Entity has terminated a contract on the grounds of convenience for public interest in accordance with 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. In making such payments, where s/he has received any advance amount, payment shall be made only after deducting such advance.

(a) Payment, if any, remaining to be made for the works, supply or services completed to the acceptable conditions,

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

(2) Notwithstanding anything contained in Sub-rule (1), the Public Entity shall have to accept goods ready for shipment and goods manufactured 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 terms and 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) Procuring the goods after causing it to be completed in accordance with the terms and conditions and at the price stated in the procurement contract, or
- (b) Canceling the supply order of residual goods, and make payment of an amount to be agreed through mutual consent to him/her for the goods or services partially prepared by him/her and materials or parts purchased by him/her prior to termination of contract.

128. Remedies to be Available upon Breach of Procurement Contract: (1) The procurement contract shall have to provide with remedy to be available to the Public Entity for breach of procurement contract by the supplier, construction entrepreneur, and consultant or service provider.

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

- (a) Rejecting a defective work,
- (b) Removing forthwith the defective goods and to cause the concerned supplier, construction entrepreneur, consultant or service provider to replace,
- (c) Obtaining liquidated damages for not completing the work on time,
- (d) Terminating the contract and to have such work completed at the cost of the supplier, construction entrepreneur, service provider or consultant who did not perform the work under the contract,
- (e) Recovering consequential damages,
- (f) Other remedies to be available under prevailing law 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 of resolution of dispute that may arise between the Public Entity and a construction entrepreneur, supplier, service provider or consultant in the course of implementation of the procurement contract.

(2) In providing mechanism for resolution of dispute pursuant to Sub-rule (1), it may be mentioned that a dispute of the procurement contract having contract price valuing 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 shall be resolved by a three-member dispute resolution committee.

130. Appointment of Adjudicator and Formation of Dispute Resolution

Committee: (1) The Adjudicator under Sub-rule (2) of Rule 129 shall be appointed by the consensus of the Public Entity and the concerned construction entrepreneur.

(2) The dispute resolution committee under 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 appointed as the chairperson by such both members.

(3) If a consensus fails to be reached between the Public Entity and the concerned construction entrepreneur in respect of appointment of Adjudicator and 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 dispute resolution committee shall, unless otherwise provided in the procurement contract be made pursuant to the prevailing arbitration law..

(4) The person to be an Adjudicator or a member of the dispute resolution committee under Sub-rule (1) must have gained specialty on 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 the Adjudicator or Dispute Resolution

Committee: The functions, duties and powers of the Adjudicator and dispute resolution committee shall be set out in his/her appointment letter and in so setting the functions, duties and a powers, the Public Entity shall also set out among other matters, 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) The Public Entity shall have to mention in the procurement contract the manner of lodging dispute, if arisen, in respect of the implementation of such contract.

(2) The procurement contract, while mentioning the manner under Sub-rule (2), may provide that any dispute failed to be resolved amicably between the Public Entity and the construction entrepreneur, supplier, service provider or consultant may lodge before the Adjudicator or dispute resolution committee 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 claim in writing by stating the matter of dispute failed to be resolved amicably and the supporting documents for such claim.

134. Decision Over Dispute: (1) Within three days of receipt of claim under Rule 133, the Adjudicator or dispute resolution committee shall have to send a copy of such claim and documents to the concerned party asking for a response in respect thereof.

(2) The Adjudicator or dispute resolution committee may also carryout inquiry by making site inspection regarding the disputes under Sub-rule (1).

(3) The Adjudicator or dispute resolution committee shall deliver decision within thirty days of submission of dispute before him/it including taking into account the response under Sub-rule (1) and the inquiry under Sub-rule (2).

(4) The decision under Sub-rule (3) shall state the reasons and grounds for sustaining and not sustaining the claim of the concerned party.

- 135. Disputes to be Resolved Through Arbitration:** A party not satisfied with the decision under Rule 134 shall start, within thirty days of such decision being made, the proceedings of resolving such dispute through arbitration in accordance with the procedures set forth, if any, in the procurement contract and, if not so set forth, pursuant to prevailing law.

Chapter-13

Provision Relating to Transparency and Conduct

- 136. Documents Relating to Procurement Proceedings to be Made Available:** If an entity, empowered by prevailing law 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 Procurement Contract:** (1) Within three days of signing of procurement contract, the concerned Public Entity shall paste a notice on its notice board and make arrangement for causing such notice to be pasted 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 publishing the notice as provisioned under Sub-rule (1) into its website, if it has; and if it does not have, into the website of the Public Procurement Monitoring Office.

(3) In the notice under Sub-rule (1), the Public Entity shall have to state, in addition to the result of evaluation of bid or consultancy services, the date of publication of notice concerning bids, proposals or sealed quotations, name of the newspaper, notice number, subject of procurement, name and address of the bidder, proponent or sealed quotation giver who has signed the contract and contract price.

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

(2) While providing consultancy services, a consultant shall not serve so as to cause conflict of interest with his/her present or future services.

(3) If the nature of the work relating to consultancy services is of the type of having 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, s/he cannot be appointed as a consultant.

Example: A consultant appointed for preparation of engineering design of a project cannot be appointed as a consultant for evaluating environment 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 nearest 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, design or construction contract.

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

139. Information of Inducement, Corruption or Fraudulent Practice: If any official of the Public Entity is offered any inducement by a bidder, proponent or has the knowledge of any corruption or fraudulent practice having been committed s/he shall have to provide information thereof to the chief of such 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 these Regulations or not.

141. Blacklisting: (1) If a Public Entity requires blacklisting 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 causes related thereto along with relevant documents, to the Public Procurement Monitoring Office.

(2) Upon receipt of the request pursuant to Sub-rule (1), the Public Procurement Monitoring Office may, if, having considered such statement, causes and documents determines that such bidder, proponent, service provider, consultant, supplier, construction entrepreneur, or any other person firm organization or company requires to be immediately debarred from participating

in public procurement up to three years, can debar until the process under these Regulations is completed.

(3) If the Public Procurement Monitoring Office decides to debar pursuant to Sub-rule (2), it shall have to give notice thereof to the concerned bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company within seven days of such decision having been made and 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 to the concerned bidder, proponent, consultant, service provider, supplier, construction entrepreneur, or other firm, organization and company of a period of thirty days enclosing therewith the copy of the statement, causes and documents so received to submit the grounds, if any, for not including the name in blacklist.

(5) Upon receipt of the notice under Sub-rule (4) the concerned bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company shall have to submit explanation along with relevant documents describing reasons and grounds, if any for not enlisting in the blacklist.

(6) While submitting explanation pursuant to Sub-rule (5), the concerned bidder, proponent, consultant, service provider, supplier, construction entrepreneur, or other person, firm, organization or company may request the Public Procurement Monitoring Office 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 joint hearing and the Public Procurement Monitoring Office considers it appropriate to make such hearing, it shall have to serve a written notice as to the time and place of such hearing to the concerned Public Entity and bidder, proponent, consultant, service

provider, supplier, construction entrepreneur and other person, firm organization or company.

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

(9) If both the parties appear in accordance with the provision 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.

Provided that the hearing shall not be adjourned for the only reason that any party has not attended.

(10) The Public Procurement Monitoring Office shall have to make a decision of blacklisting or not blacklisting having regard 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 concerned bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company.

(11) The Public Procurement Monitoring Office shall, while making decision pursuant to Sub-rule (10) to blacklist, 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 and publish in a newspaper of national circulation.

(12) In making decision pursuant to Sub-rule (11), if the Public Procurement Monitoring Office decides not to blacklist, the debarment, if any, imposed pursuant to Sub-rule (2) shall *ipso facto* be removed and the office shall have to publicly publish a statement to that effect.

(13) Where in making a decision pursuant to Sub-rule (10), if a decision is made to blacklist a bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company, 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 these Regulations within six months of receipt of request relating thereto.

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

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 from 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 requires to be released from blacklist pursuant to Sub-rule(1), the Public Procurement Monitoring Office shall have to release in accordance with the same criteria.

143. Records to be Kept: The Public Procurement Monitoring Office shall have to keep in its office and web-site the updated records of the bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company that are debarred from participating in the

procurement proceedings, automatic release from such debarment, blacklisted and released from the blacklist.

Chapter-14

Provision Relating to Monitoring of Procurement Proceedings

144. Functions, Duties and Powers of the Public Procurement Monitoring Office:

The functions, duties and powers of the Public Procurement Monitoring Office, in addition to the ones referred to in Section 65 of the Act, shall be as follows:-

- (a) Monitoring the public procurement activities by making observation visit to the procurement proceedings of the concerned Public Entity or by asking for the reports and information relating to procurement activities from public entities,
- (b) Giving direction to the Public Entity in respect of the information, data to be incorporated into the report relating to procurement activities and the period of submitting such report,
- (c) Operating programs that assist the Public Entity to conduct procurement proceedings and a bidder, proponent, sealed bidder, supplier to participate in procurement proceedings,
- (d) Making procurement proceedings simple and clear,
- (e) Maintaining the records of the work performance relating to contract implementation thereby establishing a central data bank,
- (f) Developing the methods of disseminating information relating to public procurement,

- (g) Conducting study, research on the policy, laws, experiences, practices relating to procurement proceedings of other countries, in order to improve public procurement system,
- (h) Preparing plan for arrangement for employees having capability or expertise and professional efficiency in procurement in the Public Entity,
- (i) Ascertaining whether or not the persons to be appointed to the procurement unit of the Public Entity, evaluation committee and the Public Procurement Monitoring Office have acquired necessary professional efficiency as per the plan under clause (h),
- (j) Preparing the description of the functions, duties, and powers and responsibilities of the chief of the Public Entity, staff of the procurement unit of such entity and members of the evaluation committee,
- (k) Rendering assistance to conduct training programs required to enhance the professional skill of the employee engaged in the procurement activities of the Public Entity, and
- (l) Conducting training program required for enhancing professional expertise of employees.

Chapter-15

Miscellaneous

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

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

- (a) Description relating to special circumstances,
- (b) The crisis 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 the Public Entity has made procurement pursuant to Sub-rule (1) exceeding one million Rupees it shall have to publish a public notice of the description of the procurement so made and send information thereof to the Public Procurement Monitoring Office.

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

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

147. Evaluation Committee: The evaluation committee under 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 practicable) - Chairperson
- (b) Chief of the Financial Administration Section of the concerned Public Entity - Member
- (c) Technical expert concerned with the subject (Officer level as far as possible) - Member
- (d) Legal officer of the concerned Public Entity where such position exists - Member

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

(3) The evaluation committee under Sub-rule (1) may, with approval of the chief of the Public Entity, invite in its meeting the subject expert of governmental and non-governmental sector.

(4) If the committee under 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 these Regulations.

(5) The committee under 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 the all the agenda discussed in the meeting.

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

(8) The evaluation committee shall have to submit, as referred to in these Regulations, an evaluation report 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 laborer to be applicable to the whole of 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 Entrepreneur | -Member |
| (f) Representative, Chamber of Industry and Commerce | -Member |
| (g) Chief, District Technical Office | -Member-secretary |

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

Provided that where the rates of construction materials or carriage have increased in a fiscal year by more than ten percent of the previous price, the committee may fix accordingly.

(3) The rate fixation committee shall also have to specify every year the carriage rates 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 notice thereof to the Public Procurement Monitoring Office, Auditor General's office and concerned Treasury and Accounts Comptroller Office.

(5) The procedure relating to 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 under Sub-rule (1):-

- (a) Registration of contract file;
- (b) Notice for invitation to bids or prequalification;
- (c) Documents relating to invitation to bids, pre-qualification or proposals;
- (d) Requests made by the bidders for clarification with respect to bidding documents, prequalification documents or proposals; and the answer sent by the Public Entity in respect thereof to all participating bidders or proponents;
- (e) Minutes of the pre-bid conference held with the bidders or consultants and the evidence of having sent the copies of such minutes to all participating bidders or proponents by the Public Entity;
- (f) Muchulka (minutes) of bid opening;
- (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 answer 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 was held, minutes 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 Review Committee and the opinion, response and information submitted by the concerned Public Entity in respect thereof and decision made thereon;
- (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) Document including that of receipt, inspection and acceptance of goods,
- (t) All correspondences made with the construction entrepreneurs, suppliers, consultant or service providers,
- (u) Request made by sub-contractor and the answer given by the Public Entity in respect thereof,
- (v) Evaluation reports and all documents relating thereto, and
- (w) Documents relating to the proceedings carried out to resolve the dispute relating to procurement contract,

(3) The record under Sub-rule (1) shall be kept safe for at least seven years of the completion of the procurement proceedings.

(4) The records under this Rule shall be kept in the format prescribed, if any, by these Regulations; if not so prescribed, in the format prescribed by the Public Procurement Monitoring Office.

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

(6) If the value of the property the record of which is to be kept pursuant to sub-Rule (5), exceeds five million Rupees, the records shall state the description of such property along with cost price, depreciation and maintenance cost.

150. Delegation of Power: (1) The power conferred by the Act and these Regulations of amending the cost estimate, amending procurement contract, extending time of procurement contract and issuing variation order cannot be delegated.

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

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

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

151. Format May be Prescribed: Government of Nepal may, on recommendation of the Public Procurement Monitoring Office, by publication of a notice in the Nepal Gazette, prescribe a format of any matter under these Regulations including 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 publication of a notice 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 Regulations, 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 in accordance with these Regulations.

Schedule-1

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

Method of preparation of cost estimate for the construction work

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

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

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

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

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

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

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)- $0.15 \times (e)$

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

Note:- After the cost estimate has already been prepared as stated above, for the budget management purpose, according to necessity, the cost estimate shall be

ascertained by adding ten percent for price adjustment contingency, by ten percent for physical contingency and value added tax to the total cost estimate amount.

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 to be opened letter of credit	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	Closed 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 certifier:-

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, and pharmaceuticals, medicines tools required for a specific work or other specific goods of similar nature.
- (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 the Public Entity from one or more suppliers as per the rate and terms and conditions set forth in the procurement contract.

This contract shall have to mention 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 that of one year.

- (c) **Multi-year contract:** A multi-year contract may be concluded in the following conditions:-
- (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 changed 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 erection contract:-** A design, supply and erection 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, erecting, testing operating and providing training, according to necessity, to the employees of the concerned Public Entity to operate such goods. Such contract may also be concluded to carry out any two works out of the design, supply and erection works.

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

Note:- The 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 have a construction work carried out, conclude any of the following contracts:-

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

In making payment for the work done pursuant to this contract, payment shall be made of the amount to be found out 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 cause to be carried out a construction work 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 so concluded as to rest all risk and liability relating to the construction work on construction entrepreneur.

Provided that if the financial liability of the construction work is increased for the reason that the Public Entity having ordered to make a change of any type in the construction after start up 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 cause to be carried out a construction work of the nature of high risk and unpredictable conditions of work, which a construction entrepreneur does not agree to do or cannot do 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 cost for carrying out such 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 conclusion of 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 s/he shall have to obtain the pre-approval of the Departmental head.
- (d) **Time and material rate contract:-** In order to have a work carried out 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 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 payment 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 carried out by the same construction entrepreneur. A Public Entity shall have to start the work under this contract only after approving the design of the construction work after causing such design to be examined by a technical 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 the Regulations 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 have a construction work carried out without mentioning the equipment required to maintain and manage a construction work and item wise work by mentioning only the final performance.
- (h) **Piece work contract:** In order to cause to be carried out 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 twelve months.

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 the specified time on concluding a work having technical characteristics as referred to in the terms of reference and for that s/he will receive service fee.
- (b) **Time-based contract:** If the period of consultancy service cannot be predicted such as supervision of construction work, management of large professional organization or design of complex structure such as dam, tunnel, a time based contract may be concluded for such work. This contract shall provide that the consultant's fee shall be determined as follows:-
- (a) The amount to be found out by 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 purchased or inspected.
- (e) **Indefinite service period contract:** In order to take consultancy services required from time to time in respect of specific work such as a consultant required to bring a construction work into operation, Adjudicator or an 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 foods	Type/ quality of ration	Unit	Quantity	Approved rate of the last fiscal year	Price index of NRB	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	

Signature:

Chief District Officer:

District Administration Office:

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	