

Table of Contents

ASSAM PUBLIC PROCUREMENT RULES, 2017	1
CHAPTER I: PRELIMINARY	1
Rule 1. Short Title and Commencement	1
Rule 2. Definitions	1
CHAPTER- II: INSTITUTIONAL STRUCTURE FOR PROCUREMENT	3
Rule 3. Committees Dealing With Procurement	3
Rule 4. State Procurement Facilitation Cell (SPFC)	4
Rule 5. State Public Procurement Portal (SPPP)	4
Rule 6. E-Procurement	5
Rule 7. Coding Conventions to Facilitate E-Governance	5
Rule 8. Documentary Records of Procurement Proceedings and Communication	6
CHAPTER- III: GENERAL PRINCIPLES OF PROCUREMENT	7
Rule 9. Determination of Need	7
Rule 10. Procurement Plan	8
Rule 11. Eligibility of Bidders	9
Rule 12. Participation of Bidders	11
Rule 13. Qualification of Bidders	11
Rule 14. Prequalification of Bidders	11
Rule 15. Obligations Related to Value of Procurement	12
Rule 16. Efficiency and Time Frame for Procurement Process	14
Rule 17. Single Envelop and Two Envelop Bids	15
Rule 18. Criteria for Evaluation	15
Rule 19. Price Negotiations	16
Rule 20. Terms and Conditions of Contracts	17
Rule 21. Registration of Bidders	19
CHAPTER-IV: METHODS OF PROCUREMENT AND TYPES OF BIDDING	23
Rule 22. Methods of Procurement - General	23
Rule 23. Procedure for Open Competitive Bidding	23
Rule 24. Limited Bidding	24
Rule 25. Single Source Procurement	25
Rule 26. Two Stage Bidding	27
Rule 27. Procedure of Electronic Reverse Auction	28

Rule 28.	Request for Quotations	30
Rule 29.	Spot Purchase	32
Rule 30.	Competitive Negotiations	33
Rule 31.	Rate Contracts	34
Rule 32.	Swiss Challenge Method of Procurement	38
Rule 33.	Government e-Marketplace (GeM)	48
CHAPTER V: BID PROCESS MANAGEMENT		51
Rule 34.	Contents of Bidding Documents	51
Rule 35.	Standard Bid Documents	53
Rule 36.	Price for bidding documents, pre-qualification documents or bidder registration documents and processing fee or user charges	53
Rule 37.	Sale of Bidding Documents	54
Rule 38.	Period of Validity of Bids	54
Rule 39.	Bid Security	55
Rule 40.	Notice Inviting Bids	57
Rule 41.	Pre-Bid Clarifications/ Conference	58
Rule 42.	Changes in Bidding Documents and Extension of Bid Opening Date	58
Rule 43.	Format and Signing Of Bids	59
Rule 44.	Sealing and Marking of Bids	59
Rule 45.	Submission of Bids	60
Rule 46.	Late Bids	60
Rule 47.	Receipt and Custody of Bids	60
Rule 48.	Withdrawal, Substitution and Modification of Bids	61
Rule 49.	Opening of Bids	61
Rule 50.	Preliminary Examination of Bids	63
Rule 51.	Pre-qualification of Bidders	64
Rule 52.	Tabulation of Technical Bid	65
Rule 53.	Tabulation of Financial Bids	67
Rule 54.	Determination of Responsiveness	68
Rule 55.	Clarification of Bids	69
Rule 56.	Non-Material Non-Conformities in Bids	69
Rule 57.	Evaluation of Technical Bids in Case of Two Part Bids	70
Rule 58.	Correction of Arithmetic Errors in Financial Bids	70
Rule 59.	Evaluation of Financial Bids	71

Rule 60.	Comparison of Rates of Firms from Outside and Those inside Assam	73
Rule 61.	Lack of Competition	73
Rule 62.	Negotiations for Price	74
Rule 63.	Exclusion of Bids	75
Rule 64.	Procuring Entity's Right to Accept or Reject any or all Bids and Cancellation of Procurement Process	75
Rule 65.	Acceptance of the Successful Bid and Award of Contract	76
Rule 66.	Performance Security-	77
Rule 67.	Execution of Agreement	78
Rule 68.	Further Steps or Measures	79
CHAPTER VI: INTEGRITY, OFFENCES AND PUNISHMENTS		80
Rule 69.	Code of Integrity for Officers/ Employees of The State Department And The Bidders	80
Rule 70.	Conflict of interest	81
CHAPTER VII: APPEALS, REPEAL AND SAVINGS		83
Rule 71.	Form of Appeal	83
Rule 72.	Fee for Filing Appeal	83
Rule 73.	Procedure for Disposal of Appeal	83
Rule 74.	Repeal and Savings	83
Schedule I-A		85
Schedule I-B		86
SCHEDULE –II		87
SCHEDULE –III		88

ASSAM PUBLIC PROCUREMENT RULES, 2017

In exercise of the powers conferred by section 55 of the Assam Public Procurement Act, 2017 (Assam Act No. XXIV of 2017), the State Government hereby makes the following rules, namely:-

CHAPTER I: PRELIMINARY

Rule 1. Short Title and Commencement

(1) These rules may be called the Assam Public Procurement Rules, 2017.

(2) They shall come into force with effect from the date of publication in the Official Gazette.

Rule 2. Definitions

(1) In these rules, unless the context otherwise requires, -

(i) **“Act”** means the Assam Public Procurement Act, 2017 (Assam Act No. XXIV of 2017);

(ii) **“Administrative Approval”** has the same meaning as in the Assam Financial Rules and indicates authority to incur expenditure;

(iii) **“Bid security”** shall have the same meaning as ‘earnest money’ in existing rules, notifications and orders

(iv) **“Competent authority”** means an authority or officer to whom the relevant administrative or financial powers have been delegated for taking decision in a matter relating to procurement;

(iii-a) **“Earnest Security”** means an amount of security provided by the Project Proponent in Swiss Challenge Method of Procurement to the Administrative Department concerned along with detailed and comprehensive proposal as a token of sincerity and good faith, as specified in **sub-rule 32(6)**;

(iii-b) **“Eligible Sector”** means the Sector, as specified in **rule 32 (2)**, in which the project proposals can be accepted under the Swiss Challenge method;

(iii) **“form”** means form appended to these rules;

(iv) **“international competitive bidding”** means a bidding process in which qualified bidders from all over the world, except those having nationality of a country declared ineligible by the Central Government, are allowed to participate;

(v) **“national competitive bidding”** means a bidding process in which qualified bidders only from within India are allowed to participate

(v-a) **“Project Proponent”** means a Legal entity or a Person who submits a proposal under Swiss Challenge Method;

(v-a) "Sanction" means financial sanction and has the same meaning as in the Assam Financial Rules

(vi) "**section**" means section of the Assam Public Procurement Act, 2017; and

(viii) "**State Level Empowered Committee (SLEC)**" means the State Level Empowered Committee constituted by the State Government under the chairmanship of the Chief Secretary for consideration/ examination/ approval of the project, received under Swiss Challenge Method.]

ixi) "**technical sanction**" shall have the same meaning as in the Assam Financial Rules;

(2) Words and expressions used in these rules but not defined shall have the same meaning as assigned to them in the Act.

CHAPTER- II: INSTITUTIONAL STRUCTURE FOR PROCUREMENT

Rule 3. Committees Dealing With Procurement

(1) Every procuring entity shall constitute and notify one or more committees on ad-hoc or standing basis, for different categories and for different threshold values of procurements for the following procurement processes, namely: -

(a) DPR Committee – for preparation of Preliminary or Detailed Project Report

(b) Bid Drafting Committees - for Preparation of bidding documents;

(c) Bid opening Committees - for Opening of bids;

(d) Technical Bid Evaluation Committee and Financial Bid Evaluation Committee- for Evaluation of bids;

(e) Purchase Committee - for Request for Quotation or Spot Purchase or Competitive Negotiations methods of Procurement;

(f) Any other purpose relating to procurement, as may be decided by the procuring entity.

(2) Each of such committee shall consist of three or more members including as necessary, an officer having expertise in the subject matter of procurement and an accounts officer, of level appropriate to the threshold value and category of procurement, preferably of the procuring entity. Such committees shall be notified by the Head of the Department (HoD) for all procuring entities under it or by the Head of Administrative Department in case there is no notification by the HoD. To ensure free and frank working, as far as feasible, no member of such Committee shall be reporting directly to any other member of such Committee.

Provided that Bid Opening Committees shall have only two members, if so decided.

Provided that no Bid Evaluation Committee need be formed and the task be entrusted to an officer of appropriate level for procurement below a threshold notified by the Government or in absence of such notification for procurements valued below Rs 25 Lakh.

Provided in the interest of economy and efficiency, the function of DPR Committee and/ or Bid Drafting Committee may be entrusted to individual officers/ staff instead of formal committees for the purpose by the competent authority.

Provided that in exceptional cases, but not as routine, in case of Government officer(s) of requisite level of relevant expertise not being available in the State, consultant(s) with requisite level of relevant expertise, may either be nominated to the committee or assigned the work of the such committees by the procuring entity, with the prior approval of the concerned Administrative Department after recording reasons thereof.

Rule 4. State Procurement Facilitation Cell (SPFC)

Besides the duties and powers of the State Procurement Facilitation Cell, the Government may also entrust the Cell to perform or delegate/ outsource to appropriate agency - work relating to following:

- (a) Lay down composition and Powers of various committees dealing with Procurement as in Rule 3 above
- (b) Monitor Publication of information related to Procurements by various procuring entities as in Rule 5 below.
- (c) Monitor mandatory use of e-procurement by various procuring entities as in Rule 6 below.
- (d) Lay down Coding conventions to facilitate e-governance as in Rule 7 below, including a Harmonised System Nomenclature Coding for subject matter of all procurements.
- (e) Monitor Appeals system relating to Procurements as per section 38 to 40 of the Act, and take steps to improve the appeals mechanism.
- (f) Monitor action being taken regarding Offences and Punishments relating to Procurements brought to its notice, as per Sections 41 to 47 of the Act
- (g) Any other work assigned to be performed by the Government under the Act or these Rules.

Rule 5. State Public Procurement Portal (SPPP)

(1) The State Public Procurement Portal, in addition to information specified in clause (a) to (g) of sub-section (3) of section 17 of the Act as well as Procurement Plans in terms of Rule 10(4) below, shall provide access to such other information as may be specified by the State Government, from time to time and

(2) it shall be mandatory for each procuring entity to upload and e-publish such information on such Portal.

(3) Individual cases where confidentiality is required, for reasons of public interest or security, the procuring entity shall be exempted from the mandatory e-publishing requirement. The decision to exempt any case on such grounds shall be approved by the Secretary of the Ministry/ Department with the concurrence of the concerned Financial Advisor. In the case of Autonomous Bodies and Statutory Bodies' approval of the Head of the Body with the concurrence of the Head of the Finance shall be obtained in each such case. Statistical information on the number of cases in which exemption was granted and the value of the concerned contract shall be intimated **on a quarterly / semi-annually / Annual basis** to the State Procurement Facilitation Cell.

(4) The above instructions shall apply to all Tender Enquiries, Requests for Proposals, Requests for Expressions of Interest, Notice for pre Qualification/

Registration or any other notice inviting bids or proposals in any form whether they are advertised, issued to limited number of parties or to a single party.

(5) These instructions shall not apply to procurements made by way of Request for Quotations; Spot Purchase or procurement through any Central Purchase Organisation of the State (CPO) by way of Rate Contracts or Government e-Markets (GeM).

Rule 6. E-Procurement

(1) All subject matters of procurement of an estimated value, **above a threshold limit** as may be notified by the State Government under **sub-section (2) of section 28** of the Act, shall be procured using e-procurement system. The procedure of e-procurement shall be as specified for this purpose by the **State Procurement Facilitation Cell or the nominated e-Procurement Portal**.

(2) Individual cases where confidentiality is required, for reasons of public interest or security, the procuring entity shall be exempted from the mandatory e-procurement requirement. **The decision to exempt any case on such grounds shall be approved by the Secretary of the Ministry/ Department with the concurrence of the concerned Financial Advisor**. In the case of Autonomous Bodies and Statutory Bodies' approval of the Head of the Body with the concurrence of the Head of the Finance shall be obtained in each such case. Statistical information on the number of cases in which exemption was granted and the value of the concerned contract shall be intimated on an Annual basis to the State Procurement Facilitation Cell.

(3) These instructions shall not apply to procurements made by way of Request for Quotations; Spot Purchase or procurement through any Central Purchase Organisation of the State (CPO) by way of Rate Contracts or Government e-Markets (GeM), or in case of Open Competitive Bidding on International level (International Competitive Bidding).

(4) For efficiency, Transparency and to enable e-governance, to the extent feasible, Procuring Entities shall develop and use Computer Systems for all Procurement processes from Need Assessment to Contract Management.

Rule 7. Coding Conventions to Facilitate E-Governance

To facilitate e-governance all procurement processes undertaken by any procuring entity under the State Government as in clause **(a) of subsection (2) of section (3)** of the Act shall use **standardised coding conventions defined by the State Government** from time to time.

The Conventions shall relate but not limited to:

- (i) Standardised Nomenclature Code for Subject matter of Procurement
- (ii) Budget and Accounting Codes of the State
- (iii) Codes for identifying Ministries/ Departments/ Officers/ Offices/ Consignees/

Indentors/ Inspecting Officers

- (iv) Codes for Vendor/ Contractor/ Consultant/ Service Provider
- (iv) Location Codes – Villages/ Blocks/ Cities/ Districts in the State
- (v) Codes for various categories and Value thresholds of Procurement
- (vi) Numbering Convention for the Bid Documents/ NIT
- (vii) Numbering Convention for Contracts

Provided where State Government has not yet defined such a convention, the Procuring Entity shall devise its own convention, under intimation to State Procurement Facilitation Cell.

Rule 8. Documentary Records of Procurement Proceedings and Communication

(1) Subject to the provisions of section 10 of the Act, the procuring entity shall, in addition to record specified in clause (a) to (h) of sub-section (1) of the said section, must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision including payments made at each stage of procurement from assessment of need till the Contract closure. Such Records shall be preserved in safe custody for a period as may be laid down by the Government **as in 'Class A' records or for 10 years, if not so specified.**

(2) Each procuring entity shall maintain registers or databases related to procurement in electronic or physical format and ensure their safe custody and integrity for following subjects

- (i) **Subject Matters of Procurement:** Data about all subject matters of procurement handled or likely to be handled;
- (ii) **Vendor/ Contractor Register:** Data about registered vendors/ contractor
- (iii) **Procurement Register:** Key information of progress at various stages of procurement operations, from receipt of indents till issue of the contract
- (iv) **Purchase Order Guard Register:** An indexed register where one ink signed copy of all orders issued by the Procuring Entity shall be compulsorily pasted in chronological order to be used as ultimate reference for authenticity of purchase orders against tampering/ fraud.
- (v) **Purchase Order Progress Register:** Data of progress of supplies and control of payments against all purchase orders issued

provided that separate registers or databases shall be maintained for i) works and ii) goods and iii) services if necessary.

CHAPTER- III: GENERAL PRINCIPLES OF PROCUREMENT

Rule 9. Determination of Need

(1) No procurement process shall be initiated for any subject matter of procurement by any procurement entity before assessing and determining the actual need for the procurement for the purpose of public services in accordance with the provisions of section 5 of the Act and no procurement shall be made if such procurement is not essential for public services.

(2) The content of and the essentiality for public services for the procurement shall be ascertained and clearly specified by the procuring entity in writing which shall form part of the document relating to the determination of need in accordance with sub section (3) of section 5 of the Act and shall be maintained and **preserved in safe custody for a period as may be laid down by the Government as class 'A' records or for 10 years, if not so specified,.**

Before the beginning of every financial year, all procurement entities shall first assess and determine the need for any procurement to be made by them during the year and maintain documents relating to such assessment and determination of need in accordance with the provisions of section 5 of the Act. The need so determined shall be reviewed and updated by the procurement entities every quarter (from time to time) with reference to the actual real-time requirement.

(2) Method of satisfying the assessed need (owning/ leasing/ hiring/ outsourcing or Public Private Partnership (PPP), and so on) shall be determined as per declared policies, if any, of the Government in this regard, or in absence of such policies be based on a techno-economic evaluation (using life cycle cost, if feasible) of various alternative methods of satisfaction of the need and compatibility and inter-operability with existing infrastructure or systems.

(3) To avoid unwarranted expenditure or idle inventories, the quality, quantum and extent/ Scope of assessed need and the subject matter of procurement shall be clearly spelt out keeping in view the basic needs of the procuring entity in line with **sub-section (2) of Section 5** of the Act, without including superfluous and non-essential quantum or features or extent/ scope and shall not exceed scale, consumption or usage limits of requirements laid down by the Government, if any.

(4) The Technical specifications/ Detailed Project Report/ Terms of Reference shall be so developed as to ensure Value for Money, level playing field and wider competition in procurement. Where applicable, the technical specifications shall, to the extent practicable:

- (a) be based on the national technical regulations or recognized national standards or engineering/ building codes, wherever such standards exist, and in their absence, be based on the relevant international standards. Provided that a procuring entity may, for reasons to be recorded in writing, adopt any other technical specification.
 - (b) shall emphasize sustainability criteria such as efficiency; optimum fuel/ power consumption; low maintenance cost; environment criteria - reduced pollution/ emission/ noise levels and shall comply with applicable legal, mandatory and statutory regulations, or Government guidelines, if any, in such regards.
- (5) The estimated cost of the assessed Need is a vital element in various procurement processes, approvals and establishing reasonableness of prices at the time of evaluation of the bids. Therefore, it shall be worked out in a realistic and objective manner;
- (6) **Description of assessed need and subject matter of procurement** shall be set out in the pre-qualification documents, bidder registration documents or the bidding documents as provided in **section 5 and 12 of** the Act and shall include specifications, plans, drawings, designs, trials, sample testing and test methods, packaging, marking, labelling, conformity certification or symbols and terminology as applicable. The description of the assessed need and the subject matter of procurement to the extent practicable shall –
- a) be objective, functional, generic and measurable and specify technical , qualitative and performance characteristics.
 - b) Except in case of proprietary procurement from a selected single source, reference to brand names, catalogue numbers or other details that limit any materials or items to specific manufacturer(s) shall be avoided as far as possible. Where unavoidable, such item descriptions shall always be followed by the words “or substantially equivalent”.
 - c) be in accordance with any guidelines prescribed by the Government, if any in this regard

Rule 10. Procurement Plan

(1) While preparing Annual Budget Proposals for a financial year, a procurement plan shall also be prepared by every procuring entity for each of the item of goods, works or services to be procured during that financial year in accordance with **section 5 of** the Act and submitted to the Administrative Department through the concerned Head of the Department along with the along with the Annual Budget proposals for that year.

(2) The Procurement Plan shall, apart from the specific need determined in accordance with **section 5 of** the Act, specify the following:-

- (a) Nature of Procurement – Goods / Works / Services;
- (b) Purpose and objective of the Procurement
- (c) Major Specifications– Quantity/ Type / Quality / configuration / etc;
- (d) Estimated Value;
- (e) Details of source of Funds
- (f) Procurement Methods likely to be followed with reasons if other than open bidding;
- (g) Limitations on participation of Bidders, as per Government Guidelines, if any
- (h) Timeframe for Bid Process; and
- (i) Timeframe for delivery of goods or services or completion of work to identify the funds required in the next financial year or subsequent financial years.

(3) After due approval of the Annual Budget the Procurement Plan of a procurement entity shall be updated to conform and match with the approved Annual Budget Allocations. And the approval by the concerned Administrative Department under clause (a) of sub **section (4) of section 5** shall be communicated to the procuring entity in writing within 15 days of receipt of Budget Communication by the Finance Department.

provided that the Budget Communication of Finance Department shall be deemed to have been received on the day on which it is uploaded in the website of Finance Department;

*provided further that in case of procurement entities under clauses (b) to (f) of **subsection (2) of section (3)** , due approvals of procurement plans by other authorities like Governing Bodies, Boards, etc shall be obtained thereafter as required .*

(4) The procuring Entity shall upload and maintain the Procurement Plan on the State Public Procurement Portal as well as its own website with suitable caveat that publishing of the Procurement Plan does not to imply any commitment on the part of the Procuring Entity regarding any procurement at any time.

Rule 11. Eligibility of Bidders

(1) A bidder participating in the procurement process shall:

(a) be a natural person, private entity, government-owned entity or, where specifically permitted in the bidding documents, any combination of them having formal intent and competency to enter into an agreement or participate under an existing agreement in the form of a Joint Venture.

(b) not be insolvent, in receivership, bankrupt or being wound up, not have its affairs administered by a court or a judicial officer, not have its business activities suspended and must not be the subject of legal proceedings for any of the foregoing reasons;

(c) A bidder shall not have a conflict of interest in the procurement in question as stated in **rule 17** below and in the pre-qualification documents or bidding documents. The procuring entity shall take appropriate actions against the bidder in accordance with section

11 and Chapter IV of the Act, if it determined that a conflict of interest has vitiated the integrity of any procurement process. All bidders found to have a conflict of interest shall be disqualified.

(d) not be under a declaration of ineligibility for corrupt and fraudulent practices under section 46 of the Act or otherwise by the central government, the state government or any public undertaking, autonomous body, authority by whatever name called under the central or the state government;. A bidder debarred shall not be eligible to participate in any procurement process undertaken by -

- (i) any procuring entity, if debarred by the State Government;
- (ii) a procuring entity if debarred by such procuring entity,
- (iii) all procuring entities under the Head of Department if debarred by the Head of Department of the Administrative Department

(e) not have proprietor of the firm, its employee, partner or representative, directors and officers convicted of any offence by a court under the Prevention of Corruption Act, 1988 or under the Indian Penal Code or any other law for the time being in force for offences involving moral turpitude in business dealings within a period of three years preceding the commencement of the procurement process;

(f) have fulfilled his obligation to pay such of the taxes payable to the Central Government or the State Government or any local authority as may be specified in the bidding documents, pre-qualification documents or bidder registration documents;

(g) Fulfil any other additional eligibility condition, if any, as may be prescribed, in the pre-qualification documents, bidder registration documents or bidding documents

(2) In the case of a Joint Venture: -

(a) no partner of the JV can submit an independent bid for the same package for which JV is submitting a bid, as it shall constitute a conflict of interest.

(b) All partners of the Joint Venture shall sign the bid and shall be liable jointly and severally for the bid and for the execution of the Contract in accordance with the Contract terms, and a relevant statement to this effect shall be evidenced.

(c) or otherwise all the parties in Joint Venture shall sign the Agreement.

(d) In the event the bid of Joint Venture is accepted, either they shall form a registered Joint Venture company or LLP or partnership firm or else the Contract Documents and the Joint Venture Agreement, etc., shall be submitted duly signed and / or executed in such a manner as may be required for making it legally binding on all partners indicating clearly, amongst other things, the proposed distribution of responsibilities both financial as well as technical for execution of the work amongst them.; and

(e) the Joint Venture shall nominate a Lead Partner who shall have the authority to conduct all business for and on behalf of any or all the parties of the Joint Venture during the

bidding process and during execution of the Contract. This authorization shall be evidenced by submitting a power of attorney signed by the legally authorized signatories of all the partners.

Rule 12. Participation of Bidders

(1) The procuring entity, at the time of invitation of bids in the procurement process, shall declare whether participation of bidders is limited or not and, if limited, the grounds thereof. Such declaration shall be in conformity of Section 6 of the Act and shall not be altered later except under extraordinary situation to be recorded in writing by the procuring entity.

(2) If the Purchasing Entity intends to mandatorily procure any subject matter of procurement from any category of bidders, and/ or grant purchase or price preference in procurement from any category of bidders in line with current government policies and conforming to **Section 6 of the Act**, this fact must be declared in the Bid Documents.

Rule 13. Qualification of Bidders

In addition to the provisions regarding qualification of bidders as set out in **section 7 of the Act**,-

(a) the procuring entity shall disqualify a bidder if it finds at any time that,-

(i) the information submitted, concerning the qualifications of the bidder, was false or constituted a misrepresentation; or

(ii) the information submitted, concerning the qualifications of the bidder, was materially inaccurate or incomplete;

(b) the procuring entity shall require a bidder, who was pre-qualified, to demonstrate its qualifications again at any time or stage before the Contract Documents are signed, in accordance with the same criteria used to prequalify such bidders. The procuring entity shall disqualify any bidder that fails to demonstrate its qualifications again, if requested to do so. The procuring entity shall promptly notify each bidder requested to demonstrate its qualifications again as to whether or not the bidder has done so to the satisfaction of the procuring entity.

Rule 14. Prequalification of Bidders

(1) In addition to the provisions of **section 18 of the Act**, prequalification process shall be carried only under following justifiable circumstances and not as a routine, using the procedure as Laid down in **Rule 51 below** .:

i) For bulk Registration/ Enlistment of Bidders

ii) where technical requirements are complex so that besides considering techno-commercial suitability of offers, capability of source of supply is also crucial for the successful performance of the contract (for example in complex procurements of machine, equipment's, Works) and thus it is necessary to ensure that competition is only among

bidders with requisite capabilities matching the challenges of the task so as to avoid vitiation of evaluation by low value offerings from inadequately qualified bidders

iii) Where the procurement is based on performance specification (or Turn Key/ EPC contracts) or Terms of Reference (as in procurement of Consultancy) or where otherwise the offered solutions may vary vastly from one another making it difficult to equitably evaluate all offers on a common footing.

Provided laying down of an eligibility or qualification criteria for bidders, which shall be evaluated along with Technical Bid and not prior to it, shall not amount to pre-qualification, but shall be called post-qualification. Provisions of prequalification of bidders shall not apply to post-qualification.

Rule 15. Obligations Related to Value of Procurement

The obligations related to value of procurement shall be as per the provisions of **section 8** of the Act and, further -

(1) The Government shall lay down competent authorities of various levels to accord technical, administrative and financial approval and sanctions relating to various processes in different categories and threshold values of Procurement, including assessment of need; bidding processes, award and management of contracts. The Government shall also compile a comprehensive Schedule of Powers of different levels of officers/ Committees relating to recommendation and approval of proposals and processes of Procurement for different categories and threshold Values of Procurements. For sake of efficiency, every Department, with the approval of the competent authority, may delegate, wherever necessary, appropriate purchasing powers to the lower functionaries.

(2) No procurement shall be initiated without a valid written Indent or requisition or Procurement proposal carrying Technical, administrative and Financial approvals as prescribed in the Assam Financial Rules, Delegation of Financial Power Rules and other rules and Orders that may be issued by the State Government in the Finance Department from time to time. Such Indent, Requisition or Procurement Proposal must contain all details of quality, quantum, extent or Scope of work necessary for an efficient procurement to be accomplished.

(3). The procuring entity must have the necessary financial powers for category and threshold value of procurement delegated to it by the Finance Department for subject matter of procurement and the cost thereof in the Delegation of Financial Powers Rules.

(4) It shall be obligatory for procurement entities to obtain all the required approvals and sanctions as prescribed in the Assam Financial Rules, Delegation of Financial Power Rules and other rules and Orders that may be issued by the Finance Department in the State Government from time to time.

(5). No Contract for Goods, Works or Services/ Consultancy shall be issued before

due Administrative Approval has been issued in accordance with the existing rules, orders and rules and orders that may be issued from time to time as laid down in the **Assam Fiscal Responsibility and Budget Management Act 2005, (Act o XXXVII of 2005).**

(6). Advance action for procurement in terms of sub section (1) (b) section 8 of the Act shall be done only under following exceptional circumstances with appropriate approval as may be laid down by Government in this regard:

(a) Such Advance procurement action - not involving invitation of Bids, shall be done in cases where extensive preparatory work is required before Bids are invited, **only with the prior approval of the authority designated by the Government in this regard and in the absence of such notification by the Head of Procuring Entity.**

(b) Advance procurement involving invitation of Bid shall be done only with the approval of the authority designated by the Government in this regard and in the absence of such notification with the approval of the Principal Finance Secretary provided:

(i) The procurement has long lead times (e.g. Capital Equipment and complex or infrastructure works) and where there is urgency for the subject matter of procurement, which justifies advance procurement action.

(ii) such approving Authority in his assessment of situation shall be reasonably sanguine about the likelihood of receiving Administrative/ Technical/ Budgetary approvals and that the quality/ quantum/ extent/ scope of procurement is not likely to undergo drastic change during such approvals.

(iii) However, where the two-stage bidding is justified as per Section 32 of the Act, by way of expression of interest or Request for Qualification, the Procuring agency may decide to go ahead with the advance procurement at first stage, provided the second stage is initiated only after required Budgetary and financial approval are obtained.

(iv) The Notice Inviting Tender/ EOI or RFQ in such case shall clearly mention that the budgetary approval is likely to be received shortly.

(c) During advance procurement no major expenditure shall be incurred or liabilities shall be created for such expenditure. All small expenditure in this process may be initially charged to a general administration head of account. **No consultancy contract shall be entered into for the advance procurement processes.**

(7). In terms of the proviso to **subsection (2) of section 8 of the Act,** the Finance department, having regard to the state of finances and matters incidental thereto or for prudent fiscal management may, by Notification, prescribe the limits of outstanding liabilities for the different procuring Departments or the different procuring entities under them beyond which no new procurement shall be taken up or administratively approved or sanctioned

(8). The quantum and extent/ Scope of the assessed need and subject matter of

procurement shall neither be packaged nor divided or no other action shall be taken so as to limit competition among potential bidders or to avoid obligations under Section 8 of the Act. *Provided that in the interest of efficiency; economy; timely deliveries; wider competition; or access to Micro and Small Enterprises (MSE), an indenting or procuring entity may, for reasons to be recorded in writing, divide its procurement into appropriate packages, or club requirements of other users for procurement. Some requirements may have elements of Goods, Works and Services, which could be either sliced into of Goods, Works and Services elements or combined into one package. Such decisions for slicing or packaging shall be based on techno-economic, Value for Money or need for wider competition considerations. Examples of such requirements are procurement of IT System or Outsourcing of complex Services.*

Rule 16. Efficiency and Time Frame for Procurement Process

(1) Determination of Need and generation of indent for procurement shall be done sufficiently in advance of time when deliveries are required. State Government shall lay down a time-frame for such generation of Indent with respect to the expected dates of requirements. Delivery requirements shall be specified realistically. Delays in need assessment or unrealistic delivery requirements have adverse impact on the value for money and transparency.

(2) The Government shall prescribe from time to time, the time frame for submission of bids and the modes of publicity for procurement of goods, services and Works for different categories of bidding/ procurements. **A suggested time-frame for Goods and Services is shown in Schedule I-A and for Works in Schedule I-B appended to this rules.**

Provided that, in appropriate cases, the procuring entity may, with the approval of the competent authority authorised by the State Government for the purpose relax the above mentioned period of publication of notice inviting bid and submission of bid.

Provided further that in emergent conditions, the procuring entity after recording reasons may reduce, the period for submission of bids from the date of first publication of Notice Inviting Bids, to not less than half of the period specified in sub-rule (2) above.

(3) The time frame for schedule of procurement cycle for various categories of bidding/ procurements shall be laid down by the government from time to time. For single stage bidding a suggested time frame is appended in Schedule II of these Rules. **Such complete likely schedule of procurement cycle from the date of issuing the tender to the date of issuing the Contract shall also be published in the Bid Document.**

Provided that, in appropriate cases, the procuring entity may, with the prior approval of concerned Head of the Administrative Department relax the above mentioned

time frame.

(4) A decision on acceptance or rejection of bids invited in a procurement process must be taken by the competent sanctioning authority within the original validity of the bids. Extension of bid validity must be discouraged and resorted to only in exceptional circumstances. The Government shall from time to time lay down time-frame (counted from the date of opening of technical bids where two envelope system is followed, otherwise from the date of opening of financial bids) for various categories of bidding/ procurements within which such decisions must be taken, even if the period of validity may be more. If the decision is not taken within the given time period by the concerned sanctioning authority, the bids shall be submitted to the next higher authority for decision with reasons of not taking decision within the given time period. In exceptional circumstances, the State Government may relax the limit of time period prescribed for Administrative Department/ Finance Committee/ Board/ Empowered Committee, etc. A suggested time frame is appended in Schedule III of these Rules.

Rule 17. Single Envelop and Two Envelop Bids

(1) Procuring entity, depending on complexities/ criticality of Technical requirements and value of procurement, shall choose either Single Envelop or Two Envelop bids as defined in sub-section (1)(a) and (1)(b) respectively of the Section 13 of the Act.

(2) Where qualitative requirements and technical specifications are not complex and value of procurement is low or moderate, the single envelop system shall be the default system of bidding. The lowest responsive priced bid that meets the eligibility criteria, technical and commercial requirements laid down in the bid documents is declared as successful.

(3) In technically complex requirements and where value of procurement is not low, a two envelop system shall to be followed. Such a decision shall not be based solely on value of procurement. Bid security must be submitted in or along with the first envelop. Evaluation of technical bids which are opened first must be based only on the techno-commercial criteria as laid down and stipulated in the Bid documents and these shall not be diluted or waived even in case none of the bidder meets such criteria. The committee evaluating the Technical bid shall not have any access to the financial bids. In such a case, procuring unit shall ensure integrity and safe-keeping of the financial bids before these are opened publically.

Rule 18. Criteria for Evaluation

(1) Criteria for evaluation must be chosen in line with Section 14 of the Act, so as to ensure value for money, transparency, competition and level playing field in procurement. No evaluation criteria shall be chosen that cannot be verified.

(2) Except in case of Procurement of Consultancy Services, Price shall be the default

criteria of evaluation and deviations from this may be justified and be approved by Competent Authority for the Procurement. Prices shall be evaluated only among the bids that meet the eligibility, qualification and Techno-commercial criteria as laid down in the Bid document and the prices of other bids shall be ignored.

(3) Use of trials, testing and samples as basis of evaluation shall normally be discouraged. Procuring entity shall ensure detailed specifications to obviate the need for testing, trials and samples. If at all inescapable, Trials/ testing must meet the norms of transparency, fairness and wide competition. Such trials and testing shall be done, without undue secrecy, in association with the bidders and they shall be given opportunity to point out any technical issues involved therein and be given fair opportunity to succeed in such trials and testing. Failed bidders must be provided detailed reports indicating exact values of various parameters obtained in trials/ testing. Request for retrial/ retest from the bidders must be sympathetically considered.

(4) In case sample has to be used to illustrate indeterminable characteristics such as shade/ tone, make-up, feel, finish and workmanship, and so on, supply must be in conformity with an agreed reference sample in such respects only, whereas for the remaining characteristics it must be in conformity with the laid down drawings/ specifications. Procurement of such items shall be decided on the basis of detailed specifications/ drawings and no sample shall be called for or evaluated along with the bids. If desired, a purchaser's reference sample shall be displayed for prospective tenderers to illustrate the desired indeterminable characteristics, which final supplies from successful bidder(s) will have to meet in addition to the specifications/ drawings. If required, in addition to the purchaser's reference sample, the provision for the submission of a pre-production sample matching the purchaser's sample by successful bidder(s) shall be stipulated for indeterminable characteristics, before giving clearance for bulk production of the supply.

(5) In addition to the criteria for evaluation of bids set out in **section 14 of the Act**, the evaluation criteria, where relevant, may include discounted cash flow techniques.

Rule 19. Price Negotiations

(1) Normally no negotiations for price shall be conducted after the opening of bids. Negotiations for price may, however, be undertaken, with the approval of competent authority, only with the lowest or most advantageous techno-commercially responsive bidder (who shall have been eligible for placement of bulk order but for the decision to negotiate) within the validity of his offer, following the procedure laid down in **Rule 62 below**, under the following circumstances-

- (a) in case of procurement by method of single source procurement
- (b) where anti-competitive behaviour by the bidders as per Competition Act is suspected for the subject matter of procurement; or

(c) when the rates quoted vary considerably from the estimated prices and are considered 'unreasonable' and much higher than the prevailing market rates.

Provided that the negotiations conducted under Competitive Negotiations method before obtaining 'Best and Final Offer' from bidders in terms of rule 30 below, shall not amount to negotiation for price.

Provided that negotiations in procurement of Consultancy Services with the selected consultant for discussions of the Terms of Reference, methodology, staffing, procuring Entity's inputs for incorporating in "Description of Services," in the contract, shall not amount to negotiations for price. Provided further that these discussions shall not substantially alter (or dilute) the original Terms of Reference or terms of the offer, lest the quality of the final product, its cost, and the initial evaluation be vitiated.

(2) However in no case, including where a cartel/ pool rates are suspected, negotiations shall be conducted:

(a) just for exploring further reduction in rates of the lowest or most advantageous bidder which are adjudged as 'reasonable'.

(b) with those bidders, who had either not tendered originally or whose tender was rejected because of unresponsiveness of bid, unsatisfactory credentials, inadequacy of capacity or unworkable rates.

provided, any counter offer to bidders quoting next higher rates (at the rates accepted by lowest or most advantageous bidder) in case of splitting of quantities shall not be deemed to be a negotiation.

Rule 20. Terms and Conditions of Contracts

(1) No work of any kind shall be commenced without proper execution of an agreement as given in the foregoing provisions.

(2) (a) The terms of contract must be precise, definite and without any ambiguities. The terms shall not involve an uncertain or indefinite liability, except in the case of a cost plus contract or where there is a price variation clause in the contract.

(b) Cost plus contracts shall ordinarily be avoided. Where such contracts become unavoidable - full justification shall be recorded before entering into the contract.

Where supplies or special work covered by such cost plus contracts have to continue over a long duration, efforts shall be made to convert future contracts on a firm price basis after allowing a reasonable period to the suppliers/contractors to stabilize their production/ execution methods and processes.

(3) (a) Standard forms of contracts shall be adopted wherever possible, with such modifications as are considered necessary in respect of individual contracts. The

modifications shall be carried out only after obtaining financial advice and if considered necessary - legal advice.

(b) In cases where standard forms of contracts are not used, legal and financial advice shall be taken in drafting the clauses in the contract.

(c) A Procuring Entity may, at its discretion, make purchases of value up to a threshold as notified by the Government **or upto Rupees two lakh and fifty thousand** in the absence of such a notification, by issuing purchase orders containing basic terms and conditions:

(g) Contracts shall inter-alia invariable include provisions for

(i) payment of all applicable taxes by the contractor or supplier.

(ii) recovery of liquidated damages for defaults on the part of the contractor. Only in exceptional circumstances to be justified by procuring entity in writing, an exemption from such provision can be made.

(iii) In contracts for Supply of Capital Equipment a warranty clause shall be incorporated. Similarly in Works contracts a Defect liability Period clause shall be incorporated.

(iv) All contracts for supply of goods shall reserve the right of ultimate consignee to reject goods which do not conform to the specifications, irrespective of earlier inspections or payments made.

(4) Price Variation Clause can be provided only in long-term contracts, where the delivery period extends beyond 18 months. In short-term contracts firm and fixed prices shall be provided for. Where a price variation clause is provided, the price agreed upon shall specify the base level viz, the month and year to which the price is linked, to enable variations being calculated with reference to the price levels prevailing in that month and year.

Provided that Price Variation Clause may also be provided in contracts where delivery period is shorter than 18 months, in exceptional cases where the prices vary periodically – for example in non-ferrous metals or other commodities.

(5) Departmental issue of materials shall be avoided as far as possible. Where it is decided to supply materials departmentally, a schedule of quantities with the issue rates of such material as are required to execute the contract work shall form an essential part of the contract.

(6) (a) In contracts where government property is entrusted to a contractor either for use on payment of hire charges or for doing further work on such property, specific

provision for safeguarding government property (including insurance cover) and for recovery of hire charges regularly, shall be included in the contracts.

(b) Provision shall be made in the contract for periodical physical verification of the number and the physical condition of the items at the contractor's premises. Results of such verification shall be recorded and appropriate penal action taken where necessary.

(7) Copies of all contracts and agreements for purchases of the value of Rupees Twenty-five Lakhs and above, and of all rate and running contracts entered into by civil departments of the Government shall be sent to the Audit Officer and /or the Accounts officer as the case may be.

(8) The terms of a contract, including the scope and specification once entered into, shall not be materially varied. Wherever material variation in any of the terms or conditions in a contract becomes unavoidable, the financial and other effects involved shall be examined and recorded and specific approval of the authority competent to approve the revised financial and other commitments obtained, before varying the conditions. All such changes shall be in the form of an amendment to the contract duly signed by all parties to the contract.

Rule 21. Registration of Bidders

(1) The procuring entity shall prepare a panel of bidders for the subject matter of procurement that is required frequently but other the details like quantity, time and place of delivery is not known in advance. The procuring entity shall prepare separate panel for different subject matters of procurement.

(2) The procurement of subject matter in Limited Bidding method shall be done by the procuring entity from amongst the empanelled bidders within the limit of delegation of financial powers by sending request for proposals with financial bid to all of them. They shall be also eligible to participate in other methods of procurements, provided they meet the eligibility, qualification and other criteria of that procurement.

(3) Registration of contractors shall be done keeping fundamental principles of public procurement in view (especially transparency, fairness, equality, competition and appeal rights) in the following manner:

i) New contractor(s) shall be considered for registration at any time, provided they fulfil all the required conditions.

ii) Details of the procedure for registration of new firms shall be uploaded on the website of the procuring entity and also published in the form of a booklet for information of

the contractors. Timeframes and criteria for registration of new contractors shall be clearly indicated;

iii) While registering the firms, an undertaking shall be obtained from them that they will abide by the Code of Integrity (which shall be enclosed with the application) with a clear warning that, in case of transgression of the code of integrity, their names are likely to be deleted from the list of registered contractors, besides any other penalty or more severe action as deemed fit; and

iv) Along with the new/ renewal application for registration, the contractors shall also be asked to declare that, if awarded a contract in any Limited Tender Procurement in which they participate, they bind themselves to abide by the Procuring Entity's General Conditions of Contract (GCC - which shall be enclosed with the application).

v) Eligibility:

(a) Any firm, situated in India or abroad, which is in the business of providing goods/ works/ services of specified categories of interest, shall be eligible for registration;

(b) The contractor shall be a Private, Partnership, Pvt Ltd, Corporate, PSU or a Joint Venture company, unless otherwise stipulated in the Registration Documents.

(c) Contractors shall possess valid Digital Signature Certificate (DSCs) by a certified agency in India at the time of registration/ renewal, so as to enable them to participate in e-procurements

(c) Firm, against whom any debarment/ deregistration action has been taken, shall not be eligible for re-registration during the currency of such debarment/ deregistration. Registration requests shall not be entertained from such firms, stakeholders of whom have any interest in deregistered/ banned firms;

vi) The application form, complete in all respects and accompanied with the requisite processing fee and prescribed documents shall be submitted by the firms to the registering authority. The registration application form, duly filled-in, when received from the firms shall be scrutinised carefully for assessing the capacity and capability of the firms including credentials, capability, quality control system, past performance, financial background, and so on, of the applicant. References shall be made to other firms of standing of whom the applicant firm claims to be a contractor. Likewise, the applicant firm's bankers may also be requested to advice about the financial standing of the firm. Registration of contractors shall be done with the approval of Competent Authority.

vii) In cases where the firm is not considered capable and registration cannot be granted, the concerned authority shall communicate the deficiencies and shortcomings direct to the

firms under intimation to the appellate authority. Where a request for re- verification and review is made by the firm, along with any fee as prescribed and within the period prescribed by the department, review shall be undertaken. Requests for re-verification after expiry of the said period shall be treated as a fresh application and processing fee, if any prescribed, charged accordingly;

viii) Registration shall be for specific category of requirements of goods/ Services/ works –e.g. Civil, Electrical, Horticulture, Furniture, Nursery etc;

ix) Registration shall be done for different Class of the firms (Grade A, B, and so on) based on their capability for executing contract orders of different monetary limits in the relevant category of requirements. The monetary limits shall be carefully fixed keeping in view the banker's reports, capacity and capability of the firm and other financial information indicated in the balance sheets, profit and loss statements:

x) It shall be mentioned in the letter of registration that the registration is valid for a period of three years and shall be considered for extension based (on application by the contractor/ service provider) on satisfactory performance of the firm. However, the registration shall be initially treated as provisional and it shall be treated as confirmed only after the firm has satisfactorily executed one contract of the relevant category and value from Procuring Entity. The extension of validity of registration is not a matter of right and Procuring Entity reserves the right not to extend such registration without assigning any reason;

xi) All registered contractors shall be allocated a unique registration number. Once the firms are registered, a circular shall be issued by the registration authority indicating the names and addresses of the registered contractors with details of the requirements and monetary value they will execute as well as the validity period, and so on, for which they are registered. The list of registered suppliers for the subject matter of procurement shall be exhibited on the State Public Procurement Portal and websites of the Procuring Entity/ e-Procurement/ portals;

xii) **Removal from List of Registered Contractors:** Performance and conduct of every registered contractor shall be watched by the concerned department. Procuring Entity shall have the right to reassess firms already registered, at any later date, to satisfy itself about the current financial soundness/ credit worthiness, facilities available, and so on. In cases of deficiencies in any of performance issues listed below, such contractors shall be removed from the list of registered contractors after giving opportunity to the firm to represent. The contractors removed from the list of registered contractors are neither invited to bid nor are their bids considered for evaluation. Whenever a firm is removed from the list of registered

contractors, its registration stands cancelled but the contractor data shall not be deleted from the (computer) system. Contractors removed from the list of registered contractors or their related entities shall be allowed to apply afresh for registration after the expiry of the period of removal. Performance issues which may justify removal of the contractor from the list of registered contractors are:

a) The contractor fails to abide by the terms and conditions of registration or to maintain the required technical/ operational staff/ equipment or there is change in its production/ service line affecting its performance adversely, or fails to cooperate or qualify in the review for registration;

b) If the firm ceases to exist or is acquired by or merged with another firm, or ceases to operate in the category of requirements for which it is registered.

c) Bankruptcy or insolvency on the part of the contractor as declared by a court of law; or

d) Debarment by Ministry/ Department or any other government agency;

e) Other than in situations of force majeure, after opening of financial bids, the contractor withdraws from the procurement process or after being declared as successful bidder: (i) withdraws from the process; (ii) fails to enter into a procurement contract; or (iii) fails to provide performance security or any other document or security required in terms of the bidding documents.

f) If the Central Bureau of Investigation/ C&AG or State Vigilance Department or any other investigating agency recommends such a course in respect of a case under investigation;

g) Employs a government servant within two years of his retirement, who has had business dealings with him in an official capacity before retirement; or

h) fails to execute contracts on time or does sub-standard work or makes any false declaration to any government agency;

i) or any other ground, based on which the registering authority considers, that continuation of registration is not in public interest.

(4) For bulk registration of Contractors the provisions relating to pre-qualification of bidders under **section 18 of the Act and Rule 14 and 51** of these Rules shall apply to empanelment proceedings.

CHAPTER-IV: METHODS OF PROCUREMENT AND TYPES OF BIDDING

Rule 22. Methods of Procurement- General

(1) Normally, the procedure of Open Competitive Bidding at national level (National Competitive Bidding - NCB) shall be adopted for procurements valued more than the threshold laid down by the Government, or valued more than Rupees Twenty-five thousands if no such threshold has been laid down. Even below such a threshold, this method may be used, if the sources for the requirements are limited, and a need to broaden the competition is felt. Subject to the provisions of the Act, these rules, any additional conditions notified under section 37 of the Act and guidelines issued thereunder, every procuring entity may select a different Method of procurement commensurate with the value and complexity of procurement and keeping in view transparency, efficiency; economy; timely deliveries; fairness, wider competition and guidelines of the Government in this regard, if any, after recording the reasons and circumstances thereof in writing in the Case File for the Procurement.

(2) Except for procurements made by way of Request for Quotations; Spot Purchase or procurement through any Central Purchase Organisation of the State (CPO) by way of Rate Contracts or Government e-Markets (GeM), or in case of Open Competitive Bidding on International level (International Competitive Bidding) in all other methods of procurement publicity of the Notice Inviting Tenders shall be given on State Public Procurement Portal (SPPP) in terms of Section 17 of the Act and Rule 5 above. An organisation having its own web site shall also publish all its NITs on the web site. The procuring entity shall also post the complete bidding document in its web site and on SPPP to enable prospective bidders to make use of the document by downloading from the web site. The advertisements for invitation of tenders shall give the complete web address from where the bidding documents can be downloaded.

(3) While fixing the last date of submission of bids, adequate time period shall be provided for the bidders to prepare a responsive bid. Government shall fix such time periods for various categories and values of Procurement.

(4) While the procedures for various methods are specified below, for any remaining matter of detail, the Government shall lay down further guidelines or in absence of such guidelines, the Procuring Agency shall itself lay down its own guidelines, in consultation with the State Public Procurement Facilitation Cell.

Rule 23. Procedure for Open Competitive Bidding

(1) There shall be no restriction on bidders' participation in the Open Competitive Bidding and bidders not registered with the procuring agency shall also be eligible to

participate. Foreign bidders may also participate, but they must bid prices in Indian Rupees and shall be paid only in Indian Rupees and mode of payment shall be on par with domestic bidders. The due date fixed for opening of the tender shall be minimum 21 (twenty-one) days from the date of advertisement which may vary, taking into account the nature of material called for and delivery requirements.

(2) Open Competitive Bidding at International Level (International Competitive Bidding – ICB) shall be resorted to in situations listed below. ICB tender documents must be in English and the price shall be asked in Indian Rupees or US Dollars or Euros or Pound Sterling or Yen or in currencies under the Reserve Bank of India's notified basket of currencies. Relevant INCOTERMS shall be included in the Bidding Documents. E-Procurement may not be mandatorily insisted upon in such cases. Notice Inviting Tenders shall also be sent to commercial attachés in foreign embassies in India and to Indian embassies in relevant foreign countries for inviting the attention of likely foreign bidders. The selection of the embassies will depend on the possibility of availability of the required goods in such countries. ICB procurements shall preferably be made directly from the manufacturers. Either the agent on behalf of the foreign principal or the foreign principal directly could bid in a tender, but not both. Further, in cases where agents participate in a tender on behalf of one manufacturer, they shall not be allowed to quote on behalf of another manufacturer along with the first manufacturer. Commissions and scope of services to/ by the agents shall be explicit and transparent in the bids/ contracts. The due date fixed for opening of the tender shall be minimum 30 (thirty) days from the date of advertisement which may vary, taking into account the nature of material called for and delivery requirements.

- i) Where requirements of required specifications/ quality are not available within the country and alternatives available in the country are not suitable for the purpose;
- ii) Where there is requirement for compliance to specific international standards in technical specifications; and
- iii) Where there is absence of a sufficient number of competent domestic bidders likely to comply with the required technical specifications/ quality, and
- iv) Where there is a suspected anti-competitive behaviour attracting provisions of Competition Act among indigenous bidders.

(3) If pre-qualification of the bidders is done, the procedure to be followed shall be as per Rule 14 above.

Rule 24. Limited Bidding

(1) Limited Bidding shall be used for value of procurement between the thresholds laid down by the Government for this purpose, or between Rupees 2.5 lakhs and Rupees 25

Lakhs, if no such thresholds are laid down. The Bid document used shall be simplified version, since only registered bidders well versed with Procuring Entity's Instructions to Bidders and General Conditions of Contract are involved.

(2) Limited bidding may be used even beyond such laid down value thresholds, in special circumstances with the approval of Competent Authority as per schedule of powers laid down in this regard. In such cases detailed Bid Documents as in case of Open Competitive Bidding shall be used. The circumstances justifying this out of course action are:

a) The competent authority certifies that there is an existing or prospective urgency for operational or technical requirements and any additional expenditure involved by not procuring through Open Competitive Bidding is justified in view of urgency. The Procuring Entity shall also put on record the nature of the urgency and reasons why the procurement could not be anticipated earlier; and/or

b) There are sufficient reasons, to be recorded in writing by the competent authority, indicating that it will not be in public interest to procure the goods through advertised tender enquiry; and/ or

c) The sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped is remote; and/or

d) Nature of items to be procured is such that pre-verification of competence of firm is essential, hence requires dealing with only registered firms; and

e) Government policy designates procurement from specific agencies.

(3) To ensure sufficient response, in addition to mails/ emails to selected vendors, web-based publicity shall be given for limited tenders as per rule 22 (2) above, with suitable clarifications that unsolicited bids shall not be considered.

(4) In case of unsolicited response(s) being received, it may not be considered in that tender but the antecedents of the bidder(s) shall be evaluated for registration and future requirements. An appropriate provision shall be indicated to this effect in the Bid documents.

(5) Suppliers or contractors shall be shortlisted for Limited bidding in a non-discriminatory manner. All past successful vendors/ bidders shall invariably be invited. In case it is proposed to exclude any registered/ approved/ past vendor/ contractor from being shortlisted for limited bidding, detailed reasons, such as failure in supply, shall be duly recorded and approval of the competent authority be taken before exclusion. The selection of bidders shall be with due diligence, to ensure that bidders who do not meet eligibility criteria do not get shortlisted.

(6) A minimum period of ten days and, in case of urgency after recording reasons thereof, three days, shall be given to the bidders to offer their bids.

Rule 25. Single Source Procurement

(1) Single source procurement method shall be chosen by the procurement entities only in the cases specified in sub **section (1) of section 31 of the Act** and in accordance with the prescribed procedure. The reasons for a Single Source Procurement and selection of a particular firm must be recorded and approved by the competent authority as per the delegation of powers laid down at by the Government/ Procuring Entity - powers of single source procurement shall be restricted. In procurement of goods, where certain items are procured only from Original Equipment Manufacturers (OEMs) or manufacturers having proprietary rights (or their authorised dealers/ stockists), a Proprietary Article Certificate (PAC) shall be signed by the appropriate authority. Government/ Procuring Entity shall lay down schedule of powers for signing such certificate.

(2) The procedure for single source procurement shall be as under:-

(a) The procuring entity shall solicit a bid from the single prospective bidder in terms of clause (a) of sub section (2) of section 31 of the Act and shall also exhibit the invitation to bid on the State Public Procurement Portal simultaneously as **per Rule 22(2) above**. The procuring entity shall not exhibit the invitation to bid on the State Public Procurement Portal, the subject matter for procurement is of nature specified in clause (e) or (h) of sub-section **(1) of section 31**.

(b) In case of unsolicited response being received, it shall not be considered in that tender but the antecedents of the bidder may be evaluated for registration and future requirements. An appropriate provision shall be indicated to this effect in the Bid documents.

(c) The single source shall be selected out of the list of empanelled / registered bidders for the subject matter of procurement with the procuring entity or with any other procuring entity where procuring entity uses the list of registered bidders of other procuring entity in terms of **sub-section (5) of section 19 of the Act** or through other reliable sources.

(d) The firm shall be asked to accept a "fall clause" undertaking that, in case it supplies or quotes a lower rate to other governments, public sector or private organisations, it shall reimburse the excess. The procuring entity may engage in negotiations in good faith with the single bidder for obtaining a more advantageous deal.

(e) Efforts shall be continued to break the monopoly by modifying requirements/ specifications/ terms and conditions to enable more bidders to participate. An advertised campaign to invite appropriate bidders to register for the requirement may also be considered.

(f) An Annual report of all procurements on Single Source basis shall be submitted to the Administrative Department/ Ministry.

(g) Except the provisions in these rules, relating to pre-qualification proceedings, publication of Notice Inviting Bids in news papers, price and sale of bidding documents, pre-

bid clarifications, exclusion of bids, comparison of rates of firms outside with those in Assam, all other provisions relating to the procedure for open competitive bidding shall mutatis mutandis apply in case of single source procurement.

(3) Notwithstanding anything contained in sub-rule (2), in the emergent situation arising out of floods and other natural calamities or internal security, the subject matter of procurement may be procured up to the ceiling rates. The committee consisting of the following, shall decide the ceiling rates for subject matter of procurement on the basis of rates received during the last six months or the prevailing market rates analysis, namely:-

- (a) Deputy Commissioner - Chairman
- (b) District level officer of the concerned department - Member Secretary
- (c) FAO / Treasury Officer in absence of FAO- Member

The Chairperson may also nominate an official or person having special expertise or technical knowledge relating to the subject matter of the procurement as a member of the Committee

Rule 26. Two Stage Bidding

The procedure for two stage bidding specified in **section 32 of the Act** shall be as under:-

(a) In the first stage of the bidding process, the procuring entity shall invite proposals containing the technical aspects, design and required outcomes of the subject matter of the procurement as well as the professional and technical competencies or qualifications of bidders relevant to the subject matter of procurement and the contractual terms and conditions of the proposed procurement – without asking for bid prices

(b) The bid document for the first stage may include a brief description of objectives and broad scope of the requirement; Instructions to Bidders including eligibility criteria. A preliminary qualification criteria for Past Experience, Technical capabilities, Financial Strength may also be specified, which shall be used for shortlisting prospective bidders. Each parameter may be assigned marks and relative weightages. Alternatively, instead of scoring and weightages, the Bid document may specify a 'fail-pass criteria' with the minimum qualifying requirement for each of the criteria, such as minimum years of experience, minimum number of assignments executed and minimum turnover.

(c) All first stage bids, which are otherwise eligible, shall be evaluated for shortlisting, inter-alia, based on their past experience of performance in a similar context, financial strength and technical capabilities, among others. Each bidder shall be assigned scores based on the sum of marks obtained for each parameter multiplied by the weightages assigned to that parameter. All bidders who secure the minimum required marks shall be shortlisted (specified in the bid document) Alternatively under 'fail-pass' criteria, all bidders who meet the minimum requirement, as specified, shall be shortlisted. The short list

shall normally comprise at least four firms.

(d) The committee may hold discussions with the bidders and if any such discussion is held, equal opportunity shall be given to all bidders to participate in the discussions. During these discussions the procuring entity may also involve those other stakeholders who could add value to the decision making on the various technical aspects and evaluation criteria. Based on the discussions/ presentations so held, one or more acceptable technical solutions could be decided upon laying down detailed technical specifications for each acceptable technical solution, quality benchmarks, warranty requirements, delivery milestones, qualification criteria etc., in a manner that is consistent with the objectives of the transparent procurement. At the same time care shall be taken to make the specifications generic in nature so as to provide equitable opportunities to the prospective bidders. Proper record of discussions/ presentations and the process of decision making shall be kept;

(e) In revising the technical design, stipulations, relevant terms and conditions of the procurement, the procuring entity shall not modify the fundamental nature of the procurement itself, but may add, amend or delete any specification of the subject matter of procurement or criterion for evaluation;

(e) Notwithstanding anything contained in **sections 29 and 30 of the Act**, in the second stage of the bidding process, the procuring entity shall invite bids from all those bidders whose bids at the first stage were not rejected, to present final bid with bid prices and detailed technical bid in response to a revised set of terms and conditions of the procurement;

(f) If the procuring entity is of the view after the first stage, that there is likelihood of further participation by many more bidders and to avoid getting trapped into a legacy technology, the second stage bidding may not be restricted only to the shortlisted bidders of first stage and it may be so declared in the first stage bid document ab-initio. Thereafter in the second stage, normal Open Competitive Bidding may be done. Such variant of Two-stage bidding is called 'Non-committal' Two Stage Bidding.

(g) Any bidder, invited to bid but not in a position to supply the subject matter of procurement due to changes in the specifications, may withdraw (giving justification) from the bidding proceedings without liability of forfeiting bid security.

(h) Except as otherwise provided in this rule all other provisions relating to procedure for Open Competitive bidding shall, mutatis mutandis, apply.

Rule 27. Procedure of Electronic Reverse Auction

(1) The procuring entity shall solicit bids by causing an invitation to the electronic

reverse auction to be published in accordance with as prescribed in the case of Open Competitive Bidding or, if limited bid participation is duly decided recording reasons, in accordance with the procedure prescribed for Limited Bidding **rule 24**. The bid invitation shall include inter-alia -

- (i) the criteria and procedures to be used for ascertaining the qualifications of bidders ,specifying the nature and type of the supporting documentary evidence or other information thereof that must be furnished by bidders;
- (ii) the manner in which the bid price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the subject matter of the procurement, such as any applicable transportation, insurance charges, customs duties, taxes, etc.;
- (iii) the criteria and procedure for evaluating bids, including any mathematical formula that shall be used in the evaluation procedure during the auction. The electronic reverse auction shall be based on,-
 - a) either on price, where the procurement contract is to be awarded to the lowest-priced bid; or
 - b) Or alternatively on price and other criteria specified to the bidders as applicable, where the procurement contract is to be awarded to the most advantageous bid.
- (iv) the deadline by which the bidders must register for the auction and the requirements for registration and the minimum number of bidders required to register for the auction. If the number of bidders registered for the electronic reverse auction is less than the specified minimum, the cancellation of the auction shall be communicated promptly to each registered bidder.
- (v) the date and time of the opening of the auction and the requirements for identification of bidders at the opening of the auction and the criteria governing the closing of the auction. The period of time between the issuance of the invitation to the electronic reverse auction shall be fixed taking into account the reasonable needs of the procuring entity but shall not be less than seven working days to enable the bidders to prepare for the auction.
- (vi) Provisions for verification of any formalities including, where applicable, ascertainment of qualifications or responsiveness before execution of a written procurement contract after the fulfilment of which alone, the contract shall come into force; and
- (vii) any other requirement, which is considered by the procuring entity essential for the purpose.

(2) The procuring entity may decide, in the light of the circumstances of the given procurement, that the electronic reverse auction shall be preceded by an examination or

evaluation of pre-qualifications of the bidders, which shall be conducted like e-procurement pre-qualification mode in Open Competitive.

(3) Procedure during the auction:-

- (i) all bidders shall have an equal and continuous opportunity to present their bids;
- (ii) there shall be automatic evaluation of all bids in accordance with the criteria, procedure and formula provided to the bidders;
- (iii) every bidder must receive sufficient information, instantaneously and on a continuous basis, during the auction for assessing the standing of their individual in the auction as it proceeds; and
- (iv) there shall be no communication between the procuring entity and the bidders or among the bidders, other than as provided for in clauses (i) and (iii) above.
- (v) The procuring entity shall not disclose the identity of any bidder during the auction.
- (vi) The auction shall be closed in accordance with the criteria specified in the bid documents.
- (vii) The procuring entity shall suspend or cancel the auction in the case of failures in its communication system that put at risk the proper conduct of the auction. The procuring entity may also cancel the procurement process under the provisions of section 26 of the Act.

(4) Procedure after the electronic reverse auction.-

- (i) At the closure of the electronic reverse auction the lowest priced bid or the most advantageous bid, as the case may be, shall be declared as the successful bid.
- (ii) In procurement by means of an auction that was not preceded by examination or evaluation of initial bids, the procuring entity shall ascertain after the auction the responsiveness of the successful bid and the qualifications of the bidder submitting it. The procuring entity shall reject that bid if it is found to be unresponsive or if the bidder submitting it is found unqualified. Without prejudice to the right of the procuring entity to cancel the procurement, the procuring entity may, in such a case select the bid that was the next lowest-priced or next most advantageous bid at the closure of the auction, if the bid is ascertained to be responsive and the bidder submitting it is ascertained to be qualified.

(5) Other provisions for electronic reverse auction.-Except as otherwise provided in this rule, the provisions relating to e-procurement mode in Open Competitive Bidding shall, mutatis mutandis, apply to electronic reverse auction.

Rule 28. Request for Quotations

- (1) A procuring entity may adopt the method of request for quotations for procurement

if the value of procurement is below the thresholds laid down by the Government for this purpose, or below Rs 25 thousand, if no such thresholds are laid down.

Provided that the State Government in the Finance Department may, by general Notification, lay down annual ceiling for each procurement unit for such type of procurements.

(2) The procedure for request for quotations shall be as under:-

- (a) The competent officer of the procuring entity can initiate and complete this purchase after diligent enquiries from the market and filling the certificate prescribed. Such powers to a limited extent can also be given to various field offices for operational needs.

“Certified that I, (names of officer) ,am individually satisfied that the subject matter recommended for procurement is of the requisite specifications and quality, priced at the prevailing dealer / wholesale-market rate and the supplier recommended is reliable and competent to supply/provide the subject matter in question.”

(strike out what is not applicable) (signatures)

- (b) Normally an imprest amount (with facilities for cheque payments) sufficient for two months' estimated procurements can be sanctioned for such officers to handle such procurements. The imprest amount can be recouped on monthly basis by submission of expense vouchers.
- (c) In a summary form, records shall be kept of the vendors/ contractors approached and prices indicated by them.
- (d) Selection of seller by diligent market enquiry is of essence of this mode of procurement. In larger cities, the presence of reputed Shopping Malls may also be included in the market survey. Reputed internet shopping portals may also be explored. Quotations shall be requested from as many potential bidders as practicable, subject to a minimum of three;
- (e) each bidder from whom a quotation is requested shall be informed whether any elements other than the charges for the subject matter of the procurement itself, such as any applicable transportation, insurance charges, customs duties, taxes, etc. are to be included in the price.
- (f) each bidder shall be permitted to give only one quotation.
- (g) the successful quotation shall be the lowest priced quotation meeting the needs of the procuring entity as set out in the request for quotations.

- (h) For the sake of transparency, payments shall be made by cheque or through Electronic Clearance Service except that cash payment may be allowed up to **Rs. 5,000 (Rupees Five thousand)**
- (i) Supervising officers shall carry out periodic review of such procurements to ensure that the demand is not split into small quantities for the sole purpose of avoiding the necessity of getting an approval from the higher authority required for sanctioning the purchase of the original demand or for avoiding Limited Source or Open Competitive bidding mode of procurement. An annual review of such procurements shall be carried out to ensure that future anticipated requirements are clubbed and procured through Limited Source or Open Competitive Bidding or through Rate Contracts.
- (j) Supervising Officers shall cross check a percentage of cases in the market for prices, fake vouchers, and so on. They shall also check that the same vendor(s) is not being patronised repeatedly.
- (k) Officials involved with such procurements shall not continue in the same role for long and shall be rotated frequently.

Rule 29. Spot Purchase

(1) A procuring entity may adopt the method of spot purchase for procurement for the value of procurement between the thresholds laid down by the Government for this purpose, or between **Rupees 25 thousand and Rupees 2.5 Lakhs**, if no such thresholds are laid down.

Provided that the State Government in the Finance Department may, by general Notification, lay down annual ceiling for each procurement unit for such type of procurements.

(2) A procuring entity shall procure a subject matter of procurement on the recommendation of the Spot Purchase Committee (including a representative of Finance) constituted by the Head of Department.

(3) In case of emergency procurement, facility of withdrawing requisite advance cash amount and its subsequent accountal may also be considered.

(4) The committee shall survey the market to ascertain the specifications, quality and reasonableness of rate, identify the appropriate supplier of the subject matter thereof and shall record the following certificate. In larger cities, the presence of reputed Shopping Malls may also be included in the market survey. Reputed internet shopping portals may also be explored. In a summary form, records shall be kept of the vendors/ contractors approached and prices indicated by them.

“Certified that we, (1)(2)(3)(names of members) , members of the Spot Purchase Committee are jointly and individually satisfied that the subject matter recommended for procurement is of the requisite specifications and quality, priced at

the prevailing dealer / wholesale-market rate and the supplier recommended is reliable and competent to supply/provide the subject matter in question.”

(strike out what is not applicable) (signatures)

(5) Supervisory checks and balances as per Rule 28 (i), (j) and (k) above may be carried out in this mode of procurement also.

Rule 30. Competitive Negotiations

(1) Subject to the satisfaction of the conditions laid down in **section 35 A of the Act** a procurement entity may procure the subject matter of procurement by Competitive negotiations in accordance with the procedure as prescribed herein after recording the reasons in writing.

(a) All procurement by the method of Competitive negotiations shall be made through the Purchase Committee for Competitive negotiations duly notified under rule 3.

(b) to ensure effective competition, an adequate number, not being less than three, of potential bidders selected in transparent and non-discriminatory manner shall be included in procurement process;

(c) equal opportunity shall be given to all bidders to participate in the negotiations. Any requirements, guidelines, documents, clarifications or other information related to the negotiations that is communicated by the procuring entity to a bidder before or during the negotiations shall be communicated, subject to **section 49**, at the same time and on an equal basis to all other bidders engaging in negotiations with the procuring entity related to the procurement, unless such information is specific or exclusive to that bidder;

(d) after completion of negotiations, the procuring entity shall request all bidders remaining in the proceedings to submit, by a specified time and date, their best and final offer with respect to all aspects of their proposals;

(e) the Purchase Committee shall keep record of all the bids received and prepare a comparative statement of the final bids received for submitting to the to the procuring entity with its recommendation specifying the lowest or most advantageous rate and the successful bidder for the procurement.

(f) Along with its recommendations as in clause (e) ,the Purchase Committee shall give the following certificate :-

“Certified that we, -(1) -----(2) -----(3) -----(names of members) , members of the Purchase Committee for Competitive negotiations are jointly and individually satisfied that the subject matter of procurement recommended is of the requisite specifications and quality, priced at the prevailing dealer/wholesale market rate and the supplier recommended is reliable and competent to supply the subject matter of procurement.”

(strike out what is not applicable) signatures

(g) no negotiations shall take place between the procuring entity and bidders with respect to their best and final offers

(h) the procuring entity shall ensure that the successful offer is the lowest or most advantageous offer; and

(i) nothing contained in sections 5 to 10 (both inclusive) , sections 12 to 27 (both inclusive) and Chapter III of the Act shall apply to purchases made by competitive negotiations.

Rule 31. Rate Contracts

(1) With reference to the conditions included in sub-section (1) of section 36 of the Act for adopting the method of rate contract, it may be noted that rate contract may now be adopted for only for items which are not available on Government E-Market (GeM), and are identified as common use items and are needed on recurring basis by various Procuring Entities.

(2) The State Government may nominate an agency as Central Procurement Organisation (CPO) to enter into Rate contracts for use by Procuring Entities in the State.

(i) RCs may be avoided for critical/ strategic and vital requirements. For seasonal and short-supply items (e.g. Cement) procuring entity may monitor to prevent dumping in off-season and starving of supplies during season.

(ii) In Technologically fast changing products (like PCs/ Laptops), CPO may keep watch on the market prices and renegotiate prices as soon as market prices fall significantly due to new arrivals.

(iii) The descriptions, specifications and other salient details of all RC appropriately updated, shall be available on the State Public Procurement Portal and website of CPO. The e-procurement system shall be able to offer alerts about availability of RC, if an attempt is made to float a tender for the same item. To derive benefit from bulk prices in RC, all offices shall furnish to the CPO, their annual requirement of items to enable finalising of RCs after inviting quotations. CPO may also extract such information from e-procurement portals.

(3) In the first stage single part or two part bids shall be invited in accordance with the provisions of section 13 of the Act. Following conditions shall be provisioned in the Bid Documents:

(i) In case items are not covered in such RCs or if it is decided by the Procuring Entity to conclude their own RC, it may award a rate contract by the method of open competitive bidding as per the delegation of powers based on the estimated value of the annual off take. If it is not possible to adopt the method of open competitive bidding, the procuring entity after recording reasons may adopt another method of

procurement. An approximate quantity of requirement during the period shall be indicated in the Notice Inviting Bids, but no minimum quantity is guaranteed.

- (ii) The period of rate contract shall be generally one year, preferably a financial year to match with budget provisions and levy of taxes. It may be a shorter period, if variations in market prices are expected to be significant. It may also be a longer period up to maximum two years, if the variations in market prices are not expected to be significant. The reasons for selecting the period for rate contract shall be recorded.
- (iii) The terms and conditions of the rate contract including provision for liquidated damages shall be similar to those prescribed for procurement by open competitive bidding.
- (iv) The Rate Contract is in the nature of a standing offer from the supplier firm. The firm and/ or the purchaser are entitled to withdraw/ cancel the Rate Contract by serving an appropriate notice on each other giving **15 (fifteen) days time**.
- (v) The procuring entity shall also reserve its right to renegotiate the price with the rate contract holders during the validity of the Rate Contract.
- (vi) The procuring entity shall reserve its right to conclude one or more than one rate contract for the same item. For the sake of transparency and to avoid any criticism, all such parallel rate contracts are to be issued simultaneously. In case of emergency, the purchaser may purchase the same item through ad hoc contract with a new supplier.
- (vii) A rate contract shall be entered, for price without a commitment for quantity, place and time of supply of subject matter of procurement, with the bidder of lowest priced bid or most advantageous bid and fulfil the laid down eligibility and qualification criteria including past performance against such Rate Contracts, availability of ISI mark, service centres across the State etc.
- (viii) For finalising RCs for Automobiles, Machine Tools, Information Technology Products, OEM & Ancillary Spares and similar other such products where the design feature, performance parameters etc. of such products/ goods or services differ significantly among the products of different manufacturers and even between different models of the same manufacturer and where equitable comparison of prices of such products or services is not feasible. Such Rate Contracts are to be concluded on offered percentage of discount on Net Dealer Price (NDP) or MRP basis, generally known as Catalogue basis.
- (ix) Price Negotiation/ Counter-Offer- Price Negotiation with the tenderers shall be severely discouraged. However, in case the price quoted by the lowest responsive tenderer is not reasonable and un-acceptable, the price may be negotiated with

lowest responsive only and, if it reduces the price to the desired level, rate contract may be concluded with him.

- (x) There may be a situation, where parallel rate contracts are needed, though the price of lowest responsive bidder is reasonable. To start with, the rate contract may be awarded to lowest responsive tenderer. Then the price of lowest bidder is to be counter offered to the higher quoting responsive tenderers under intimation to lowest bidder asking him if he so desires to reduce its price and send its revised tender accordingly in sealed covers/ through fax or email or online on e-bidding platform to be opened in public at a specified place, date and time (as per the standard procedure). The tenderers, who accept the counter offered rate or rate lower than that, are to be awarded parallel rate contracts. If lowest bidder also lowers its rate in its revised offer, same may also be accepted with effect from that date and its rate contract amended accordingly.
- (xi) There may also be a situation where parallel rate contracts are necessary, but even the price of the lowest responsive tenderer is not reasonable. In that case, price negotiation may be conducted with him in the first instance. If he agrees to bring down the price to the desired level, rate contract may be concluded with it and that price counter offered to other responsive tenderers for further action in identical manner as indicated in the above sub-para. If, however, lowest bidder does not agree to reduce its price in the first instance itself, then the price, which has been decided as reasonable may be counter offered to all the higher quoting responsive tenderers (including lowest bidder) for further action on above lines.
- (xii) In respect of items where single bid has been received, the same may be re-tendered, i.e. if consequent to invitation of tender/ bid only one bid/ tender is received or consequent to technical evaluation if only one bid/ tender is found eligible, such bid/ tender shall be termed as single bid in respect of that item.
- (xiii) The prices under a rate contract shall be subject to price fall clause. A clause regarding price fall shall be incorporated in the terms and conditions of rate contract. Price fall clause is a price safety mechanism in rate contracts and it provides that if the rate contract holder quotes / reduces its price to render similar goods, works or services at a price lower than the rate contract price to anyone in the State at any time during the currency of the rate contract, the rate contract price shall be automatically reduced with effect from the date of reducing or quoting lower price, for all delivery of the subject matter of procurement under that rate contract and the rate contract shall be amended accordingly. The firms holding parallel rate contracts shall also be given opportunity to reduce their price by notifying them the reduced price giving them fifteen days time to intimate their acceptance to the revised price.

Similarly, if a parallel rate contract holding firm reduces its price during currency of the rate contract, its reduced price shall be conveyed to other parallel rate contract holding firms and the original rate contract holding firm for corresponding reduction in their prices. If any rate contract holding firm does not agree to the reduced price, further transaction with it, shall not be conducted.

(xiv) It shall be ensured that new rate contracts become operative right after the expiry of the existing rate contracts without any gap. In case it is not possible to conclude the new rate contracts due to unavoidable reasons, the existing rate contracts may be extended on same price, terms and conditions for a period not exceeding 3 months. In such cases it shall be ensured that market prices have not fallen down during the period for the subject matter of procurement or its constituents, to be procured under the rate contract.

(xv) Except as otherwise provided in this rule all other provisions of Chapter V and VI below shall, mutatis mutandis, apply.

(3) In the second stage supply or work order shall be placed at the contracted price for supply or execution of the required quantity of the subject matter of procurement mentioning the place of supply or execution, delivery schedule, etc., as and when needed. The Procuring Entities in the State shall utilise such rate contracts to the maximum extent possible. However, direct procurement through other modes of procurement of items on RC may be allowed for **small requirements up to Rupees one Lakh in each instance, subject to an upper limit of Rupees Five Lakh for each item** in a year per Head of Office.

(i) For utilising such RCs, Procuring Entity may approach Central Purchase Organization's (or. DGS&D's) and get its officers listed as Direct Demanding Officers (DDOs) and follow their guidelines for placement of Orders against the RCs. Before creating the supply order, approval of the CA (depending on the value of procurement) may be taken on file, by submitting information about all the available RCs and justifying the selection of a particular RC holder.

(ii) Responsibility for reasonableness of rates lies with the Central Purchase Organization's (or. DGS&D's). All parallel RCs for an item, even at differential rates, are considered to be at reasonable rates and the Procuring Entity is free to select any one of the RC holder. However Procuring entity must put in place adequate guidelines to handle RC procurements, including a transparent system of choosing the RC holders by rotation in a transparent manner in case of parallel RCs. A suggest basis for such selection of RC holder from among the parallel RCs is given below:

- a) The Rate Contract Price;
 - b) The past performance of firm with reference to their capacity, quality of supplies as well as timely delivery of the goods;
 - c) The delivery date committed by the firm with respect to the delivery requirement of the Procuring Entity;
 - d) The proximity of the rate contract holder wherever the proximity is considered crucial for timely delivery, ease of progressing and from the point of view of logistics and contract management etc.; and
 - e) The need for reputed brands in the case of sensitive, critical and selective applications.
 - f) In case of number of firms meeting such criteria, orders may be split or rotated in a transparent manner.
- (iii) Since RCs are prone to intensive lobbying by RC holders, the quantity being ordered on RC shall be subject to the same level of scrutiny as in other modes of procurement to ensure that there is no abnormal unexplainable trend in procurement.
- (iv) In case a Procuring Entity directly (not under the rate contract) procures Central Purchase Organization's (or. DGS&D's) rate contracted goods from Rate Contract holders, the prices to be paid for such goods shall not exceed those stipulated in the rate contract and the other salient terms and conditions of the purchase shall be in line with those specified in the rate contract. The Procuring Entity shall make its own arrangement for inspection and testing of such goods where required.

Rule 32. Swiss Challenge Method of Procurement

- (1) The Swiss Challenge Method is a method in which an unsolicited proposal for a government project is received and allows third party to challenge the original proposal through open bidding, and then lets the original proponent counter-match the most advantageous / most competitive offer.
- (2) Eligible sectors under Swiss Challenge Method.- In following sectors Swiss Challenge Method of procurement may be adopted, namely:-
- (i) Agriculture, Horticulture, allied sector & post-harvest management Agri-infrastructure [Agriculture and horticulture Markets; Floriculture parks and markets; Agro-food processing and allied infrastructure (including common-user cold storage facilities)];
 - (ii) Transportation & Logistics [Roads (including bridges, highways, interchanges, and flyovers), Public Transport, Railway systems, Urban transport systems: MRTS, LRTS, Monorail, High-capacity bus systems, Airstrips, Inland water transport, Bus/Truck/Urban Transport Terminals and associated public facilities such as Public Amenities Centres];

- (iii) Warehousing infrastructure (including container freight stations, container depots, cold storage facilities and tank farms);
- (iv) Mechanized and Multi-storey Parking facilities;
- (v) Urban and Municipal Infrastructure (Sanitation, Water Supply and Sewerage; Desalination; Underground drainage; Solid waste/ Bio-medical waste/ Hazardous waste: Collection, transportation, treatment and disposal facilities);
- (vi) Education including Technical Education (Skill development etc.);
- (vii) Gas distribution network;
- (viii) Medical and Health Sector;
- (ix) Housing Sector & Environment;
- (x) Information Technology;
- (xi) Water Body Eco-system Management;
- (xii) Industrial infrastructure;
- (xiii) Irrigation Sector;
- (xiv) Land Reclamation;
- (xv) New & Renewable Energy (solar, wind, hydel etc.);
- (xvi) Power sector;
- (xvii) Public Buildings, Markets, gardens, parks;
- (xviii) Sports and Recreation infrastructure;
- (xix) Trade Fair, Convention, Exhibition and Cultural Centres;
- (xx) Tourism Sector;
- (xxi) Water Supply Project;
- (xxii) Up-gradation and restructuring of any of the projects in above sectors;
- (xxiii) Any project in public-private partnership that the State Government may find beneficial;
- (xxiv) Any proposal for the partial or complete disinvestment of a state public sector undertaking;
- (xxv) Any other project, which is a combination of above mentioned sectors; and
- (xxvi) On recommendations, with appropriate justifications, of the Administrative Department for inclusion of any new sector, SLEC may recommend for inclusion of the same to the State Government. Any new sector can be added to the list of "eligible sectors" of these rules, only after the consent of the Finance Department of State Government on the recommendations of the SLEC.

(3) Projects, which shall not be acceptable under Swiss Challenge Method: The following proposals shall not be acceptable under Swiss Challenge Method, namely:-

- (i) Proposals which contravene the provisions of any law that is in force;
- (ii) Proposals/ projects which shall result in monopolistic situation;
- (iii) Projects which are less than **Rs. 50.00 Crores (Rs. Fifty Crores)** in value.

- (iv) Proposals / projects that fall outside the sectors and below the financial limits as prescribed in these rules.
- (v) Proposals of PPP Projects involving financial assistance from State Government by way of viability gap funding (VGF) more than 20% of the total project cost, excluding the cost of land.

(4) Procedure-

- (a) The Project Proponent or his authorized representative shall submit an application along with certificate in Form No. 2 and details of proposal in Form No. 3 to the Administrative Department. If Pre-Feasibility Report or detailed project report is available then same shall also be submitted with application. The contents of Pre-Feasibility Report shall be as specified in Form No. 4 and the contents of detailed project report shall be as specified in Form No. 5.
- (b) The Administrative Department shall scrutinize the proposal as to whether it falls into the purview of the department's development plans and whether "Public Need" is established and the proposal prima facie addresses the public need and requirement.
- (c) If the Administrative Department finds that the proposal received under Swiss Challenge Method has no uniqueness and is similar to the procurement of goods/works/services, that is already being done under conventional method, then the Administrative Department shall be under an obligation to reject such a proposal, but in case, if the Administrative Department considers that a proposal received is appropriate to be taken under Swiss Challenge Method, despite its being similar to the procurement being done under conventional methods, then it shall record reasons in writing for accepting it under Swiss Challenge Method.
- (d) The Administrative Department shall examine and offer its comments regarding the proposal submitted by Project Proponent. After examination if the Administrative Department is satisfied that the conditions specified in **sub-rule (2) above**, are fulfilled, it shall submit its recommendations to the State Level Empowered Committee (SLEC) through Planning Department of the State Government, for according the 'permission to proceed'.
- (e) The Planning Department shall arrange and coordinate the meetings of the SLEC. The SLEC, after necessary examination, may accord the permission to proceed with or without modifications. The permission to proceed shall be conveyed by the Principal Secretary/Secretary, Planning Department to the Administrative Department concerned. On receipt of the permission to proceed, the same shall be exhibit by the Administrative Department on State Public Procurement Portal.
- (f) After obtaining permission to proceed from SLEC, a letter shall be issued by the Administrative Department to the Project Proponent allowing a period of three

months, for undertaking detailed studies including preparation of Detailed Project Report required for bidding and submit the detailed and comprehensive proposal to Administrative Department. In case, the Project Proponent fails to submit detailed and comprehensive proposal within a period of three months and submits written request to the Administrative Department, the Administrative Department may in appropriate case, after recoding reasons in writing extend the period specified above.

(g) If the Project Proponent fails to submit the detailed and comprehensive proposal within a specified period or extended period, as the case may be, the Administrative Department may at its discretion exercise the option to develop the project on its own or through its agencies or through any third party, without the Project Proponent having any claims, and if the Administrative Department exercises the option in the manner as specified above, it shall be exhibit by the Administrative Department on State Public Procurement Portal.

(5) Preparation and submission of detailed and comprehensive proposal -

(a) The Project Proponent shall submit a detailed and comprehensive proposal in Form No. 6 along with detailed project report in hard copy and soft copy, Earnest Security equal to 0.05% of the total estimated cost of the Project, Bid Value/Financial Proposal-IRR etc. (with details and supporting documents, wherever necessary), project financial summary in Form No. 7 and check list for submission of documents in Form No. 8 within a period specified in sub rule (4) above to the Administrative Department in hard copy and soft copy.

(b) It shall be ensured by the Project Proponent that all financial reports and/or the documents having financial details must be duly verified from a competent Chartered Accountant.

(c) The Administrative Department may carry out additional studies for independently determining the project cost, project revenues, viability and risk analysis etc. to ensure proper benchmarking.

(d) The Project Proponent shall submit the detailed and comprehensive proposal in two covers. The first cover shall include the detailed project report, the survey data, specifications (input/output), as well as designs of the project, total estimated cost of the project on the basis of detailed project report, cost of preparation of detailed project report, along with the Earnest Security. The detailed project report shall include the details as specified in Form No. 5. The first cover shall be opened by the Administrative Department, or by a Committee constituted by the Administrative Department for this purpose. The Bid Value, in such form, as may be required by the Administrative Department, shall be submitted in a separate cover, duly sealed by the project proponent, which shall be opened by the Administrative Department, or by a

Committee constituted by the Administrative Department for this purpose, only at the time of opening of the financial bids received from other bidders through open competitive bidding process.

(6) Earnest Security.-

- (a) The Project Proponent shall furnish interest-free Earnest Security, as a token of sincerity and good faith, amounting to 0.05% of the total estimated cost of the project through demand draft or bank guarantee or any acceptable instrument, acceptable to the Administrative Department concerned, with a validity period of not less than 180 days commencing from the date of submission of detailed and comprehensive proposal (including claim period of 60 days), to be extended as may be mutually agreed, from time to time. The Bid shall be summarily rejected if the detailed and comprehensive proposal is not accompanied by the Earnest Security.
- (b) The Project Proponent shall also submit the requisite Bid Security as specified in the Bid Document, in case the bidding process is initiated under the proposed project by the Administrative Department concerned. The Bid Security shall be calculated on the basis of the total estimated cost of the Project as per the detailed project report. The Project Proponent shall be required to furnish the Bid Security as specified in the Bid document by the last date and time fixed for submission of bids under the bidding process initiated for the proposed project. The Earnest Security furnished by the Project Proponent earlier shall be adjusted against the Bid Security. If Project Proponent fails to furnish Bid Security of required amount within the time specified in Bid Document, his Earnest Security shall be forfeited and he shall have no right as the Project Proponent.

(7) Detailed Project Report (DPR) preparation cost.

- (a) The direct cost of preparing the DPR shall be mentioned by the Project Proponent in detailed and comprehensive proposal. The DPR preparation cost shall include external payout, internal cost, out-of pocket expenses and taxes, all accompanied by original receipts.
- (b) The Administrative Department or a Committee, constituted by the Administrative Department for this purpose, shall negotiate the cost of preparation of the detailed project report with the Project Proponent and ensure that such assessment of the detailed project report preparation cost shall be reasonable and justifiable. The reimbursement of detailed project report preparation cost to the project proponent shall be 0.1% of the final bid value or of the approved negotiated cost of preparation of detailed project report, whichever is lower.
- (c) The cost of preparation of DPR, as determined under sub-rule (2) above, may be reimbursed to the Project Proponent only in the case of final selection of successful

bidder, if it is other than the Project Proponent, and only after the Procuring Entity has entered into agreement with such successful bidder. The cost of preparation of the DPR, payable to the Project Proponent, shall be recovered from the successful bidder as specified in the bid document:

Provided that the Project Proponent shall not be entitled for the cost of preparation of DPR if he fails to furnish Bid Security as specified in sub-rule (7) (b).

- (d) In case, for any reason whatsoever, the project is not taken up by the Administrative Department, the cost of preparation of DPR shall not be reimbursed to the Proposal Proponent.

(8) Clarifications regarding Detailed Project Report (DPR): No changes shall be permitted in the DPR once the Project Proponent has submitted the DPR to the Administrative Department concerned. However, the Administrative Department may seek clarifications with respect to the DPR from the Project Proponent and these clarifications shall be attached as an addendum to the DPR.

(9) Bid Parameters and Bid Value -

- (a) The Project Proponent shall submit the detailed and comprehensive proposal along with the bid parameters and Bid Value. The decision on the bid parameters shall be taken by the Administrative Department concerned and the Administrative Department shall have the authority to make changes to the project proposal as per the needs, requirements and development plans of the Administrative Department, without changing the basic theme and fundamental structure of the project proposal. Any such change in the bid parameters shall be intimated to the Project Proponent if required, the Administrative Department may provide an additional time of fifteen days to the Project Proponent for submitting the final bid value.
- (b) If the additional time is allowed under sub-rule (a), the Project Proponent shall submit the final bid value in such form as may be required by the Administrative Department. After submission of final bid value by the project proponent, the original bid value submitted by the project proponent shall become inoperative. The final bid value shall be submitted in a separate cover, duly sealed by the project proponent, which shall be opened only at the time of opening of the financial bids received from bidders through open competitive bidding process. In case, the Project Proponent desires to give additional information, he may enclose such information separately. After submission of the final bid value by the project proponent, the Administrative Department shall submit the proposal, with appropriate recommendation, to the State Level Empowered Committee.

(10) Competent Authority for approval of Projects under SCM and Procedure to be followed thereof

(a) After examination of the detailed and comprehensive proposal, the Administrative Department shall submit detailed and comprehensive proposal along with its recommendation to SLEC for consideration. The Administrative Department shall also indicate the budgetary provisions for the project proposal.

(b) On receipt of recommendation of the Administrative Department, the SLEC shall examine, consider and grant approvals on merits.

(11) Bidding Process -

(a) The DPR (except for proprietary technology details) shall be shared with prospective bidders so as to ensure fair competition and for providing an opportunity for a competitive bidding process. The open competitive bidding process, as provided in Chapter-V of these rules, shall be initiated by the Administrative Department concerned after approval of the project proposal from SLEC.

(b) The bidding document, among other essential clauses, shall incorporate details about the necessary clearances/approvals to be taken from respective authorities and who, i.e. the Administrative Department or the successful Bidder/ Project Proponent, shall be responsible for taking it, keeping in view the nature and requirements of individual project. The bidding document shall clearly incorporate that the open bidding process is being taken up under Swill Challenge Method of procurement.

(c) After examination of the bids, if the proposal of the Project Proponent is found to be lowest or most advantageous, as the case may be, in accordance with the evaluation criteria as specified in bidding document, then the Project Proponent shall be selected and awarded the project. In case bid of other bidder is found lowest or most advantageous, as the case may be, the Project Proponent shall be given an opportunity to match the lowest or most advantageous bid within a period as specified. If the Project Proponent agrees to match the lowest or most advantageous bid, within the time period specified, the Project Proponent shall be selected and awarded the project. In case the Project Proponent fails to match the lowest or most advantageous bid, within the period specified, the bidder who has submitted lowest or most advantageous bid, as the case may be, shall be selected and awarded the project;

Provided that, if through the open bidding process, bid of other bidder is found lowest or most advantageous, as the case may be, the project proponent shall be given an opportunity to match such lowest or most advantageous bid, only if the final bid value offered by the project proponent is within 15% of such lowest or most advantageous bid, as the case may be.

(11).Transaction Advisor -

(a) The Administrative Department concerned may appoint a Transaction Advisor for the project or entrust the responsibility on officer of the Department. The Transaction Advisor

shall be capable to offer technical, financial and legal advice and assist the Administrative Department concerned in finalization of the successful bidder.

(b) In case, the Administrative Department desires to appoint a Transaction Advisor for a project proposal received under Swiss Challenge Method, it may initiate the process of the appointment of the Transaction Advisor immediately after the permission to proceed is granted by the SLEC in order to save time in the process. It shall be ensured by the Administrative Department that the process of appointment of the Transaction Advisor is completed before submission of DPR by the Project Proponent.

(c) The functions and responsibilities of the Transaction Advisor shall be as under,-

(i) he shall examine the DPR with respect to technology, technical specifications, cost estimates, drawings, Internal Rate of Return (IRR), Net Present Value (NPV), Equity debt ratio, Value for Money analysis, necessary approvals (statutory or otherwise) required for the implementation of the project etc.;

(ii) he, if required by the Administrative Department, shall carry out additional studies for independently determining the project cost, project revenues, viability and risk analysis etc. including Value for Money analysis to ensure proper benchmarking;

(iii) he shall be required to specify broad parameters regarding environment and social safeguards that need to be adhered by the concessionaire during implementation period in the bid document;

(iv) he shall assist the Administrative Department to get necessary approvals from appropriate authorities for the implementation of the project;

(v) he shall develop documents for Request for Qualification (RFQ)/Request for Proposals (RFP) and submit to the Administrative Department concerned for approval. The bidding criteria shall be designed in such a way that maximum competition is ensured;

(vi) he shall develop and present the RFP and the concession agreement to the concerned authorities for approval and after competent approval, the same shall be launched into the market;

(vii) he shall assist the Administrative Department concerned with the Bid process management, including Request for Proposal (RFP) launch, formulation of responses to bidder queries, bid evaluation and recommendations as per the criteria mentioned in the RFP document, recommending a bidder, contract negotiations and bid closure which are required to be undertaken, for bringing the Project to a Technical close;

(viii) he shall submit all the documents for approval to the Administrative Department. He shall not provide any document to the bidder(s) or any other person(s) without explicit consent from the Administrative Department concerned; and

(ix) he shall perform any other functions or responsibilities assigned by the Administrative Department.

(12) Time frame for the total process.- The time frame for procurement through Swiss Challenge Method shall be as under:-

S.No.	Activity	Time Required
1.	Examination of preliminary report and permission to the proponent to proceed for preparation of detailed proposal OR rejection of the proposal, as the case may be, by the Administrative Department.	One Month from the date of receipt of the proposal.
2.	Detailed proposal submission by the proponent	Within three Months or period extended under sub-rule 32(4) (f).
3.	Examination of detailed proposal, preparation of bid documents and approval from competent authority	Forty Five days
4.	Bid invitation and submission of bids	(i) Thirty days from the date of first publication of Notice Inviting Bids;(ii) Where clarifications/ addendum are issued, at least fifteen days from date of issue of clarifications/ addendum; or (iii) In case of International Competitive Bidding, the period of submission of bids shall be forty five days from the date of first publication of Notice Inviting Bids and at least twenty days from the date of issue of clarifications/ addendum.
5.	Bids evaluation	Fifteen Days
6.	Time for project proponent to match the most advantageous bid, if any	Fifteen Days
7.	Letter of Award	Within 7 days of approval of award by the competent authority.
8.	Execution of Contract Agreement	Within fifteen days of issue of letter of award or a period as

		specified in the bidding documents.
--	--	-------------------------------------

Provided that, in appropriate cases, the Administrative Department may relax the above mentioned period.

(13).Eligibility criteria for the Project Proponent -

(a) The legal entity or person, including joint venture or consortium shall be eligible for submitting proposal as Project Proponent, if,-

(i) the person or lead member shall have an average turnover of minimum of 100% project cost in the last three financial years and in case of Joint venture/consortium, an average turnover of minimum of 100% of project cost in last three financial years by lead member and the audited balance sheets of last three financial years shall be submitted;

(ii) the person or lead member, or any other member of the joint venture or consortium, shall have experience in handling at least one project in that Sector in which the proposal is being submitted, costing not less than 100% of total project cost over the last 10 years, in such project(s) where the contract has been awarded and work has been completed. (Work order and completion certificate from the client shall be provided);

(iii) he shall not be blacklisted by Central Government, any State Government or any Government agency. He shall submit an undertaking to the effect that he has not been blacklisted by Central Government, any State Government or any Government agency; and

(iv) he shall necessarily fulfil the prequalification / qualification criteria/ parameters for bidders, as per the bid document issued by the Administrative Department for open bidding process for the project.

(b) In case of consortium, a person authorised through power of attorney executed by all the members in his favour, shall sign the proposal on behalf of all the member of the consortium and such power of attorney shall be submitted along with the proposal.

(c) In case of joint venture or consortium, the Lead Member, and the member of joint venture or consortium, on the basis of whose technical capability, the technical eligibility of joint venture or consortium for the project is decided, shall not be allowed to exit from the joint venture or consortium.

(d) In case of,-

(i) company, certificate of incorporation;

(ii) in case of firm, certificate of registration; and

(iii) in case of partnership firm, partnership deed shall be submitted along with the proposal.

(14).**Power to call off the Project:** The Administrative Department concerned shall have the right to call off the project anytime during the process without assigning any reason to the Project Proponent, but it may call off the project before entering into an agreement with the

Project Proponent or the successful bidder, as the case may be. Once an agreement is entered in to by the Administrative Department concerned, the respective clauses of the duly entered agreement shall apply. If the Administrative Department calls off the project in the manner as specified above, the same shall be exhibit by the Administrative Department on State Public Procurement Portal.

Rule 33. Government e-Marketplace (GeM)

(1) Central Government has authorised DGS&D (or any other agency which may subsequently substitute DGS&D) to host an online Government e-Market Place (GeM) for common use goods and services requirements of Government Procuring Entities, including State Government entities.

- (i) On GeM products or services are offered by a number of sellers. The credentials of suppliers on GeM shall be certified by DGS&D.
- (ii) Procuring entities will be able to view all the products as well as compare them and select the products/ services offered by any one of the participating retailer, based on entity's own criteria. The procuring authorities shall be responsible for ascertaining the reasonability of rates.
- (iii) In general, because GeM aggregates products/ services from a wide array of providers, selection is usually wider, availability is higher, and prices are more competitive. This acts as an incentive for the supplier to quote their best price.
- (iv) Procuring Entity's transactions are processed by the GeM portal and then product/ services are delivered and fulfilled directly by the participating retailers.
- (v) Tools of reverse bidding and e-auction are also available which can be utilised for the procurement of bulk quantities. For the same products, the demand of various Procuring Entities can be clubbed together and reverse auction done on the basis of aggregated demand which will provide the best prices.
- (vi) Detailed instructions for user organization registration, supplier registration, listing of products, terms and conditions, online bidding, reverse auction, demand aggregation, call centre, etc. are available on GeM portal(<https://gem.gov.in/>).
- (vii) Procuring entities in the State shall procure Goods and Services available on GeM mandatorily through GeM.

(2) The GeM portal shall be utilized by the Government buyers for direct on-line purchases as under:-

- (i) Up to a threshold if notified by the Government or otherwise uptoRs.50,000/- (Rupees Fifty thousand) through any of the available suppliers on the GeM, meeting the requisite quality, specification and delivery period;

- (ii) Between thresholds if notified by the Government or otherwise between **Rs.50,000/- (Rupees Fifty thousand) and Rs.30,00,000/- (Rupees thirty lakh)** through the GeM Seller having lowest price amongst the available sellers, of at least three different manufacturers, on GeM, meeting the requisite quality, specification and delivery period. The tools for online bidding and online reverse auction available on GeM can be used by the Buyer if decided by the competent authority.
- (iii) Above a threshold if notified by the Government or otherwise above **Rs.30,00,000/- (Rupees Thirty Lakh)** through the supplier having lowest price meeting the requisite quality, specification and delivery period after mandatorily obtaining bids, using online bidding or reverse auction tool provided on GeM. The invitation for the online e-bidding/ reverse auction will be available to all the existing Sellers or other Sellers registered on the portal and who have offered their goods/ services under the particular product/ service category, as per terms and conditions of GeM.
- (iv) The above mentioned monetary thresholds are applicable only for purchases made through GeM. For purchases, if any, outside GeM, relevant Sections of the Act and Rules shall apply. A demand for goods shall not be divided into small quantities to make piecemeal purchases to avoid procurement through Buying/ bidding/ reverse auction on GeM or the necessity of obtaining the sanction of higher authorities required with reference to the estimated value of the total demand.
- (v) It may be noted that unlike Rate Contracts, the responsibility of reasonableness of rate for procurements from GeM portal does not lie with DGS&D. It is the responsibility of the Procuring Entity to do due diligence for ensuring reasonableness of rates. The Government Buyers may ascertain the reasonableness of prices before placement of order using the Business Analytics (BA) tools available on GeM including the Last Purchase Price on GeM, Department's own Last Purchase Price etc.
- (vi) Payment Procedure in GeM: The consignee is required to issue an online digitally signed consignee receipt and acceptance certificate after receipt of goods within ten days. Thereafter, the payments are to be released maximum within ten days. The timelines after Consignee Receipt and Acceptance Certificate (CRAC) issued online and digitally signed by consignee will be two (2) working days for Buyer, one (1) working day for concerned DDO and two (2) working days for concerned PAO for triggering payment through PFMS/ Government Financial System/ Banks for crediting to the supplier's account.

Any matter needing a resolution will be escalated to the next higher level in each agency (Buyer, DDO and PAO) where the matter shall be resolved within 24 (twenty-four) hours in the entire process, payments shall not exceed ten days including holidays.

CHAPTER V: BID PROCESS MANAGEMENT

Rule 34. Contents of Bidding Documents

(1) All essential information, which a bidder needs for sending responsive bid, shall be clearly spelt out in the bidding document to enable the prospective bidders to formulate and send their competitive bids with confidence. The bidding documents shall include the following, namely:-

(a) instructions for preparing bids;

(b) the criteria and procedures that shall be applied in the ascertainment of the qualifications of bidders;

(c) Limitation or preference for participation by bidders in terms of the government policies;

(d) the requirements as to documentary evidence or other information that must be submitted by bidder in proof of its qualifications;

(e) a detailed description of the subject matter of the procurement, including but not limited to, technical specifications, plans, drawings and designs if relevant, the quantity of the goods, any incidental services to be performed, the location where the goods are to be delivered, the work is to be executed or the services are to be provided and the required time, if any;

(f) the detailed procedure for presentation, opening, examination and evaluation of bids, minimum requirement, if any, with respect to technical, quality and performance characteristics that bids must meet in order to be considered responsive, and the criteria to be used by the procuring entity in evaluation of bids and determining the successful bid, including any provision for preference and any criteria other than price to be used and the relative weight of such criteria;

(f) the terms and conditions of the procurement contract or the rate contract, to the extent they are already known to the procuring entity, and the contract or agreement form, if any, to be signed by the parties;

(g) if alternatives to the characteristics of the goods, works or services, contractual terms and conditions or other requirements set forth in the bidding documents are permitted, a statement to that effect, and a description of the manner in which alternative bids are to be evaluated and compared;

(h) if bidders are permitted to submit bids for only a portion of the goods, works or services to be procured, a description of the portion or portions for which bids may be submitted;

(i) the manner in which the bid price is to be formulated and expressed, including a

statement as to whether the price is to cover elements other than the cost of the goods, works or services themselves, such as any applicable transportation and insurance charges, customs duties and taxes etc.;

(j) any requirements of the procuring entity with respect to the issuer and the nature, form, amount and other terms and conditions of any bid security to be provided by bidder submitting bid, and any such requirements for any security for the performance of the procurement contract or the rate contract to be provided by the bidder that enters into the procurement contract, including securities such as labour and materials bonds;

(k) the manner, place and deadline for the submission of bids;

(l) the means by which, bidders may seek clarifications of the bidding documents and a statement as to whether the procuring entity intends to convene a meeting of bidders;

(m) the period of time during which bids shall remain valid;

(n) the place, time and date for the opening of bids;

(o) references to the Act, these rules and other laws and regulations directly pertinent to the procurement proceedings, provided, however, that the omission of any such reference shall not constitute grounds for appeal or liability on the part of the procuring entity;

(p) the name, designation, address and e-mail address, if any, of one or more officers or employees of the procuring entity, who are authorised to communicate directly with and to receive communications directly from bidders in connection with the procurement proceedings, without the intervention of an intermediary;

(q) any commitments to be made by the bidder outside of the procurement contract, such as commitments relating to the transfer of technology;

(r) reference to the right provided to seek appeal of an unlawful act or decision of, or procedure followed by the procuring entity in relation to the procurement proceedings;

(s) if the procuring entity reserves the right to cancel bid proceedings and reject all bids, a statement to that effect;

(t) any formalities that shall be required once a bid has been accepted for a procurement contract or rate contract to enter into force, including, where applicable, the execution of a written procurement contract and approval by a higher authority or the State Government; and

(u) any other requirements laid down by the procuring entity like detail project report, concession agreement, design, plans, etc. in conformity with the Act and these rules relating to the preparation and submission of bids and to other aspects of the procurement proceedings.

(2) The procuring entity shall provide the bidding documents to each bidder that responds to the invitation to bids in accordance with the procedures and requirements specified therein. If prequalification, empanelment or registration proceedings have been

engaged in, the procuring entity shall provide a set of bidding documents to each bidder that has been pre-qualified and that pays the price, if any, charged for that document.

Rule 35. Standard Bid Documents

(1) That State Government shall from time to time notify Standard Bid Documents for the various procuring entities including Departments, Autonomous Councils, Authorities, Boards, Undertakings, Agencies, Corporations, etc for different types, value ranges and kinds of a procurement for the various procurement methods prescribed in the Act as may be required

(2) Procuring entities shall prepare Bid Documents based on notified Standard Bid Documents for the type, value range and the procurement method relevant for the procurement under consideration. The standard provisions in most sections of the SBD are to be used unaltered. Any modification to suit a unique requirement of the specific procurement in these documents is to be done through variable sections such as Special Instructions to Bidders or Special Conditions of Contract (or such sections, named otherwise). In case SBD needs modification to suit special circumstances of specific procurement, approval for the same may be taken from Competent Authority with concurrence of the Financial Advisor.

Provided, where a relevant SBD has not yet been notified by the Government, Procuring Entity may either use an existing SBD or under intimation to the SPFC develop its own SBD taking legal advice if necessary and approval for the same may be taken from Competent Authority with concurrence of the Financial Advisor.

(3) In case of a limited bidding, instead of a full set of SBD, only a machine numbered tender form shall be used as the tender document, after filling up the name of the vendor and details of requirements. It shall have the “terms and conditions of tender” printed on the obverse side. In any case, all registered vendors, who normally are invited to quote in such limited bidding, have already acknowledged acceptance of “General Conditions of Contract” as part of the registration application, which are applicable to such procurements, in additions to “Terms and Conditions of Tender” on the obverse of tender form. If necessary, specifications and drawings or any other document may be enclosed with the limited tender form.

(4) Before issuing a notice inviting bids the procuring entity shall ensure that the Bid documents are ready for distribution or sale.

Explanation- *For the purpose of these rules, Autonomous Councils includes those declared under the Sixth Schedule to the Constitution of India.*

Rule 36. Price for bidding documents, pre-qualification documents or

bidder registration documents and processing fee or user charges

The bidding documents, prequalification documents or registration documents shall be priced minimally (if at all priced) keeping in view the value of the tender as also the cost of preparation, publicity and delivery of the tender documents. **In order to promote wider participation and ease of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders.** Firms that are eligible for exemption from the tender document fee such as MSEs, Procuring Entity registered units (for relevant items and monetary limit) have to submit/ upload scanned copy of documents in support of this exemption. At the option of the procuring agency, the bidder may also be charged processing fee or user charges for using e-procurement facility.

Rule 37. Sale of Bidding Documents

(1) The bidding documents shall be available for sale or downloading from the date of publication of Notice Inviting Bids until one day prior to the date of opening of bids. The complete bidding documents shall also be placed on the State Public Procurement Portal and the Procuring Entity's website as per Rule 5 above. The prospective bidders shall be permitted to download the bidding document from such websites **and pay its price, if any,** while submitting or uploading the his bid to the procuring entity.

(2) The bidding documents, pre-qualification documents or bidder registration documents shall be made available for sale or download to any bidder who pays the price for it in cash or by bank demand draft, banker's cheque or through electronic means (if so provided) unless the procurement is reserved for specific category of bidders:

Provided that in case pre-qualification proceedings were held for a bidding process including registration or empanelment proceedings, the bidding documents shall be made available to only those bidders who have been prequalified or registered or empanelled, as the case may be.

(3) A detailed account of bidding documents sold shall be kept. It shall also incorporate the details of the bidding documents downloaded from the website, when their price is paid at the time of submission of bid.

(4) Bidding documents purchased by Principal of any concern may be used by its authorised sole selling agents/ marketing agents/ distributors/ sub-distributors and authorised dealers or vice versa.

Rule 38. Period of Validity of Bids

(1) Bids submitted by the bidders shall remain valid during the period specified in the bidding documents. This period shall normally be not more than ninety days, but depending on the nature of the procurement, a longer validity period may be may be required and called for by the procurement entity. A bid valid for a shorter period than called for shall be rejected by the procuring entity as non-responsive.

(2) Prior to the expiry of the period of validity of bids, the procuring entity, in exceptional circumstances, may request the bidders to extend the bid validity period for an additional specified period of time. A bidder has the option to refuse such request and such refusal shall be treated as withdrawal of bid but in such circumstances bid security shall not be forfeited.

(3) Bidders that agree to an extension of the period of validity of their bids shall extend the period of validity of bid securities submitted by them or submit new bid securities to cover the extended period of validity of their bids. A bidder whose bid security is not extended or new bid securities not submitted shall be considered to have refused the request to extend the period of validity of its bid and rejected accordingly.

Rule 39. Bid Security

(1) The amount of bid security shall generally be between two to five per cent of the estimated value of the procurement. The exact amount of bid security, rounded off to the nearest thousands of Rupees, as determined by the Procuring Entity, is to be indicated in the bidding documents.

(2) In appropriate cases, in place of a Bid security, Procuring Entities may consider asking Bidders to sign a Bid securing declaration accepting that if they withdraw or modify their Bids during the period of validity, or if they are awarded the contract and they fail to sign the contract, or fail to submit a performance security before the deadline defined in the request for bids/ request for proposals document, they will be suspended for the period of time specified in the request for bids/ request for proposals document from being eligible to submit Bids/ Proposals for contracts with the procuring entity. Undertakings, Corporations, Autonomous bodies, Registered Societies, Cooperative Societies which are fully owned or controlled or managed by the State Government and Government Undertakings of the Central Government shall be allowed to submit such a bid securing declaration in lieu of bid security.

(3) In appropriate cases, Submission of the bid security may be waived with the Competent Authority's (CA's) approval, especially in the case of indigenisation/ development tenders, limited tenders and single source procurements directly from the manufacturer or authorised agents.

(4) In case of procurement of Goods, Tenderers that are currently registered and who will also continue to remain registered during the tender validity period with the Procuring Entity or eligible Micro and Small Enterprises (MSEs) are exempt from payment of Bid Security. In case the tenderer falls in these categories, the bidder shall furnish a certified copy of its valid registration details. Except for MSEs, this exemption is valid for the category and monetary value of registration only.

(5) Bid security instrument or cash receipt of bid security or a bid securing

declaration or the documents concerning exemption from Bid Security shall necessarily accompany the sealed bid.

(6) Bid security of a bidder lying with the procuring entity in respect of other bids awaiting decision shall not be adjusted towards bid security for the fresh bids. The bid security originally deposited with original tender may, however, be taken into consideration with suitable extension of validity period, in case bids are re-invited.

(7) The bid security may be given in the form of, a banker's cheque or demand draft or National Savings Certificate or KissanVikash Patra or deposit through digital mode in the form as per the existing procedures or in any form that may be specifically prescribed by the Finance Department by Notification from time to time. The bid security must remain valid for thirty days beyond the original or extended validity period of the bid. In case Bid securities larger than Rupees Five Lakhs and in case of International Competitive Bidding procuring entity may also permit submission of Bid Security in form of bank guarantee in specified format, of a scheduled bank.

(8) The bidding documents may stipulate that the issuer of the bid security and the confirmer, if any, of the bid security, as well as the form and terms of the bid security, must be acceptable to the procuring entity. In cases of International Competitive Bidding, the bidding documents may in addition stipulate that the bid security shall be issued and confirmed by an issuer/ confirmer in India.

(8) Prior to presenting a submission, a bidder may request the procuring entity to confirm the acceptability of proposed issuer of a bid security or of a proposed confirmer. The procuring entity shall respond promptly to such a request.

(9) The bank guarantee presented as bid security shall be got confirmed from the concerned issuing bank. However, the confirmation of the acceptability of a proposed issuer or of any proposed confirmer does not preclude the procuring entity from rejecting the bid security on the ground that the issuer or the confirmer, as the case may be, has become insolvent or has otherwise ceased to be creditworthy or is implicated in any legal dispute the outcome of which may adversely affect his financial credibility or solvency.

(10) The bid security of unsuccessful bidders shall be refunded soon after final acceptance of successful bid, signing of Agreement and deposit of performance security.

(11) The Bid security taken from a bidder shall be forfeited in the following cases, namely:-

(a) when the bidder withdraws or modifies its bid after opening of bids;

(b) when the bidder does not execute the agreement, if any, after placement of supply / work order within the specified period;

(c) when the bidder does not deposit the performance security within specified period after the supply / work order is placed; and

(d) if the bidder breaches any provision of code of integrity prescribed for bidders specified in the Act and Chapter VII of these rules.

(12) the amount of bid security of a successful bidder may be adjusted with the amount of Performance Security required of him or refunded if the successful bidder furnishes the full amount of performance security.

(13) The procuring entity shall promptly return the bid security after the earliest of the following events, namely:-

(a) the expiry of validity of bid security;

(b) the execution of agreement for procurement and performance security is furnished by the successful bidder;

(c) the cancellation of the procurement process; or

(d) the withdrawal of bid prior to the deadline for presenting bids, unless the bidding documents stipulate that no such withdrawal is permitted.

Rule 40. Notice Inviting Bids

(1) A procuring entity shall solicit bids by causing an invitation to bid or pre-qualify, as the case may be, to be published on the State Public Procurement Portal and on its own official website as per Rule 5 above. To ensure competition, attention of all likely tenderers, for example, registered suppliers, past suppliers and other known potential suppliers, shall be invited to the NIT through email/ SMSs/ letters. SPPP shall be programmed to generate such alerts automatically.

(2) In case of International Competitive Bidding in which the bid notice is to be addressed to international bidders, the Notice Inviting Bids shall additionally be published by using suitable mediums that attract international responses. This may include circulation of Notice Inviting Bids to the Indian embassies abroad, foreign embassies in India, international trade journals, etc. Period for submission of bid from the date of first publication of Notice Inviting Bid shall be forty five days.

(3) In case of procurement through a limited bidding or Single Source procurement, the NIT may be uploaded on SPPP Portal and Procuring Entity's website with a caveat saying:

"This notice is being published for information only and is not an open invitation to quote in this tender. Participation in this tender is by invitation only and is limited to the selected Procuring Entity's registered suppliers. Unsolicited offers are liable to be ignored. However, suppliers who desire to participate in such tenders in future may apply for registration with Procuring Entity as per procedure."

(4) The NIT format in Standard Bidding Documents shall be used for publishing the tender notice. The NIT shall be brief but must contain sufficient detail for a prospective bidder to decide whether to participate in the tender or not and, if he decides to participate,

how to go about it.

(5) An abridged notice shall also be published in newspapers of adequate circulation. The bids for more than one subject matter of procurement shall be published in one Notice, as far as possible by the Government Departments in newspapers through Information and Public Relations Department, Assam with a request in which category of newspapers such notice is to be published.

Rule 41. Pre-Bid Clarifications/ Conference

Subject to the provisions contained in section 22 of the Act, in case of turnkey contract (s) and facilities of a special nature; procurement of sophisticated and costly equipment; large works and complex consultancy assignments a suitable provision may be kept in the bidding documents for one or more rounds of pre-bid conference for clarifying issues/ clearing doubts, if any, about the specifications and other allied technical/ commercial details of the work, consultancy, plant, equipment and machinery projected in the bidding document and for ensuring that the technical requirements provide a level playing field. The date, time and place of the pre-bid conference shall be indicated in the tender enquiry document. Bidders shall be asked to submit written queries in advance of the conference. After the conference, the techno-commercial requirements may be revised if considered necessary by way of issue of a formal corrigendum (mere minutes of the meeting of pre-bid conference shall not suffice) and shared with all the bidders who purchase or have purchased the bid documents., and shall be published on the State Public Procurement Portal.

Rule 42. Changes in Bidding Documents and Extension of Bid Opening Date

(1) At any time prior to the deadline for presenting bids, the procuring entity may for any reason, whether on its own initiative or as a result of a request for clarification by a bidder, modify the bidding documents by issuing an addendum in accordance with provisions of section 23 of the Act. The corrigendum shall be published in same manner as the original NIT/ Bid document, including uploaded on the SPPP and entity's website.

(2) Normally, the date of submission and opening of bids shall not be extended except in following circumstances:

- (a) sufficient number of bids have not been received within the given time and the procuring entity is of the opinion that further bids are likely to be submitted if time is extended, or
- (b) the bidding documents are required to be substantially modified as a result of discussions in pre bid conference or otherwise and the time with the prospective bidders for preparation of bids appears insufficient,

(3) In cases where the time and date of submission of bids is extended due to modification of bidding documents under sub rule (2), (b), the procurement

entity shall-

(i) ensure that, after issue of corrigendum, reasonable time is available to the bidders for preparation and submission of their bids.

(ii) publicity of extended time and date shall be given in the manner, as was given at the time of issuing the original Notice Inviting Bids and shall also be placed on the State Public Procurement Portal and the website of the Procuring Entity

(4) If in the office of the bids receiving and opening authority, the last date of submission or opening of bids is a non working day, the bids shall be received or opened on the next working day.

Rule 43. Format and Signing Of Bids

(1) The bidder shall prepare one original set of the bidding documents called Bid and clearly mark it as "ORIGINAL" and if asked, the bidder shall submit additional copies of the bid in such number as specified in the bidding documents and clearly mark them as "COPY". In the event of any discrepancy between the original bid and its copies, the contents of the original bid shall prevail.

(2) The original and all copies of the bid shall be typed or written in ink and it's all the pages shall be signed by the bidder or a person duly authorised to sign on behalf of the bidder, in token of acceptance of all the terms and conditions of the bidding documents. This authorisation shall consist of a written confirmation as specified in the bidding documents and shall be attached to the bid.

(3) Any corrections in the bid such as interlineations, erasures, or overwriting shall be valid only if they are signed or initialled by the person signing the bid.

(4) Similar procedure for signing of bids shall be adopted for Technical and Financial bids, if two part bids have been invited.

Provided that this Rule may not apply in e-Procurement where the bids shall be prepared and uploaded in the formats provided on the eProcurement Portal and shall be signed digitally by way of Digital Signature Certificates. Scanned copies of certain documents may be stipulated in the bid-documents to be uploaded along with the uploaded bids.

Rule 44. Sealing and Marking of Bids

(1) Bidders may submit their bids by post or by hand but if so specified in the bidding documents, bidders shall submit their bids only electronically. Bidders submitting bids electronically shall follow the electronic bid submission procedure as specified on the State Public Procurement Portal.

(2) (a) Bids submitted by post or by hand shall enclose the original and each copy of the bid in separate sealed envelopes, duly marked envelopes as "ORIGINAL", and "COPY". The envelopes containing the original and the copies shall then be enclosed in one single

envelope.

(b) The inner and outer envelopes shall-

- (i) bear the name and complete address along with telephone/mobile number of bidder;
- (ii) bear complete address of the procuring entity with telephone number;
- (iii) bear the specific identification of the bidding process pursuant to Notice Inviting Bids and any additional identification marks as specified in the bidding documents; and
- (iv) bear a warning not to be opened before the time and date for bid opening, in accordance with the Notice Inviting Bids.

(c) If all envelopes are not sealed and marked as required, the procuring entity shall assume no responsibility about its consequences.

(d) Similar procedure for sealing and marking of bids shall be adopted for Technical and Financial bids, if two part bids have been invited.

Rule 45. Submission of Bids

Bids submitted by post or by hand shall be received, by the person designated for the purpose by the procuring entity or directly dropped in the bid box, at the place and up to the time and date specified in the Notice Inviting Bids. In e-procurement, all tenders uploaded by tenderers are received, safeguarded and opened online on the portal.

Rule 46. Late Bids

The person authorised to receive the bids shall not receive any bid that is submitted personally, after the last time and date fixed for submission of bids. Any bid which arrives by post after the deadline for submission of bids shall be declared and marked as "Late" and returned unopened to the bidder by registered post. In eProcurement, the Portal shall not allow any submission after the last time and date fixed for submission of Bids.

Rule 47. Receipt and Custody of Bids

(1) The bids shall be received by hand delivery, by courier or by post in the specified format up to the specified time and date and at the specified place, by the person authorised by the procuring entity except when bids are received through e-procurement or they are directly dropped in the bid box.

(2) The person authorised to receive the bids shall provide a receipt signed by him with date and time of receipt of bid to the person, who delivers the bid.

(3) All bids received unsealed, in torn or damaged condition through post or by personal delivery shall be so marked and signed on the cover by the person receiving the same and get signed on it by the person delivering it and put in a fresh cover and reseal, if so warranted. All such entries shall be attested by the receiving person.

(4) Preferably, all bids received shall be put into a duly locked bid box placed for

receiving the bids. In the absence of a bid box, the received bids shall be kept in safe custody in lock and key by the person authorised to receive the bids.

(5) The location of bid box shall be such as to facilitate easy access to bidders. The bid box shall have two sealed locks. The key of one of the locks shall remain with the procuring entity and the key of the other lock shall be with the person authorised to receive the bids.

(6) Bids received by the authorised person on or before the time and date fixed for receipt of bids shall be entered in bids receipt register and the same shall be closed at the scheduled time and date giving in words and figures the number of bids received up to the last time and date for submission of bids.

(7) The record of bids received late through post shall be entered in bids receipt register after closing the register as per **sub-rule (6)**.

(8) Bids received by telegram or given on form other than the prescribed form shall not be considered.

(9) In case of e-tendering, that is to say bid proposals submitted through electronic methods, the same shall be submitted in accordance with the procedure outlined on the State Public Procurement Portal.

Rule 48. Withdrawal, Substitution and Modification of Bids

(1) A bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by him or his authorised representative (authorisation letter shall be enclosed). Corresponding substitution or modification of the bid must accompany the written notice. The notice must be-

(a) submitted in accordance with the bidding documents, and in addition, the envelope shall be clearly marked as "Withdrawal," "Substitution," or "Modification"; and

(b) received by the person authorised to receive the bids or directly dropped in the bid box prior to the last time and date fixed for receiving of bids.

(2) Bids requested to be withdrawn shall be returned unopened to the bidders.

(3) No bid shall be withdrawn, substituted, or modified after the last time and date fixed for receipt of bids.

Provided that this Rule shall not apply in e-Procurement where the bidder shall withdraw, substitute, or modify its bid online.

Rule 49. Opening of Bids

(1) The sealed bid box shall be opened by the bidopening committee constituted by the procuring entity at the time, date and place specified in the bidding documents in the presence of the bidders or their authorised representatives, who choose to be present.

(2) The bids receiving person shall also hand over all the bids received by him up to

the time and date for submission of bids to the Convener of bids opening committee and obtain its signature in the bids receipt register.

(3) The bid opening committee may co-opt experienced persons in the committee to conduct the process of bid opening.

(4) If electronic bidding is adopted, specific electronic bid opening procedure as specified on the State Public Procurement Portal shall be followed. The bidders may witness the electronic bid opening procedure online.

(5) The bids shall be opened by the bids opening committee in the presence of the bidders or their authorised representatives who choose to be present. All envelopes containing bids shall be signed with date by the members of the committee in token of verification of the fact that they are sealed. The envelopes shall be numbered as a/n, where 'a' denotes the serial number at which the bid envelop has been taken for opening and 'n' denotes the total number of bids received by specified time.

(6) The bid opening committee shall prepare a list of the bidders or their representatives attending the opening of bids and obtain their signatures on the same. The list shall also contain the representative's name and telephone number and corresponding bidders' names and addresses. The authority letters brought by the representatives shall be attached to the list. The list shall be signed by all the members of bid opening committee with date and time of opening of the bids.

(7) First, envelopes marked as "WITHDRAWAL" shall be opened, read out, and recorded and the envelope containing the corresponding bid shall not be opened, but returned to the bidders. No bid shall be permitted to be withdrawn unless the corresponding withdrawal notice contains a valid authorisation to request the withdrawal and readout and recorded in bid opening. If the withdrawal notice is not accompanied by the valid authorisation, the withdrawal shall not be permitted and the corresponding bid shall be opened. Next, envelopes marked as "SUBSTITUTION" shall be opened, read out, recorded and exchanged for the corresponding bid being substituted and the substituted bid shall not be opened, but returned to the bidder. No bid shall be substituted unless the corresponding substitution notice contains a valid authorisation to request the substitution and is read out and recorded at bid opening. Envelopes marked as "MODIFICATION" shall be opened thereafter, read out and recorded with the corresponding bid. No bid shall be modified unless the corresponding modification notice contains a valid authorisation to request the modification and is read out and recorded at bid opening. Only envelopes that are opened, read out, and recorded at bid opening shall be considered further.

(8) All other envelopes shall be opened one at a time and the following details shall be read out and recorded-

(a) the name of the bidder and whether there is a substitution or modification;

- (b) the bid prices (per lot if applicable) ;
- (c) the bid security, if required; and
- (d) any other details as the committee may consider appropriate.

(9) After all the bids have been opened, they shall be initialled and dated on the first page of the each bid by the members of the bids opening committee. All the pages of the price schedule and letters, Bill of Quantities attached shall be initialled and dated by the members of the committee. Key information such as prices, delivery period, etc. shall be encircled and unfilled spaces in the bids shall be marked and signed with date by the members of the committee. The original and additional copies of the bid shall be marked accordingly. Alterations/corrections/additions/over-writings shall be initialled legibly to make it clear that such alteration, etc., were existing in the bid at the time of opening.

(10) No bid shall be rejected at the time of bid opening except the late bids, alternative bids (if not permitted) and bids not accompanied with the proof of payment or instrument of the required price of bidding documents, processing fee or user charges and bid security.

(11) The bid opening committee shall prepare a record of the bid opening that shall include the name of the bidder and whether there is a withdrawal, substitution, or modification, the bid price, per lot (if applicable), any discounts and alternative offers (if they were permitted), any conditions put by bidder and the proof of the payment of price of bidding documents, processing fee or user charges and bid security. The bidders or their representatives, who are present, shall sign the record. The omission of a bidder's signature on the record shall not invalidate the contents and effect of the record. The members of the committee shall also sign the record with date.

(12) In case of two part bids, only outer envelopes and envelopes marked as "Technical Bid" shall be opened in the sequence of the serial numbers marked on them. The envelopes marked as "Financial Bid" shall be kept intact and safe and shall be opened of only those bidders who qualify in the evaluation of their Technical Bids in the manner as mentioned in **sub-rule (3) to (10)** above, on the date and time to be intimated to those bidders.

(13) In case of two stage bidding the proposals received in response to invitation of Expression of Interest or Request for Qualification in the first stage shall be opened as per the procedure specified in **sub-rules (3) to (11)** for the opening of Single Part bid. The procedure for opening of second stage bids shall be similar to that for opening of Two Part bids, specified in **sub-rule (12)**. In case Technical and Financial bids are invited in single envelop in second stage, the procedure for opening of the bids shall be as specified in **sub-rule (3) to (11)**.

Rule 50. Preliminary Examination of Bids

The bid evaluation committee constituted by the procuring entity shall conduct a preliminary scrutiny of the opened bids to assess the prima-facie responsiveness and ensure that the-

- (a) bid is in prescribed format and is signed, as per the requirements listed in the bidding documents;
- (b) bid has been sealed as per instructions provided in the bidding documents;
- (c) bid is valid for the period, specified in the bidding documents;
- (d) bid is accompanied by bid security or bid securing declaration or documents related to exemption from bid-security;
- (e) The bidder is eligible to participate in the bid as per laid down eligibility criteria or limitation on participation of bidders, if any;
- (f) The bidder has quoted for goods manufactured by a different firm then it must be accompanied by required authority letter from the proposed manufacturer;
- (g) Against a schedule in the list of requirements in the Bid document, the bidder has quoted for the entire requirement as specified in that schedule (example: in a schedule, it has been stipulated that the tenderer will supply the equipment, install and commission it and also train the purchaser's operators for operating the equipment).
- (h) bid is unconditional and the bidder has agreed to give the required performance security; and
- (i) other conditions, as specified in the bidding documents are fulfilled.

Rule 51. Pre-qualification of Bidders

Wherever Prequalification of Bidders is done in accordance with **Section 18 of the Act and Rule 19** above the procedure to be followed shall be as follows:

- i) Pre-qualification Bids (PQB) procedures shall meet the norms of transparency, fairness and wide competition.
- ii) The invitation for PQB shall be processed in the same manner as an Open Competitive Bidding, ensuring the widest possible competition.
- iii) In PQB stage, competent qualified tenderers shall be shortlisted by using a Pre-qualification Criterion (PQC – for example, i) past experience of similar contracts, ii) performance capability and iii) financial strength) or any other criteria relevant for the procurement. The PQC and evaluation criterion shall be notified clearly in the PQB documents. It shall be clarified in the PQB documents that bidders have to submit authenticated documents in support of PQC/ eligibility criteria.
- iv) Due consideration shall be given while framing PQC, to its effect on adequacy of competition. To encourage MSEs or the past successful bidders,

a call may be taken – whether PQC shall apply to full quantity/ packages or be proportional to part quantity/ package quoted by a bidder. In case requirement is suddenly a multiple times the past procurements, blind adoption of past PQCs may lead to disqualification of successful past vendors leading to inadequate competition. PQC shall therefore be carefully decided for each procurement with the approval of authority competent to approve the procurement.

- v) The PQB documents shall also indicate a complete schedule of requirements for which this PQB is being done, including approximate likely quantum or Extent/ Scope of requirements.
- vi) The procuring entity shall evaluate the qualifications of bidders only in accordance with the PQC specified. At least in high value and critical procurements, the credentials regarding experience and past performance, submitted by the successful bidder, may be verified as per PQC criteria, as far as reasonably feasible, from the parties for whom work has been claimed to be done. In case such verification for the successful bidder(s) shall be done at least before signing of Contract.
- vii) The procuring entity shall promptly notify each bidder presenting an application to pre-qualify whether or not it has been pre-qualified and also publish the result of prequalification proceedings on the State Public Procurement Portal as well as Website of the Procuring Entity. The procuring entity shall promptly communicate, with reasons, to each bidder that it has not been pre-qualified.
- viii) The pre-qualification results shall be valid for such period as may be specified in the pre-qualification document and for a single subsequent procurement within this period, except when it is determined that engaging in fresh pre-qualification shall not result in enhanced competition.
- ix) During the period of such validity, the procuring entity shall invite bids for procurement (Request for Proposals – RfP) from pre-qualified bidders and all other bids may be treated as unsolicited offers which are normally rejected. In case bids are not invited within such a period, fresh pre-qualification shall be done. It is desirable that the time gap between the pre-qualification approval and floating of the linked main procurement tender is less than six months.
- x) Except as otherwise provided in this rule all other provisions of Chapter V and VI of these Rules shall, mutatis mutandis, apply.

Rule 52. Tabulation of Technical Bid

(1) If Technical bids have been invited, they shall be tabulated by the bids evaluation committee in the form of a comparative statement to evaluate the qualification of the bidders against the criteria for qualification set out in the bidding documents. The comparative statement so prepared shall be signed by the concerned officers. It may also be vetted by the associated/ integrated Finance for veracity of information. The table shall include following:-

- (a) Name and address of the bidder including e-mail address, if any;
- (b) Reference of registration/ empanelment, if any, with the procuring entity or other procuring entity;
- (c) Is there any substitution or modification of the original bid;
- (d) Whether the bidder fulfils the eligibility criteria given in the bidding documents;
- (e) Whether the bid has been signed by the bidder or an authorised person (whether valid document of authority is enclosed) ;
- (f) Whether proof of payment of price of bid documents given;
- (g) Whether proof of payment of processing fee or user charges, if any, bid security or the instrument of bid security or bid securing declaration given;
- (h) Response to the required qualification criteria and allotment of marks for them, or whether meets the minimum standards fixed for each criterion in the bidding documents for,-
 - (i) availability of financial resources;
 - (ii) past performance and experience;
 - (iii) technical and professional competence including requirement of technical/ professional/ specialist personnel and availability of required machinery and equipment;
 - (iv) managerial resources and competence;
 - (v) whether proof/ declaration has been given as required under clauses (b) to (e) of sub-section (2) of section 7 of the Act;
 - (vi) any other qualification criteria fixed in accordance with the provisions of section 7 of the Act.
- (i) Result of evaluation of Technical bids, whether qualified or not, if not, reasons thereof.

(2) The members of bids evaluation committee shall give their recommendations below the table as to which of the bidders have been found to be qualified in evaluation of Technical bids and sign it.

(3) The format of the table given in sub-rule (1) may also be used, mutatis mutandis, for evaluation of proposals received in response to Registration/ Empanelment of bidders, Request for Qualifications/ Expression of Interest in first stage of Two-stage bidding process. This format may also be used, mutatis mutandis, for evaluation of Technical Bid in the

second stage of the Two Stage bidding, if Technical bids have been invited separately.

Provided that no tabulation need be prepared for procurement below a threshold notified by the Government or in absence of such notification for procurements valued below Rs 25 Lakh.

Rule 53. Tabulation of Financial Bids

(1) After evaluation of Technical bids the Financial bids shall be tabulated by the bids evaluation committee in the form of a comparative statement to evaluate the lowest or most advantageous bid on the basis of evaluation criteria set out in the bidding documents. The comparative statement so prepared shall be signed by the concerned officers. It may also be vetted by the associated/ integrated Finance for veracity of information. The table may include following:-

- (a) Name and address of the bidders including e-mail address, if any;
- (b) If evaluation of Technical bids has taken place, whether the bidder has qualified in evaluation of Technical bids;
- (c) Specifications of the subject matter of procurement offered;
- (d) Rates quoted per unit, per item and total price of each item quoted or percentage above, below on the rates given in the bidding documents, as the case may be;
- (e) Admissible taxes to be shown separately;
- (f) Packing and forwarding charges, freight, insurance etc.;
- (g) Total cost per unit, per item and all items including all cost and taxes;
- (h) Discount, rebate if any (if permitted) ;
- (i) Alternative offers (if permitted) ;
- (j) Delivery/completion period quoted;
- (k) Validity period of bids quoted;
- (l) Mode of payment quoted;
- (m) Samples, trials offered (if asked for) and results of sample testing and trials conducted;
- (n) Guarantee/warranty/defect liability period quoted, if asked for;
- (o) Contract maintenance period quoted, if asked for;
- (p) Response to any other information asked for in the bidding documents;
- (q) Any conditions quoted different from those included in the bidding documents;
- (r) Is there any material deviation, reservation or omission from the required specifications and terms and conditions set out in the bidding documents;
- (s) Result of evaluation of financial bids- standing of the bidder in financial evaluation;
- (t) Combined evaluation of Technical and Financial bids, if stipulated in the bidding documents- standing of the bidder in combined evaluation of Technical and Financial bids;

(2) If only Single Part bids have been invited, then the information specified in clause (b) , (c) , (d) , (e) , (f) , (g) and sub-clause (v) of clause (h) of sub-rule (1) of rule 52 above shall also be included in the table.

(3) The table given in sub-rule (1) may also be used for evaluation of Financial bids, in second stage of Two Stage bidding.

(4) The members of bids evaluation committee shall give their recommendations below the table regarding lowest bid or most advantageous bid and sign it.

Provided that no tabulation need be prepared for procurement below a threshold notified by the Government or in absence of such notification for procurements valued below Rs 25 Lakh,

Rule 54. Determination of Responsiveness

(1) The bid evaluation committee shall determine the responsiveness of a bid on the basis of bidding documents and the provisions of sub-section (2) of section 7 of the Act.

(2) A responsive bid is one that meets the requirements of the bidding documents without material deviation, reservation, or omission where: -

(a) "deviation" is a departure from the requirements specified in the bidding documents;

(b) "reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the bidding documents; and

(c) "Omission" is the failure to submit part or all of the information or documentation required in the bidding documents.

(3) A material deviation, reservation, or omission is one that,

(a) if accepted, shall:-

(i) affect in any substantial way the scope, quality, or performance of the subject matter of procurement specified in the bidding documents; or

(ii) limits in any substantial way, inconsistent with the bidding documents, the procuring entity's rights or the bidder's obligations under the proposed contract; or

(b) if rectified, shall unfairly affect the competitive position of other bidders presenting responsive bids.

(4) The bid evaluation committee shall examine the technical aspects of the bid in particular, to confirm that all requirements of bidding document have been met without any material deviation, reservation or omission.

(5) Bids received shall be evaluated in terms of the conditions already incorporated in the bidding documents. No new condition which was not incorporated in the bidding documents shall be brought in for evaluation of the bids. Determination of a bid's responsiveness shall be based on the contents of the bid itself without recourse to extrinsic evidence or hearsay information. Similarly, no condition mentioned in the Bidding Document

(especially the significant/ essential ones) shall be overlooked/ relaxed while evaluating the tenders. The aim shall be ensure that no tenderer gets undue advantage at the cost of other tenderers and/ or at the cost of Procuring Entity.

(6) The procuring entity shall regard a bid as responsive if it conforms to all requirements set out in the bidding documents, or it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the bidding documents, or if it contains errors or oversights that can be corrected without touching on the substance of the bid. Bids declared as unresponsive shall be excluded from any further evaluation. Unopened part bids of such unresponsive bidders shall be returned to the bidder unopened.

Rule 55. Clarification of Bids

(1) To assist in the examination, evaluation, comparison and qualification of the bids, the bid evaluation committee may, at its discretion, ask any bidder for a clarification by a specified date regarding its bid and also mentioning therein that, if the bidder does not comply or respond by the date, his tender will be liable to be rejected. The committee's request for clarification and the response of the bidder shall be in writing. Depending on the outcome, such bids are to be ignored or considered further.

(2) Any clarification submitted by a bidder with regard to its bid that is not in response to a request by the committee shall not be considered.

(3) No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the committee in the evaluation of the financial bids.

(4) No substantive change to qualification information or to a submission, including changes aimed at making an unqualified bidder, qualified or an unresponsive submission, responsive shall be sought, offered or permitted.

(5) Any shortfall information/ documents shall be sought only in case of historical documents which pre-existed at the time of the tender opening and which have not undergone change since then. These shall be called only on basis of the recommendations of the TC. (Example: if the Permanent Account Number, registration with sales tax/ VAT). So far as the submission of documents is concerned with regard to qualification criteria, after submission of the tender, only related shortfall documents shall be asked for and considered. For example, if the bidder has submitted a supply order without its completion/ performance certificate, the certificate can be asked for and considered. However, no new supply order shall be asked for so as to qualify the bidder.

(6) All communications generated under this rule shall be included in the record of the procurement proceedings.

Rule 56. Non-Material Non-Conformities in Bids

(1) The bid evaluation committee may waive any non-conformity in the bid that does not constitute a material deviation, reservation or omission, the bid shall be deemed to be substantially responsive.

(2) The bid evaluation committee may request the bidder to submit the necessary information or document like audited statement of accounts, GST clearance/ registration certificate, PAN, etc. within a reasonable period of time. Failure of the bidder to comply with the request may result in the rejection of its bid.

(3) The bid evaluation committee may rectify non-material nonconformities or omissions on the basis of the information or documentation received from the bidder under sub-rule (2).

Rule 57. Evaluation of Technical Bids in Case of Two Part Bids

(1) The criteria fixed for evaluation of technical bids shall be in accordance with the provisions of **section 7 of the Act** and clearly mentioned in the bidding documents so as to keep transparency in selection process. The criteria once fixed for evaluation of technical bids shall not be changed or relaxed.

(2) Techno-commercial qualifications of the bidders shall be evaluated in tabular form as **per rule 52 above on** the basis of the weightings of marks assigned or minimum achievements fixed in the bidding documents for various criteria of qualifications in the area of professional, technical, financial, managerial competence, etc. i.e. like number of years of experience of the bidder in the subject matter of procurement, satisfactorily completion of similar contracts in past certain years, each valuing not less than specified percentage of the value of subject matter of procurement, financial turnover of the bidder in past certain years in relation to the value of subject matter of procurement, the value of orders in hand of the bidder at the time of submitting the bid relative to the value of subject matter of procurement, etc.

(3) Bidders securing specified minimum percent of marks or have fulfilled minimum achievement norms may be considered to have technically qualified.

(4) The number of firms qualified in technical evaluation shall not generally be less than three. If the number is less than three and it is considered necessary by the procuring entity to continue with the procurement process, reasons shall be recorded in writing and included in the record of the procurement proceedings.

(5) The bidders who qualified in the technical evaluation shall be informed in writing about the date, time and place of opening of their financial bids. This date shall generally be not later than fifteen days from the date of issue of letter.

(6) The authenticity, integrity and sanctity of unopened Financial Bids must be ensured during the evaluation of Technical Bid. At the time of Technical Bid opening, the financial bids may preferably be put in a large envelop, which may be dated, sealed and signed (including by some of the bidders present), to show that none of the bids were

accessed during the custody.

Rule 58. Correction of Arithmetic Errors in Financial Bids

The bid evaluation committee shall correct arithmetical errors in substantially responsive bids, on the following basis, namely: -

(a) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the bid evaluation committee there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;

(b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and

(c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to clause (a) and (b) above.

(d) If the price bid is ambiguous so that it may very well lead to two equally valid total price amounts, then the bid shall be treated as unresponsive;

Provided that this Rule may not apply in e-Procurement where the arithmetical work is done by software on the Portal, hence such issues are not likely to arise.

Rule 59. Evaluation of Financial Bids

Subject to the provisions of **section 27 of the Act**, the procuring entity shall take following actions for evaluation of financial bids:-

(a) in case of single part bid system where bid is received in single cover along with requisite bid security, processing fee or user charges and price of bidding documents within specified time, it shall be considered for financial evaluation by the bids evaluation committee;

(b) in case of two part bid system the financial bids of the bidders who qualified in technical evaluation shall be opened at the notified time, date and place by the bid evaluation committee in the presence of the bidders or their representatives who choose to be present;

(c) the process of opening, marking and signing on the financial bids shall be as prescribed in **rule 49 above**;

(d) the names of the bidders, the rates given by them and conditions put, if any, shall be read out and recorded;

(e) conditional bids are liable to be rejected;

(f) Normally, the comparison of the responsive tenders shall be on total outgo from the Procuring Entity's pocket, for the procurement to be paid to the supplier or any third party, including all elements of costs as per the terms of the proposed contract, including any

taxes, duties, levies etc, freight insurance etc. Therefore, it shall normally be on the basis of CIF/ FOR destination basis, duly delivered, commissioned, as the case may be:, and the evaluation criteria specified in the bidding documents shall only be applied;

(g) the offers shall be evaluated and marked L1, L2, L3 etc. L1 being the lowest offer and then others in ascending order in case price is the only criteria, or evaluated and marked H1, H2, H3 etc. in descending order in case quality is also a criteria and the combined score of technical and financial evaluation is considered;

(h) Sometime certain bidders offer suomotu discounts and rebates after opening of the tender (techno-commercial or financial). Such rebates/ discounts shall not be considered for the purpose of ranking the offer but if such a firm does become L1 (or H1 as relevant) at its original offer, such suomotu rebates can be incorporated in the contracts. This also applies to conditional rebates, for example, rebate for faster payments, and so on;

(i) Unless announced beforehand explicitly in the tender documents, the quoted price shall not be loaded on the basis of deviations in the commercial conditions. If it is decided to incorporate such clauses, these shall be unambiguous and clear – and thereafter there shall be no relaxation during evaluation. Moreover, sometimes, while purchasing sophisticated and costly equipment, machinery, and so on, the procuring entity may also give special importance to factors such as high quality performance, environmental-friendly features, low running cost, low maintenance cost, and so on. To take care of this, relevant details shall be incorporated in the bid document and the criteria adopted to assess the benefit of such features while evaluating the offers shall also to be clearly stipulated in the tender enquiry document so that the tenderers are aware of it and quote accordingly. While evaluating such offers, these aspects shall also to be taken into account. Such details, whenever considered necessary, shall be evolved by the competent technical authority for incorporation in the tender document, so that there is no ambiguity and/ or vagueness in them;

(j) As per policies of the government from time to time, the purchaser reserves his option to give price/ purchase preferences as indicated in the tender document. In such cases such preferences shall be considered in evaluation;

(k) Unless otherwise stipulated in the Bid Documents, in case the list of requirements contains more than one schedule, the responsive, technically suitable tenders shall be evaluated and compared separately for each schedule. The tender for a schedule shall not be considered if the complete requirements prescribed in that schedule are not included in the tender. However, tenderers have the option to quote for any one or more schedules and offer discounts for combined schedules. Such discounts, wherever applicable, shall be taken into account to for deciding the lowest evaluated cost for Procuring Entity in deciding the

successful tenderer for each schedule, subject to that tenderer(s) being responsive; and

(l) If the tenders have been invited on a variable price basis, the tenders shall be evaluated, compared and ranked on the basis of the position prevailing on the day of tender (Technical Bid) opening and not on the basis of any future date.

(m) the bid evaluation committee shall prepare a comparative statement in tabular form in accordance with rule 53 with its report on evaluation of financial bids and recommend the lowest offer for acceptance to the procuring entity, if price is the only criterion, or most advantageous bid in other case;

(n) it shall be ensured that the offer recommended for sanction is justifiable looking to the prevailing market rates of the goods, works or service required to be procured; and

(o) in case a rate contract is being entered, more than one firm at the same lowest rate may be considered to ensure uninterrupted delivery but for this purpose, counter offer of lowest rate shall be given for acceptance to the bidders quoting higher rates in the order of ascending value.

Rule 60. Comparison of Rates of Firms from Outside and Those inside Assam

While preparing a comparative price statement for evaluation of tenders submitted, the SGST payable in Assam shall be excluded and the price comparison shall be made only on the basic price. However, any tax payable outside Assam shall be added to the basic price for such a price comparison. In case of GST payable for procurement of goods from outside the state, the principles enumerated below shall be followed. Such provisions must be declared beforehand in the bid documents:

(a) In comparing the cost of an article procured from within the state with the price of a similar article procured from outside the state, the amount of AssamSGST shall be deducted from the total cost since it accrues back as revenue to the state. If after such deduction, the cost of articles to be procured within the state is not more than the cost of procurement including GST, transport and other charges of similar articles from outside the state, it shall be economical to procure articles within the state; and

(b) However, if after such comparison, a procuring entity decides to procure goods from outside the state, the supplier may be asked to supply the goods through billing by a branch office/ sales depot of the supplier inside the state in order to protect the state's consumption base for taxation.

Rule 61. Lack of Competition

(1) When a situation arises where, after the evaluation of bids, the bid evaluation committee ends up with one responsive bid only, the bid evaluation committee shall check as to whether while floating the Notice Inviting Bids all necessary requirements to encourage competition like standard bid conditions, industry friendly specifications,

wide publicity, sufficient time for formulation of bids, etc. were fulfilled. If not, the Notice the Committee shall recommend cancellation of the bid process and invitation of fresh bids after rectifying deficiencies and the procurement entity shall act accordingly as so recommended

(2) Subject to the defect- free and proper floating of bid invitations as indicated above and in accordance to the provisions of the Act and these rules, the bid process shall be considered valid even if there is one responsive bid, provided that-

- (a) the bid is technically qualified;
- (b) the price quoted by the bidder is assessed to be reasonable;
- (c) the bid is unconditional and complete in all respects;
- (d) there are no obvious indication of cartelisation amongst bidders; and
- (e) the bidder is qualified as per the provisions of section 7

(3) In such cases, the bid evaluation committee shall prepare a justification note and obtain the approval of the next higher authority of the procuring entity thereon, in which the specific concurrence of the accounts member shall be necessary. The bid shall be finalised only after such approval is accorded with concurrence of the accounts member.

(4) In case of dissent by any member of bid evaluation committee the next higher authority in delegation of financial powers shall decide as to whether to sanction the single bid or re-invite bids after recording reasons. If a decision to re invite the bids is taken, market assessment shall be carried out for estimation of market depth, eligibility criteria and cost estimate.

Rule 62. Negotiations for Price

(1) Negotiations for price shall not be normally conducted, except under the circumstances specified under Section 15 of the Act and Rule 19 above and that too only with the lowest or most advantageous bidder. The procedure for such negotiations shall be as laid down in following sub-rules.

(2) The bid evaluation committee shall have full powers to recommend and conduct negotiations. Detailed reasons and results of negotiations shall be recorded in the proceedings.

(3) The lowest or most advantageous bidder shall be informed and his acknowledgement taken in writing either through messenger or by registered letter and email (if available). A minimum time of seven days shall be given for calling negotiations. In case of urgency the evaluation committee, after recording reasons, may reduce the time, provided the lowest or most advantageous bidder has received the intimation and consented to the timing of holding of negotiations.

(4) Invitation to Negotiations shall be drafted in a standard format designed with legal

assistance, so as not to render the original offer of the bidder inoperative. Before starting Negotiation an undertaking may also be taken from the bidder to this effect that in case of failure of negotiations, the original offer/ proposal of the bidder shall remain valid for further 45 days. The bid evaluation committee shall have option to consider the original offer in case the bidder decides to increase rates originally quoted or imposes any new adverse terms or conditions.

(5) At the end of negotiation, revised bids shall be obtained in writing from the selected bidder, in a format that commits him to keep revised and original bid valid for 45 days. The revised bids so obtained shall be read out to the bidder(s) or their representatives present. If necessary, the negotiating party may be given some time to submit its revised offer. In case, however, the selected bidder prefers to send a revised bid instead of being present at the negotiation, the offer shall be taken into account. In case a bidder does not submit the revised bid, its original bid shall be considered.

(6) In case of non-satisfactory achievement of rates from lowest or most advantageous bidder, the bid evaluation committee may choose to make a written counter offer to the lowest or most advantageous bidder and if this is not accepted by him, the committee may decide to reject and re-invite bids. Since a counter may render the original offer of the bidder inoperative, this procedure shall be used in exceptional cases only.

(7) In case the rates even after the negotiations are considered very high, fresh bids shall be invited.

Rule 63. Exclusion of Bids

A procuring entity shall exclude a bid in accordance with the provisions of section 25 of the Act.

Rule 64. Procuring Entity's Right to Accept or Reject any or all Bids and Cancellation of Procurement Process

(1) The procuring entity may, with reasons to be recorded in writing with such decision, accept or reject any bid, or annul the bidding process or reject all bids at any time prior to award of contract, without thereby incurring any liability to the bidders in accordance with **Section 26 of the Act**. In case where responsive bids are available, the aim shall be to finalise the tender by taking mitigating measures. If it is decided to rebid the tender, the justification shall balance the perceived risks in finalisation of tender (marginally higher rates) against the certainty of resultant delays, cost escalations, loss of transparency in re-invited tender. If any procurement process has been cancelled, it shall not be reopened, but such cancellation shall not prevent the procuring entity from initiating a new procurement process for the same subject matter of procurement, if required. After such decision, all participating bidders shall be informed and bids if not opened shall not be opened and in case of manual tenders be returned unopened. The decision to cancel the procurement

process and re-invite bids may be taken in following situations in addition to those indicated in **Section 26 of the Act:**

(a) If the quantity and quality of requirements have changed substantially or there is an un-rectifiable infirmity in the bidding process;

(b) when none of the tenders is substantially responsive to the requirements of the Procurement Documents;

(c) none of the technical Proposals meets the minimum technical qualifying score;

(d) If effective competition is lacking. However, lack of competition shall not be determined solely on the basis of the number of Bidders. (Please refer to rule 61 above also regarding receipt of a single offer).

(e) the Bids'/ Proposals' prices are substantially higher than the updated cost estimate or available budget;

(f) If the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, fails to sign the procurement contract as may be required, or fails to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process, the procuring entity shall cancel the procurement process. Provided that the procuring entity, on being satisfied that it is not a case of cartelization and the integrity of the procurement process has been maintained, may, for cogent reasons to be recorded in writing, offer the next successful bidder an opportunity to match the financial bid of the first successful bidder, and if the offer is accepted, award the contract to the next successful bidder at the price bid of the first successful bidder.

(2) Approval for re-tendering shall be accorded by the CA after recording the reasons/ proper justification in writing. The decision of the procuring entity to cancel the procurement and reasons for such a decision shall be immediately communicated to all bidders that participated in the procurement process. Before retendering, the procuring entity is first to check whether, while floating/ issuing the enquiry, all necessary requirements and formalities such as standard conditions, industry friendly qualification criteria, and technical and commercial terms, wide publicity, sufficient time for bidding, and so on, were fulfilled. If not, a fresh enquiry is to be issued after rectifying the deficiencies.

Rule 65. Acceptance of the Successful Bid and Award of Contract

(1) A bid shall be treated as successful only after the competent authority has approved the procurement in terms of that bid. And:

(a) The competent authority shall, after considering the recommendations of the bid evaluation committee and the conditions of bid, if any, financial implications, trials, sample testing and test reports, etc., shall accept or reject the successful bid(s). If any member of the bid evaluation committee has disagreed or given its note of dissent, **or if the Competent Authority overrules the majority/ unanimous**

recommendations of the bid evaluation committee, the matter shall be referred to the next higher authority, as per delegation of financial powers, for decision.

- (b) The competent authority shall, ensure that the price of successful bid is reasonable and consistent with the required quality before award of the contract.
- (c) The competent authority shall, award the contract to the bidder whose offer has been determined to be the lowest or most advantageous in accordance with the evaluation criteria set out in the bidding documents and if the bidder has been determined to be qualified to perform the contract satisfactorily on the basis of qualification criteria fixed for the bidders in the bidding documents for the subject matter of procurement.
- (d) The procuring entity shall, inform the successful bidder, in writing, that its bid has been accepted, prior to the expiration of the period of bid validity.

(2) **Right to vary quantity:** If the procurement entity does not procure any subject matter of procures less than the quantity specified in notice inviting bids or the bidding documents due to change in circumstances, the bidder shall not entitled for any claim or compensation except as otherwise provided for in the bidding documents provided that supply order or work order has not been issued.

(3) **Repeat Orders:** If an original supply order for a subject matter of procurement was given to a supplier of goods or services after Open Competitive Bidding and if so provided for in the bidding documents, repeat orders for supply of additional quantities of that subject matter of procurement may be placed with the original supplier on the same rates and conditions as in the original order, subject to the limit of 50% of the original quantity or value thereof.

(4) **Confidentiality-** In addition to the restrictions specified in section 49 of the Act, the procuring entity, while procuring a subject matter of such nature which requires the procuring entity to maintain confidentiality, may impose condition for protecting confidentiality of such information.

(5) **Information and Publication of Award** - Information of award of contract shall be communicated to all participating bidders and published on the State Public Procurement Portal in accordance with provisions of sub-section (3) of section 27 of the Act and Rule 5 above.

Rule 66. Performance Security-

(1) Performance security shall be solicited from all successful bidders except from the undertakings, corporations, co-operative societies and Boards fully owned and controlled or managed by the State Government and undertakings of the Central Government all of which shall be required to furnish a valid performance security declaration by the Head of that organisation:

Provided that the State Government may, by notification, relax the provision of performance security in a particular procurement or any class of procurement for stated reasons.

(2) The amount of performance security shall be **fiveto Ten percent** of the amount of supply order in case of procurement of goods and services and ten percent of the amount of work order in case of procurement of works.

Provided that the amount of performance security may be set higher if so specified in the bidding documents,

Provided further that the State Government may, by Notification, prescribe lower amounts of performance security for small and micro enterprises of Assam in the interest the development of these industries in the State.

Provided further that in case of procurement of works, the procuring entity may stipulate in the Bid documents a provision for deduction of half or any other fraction of the performance security amount as Retention Money from his each running and final bill as a percentage of the amount of the bill.

(3) Performance security shall be furnished in any one of the following forms-

(a) deposit through online mode;

(b) Bank Draft or Banker's Cheque of a scheduled bank;

(c) National Savings Certificates and any other script/instrument under National Savings Schemes for promotion of small savings issued by a Post Office in Assam if the same can be pledged under the relevant rules. They shall be accepted at their surrender value at the time of bid and formally transferred in the name of procuring entity with the approval of Head Post Master;

(d) Bank guarantee/s of a scheduled bank which shall be got verified from the issuing bank. Other conditions regarding bank guarantee shall be same as mentioned in the rule for bid security;

(e) Fixed Deposit Receipt (FDR) of a scheduled commercial bank which shall be in the name of procuring entity on account of the bidder and discharged by the bidder in advance. Before accepting the Fixed Deposit Receipt the procuring entity shall ensure that the bidder furnishes an undertaking from the bank to make payment or premature payment of the Fixed Deposit Receipt on demand to the procuring entity without requirement of consent of the bidder concerned. In the event of forfeiture of the performance security, the Fixed Deposit shall be forfeited along with interest earned on such Fixed Deposit.

(4) Performance security furnished in the form specified in clause (b) to (e) of sub-rule (3) shall remain valid for a period of sixty days beyond the date of completion of all contractual obligations of the bidder, including warranty obligations and maintenance and defect liability period.

Rule 67. Execution of Agreement

(1) As soon as a bid is accepted by the competent authority, its written intimation shall be sent to the concerned bidder by registered post or email and asked to execute an

agreement in the format given in the bidding documents on a non judicial stamp of requisite value and deposit the amount of performance security **or a performance security declaration**, if applicable, within a period specified in the bidding documents or where the period is not specified in the bidding documents then within fifteen days from the date on which the letter of acceptance or letter of intent is despatched to the bidder.

- (2) If the issuance of formal letter of acceptance is likely to take time, in the meanwhile a Letter of Intent (LOI) may be sent to the bidder. The acceptance of an offer is complete as soon as the letter of acceptance or letter of intent is posted and/ or sent by email (if available) to the address of the bidder given in the bidding document. Until a formal contract is executed, the letter of acceptance or Letter of Intent shall constitute a binding contract.
- (3) The successful bidder shall sign the procurement contract within a period specified in the bidding document or where the period is not specified in the bidding document then within fifteen days from the date on which the letter of acceptance or letter of intent is despatched to the successful bidder.
- (4) A procurement contract shall come into force from the date on which the letter of acceptance or letter of intent is despatched to the bidder, and further -
- (5) If the bidder, whose bid has been accepted, fails to sign a written procurement contract or fails to furnish the required performance security within specified period, the procuring entity shall take action against the successful bidder as per the provisions of the Act and these rules. The procuring entity may, in such case, cancel the procurement process or if it deems fit, offer for acceptance the rates of lowest or most advantageous bidder to the next lowest or most advantageous bidder, in accordance with the criteria and procedures set out in the bidding documents.
- (6) The bid security of the bidders whose bids could not be accepted shall be refunded soon after the contract with the successful bidder is signed and its performance security is obtained.

Rule 68. Further Steps or Measures

The State Government may, by Notification, prescribe further steps or measures to be adopted in the process of submission, opening and evaluation of bids in addition additional to those prescribed in this chapter of these rules. State Procurement Facilitation Cell may lay down Procedures, benchmarking standards, monitoring and reporting for various procurement processes and entities. It may lay down Key Performance Indices, which shall be monitored and reported, periodically to SPFC.

CHAPTER VI: INTEGRITY, OFFENCES AND PUNISHMENTS

Rule 69. Code of Integrity for Officers/ Employees of The State Department And The Bidders

(1) for the Officers and Employees of the State Government -

(a) All the officers or employees of the procuring entity while participating in any procurement process, directly or indirectly, shall,-

i) maintain an unimpeachable standard of integrity in conformity with the Code of Integrity enjoined upon in **Section 11 of the Act** (including rules and regulations issued thereunder) and also Code of Conduct enshrined in **The Central Civil Services (Conduct) Rules, 1964 and/ or The Assam Service (Discipline And Appeal) Rules, 1964** (as applicable to him) or guidelines issued by the Government in this regard, if any both inside and outside their office;

ii) shall have the responsibility and accountability to discharge his duties in relation to such procurement processes shall ensure compliance to the provisions of the Act and the rules and guidelines made there under including Fundamental principles laid down in **Section 4 of the Act.**

(b) all officers or employees of the State Government (whether involved in procurement processes or otherwise) shall not commit an act of commission or omission, that shall amount to an offence under **Section 41, 42, 43 or 45 of the Act or the rules and regulations** made thereunder.

(c) Officers and employees found to have breached the provisions of (a) and (b) above shall attract penalties under the Act and/or relevant Conduct/ Service Rules.

(2) for the prospective Bidders/ Contracts/ Consultants/ Service Providers

(a) All the bidders, prospective Bidders, Contractors/ Consultants/ Service Providers participating in any procurement process, directly or indirectly, shall,-

(i) maintain an unimpeachable standard of integrity in conformity with the Code of Integrity enjoined upon in **Section 11 of the Act** (including rules and regulations issued thereunder) and also conditions of their Registration with any Procuring Entity within the State

(ii) shall not commit an act of commission or omission, that shall amount to an offence under **Section 42, 43, 44 or 45 of the Act or the rules and regulations made thereunder.**

(b) Without prejudice to the provisions of Chapter IV of the Act, the procuring entity may take appropriate action in accordance with the provisions of **subsection (3) of section**

11and section 46 of the Act in case of breach of any provision in sub-rule (a) and (b) above and rule 68 below, by a bidder or prospective bidder or Contractor/ Consultant/ Service Provider.

Rule 70. Conflict of interest

(1) A conflict of interest for procuring entity or its personnel and bidders is considered to be a situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations.

(2) The situations in which a procuring entity or its personnel may be considered to be in conflict of interest includes, but is not limited to, following:-

(a) A conflict of interest occurs when procuring entity's personnel's private interests, such as outside professional or other relationships or personal financial assets, interfere or appear to interfere with the proper performance of its professional functions or obligations as a procurement official.

(b) Within the procurement environment, a conflict of interest may arise in connection with such private interests as personal investments and assets, political or other outside activities and affiliations while in the service of the procuring entity, employment after retirement from the procuring entity's service or the receipt of a gift that may place the procuring entity's personnel in a position of obligation.

(c) A conflict of interest also includes the use of procuring entity's assets, including human, financial and material assets, or the use of procuring entity's office or knowledge gained from official functions for private gain or to prejudice the position of someone procuring entity's personnel does not favour.

(d) A conflict of interest may also arise in situations where procuring entity's personnel is seen to benefit, directly or indirectly, or allow a third party, including family, friends or someone they favour, to benefit from procuring entity's personnel's actions or decisions.

(3) A Bidder may be considered to be in conflict of interest in case of:

(a) Bidder or their personnel having relationships or financial or business transactions with any official of procuring entity that are directly or indirectly related to tender or execution process of contract;

(b) participation by a bidder or any of its affiliates that are either involved in the consultancy contract to which this procurement is linked. All bidders shall provide in Qualification Criteria and Bidding Forms, a statement that the bidder is neither associated nor has been associated directly or indirectly, with the consultant or any other entity that has prepared the design, specifications and other documents for the subject matter of procurement or being proposed as Project Manager for the contract.

(d) Improper use of information obtained by the (prospective) bidder from the procuring entity with intent to gain unfair advantage in the procurement process for personal gain

(c) Bidders may be considered to be in conflict of interest with other bidders participating in the procurement under following situations

- i) they receive or have received any direct or indirect subsidy from any of other Bidders;
- ii) they have the same legal representative for purposes of the bid;
- iii) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another;
- iv) A bidder participates in more than one bid in the same bidding process. However, this does not limit the inclusion of the same sub-contractor, not otherwise participating as a bidder, in more than one bid; or
- v) In case of a holding company having more than one independently manufacturing units or more than one unit having common business ownership/ management, only one unit shall quote. Similar restrictions shall apply to closely related sister companies. Bidders must proactively declare such sister/ common business/ management units in same/ similar line of business.
- vi) In cases of agents quoting in offshore procurements, on behalf of their principal manufacturers, one agent cannot represent two manufacturers or quote on their behalf in a particular tender enquiry. One manufacturer can also authorise only one agent/ dealer. There can be only one bid from (a) The principal manufacturer directly or through one Indian agent on his behalf; and (b) Indian/ foreign agent on behalf of only one principal.

CHAPTER VII: APPEALS, REPEAL AND SAVINGS

Rule 71. Form of Appeal

- (1) An appeal under sub-section (1) or (4) of section 38 shall be in Form along with as many copies as there are respondents in the appeal.
- (2) Every appeal shall be accompanied by an order appealed against, if any, affidavit verifying the facts stated in the appeal and proof of payment of fee.
- (3) Every appeal may be presented to First Appellate Authority or Second Appellate Authority, as the case may be, in person or through registered post or authorised representative.

Rule 72. Fee for Filing Appeal

- (1) Fee for first appeal shall be rupees two thousand five hundred and for second appeal shall be rupees ten thousand, which shall be non-refundable.
- (2) The fee shall be paid in the form of bank demand draft or banker's cheque of a Scheduled Bank payable in the name of Appellate Authority concerned.

Rule 73. Procedure for Disposal of Appeal

- (1) The First Appellate Authority or Second Appellate Authority, as the case may be, upon filing of appeal, shall issue notice accompanied by copy of appeal, affidavit and documents, if any, to the respondents and fix date of hearing.
- (2) On the date fixed for hearing, the First Appellate Authority or Second Appellate Authority, as the case may be, shall,-
 - (a) hear all the parties to appeal present before him; and
 - (b) peruse or inspect documents, relevant records or copies thereof relating to the matter.
- (3) After hearing the parties, perusal or inspection of documents and relevant records or copies thereof relating to the matter, the Appellate Authority concerned shall pass an order in writing and provide the copy of order to the parties to appeal free of cost.
- (4) The order passed under sub-rule (3) shall also be placed on the State Public Procurement Portal.

Rule 74. Repeal and Savings

All rules, regulations, orders, notifications, departmental codes, manuals, by-laws, official memoranda or circulars relating to procurement of goods, services or works provided for in

these rules, which are in force on the date of commencement of these rules, in relation to the matter covered by these rules are hereby repealed to the extent they are covered by these rules:

Provided that such repeal shall not affect the previous operation of rules, regulations, orders, notifications, departmental codes, manuals, by-laws, official memoranda or circulars, so repealed and the procurement process commenced before the commencement of these rules shall continue as per the provisions of rules, regulations, orders, notifications, departmental codes, manuals, by-laws, official memoranda or circulars, so repealed.

Schedule I-A
Time for submission of bids and modes of publicity for
procurement of Goods and Services

S.No.	Estimated Value of procurement	Period for submission of bid from the date of first publication of Notice Inviting Bid	Mode of publication
1	2	3	4
1.	Up to rupees five lakh	Ten days	(i) Notice Board of the procuring entity and all subordinate Regional and Divisional Head Quarters, as the case may be. (ii) One Regional daily newspaper.
2.	Above rupees five lakh and up to Rs fifty lakh	Fifteen days	(i) Notice Board of the procuring entity and all subordinate Regional and Divisional Head Quarters, as the case may be. (ii) One Regional daily newspaper. (iii) One leading daily State Level newspaper having circulation of fifty thousand copies and above.
3.	Above rupees fifty lakh	Thirty days	(i) Notice Board of the procuring entity and of all subordinate Regional and Divisional Head Quarters, as the case may be. (ii) One State level leading daily newspaper having circulation of fifty thousand copies and above. (iii) One all India level daily newspaper with wide circulation.

Schedule I-B

Time for submission of bids and modes of publicity for procurement of works

S.N	Estimated Value of procurement	Period for submission of bid from the date of first publication of Notice Inviting Bid	Mode of publication
1	2	3	4
1.	Up to rupees one lakh	Seven days	Notice Board of the procuring entity and its subordinate offices.
2.	Above rupees one lakh and upto Rupees ten lakh	Fifteen days	(i) Notice Board of the procuring entity and its subordinate offices. (ii) One leading Regional daily Newspaper.
3.	Above rupees ten lakh and upto rupees one crore	Twenty one days	(i) Notice Board of the procuring entity and its subordinate offices. (ii) One leading Regional daily newspaper, one state level leading daily newspaper having circulation of 50,000 copies or more.
4.	Above rupees one crore	Thirty days	(i) Notice Board of the procuring entity and its subordinate offices. (ii) One leading Regional daily newspaper, one State level leading daily newspaper having circulation of 50,000 copies or more. (iii) One all India level [daily newspaper] with wide circulation.

SCHEDULE -II

Suggested time frame for various procurement methods by Single stage bidding

S.No.	Stages of Procurement	Procurement Method	Limited Bidding and Single Source Procurement
		Open Competitive Bidding	
1	2	3	4
1.	Issue of bidding documents	On the day of first publication of Notice Inviting Bids.	
2.	Submission of bids	(i) Thirty days from the date of first publication of Notice Inviting Bids; (ii) Where clarifications/ addendum are issued, at least fifteen days from date of issue of clarifications/ addendum; or (iii) In case of International Competitive Bidding, the period of submission of bids shall be forty five days from the date of first publication of Notice Inviting Bids and at least twenty days from the date of issue of clarifications/addendum.	Seven days from issue of Bidding documents/date of issue of clarifications/addendum.
3.	Technical bid opening	Within one day of last day of submission of bids.	Within one day of last day of submission of bids.
4.	Issue of letter of award	Within three working days of approval of award by concerned procurement entity	Within three days of approval of award by the competent authority.
5	Execution of contract agreement	Within fifteen days of issue of letter of award or a period as specified in the bidding documents.	Within fifteen days of issue of letter of award or a period as specified in the bidding documents.
6	Declaration of results in State Public Procurement Portal and website of the procuring entity	Within three days of decision / issue of sanction/ letter of acceptance as the case may be	Within three days of decision / issue of sanction/ letter of acceptance as the case may be

SCHEDULE -III

Time schedule for decision on the bids by the competent authority

S. No.	Authority competent to take decision 2	Maximum Time allowed for decision 3
1.	Head of Office or Executive Engineer	Twenty days
2.	Regional Officer or Superintending Engineer	Thirty Days
3.	Additional Chief Engineer	Forty days
4.	Head of the Department or Deputy Commissioner/ Chief Engineer/	Forty days
5.	Administrative Department	Sixty days
6.	Finance Committee/ Board/Empowered Committee/ Empowered Board, etc.	Seventy days

Note: (1) The period specified above shall be inclusive of time taken in communication of acceptance of bid.

(2) If procuring entity is other than the Head of Departments of the State Government or its attached or subordinate offices, the concerned administrative department shall specify the equivalent authority competent to take decision on the bid.