

**The (Draft)**  
**Assam Public**  
**Procurement Rules,**  
**2017**

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In exercise of the powers conferred by section 55 of the Assam Public Procurement Act, 2017 (Assam Act No XXIV of 2017), the Governor of Assam is pleased to make the following rules, namely:-

## CHAPTER-I

### Preliminary

#### 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.

#### 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) **“Administrative Department”** means an Administrative Department of the Government of Assam;
- (iv) **“Bid”** has the same meaning as ‘tender or ‘quote’ and **”Notice inviting Bids (NIB)”** shall have the same meaning as “Notice Inviting Tender (NIT)”
- (v) **“Bid security”** has the same meaning as ‘earnest money’ in existing rules, notifications and orders;
- (vi) **“Competent authority”** means the authority or officer to whom the relevant financial or administrative powers have been delegated under the relevant Delegation of Financial Powers Rules in respect of matters relating to procurement and approval of incurring expenditure thereon;
- (vii) **“Delegation of Financial Power Rules”** means the Delegation of Financial Power Rules of the Government of Assam as amended from time to time in respect of procuring entities specified in clause (a) of sub-section (2) of Section 3 of the Act and the relevant rules of delegation of financial powers, by whatever name called, in respect of procuring entities specified in clauses (b) to section (f) therein;
- (viii) **“form”** means form appended to these rules;
- (ix) **“Finance Department”** means the Finance Department of the Government of Assam;
- (x) **“International Competitive bidding” (ICB)** 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;
- ( xi) “**National Competitive bidding**” (NCB) means a bidding process in which qualified bidders from within India only are allowed to participate
  - ( xii) “**Sanction**” means financial sanction and has the same meaning as in the Assam Financial Rules;
  - ( xiii) “**Section**” means section of the Assam Public Procurement Act, 2017;
  - ( xiv) “**State Government**” means the Government of Assam;
  - ( xv) “**Technical sanction**” (TS) has the same meaning as in the Assam Financial Rules;
  - ( xvi) “**Urgent works,**” as distinct from emergency works, means works which require immediate commencement for completion within a very short, compressed time schedule or which need to be taken up on priority basis in the public interest to ensure the safety and security of life or prevention of loss of public assets and for which necessary budget provision or funds have already specifically been made available;

(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**

**3. Procurement Committees-** (1) Every procuring entity shall constitute and notify one or more Committees for the following purposes, namely: -

- (a) Preparation of bidding documents;
- (b) Opening of bids;
- (c) Evaluation of technical and financial bids;
- (d) Monitoring of contract;
- (e) Spot Purchase;
- (f) Purchase Committee for Competitive negotiations;
- (g) Any other purpose relating to procurement like preparation or evaluation of Detailed Project Report, etc, as may be decided by the procuring entity:

*Provided that no consultant or advisor, by whatever name called, shall be a member of any such Committee;*

(2) Each such Committee shall consist of three or more members, provided that, in cases of *e-procurement*, the *Bid Opening Committee* may have a minimum of two members;

(3) The concerned Financial Advisor or the Finance and Accounts officer or senior-most officer of the procuring entity dealing with finance as the case may be shall be a member in all the Committees;

(4) The procurement entity may nominate a technical official having the relevant expertise as a member in any or all the Committees if deemed necessary;

(5) The procuring entity may, with the prior approval of the concerned Administrative Department and after recording reasons thereof, engage a consultant having the requisite level of expertise as a subject matter specialist to assist any or all the Committees but such consultant shall not be part of the Committee or Committees;

(6) In complex projects, the work of preparation of project report or bidding documents may be assigned to duly engaged consultants having the requisite level of expertise with the prior approval of the concerned Administrative Department.

**4. State Procurement Facilitation Cell (SPFC) -** (1) The State Procurement Facilitation Cell provided for in section 50 of the Act shall be established in the Finance Department of the State Government. The Finance Department shall duly notify the essential

staffing pattern, strength, qualifications of professionals, consultants, advisors and other personnel as appropriate for effective performance of the assigned functions of the Cell;

(2) In addition to the functions and powers of the State Procurement Facilitation Cell specified in section 50 of the Act, the State Government may, by notification, also entrust the Cell with one or more of the following functions and powers:

- (a) Issuing, with the approval of the Head of the Finance Department and consistent with the provisions of the Act, clarifications relating to the composition and powers of various Committees dealing with procurement as in Rule 3 above;
- (b) Monitoring publication of required information related to procurement in the State Public Procurement Portal by various procuring entities as in Rule 5 below;.
- (c) Monitoring mandatory use of e-procurement by procuring entities as in Rule 6 below;
- (d) Setting coding conventions to facilitate e-governance as in Rule 7 below including a Harmonised System Nomenclature Coding for subject matters of all procurement;
- (e) Establishing, maintaining and continuous monitoring of the required safety and security protocols for the State Public Procurement Portal, issuing guidelines for the purpose and taking all precautionary measures thereof to ensure the security and integrity of the portal;
- (f) Monitoring Appeals relating to procurement as per section 38 to 40 of the Act, and taking steps to improve the appeal mechanism;
- (g) Monitoring action taken regarding offences and punishments relating to procurement as per sections 41 to 47 of the Act that are brought to its notice;
- (h) Any other work required to be performed under the Act or these Rules.

(3) The State Public Facilitation Cell, hereinafter referred to as the SPFC, shall develop a Procurement Management Information System (PMIS) for tracking the procurement process and the performance of the process. The Administrative Departments and the agencies under them shall submit the necessary information for the purpose to the SPFC on a quarterly basis.

**5. State Public Procurement Portal (SPPP)-** (1) The State Public Procurement Portal provided for under section 17 of the Act shall be launched, administered and maintained by the Finance Department with the assistance of the Information and Technology Department of the

State Government. All procuring entities shall be provided access to the portal for publishing procurement information as prescribed under the Act and these rules;

(2) In addition to the information specified in clause (a) to (g) of sub-section (3) of section 17, the State Public Procurement Portal shall provide access to such other information as may be specified by the State Government from time to time.

(3) Every procuring entity shall e- publish the specified information by uploading it in State Public Procurement Portal. All decisions relating to a particular procurement including extension of time, award of contract, closing of procurement process, commencement of works or services or delivery of goods procured shall be published in the Portal by the concerned procurement entity;

(4) Subject to any other law for the time being in force, the Head of the concerned Administrative Department with the concurrence of the Financial Adviser shall, after recording the reasons thereof, exempt the procuring entity from the prescribed mandatory e-publishing of information in cases where confidentiality is required to be maintained in terms of section 49 of the Act. In the case of procurement entities referred to in clauses (b) to (f) of sub-section (2) of Section 3 of the Act, the Head of the concerned Body with the concurrence of the Head of the Finance of that Body shall so exempt the procuring entities under them:

*Provided that statistical information like the number of cases in which such exemptions were granted, the value of the related procurement, etc, as may be required shall be intimated to the State Procurement Facilitation Cell by the concerned Department or Body on a quarterly basis;*

(4) The information published in the State Public Procurement Portal shall be treated as records and shall be classified, maintained and preserved in accordance with the Assam Record Rules for the time-period specified therein;

(5) The Finance Department shall allocate pages, codes, user identities, passwords, etc and other user and security tools, etc, as necessary to every procurement entity and may prescribe guidelines and standard operating procedures for use of the State Public Procurement Portal;

(6) All publications uploaded in the Portal shall be either digitally signed or clear and legible scanned copies of documents duly signed by the procuring entity or the competent authority;

(7) The State Public Procurement Portal shall contain the necessary links to the websites relating to public procurement by the State Government including the sites for e-procurement and electronic reverse auction;

(8) The provisions of this rule shall apply to all bid enquiries, requests for expressions of interest, requests for proposals, notice inviting bids for pre-qualification or registration or any other notice inviting bids or proposals in any form whether they are openly advertised, issued to limited number of parties or to a single party;

(9) The provisions of this rule shall not apply to procurements made by way of Request for Quotations; Spot Purchase or Government e-Market (GeM).

**6. e-Procurement-** (1) All subject matters of procurement of an estimated value of Rs twenty lakh and above or as may be notified by the State Government from time to time shall be procured through e-procurement;

(2) The procedure of e-procurement shall be as prescribed by the Finance Department in consultation with the Information and Technology Department of the State Government from time to time;

(3) The provisions of this rule shall not apply to procurements made by way of Request for Quotations, Spot Purchase or Government e-Markets (GeM);

(4) For efficiency, transparency and to enable e-governance to the extent feasible, all procuring entities shall use Computer Systems for all procurement processes from Need Assessment to Contract Management.

**7. Coding convention-** Procurement entities under the State Government specified in clause (a) of sub-section (2) of Section 3 shall use standardised coding conventions as prescribed by the State Government by notification from time to time;

(2) The coding conventions shall relate to but not be limited to:

- (i) Standardised nomenclature code for the subject matter of procurement;
- (ii) Budget and Accounting Codes of the State;
- (iii) Codes for identifying Administrative Departments, Heads of Departments, Offices, Officers, Consignees, Indenters, Inspecting Officers;
- (iv) Codes for vendors, contractors, consultants, service providers;
- (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, Notice Inviting Bids, RFPs, etc;
- (vii) Numbering convention for Contracts:

*Provided where the State Government has not yet defined such a coding convention, the procuring entity shall devise its own convention under intimation to State Procurement*

**8. Documentary Records of procurement proceedings and Communication-** (1) Subject to the provisions of section 10, all procuring entities shall, in addition to the records specified in clause (a) to (h) of sub-section (1) of the said section, maintain and preserve in safe custody the following records for the a period as laid down in the Assam Record Rules:

- (a) the names and addresses of all bidders with bid prices and conditions of bid if bid is conditional;
- (b) the name and address of the successful bidder and price at which procurement is made;
- (c) in case of rate contract method, the names and addresses of the bidders with whom the rate contracts are concluded;
- (d) a summary of modification, if any, made in the bidding documents;
- (e) details of qualifications required, the bidders having such qualifications, with details thereof, and details of bidders disqualified with reasons thereof;
- (f) comparative statements and a summary of the evaluation and comparison of bids, including the application of any margin of preference, reasons for rejection or non consideration of a bid, if any, and recommendations of the bid evaluation committee.
- (g) copy of all supply and work orders and the written procurement contract executed including rate contracts;
- (h) the terms and conditions of empanelment and a copy of the agreement in the case of empanelment;
- (i) if the procurement process is cancelled, the reasons for the cancellation.

(2) Every procuring entity shall maintain registers or databases related to procurement for the following in electronic or physical format as official records and ensure their safe custody:

- (i) **Subject Matters of Procurement:** Data about all subject matters of procurement handled or likely to be handled;
- (ii) **Vendor and Contractor Register:** :Data about registered vendors or contractors;
- (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 indicating the authenticity of purchase orders as a check against tampering or fraud;.

- ( v) **Purchase Order Progress Register:** Data of progress of supplies and control of payments against all purchase orders issued;
- ( vi) **Stock Register:** where receipts of all procured goods delivered in good condition are recorded before certifying stock receipts on invoices or bills as required for audit purposes;
- ( vii) **Asset registers:** where assets created on completion of works, whether building or other asset, shall be recorded with value and other details thereof;
- ( viii) **Liability Register:** where the financial liabilities relating to procurement of goods, works or services are recorded and updated regularly to indicate the balance liability remaining thereof at the end of every quarter;
- ( ix) **Any other register** or database that may be specified by the Finance Department or the concerned Administrative Department from time to time:

*Provided that, if necessary, separate registers or databases may be maintained for i) works ii) goods and iii) services.*

(3) The total number of pages with page numbers contained in every register specified in sub-rule (2) shall be duly certified before entering records therein and all such records shall be duly authenticated by the competent authority. The procurement register, the stock register and the Asset register shall be verified by the competent authority every quarter and after the end of every financial year;

(4) The registers of the procurement entities as specified above shall be subject to audit and made available to audit by the procuring entities as required accordingly.

### **CHAPTER-III**

#### **General principles of Procurement**

**9. Determination of need-** (1) While determining the need for any public procurement as prescribed in sub-section (1) of section 5 of the Act, procuring entities shall consider and assess its essentiality for public services and no procurement shall be initiated or made if such procurement is not clearly essential for public services. It shall be the obligation and primary responsibility of the concerned procuring entity to ensure that no procurement that is not clearly essential to public services is made by it;

(2) Procuring entities shall determine the need for procurement as prescribed before preparing its procurement plan and record the need so determined in its procurement plan specifically indicating its reasons of its essentiality for public services. The need so determined shall be reviewed and updated by the procurement entities from time to time with reference to the actual real-time requirement;

(3) While assessing the need, the procuring entity shall, also, in addition to the provisions in sub section (2) of section 5 of the Act, determine the appropriate method of satisfying the assessed need, whether by owning, leasing, hiring, outsourcing, Public Private Partnership (PPP) or otherwise, as per the declared policies of the Government or, in the absence of such policies, on the results of a techno-economic evaluation of various alternative methods of the satisfaction of the need using life-cycle cost, if feasible, as well as compatibility and inter-operability with existing infrastructure or systems;

(4) The quality, including the technical, performance and qualitative characteristics, the specific quantum and the extent or scope of the subject matter of procurement relating to the need so determined shall be clearly spelt out by the procuring entity to avoid unwarranted expenditure or idle inventories. The procuring entity shall not include superfluous and non-essential quantum or features of the subject matter of procurement or exceed scale, consumption or usage limits of requirements as laid down in its extent or scope and shall ensure that:

- (a) the purpose or solution sought to be obtained by the proposed procurement is sustainable;
- (b) the maintenance costs, where applicable, are reasonable and justified;

(5) The technical specifications, detailed project report, terms of reference shall be so developed as to ensure value for money, a 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, wherever such standards exist, or engineering, building codes 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 or power consumption, low maintenance cost and environment criteria such as reduced pollution, emission, noise levels, etc and shall comply with applicable legal and statutory regulations;

(6) The procuring entities shall work out the estimated costs in a realistic and objective manner with due diligence, this being a vital element in procurement processes like approvals, establishing reasonableness of prices at the time of evaluation of the bids, etc.

(7) The procuring entities shall consider the appropriateness of procurement of common use and other replacement goods, machinery equipment, etc on buy back or with exchange value by trading old, unusable items for new ones to avoid dead stock and useless inventories;

(8) All procurement entities shall maintain and preserve documents relating to such assessment and determination of the public need for procurement indicating the nature of the essentiality for public services as Class “B” records as prescribed in the Assam Records Rules.

**10. Procurement Plan-** (1) Every procuring entity, while preparing the annual budget proposals for a financial year, shall also prepare a procurement plan relevant to the public need determined under section (5) of the Act for each of the items of goods, works or services to be accordingly procured during that financial year in accordance with section 5 of the Act and rule 9 of these rules and submit it together with the annual budget proposal for that year to the Administrative Department through the concerned Head of the Department;

(2) The procurement plan shall, in addition to the provisions contained in clause (b) of sub-section (4) of Section 5 of the Act, also set forth and clearly indicate the following:-

- (a) Nature of Procurement – Goods, Works or Services;
- (b) Purpose and objective of the Procurement;
- (c) Its essentiality for public purposes;
- (d) Major Specifications– Quantity, Type,/ Quality ,configuration, scope, etc;
- (e) Estimated value;
- (f) Details of source of Funds;
- (g))Procurement method, with specific reasons if other than open competitive



bidding;

(h) The specific limitation on participation of bidder, if limited bidding is proposed;

(i) The time-frame for Bid Process; and

(j) In case of works, the time-frame for completion to assess requirement of fund in subsequent financial years or, in case of goods or services, the time-frame for delivery.

(3) The concerned procurement entity shall update its procurement plan as per the approved budget allocations and submit it to the concerned Administrative Department immediately on receipt of Budget Communication from Finance Department for its approval in terms of clause (a) of sub-section (4) of Section 5 of the Act. The plan, after approved by the Administrative Department shall be uploaded in the State Public Procurement Portal and the Departmental website by the procuring entity within seven days from the date of such approval;

(4) 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, if not received earlier otherwise;

(5) Any further update of the procurement plan made with the approval of the Administrative Department pursuant to sub clause (e) of sub section (4) of section 5 of the Act shall also be up loaded in the State Public Procurement Portal and the Departmental portal within seven days from the date of such approval by the Administrative Department;

(6) Notwithstanding anything contained in these rules, approvals of procurement plans by the other competent authorities like Governing Bodies, Boards, etc shall be obtained as due under existing rules, Articles, Bye laws, due procedure, etc. in cases of procurement entities under clauses (b) to (f) of sub-section (2) of Section 3 of the Act.

**11. Eligibility of Bidders-** (1) A bidder shall be a natural person, private entity, government-owned entity or, where specifically permitted in the bidding documents, any combination of these having formal intent and legal competency to enter into an agreement or contract or participate under an existing agreement or contract in the form of a Joint Venture;

(2) In addition to the eligibility conditions prescribed in sub-section (5) of Section 6 of the Act, a bidder to be eligible shall:-

(a) not have a conflict of interest in the procurement in question as laid down in the Act, these rules and the pre-qualification documents or bidding documents or bidder registration documents. All bidders found to have a conflict of interest shall be disqualified and their bid or other security forfeited and also be liable to other appropriate measures prescribed

in sub-section (3) of Section 11 of the Act. The concerned procuring entity shall take appropriate action immediately against such bidders in accordance with the provisions contained in subsection (3) section 11 of the Act if it is determined that a conflict of interest has vitiated the integrity of any procurement process and failure to so act shall be deemed to be an omission on the part of the procuring entity constituting a misconduct under the relevant conduct rules:

*Provided that such bidders shall be given a reasonable opportunity of being heard before such disqualification;*

(b) not be debarred under section 46 of the Act or otherwise.

(c) not be debarred under section 46 of the Act by any procuring entity under the State Government, the Central Government or any State Government or any Public Undertaking, Autonomous body, Authority by whatever name called under the under them. A bidder so debarred under section 46 shall not be eligible to participate in any procurement process undertaken by any procuring entity under the State Government or any Body or Agency under it for the period of such debarment;

(d) fulfil any other additional eligibility condition as may be prescribed or laid down by the procurement entity in the pre-qualification documents, bidder registration documents or bidding documents;

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

(a) no partner of the Joint Venture shall submit an independent bid for the same package for which the Joint Venture submits a bid as this would constitutes conflict of interest;.

(b) all partners of the Joint Venture shall sign the bid and shall be jointly and severally liable for the bid and for the execution of the Contract in accordance with the terms of the contract and a relevant statement to this effect shall be submitted by them in evidence thereof;

(c) in the event of the bid of Joint Venture being accepted, they shall either form a registered Joint Venture Company or a Limited Liability Partnership, or a Partnership Firm or else the contract documents and the Joint Venture Agreement, etc. shall be duly signed and executed in such a manner as may be required for making it legally binding on all partners and clearly indicating, amongst other things, the proposed distribution of responsibilities, both financial as well as technical, for execution of the work amongst them; and

(d) 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 or, otherwise, all the parties in Joint Venture shall sign the Agreement;

**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 and the specific nature or type of the limitation. Such declaration of the procuring entity shall not be altered later after bids have been invited to avoid vitiation of the entire procurement process;

*Provided that, if the nature and type of the limitation specified at the time of invitation of bids is altered in the public interest under extraordinary circumstances and such alteration enhances or substantially modifies the original limitation, fresh Notice Inviting Bids incorporating such altered limitation therein shall be issued after cancellation of the procurement proceedings initiated by the previous notice.*

**13. Qualification of bidders-** (1) The procuring entity shall clearly specify the qualifications required for bidders to participate in a procurement process in the relevant bidding documents or the bidder registration documents or pre-qualification bidding documents etc, in terms of Section 7 of the Act;

(2) A bidder shall be deemed to have qualified on fulfilling the eligibility conditions laid down as well as the qualifications specified in accordance with rule 11 and sub rule (1) above respectively but subject to the conditions that 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;

(3) The procuring entity may also require a bidder who was pre-qualified to demonstrate its qualifications again in accordance with the same criteria used to pre-qualify 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 specifically informing as to whether or not the bidder has so demonstrated to the satisfaction of the procuring entity and thereby qualified.

**14. Obligations of procuring entities relating procurement and value thereof-** (1) It shall be obligatory for every procurement entity to obtain all the required approvals and sanctions as prescribed in the Assam Financial Rules, Delegation of Financial Power Rules or other relevant Acts, rules and orders as amended up to date before initiating any procurement. In case of procurement of works, this shall, inter alia, include due administrative approval, technical sanction and financial sanctions. In case of goods and services, these shall, inter alia, include due approval of rates through due process and financial sanctions.

(2) No authority or official shall initiate any procurement unless such authority or official has been delegated with the necessary financial powers for the particular subject matter of procurement and the value or cost thereof under the relevant Delegation of Financial Powers Rules, by whatever name called, and budget provision or funds for the purpose is clearly available for the purpose;

(3) The bidding process for procurement undertaken by the procurement entities shall be subject to the relevant guidelines issued by the Central Vigilance Commission consistent with the Act and these rules:

(4) In case of procurement of works, no work order or letter of acceptance of bid shall be issued before Administrative Approval for such procurement has been duly accorded in compliance with the existing rules, orders and the 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 No XXXVII of 2005);

**Explanation:** Bids for works may be invited only after Administrative Approval (A/A) for the work based on plan and estimates duly prepared as per duly notified Schedule of Rates and market analysis as applicable as well as the Technical Sanction (TS) thereon has been duly accorded by the competent authorities;

(3) In case of procurement of goods and services, no supply order or letter of acceptance of bid shall be issued before financial sanction for such procurement has been duly accorded in compliance with existing rules, orders and the rules and orders that may be issued from time to time as laid down in the said Act No XXXVII of 2005. Bids may be accepted only after such financial sanction has been duly accorded;

(4) (a) Any advance action for procurement for works by any procuring entity in terms of clause (b) of sub- section (1) of Section 8 of the Act, shall be strictly limited to feasibility studies, design, soil testing deciding quality control measures, framing of plan and estimates or

detailed project report, preparation of specific bidding documents and other necessary preparatory work but bids shall be invited as prescribed only after Administrative Approval has been duly accorded for such procurement by the competent authority;

(b) Any such advance action for procurement of goods and services by any procuring entity in terms of clause (b) of sub-section (1) of Section 8 of the Act shall be strictly limited to all preparatory work like identification of quality and other relevant specifications or terms and conditions, preparation of specific bidding documents and finalisation of rates by inviting appropriate bids thereof as per due process but no bid shall be accepted or supply order issued before sanction has been duly accorded for such procurement by the competent authority;

(5) Subject to the provisions in this rule, the Head of the concerned Administrative Department, with the concurrence of the concerned Financial Advisor and the Heads of the concerned Department, with the concurrence of the concerned Finance and Accounts Officer shall be the designated Authority up to their respective financial powers specified in the relevant Delegation of Financial Power Rules for approving such advance action in terms of clause (b) of sub-section (1) of Section 8 of the Act in respect of procurement entities specified in clause (a) of sub-section (2) of Section 3 of the Act. In respect of the procurement entities specified in clauses (b) to (f) of sub-section (2) of Section 3 of the Act, the Head of the concerned Body with the concurrence of the Head of the Finance of that Body shall be such designated Authority;

*Provided that the State Government may, by Notification, designate any other Authority or Authorities for approval of such advance actions or prescribe further conditions or guidelines for such advance action;*

(6) In terms of the proviso to sub-section (2) of Section 8 of the Act, the Finance Department, having regard to the position of State finances and matters incidental thereto or for prudent fiscal management, may prescribe specific 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 by them;

(7) No procurement entity shall divide or bulk its procurement after bids have been invited for the purpose under any circumstances and violation thereof shall be deemed as wilful dereliction of duty constituting grave misconduct under the relevant conduct rules.

**15. Time frame for procurement process-** (1) The timeframe for one stage bidding shall be as in Schedule 1 (a) appended to these rules:

*Provided that, in appropriate cases, the Head of the concerned Administrative Department may, in consultation with the concerned financial Advisor, relax the prescribed time frame in respect of a particular procurement by a procurement entity under it after recording the reasons thereof in writing;*

(2) The time frame for making decisions on bids by the competent sanctioning authorities shall be as specified in Schedule 1(b) appended to these rules. A decision on acceptance or rejection of bids invited in a procurement process must be taken by the competent sanctioning authority well within the period of original validity of the bids and within the time frame specified in Schedule 1(b) counted from the date of opening of technical bids in cases of two envelope system or from the date of opening of financial bid in cases of single envelop system;

(3) In exceptional circumstances, the State Government may relax the period prescribed in the Schedule 1 (b) for Administrative Departments, Finance Committees, Boards, Empowered Committee, Authorities and Autonomous Councils;

(4) If a procuring entity or sanctioning authority has not been able to take a decision on bids within the time period specified in Schedule 1 (b) or as has been relaxed in terms of sub-rule (3), it shall forthwith, within the second working day of the expiry of such time period, report the matter to the Head of the concerned Administrative Department with intimation to the State Procurement Facilitation Cell indicating the specific reason for the delay and also publish the reason thereof in the State Public Procurement Portal. The Head of the concerned Administrative Department shall consider such report and reason of delay take appropriate action in accordance with the relevant rules framed under Article 309 of the Constitution of India or direct such action to be taken.

**16. Code of Integrity for procurement entity and bidders-** (1) The procuring entity and all officers or employees of the procuring entity, whether involved in the procurement process or otherwise, or bidders and their representatives or consultants or service providers participating in a procurement process or other persons involved, directly or indirectly in any way in a procurement process shall maintain an unimpeachable standard of integrity both inside and outside their office as enjoined in section 11 of the Act, the Central Civil Service Conduct Rules, 1964 or the Assam Civil Service Rules, 1965 or the relevant conduct rules by whatever name called or any other law or code as applicable to them and also shall:

(a) act strictly in accordance with the provisions of the Act, these rules or instructions

and guidelines issued under the Act and these rules;

- (b) not allow and prevent any bidder to have access to information on a particular procurement, before such information is available to the public at large;
- (c) not use or include unnecessarily restrictive or “tailored” specifications, terms of reference, statements of work, limitations or terms and conditions that may discourage wide competition or unnecessarily exclude certain categories of prospective bidders from participation;
- (d) not solicit or accept any bribe, reward, gift or any material benefit or solicit promise of any future employment, whether direct or indirect, from anyone who has sought or is seeking or likely to seek procurement from the procuring entity or, correspondingly, offer or give bribe, reward, gift or any material benefit or promise any future employment to any procuring entity from whom procurement is sought or is being or likely to be sought;
- (e) not have a financial or other interest in any bidder responding to a bidding process of the procuring entity and any such person having financial or other interest in any bidder shall not participate or be involved in that procurement process in any way;
- (f) not disclose proprietary and source selection information, directly or indirectly, to any person other than a person authorised to receive such information;
- (g) treat all bidders in a fair and equitable manner in line with the principle of fairness, integrity and transparency in the procurement process;
- (h) provide all bidders identical information together, that is, at the same time, during the bidding process;
- (i) apply the same criteria of evaluation as specified in the bidding documents, bidder registration documents or pre-qualification documents and under no circumstances introduce or apply new evaluation criteria during the evaluation process;
- (j) not entertain any favour, recreation, presents, services, etc. from the bidders or prospective bidders;
- (k) protect the interests of the procuring entity and the State Government under all circumstances while dealing with information and information sources;
- (l) maintain the confidentiality of all bids;
- (m) ensure that the selection of bidder is as per the bidding documents and is not influenced by personal or private reasons attributable to the officials in any manner;
- (n) disclose conflict of interest, if any forthwith; and

- (o) not act in contravention of the code of integrity laid down in section 11 of the Act and prescribed herein;

**17. Conflict of interest-** (1) Conflict of interest for a procuring entity or its personnel and bidders is considered to be a situation in which a party has interests that could improperly influence that performance of its 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 include, but are not limited to the following:-

- (a) A conflict of interest occurs when the private interests of a procuring entity or its personnel, such as personal, non-official, extra- 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 social activities and affiliations while in the service of the procuring entity, employment after retirement from service or of relatives or the receipt of a gift that may place the procuring entity or its personnel in a position of obligation;

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

- (d) A conflict of interest may also arise in situations where the procuring entity or any of its personnel is seen to benefit directly or indirectly or allow a third party, including family, friends or someone they favour, to benefit directly or indirectly from the decision or action of the procurement entity;

(3) The situations in which bidders participating in a procurement process or their representatives may be considered to be in conflict of interest include, but are not limited to the following:-

- (a) If they or their personnel or representatives or agents have any relationship or financial or business transactions or interests with any official of the procuring entity that are directly or indirectly involved in or related to the procurement process or execution of contract;

- (b) If they receive or have received any direct or indirect subsidy from any other bidder;



- (c) If they have the same legal representative for purposes of the bid;
  - (d) If 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;
  - (e) If they participate in more than one bid in the same bidding process;
  - (f) If they have controlling partners in common;
  - (g) If a bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the subject matter of procurement of the bidding process or were involved in such preparation in any way;
- (5) In the qualification criteria and bidding forms, all bidders shall provide a signed 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 is being proposed as Project Manager for the contract;
- (6) (a) In case of a holding company having more than one independently manufacturing unit or more than one unit having common business ownership or management, only one unit shall be allowed to submit bid or quote to prevent any conflict of interest. Similar restrictions shall apply to closely related sister or subsidiary companies. Such bidders must proactively declare such sister or subsidiary company or common business or management units in similar lines of business;
- (b) In cases of agents quoting in offshore procurements on behalf of their principal manufacturers, one agent shall not represent two manufacturers or quote on their behalf in a particular bid enquiry to prevent any conflict of interest.

**18. Breach of code of integrity by the bidder-** (1) Without prejudice to the provisions of Chapter IV of the Act, all procuring entities shall take appropriate action in accordance with the provisions of Section 46 and sub-section (3) of Section 11 as well as the relevant Discipline and Appeal Rules in case of breach of any provision of the code of integrity by a bidder or prospective bidder or person or any employee of the procuring entity and omission to do so shall amount to grave dereliction of duty and negligence constituting misconduct;

(2) The concerned controlling or supervising officers of procuring entities shall ensure that such action is taken by their subordinate procuring entities as duty in terms of the relevant conduct rules, by whatever name called;

(3) All procuring entities shall furnish soft and hard copies of returns of such breaches and the action taken thereon within thirty days of noticing such breach to the Heads of the concerned Administrative Departments who shall compile such returns of all the procuring entities under them and furnish soft and hard copies of the compiled annual return for the Administrative Department to the State Procurement Facilitation Cell on a quarterly basis within a week after every quarter;

(4) The State Procurement Facilitation Cell shall compile the department-wise returns for the entire State on such breaches and the action taken thereon and also take such steps as necessary for ensuring corrective action wherever required. It shall publish the compiled return of the breaches and the action taken thereon for the entire State in the State public Procurement Portal within the first quarter succeeding the concerned financial year.

**19. Description of subject matter of procurement-** (1) The description of the subject matter of procurement shall be set out in the pre-qualification documents, bidder registration documents or the bidding documents as prescribed in section 12 of the Act and the procurement entities shall ensure that such description of the subject matter is well defined, clear, specific, free from ambiguity and is in conformity with any guidelines issued by the State Government;

(2) In the description of the subject matter of the procurement as prescribed in sub-rule (1), the procuring entity shall specify the technical, qualitative and performance characteristics of the subject matter and include all specifications, standards, plans, drawings, designs, trials, sample testing and test methods, packaging, marking, labelling, conformity certification or symbols and terminology, etc as necessary and applicable;

(3) Except in cases of procurement from a selected single source or single manufacture or single service provider, reference to brand names, catalogue numbers or other details that limit any material or items to specific manufacturer(s) shall be avoided and not be made. Where absolutely unavoidable, such item descriptions shall always be followed by the words “or substantially equivalent.”

**20. Single envelop and two envelop bids-** (1) A procuring entity may choose to invite bids in single envelop or two envelop as defined in section 13 of the Act depending on the content, nature, or type of the subject matter of procurement or the availability of the appropriate design or the appropriate and most suitable technical specifications or technical capacity to define the qualitative standards and technical specifications for the subject matter

of procurement. The procedure and basis for so choosing shall be as prescribed herein below;

(2) The single envelop system shall be adopted by procuring entities where the subject matter of procurement is well defined with clearly set qualitative standards and technical specifications that are not complex in nature;

(3) The two envelop system shall to be adopted by the procurement entities in cases where the qualitative standards of the subject matter of procurement are not clearly set or the technical specifications and requirements for it are complex or where, in particular cases, the most appropriate design or technology at the best price is not available with the procuring entity;

(4) In case of single envelop bids, the lowest responsive priced bid that meets the eligibility criteria as well as the technical and commercial requirements laid down in the bid documents shall be the successful bid;

(5) In case of two envelop bids, bid security shall be submitted in or along with the first envelop containing the technical bid. The technical bids shall be opened first and evaluated. The Bid Evaluation Committee shall not be allowed access to the financial bids by the procuring entity which shall ensure the integrity and safe-keeping of the sealed financial bids till the completion of evaluation of technical bids.

(6) The evaluation of technical bids, in case of two envelop bids, shall be based solely on the criteria as specified in the bid documents and these shall not be waived even in cases where none of the bidders meet such criteria. If none of the bids are technically acceptable or none meet the criteria, the procurement process shall be cancelled and fresh bids invited without opening the financial bids. After completion of the technical evaluation, the financial bids of only the technically accepted bids shall be opened and evaluated. The lowest priced most advantageous bid among the technically accepted bids shall be the successful bid.

**21. Criteria for evaluation-** (1) The criteria, or set of criteria for evaluation of bids shall be prudently chosen by procuring entities in accordance with section 14 of the Act with a view to meeting the determined public need appropriately and satisfactorily as well as to ensure value for money, transparency, fair and wide competition in procurement. Any criterion that cannot be verified or assessed shall not be included in the evaluation criteria by the procuring entities;

(2) The criteria so chosen shall be clearly specified in the bidding documents and all bids shall be evaluated solely on the basis of the criteria for evaluation specified therein;

(3) Except in cases of procurement of Consultancy Services, price shall be the main criteria of evaluation and bid prices shall be evaluated by the Bid Evaluation Committee only among the bids that meet the eligibility, qualification and techno-commercial criteria specified in the bidding documents;

(4) Trials or sample testing, if may be chosen when considered actually necessary, shall be done, in an open and transparent manner in the presence of and in association with the different bidders who shall be given the opportunity to point out any of the technical issues involved therein. Failed bidders shall be provided reports indicating values of the various parameters obtained in trials or testing;

(5) In case samples had been called for and a particular sample selected during evaluation with reference to characteristics like shade, tone, make-up, feel, finish, design, workmanship, etc, the supply must be in conformity with the selected sample in such respects only. The other remaining characteristics shall be in conformity with drawings, specifications, etc, as laid down in the bidding documents;.

(6) In addition to the criteria for evaluation of bids set out in section 14, the evaluation criteria may include discounted cash flow techniques, etc, where relevant provided that such criteria has been mentioned in the bidding document.

**22. Negotiation of price-** (1) Save as otherwise provided for in section 31 and section 35 for procurement by the methods of single source procurement or competitive negotiations, no negotiations shall be conducted after the pre-bid stage till the completion of the evaluation of bids by any procuring entity;

(2) Subject to the guidelines of the Central Vigilance Commission issued from time to time, negotiations may however be undertaken, if so approved by the competent authority, only with the lowest or most advantageous responsive bidder and with no other bidder under the following circumstances:-

(a) when ring, pool or cartel prices have been quoted or is suspected to have been quoted by the bidders for a subject matter of procurement;

(b) when the rates quoted vary considerably or are unreasonable or higher than the prevailing market rates;

(3) The competent authority having previously approved the holding of negotiations, the bid evaluation committee shall have full powers to undertake such negotiations provided that the reasons and results of negotiations shall be recorded in detail;

(4) The lowest or most advantageous responsive bidder shall be informed of the proposed negotiations in writing either by email or through dak-messenger or by registered letter in such a way so as to not to render the original offer of the bidder inoperative. A minimum time of seven working days from date of delivery of such communication to that bidder shall be given for calling negotiations. In case of urgency the Bid Evaluation Committee, after recording reasons thereof, may reduce such time to not less than three working days, provided that the lowest or most advantageous bidder has received the intimation in time and consented to negotiations;

(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 both the revised and original bids valid for 45 days. The revised bid so obtained shall be read out to the bidder or its representatives present. In case 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 stand unrevised;

(6) In case the rates are considered unreasonable or high or are higher than prevailing wholesale market rates even after the negotiations, bids shall be rejected and fresh bids shall be invited.

**23. Pre-qualification of bidders-** (1) Subject to the provisions of section 18 of the Act, and in addition thereto, procuring entities may engage in a pre-qualification process as per the procedure prescribed herein in cases where:-

(a) there is a need for procurement in bulk or in large quantities;

(b) besides the complex techno-commercial suitability of offers, the capability of the source of supply is also essential or vital for the successful performance of the contract, as in cases of procurement of complex machinery or equipment systems or works, making it necessary to ensure that competition is only among bidders having the requisite capabilities so as to avoid vitiation of evaluation by low value offerings from inadequately qualified bidders;

(c) the procurement is based on complex performance specifications, turnkey engineering procurement and construction (EPC) contracts, or terms of reference as in procurement of consultancy, etc or where the offered solutions are likely to vary widely from one another making it difficult to equitably evaluate all offers on a common footing;

(2) The procedure for pre-qualification of bidders in accordance with section 18 of the Act shall be as prescribed herein below:-

i) Pre-qualification Bids procedures shall meet the norms of transparency, fairness and open wide competition;

ii) The Notice Inviting Bids for such pre-qualification, wherein the complete description of the subject matter of procurement, the terms and conditions of the pre-qualification including the period of validity and the eligibility or pre-qualification and evaluation criteria shall be clearly specified, shall be published in exactly the same manner as prescribed for Open Competitive Bidding to ensure widest possible competition;

iii) The pre-qualification results shall be valid as specified in the pre-qualification documents which shall usually be for one financial year and may further be extended for another one such year after recording reasons thereof. The period of validity shall be clearly specified in the pre-qualification documents;

iv) In the pre-qualification bid stage, competent qualified bidders shall be shortlisted by using measureable pre-qualification criteria like past experience of similar contracts, performance capability, financial soundness, or any other criterion relevant to the procurement;

v) The pre-qualification and the evaluation criteria shall be notified clearly in the pre-qualification bidding documents without any ambiguity and specifically clarifying that bidders have to submit authenticated documents relating to the prequalification criteria and eligibility criteria in support of their bids;

vi) The pre-qualification bidding documents shall indicate the complete schedule of requirements for which the prequalification is being done and include the likely quantum or extent or scope of the requirements for the procurement;

vii) The procuring entity shall evaluate the qualifications of bidders only in accordance with the pre-qualification criteria set out in the bidding documents. Verification of documents submitted by the bidders, where required, shall be done with due diligence by the procuring entity;

viii) 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 pre-qualification proceedings on the State Public Procurement Portal as well as Departmental Website. The procuring entity shall also promptly inform each bidder who have not pre-qualified that it has not been pre-qualified stating the reasons thereof;

ix) During the period of validity of the pre-qualification, the procuring entity shall invite bids for procurement from the pre-qualified bidders and only those bidders who have pre-qualified shall be entitled to continue in the procurement proceedings;

x) In case bids are not invited within the period of such validity, fresh pre-qualification shall be done;-.

xi) Except as otherwise provided herein, all other provisions of Chapter III and Chapter IV of these Rules, pertaining to General Principles and Open Competitive Bidding respectively shall, mutatis mutandis, apply to pre-qualification proceedings;

**Explanation:-**Prescribing eligibility or qualification criteria for bidders which would be evaluated along with Technical Bids and not prior to it shall not amount to pre-qualification and the provisions for pre-qualification of bidders shall not apply thereto.

**24. Registration of Bidders-** (1) The procuring entity may prepare a registered panel of eligible bidders of good conduct on the basis of duly set criteria for subject matters of procurement that are essential and required frequently to fulfil public needs but other details like quantity, time and place of delivery are not definitely known in advance. Such registration or empanelment shall be for a period of three calendar years from the date of registration with provision for renewal, subject to sub-rule (7) and the bidders so empanelled shall be listed with the procuring entity as registered bidders;

(2) The procuring entity may prepare separate panels for different subject matters of procurement or for different categories of procurement like goods, works, services; Also registration may be done for different classes of contractors or suppliers based on their capability for executing contract orders of different monetary limits in the relevant category of requirements, financial soundness, facilities and resources available with them, etc. The monetary limits shall be carefully assessed and fixed keeping in view the banker reports, capacity and capability of the firm or contractor and other financial information indicated in the balance sheets, profit and loss statements, etc:

(3) The provisions for pre-qualification of bidders contained in section 18 and sub-rule (1) of rule 23 of these rules shall apply to such registration of bidders;

(4) The procedure for registration of bidders shall be the same as prescribed for pre-qualification proceedings in sub rule (2) of rule 23 of these rules. The procuring entity shall invite applications for registration of bidders in the same manner as prescribed for Open Competitive Bidding through Notice Inviting Bids ensuring the widest possible competition;

(5) The procurement of a subject matter shall be done by the procuring entity from amongst the registered bidders within the limit of delegation of financial powers by sending

request for proposals and financial bids to all of them and uploading these in the State Public Procurement Portal. They shall also be eligible to participate in other methods of procurement if they meet the eligibility, qualification and other criteria of that procurement;

(6) New bidders and contractors shall be considered for registration at any time if they fulfil the required criteria and conditions and apply for such registration. The procuring entity shall upload the details of the criteria, conditions, time frames and procedure for registration of new bidders, firms and contractors in the State Public Procurement Portal and the Departmental website;

(7) The registration of bidders may be renewed after expiry of the three years subject to the fulfilment of the conditions thereof, the prescribed eligibility and other criteria as well as satisfactory performance during the previous registration period;

(8) The concerned procurement entity shall upload the list of registered bidders and contractors in the State Public Procurement Portal and update it regularly;

(9) Subject to the provisions in the Act and these rules, the registration of the bidders by concerned procuring entities shall be done in accordance with the criteria that may be prescribed by the State Government in the respective Administrative Departments from time to time:

*Provided that the existing register of bidders or contractors under the Public Works and other Departments or Bodies or Agencies shall be continued as already prescribed in the meantime on condition that the lists of such registered bidders and contractors shall be uploaded in the State Public Procurement Portal within 30 days of the enforcement of these rules.*

**25. Removal from list of Registered bidders or Contractors-** (1) A registered or empanelled bidder, after giving reasonable opportunity of being heard, may be de-registered and removed from the list by the concerned procuring entity for violation of the provisions of the Act or for any other valid reasons as in the following cases which are only indicative and not exhaustive:-

- (a) The contractor fails to abide by the terms and conditions of registration or to maintain the required technical or operational staff or equipment or there is change in its production or 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;
- d) Debarment by the Central Government, State Governments, concerned Administrative Department or Head of Department or any other Government Agency or Body or procuring entity under them;
- 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, withdraws from the process or fails to enter into a procurement contract or fails to provide performance security or any other document or security required in terms of the bidding documents;
- f) If a Court of law or the Comptroller and Auditor General or the Central Bureau of Investigation or State Vigilance and Anti-Corruption Department or Vigilance Commissioner or any other such competent authority or other investigating agency in respect of a case under investigation recommends such a course;
- g) Employs a government servant within two years of retirement of that government servant, who has had business dealings with the registered bidder in an official capacity before retirement;
- h) Makes any false declaration to any Department or Agency of the Government;
- i) or any other ground, based on which the registering authority considers, that continuation of registration is not in the public interest.

(2) Whenever a firm or contractor or supplier is removed from the list of registered contractors, its registration shall automatically stand cancelled. The firms, contractors or suppliers removed from the list of registered contractors shall neither be invited to bid nor will their bids be considered for evaluation but the firm or contractor or supplier data relating to them shall not be deleted from the portals or the computer system;

(3) Firms or contractors or suppliers 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;

(4) The procuring entities shall have the right to reassess, at any date, firms or contractors or suppliers already registered to satisfy themselves about their current financial soundness,

credit worthiness, facilities and resources available with them and take appropriate action thereon in accordance with the Act and these rules;

(5) Notwithstanding anything contained in sub-rule (1), a registered bidder, who already holds a previous contract or award for works or supply of goods which is in progress, is found to have adopted fraudulent means or has otherwise violated the provision of the Act while submitting bids for or undertaking a different work or supply shall be debarred from participating in that bid and in all bids for future works for a period up to three years after being given a reasonable opportunity of being heard but may, if the procuring entity so decides in the public interest, not be deregistered till the completion or cancellation of such previous contracts or awards for works or supply already held;

**26. Contents of bidding documents-** (1) All essential information which a bidder needs for submitting a responsive bid shall be clearly specified in the bidding document so as to enable all prospective bidders to participate with their responsive competitive bids. The bidding documents shall have the following parts or sections:-

- (a) Notice Inviting Bids;
- (b) Instruction to bidders;
- (c) Bid data Sheet;
- (d) Qualification and Evaluation criteria;
- (e) Bidding forms;
- (f) Conditions of contract and contract forms;
- (g) Any other document or part that may be necessary.

(2) The bidding documents shall include the following, namely:-

- (a) instructions for preparing bids;
- (b) the criteria and procedures that shall be applied for ascertaining the qualifications of bidders;
- (c) the requirements as to documentary evidence or other information that must be submitted by bidder in proof of its qualifications, tax clearances, registrations, etc;
- (d) 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 required to be performed like installation, maintenance, training, 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- schedules thereof, if any;

(e) the detailed procedure for presentation, opening, examination and evaluation of bids, minimum requirement in respect of the 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 for determining the successful bid including any provision for preference due or any criteria other than price that shall be used indicating 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 clear 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) all requirements of the procuring entity with respect to the issuer, the nature, form, amount and other terms and conditions of bid security to be provided by bidders submitting bids as well as the required securities such as labour and material bonds and the amount of performance security for the performance of the procurement contract or the rate contracts, if any, that is to be provided or deposited by the bidder who enters into the procurement contract, including securities such as labour or 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 where felt required by the procuring entity, provided that the

omission of any such reference shall not constitute any ground for appeal or liability on the part of the procuring entity;

(p) the name, designation, address and e-mail of one or more officers 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 any intermediary;

(q) all commitments required to be made by the bidder beyond the procurement contract, such as commitments relating to the transfer of technology, knowhow, maintenance or maintenance training, etc;

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

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

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

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

(3) When it is decided with the approval of the competent authority to replace an existing old item with a new and better version on a 'buy back' or similar procedure the procuring entity may trade the existing old item while purchasing the new one provided the procuring entity shall incorporate a suitable clause for the purpose so that the prospective and interested bidders can formulate their bids accordingly. The procuring entity shall also decide the time as well as the mode of handing over the old item to the successful bidder depending on the value, type and condition of the old item to be traded and incorporate suitable provisions thereof in the bidding document. Further, provision shall also be kept in the bidding document to enable the procuring entity either to trade or not to trade the item while purchasing the new one;

(4) Subject to these rules and the payment of price for the bidding documents if any, the procuring entity shall provide the bidding documents to every bidder who responds to the

invitation to bids in accordance with the procedures and requirements specified therein. If pre-qualification, empanelment or registration proceedings had been previously engaged in and completed, the procuring entity shall provide a set of bidding documents to every bidder that has been pre-qualified or empanelled on payment of the price charged for the document.

**27. Standard Bidding Documents (SBDs)-** (1) In terms of sub section (4) of section 20, the State Government shall, from time to time, notify Standard Bidding Documents as model bidding documents for the various procuring entities including Departments, Autonomous Councils, Authorities, Boards, Undertakings, Agencies, Corporations, etc, for the different kinds of procurement like works, goods and services or for different types or value ranges of procurement by the various procurement methods prescribed in the Act as may be required;

(2) The procuring entities shall, for the procurement under its consideration, prepare specific bidding document based on the notified Standard Bid Document for the kind, type, value range and procurement method. The standard provisions in the SBD shall be used without any alteration. Any modification to suit a unique requirement of the specific procurement in these documents may be done through variable sections such as Special Instructions to Bidders or Special Conditions of Contract or any such section, named otherwise;

(3) In case a notified SBD needs modification to suit special circumstances of a specific procurement, the procuring entity, before making any such modification, shall obtain the approval of the Head of the concerned Administrative Department which may be accorded with the prior concurrence of the Finance Department but no such approval shall be accorded ex post facto;

*Provided, where a relevant SBD has not yet been notified by the State Government, procuring entity may either use an existing SBD or, under intimation to the State Procurement Facilitation Cell, develop its own SBD and after obtaining the approval from the Head of the Administrative Department which may be accorded with the concurrence of the Financial Advisor;*

(4) Before issuing a Notice Inviting Bids, the procuring entity shall ensure that the relevant bidding documents specific to the procurement in question are prepared as prescribed herein and are kept ready for distribution on the date of issue of such notice inviting the bids.

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

**28. Price for bidding documents, pre-qualification documents or bidder registration documents and processing fee or user charges-** (1) The price for the bidding documents, pre-qualification documents or registration documents shall be fixed keeping in view the value of the bid and considering its preparation, publicity and delivery costs;

(2) The State Government may fix rates and issue guidelines for charging reasonable processing fee or user charges from bidders for using e-procurement facility.

**29. Sale of bidding documents-** (1) The bidding documents shall be available for sale from the date of publication of Notice Inviting Bids till 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 Departmental website. The prospective bidders shall be permitted to download the bidding document from the website and pay its price while submitting the filled-up bidding document to the procuring entity, or e-procurement gateway if such facility is available;

(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 demand draft, banker's cheque or through electronic means if the facility is available unless the procurement is reserved for a 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 pre-qualified or registered or empanelled as the case may be;*

(3) A detailed account of the 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 the principal of any concern may be used by its authorised sole agents or marketing agents or distributors or sub-distributors or authorised dealers and vice versa.

**30. Bid security-** (1) The amount of bid security to be deposited by bidders while submitting bids in a bidding process shall generally be between two to five percent of the estimated value of the procurement. The exact amount of bid security, rounded off to the

nearest thousand rupees, as determined by the procuring entity shall be indicated in the bidding documents:

*Provided that any concession in bid security deposit as may be notified by the State Government from time to time for encouraging local industries or small business, micro and small enterprises located in and operating from the State, recognised start-ups located in and operating from the State, individual bidders belonging to different reserved categories of the State, individual physically challenged bidders of appropriate levels of disability, etc, shall be allowed accordingly on production of the relevant certificates from the competent authorities:*

*Provided further that individual bidders belonging to the Scheduled Caste and Scheduled Tribe categories of the State shall continue to be allowed to deposit fifty percent of the bid security so fixed by the procuring entities as valid bid security subject to production of valid caste certificate duly issued by the competent authority until such existing provision is modified by the state Government;*

(2) Corporations and Undertakings which are fully owned or controlled by the State Government, State Public Enterprises or Autonomous Bodies for profit having legal capacity to bid in terms of their mandate, and Undertakings of the Central Government shall be allowed to, in lieu of bid security, furnish Bid Security Declaration accepting that if they withdraw or modify their bids during the period of validity or if they fail to sign the contract or provide performance security before the deadlines specified for these, they shall be suspended from being eligible to bid in any procurements of that procuring entity for a period specified in the bidding documents which shall not be less than three years and such fact shall be uploaded in the State Public Procurement Portal and the Departmental website;

(3) Bid security instrument or cash receipt of bid security or a bid securing declaration shall necessarily accompany the sealed bid submitted by the concerned bidders;

(4) The 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 may be taken into consideration in case bids are re-invited if found valid;

(5) The bid security may be given in the form of a banker's cheque or demand draft or bank guarantee in specified format, of a scheduled bank or deposit through digital mode or in any form that may be specifically prescribed by the State Government by notification issued from time to time. The bid security must remain valid for thirty days beyond the original or extended validity period of the bid;

(6) The bidding documents shall stipulate that the issuer 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 by a bank or Financial Institution acceptable to the procuring entity and confirmed by the corresponding bank of Financial Institution;

(7) Bank guarantee presented as bid security shall be verified and 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 litigation the outcome of which may adversely affect his financial credibility;

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

(9) The bid security of unsuccessful bidders shall be refunded immediately after final acceptance of successful bid, signing of Agreement and deposit of performance security;

(10) 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.

(11) The procuring entity shall promptly return the bid security immediately and not later than five working days after :-

- (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;

**31. Forfeiture of Bid Security-** The Bid security deposited by 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 after placement of supply or work order within the specified period;



(c) when the bidder fails to commence the supply and delivery of the goods or services or execute work as per supply or work order within the time specified;

(d) when the bidder does not deposit the required performance security within the specified period, and

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

**32. Period of validity of bids-** (1) Bids submitted by the bidders shall have to remain valid during the period specified in the bidding documents. This period should normally not be more than ninety days, but depending on the nature of the procurement, a longer validity period may be specified in the bidding documents by the procurement entity if required. A bid valid for a shorter period than that which has been called for in the bidding documents 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 a specified additional period of time. A bidder, by option, may refuse the request and such refusal shall be treated as withdrawal of bid and but in such cases the bid security shall not be forfeited;

(3) Bidders who agree to the extension of the period of validity of bids so requested for by the procurement entity shall also 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.

**33. Notice Inviting Bids-** (1) A procuring entity shall invite bids in Open Competitive Bidding and two stage bidding or for pre-qualification or registration of bidders by causing an Notice Inviting Bids (NIB) to be published in the State Public Procurement Portal and its Departmental website. An abridged notice shall also be mandatorily published in newspapers of wide and adequate circulation, as prescribed in sub-rule (3) of this rule wherein the complete web address where details are available and bidding documents from shall be mentioned;

(2) An invitation to bid published on the State Public Procurement Portal shall contain, at least, the following information, namely:-

- (a) the name and address of the procuring entity including e-mail address;
- (b) a summary of the terms and conditions of the procurement or rate contract to be entered into including the nature, quantity, time and place of delivery of the goods to be supplied, the works to be executed, or the services to be provided;
- (c) description of the subject matter of procurement;
- (d) whether the bid procedure shall be conducted in a single stage or two stages and whether it is to be presented in one envelop or in two envelopes;
- (e) the criteria and procedure that shall be adopted for evaluating qualifications of bidders;
- (f) the place from where the bidding documents can be obtained or downloaded and the procedure thereof;
- (g) the price of the bidding documents and the mode of payment for the exact amount of bid security and the forms in which the bid security is to be furnished;
- (h) the manner, place and deadline for the submission of bids;
- (i) right of the procuring entity to cancel the bid process and reject any or all the bids;
- (j) the time, date and place of opening of bids;
- (k) items of procurement that are reserved for a specific category of bidders, if any;
- (l) any other important information relating to the procurement;
- (m) the price and /or purchase preference that shall be applicable, if any

(3) The Notice Inviting Bids shall simultaneously be published in an abridged form in at least two newspapers, one each in Vernacular and English, of sufficiently wide circulation as prescribed in existing guidelines for ensuring maximum competition and indicating therein at least the type and subject matter of procurement in brief, the date and time for submission of bids and the addresses of the websites, etc where details shall be available. The bids for more than one subject matter of procurement may be published in one Notice;

(4) To ensure competition, attention of all likely bidders like registered bidders, past suppliers or contractors, shall be invited through email and SMSs alerts, etc, and the State Public Procurement Portal shall be programmed to generate such alerts automatically.

#### **34. Time Frame for submission of bids and minimum modes of Publication- (1)**

The timeframe for submission of bids in response to the Notice Inviting Bids and the minimum modes of publication of the Notice Inviting Bids for procurement of goods and services shall be as prescribed in Schedule 2 (a) appended to these rules:

*Provided that, in appropriate cases, the procuring entity may, with the approval of the Head of the concerned Administrative Department relax the period for submission of bids specified therein;*

(2) The time frame for submission of bids in response to the Notice Inviting Bids and the minimum modes of publication of notice invitation of bids for procurement of Works shall as prescribed in Schedule 2 (b) appended to these rules;

*Provided that, in appropriate cases, the procuring entity may, with the approval of the Head of the concerned Administrative Department relax the period for submission of bid specified therein;*

(3) 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 media 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. The period for submission of bid from the date of first publication of Notice Inviting Bid shall be forty five days in case of International Competitive Bidding;

(4) In emergent conditions, the procuring entity may, after duly recording the reasons, grounds and nature of the emergency, reduce the period for submission of bids from the date of the last publication of Notice Inviting Bids, to not less than half of the period specified in Schedules 2 (a) and 2(b), as the case may be;

**35. Pre-bid clarification-** (1) Subject to the provisions contained in section 22 of the Act, the responses of the procuring entities to bidders seeking clarifications on the bidding documents in terms of section 22 of the Act shall be communicated to the bidders in writing and, at the same time, such requests for clarification shall be uploaded along with the response thereto in the State Public Procurement Portal;

(2) In cases of turnkey contracts or facilities of a special nature or procurement of sophisticated and costly equipment; large works and complex consultancy assignments, a suitable provision shall be kept in the bidding documents for one or more rounds of pre-bid conference for clarifying issues or doubts, if any, about the specifications, technical or commercial details of the work, consultancy, plant, equipment and machinery projected in the bidding document, etc;

(3) The date, time and place of the pre-bid conference shall be indicated in the bidding 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 and shared with all the bidders who purchase or have purchased the bid documents. Such corrigendum shall be published on the State Public Procurement Portal along with the records or minutes of the pre-bid conference.

**36. Changes in bidding documents-** (1) At any time prior to the date and time fixed for submission of bids, the procuring entity may, for reasons to be recorded in writing, 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 or corrigendum in accordance with the provisions of section 23 of the Act. Such addendum or corrigendum, if issued shall be published in the same manner as the original Notice inviting bids and bidding document including uploading in the state Public Procurement Portal and the Departmental website of the procuring entity;

(2) Subject to sub-section (2) of Section 23 of the Act, in cases where the bid documents have been modified in terms of sub rule (1) the procuring entity may, in consideration of the nature and date of making such modification and the period of time remaining till the last date for submission of bids thereof, appropriately extend the time for submission of bids or modified bids by duly publishing notice prior to the last date originally fixed in order to allow the bidders sufficient and reasonable time to take into account such modification while submitting their bids or modified bids;

(3) In cases where the time and date of submission of bids is extended due to modification of bidding documents under sub-rule (2), the extended time and date for submission of bids shall be published in the same manner as the original Notice inviting bids and bidding document including uploading in the State Public Procurement Portal and the Departmental website of the procuring entity;

(4) If such last date of submission so fixed is not a working day, the bids shall be received or opened on the next working day.

**37. Exclusion of bids-** (1) A procuring entity shall exclude a bid in accordance with the provisions of section 25 of the Act and shall, if a bid has been excluded for the reasons contained in clause (c) of sub-section (1) of Section 25 of the Act, take immediate action against the officer or employee concerned as well the concerned bidder, agent or anyone acting on their behalf in accordance with law including the Act and these rules;

(2) The procuring entity shall report such action taken in detail to the Head of the

concerned Administrative Department for further necessary action forthwith and not later than one working day of having taken such action.

**38. Cancellation of procurement process-** (1) A procurement entity cancelling a procurement initiated by it in terms of the provisions of Section 26 of the Act for sufficient cause or reasons to be recorded in writing shall, while communicating its decision to cancel such procurement in accordance with sub-section (3) of Section 26, also publish such decision with the reasons thereof in the State Public Procurement Portal or, if not applicable, report the details thereof to the State Procurement Facilitation Cell for the Procurement Management Information System and annual report thereof;

(3) The procurement entity shall cancel a procurement process and re-invite bids by issue of a fresh Notice Inviting Bids in the following situations:

(a) If the quantity and quality of requirements have changed substantially or there is an infirmity in the bidding process initiated which cannot be rectified;

(b) When none of the bids received is substantially responsive in respect of the bidding documents;

(c) None of the technical bids 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 participating.

(e) if the bid prices are substantially higher than the estimated cost or the prevailing wholesale market prices or prices of authorised dealers;

(3) Before re-inviting bids thereof, the procuring entity shall first examine whether necessary requirements and formalities such as standard conditions, industry friendly qualification criteria, technical and commercial terms, wide publicity, sufficient time for bidding, etc, were fulfilled. The fresh Notice Inviting Bids shall be issued only after rectifying all deficiencies.

**39. Acceptance of the successful bid and Award of contract-** (1) Subject to the provisions of sub-section (1) of Section 27 of the Act, a bid shall be treated as successful only after the competent authority having the requisite financial and administrative powers delegated to it under the relevant delegation of Financial Power Rules has approved the concerned procurement in terms of that bid and, in case of all procurement of goods and services, such approval shall be deemed to have been accorded only after sanction for such procurement has been duly issued notwithstanding any order to the contrary;

**Explanation:** In the case of works, since Administrative Approval and Technical Sanction of plan and estimates generally framed on the basis of a duly notified Schedule of Rates (SOR) are accorded by the concerned competent authorities before issue of any Notice Inviting Bids initiation of the bidding process, further sanction is not required before acceptance of bid and award of contract relating to the work. Financial sanction will be required later, after the award of contract and commencement of works, for payment of bills for portions of works completed or for payment of any mobilisation advance that may be specifically entitled. In case of goods and services, prior sanction is required before bids are accepted and contract awarded or agreement signed as no such approval or sanction is available before inviting bids for the due finalisation of rates on the basis of which sanction is to be issued.

(2) Subject to section 27 of the Act, the competent procuring entity, after considering the recommendations of the Bid Evaluation Committee and the conditions of the bidding documents including those relating to eligibility, qualifications, financial implications, trials, sample testing and test reports, reasonableness of price, etc as required, shall accept or reject the recommended successful bid and record the decision thereof:

*Provided that, if any member of the Bid Evaluation Committee has disagreed or given a note of dissent, the matter shall be referred to the next higher authority as per the relevant Delegation of Financial Power Rules for decision;*

*Provided further that no bids shall be accepted in any case if the price is not reasonable or is higher than the wholesale market price or the price of authorised dealers or the offered subject matter of procurement is not consistent with the required quality;*

(3) The competent procuring entity shall take such decision on the recommendations of the Bid Evaluation Committee within the original validity period of bids and the time-frame prescribed in the Schedule 1 (b) of these rules. If the decision is not taken within the original validity period or the prescribed time-frame for taking such decisions, the matter shall be referred to the next higher authority as per the relevant Delegation of Financial Power Rules for decision;

(4) Prior to the expiry of the period of bid validity, but after due sanction has been formally accorded by the competent authority in cases of goods or services, the procuring entity shall inform the successful bidder and all other bidders of the acceptance of the successful bid in writing and shall also upload the communication on the State Public Procurement Portal, together with the sanction letter in case of procurement of goods or services;.

In such communication, the successful bidder whose bid has been so accepted shall be asked to execute an agreement in the format given in the bidding documents on non judicial stamp paper of requisite value and to deposit the required performance security within the period specified in the bidding documents or, where the period is not specified in the bidding documents, within fifteen days of such communication;

(5) 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 on the basis of qualification criteria fixed for the bidders in the bidding documents and has deposited the performance security or performance declaration thereof;

**40. Performance Security-** (1) Before awarding the contract for the procurement by signing a contract document or otherwise, performance security shall be called from and deposited by all successful bidders;

(2) The amount of performance security shall be five percent of the amount of the value of the supply order or work order in rupees as the case may be provided that the amount of performance security may be higher if so specified in the bidding documents;

(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) Bank guarantee of a scheduled bank, got verified from the issuing bank.

(d) Fixed Deposit Receipt (FDR) of a scheduled bank which shall be duly endorsed 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) The procuring entities shall ensure that the performance security furnished in the forms specified in clause (b) to (d) of sub-rule (3) remain valid for a period of at least sixty days beyond the date of completion of all contractual obligations of the bidder including warranty obligations, maintenance and defect liability period, whichever is the latest;

(5) The State Government may, after due consideration, prescribe other forms for

furnishing performance security or raise the quantum of performance security by notification issued from time to time.

**41. Execution of agreement-** (1) A procurement contract shall come into force from the date of issue of the work order or supply order by the concerned procuring entity for the procurement;

(2) Upon due acceptance of a bid by the competent sanctioning authority, written intimation together with the terms and conditions of the sanction in case procurement of goods and services, if any, shall be issued to the concerned bidder by registered post and email asking such bidder to execute an agreement in the format given in the bidding documents on non-judicial stamp of requisite value and to deposit the amount of performance security within the period specified in the bidding documents or where the period is not specified in the bidding documents, within fifteen days from the date on which such letter of acceptance is despatched to the bidder as provided for in rule 39. Acceptance of the bid offered shall be complete thereupon;

(3) The successful bidder shall sign the procurement contract within the period specified in the bidding document or, if the period is not specified in the bidding document, within fifteen days from the date on which the letter of acceptance is despatched to the successful bidder;

(4) If the bidder, whose bid has been accepted, fails to sign a written procurement contract or fails to furnish the required performance security within the 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 cases, cancel the procurement process or if it deems fit, offer 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;

(5) The bidder shall execute the written procurement contract on non-judicial stamp of specified value, the cost of which shall be borne by the bidder;.

**42. Information and Publication of Award-** Information of the award of contract shall be communicated to all participating bidders and published in the State Public Procurement Portal in accordance with the provisions of sub-section (3) of Section 27 of the Act and rule 38 above;



**43. Procuring entity's right to accept or reject any or all bids-** In accordance with section 26 of the Act, the procuring entity may, with reasons to be recorded in writing, 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;

**44. Right to vary quantity-** (a) If the procurement entity does not procure any subject matter or procures less or more than the quantity specified in the Notice Inviting Bids or the bidding documents due to change in circumstances, the bidder shall not be entitled to any claim or compensation except as otherwise provided for in the bidding documents;

**45. 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 at the same rates and on the same terms and conditions as in the original order subject to the condition that the procuring entity is satisfied that initiating a new procurement would not lead to better competitive prices and such satisfaction is recorded in writing;

**46. Confidentiality-** In addition to the restrictions specified in section 49, the procuring entity, while procuring a subject matter of such nature which requires the procuring entity to maintain confidentiality, may impose conditions for protecting confidentiality of such information as necessary subject to any law for the time being in force.

## **CHAPTER-IV**

### **Open Competitive Bidding**

*(Procedure relating to invitation, submission, opening and evaluation of bids)*

**47. Procedure relating to invitation, submission, opening and evaluation of bids in open competitive bidding-** (1) Subject to the provisions in the Act and the General Principles contained in Chapter III of these rules, all procuring entities shall invite bids in the Open Competitive Bidding method of procurement in accordance rule 33 of these rules giving the widest possible publicity and providing sufficient time for submission of bids for maximisation of competition;

(2) The procedure relating to the submission, opening and evaluation of bids to be followed by all procuring entities for Open Competitive bidding shall be as laid down herein in Chapter IV of these rules;

(3) Save as otherwise specifically provided in the Act and these rules, the procedure for submission, opening and evaluation of bids to be followed by all procurement entities in the methods of procurement other than open competitive bidding, when chosen in terms of section 29 of the Act after recording reasons thereof, shall, mutatis mutandis, also be as laid down herein in Chapter IV of these rules;

**48. Format and signing of bids-** (1) Except in the case of e-procurement, the bidder shall prepare and submit one original set of the bidding documents, called “Bid”, and clearly mark it as “ORIGINAL” along with such number of additional copies thereof as specified in the bidding documents, marking these additional copies as “COPY” clearly. In the event of any discrepancy between the original bid and its copies, the contents of the original bid marked “ORIGINAL” shall prevail and be taken into account to the exclusion of all copies;

(2) The original and all additional copies of the bid shall be typed or written in ink with all pages signed by the bidder or a person duly authorised to sign on behalf of the bidder in token of acceptance of the terms and conditions of the bidding documents. This authorisation shall consist of a written confirmation as specified in the bidding documents which 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 duly signed or initialled by the person signing the bid;

(4) The same procedure shall be adopted for signing of Technical and Financial bids in

case of two- part or two envelop bids.

(5) In case of e-procurement, the bidders shall prepare bids in the formats provided in the State Public Procurement Portal or e-procurement portal, which shall be signed digitally by way of digital signature certificates and uploaded therein. Scanned copies of documents stipulated bid documents shall be uploaded by the bidders along with their uploaded bids:

*Provided that the procedure for e-procurement as laid down by the State Government by Notification or provided for in the State Public Procurement Portal or e-procurement portal from time to time shall be followed.*

#### **49. Sealing, marking and submission of bids-**

(1) Bidders may submit their bids by post or by hand or dropped in the box earmarked for the purpose, provided that bidders shall submit their bids only electronically if so specified in the bidding documents,. Bidders submitting bids electronically shall follow the electronic bid submission procedure as specified on the State Public Procurement Portal or e-procurement portal;

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

(3) The inner and outer envelopes shall bear the :-

(a) name and complete address along with mobile telephone number and email address of the bidder;

(b) complete postal address of the procuring entity;

(c) specific identification mark or code and any additional identification marks as specified in the bidding documents; and

(d) a warning not to be opened before the time and date fixed for opening of bids as indicated in the bidding documents;

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

(5) Similar procedure for sealing, marking and submission of bids shall be adopted for Technical and Financial bids, if two envelop bids are invited.

**50. Time deadline for the submission of bids-** (1) The date of submission and opening of bids shall be specified in the bidding documents which shall not be extended except when:-

(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 for preparation of bids by the prospective bidders appears to be insufficient for which such extension is required;

(2) In cases where the time and date of submission of bids is extended due to modification of bidding documents, the procuring entity shall-

(i) ensure that, after issue of addendum or corrigendum, reasonable time remains available to the bidders for preparation and submission of their bids;

(ii) publish such modifications as well as the extended date and time for submission of modified bids in the same manner in which the Notice Inviting Bids and initial bidding documents were published including publication in the State Public Procurement Portal;

(4) If the last date of submission or opening of bids is not a working day, the bids shall be received and opened on the next working day. In case of e-procurement, if the last date for submission and opening is a holiday the opening date will be the next working day and time.

**51. Receipt and Custody of Bids-** (1) Except when bids are received through e-procurement or directly dropped in the bid box, bids shall be received by hand, courier or post in the specified format up to the specified time and date and at the specified place by the officer duly authorised by the procuring entity in this respect;

(2) The officer so authorised to receive the bids shall forthwith, at the time of receiving a bid, provide a signed receipt indicating therein the date and time of the receipt of bid to the person who delivers the bid;

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

(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 bids received shall be kept in safe custody under lock and

key by the officer authorised to receive the bids;

(5) The location of the bid box shall be such that it facilitates 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 remain with the officer authorised to receive the bids;

(6) All bids received by the officer authorised to receive bids on or before the date and time fixed for receipt of bids shall be entered in the Bids Receipt Register which shall be closed at the scheduled time and date after noting the total number of bids received up to the last time and date for submission of bids in words as well as figures and duly signed by that officer;

(7) The record of bids received late through post shall be marked as “Late” noting the time thereon and entered in the bids receipt register as such by such authorised officer after the closing of the register;

(8) Bids received by telegram or given in forms other than the prescribed form shall not be considered;

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

**52. Late bids-** The officer authorised to receive the bids shall not receive any bid that is submitted personally by hand after the time and date fixed for submission of bids under any circumstances. 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 case of e-procurement, the system shall not allow any bids to be uploaded after the deadline for submission of bids;.

**53. 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 the bidder or his representative authorised in writing and such letter of authority shall be enclosed with the bid. The corresponding substitution or modification of the bid contained in sealed envelopes as required must accompany the written notice. Such written notice shall be-

(a) submitted in accordance with the bidding documents with the envelope clearly marked as “Withdrawal,” “Substitution,” or “Modification” as applicable, and

(b) received by the officer 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 time and date fixed for receipt of bids;

(4) The provisions of this rule shall not apply in cases of e-procurement where bidders may withdraw, substitute or modify their bid online;

**54. Opening of bids-** (1) The sealed bid box shall be opened by the Bid Opening 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, enabling them to watch the proceedings;

(2) The officer authorised to receive bids shall also hand over all the bids received by him up to the time and date for submission of bids to the convener of the Bid Opening Committee and obtain the signature of the convenor of the Committee 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 shall be enabled to witness the electronic bid opening process online;

(5) Each bid received shall be opened by the Bid Opening Committee in the presence of the bidders or their authorised representatives who choose to be present. All envelopes containing bids shall be signed, indicating date and time, 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 the specified time;

(6) The Bid Opening Committee shall prepare a list of bidders or their representatives attending the opening of bids and obtain their signatures on the same. The list shall also contain the name, e-mail and mobile telephone number of the representatives and the corresponding names and addresses of the bidders they represent. The authority letters brought by the representatives shall be attached to the list. The list shall be signed by all members of Bid Opening Committee

indicating the date and time of opening of the bids;

(7) First, envelopes marked “WITHDRAWAL” shall be opened, read out, and recorded and the envelope containing the corresponding bid shall not be opened, but returned to the concerned bidders. No bid shall be permitted to be withdrawn unless the corresponding withdrawal notice contains a valid authorisation to request the withdrawal which shall also be read out and recorded. If the withdrawal notice is not accompanied by the valid authorisation, the withdrawal shall not be permitted and the corresponding bid shall be opened;

(8) 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 which shall also be read out and recorded. Thereafter, envelopes marked as “MODIFICATION” shall be opened, 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 which shall be read out and recorded;

(9) 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 deposited; and
- (d) any other details as the Committee may consider appropriate;

(10) After all the bids have been opened, these shall be initialled and dated on the first page of each bid by the members of the Bid Opening Committee. All the pages of the price schedule and letters, Bill of Quantities, etc 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, overwriting shall be initialled legibly to make it clear that such alterations, corrections, additions, overwriting existed in the bid at the time of opening;

(11) 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;

(12) The Bid Opening Committee shall prepare a record of the proceedings of the bid opening that shall include the name of the bidders 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 noting the date;

(13) In case of two envelop bids, only the 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. After the completion of the technical evaluation, the envelopes marked "Financial Bid" of only those bidders who have qualified in the evaluation of their Technical Bids shall be opened in the manner prescribed in these rules on the date and time that is intimated to those bidders;

(14) In case of two stage bids, 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 prescribed hereinabove in sub-rules 1 to 12 of this rule for opening of single envelop bids. The second-stage bids shall be opened as per the procedure prescribed for opening of two envelop bids, specified in sub-rule (13). In cases where the Technical and Financial bids are invited in single envelop in second stage, the procedure for opening of these bids shall be as prescribed hereinabove in sub-rules (1) to (13) of this rule;

**55. Preliminary examination of bids-** The Bid Evaluation Committee constituted by the procuring entity shall conduct a preliminary scrutiny of the opened bids at the beginning to assess the prima-facie responsiveness and record its findings thereof particularly in respect of the following:

- (a) that the bid is signed, as per the requirements listed in the bidding documents;
- (b) that the bid has been sealed as per instructions in the bidding documents;
- (c) that the bid is valid for the period, specified in the bidding documents;
- (d) that the bid is accompanied by due bid security or bid securing declaration;
- (e) that the bid is unconditional and that the bidder has agreed to give the required



performance security; and

- (f) whether any other conditions specified in the bidding documents are fulfilled.

**56. Tabulation of Technical bids-** (1) If Technical bids have been invited, these shall be tabulated by the Bid Evaluation Committee in the form of a comparative statement to evaluate the qualifications of the bidders against the criteria for qualification set out in the bidding documents. The comparative statement so prepared shall be signed by all members of the Committee. The table shall include the following:-

- (a) Name and address of the bidder including e-mail address;
- (b) Reference of registration and empanelment, if any, with the procuring entity or other procuring entities;
- (c) Whether there is 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 and, if signed by authorised person, whether valid document of authority is enclosed;
- (f) Whether proof of payment of price of bid documents is 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 are given;
- (h) Responses to the required qualification criteria and allotment of marks for them, or whether the minimum standards fixed for each criterion in the bidding documents are met in respect of the following:
  - (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 or declaration has been given as required under section 7;
  - (vi) whether any other qualification criteria fixed in terms of the provisions of section 7 of the Act are met;
- (i) The Result of evaluation of Technical bids, that is, whether qualified or not and, if

not, the reasons thereof;

(2) The members of the Bid Evaluation Committee shall record their recommendations below the comparative statement table as to which of the bidders have been found to be qualified in evaluation of Technical bids and sign it indicating date.

(3) The format of the table given in sub-rule (1) shall also be used, mutatis mutandis, for evaluation of proposals received in response to Registration of bidders, Empanelment of bidders, Request for Qualifications, Expression of Interest in the first stage of Two-stage bidding process. This format shall also be used, mutatis mutandis, for evaluation of Technical Bids in the second stage of the Two Stage bidding, if Technical bids have been invited separately.

**57. Tabulation of Financial bids-** (1) After completion of the evaluation of Technical bids, the Financial bids of only those bidders who have been qualified in the technical evaluation shall be opened and tabulated by the Bid Evaluation Committee in the form of a comparative statement to evaluate the lowest or most advantageous bid on the basis of the evaluation criteria set out in the bidding documents. The comparative statement so prepared shall be signed by all members of the Committee. The table shall include following:-

- (a) Name and address of the bidders including e-mail address;
- (b) If Technical bids have been evaluated, whether the bidder has qualified in evaluation of Technical bids;
- (c) Specifications of the subject matter of procurement offered by the bidders;
- (d) Rates quoted per unit, per item and total price of each item quoted or percentage above, below on the rates in the bidding documents, as the case may be;
- (e) GST (CGST, SGST, IGST), admissible duties, rates and other taxes, if any, all of which shall be shown separately;
- (f) Packing and forwarding charges, freight, insurance charges, etc;
- (g) Total cost per unit, per item and all items including all cost, charges and taxes;
- (h) Discount or rebate, if any and if permitted;
- (i) Alternative offers, if permitted;
- (j) Delivery period or completion (of works) period quoted;
- (k) Validity period of bids quoted;
- (l) Mode of payment quoted;

- (m) Samples, trials offered and results of sample testing and trials if asked for;
- (n) Guarantee, warranty and defect liability period quoted, if asked for;
- (o) Contract maintenance period quoted, if asked for;
- (p) Responses to any other information asked for in the bidding documents;
- (q) Any conditions quoted different from those included in the bidding documents;
- (r) Any material deviation, reservation or omission from the required specifications or terms and conditions specified in the bidding document;
- (s) Standing of the bidder in the evaluation of financial bids;
- (t) Combined evaluation of Technical and Financial bids, if stipulated in the bidding documents and the standing of the bidders in such combined evaluation;
- (u) Claim of registered Micro and Small Enterprises bidders located in the State for price preference in terms of the Procurement Preference Policy, Assam, 2015, if any

(2) If single envelop bids have been invited, the information specified in clause (b), (c), (d), (e), (f), (g) and sub-clause (v) of clause (h) of sub-rule (1) of rule 57 relating to tabulation of technical bids 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 the second stage of Two Stage bidding;

(4) The members of Bid Evaluation Committee shall give their recommendations below the table clearly indicating the lowest bid or most advantageous bid and sign it indicating date.

**58. Determination of responsiveness-** (1) The Bid Evaluation Committee shall determine the responsiveness of a bid to the bidding documents and also to the provisions of sub-section (2) of section 7 of the Act;.

(2) A bid shall be deemed to be responsive if it meets the requirements of the bidding documents without any 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) effect in any substantial way the scope, quality, or performance of the subject matter of procurement specified in the bidding documents; or

(ii) limit in any substantial way, inconsistent with the bidding documents, the rights of the procuring entity or the obligation of the bidder 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) The procuring entity shall regard a bid as responsive if it conforms to all requirements set out in the bidding documents, or contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the bidding documents, that is, there is no material deviation, or if it contains errors or oversights that can be corrected without any change in the substance of the bid;

(6) Bids that are not responsive or contain any material deviation shall be rejected. Bids declared as unresponsive shall be excluded from any further evaluation and the unopened part bids of such unresponsive bids, if any, shall be returned to the concerned bidder.

**59. 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 in writing for clarification by a specific date regarding its bid specifically therein that if the bidder does not comply or respond by that date his bid shall be liable to be rejected.. The request of the Committee for clarification and the response of the bidder thereto shall be in writing. Depending on the outcome, such bids shall be ignored or considered further;

(2) Any clarification submitted by a bidder with regard to his bid that is not in response to a request by the Committee specifically 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 under any circumstances;

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

**60. Immaterial Non-conformities in bids-** (1) The Bid Evaluation Committee may waive non-conformities in the bid that do not constitute a material deviation, reservation or omission and deem the bid to be responsive;

(2) The bid evaluation committee may request the bidder to submit necessary information or documents which are historical in nature like audited statements of accounts, tax clearance certificate, PAN, etc. within a reasonable period of time. Failure of the bidder to comply with the request within the given time shall result in the rejection of its bid;

(3) The Bid Evaluation Committee may rectify immaterial non-conformities or omissions on the basis of the information or documentation received from the bidder under sub-rule (2).

**61. Evaluation of Technical bids in case of two envelop or two part bids-**

(1) Subject to the provisions of section 7 and section 14 of the Act, Technical bids shall be evaluated solely on the basis of the criteria or terms and conditions set forth for evaluation of technical bids in the bidding documents and in accordance with the procedure herein in this rule. The criteria and terms and conditions shall be clearly mentioned in the bidding documents so as to maintain transparency in the evaluation and selection process. Such criteria or terms once fixed for evaluation of technical bids in the bidding document shall not be changed or relaxed under any circumstances; Bids shall be evaluated only against the criteria specified in the bidding documents. No new criterion shall be added or any such specified criterion ignored;

(2) Techno-commercial qualifications of the bidders shall be evaluated by the Bid Evaluation Committee in tabular form as per rule 56 on the basis of the weightings of marks assigned or minimum achievements as fixed in the bidding documents for the various criteria for qualifications in the areas of professional, technical, financial, managerial competence, etc. i.e. like number of years of experience of the bidder in the subject matter of procurement, satisfactory completion of similar contracts in certain number of past years each of a value not less than

specified percentage of the value of subject matter of procurement, financial turnover of the bidder in certain number of past years in relation to the value of the subject matter of procurement under consideration, the value of orders in hand of the bidder at the time of submitting the bid relative to the value of the subject matter of procurement, etc;

(3) Bids that are not responsive or contain any material deviation shall be rejected as prescribed in rule 58;

(4) Bidders securing the specified minimum percent of marks or having fulfilled specific minimum achievement norms as fixed may be considered as qualified;

(5) The number of firms qualified in technical evaluation should 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;

(6) The date, time and place fixed for opening of financial bids shall be communicated in writing to all the bidders who qualified in the technical evaluation. The date so fixed shall be not later than seven working days from the date of issue of such communication;

(7) The authenticity, integrity, sanctity and safe custody of the unopened Financial Bids shall be ensured during the evaluation of Technical Bids. At the time of opening of the Technical Bid, the Financial bids shall be put in a large envelop, which shall be dated, sealed and signed by the Members of the Bid Evaluation Committee as well as some of the bidders if present and placed under lock and key to demonstrate that none of the bids were accessed during the custody of the Financial bids.

**62. Correction of arithmetic errors in financial bids-** (1) The Bid Evaluation Committee shall correct arithmetical errors in responsive bids, in the following cases, 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 calculation of the 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 clauses (a) and (b) above;

(2) If the price bid is ambiguous leading to two equally valid total price amounts, the bid shall be treated as unresponsive and rejected;

(3) The provisions in this rule shall not apply to e-procurement where the arithmetical calculations shall be done by the software in the portal and such issues are unlikely to arise.

**63. Evaluation of financial bids-** (1) Subject to the provisions of section 27 of the Act, financial bids shall be evaluated in accordance with the procedure prescribed herein in this rule;

(a) In case of single envelop or single part bid systems where bids are received in single cover along with requisite bid security, processing fee or user charges and price of bidding documents within the specified time, bids shall be evaluated straightaway by the Bid Evaluation Committee in accordance with the provisions for evaluation in the Act, these rules and the criteria and terms in the bidding document in the presence of the bidders or their representatives who choose to be present;

(b) In case of two envelop or two stage bid system, the financial bids of only those bidders who have qualified in the technical evaluation shall be opened by the Bid Evaluation Committee at the notified time, date and place 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 54 relating to opening of bids;

(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 shall be liable to be rejected;

(f) The financial evaluation shall include all costs, taxes, duties, charges applicable to the bidder;

(g) The comparison of the responsive bids shall be considered on the total outgo of public money from the procuring entity for the procurement to be paid to the supplier or to any third party, including all elements of costs as per the terms of the proposed contract, including any taxes, duties, levies, freight, insurance etc, duly delivered, commissioned, as the case may be, and the

evaluation criteria specified in the bidding documents shall only be applied accordingly;

(h) If the bids were invited on a variable price basis, the responsive bids shall be evaluated, compared and ranked on the basis of the position prevailing on the day of opening of bids and not on the basis of any future date. In case of two stage bid system, such ranking shall be based on the position prevailing on the date of opening of the Technical bids.

(i) While evaluating bids, factors such as high quality performance, environmental-friendly features, low running cost, low maintenance cost, and the like shall be taken into account provided that these are specified in general in the bidding documents;

(j) The offers shall be evaluated as provided hereinabove and marked L1, L2, L3 etc, where L1 is 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 being considered;

(k) If certain bidders offer suo motu discounts and rebates after opening of the bid, techno-commercial or financial, these 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 suo motu rebates shall be incorporated in the contracts. This also applies to conditional rebates like rebate for faster payments, etc;

(l) In case rate contract is to be entered into, more than one firm at the same lowest rate may be considered to ensure uninterrupted delivery if so provided for in the bidding documents, but, for this purpose, counter offer of the lowest rate shall be given to the bidders quoting the next higher rates for acceptance in order of the ascending value of the bids;

(2) The Bid Evaluation Committee shall prepare a comparative statement in tabular form as in rule 57 relating to tabulation of financial bids along with its report on the 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 the other case:

*Provided that the bid offer so recommended by the Committee shall be reasonable and justified in consideration of the prevailing wholesale market prices and, in no case, shall be in excess of such market prices;*

(3) While evaluating bids and recommending the offer to be accepted, the Bid Evaluation Committee shall consider and give effect to the price preference for Micro and Small Enterprises in the State as prescribed in the Procurement Preference Policy, Assam, 2015 or as may be notified



from time to time and such other price or purchase preference that may be notified by the State Government from time to time.

**64. Comparison of rates of firms outside and those within the State of Assam-** The Bid Evaluation Committee shall while preparing a comparative price statement for evaluation of bids submitted, exclude the SGST payable in Assam 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 of Assam, the principles enumerated in clauses (a) and (b) 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 of Assam with the price of a similar article procured from outside the State, the amount of Assam SGST 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) If however, after such comparison, a procuring entity decides to procure goods from outside the State, the supplier shall be asked to supply the goods through billing by a branch or office or sales depot of the supplier inside the State in order to protect the consumption base for taxation in the State.

**65. 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 Committee shall check as to whether while floating the Notice Inviting Bids all necessary requirements to encourage competition like standard bidding terms and conditions, industry-friendly specifications, wide publicity, sufficient time for formulation of bids, etc were fulfilled. If not, the Committee shall recommend cancellation of the bid process and issue of fresh Invitation for Bids after rectifying the deficiencies and the procurement entity shall act accordingly as recommended;

(2) Subject to a completely defect-free and proper floating of Notice Inviting Bids as indicated in sub- rule (1) above and the provisions of the Act and these rules, the finding of which shall be recorded in writing by the concerned procuring entity by detailing the defect-free process

undertaken, the bid process shall be considered valid even if there is one responsive bid except as otherwise provided for in rule 38 and 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 is no indication of cartelisation amongst bidders; and
- (e) the bidder is qualified as per the provisions of section 7 of the Act;

In such cases, the Bid Evaluation Committee shall prepare a justification note, in which the specific concurrence of the Finance and Accounts member shall be necessary and on which the approval of the next higher authority of the procuring entity in terms of the relevant Delegation of Financial Powers shall be obtained. The bid shall be finalised only after such approval is accorded with the concurrence of the Finance and Accounts member;

(3) In case of dissent by any member of Bid Evaluation Committee, the next higher authority as per the relevant Delegation of Financial Power Rules shall decide whether to sanction the single bid or re-invite bids after recording reasons thereof. If a decision to re-invite bids is taken, the bid process shall first be cancelled and market assessment for estimation of market depth, eligibility criteria and cost estimates shall be carried out before issue of fresh Notice inviting Bids.

**66. Price and Purchase Preference-** (1) Price or purchase preference as per the rates and proportion of quantity notified in the Procurement Preference Policy, Assam, 2015 shall be accorded to the registered Micro and Small Enterprises located in and operating from within the State of Assam as prescribed therein, or as may be notified by the State Government from time to time, subject to the production of valid registration certificate as prescribed in the said Policy;

(2) Any other price and purchase preference or any concession in respect of bid security for any defined category of bidders that may be prescribed by the State Government by Notification published in the Official Gazette shall be duly accorded in the evaluation of bids and the award of contract or agreement, etc, subject to submission of evidence of eligibility for availing such price or purchase preference or concession relating to bid security thereof.

**67. Further steps or measures-** Subject to the provision of the Act and these rules, the State

Government in the Finance Department may, by Notification, prescribe further steps or measures to be adopted in the process of invitation, submission, opening and evaluation of bids for any of or all the methods of procurement. The State Procurement Facilitation Cell may recommend to the State Government benchmarking standards, or Key Performance Indices for procurement processes or entities for effective implementation of the Act.

## **CHAPTER-V**

### **Methods of Procurement and Procedure thereof**

**68. Most Preferred method of Procurement-** (1) Subject to the provisions of the Act, these rules or any additional conditions notified under section 37 of the Act, every procuring entity shall procure a subject matter of procurement by single or two stage Open Competitive Bidding method, whether through e-procurement or otherwise, as the most preferred method of procurement in accordance with the procedure prescribed in Chapter III and Chapter IV and rule 69 of these rules and the criteria and processes specified in the bid documents;

(2) For a particular procurement, a procurement entity, subject to the provisions in the Act, these rules and further conditions that may be notified by the State Government, may choose a different method of procurement specified in sub-section (1) of Section 28 of the Act if deemed more advantageous and appropriate after recording the specific reasons and circumstances in writing for so choosing in exception to the preferred Open Competitive Bidding method in terms of subsection 4 of Section 29 of the Act. Such specific reasons and circumstances shall be recorded in the case file and clearly noted in the procurement register indicating the name and designation of the procurement entity making the decision;

**69. Procedure for Open Competitive Bidding-** (1) Subject to the provisions in the Act, the general principles of procurement prescribed in Chapter III and the procedure laid down in Chapter IV of these rules shall be followed by all procuring entities in cases of all procurement through Open Competitive Bidding;

(2) There shall be no restriction on bidders in Open Competitive Bidding. Bidders not registered with the procuring entity as well as foreign bidders bidding in Indian rupees shall be eligible to participate. If bidders are required to be pre-qualified, the procedure for pre-qualification of bidders prescribed in Chapter III of these rules shall be followed;

(3) The date for opening of bids shall be fixed after at least twenty one clear days counted from the date of publication of the latest advertisement inviting bids;

(4) Open Competitive Bidding at global level, i.e. International Competitive Bidding, (ICB), with provisions to bid in the currencies under the notified Basket of Currencies of the Reserve bank of India, shall be resorted to in cases where:

- i) The required specifications, quality of the subject matter are not available within the nation and alternatives available in the nation are not suitable for the purpose;
- ii) There is requirement for compliance to specific international standards in technical specifications and sufficient number of competent domestic bidders that are likely to comply with these required technical specifications and quality are not available;
- iii) There is a suspected anti-competitive behaviour attracting provisions of Competition Act, 2002 (Union Act 12 of 2003) as amended among indigenous bidders;
- iv) Any other reason for which International Competitive Bidding is considered to be appropriate by the procuring entity or the concerned Administrative Department:

*Provided that date for opening of bids shall be fixed after at least forty five clear days counted from the date of publication of the latest advertisement inviting bids in case of International competitive Bidding.*

**70. Limited bidding-** (1) A procuring entity may choose to adopt the Limited Bidding Method for a particular procurement on satisfaction of any of the conditions prescribed in sub-section (1) of Section 30 or section 6 of the Act and after recording the specific reasons and circumstances in terms with sub-rule (2) of rule 68. for so choosing. In such Limited Biddings, the restriction or the limitation criteria shall be in respect of the bidders or the number or type or category of bidders as provided for in Section 6 or Section 30 of the Act and not in any other respect. The selection of bidders for the purpose shall be done by the procuring entity with due diligence in a fair and transparent manner;

(2) Subject to Section 30 of the Act and except as otherwise provided for in sub-rules (3) to (5) herein below, the procedure prescribed for procurement by Open Competitive Bidding including evaluation thereof shall, mutatis mutandis, apply to all procurement made by the limited bidding method;

(2) The particular limitations of the bidders as decided by the procurement entity for the limited bidding method chosen by it shall be clearly specified in the Notice Inviting Bids which shall be, in addition to writing directly as provided for in section 30 of the Act, also simultaneously published in the State Public Procurement Portal;

*Provided that the procuring entity shall not exhibit the invitation to bid on the State Public Procurement Portal if the subject matter for procurement is of the nature specified in*

*clause (e) or clause (h) of sub-section (1) of Section 31 of the Act;* A minimum period of ten working days and, in case of extreme urgency after recording reasons thereof, three working days after invitation of bids shall be given to the bidders to offer bids;

(3) All bidders fulfilling the qualification and limitation criteria and submitting shall be allowed to participate in the bidding process irrespective of whether any invitation was issued to them or not as provided for in clause (b) of (2) of Section 30 sub-section .

**71. Single source procurement-** (1) The procedure to be followed for single source procurement, when chosen by competent procurement entities after recording reasons thereof in the cases specified in sub-section (1) of Section 31 of the Act and in accordance with sub-rule (2) of rule 68 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 and shall also exhibit the invitation to bid on the State Public Procurement Portal simultaneously:

*Provided that 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 clause (h) of sub-section (1) of Section 31 of the Act;*

(b) The procuring entity may engage in negotiations in good faith with the single bidder for obtaining a more advantageous deal only after submission of bid.

(c) The single source may be selected from the list of empanelled, registered bidders for the subject matter of procurement with the procuring entity or, where it does not register bidders, from the list of empanelled, registered bidders of another procuring entity in terms of sub-section (5) of Section 19 or a suitable bidder identified in an objective manner through other reliable sources;

(d) The basis or grounds for the selection of the single bidder shall be recorded in writing by the procurement entity;

(e) Before procuring an item as per the rate contracts of the DGS&D under clause (c) of sub-section 2 of Section 31 or the rate contracts of any such similar Institution or entity that may be established from time to time, the procuring entity shall obtain and compare such contracted rate in offer with the respective company price list or discounted rates of their authorised dealers for the same item or subject matter of procurement and, thereafter, proceed to procure the item at

the lowest rate emerging from such comparison;

(f) In procurement of goods, where items are procured only from Original Equipment Manufacturers or manufacturers having proprietary rights or their authorised dealers or stockists, a Proprietary Article Certificate (PAC) shall be signed by the appropriate authority. The concerned Administrative Department responsible for the sector of such proprietary shall lay down the schedule of powers for signing such certificate;

(g) Except as otherwise provided for in this rule and provisions of Chapter III relating to pre-qualification proceedings, publication of Notice Inviting Bids in newspapers, price and sale of bidding documents, pre-bid clarifications, exclusion of bids, comparison of rates of firms from outside and within Assam, all other provisions relating to the procedure for Open Competitive Bidding shall, mutatis mutandis, apply to all procurement made by the single source procurement method;

(2) Notwithstanding anything contained in sub-rule (1), in emergent situations arising in a district of the State out of floods and other calamities, natural or otherwise, or urgency for upholding Human Rights, the relevant subject matter may be procured from a single source at or below the ceiling rates to be fixed by a District Emergency Procurement Committee;

The District Emergency Procurement Committee shall decide the ceiling rates for the subject matter of procurement on the basis of analysis of the wholesale market or authorised dealer rates of that subject matter prevailing during the previous six months and shall consist of the following officials, namely:-

- (a) Deputy Commissioner - Chairperson
- (b) District officer of the concerned Department - Member Secretary
- (c) Sub Divisional officers of Civil Sub divisions - Member
- (d) Finance & Accounts Officer or Treasury Officer in absence of FAO - Member

The Chairperson may 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.

(3) An Annual report of all procurements made by the method of single source procurement shall be submitted to the State Procurement Facilitation Cell through the concerned Administrative Department by the first quarter of the following financial year;

(4) All procuring entities shall make continued efforts to break the monopoly of bidders by modifying requirements, specifications, terms and conditions, increasing the number of registered

bidders, etc to enable more bidders to participate.

**72. Two stage bidding-** Subject to the provisions contained in Section 32 of the Act, the procedure for procurement through Two stage bidding shall be as prescribed hereunder:-

(a) In the first stage of the bidding process, the procuring entity shall invite proposals containing the technical aspects including design, technology, etc with reference to the required outputs or outcomes relevant to the procurement as well as the professional and technical competencies and qualifications of bidders relating to the subject matter of procurement along with the contractual terms and conditions of the proposed procurement without asking for any bid price;

(b) The bid document for the first stage shall, inter alia, include a brief description of objectives and scope of the requirement, instructions to bidders including eligibility criteria, evaluation criteria, preliminary qualification criteria relating to past experience, technical capabilities, financial strength etc which shall be used for short listing prospective bidders. Each parameter may be assigned marks and relative weights.

Alternatively, instead of scoring and assessing against weights, the bid document may specify a 'fail-pass criteria' with the minimum qualifying requirement for each of the criteria, such as minimum years of relevant experience, minimum number of assignments executed and minimum turnover, etc;

(c) All first stage bids, if otherwise eligible, shall be evaluated for short listing by the Bid Evaluation Committee against the different criteria specifically provided for in the bidding document like past experience or performance in a similar context, financial strength, technical capabilities, etc. Each bidder shall be assigned scores based on the sum of marks obtained for each parameter multiplied by the weights assigned to that parameter as specified in the bid document. All bidders who secure the minimum required marks shall be shortlisted. Alternatively, if fail-pass criteria are specified in the bidding document, all bidders who meet the minimum requirement as so specified shall be shortlisted. The short list shall comprise of not less than four bidders;

(d) The Bid Evaluation Committee may hold discussions with the bidders provided that equal opportunity shall be given to all bidders to participate in the discussions or make presentations if any such discussion is held. The procuring entity may, at its option, involve other stakeholders or persons having relevant expertise in the discussions who could add value to decision making on the various technical aspects and criteria including the evaluation criteria;



(e) Based on the discussions or presentations so held, one or more acceptable technical solutions shall be decided in respect of detailed technical specifications for each acceptable technical solution, quality bench marks, warranty requirements, delivery milestones, qualification criteria, environment friendliness and suitability, ease of maintenance, sustainability etc, in a manner that is consistent with the Act and the objectives of transparent public procurement for revision of the original bidding document and specifications, etc as may be necessary;

(f) While revising the technical design, stipulations, terms and conditions, or criteria for evaluation, etc made in terms of the provisions contained in clause (d) of subsection (2) of Section 32 of the Act 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 terms and conditions or criterion for evaluation, etc and such revision shall be communicated forthwith to all the eligible bidders in writing and exhibited in the State Procurement Portal simultaneously;

(g) 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, asking them to present their final bid containing bid prices and detailed technical bid in response to the revised set of specifications, terms and conditions, evaluation criteria, etc for the procurement;

(h) Any bidder choosing to withdraw from the bid at the second stage in terms of clause (f) of sub-section (2) of Section 32, shall declare his intention to withdraw in writing, citing the reasons thereof, to the concerned procurement entity at least one working day prior to the date fixed for submission of the final bid with bid price. Such bidder upon so declaring shall not be penalised in any way and his bid security shall not be forfeited;

*Provided that the bid security of a bidder withdrawing from the bid but failing to declare his intention to withdraw till the day before the date fixed for submission of final bid with bid price shall stand forfeited;*

(2) Notwithstanding anything contained in this rule, if, after the first stage, the procuring entity is of the view that there is likelihood of further participation by many more bidders or there is a likelihood of getting trapped into a legacy technology, the second stage bidding may not be restricted only to the bidders shortlisted at the first stage, subject to the condition that such provision had been specified in the bidding document for the first stage, abinitio. In such cases of “Non-committal Two Stage Bidding”, the Open Competitive Bidding method shall be adopted at

the second stage in the public interest by issuing Notice Inviting Bids citing the revised set of specifications, terms and conditions and evaluation criteria, etc, as prescribed;

(3) Except as otherwise provided for in this rule, all other provisions relating to the procedure for procurement by Open Competitive Bidding method shall, mutatis mutandis, apply to Two stage Bidding method.

**73. Procedure of Electronic Reverse Auction-** (1) Subject to the satisfaction of the conditions in sub-section (1) of Section 33 of the Act and in accordance with sub rule (2) of rule 68 a procuring entity may choose the method of electronic reverse auction for a particular procurement. In the electronic reverse auction, the procuring entity shall call for bids by causing an invitation for bids to the electronic reverse auction which shall be published in accordance with rule 33 relating to notice inviting bids or, if limited bidding is duly decided, in accordance with the procedure prescribed for Limited Bidding. The invitation to bid shall include:

(i) A detailed description of the subject matter of the procurement with all specifications, the terms and conditions, time deadlines, form of contract, location of delivery of such subject matter and the required qualifications of bidders;

(ii) 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 as evidence of their qualifications;

(iii) 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 transportation, insurance charges, customs duties, taxes, etc.;

(iv) The criteria and procedure for evaluating bids, including any mathematical formula that shall or may be used in the evaluation during the auction; Such criteria shall be based:-

- (a) either on price, where the procurement contract is to be awarded to the lowest-priced bid; or
- (b) alternatively, on price and other criteria applicable as specified in the bidding documents, where the procurement contract is to be awarded to the most advantageous bid;

(v) The deadline by which the bidders must register for the auction, 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 specified minimum, the procuring entity shall cancel the auction and such cancellation shall be communicated promptly to each registered bidder. Invitation to fresh electronic reverse auction may be reissued thereafter;

(vi) The date and time of the opening of the auction, 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 date of issue of the invitation to the electronic reverse auction and that fixed for opening of the auction shall not be less than seven working days to enable the bidders to prepare for the auction;

(vii) The provisions for verification of any formalities including, where applicable, ascertainment of qualifications or responsiveness before execution of a written procurement contract after which alone, the contract shall come into force; and

(viii) Any other requirement or procedure for the conduct of the auction considered essential by the procuring entity;

(2) The procuring entity may decide, in the light of the circumstances of the given procurement, whether the electronic reverse auction shall be preceded by an examination or evaluation of pre-qualifications of the bidders which, if do decided, this shall be conducted in the same manners as in e-procurement pre-qualification process in Open Competitive Bidding.

**(3) *The procedure during the electronic reverse auction shall be as follows:***

(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 shall be provided with sufficient information, instantaneously and on a continuous basis, during the auction for assessing the standing of their individual bids in the auction as it proceeds;

(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.

(viii) The procuring entity may also cancel the procurement process in compliance with the provisions of section 26 of the Act.

**(4) *The procedure after the electronic reverse auction shall be as follows:-***

(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 for in this rule, the provisions relating to Open Competitive Bidding in e-procurement mode shall, mutatis mutandis, apply to electronic reverse auctions.

**74. Request for Quotations-** (1) Subject to the provisions contained in section 34 of the Act and in accordance with sub rule (2) of rule 68, a procuring entity may adopt the method of request for quotations for procurement if the estimated cost or the value of the subject matter of procurement is less than Rupees one lakh on one occasion but it shall not exceed Rupees five lakh in a financial year:

*Provided that the State Government in the Finance Department may, by Notification, raise or lower the monetary ceiling values of rupees one lakh and Rupees five lakh prescribed herein stating reasons thereof;*

(2) The entity shall select authorised dealers or wholesalers through diligent market enquiry which is of essence in this mode of procurement. Departmental Stores and Shopping Malls, shall be included in the market survey;

(3) The procedure for procurement by request for quotations shall be as under:-

(i) The procuring entity shall initiate and complete the process after diligent enquiries from the market and filling the certificate prescribed below.

“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)*

*(signature, name , date, designation)*

(ii) The procuring entity shall keep records of the different dealers, wholesalers, vendors, etc approached and prices indicated by each of them;

(iii) Sealed quotations shall be requested from as many genuine potential bidders as practicable, subject to a minimum of three setting forth the specific criteria for evaluation and each bidder shall be permitted to give only one quotation;

(iv) Each bidder from whom a quotation is requested for shall be informed whether any element other than the price for the subject matter of the procurement itself, such as any applicable transportation, insurance charges, customs duties, taxes, etc, are to be included but shown separately in the total quoted price;

(v) The successful quotation shall be the lowest priced quotation meeting the needs of the procuring entity as set out in the request for quotations;

(vi) The quotes from the bidders shall be tabulated and evaluated and a comparative statement prepared by the Bid Evaluation Committee recommending the successful bidder. Such comparative statement shall be signed by all members of the bid evaluation Committee on which the procuring entity shall take a decision regarding acceptance and sanction thereof or otherwise:

*Provided that no such bid shall be accepted or sanctioned by the procuring entity if it is higher than the prevailing wholesale market price or prices of authorised dealers;*

(3) The procuring entity shall make payments for procurement in the request for quotation method by cheque or through Electronic Clearance Service for the sake of transparency;

(4) The controlling as well as the supervising officers and internal auditors of the procuring entity shall cross check at least twenty percent of such procurement in the market for prices, fake vouchers, etc and ensure that:

(a) the same vendor(s) is/are not being patronised repeatedly,

(b) 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

(c) Open Competitive bidding or Limited Source is not being avoided;

(5) The controlling officer shall also conduct annual reviews of such procurements to ensure that future anticipated requirements are clubbed and procured through Limited Source or Open Competitive Bidding or through Rate Contracts;

(6) The procuring entities shall furnish annual returns of all procurement made by them through Request for Quotations to the State Procurement Facilitation Cell through the concerned Administrative Department within the first quarter following the end of each financial year.

**75. Spot Purchase-** (1) Subject to sub-section (2) of Section 34 of the Act and in accordance with sub-rule (2) of rule 68, a procuring entity may adopt the method of spot purchase for procurement if the estimated cost or value of the subject matter of procurement is the same as prescribed for Request for Quotation in sub-rule (1) of rule 74 or as duly notified by the State Government in accordance with the proviso there under;

(2) A procuring entity shall procure a subject matter of procurement on the recommendation of the Spot Purchase Committee. The Committee shall survey the market diligently to ascertain the specifications, quality and reasonableness of rate with reference to the wholesale market price, identify the appropriate supplier of the subject matter thereof and shall record the certificate prescribed below signed by all the members. Departmental Stores, Shopping Malls, Authorised Dealers may be included in the market survey and reputed internet shopping portals may also be explored;

“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 with names, designation dates)*

(3) Records shall be kept of the authorised dealers, vendors, wholesalers approached and the price quoted by them;

(4) The provisions relating to payments, supervisory checks, annual reviews and annual returns prescribed in rule 74 relating to Request for Quotations shall apply to Spot Purchases

**76. Competitive negotiations-** (1) Subject to the satisfaction of the conditions and circumstances specified in sub-section (1) of Section 35 A of the Act, a procurement entity may choose to procure a subject matter of procurement by the method of Competitive negotiations in accordance with sub-rule (2) of rule 68 provided that such procuring entity is otherwise empowered to make such procurements under the relevant Delegation of Financial Power Rules. The procedure for such procurement by the method of Competitive negotiations shall be as prescribed herein below:-

(a) All procurement by the method of Competitive negotiations shall be made through the Purchase Committee of the procuring entity for Competitive negotiations duly notified under rule 3 of these rules;

(b) Before initiating the procurement process, the procurement entity shall examine the public need for procurement of the subject matter and determine the quality specifications as well as the quantity actually required to be procured through competitive negotiations for meeting the urgent public need to avoid any excess procurement or wastage. Such assessment shall be communicated to the Purchase Committee in writing by the procurement entity;

(c) On receiving such communication from the competent procurement entity, the Purchase Committee shall make a fair assessment of the prevailing wholesale market price or producer price of the subject matter of procurement independently before undertaking comparative analysis and evaluation of the bids received from the qualified bidders selected by it in accordance with clause (b) of sub-section (2) of Section 35 A of the Act in order to ensure proper determination of lowest or most advantageous bid preceding the competitive negotiations;

(d) Equal opportunity shall be given to all potential bidders to participate in the competitive negotiations. Any requirement, guidelines, documents, clarifications or other information related to the negotiations that is communicated by the procuring entity or the Purchase Committee 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 and Purchase Committee;

(e) The proceedings of the negotiations shall be recorded in writing and maintained as records of the procurement;

(f) 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 in

respect of all aspects of their proposals;

(g) The Purchase Committee shall keep record of all the bids received and prepare a comparative statement of the final bids received and, after evaluation thereof, submit these to the procuring entity together with its recommendations specifying the lowest or most advantageous bid and the successful bidder for the procurement in writing along with the certificate of its satisfaction duly signed by all members in the format specified hereunder:

“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

*Provided that the Purchase Committee shall recommend cancellation of the procurement process and initiation of fresh process if the final bids received are found to be high or unreasonable or if the quality of the subject matter is not as per specifications or requirement;*

(h) No negotiations with bidders shall take place in respect of their best and final offers.

(2) The procuring entity shall ensure that the successful offer is the lowest or most advantageous offer and that such bid price is not unreasonable or higher than the market price

**77. Rate contract-** (1) Subject to the satisfaction of the conditions contained in clause (a) of sub-section (1) of Section 36 of the Act, a procuring entity may engage in a rate contract procedure in accordance with the provisions laid down herein below;

(2) Procuring entities shall proceed to conclude rate contracts through the Open Competitive Bidding method, whether through e-procurement mode or otherwise, to ensure transparency and participation number of maximum number of bidders;

(3) The procedure for concluding rate contracts and for procurement in the rate contract method shall consist of two phases. In the first phase, the rate contracts, including parallel rate contracts if required shall be concluded through Open Competitive Bidding without any commitment of actual procurement. In the second phase, actual procurement of the particular



subject matter in the required quantities as essential and necessary to satisfy the public need may be made from time to time by issue of supply or work orders at those rates during the period of the rate contract;

(4) In the first phase, single envelop or two envelop bids in terms of section 13 of the Act shall be invited by issuing Notice Inviting Bids as in the Open Competitive Bidding method and incorporating the following conditions in the bid documents:-

(a) In the Notice Inviting Bids and bidding document, approximate quantities of the requirement estimated on the basis of the annual off take shall be indicated along with the specifications thereof wherein it shall also be specifically mentioned that no minimum quantity of procurement is guaranteed;

(b) The period of the rate contract shall be clearly indicated in the Notice Inviting Bids and the bidding document. The period of rate contracts shall normally be one financial year but may be shorter if the procurement entity arrives at a reasoned conclusion that market prices would fall significantly in the short term. A shorter period may be selected and specified in the bidding documents by the procuring entity after recording the reasons thereof in writing in the case file which shall form part of the procurement records;

(c) 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;

(d) A clause to the effect that the procuring entity or the rate contractor are both entitled to withdraw or cancel the rate contract by serving due notice on each other giving ninety days time;

(e) A clause to the effect that the procuring entity reserves its right to renegotiate the price with the rate contract holders during the validity of the rate contract;

(f) The rate contract shall be entered into for price, without commitment for quantity, place and time of supply of the subject matter of procurement, with the bidder of the lowest priced bid or most advantageous bid fulfilling the laid down eligibility and qualification criteria including past performance against such rate contracts, availability of ISI mark or service centres across the State and such other criteria as required and these conditions as applicable shall be specified in the bidding documents;

(g) The procuring entity shall also reserve its right to conclude parallel rate contracts with different bidders in addition to the responsive bidder submitting the lowest priced bid or most

advantageous bid but at the rates of such bidder;

(h) That, in case the price quoted by the lowest responsive bidder is not reasonable or found to be high, the price may be negotiated with lowest responsive bidder with whom the rate contract may be concluded consequent only upon lowering of the bid price to the desired level. If otherwise, fresh bids shall be invited;

(i) The prices under a rate contract shall be invariably subject to 'price fall clause' and this shall be specified in the bidding documents. A clause regarding price fall shall be incorporated in the terms and conditions of rate contract;

**Explanation I:** A price fall clause is a price safety mechanism in rate contracts which provides that if the original rate contract holder quotes a lesser price or 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 lowered or reduced accordingly to such lesser or reduced price quoted for the subject matter of procurement with effect from the date of such quoting or reducing and the rate contracts shall also be amended accordingly;

**Explanation II:** In such cases, the firms holding parallel rate contracts shall also be given opportunity to reduce their price by notifying the lowered or reduced price allowing them fifteen days time to intimate their acceptance to the revised price. Similarly, if a parallel rate contract holder firm reduces its price during the currency of the rate contract, its reduced price shall be conveyed to other parallel rate contract holders as well as the original rate contract holder for corresponding reduction in their prices. If any rate contract holders do not agree to the reduced price, further transaction with it, shall not be conducted;

(5) If, consequent to invitation of bids, only one bid is received or consequent to technical evaluation if only one bid is found eligible or qualified, such bid shall be termed as 'single bid' in respect of that subject matter of procurement or item and in all cases where such single bid is received, bids shall be re-invited for that subject matter of procurement or item by issue of fresh Notice Inviting Bids;

(6) Rate contracts for Machine Tools, Information Technology Products, Original Equipment Manufacturer & Ancillary Spares and other similar such products where the design feature, performance parameters, etc, vary 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 may be finalised and concluded on the offered percentage of discount on Net Dealer Price (NDP) or discounted MRP basis, generally known as “Catalogue basis”.

(7) **Parallel rate contracts-** (a) If the quantity of the subject matter of procurement required is beyond the capacity of the lowest bidder or the subject matter of procurement is of a critical or vital nature, rate contracts may be entered with more than one bidder in the order of their standing in the final evaluation of bids but at the successful lowest bid rate as parallel rate contracts provided that such provision for parallel rate contracts is specified in the bidding documents;

(b) Where parallel rate contracts are needed though the price of lowest responsive bidder is reasonable, the rate contract shall first be awarded to such lowest responsive bidder. Thereafter, the price of such lowest bidder shall be counter-offered to the responsive bidder quoting the next higher rate, or rates in case more than one parallel rate contractors are needed, with intimation to the lowest bidder, asking them if they so desire to reduce their price and send revised bids accordingly in sealed covers or on e-bidding platform to be opened in public at a specified place, date and time as per the prescribed procedure. Bidders who accept the counter-offered rate or rate lower than it shall be awarded parallel rate contracts. If the lowest bidder also lowers its rate in its revised offer, the same may also be accepted with effect from that date and its rate contract amended accordingly. All such parallel rate contracts shall be awarded simultaneously for the sake of transparency and to avoid any criticism;

(c) In cases where parallel rate contracts are necessary, and where even the bid quoted by the lowest responsive bidder is not reasonable, price negotiation may be conducted with that bidder in the first instance. The rate contract may be concluded if that bidder agrees to bring down the price to the desired level and that price counter offered to other responsive bidders for further action in identical manner as prescribed in clause (b) above. If however, the 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 other responsive bidder who had quoted higher prices and also to the lowest bidder for further action as in clause (b) above;

(8) In the second stage, the supply or work order shall be placed to the rate contractor as and when needed 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 and the delivery

schedule;

(9) The procuring entities shall ensure new rate contracts become operative right after the expiry of the existing rate contracts without any gap from the beginning of a financial year. In case it is not possible to conclude the new rate contracts due to unavoidable reasons, the existing rate contracts may be extended at the same rates, terms and conditions for a further period not exceeding another one financial year after ascertaining that the wholesale market prices of the subject matter of procurement or its constituents have not fallen during the period.

(10) Except as otherwise provided for in this rule, all other provisions of Chapter-III and IV of these rules shall, *mutatis mutandis*, apply to procurement by rate contracts.

**78. Government e-Marketplace (GeM)-** (1) Consequent upon the authorisation of the DGS&D by the Union Government to host an online Government e-Market Place (GeM) for common use goods and services for procuring entities of the Union Government with access to all State Governments, the procuring entities specified in sub section (2) of section 3 of the Act may, as appropriate in the public need and interest, utilise the GeM facility for direct on-line purchase of their essential common use needs determined as available therein, subject to the provisions of the Act, the guidelines that may be notified in this regard by the State Government and, without exception, the condition that the rates for the items offered by suppliers in the GeM or the total cost involved thereof are not higher than the prevailing wholesale market prices in the State or the discounted rates of authorised dealers in the State as applicable;

(2) The procuring entities shall publish their annual requirements for the common use goods and services on the GeM within thirty days of approval of the annual budget. The demand for such goods and services shall not be divided into small quantities to make piecemeal purchases for avoiding procurement through L-1 buying or bidding or reverse auction on the GeM.

(4) All such procurement through the GeM shall be subject to the prior sanction of the concerned competent authority with reference to the relevant Delegation of Financial Power Rules in respect of the subject matter and value of the procurement;

(3) The State Government in the Finance Department shall notify the detailed guidelines for such on-line procurement through the GeM together with the mode and procedure for making payments to the registered suppliers thereof and may also prescribe financial ceilings or any other conditions for the purpose.

**79. e-Commerce** - (1) A procuring entity may, after recording reasons in terms of sub-section (4) of Section 29 of the Act and as prescribed in rule 68, choose to procure its essential common use needs duly determined by on-line purchase through reputed e-commerce websites in case the subject matter of procurement is not available on the Government e-Marketplace (GeM), subject to the provisions of the Act, the guidelines that may be notified in this regard by the State Government and, without exception, the condition that the rates for the items offered by suppliers in the e-commerce website or platform or the total cost involved thereof are not higher than the prevailing wholesale market prices in the State or the discounted rates of authorised dealers in the State as applicable;

(2) The concerned Purchase Committee of the procuring entity constituted for the purpose shall survey the e-commerce market place diligently to ascertain the specifications, quality and reasonableness of rate of the subject matter and identify the appropriate e-commerce website thereof and shall record the certificate prescribed below signed by all the members:

“Certified that we, (1).....(2).....(3) ....(*names of members*), members of the 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 e-commerce websites, and that the subject matter of procurement is not available on the GeM and the procurement thru the e-commerce website is recommended is reputed and reliable and competent to supply the subject matter in question.”

*(strike out what is not applicable)*

*(signatures with names, designation dates)*

(3) The State Government may prescribe procedures for making payments, maintenance of accounts and records for audit, etc for such on-line procurement and issue guidelines for assessing the reliability and reputation of the available e-commerce websites and the vendors participating therein;

**80. Community procurement for community driven schemes-** (1) The method of community procurement for community driven schemes specified in clause (1) of sub-section (1) of Section 28 of the Act shall be adopted for procurement of inputs like, equipment, machinery etc, in community driven schemes where each beneficiary of such scheme, whether individual or group or community, is required to bear a part of the cost of such input by way of bank loan or otherwise as

“beneficiary share.” This method of procurement enables the beneficiary to procure the schematic input item of their own choice by themselves, from a dealer selected by them, at their own preferred time and at the price specified in a ‘rate-bank’ established and published by the procurement entity;

(2) The concerned procurement entity implementing such community driven scheme, duly approved, shall establish a ‘Rate-Bank’ consisting of the names of manufacturers of the specific input items, equipment or machinery with the list of their local dealers, brands and models with corresponding prices through a transparent and open competitive process as prescribed herein:

(i) The procuring entity shall first fix the minimum technical and quality specifications of the required input items for the community driven scheme and publish an open advertisement inviting all corresponding manufacturers to furnish or quote their rates along with the technical details and specifications of the inputs offered and the names and addresses of their local dealers;

(ii) The bidding document shall, inter alia, lay down the terms and conditions of the procurement with clear indication that no supply order would be issued by the procuring entity at any time and shall also:-

(a) seek the willingness of the manufacturer to sell the input items to the beneficiaries of the scheme directly at the pre-determined price and to provide necessary after-sales service thereof ;

(b) mention the exact amount fixed as Government share in rupees for each of the input items, brands and models, clearly indicating therein that the balance amount shall be paid by the respective beneficiary;

(iii) The manufacturers whose products meet the laid down technical specification and who agree to the terms and conditions laid down in the bidding document including the community procurement process, shall be included in the rate-bank along with their offered brands, models and corresponding prices as well as the names of their local dealers;

(iv) The procurement entity shall sign a contract with all the manufacturers included in the Rate-bank;

(v) The Rate-bank along with the procedure that the beneficiaries are required to follow to procure the input item under the community driven scheme as well as the list of the eligible beneficiaries with details shall be published in the State Public Procurement Portal as well as the Departmental website by the procuring entity and also given wide publicity;

(3) The eligible beneficiaries shall be free to choose the brand and model of the input item at the corresponding price as well as the particular dealer from the published rate-bank. They shall inform the concerned dealer as well as the local office of the procurement entity of their specific choice through an application-cum-agreement form made available in the State Public Procurement Portal and the Departmental website at least ten working days before the procurement and procure the input item thereafter accordingly by paying their share of the cost or the difference between the listed rate for the chosen brand, model and the pre-fixed Government share, as the case may be;

(4) The concerned dealers shall maintain records and evidences as prescribed by the procurement entity and shall submit the same along with the bills to the procurement entity for payment of the Government share. The procurement entity shall release the payment to the concerned dealers after due verification of the bills and shall maintain all records, invoices, and evidence for audit. It may issue further schematic guidelines as appropriate, like geo-tagging, etc;

## CHAPTER-VI

### Procedure for Swiss Challenge Method-

**81. Swiss Challenge Method of Procurement-** The Swiss Challenge Method of procurement defined in clause (zf) of section 2 and prescribed in sub section (1), (d) of section 31 of the Act may be adopted by the State Government, or the Agencies fully owned by it, to procure public assets or services that fulfil any essential and important public need though such public need may not have been specifically or completely determined by the procuring entities or originally included in their procurement plans:

*Provided that no such procurement shall be taken up if the public need sought to be fulfilled by such procurement is not essential, well defined and unambiguous and categorically stated to be as such by the State Level Empowered Committee constituted by the State Government for the purpose under these rules:*

*Provided further that the provisions of the relevant Delegation of Financial Power Rules shall be applicable to all procurement through Swiss Challenge method.*

**82. Eligible sectors under Swiss Challenge Method-** The Swiss Challenge Method of procurement may be adopted in the sectors or sub-sectors or across such sectors and sub-sectors of the economy, as specified in Schedule III appended to these rules:

*Provided that, the State Government may from time to time, by Notification include any new sector or sub-sector in Schedule III in pursuance of emerging public policy and needs;*

*Provided, further that, the State Government may, by Notification, delete any sector or sub-sector included in the Schedule as eligible under this rule in the public interest, recording the reasons thereof in such Notification;*

**83. Projects not acceptable under Swiss Challenge method.-** The following types of proposals or projects shall not be accepted or processed under Swiss Challenge method, namely:-

- (i) Proposals or projects which contravene the provisions of any law that is in force;
- (ii) Proposals or projects which would result in monopolistic situations;
- (iii) Proposals or projects in sectors that are not declared eligible under rule 82 ;
- (iv) Proposals below any threshold value that may be fixed for the purpose by Notification issued by the State Government, if so fixed;



(v) Proposals for Public Private Partnership Projects involving financial assistance from State Government by way of viability gap funding, by whatever name called, of more than twenty percent of the project cost excluding the value of land and all kinds of contingency or administrative charges by whatever name called included therein, if any;

(vi) Proposals which are likely to have adverse effect on the environment or disturb the ecological system or biodiversity or the livelihood or occupational patterns in any area.

**84. Competent authority for deciding procurement by Swiss Challenge Method- (1)**

The State Government shall constitute a State Level Empowered Committee chaired by the Chief Secretary with the Head of the Transformation and Development Department as Member-Convenor and the Heads of Finance and the concerned Administrative Department(s) as Members. In cases where the project proposal in question covers eligible sectors that fall under the purview of different Administrative Departments, all the Heads of those Administration Departments shall be included as Members. In case the project proposal relates to an Agency fully owned by the State Government, the Chief Executive Officer of that Agency shall be included as a member:

*Provided that the Principal Chief Conservators of Forest and Environment of the State shall invariably be included as Members in the State Level Empowered Committee whenever the project proposal under consideration is so designed that it is likely to have an impact, even remotely, on any aspect of the environment or biodiversity or ecology;*

(2) The State Level Empowered Committee, hereinafter referred to as SLEC, shall be the competent authority for deciding whether Swiss Challenge method shall be adopted for procurement by the State Government as well as, in cases where such procurement is proposed to be done with substantial funding from the State Government, for the various Undertakings, Agencies and Bodies, etc under it:

*Provided further that the State Government may, by notification, prescribe a financial threshold related to the estimated cost of the proposed project below which proposals need not be submitted to the SLEC but may be decided upon by the Head of the concerned Administrative Department with in consultation with the Transformation and Development Department and in the same manner as prescribed for the purpose in these rules;*

(3) The SLEC may co-opt as member, or members, other officials of the State Government having expertise on issues relating to the project proposal or any of its components or, instead of so co-opting, seek and obtain the views and advice of any officer of the Union Government or the State Government or the various types of Undertakings under

them or any other person having professional expertise in the relevant matters;

(4) The SLEC shall examine and consider proposals placed before it along with the recommendations of the concerned Administrative Department as well as the views of the Transformation and Development Department thereon in detail and, upon satisfaction that important public need would be fulfilled by the project and having regard to the usefulness of the project in respect of the fulfilment of such public need, take a decision as to whether the Administrative Department shall be permitted to proceed with the proposed procurement in the Swiss Challenge Method with or without any specific modifications as it may consider to be necessary or whether the proposal shall be rejected;

(5) While considering proposals placed before it, the SLEC may, if required, call for clarifications relating to the proposal from the project proponent or their authorised representatives within a specified time and such clarifications shall be provided by the project proponent in written form within that specified time;

(6) On receipt of the communication of the decision of the SLEC from the Transformation and Development Department, the concerned Administrative Department shall take further action as prescribed in this Chapter within seven working days from the date of receipt of such communication;

*Provided that if the proposal is rejected by the SLEC, the Head of the concerned Administrative Department shall forthwith communicate the decision to the project proponent accordingly, in any case not later than two working days from the date of receipt of such communication of rejection.*

**85. Procedure for procurement through Swiss Challenge Method-** (1) The Project Proponent or his authorized representative, shall submit an application along with the certificate and the details of the project proposal respectively in Form No. 2 and Form No. 3 appended to these rules to the Administrative Department along with the pre-feasibility report and, if available, the Detailed Project Report. The contents of pre-feasibility report shall be as specified in Form No. 4 and the contents of the Detailed Project Report shall be as specified in Form No. 5 appended to these rules;

(2) The Administrative Department shall scrutinize the proposal to determine whether it falls within the purview of the development plans of the Department and whether the "Public Need" is clearly established and, if so, whether the proposal, prima facie, addresses that public need and requirement;

(3) If the Administrative Department finds that the proposal is unique and appropriate

and satisfies essential and important public need and is in the public interest, it shall record the reasons thereof in writing and process it, along with a note clearly defining such public need, for submission to the SLEC through the Transformation and Development Department as prescribed herein in this rule. In case the Administrative Department finds that the proposal has no uniqueness and is similar to the procurement of goods, services, works or projects procured through conventional or other methods, then the Administrative Department shall reject the proposal under Swiss Challenge and intimate the project proponent accordingly:

*Provided that if the Administrative Department considers that the proposal meets essential and important public need and is appropriate to be taken up under the Swiss Challenge method despite it being similar to the procurement being done under conventional methods, it may process it under the Swiss Challenge method as prescribed after recording the reasons in writing for such consideration;*

(4) The Administrative Department shall duly examine the proposal submitted by the project proponent and, if satisfied that the conditions specified in sub-rules (2) and (3) above are fulfilled, submit the proposal along with its recommendations and comments to the Transformation and Development Department, specifically indicating the availability of relevant budget provision or funds for the purpose, as the case may be, for placing it before the SLEC.

(5) The Transformation and Development Department shall convene meeting of the SLEC and place the proposal before the SLEC with its views thereon. The SLEC, after examination of the proposal, due consideration of the views of the Administrative Department as well as that of the Transformation and Development Department and the suitability of available budget provision or funds for the purpose as relevant, may either accord permission to proceed, with or without modifications, or reject the proposal with reasons.

(6) The Head of the Transformation and Development Department shall thereafter convey such decision of the SLEC to the concerned Administrative Department. If permission to proceed is accorded by the SLEC, the Administrative Department shall publish and exhibit the proposal, with such modifications as decided by the SLEC, on the State Public Procurement Portal;

(7) The Administrative Department shall, on receipt of permission of the SLEC to proceed, immediately inform the project proponent in writing requesting conduct of detailed studies after incorporating modifications, if any and submission of detailed and comprehensive proposal in Form 6 appended to these rules along with the Detailed Project Report required for bidding within a period of three months from the date of such written communication:

*Provided that, if so requested by the project proponent, the Administrative Department may suitably extend the time period of three months in case the project proponent is unable to submit the comprehensive proposal with Detailed Project Report for reasons and circumstances beyond the control of the project proponent;.*

(7) If the project proponent fails to submit the detailed and comprehensive proposal within the specified period or extended period, 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 claim thereon. If the Administrative Department exercises this option in the manner as specified above, it shall exhibit the developed proposal in the State Public Procurement Portal;

**86. Preparation and submission of comprehensive proposal** - (1) The project proponent shall submit the detailed and comprehensive proposal in Form No. 6 appended to these rules and the detailed project report as well the details of bid value, financial proposal including IRR calculations, etc, with supporting documents wherever necessary, project financial summary in Form No. 7 and the check list for submission of documents in Form No. 8 appended to these rules in hard copy and soft copy along with Earnest Security equal to 0.05% of the estimated cost of the project to the concerned Administrative Department within the specified or the extended period;

(2) The project proponent will ensure that all financial reports and the documents having financial details submitted by it are duly verified by a competent Chartered Accountant and those reports and documents that are not so verified shall not be considered as valid;

(3) The Administrative Department may carry out additional studies for independently determining the project costs, revenues, viability and risk analysis etc for proper benchmarking;

(4) The project proponent shall submit the detailed and comprehensive proposal prescribed herein in two covers. The first cover shall include the detailed project report with costs thereof, the survey data, specifications, inputs, outputs or outcomes, as well as designs, estimated cost of the project, along with Earnest Security, etc. as in sub rule (1). The detailed project report shall include the details as specified in Form No. 5 appended to these rules. The first cover shall be opened by the Administrative Department, or by a Committee specifically constituted by it for the purpose;

(5) The bid value shall be submitted in a separate second cover duly sealed by the project proponent which shall be kept in safe custody by the Administrative department to be opened later by it or by the Committee constituted for the purpose, at the time of opening of the

financial bids received from other bidders through the Open Competitive Bidding process.

**87. Earnest Security-** (1) The project proponent, as a token of sincerity and good faith, shall furnish interest-free Earnest Security amounting to 0.05% of the total estimated cost of the project through demand draft or bankers cheque or bank guarantee from a scheduled bank or any other acceptable instrument with a validity period of not less than one hundred and eighty days commencing from the date of receipt of the comprehensive proposal by the Administrative Department including claim period of sixty days. The validity period may be extended as mutually agreed, from time to time. The bid shall be summarily rejected if the detailed and comprehensive proposal is not accompanied with the Earnest Security;

**88. Bid Security-** (1) In case bidding process is initiated for the proposed project by the concerned Administrative Department, the project proponent shall also deposit the requisite bid security as specified in the bidding document;

(2) The bid security shall be calculated on the basis of the total estimated cost of the project as per the detailed project report and the amount thereof shall be specified in the bidding documents;

(3) The project proponent shall furnish the bid security as specified in the bidding document by the last date and time fixed for submission of bids in the bidding process for the proposed project. The Earnest Security furnished by the project proponent earlier shall be adjusted against the bid security;

(4) If the project proponent fails to furnish bid security of the required amount within the time specified in the bidding document, the Earnest Security furnished earlier shall be forfeited and the project proponent shall cease to have any right as the project proponent;

**89. Cost of Detailed Project Report (DPR)-** (1) The direct cost of preparing the Detailed Project Report shall be mentioned by the project proponent in the detail and comprehensive proposal with necessary documents. The cost may include external payout, internal cost, and taxes, all accompanied by original receipts;

(2) The Administrative Department or the Committee constituted for this purpose, shall negotiate the cost of preparation of the detailed project report with the project proponent and ensure that the assessment of the cost of preparing the detailed project report is reasonable and justified;.

(3) Subject to such cost having been actually incurred by the project proponent, the cost

of preparation of detailed project report as determined under sub-rule (2) above shall be reimbursed to the project proponent only if a different bidder or challenger other than the project proponent is the successful bidder and only after the procuring entity has entered into an agreement with such successful bidder for the project. Such reimbursement of the cost of preparation of Detailed Project Report shall be limited to 0.1% of the final bid value or the negotiated cost of its preparation, whichever is less;

(4) The cost of preparation of the detailed project report payable to the project proponent, shall be recovered from the successful bidder immediately on acceptance of bid but before signing of the contract document with the successful bidder and, thereafter, reimbursed to the project proponent if such cost has been actually incurred by it:

*Provided that the cost of preparation of the detailed project report shall not be reimbursed and therefore not recovered, if the project proponent had failed to furnish the required bid security as specified in rule 88;*

(5) In case, for any reason whatsoever, the project is not taken up by the Administrative Department, the cost of preparation of the detailed project report shall not be reimbursed to the project proponent.

**90. Clarifications on the Detailed Project Report** - No changes shall be permitted in the detailed project report once the project proponent submits it to the concerned Administrative Department. However, the Administrative Department may seek clarifications with respect to the detailed project report from the project proponent and these clarifications shall be attached as an addendum to the detailed project report.

**91. Bid Parameters and Bid Value-** (1) The project proponent shall submit the detailed and comprehensive proposal along with the bid parameters and bid value as provided for. The concerned Administrative Department shall decide the bid parameters and shall have the authority to make changes to the project proposal as per the public need or requirement and its development plans without changing the basic theme and fundamental structure of the project proposal. Any such change made in the proposal shall be intimated to the project proponent by the concerned Administrative Department and, if required, additional time of a maximum of fifteen working days may be allowed to the project proponent for submitting the final bid value;

(2) If such additional time is allowed under sub-rule (1), the project proponent shall submit the final bid value in such form as may be required by the Administrative Department.

After submission of the final bid value by the project proponent, the original bid value submitted by the project proponent shall become inoperative;

(3) The final bid value shall be submitted by the project proponent 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. In case, the project proponent desires to give additional information, such information may be enclosed in a separate cover;

(5) After submission of the final bid value by the project proponent, the Administrative Department shall submit the proposal with appropriate recommendations to the Transformation and Development Department for placing before the SLEC.

**92. Bidding Process-** (1) Save as otherwise provided for in this Chapter the procedure prescribed for the Open Competitive Bidding method in these rules shall, mutatis mutandis, apply in the case of bidding under the Swiss Challenge method of procurement. Open Competitive Bidding shall be initiated by the Administrative Department as per the prescribed procedure for the purpose and also in accordance with e-procurement procedure where applicable;

(2) Except for proprietary technology details constituting intellectual property rights contained therein, the detailed project report shall be shared with prospective bidders and also uploaded in the State Public Procurement Portal so as to ensure fair competition and wide competitive bidding;

(3) The bidding document, among other essential clauses, shall incorporate details about the necessary clearances or approvals to be taken from the respective authorities indicating who shall be responsible for obtaining these, keeping in view the nature and requirements of the project. Also, the bidding document shall clearly incorporate the clause that the Open Bidding Process has been taken up under the Swiss Challenge method of procurement;

(4) After examination and evaluation of the bids by the Bid Evaluation Committee, if the proposal of the project proponent is found to be lowest or most advantageous in accordance with the evaluation criteria as specified in the bidding document, the project proponent shall be selected and awarded the project. In case any other responsive bidder is the lowest or most advantageous bidder, the project proponent shall be given an opportunity to match the lowest or most advantageous bid within a maximum period of fifteen working days:

(5) If the project proponent agrees to match the lowest or most advantageous bid as provided for in sub rule (4) within the specified time period, 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 specified period, the other responsive bidder who successfully submitted the lowest or most advantageous bid shall be selected and awarded the project.

**93. Transaction Advisor-** (1) The Administrative Department concerned may appoint a Transaction Advisor for the project or entrust such responsibility to an officer of the Department for the purpose. The Transaction Advisor or the officer so entrusted should be capable of providing technical, financial and legal advice and assisting the Administrative Department concerned in the entire process of finalization of the successful bidder and award of contract;

(2) In case, the Administrative Department desires to appoint a Transaction Advisor for a project proposal received under Swiss Challenge Method, it shall 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. In any case, the process of the appointment of the Transaction Advisor shall be completed by the Administrative Department before submission of detailed project report by the project proponent;

(3) The functions and responsibilities of the Transaction Advisor if appointed, or the officer entrusted for the purpose, hereinafter also referred to as the Transactional Advisor, shall be as laid down herein below:

(i) to examine the detailed project report 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, etc, and necessary approvals whether statutory or otherwise required for the implementation of the project, etc.;

(ii) to 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, if so required by the Administrative Department;

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

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

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



(vi) to develop and present the Request for Proposal (RFP) and the concession agreement to the concerned authorities for approval and after approval of the competent authorities, to issue the same in the manner prescribed;

(vii) to assist the Administrative Department concerned with the bid process management, including launch of Request for Proposal (RFP) 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 close;

(viii) to submit all the documents required for necessary approvals to the Administrative Department. They shall not provide any document to the bidders or any other persons without explicit written consent from the Administrative Department concerned; and

(ix) to perform any other function or task assigned by the Administrative Department.

**94. Time frame for the total process-** The time-frame for procurement through Swiss Challenge Method shall be as specified in Schedule IV appended to these rules:

*Provided that, if appropriate and found justified in a particular case, the concerned Administrative Department, in consultation with the Transformation and Development Department, may relax the time period specified in the Schedule after recording the reasons and justification thereof.*

**95. Eligibility criteria for the Project Proponent-** (1) Any legal entity or person, including a Joint Venture or Consortium shall be eligible for submitting proposal as project proponent, if:-

(i) the person or lead member has an average turnover of minimum of 100% of the proposed project cost over the three previous financial years and in case of Joint Venture or Consortium, an average turnover of minimum of 100% of the project cost over the three previous financial years by the lead member. The audited balance sheets of the three previous financial years shall be submitted by the project proponent to indicate eligibility under this criterion;

(ii) the person or lead member, or any other member of the Joint Venture or Consortium, has experience in handling at least one project in the sector in which the proposal is being submitted costing not less than 100% of total project cost over the last 10 years and where the contract has been awarded and work has been completed, the relevant work order and completion certificate from the client shall be submitted by the project proponent;

(iii) the person or lead member is not blacklisted by Central Government or any State Government or any Government Undertaking or Agency. An undertaking to the effect that he has not been blacklisted by Central Government, or any State Government or any Government Undertaking or Agency shall be submitted by the project proponent;

(iv) the person or lead member shall necessarily fulfil the pre-qualification or qualification criteria or parameters for bidders as specified in the bid document issued by the Administrative Department for the Open Competitive Bidding process for the project;

(2) 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 members of the Consortium and such power of attorney shall be submitted along with the proposal.

(3) 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 and an undertaking to that effect shall be submitted along with the proposal;

(4) The following, as the case may be, shall be submitted along with the proposal by the project proponent-

- (i) in case of a Company, the certificate of incorporation;
- (ii) in case of a Firm, the certificate of registration; and
- (iii) in case of a Partnership Firm, the partnership deed.

**96. Power to call off the Project-** The Administrative Department concerned shall have the right to call off the project without assigning any reason thereof at any time during the procurement process till before an agreement with the project proponent or the other successful bidder has been entered into:.

*Provided that, once the agreement is duly entered into and signed by the Administrative Department concerned, the respective clauses of the agreement entered into shall apply:*

*Provided further that, if the Administrative Department calls off the project in the manner specified herein, the same shall be exhibit by the Administrative Department on the State Public Procurement Portal and such project shall not be reopened in future except with the express consent of the project proponent, wherein its status as the project proponent shall be retained even if modifications had been made therein as prescribed.*

## **CHAPTER-VII**

### **Procedure for Procurement of Consultancy and Non- Consultancy Services**

**97. Consultancy and Non-consultancy Services-** (1) Subject to the provisions of the Act, the General Principles of Procurement prescribed in Chapter III of these rules and as provided for herein, the Administrative Departments, Heads of Departments, Boards, Corporations and Bodies that are fully owned and controlled by the Government may, if required in the public interest,:

- (a) hire external professionals, consultancy firms or consultants hereinafter referred to as consultant, for a specific service or job or task which is related to the meeting of a public need and which is well defined in terms of content, outcomes or outputs as well as the time- frame for completion, or
- (b) procure specific, essential non-consulting services in the interest of economy and efficiency in the meeting of a public need ;

**Explanation I:** For the purpose of these rules, "Consulting Service" means any subject matter of procurement other than goods or works, except those consequential or incidental to such service or subject matter, and includes professional, intellectual, technical and advisory services or any other service classified or declared as such by a procuring entity but does not include direct engagement of a retired Government servant;

These services typically involve providing expert or strategic advice, e.g. management consultant, policy consultants, communications consultants, training and development consultants, organisational analysis and development, restructuring, advisory and project related consulting services which include feasibility studies, project management, engineering services, etc;

**Explanation II:** Similarly, "Non-Consulting Services,." as distinguished from "Consultancy Services," means any subject matter of procurement, other than goods or works except those consequential or incidental to that service or subject matter, that involve physical, measurable deliverables or well defined outcomes, where performance criteria or standards can be clearly identified and consistently applied. These services include maintenance, transportation, hiring of vehicle, outsourcing management of building facilities, management,

security, catering, reprography, photocopier service, janitor, office errand services, drilling, aerial photography, video recording, satellite imagery, survey, mapping, Information Technology related services like website design, maintenance, etc;

**98. Procurement of Consultancy Services.-** (1) In cases where the appropriate requisite or desired level of expertise or specialisation required in relation to meeting a public need is not available with an Administrative Department or Body under the State Government, the concerned procuring entities, with the prior approval of the Head of the concerned Administrative Department or the Head of that the Undertaking or Body, as the case may be, may procure consultancy services by engaging consultants assigning clearly identified tasks or jobs or services or jobs or tasks required for the purpose of obtaining the required expert or specialised services required in relation related to the meeting of the public need;

**99. Procedure for procurement of Consultancy Services-** (1) The procedure for procurement of consultancy services by engagement of consultants for the specifically identified consultancy services required in relation to meeting a public need shall be as prescribed below:

(i) ***Preparation of objectives and scope of the consultancy assignment:*** Upon having decided to procure consultancy services for a particular purpose in relation to a public need, the procuring entity shall first prepare, in simple and concise language, the specific objectives and scope of the required consultancy assignment including the desired outputs or outcomes thereof, the approximate time period that may be required for completion of such consultancy and an estimate of the likely expenditure involved with reference to the prevalent market conditions;. The eligibility and prequalification criteria including experience criteria in the related area to be met by the consultants shall also be identified at this stage;

(ii) ***Issue of notice inviting Expression of Interest (EOI):*** The procuring entity, after obtaining the approval of the Head of the concerned Administrative Department or Body, as the case may be, shall, thereafter, publish notice inviting “Expression of Interest”, hereinafter referred to as EOI, in the State Public Procurement Portal as well as the Departmental website and also publish an abridged notice in newspapers citing the web address where details are available. The EOI shall include, in brief, the broad scope of the work or service required, inputs and assistance that shall be provided by the procuring entity, eligibility and pre-qualification criteria to be met by the consultants including past experience in similar work or service, the approximate time period for completion and any other information required with a

view to facilitating submission of expressions of interest from maximum number of consultants. The consultants shall also be asked in such notice to furnish their comments on the objectives and scope of the service projected. Adequate time, not less than twenty one days, shall be allowed for submission of EOIs.

(iii) ***Short listing of consultants and Preparation of Terms of Reference (TOR):***

The procuring entity shall shortlist prospective consultants who meet the requirements on the basis of responses to the notice calling for EOI received by it for further consideration. The number of short listed consultants shall not be less than three. The specific “Terms of Reference for the consultancy shall then be prepared for inviting proposals thereof from the shortlisted consultants”;

(iv) ***Framing of the Terms of Reference (TOR):*** The “Terms of Reference,” hereinafter referred to as TOR, which defines the assignment, objectives, scope, outputs, outcomes of the consultancy services and provides necessary background information thereon, shall be carefully framed in precise terms by the procuring entity keeping in mind the relevant public need sought to be satisfied. It should allow prospective consultants to propose their own methodology and work schedule, particularly when the assignment is complex. The TOR shall, inter alia, include the following:

- (a) Precise statement of the objectives of the assignment;
- (b) Context or background of the project and relevant information;
- (c) Scope of the services to be provided;
- (d) Outline of the tasks to be carried out and schedule of completion thereof;
- (e) Final output and/or outcome that will be required to be delivered;;
- (f) The support and inputs that shall be made available to facilitate the consultancy;
- (g) Time-frame for completion of the consultancy assignment

(v) ***Preparation and Issue of Request for Proposal (RFP):*** The “Request for Proposal,” hereinafter referred to as RFP, calling for the detailed technical and financial proposals shall be issued to all the shortlisted consultants for obtaining offers from them for the required consultancy service wherein the Terms of Reference for the consultancy shall be clearly and precisely defined. The RFPs shall ordinarily be called ‘Two bid’ system with the sealed technical and financial bids submitted separately. The RFP shall contain:-

- a) A letter of Invitation;

- b) Information regarding the procedure for submission of proposals including the time and date deadlines and place for such submission and opening of bids;
- c) The Terms of Reference ( TOR);
- d) The eligibility and pre-qualification criteria, in case these have not been ascertained through the Expression of Interest;
- e) The type of relevant experience that will be evaluated;
- f) The bid evaluation criteria, the method and procedure selection, the minimum quality score or weights that shall be used;
- g) Standard formats for technical and financial proposals;
- h) Proposed terms and conditions of the contract;
- i) The procedure proposed to be followed for mid-term review of the progress of the work and review of the final draft report;
- j) The minimum quality score that has to be obtained for qualifying technically, if applicable;

(2) ***Submission, receipt and opening of proposals-*** (a) Save as otherwise provided for herein, the provisions of Chapter IV relating to submission, receipt and opening of bids shall, mutatis mutandis, apply to the procedure for procurement of consultancy services in general;

(b) The bidder shall submit the technical bid or proposal in a sealed envelope marked “Technical Proposal” and the financial bid or proposal in a different sealed envelope marked “Financial Proposal,” both of which shall be put in a bigger outer envelope which shall also be sealed. The bid shall be submitted by the bidder by hand or post or delivered to the concerned procuring entity or its authorised officer or dropped in the bid box earmarked for the purpose on or before the date and time fixed for submission of bid proposals;

(c) The bids shall be received as prescribed in rule 51 of these rules relating to receipt of bids. The officer authorised by the procurement entity to receive bids shall issue a receipt for each bid received and record such receipts in the bid register as prescribed therein. Late bids shall not be considered and returned as prescribed in Chapter IV;

(d) The Bid Evaluation Committee notified for the purpose shall first open the technical bid contained in the sealed envelope marked “Technical Proposal” at the appointed place on the specified date and time in the presence of the bidders who choose to be present. The sealed envelopes containing the financial bids marked “Financial Proposal” shall be kept in

safe custody under lock and key by the procuring authority till completion of the technical evaluation;

(3) ***Evaluation of Technical Bids:*** The Technical proposals shall be tabulated, analysed and evaluated as per the criteria specified in the RFP by the Bid Evaluation Committee which shall record in detail the reasons for acceptance or rejection of the technical proposals analysed and evaluated by it and prepare a list of the bids that have been qualified and accepted technically;

(4) ***Evaluation of Financial Bids of technically qualified bidders:*** On completion of the technical evaluation, the Bid Evaluation Committee shall open the financial bids of only those bidders who have been declared technically qualified for further analysis, evaluation, ranking and selection of the successful bidder for award of the consultancy contract;.

**100. Methods of Evaluation and Selection of Consultancy Proposals.-** The proposals received in response to the RFP shall be evaluated and selected by any one of the six following methods as is appropriate to the nature and type of the proposed consultancy prescribed herein and as was specified in the RFP:-

- a) Quality and Cost Based Selection (QBS);
- b) Least Cost System, (LCS);
- c) Quality Based Selection (QBS);
- d) Fixed Budget System (FBS);
- e) Consultants' Qualifications Selection (CQS);
- f) Single Source Selection/Consultancy, (SSS);

(a) **Quality and Cost Based Selection method (QCBS)** shall be used for procurement of consultancy services, where quality of consultancy is of prime concern as prescribes herein below:.

(i) In QCBS, initially the quality of technical proposals shall be scored as per the criteria specified in the RFP. Only those responsive proposals that have obtained the minimum qualifying score in the technical evaluation as specified in the RFP shall be considered further;

(ii) After opening and scoring the financial proposals of the responsive technically qualified bidders who have obtained the prescribed minimum score, a final combined score for both the quality and cost aspects shall be arrived at by giving predefined relative weight-ages

for the scores on the quality parameters of the technical proposal and the score of the financial proposal;

(iii) The RFP shall specify the minimum qualifying score for the quality of technical proposal and also the relative weight-age to be given to the quality and cost determined for each case depending on the relative importance of quality in relation to the cost aspects in the assignment, (e.g. 70:30, 60:40, 50:50 etc). The responsive proposal with the highest weighted combined score shall be selected. The weight-age of quality shall not be less than fifty percent;

(iv) The weight-age of the technical parameters, i.e. the non-financial parameters, shall in no case exceed seventy percent;

(b) **Least Cost System, (LCS)** shall be followed for assignments of a standard or routine nature where established methodologies, practices and standards exist. such as audits, engineering design of non-complex works, etc. Unlike QCBS, there is no weight-age for technical score in the final evaluation in LCS and the responsive technically qualified proposal received with the lowest price or cost shall be selected;

(c) **Quality Based Selection (QBS)** method shall be considered as appropriate only for assignments of a complex or highly specialised nature demanding high level of proficiency and innovation for which it is difficult to define a precise TOR, as in multi-sector feasibility studies, preparation of urban master plans, structural design of large projects having high downstream impact requiring the best available expertise, as in river bridges, power projects, barrages, etc, organisational analysis and development, restructuring interventions for large Government systems like Agencies, Directorates, Undertakings, etc or highly productive assignments that can be suitably carried out in different such that proposals will not be comparable as in management or policy research and analysis where the degree of usefulness or success depends on the quality of the analysis and may be thus followed as per the procedure prescribed below:

(i) In QBS, the RFP shall either request for submission of technical proposal only without the financial proposal or submission of both technical and financial proposals in separate envelopes at the same time in the two-envelope system. The RFP shall mention the estimated budget and the time-frame for completion of the consultancy assignment inviting comments of the bidders thereon;

(ii) If only technical proposals are invited, the technical proposals shall first be duly evaluated in the same manner as prescribed for the QBCS method and thereafter the bidder with the highest ranked technical bid shall be asked to submit a detailed financial proposal



which shall then be negotiated. If negotiations fail due to unreasonable price or costs or unacceptable requirements, the procuring entity may either cancel the procurement proceedings and issue fresh RFP or proceed similarly with the bidder of the next lower-ranked technical bid;

(iii) If consultants were requested to provide financial proposals initially together with the technical proposals, the financial proposal of only the bidder with the highest ranked technical bid shall be opened and then negotiated as in (ii) above;

(iv) The other financial bids shall be returned unopened to the bidders after the successful conclusion of negotiations as in QCBS method.

(d) **Fixed Budget System (FBS)** shall be considered appropriate only when the assignment is simple and unambiguous, where the TOR can be precisely defined, and where the budget or fund available for the purpose is fixed. In FBS, the TOR shall be prepared with care and precision. The RFP shall indicate the available budget and invite technical and financial proposals in separate envelopes within the available budget. All technical proposals received shall first be evaluated as prescribed for technical evaluation and ranked as in the QCBS method. Thereafter, the financial proposals of only those bidders who have qualified in the technical evaluation shall be opened and the prices quoted therein read out in presence of the bidders who choose to be present. Proposals quoting financial prices that exceed the available budget as indicated in the RFP shall be rejected. The highest ranked technical proposal among the remaining shall be selected for negotiating the contract;

(e) **Consultants Qualification Selection (CQS)** is appropriate only for small assignments when highly specialized expertise is required, such as from boutique consulting firms with depth of expertise in specific areas, or when recruitment time is critical and the small assignment is short-term, and when preparing and evaluating competitive proposals is unjustified;

. In selection by CQS, the procuring entity shall prepare the TOR, publish notice as prescribed calling for EOI and information on the experience and competence of consultants relevant to the assignment, evaluate and rank the EOIs based on the evaluation criteria and establish a short list of at least three firms. The highest ranked firm with the most appropriate qualifications and references shall be selected and the RFP sent to it requesting for technical and financial proposals. The technical proposal so received shall then be evaluated as per the RFP evaluation criteria and contract negotiated if found acceptable. If not acceptable, the RFP shall then be sent to the next ranked firm in the shortlist and the process repeated.

(f) **Single Source Selection (SSS)** or selection by direct negotiation may be considered in exceptional cases for small assignments only if:-

- (i) the tasks represent a natural continuation of previous work completed by the consultant;
- (ii) there exists an emergency situations arising out of disasters, natural or otherwise or where timely completion of the assignment is of utmost importance;
- (iii) the execution of the consultancy involves use of proprietary techniques; or
- (iv) only one prospective consultant is qualified and available or has the exceptional experience for the assignment;

**101. Award of Consultancy Contract.-** (1) The procuring entity shall ensure fairness and equity in the evaluation of all bids and shall have a procedure in place to determine that the prices are reasonable and consistent with market rates for consultancy services of a similar nature and that the required consultancy services are not split into smaller sized procurement;

(2) The procurement entity shall award the consultancy assignment to the selected bidder by executing a consultancy contract which shall, inter alia, indicate the Terms of Reference for the consultancy, the specific deliverables and, outcomes, etc, time schedule for completion, the inputs and assistance that shall be provided by the procuring entity for the purpose, other terms and conditions and details of the amount and mode of the consideration to be paid consultant;

(3) The procuring entity shall involve itself throughout in the conduct of the consultancy so awarded by it, preferably by taking a Task Force approach, and continuously monitoring the performance of the consultants so that the output or outcome and objectives for which the consultancy services have been procured by it are achieved in time.

**102. Procurement of Non-Consulting Services.-** (1) A procuring entity who is otherwise competent under the relevant Delegation of Financial Power Rules, may procure well-defined essential non-consulting services in the interest of efficiency and economy in the meeting of a public need and, while doing so, set guidelines containing detailed instructions and procedures to be followed by the service providers of such non-consulting service;

**103. Procedure for Procurement of Non-Consultancy Services.-** (1) The procedure for procurement of such non-consulting services shall be as prescribed herein:

(i) **Identification of the required Non-Consultancy service:** The procurement entity shall clearly identify the exact nature of the non-consultative service required in relation to the meeting of the public need and define the services and tasks involved therein that are to be delivered by the non-consultancy service provider together with the performance or quality parameters thereof;

(ii) **Preparation of bid document:** The procuring entity shall prepare the relevant bidding documents containing details of the non-consultancy service which shall, inter alia, contain:

- a) The details of the work or service to be performed by the service provider;
- b) The facilities and inputs which will be provided to the service provider by it;
- c) Eligibility and qualification criteria to be met by the service provider for performing the required service;
- d) The statutory and contractual obligations to be complied with by the service provider;
- e) The code of conduct and other norms to be followed while in providing the service;
- f) The time, dates and place for submission and opening of bids;
- g) The criteria for evaluations of bids and terms of contract;

(iii) **Invitation of Bids:** The procuring entity shall publish notice inviting bids in the State Public Procurement Portal as well as its Departmental website along with publication of an abridged notice in newspapers indicating the web address where details are available as prescribed in these rules. Not less than three weeks time counted from the date of publication of last advertisement shall be provided for submission of bids to ensure wide competition and sufficient time for preparation of bids;

(iv) **Evaluation of Bids Received:** The Bid Evaluation Committee shall evaluate, segregate, rank all responsive bids and select the successful responsive bidder for execution of the contract as specified in the bidding document. Late bids shall not be considered;

(v) **Monitoring the Contract.** The procuring entity shall involve itself throughout in the conduct of the non-consultancy contract and continuously monitor the performance of the service provider, ensuring in terms of the contract that .

(2) Save as otherwise provided for in this Chapter, the provisions contained in Chapter IV and Chapter V shall apply, mutatis mutandis, to the procurement of Non-Consultancy services;

**104. Power of State Government to engage retired employees or persons of renown.-**

Notwithstanding anything contained in this Chapter, the State Government may, in the public interest or towards meeting a public need, engage, as Consultants, retired Government servants or persons of renown having the requisite expertise and experience or eminent persons with specialised professional skills in specific areas of public service like public policy analysis and formulation, delivery of medical and health services, training and development tasks, legal advisors, and other administrative, professional or academic areas or in trades like secretarial practice, accounting and financial analysis, data management, electrical, mechanical and digital technicians, etc, or personnel possessing multiple skills in such areas in consistence with its Notified policies.

## **CHAPTER-VIII**

### **Procurement through Framework Agreements**

**105. Framework Agreement Method-** (1) When a procuring entity requires to procure a subject matter of procurement over a period of time in terms of its procurement plan but for which the quantity or extent and timing cannot be specified in advance, it may, after recording the reasons and circumstances thereof in writing, opt to follow a Framework Agreement Procedure for entering into a long-term Framework Agreement with suppliers or contractors or providers of consultancy or non-consultancy services setting the scope, terms and conditions under which such procurement can be made at any time throughout the term of such agreement.

(2) A procurement entity may so opt to adopt the Framework Agreement method of procurement as an alternative to other methods for the following:-

(i) Goods that can be procured off-the-shelf or common use goods with standard specifications that are needed from time to time by the procurement entity;

(ii) Small value non-consulting or consulting services that are of a simple and non-complex nature and are required from time to time by the procurement entity;

(iii) Small value contracts for works under emergency as well as urgency situations;

(iv) Standard or regular maintenance and repair

(v) Quick restoration of essential public facilities;

(v) Prompt and continuing access to “on call” specialized advisory services for a particular activity, the extent and timing of which cannot be defined in advance.;

(vi) Retaining advisers, expert adjudicators, members of panels, or specialists or experts to participate in the design or implementation of complex tasks such as dispute resolution boards, institutional reforms, procurement advice, technical troubleshooting, legal counsel, Internal Audit, evaluation of safeguard issues, and other such service providers needed from time to time;

(3) A procurement entity may establish a Framework Agreement for a period of not more than three years with option to extend further for not more than one year, with one or more firms that are capable of delivering the specified goods, works, non-consulting services or consulting services at the required time, agreeing to the applicable terms and conditions in advance which shall include the fees, charge rates or pricing mechanism established through appropriate procedures consistent with the Fundamental Principles of Public Procurement prescribed in the Act including principles of advertisement, fair and open competition, effective

and independent protest mechanism, transparent bid evaluation and selection criteria. There shall be no guaranteeing of any call-off contracts to the firms awarded such Agreements.

**106. Procedure for establishing Framework Agreement-** (1) A procuring entity may, if it so decides in terms of sub-section (4) of Section 29 of the Act and as prescribed in rule 68, establish a Framework Agreement for procurement specified in sub-rule (2) through Open Competitive Bidding using appropriate RFP bidding documents. The RFP or bidding documents shall, inter alia, include the following-

i) a description of the goods, works, non-consulting Services or consulting services that the Frame Work Agreement is intended to cover;

ii) an estimate of the total volume or scope of the goods, works, non-consulting or consulting Services for which call-off contracts may be placed and, as far as possible, the volume or scope and frequency of the call-off contracts to be awarded under the Frame Work Agreement;

iii) the qualification criteria as well as evaluation criteria and methodology;

iv) the terms and conditions of contract that will apply to call-offs under the Frame Work Agreement which shall include the following information:

(a) a statement that the fees, charge rate or pricing mechanism and any other associated costs shall be agreed with each firm and be valid for the term of the Framework Agreement;

(b) a statement which explains that the procurement entity will engage Framework firms as required through call-off contracts;

(c) a statement specifying whether the agreement shall be a Closed Framework Agreement in which the panel of firms remain unchanged during the term of the agreement, except for firms removed for sufficient cause with no additional or replacement firms added or an Open Framework Agreement together with an outline of the selection process;

v) a statement indicating that there is no guarantee of being awarded a call-off contract, and no commitment is be made with regard to volume of goods, works, non-consulting or consulting services;

vi) a statement that the Framework Agreement is not an exclusive agreement and that the procurement entity reserves the right to procure the same or similar goods, works, non-consulting or consulting services from firms that are not part of the Framework Agreement;

vii) a description of the circumstances that may lead to a firm being removed from the

framework agreement and the process to be used in securing the removal;

viii) the secondary procurement method or methods that the procurement entity shall use to select a firm in the call-off process;

ix) the contractual method the procurement entity will use to secure the call-off contract, like statement of supply order or work order, etc;

x) the duration of the Framework Agreement, including any option to extend, which shall not be more than three years with option to extend for up to one more year at the most;

xi) The procurement entity shall issue a Notification of Intention to conclude a Framework Agreement clearly indicating whether single or multiple Agreements are intended.

**107. Procedure for hiring individual experts through FA-** (1) In case individual experts are required to be hired through Framework Agreement with service provider firms, the concerned procurement entity shall, addition to the procedure prescribed in rule 106 also describe the requirement of different experts in the Request for Proposal document along with the selection criteria focusing on the relevant qualifications and expertise required to enable firms to furnish the list of experts they commit to make available in their proposal;

(2) The procurement entities shall, after due evaluation of proposals received, establish a list of qualified experts, which can include experts from different firms. The procurement entity and the Frame Work Agreement firms shall agree upon pre-established fee rates to be paid for the experts on standard conditions of contract and such payments shall be made on the basis of the time actually usefully spent by the experts in providing the service;

(3) Experts shall be selected from the list on the basis of a “call off” request with specific Terms of Reference for the assignment and the comparative qualitative evaluation of the Curriculum Vitae of the proposed experts or the fee levels and a specific contract shall be signed for each assignment;

(4) ***Call-off contract for procurement under a Framework Agreement:*** As part of the call-off process, firms shall be given a description of the scope of supply or tasks that they will be expected to provide. The statement of work or purchase order to be issued as part of the call-off process shall specify the objectives, tasks, deliverables, timeframes and price or price mechanism. The price for individual call-off contracts shall be based on the fees, charge rate or pricing mechanism detailed in the Framework Agreement. A firm or individual expert shall be selected from the panel using one of the secondary procurement process described in the

Agreement. The secondary procurement for the call-off process shall take one or, as an option both, of the following forms:

(a) mini-competition based on objective criteria for call-offs that have been described in the Agreement, such as competitive quotes or Request for Quotations from some or all of the panel members based on the lowest evaluated cost or competitive bids or Request for Proposal with h Bidding Document from some or all of the panel members, based on expertise, proposed solutions and value for money; and/or

(b) direct selection based on objective criteria for call-offs that have been described in the Framework such as either 'location' where call-off contracts are awarded to the firm that is best able to deliver at the required location or 'balanced division' of supply, scope, task, where an upper value limit is fixed and call-off contracts are awarded in turn on a rotational basis when a firm reaches the upper value limit;



## **CHAPTER-IX**

### **Appeals, Repeals and Savings**

**108. Form of Appeal.-** (1) An appeal under sub-section (1) or sub section (4) of section 38 shall be submitted in Form No 1 appended to these rules along with as many copies as there are respondents in the Appeal;

(2) Every appeal shall be accompanied with a copy of the order appealed against, if any, an affidavit verifying the facts stated in the appeal and proof of payment of the prescribed fee;

(3) An appeal shall be presented to the First Appellate Authority or Second Appellate Authority, as the case may be, in person or through registered post or through duly authorised representative.

**109. Fee for filing appeal.-** (1) The fee for a first appeal shall be rupees two thousand five hundred and that for a second appeal shall be rupees ten thousand;

(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;

(3) All such fees received shall be deposited into the State Exchequer under the relevant Head of Account for Fees.

**110. 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 including the affidavit and documents enclosed, if any, to the respondents and fix a 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) Peruse or inspect documents, relevant records or copies thereof relating to the matter;
- (b) Hear all the parties to the Appeal present before him and record statements as required;

(3) And, thereafter, consider the matter listing the points in the issue (s) in question and dispose the Appeal with a speaking order in writing wherein the reasons for the decision made and shall be specifically recorded together with discussion of the evidence thereof and available. Copies of the Order disposing the Appeal shall be endorsed to the parties to the

appeal free of cost and the records thereof shall be preserved as a part of the procurement proceedings,

(4) The order so passed disposing the Appeal under sub-rule (3) shall also be placed on the State Public Procurement Portal.

**111. Register, Records and Annual Return of Appeals.-** (1) Every First and Second Appellate Authority shall maintain a register of Appeals in which brief details of appeals submitted shall be recorded immediately on its receipt and an Appeal case number indicating the dated of filing of the Appeal shall be allocating to it.. The records of every First Appeal and Second Appeal shall be maintained by the concerned First and Second Appellate Authorities respectively in Appeal Case files as official records.

(2) The concerned Appellate Authority shall furnish annual returns of First Appeals and Second Appeals received, as the case may be, indicating the status thereof, specifying whether disposed or pending to the concerned Administrative Department which shall be compiled by the Administrative Department and furnished to the State Public Procurement Facilitation Cell in soft and hard copy within thirty days of the close of the each financial year.

**112. Repeal and savings.-** All regulations, orders, notifications, departmental codes, manuals, by-laws, official memoranda or circulars relating to procurement of goods, services or works which are in force on the date of commencement of these rules, insofar as covered by these rules or are inconsistent with 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 such 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;*

*Provided further that such regulations, orders, notifications, departmental codes, manuals, by-laws, official Memoranda or circulars containing provisions not covered by these rule and not in contravention to these rules shall continue to remain in force and apply accordingly.*

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