

## **The Public Procurement Regulation, 2064 (2007)**

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### Amendment

1.	The Public Procurement (First Amendment) Regulation, 2008 (2065)	24 November 2008 (2065.8.9)
2.	The Public Procurement (Second Amendment) Regulation, 2008 (2065)	17 December 2008 (2065.9.2)
3.	The Public Procurement (Third Amendment) Regulation, 2011 (2068)	20 June 2011 (2068.3.6)
4.	The Public Procurement (Fourth Amendment) Regulation, 2073 (2019)	19 December 2019 (2073.9.4)
5.	The Public Procurement (Fifth Amendment) Regulation, 2017 (2073)	9 March 2017 (2073.11.26)
6.	The Public Procurement (Sixth Amendment) Regulation, 2019 (2075)	13 May 2109 (2076.1.30)
7.	The Public Procurement (Seventh Amendment) Regulation, 2019 (2076)	6 June 2019 (2076.2.23)
8.	The Public Procurement (Eighth Amendment) Regulation, 2019 (2076)	1 August 2019 (2076.4.16)

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

## Chapter-1

### Preliminary

1. Short title and commencement: (1) These Rules may be cited as the "Public Procurement Regulation, 2007 (2064)."
  - (2) This Regulation shall commence forthwith.
2. Definitions: Unless the subject or the context otherwise requires, in this Regulation,-
  - (a) "Act" means the Public Procurement Act, 2007 (2063).
  - (b) "Multi-year contract" means a contract of which term exceeds one year.
  - (c) "Sealed quotation" means a description, also quoting the price, which is submitted in a sealed envelope by a person, firm, company or organization that is interested to execute any works or provide goods or other services pursuant to the notice of the public entity.
  - (d) "Secretary" means the secretary of a Ministry, and this term also includes the chief secretary of the Government of Nepal and other special class officer of the Government of Nepal who performs the functions equivalent to that of a secretary.
  - (e) "Superior office" means the office which is higher in level than the concerned office.

- (f) "Treasury Controller Office" means the treasury controller office under the Office of the Financial Comptroller General.
- (g) "Rate fixation committee" means the committee referred to in Rule 148.
- (h) "Head of department" means an official who serves as the head of a department or other office equivalent thereto under any Ministry.
- (i) "Ministry" means a Ministry of the Government of Nepal, and this term also includes the Office of the Prime Minister and Council of Ministers.
- (j) "Standing list" means the list referred to in Rule 18.
- (k) "Users' committee" means a committee which is formed by the persons who are direct beneficiaries of a construction work from among themselves in order to build, operate and maintain any construction work.
- (l) "Management contract" means the contract referred to in clause (f) of Schedule-4.
- (m) "Evaluation committee" means the committee referred to in Rule 147.
- (n) "Bid price" means an amount which is fixed upon the examination of a bid.
- (o) "Sub-contractor" means a construction entrepreneur, supplier, consultant or service provider who, after executing a separate contract with the construction entrepreneur, supplier, consultant or service provider who

has entered into a procurement contract, carries out any work under that procurement contract.

- (p) "Proprietary goods" means any accessory equipment and spare parts manufactured by the manufacturer of any goods, machinery or equipment for the operation or maintenance such goods, machinery or equipment.
- (q) "Contract price" means the procurement price set forth in a procurement contract, and this term also includes the price fixed from the measurement of the work carried out under the variation order where such order has been issued and the procurement price fixed from the price adjustment where such adjustment has been made, under such a contract.
- (r) "Framework or unit rate contract" means the contract referred to in clause (b) of Schedule-3.
- (s) "Force account" means any construction work to be executed by a public entity itself.
- (t) "Review committee" means the committee formed pursuant to sub-section (1) of Section 48 of the Act.
- (u)<sup>1</sup> "Medicinal goods" means medicines, injections or vaccines, syringes, blood bags, reagents to be used in laboratories, health related equipment to be used for the production of family planning hormonal or diagnosis and treatment of diseases.
- (v)<sup>2</sup> "Electronic bid" means a bid submitted by a bidder by using the electronic procurement system.

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<sup>1</sup> Inserted by the Fifth Amendment.

<sup>2</sup> Inserted by the Fifth Amendment.

- (w)<sup>3</sup> “Electronic procurement system” means the procurement system established, operated and managed by the Public Procurement Monitoring Office by using electronic means of communication pursuant to Rule 146.
- (x)<sup>4</sup> “Electronic means of communication” means the electronic communication technology, system or medium applied by the Public Procurement Monitoring Office to establish, operate and manage the electronic procurement system.
- (y)<sup>5</sup> “Government fund” means the Federal Consolidated Fund, Province Consolidated Fund or Local Consolidated Fund, and this term also includes any other government fund established in accordance with the prevailing law.

## Chapter-2

### Preparation of Procurement Proceeding, Procurement Plan and Cost Estimate

3. Preparation to be made for procurement proceeding: In making preparation for any procurement proceeding, a public entity shall do as follows:
- (a) To identify the procurement need,
  - (b) To obtain information of the procurement contract in practice in the market in order to resolve various technical matters pertaining to procurement and to ascertain the availability of suppliers,

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<sup>3</sup> Inserted by the Fifth Amendment.

<sup>4</sup> Inserted by the Fifth Amendment.

<sup>5</sup> Inserted by the Fifth Amendment.

- (c) If goods, construction works or consultancy services or other services of similar nature were procured in previous years, to study such procurement processes,
- (d) To ascertain the description, quantity and scope of the procurement,
- (e) To divide the procurement into more convenient slices or include it in packages,
- (f) To cause a procurement plan to be prepared,
- (g) To prepare the cost estimate of procurement,
- (h) To identify the financial source and amount of procurement,
- (i) To select the procurement method, and
- (j) To ascertain, in the case of a procurement other than the procurement of a construction work of up to twenty million<sup>6</sup> rupees, whether or not it is required to conduct the bid qualification or pre-qualification actions.

3A.<sup>7</sup> Provisions relating to packaging and slicing: (1) A public entity shall, in packaging the procurement, do so without prejudice to the number of packages set forth in the procurement masterplan pursuant to clause (c) of sub-rule (2) of Rule 7.

(2) In making preparation for dividing the procurement into more convenient groups/slices or including it in packages, bids shall be invited separately for any construction work of such nature as can be completed severally to the extent of having maximum competition for the same.

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<sup>6</sup> Amended by the Fourth Amendment.

<sup>7</sup> Inserted by the Sixth Amendment.

(3) Except where it is required to conduct in the same package because of being interrelated to each other, bids shall not be invited by making bigger packages in a manner to restrict and limit competition.

4. Procurement not to be made without order of the competent authority: No person shall make or cause to be made any procurement without written order of the competent authority.

5. Procurement requisition to be received: (1) Prior to commencing the procurement proceeding of goods, the procurement unit of the concerned public entity shall obtain procurement requisition from the divisions and sections and have the requisition approved by the competent authority.

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

- (a) Description relating to the type, quality, quantity of the goods,
- (b) The time when the goods are required,
- (c) The estimated value of the procurement, and
- (d) The source of funding.

5A.<sup>8</sup> Description of goods, construction works and services to be approved: (1) Prior to procuring any goods, construction work or service, the chief of the public entity shall prepare, or cause to be prepared, the specifications, plans, maps, designs, special requirements or other details, referred to in Section 4 of the Act.

(2) The description prepared pursuant to sub-rule (1) has to be approved by the authority referred to in Rule 14. the specifications, plan, map, design, special requirements or other details

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<sup>8</sup> Inserted by the Fourth Amendment.

(3) Notwithstanding anything contained in sub-rule (2), the specifications, plans, maps, designs, special requirements or other details of structures of complex and special nature such as tunnels, railways, ropeways, cable-car ways and roads of special natures have to be approved by the head of department.

(4) The description prepared pursuant to sub-rule (1) may be amended in any of the following circumstances:

- (a) If the construction work is of complex nature from geologically so that it cannot be foreseen at the time of preparation of the description,
- (b) If there arises a situation of natural calamity after the preparation of the description,
- (c) If the departmental norms are changed,
- (d) If the pre-determined technology or system for conducting the construction work is changed,
- (e) If there arises difficulty with its implementation because of the structure of being special and complex nature.

(5) Except where it is required to amend the description prepared pursuant to sub-rule (1) in any circumstance set forth in sub-rule (4), the chief of public entity shall have the duty to send an intimation for legal action pursuant to sub-section (2) of Section 5A. of the Act, and the one level higher authority shall have such a duty in cases where the chief himself or herself has approved the description referred to in sub-rule (1).

6. Provision of budget and construction site: (1) No public entity shall commence the procurement proceeding unless and until the required budget for the procurement is provisioned.



(2) Notwithstanding anything contained in sub-rule (1), procurement proceeding may be commenced in the following circumstances even if the budget has not been provisioned:

- (a) In the case of a procurement to be made under a multi-year contract, in order to carry out procurement proceeding for other years after the budget required for the first year has been arranged, and
- (b) Because of being it essential to make prelamination preparations for procurement, to carry out acts such as inviting sealed quotations or bids, inviting pre-qualification applications, publishing a notice for the preparation of a list of consultants, inviting proposals from consultants or making available the sealed quotation forms, bidding documents or pre-qualification documents or documents relating to proposal.

(3)<sup>9</sup> No public entity shall make invitation to bids without making provision of the construction site, without ensuring the removal of structures including trees, plants required to be removed from the construction site, without ensuring the budget for the distribution of compensation or damages if so required, and without having approved the report on environmental study required to be conducted under the prevailing law.

(4)<sup>10</sup> Notwithstanding anything contained in sub-rule (3), nothing shall bar the making of invitation to bids in cases where the environment study report is yet to be approved in the following circumstance:

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<sup>9</sup> Amended by the Sixth Amendment.

<sup>10</sup> Inserted by the Sixth Amendment.

- (a) If it is to implement a project already approved at the time of commencement of sub-rule (3),
- (b) If a decision is made by the Government of Nepal, Council of Ministers, to implement any special project.

(5)<sup>11</sup> In the case of a procurement to be made in accordance with a multi-year contract, the public entity shall, in conducting the procurement actions for the other year pursuant to clause (a) of sub-rule (2), commence the procurement actions only after ensuring the required budget.

7. Master procurement plan to be prepared: (1) A public entity shall prepare a master procurement plan in making procurement for a plan or project to be operated for a period exceeding one year or in making an procurement of an amount exceeding one hundred million rupees a year.

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

- (a) The type, quantity and tentative estimated cost of procurement,
- (b) The procurement method,
- (c) If, for the purpose of maximizing competition, procurement is to divided in slices or packages, provision relating thereto,
- (d) A tentative number of contracts to be concluded for the completion of the whole procurement actions and major functions relating to such procurement actions,
- (e) If pre-qualification action is to be carried out for procurement, matters relating thereto,
- (f) Tentative time-table of the procurement actions,

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<sup>11</sup> Inserted by the Sixth Amendment.

(g) The matters so specified by the Public Procurement Monitoring Office from time to time as to be included in the master procurement plan.

(3) The master procurement plan prepared pursuant to this Rule has to be approved <sup>12</sup>by the secretary related to the concerned entity in the case of any public entity referred to in sub-clause (1) of clause (b) of Section 2 of the Act and by the authority provided for in the procurement regulation or bye-laws of the concerned public entity in the case of other public entity.

(4) The concerned public entity shall each year update the master procurement plan approved pursuant to sub-rule (3).

8. Annual procurement plan to be prepared: (1) Where a public entity is to make procurement of an amount exceeding one million rupees a year, it shall, in preparing estimated annual programs and budget for the next fiscal year, prepare an annual procurement plan for procurement to be made in the next fiscal year. While so preparing a procurement plan, it shall be prepared based also on the master procurement plan, if any, prepared pursuant to Rule 7.

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

- (a) Description relating to the type of procurement,
- (b) Possible packages of procurement,
- (c) Time schedule of the procurement actions,
- (d) Procurement methods,
- (e) Types of contracts to be concluded for procurement, and

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<sup>12</sup> Amended by the Third Amendment.

(f) The matters so specified by the Public Procurement Monitoring Office from time to time as to be included in the annual procurement plan.

(3) The time schedule referred to in clause (c) of sub-rule (2) shall contain the time period for carrying out the following acts:

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

(4) The chief of the public entity shall send a copy of the annual procurement plan prepared pursuant to this Regulation, along

with the estimated annual programs and budget for the next fiscal year, to the superior office and the Ministry of Finance.

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

(6) The superior office shall monitor whether procurement actions have been completed within the stipulated time or not.

9. Matters to be considered in preparing the cost estimate: (1) A public entity shall consider the following matters in preparing the cost estimate of any procurement:

- (a) Whether the whole procurement act may be carried out through a single contract or a separate contract is to be concluded for each work,
- (b) Whether the procurement contract is to be renewed or not,
- (c) Any other options to procurement, if any,
- (d) Maximum time and cost that may be required to complete the work under the procurement contract, and
- (e) Such other matters so specified by the Public Procurement Monitoring Office as to be considered by a public entity in preparing the cost estimate.

(2) While preparing the cost estimate, the public entity shall prepare separate items for costs pertaining to mobilization and

demobilization, insurance, facilities to be provided to the consultant, quality testing, occupational health and safety, as built drawing, commission for the performance security, including the bid security<sup>13</sup> or performance security, and include them in the cost estimate.

(3)<sup>14</sup> In preparing the cost estimate pursuant to sub-rule (1), the public entity shall prepare it based also on the description referred to in Rule 5A.

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

(2) In preparing the cost estimate of any construction work, the cost estimate shall be prepared as per the norms concerning the construction work, archaeological excavation and underground works such as tunnel digging, deep tube-well and petroleum exploration, where such norms are available, and failing such norms, the required norms shall be prepared and caused to be approved by the Government of Nepal, Council of Ministers, and the cost estimate shall be prepared as per the approved norms.

Provided that if, in the course of carrying out the works according to such norms, a specific type of norm is required for a specific work, the chief of the concerned public entity may cause the required norms to be prepared by the technician of such an entity and if the entity does not have such a technician, by the concerned technician of another public entity and may cause such norms to be approved by the head of department. The norms so approved shall be sent to the Construction Business Development Council within a period of one year.

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<sup>13</sup> Amended by the Third Amendment.

<sup>14</sup> Inserted by the Fifth Amendment.

(3) While preparing the cost estimate pursuant to this Rule, the public entity shall, upon studying whether the goods are available at the site or not, fix the period of time to be required for the completion of the construction work.

(4) The public entity shall, in the course of preparing the cost estimate, fix the rate and price of cement, iron rod, bricks, stone, soil, corrugated sheet, bitumen, and emulsion, fuel, polythene pipe, G.I. pipe, D.I. pipe, sanitary items, electrical goods, G.I. wire and similar other construction materials, the rent of machine and equipment or labour wages on the basis of the rate fixed by the rate fixation committee.

Provided that if the rate fixed by the rate fixation committee is not available, the rate shall be fixed on the basis of the rate fixed by the concerned government office or a government owned corporation, authority, body or other body of similar nature situated nearby the construction site or the rate, rent or wages provided by the Chamber of Industry and Commerce.

(5) In cases where even the rate, price, rent or wages referred to in sub-rule (4) be not available, such rate shall be fixed on the basis of the rate, rent or wages specified by the head of department.

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

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

11. Cost estimate of goods: (1) A public entity shall, in preparing the cost estimate of goods, prepare it subject to Rule 9 and the specifications of the concerned goods.

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

- (a) The actual cost incurred in the procurement of the same nature made in the current or previous years by the concerned public entity or other public entity of the district where such a public entity is located,
- (b) The rate prevailing at the local market,
- (c) The rate prevailing at another market and estimated cost of transportation of goods to the place of their delivery,
- (d) The rate issued by the Chamber of Industry and Commerce.

12. Cost estimate of consultancy services: (1) A public entity shall, in preparing the cost estimate of a consultancy service, prepare it subject to Rule 9.

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

- (a) The norms relating to the cost estimate of consultancy services, if any, prepared by the concerned Ministry,



- (b) The terms of reference of the concerned consultancy service,
- (c) The actual cost incurred in the procurement of the same nature made in the current or previous years by the concerned public entity or other public entity.

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

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

- (a) Remuneration of the key human resources and other human resources,
- (b) Travel costs, costs for accommodation of human resources, office expenses, costs related to necessary goods, equipment and services, costs related to translation and publication of reports and other documents,
- (c) If the consultant has to arrange for any training, seminar or travel, the costs required for such work, and other costs.

(4)<sup>15</sup> The cost estimates of consultancy services and other services shall be prepared in the form referred to in Schedule-1A.

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

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<sup>15</sup> Inserted by the Fourth Amendment.

(2) In preparing the cost estimate of the rent of any motor vehicle, machinery, equipment or goods to be hired, the chief of the concerned public entity shall form a committee comprising a maximum of three skilled technicians having knowledge of such vehicle, equipment or goods. If such an entity does not have such technical human resources, the superior office of such an entity shall form such a committee.

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

- (a) Description, specifications, condition and life of the motor vehicle, machinery, equipment or goods to be hired,
- (b) Prevailing market rate,
- (c) Period of hiring,
- (d) Price and consumption of fuel, and
- (e) Such other matters as the committee thinks appropriate.

(4) The public entity shall, in preparing the cost estimate of transportation, prepare a tentative cost estimate on the basis of the rate fixed by the rate fixation committee in the case of a district level public entity, on the basis of the departmental rate in the case of a central level public entity, and on the basis of the prevailing market rate in the case where there is no even such a departmental rate.

(5) The public entity shall, in preparing the cost estimate of maintenance of any goods, cause such cost estimate to be prepared by an employee of such an entity who is expert or skilled in such matter, if so available, and by an individual, firm, company or organization executing such a work if no such employee is available.

(6) The public entity shall, in preparing the cost estimate related to house rent and service contract, prepare a tentative cost estimate according to the prevailing market rate and the norms relating thereto issued, if any, by the Public Procurement Monitoring Office.

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

(a)<sup>16</sup> The cost estimate that does not exceed ten million rupees, by the gazetted third-class chief of office,

(b)<sup>17</sup> The cost estimate that does not exceed fifty million rupees, by the gazetted second-class chief of office,

(c)<sup>18</sup> The cost estimate that does not exceed one hundred million rupees, by the gazetted first-class chief of office,

(d)<sup>19</sup> The cost estimate that exceeds one hundred million rupees, by the head of department.

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

(a)<sup>20</sup> The cost estimate that does not exceed one million rupees, by the gazetted third-class chief of office,

(b)<sup>21</sup> The cost estimate that does not exceed two million five hundred thousand rupees, by the gazetted second-class chief of office,

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<sup>16</sup> Amended by the Fourth Amendment.

<sup>17</sup> Amended by the Fourth Amendment.

<sup>18</sup> Amended by the Fourth Amendment.

<sup>19</sup> Amended by the Fourth Amendment.

<sup>20</sup> Amended by the Fourth Amendment.

<sup>21</sup> Amended by the Fourth Amendment.

(c)<sup>22</sup> The cost estimate that does not exceed five million rupees, by the gazetted first-class chief of office,

(d)<sup>23</sup> The cost estimate that exceeds five million rupees, by the head of department.

(3)<sup>24</sup> If the chief of the public entity himself or herself cannot approve the cost estimate pursuant to this Rule or the description referred to in Rule 5A., he or she shall cause such a cost estimate or description to be approved by one level higher authority.

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

15. Cost estimate to be updated: (1) If the procurement is not made as per the cost estimate approved pursuant to Rule 14, the public entity shall update such a cost estimate in each fiscal year in pursuance of the process referred to in this Regulation.

(2) The public entity shall not make an invitation to sealed quotations and bids or proposals for a consultancy service without updating the cost estimate pursuant to this Rule.

16.<sup>25</sup> Functions of procurement division, section or unit: (1) A public entity shall establish a separate procurement division, section or unit, as required, on the basis of the procurement workload and nature of work.

(2) In establishing the procurement division, section or unit referred to in sub-rule (1), a procurement official shall be so designated

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<sup>22</sup> Amended by the Fourth Amendment.

<sup>23</sup> Amended by the Fourth Amendment.

<sup>24</sup> Amended by the Sixth Amendment.

<sup>25</sup> Amended by the Fourth Amendment.

that he or she bears the responsibilities of the chief of such a division, section or unit.

(3) The procurement official referred to in sub-rule (2) shall perform the following functions, in addition to the functions referred to in sub-section (3) of Section 7 of the Act:

- (a) To prepare and update the master procurement plan and annual procurement plan,
- (b) To coordinate the functions related to procurement actions,
- (c) To collect the procurement requisitions and submit them to the competent authority for approval,
- (d) To function as the coordinator of the committee opening bids or proposals,
- (e) To maintain records of the procurement actions pursuant to Rule 149,
- (f) To maintain records of time extension, performance security/guarantee and letters of credit referred to in Schedule-2.

### Chapter-3

#### Procurement and Selection of Procurement Contract

17. Goods manufactured in Nepal to be procured: A public entity shall, in making procurement by selecting any method set forth in this Regulation, procure the Nepali goods even though the price of the goods manufactured in Nepal is higher by up to fifteen percent<sup>26</sup> than the foreign goods.

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<sup>26</sup> Amended by the Fourth Amendment.

18.<sup>27</sup> Provisions relating to preparation of standing list: (1) A person, organization, supplier, construction entrepreneur, consultant, non-governmental organization or service provider that wishes to get registered or updated in the standing list pursuant to Section 6A. of the Act shall make an application in the form referred to in Schedule-2A., accompanied by the copies of the following documents, to the concerned public entity:

- (a) The organization or firm registration certificate,
- (b) The permanent account number or value added tax registration certificate,
- (c) The tax clearance certificate, and
- (d) Business license, as required.

(2) The public entity shall make necessary inquiries into the application received pursuant to sub-section (1), register it and give the receipt referred to in Schedule 2B.

(3) The public entity shall maintain records of separate standing lists referred to in Section 6A. of the Act in the form referred to in Schedule-2C. and update such records each fiscal year.

(4) The standing list shall be published semi-annually by posting it on the notice boards of the District Administration Office and the Treasury Controller Office situated in the district or by putting it on the web site of the concerned public entity.

(5) Notwithstanding anything contained in this Rule, any bidder or proponent who is not listed in the standing list shall not be deprived of participating in sealed quotations, bids or proposals invited by the public entity.

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<sup>27</sup> Amended by the Fourth Amendment.

19. Procurement to be made from those who have obtained permanent account number and value added tax registration certificate: (1) A public entity shall procure only from the individuals, firms, organizations or companies that have obtained the permanent account number and value added tax registration certificate from the Inland Revenue Office.

(2) Notwithstanding anything contained in sub-rule (1), procurement may, in the following circumstance, be made also from an individual, firm, organization or company that has not obtained the value added tax registration certificate:

- (a) In procuring goods or executing construction works of an amount less than twenty thousand rupees,<sup>28</sup>
- (b)<sup>29</sup> In procuring any goods, consultancy services or other services on which value added tax is not leviable,
- (c)<sup>30</sup> .....
- (d)<sup>31</sup> .....
- (e)<sup>32</sup> .....
- (f)<sup>33</sup> .....
- (g) In renting a house, and
- (h) In executing a construction work with the participation of users' committee or beneficiary community.

(3) Notwithstanding anything contained elsewhere in this Rule, if there does not exist any firm or seller having obtained the

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<sup>28</sup> Amended by the Fourth Amendment.

<sup>29</sup> Amended by the Third Amendment.

<sup>30</sup> Deleted by the Third Amendment.

<sup>31</sup> Deleted by the Third Amendment.

<sup>32</sup> Deleted by the Third Amendment.

<sup>33</sup> Deleted by the Third Amendment.

value added tax registration certificate from the concerned Inland Revenue Office in any district specified as the remote area by the Government of Nepal, procurement of up to one million rupees may be made from a supplier included in such list of suppliers available in the district as prepared by the following committee for that district:

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

(4) The Treasury Controller Office shall perform the functions of the secretariat of the committee formed pursuant to sub-rule (3).

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

20. Selection of procurement contract: (1) A public entity shall, upon the selection of the procurement method with regard to any procurement actions, select a procurement contract by which the procurement is to be made, out of the contracts referred to in Rule 21 if goods or other services are to be procured, in Rule 22 if a construction work is to be procured and in Rule 23 if a consultancy service is to be procured.



(2) In selecting a procurement contract pursuant to sub-rule (1), it shall be selected having regard to the following matters:

- (a) The type and quantity of procurement,
- (b) Whether there is a possibility that the procurement of the same nature will be made again,
- (c) Allocation of risks between the public entity and the supplier, construction entrepreneur or consultant and other party, and
- (d) Method of supervising the contract.

(3)<sup>34</sup> In selecting the procurement contract pursuant to sub-rule (1), it shall be selected in accordance with the procurement contract set forth in the standard bidding documents issued by the Public Procurement Monitoring Office.

Provided that where the standard bidding documents have not been issued by the Public Procurement Monitoring Office, the public entity may prepare and use the tender documents along with the procurement contract required for it, with the consent of the Public Procurement Monitoring Office.

(4)<sup>35</sup> After an invitation to bids has been made upon selecting the tender documents and procurement contract pursuant to this Rule, the standard procurement contract so selected is not subject to alteration except as otherwise provided in this Regulation.

21. Procurement contract of goods or other services: (1) A public entity may procure goods or other services by making any contract out of the contracts referred to in Schedule-3.

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<sup>34</sup> Inserted by the Fourth Amendment.

<sup>35</sup> Inserted by the Fourth Amendment.

(2) In entering into the contract referred to in sub-rule (1), it shall be entered into based on the technical specifications and period set forth in the bidding documents.

(3) The procurement contract shall be governed by the provisions of this Regulation to the extent provided for in this Regulation and by the prevailing law on the sale of goods contract with regard to the matters not provided for in this Regulation.

(4) The procurement contract of goods or the conditions of delivery of goods under this Rule shall be prepared in accordance with the international commercial terms (Incoterms).

(5) In making payment under the contract referred to in this Rule, it shall be made generally upon the submission of documents showing the supply of goods made by the supplier through the letter of credit or the medium set forth in the bidding documents.

22. Procurement contract for construction works: A public entity may, for the execution of any construction work, enter into any one contract out of the contracts referred to in Schedule-4.

23. Procurement contract for consultancy services: A public entity may, for the procurement of a consultancy service, enter into any one contract out of the contracts referred to in Schedule-5.

24.<sup>36</sup> Conditions may be specified: If it is required to specify any other additional conditions in the bidding documents or documents relating to proposal, in addition to the conditions set forth in this Chapter with regard to any procurement contract, additional conditions may be specified so that there is no substantial deviation from the conditions of the procurement contract set forth in the bidding documents or documents relating to proposal.

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<sup>36</sup> Amended by the Fourth Amendment.

## Chapter-4

### Qualification Criteria, Technical Capacity and Technical Specifications

25. Criteria on qualification of bidders supplying goods: (1) A public entity may, in specifying the criteria on qualifications of bidders or proponents of a pre-qualification proposal who participate in the procurement actions related to the supply of goods, specify such criteria having regard to any or all of the following matters, as required:

- (a) Technical capacity,
- (b) Manufacturing records,
- (c) Technical specifications of goods,
- (d) Economic and financial capability,
- (e) If the goods are to be installed, competency of the technician to be involved in the installation,
- (f) Guarantee to the effect that the goods to be supplied will smoothly operate for a specific period,
- (g) Provision of maintenance of goods,
- (h) Availability of services and spare parts,
- (i) In the case of a supplier supplying goods including with installation thereof, his or her skill, efficiency, experience and reliability.

(2) In requiring the documents that prove the qualification and technical capacity of a bidder or proponent pursuant to this Rule, the public entity may require any or all of the following documents, according to the nature, quantity, importance or use of the goods:

- (a) The nature, quantity, contract price and date of the goods supplied by the bidder to any government entity or private organization during the period of last three years and the name and address of such a government entity or private organization,
- (b) If the goods to be procured are of complex or exceptional nature, documents as to the test of the production capacity of the bidder or pre-qualified proponent conducted by the concerned public entity itself or, on its behalf, by the competent authority of the country of incorporation of such a bidder or proponent,
- (c) The certificate issued by the competent quality control authority or recognized body as to the specifications and quality of the goods to be procured, after inspecting such goods,
- (d) Such samples, supplementary details or photographs as may be required to prove the authenticity of the goods to be supplied,
- (e) Proportion of the work relating to supply intended to be made through a sub-contractor.

(3) If a bidder or prequalified proponent himself or herself does not manufacture or produce the goods to be supplied, such a bidder or proponent shall submit the document proving that the manufacturer of such goods has duly and exclusively authorized him or her to submit the bid or pre-qualification proposal, supply and install the goods.

(4) A bidder or pre-qualified proponent who does not carry on trade, business within Nepal shall submit the document proving that, if he or she obtains the procurement contract, his or her agent or authorized seller who is capable of discharging the liabilities relating to the maintenance of the goods supplied pursuant to such a contract, provision of after-sales service and making reserve of and supply of necessary spare-parts shall be present in Nepal.

26. Criteria as to qualification of construction entrepreneurs: (1) A public entity may, in specifying the criteria as to the qualification of the bidder or pre-qualification proponent participating in the procurement actions of a construction work costing more than twenty million rupees,<sup>37</sup> specify such criteria having regard to any or all of the following matters, as required:

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

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

- (c) A special experience upon having executed monthly or yearly a construction work equivalent to the minimum

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<sup>37</sup> Amended by the Fourth Amendment.

amount set forth in the bidding documents or prequalification documents solely or by concluding a management contract or as a partner of joint venture or a sub-contractor, and having completed successfully the procurement contracts of the nature, complexity and construction technology similar to the proposed procurement contract in such a number as specified in such documents,

- (d) Economic and financial capacity as to the availability of liquidity, credit facility and other financial source (excluding the advance payment under any procurement contract) which may provide such cash-flow as may be necessary to complete the proposed construct work or other construction work which the concerned bidder or prequalified proponent has been executing or committed to execute or the accessibility to the source of such property in cases where there is no payment of money or delay in payment of money required to commence the construction work referred to in the procurement contract,
- (e) Skilled human resources as specified in the bidding documents or prequalification documents,
- (f) Main equipment, machineries as specified in the bidding documents or prequalification documents in running condition which are owned by the bidder or pre-qualified proponent himself or herself or which will be so available by way of rent, lease, contract or other commercial means that they can be used freely during the period of the procurement contract.

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

(3) In requiring the documents that prove the technical capacity of a construction entrepreneur pursuant to this Rule, the public entity may require the bidder or pre-qualified proponent to submit any or all of the following documents, according to the nature of the construction work:

- (a) Description of the price, date and site of the construction works completed by him or her during the period of last ten years,
- (b) Proportion of the work which he or she intends to get executed through a sub-contractor,
- (c) Description of the technical human resources,<sup>38</sup> equipment and plants referred to in clause (f) of sub-rule (1)<sup>39</sup> available with him or her to complete the proposed work.
- (d)<sup>40</sup> The description referred to in clause (n3) of sub-section (2) of Section 13 of the Act in order to prove the bidder's technical capacity referred to in (n4) of sub-section (2) of the said Section to complete the proposed construction work.

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<sup>38</sup> Inserted by the Fourth Amendment.

<sup>39</sup> Inserted by the Sixth Amendment.

<sup>40</sup> Inserted by the Fourth Amendment.

(4)<sup>41</sup> Notwithstanding anything contained in sub-section (1), qualification shall be specified pursuant to sub-section (5) of Section 10 of the Act for the construction work of such other structure as specified by the concerned public entity, including structures of complex or special nature such as a power-house, turbine, bridge, tunnel way, railway, ropeway, cable car way, multi-storied building or road, the cost estimate of which does not exceed twenty million rupees.

27. Criteria as to qualification of proponents of consultancy services: (1) A public entity may, in specifying the criteria as to the qualification of the proponent participating in the procurement actions relating to a consultancy service, specify such criteria having regard to any or all of the following matters:

- (a) If the proponent being an individual, his or her work experience, and if the proponent is a firm or organization, its required institutional work experience,
- (b) The required academic qualification of the key employees of the proponent, and their work experience in the works of similar nature,
- (c) Method, procedure of performance of work, responsiveness to the terms of reference, technology transfer and time schedule,
- (d) Managerial capacity of the proponent,
- (e) Financial capacity of the proponent,
- (f) Involvement of native human resources if the proposal has been invited internationally,

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<sup>41</sup> Inserted by the Fourth Amendment.



(g) Such other matters as specified in the bidding documents.<sup>42</sup>

(2) In requiring the documents that prove the technical capacity of a proponent pursuant to this Rule, a public entity may require any or all of the following documents, according to the nature of the proposed consultancy service:

(a) Description specifying the public or private organization to which the consultancy service identical to the proposed consultancy service has been provided during the period of last ten years,<sup>43</sup> the amount and date thereof,

(b) Description as to qualification of the key staff proposed for the completion of the proposed work,

(c) Description of his or her managerial staff and average annual human resources in the last three years, and

(d) Portion of the proposed consultancy service which he or she intends to get provided through a sub-contractor.

28. Criteria as to qualification of joint venture: (1) Bidders may, for the purpose of participating in any procurement actions, form a joint venture and submit a bid.

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

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

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<sup>42</sup> Amended by the Third Amendment.

<sup>43</sup> Amended by the Third Amendment.

(3) The public entity shall, in specifying the qualification pursuant to sub-rule (2), specify such qualification having regard to the following matters with regard to a partner in such a venture:

- (a) His or her average annual turnover,
- (b) His or her special experience and the main work performed by him or her,
- (c) Cash-flow available with him or her to conduct the construction work,
- (d) His or her capacity related to human resources, and
- (e) His or her capacity related to machineries or equipment.

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

(5) The public entity shall specify the individual qualification of a partner of a joint venture having regard to the following matters:

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

(6) If a joint venture is selected for a procurement contract, the concerned public entity shall require the joint venture to get so registered with the permanent account number and value-added tax in

the Inland Revenue Office that such a joint venture has joint liability and its partners have personal liability.

(7) If a joint venture has to submit also a bid security while submitting a bid, such a bid security has to be so issued in the name of all the partners of the joint venture referred to in sub-rule (1) that all the partners have the liability.

(7a)<sup>44</sup> In cases where a contract is so obtained upon being involved in the bidding process that the construction work is to be executed through a joint venture, all the members of the joint venture shall complete the construction work in accordance with the contract. The liability of such a work may not be assigned to any one member or some members of the joint venture or anyone else.

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

29. Documents setting out economic and financial capacity may be required: (1) In requiring the documents that prove the bidder's economic and financial capacity in the bidding documents, the public entity may require any or all of the following documents, according to the nature of the construction work:

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

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<sup>44</sup> Inserted by the Sixth Amendment.

(2) In requiring the balance sheet referred to in clause (c) of sub-rule (1), balance sheets of the past two to five fiscal years may be required, according to the nature of the work.

30. Provisions relating to execution of work by sub-contractor: (1) If a public entity is to invite bids providing that the work may be executed through a sub-contractor as well, it shall specify the following matters in the bidding documents:

- (a) That he or she may cause the work to be executed by a sub-contractor,
- (b)<sup>45</sup> That a maximum of twenty-five percent of the work may be executed through a sub-contractor and description of the nature of such work,
- (c) The criteria as to the qualification of the sub-contractor, as required.

(2) Where the criteria as to qualification are specified pursuant to sub-rule (1), the bidder shall, prior to making the procurement contract, submit the document demonstrating the criteria as to the qualification of the sub-contractor.

## Chapter-5

### Provisions Relating to Bidding

31. Procurement to be made through bidding: (1)<sup>46</sup> A public entity shall procure through bidding any construction works, goods or services whatsoever of which cost estimate exceeds two million rupees.

(2) In the circumstances set forth in Section 15 of the Act, goods, construction works or services shall be procured by making invitation to international open bidding.

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<sup>45</sup> Amended by the Fourth Amendment.

<sup>46</sup> Amended by the Fourth Amendment.

31A.<sup>47</sup> Procedure of procurement through lump sum price rate method: (1) If a public entity needs to procure any construction work which is of such a nature as not requiring any qualification and the cost estimate of which does not exceed twenty million rupees, it may procure such works through competition on the basis of the lump sum rate method through a national bidding, upon publishing the cost estimate.

(2) In submitting a bid pursuant to sub-rule (1), a bidder shall submit the bid offering the lump sum rate which is less or more by a certain percent than the total cost estimate.

(3) The method referred to in sub-section (1) may not be used in the procurement actions requiring the multi-year contract.

32B.<sup>48</sup> Procedure for procurement to be made at the rate specified by the producer or authorized seller (catalogue shopping method): (1) A public entity may procure any heavy equipment, motor vehicles, tools, machineries, equipment, medical devices required for health services such as X-ray and MRI or similar other mechanical goods through competition upon giving a written notice of seven days in minimum to fifteen days in maximum to the companies which produce or distribute the goods of similar standards or their authorized sellers.

(2) Upon receipt of the notice pursuant to sub-rule (1), the manufacturing company or its authorized seller who wishes to sell such goods shall register an application with such a public entity, attaching therewith the description (catalogue or brochure) containing the official specification, quality, price and facilities of the product.

Provided that the bid security shall not be required for such registration of the application.

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<sup>47</sup> Inserted by the Fourth Amendment.

<sup>48</sup> Inserted by the Fourth Amendment.

(3) A list of manufacturing companies of the products of similar specifications and quality or their authorized sellers shall be prepared having regard to the descriptions (catalogues or brochures) containing the specification, quality, price and facilities submitted by the manufacturing companies or their authorized sellers who have been registered pursuant to sub-section (2).

(4) An invitation shall, specifying the quantity of the goods to be procured on the basis of the list referred to in sub-rule (3), be made to financial proposals, along with an offer to make discount in the price or addition to the facilities out of the price and facilities specified by the manufacturers or authorized sellers.

(5) Upon receipt of the proposals referred to in sub-rule (4), the lowest evaluated substantively responsive proponent shall be selected upon making evaluation pursuant to this Regulation on the basis of, inter alia, the offered discount in the price and addition to the facilities.

(6) The procurement contract shall be made with the proponent selected pursuant to sub-rule (5), against the performance security pursuant to Rule 110.

(7) The method referred to in sub-rule (1) shall not be used in the procurement actions requiring the multi-year contract.

31C. Procedure for procurement to be made through limited tendering method: (1) If a public entity needs to procure any goods, construction work, consultancy service or other service which are or will be available limitedly, it may make such procurement by inviting bids or proposals through a fifteen-day notice on invitation to bids after ascertaining the situation that the number of available suppliers, construction entrepreneurs, consultants or service providers of such nature is three or below, so that there is competition between such

suppliers, construction entrepreneurs, consultants or service providers only.

(2) The method referred to in sub-rule (1) shall not be used in the procurement actions requiring the multi-year contract.

(3) In making procurement through the limited tendering method, the public entity shall obtain prior approval of one level higher authority.

31D.<sup>49</sup> Procedure for procurement to be made through buy back method: If there exists a situation that it would not be cost effective, after the expiry of the period of their guarantee or warrantee specified by their manufacturers, to repair, maintain and bring into use any motor vehicles, machineries, equipment, devices, chemicals, fertilizers, pesticides or other goods of similar nature owned by a public entity and they would not yield results conforming to the standards specified by such manufacturing companies or cannot be reused or purposeful, and that it would not be appropriate to keep storing them or even to auction them from the point of view of public health or environment, the public entity may ascertain such a situation and return the old goods to the concerned manufacturer, authorized seller or supplier and obtain in exchange the new goods of similar nature from the same manufacturer, authorized seller or supplier.

(2) In making an exchange pursuant to sub-section (1), procurement shall be made by making a procurement contract after obtaining a proposal of valuation of the old goods from the manufacturer, authorized seller or supplier of such goods after deducting the valuated amount of the old goods from the specified selling price of the new goods.

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<sup>49</sup> Inserted by the Fourth Amendment.

(3) The quality of the new goods to be procured pursuant to this Rule has to be certified by the recognized institution.

(4) In making the procurement contract pursuant to sub-rule (2), it has to specify whether or not the new goods to be procured can be re-exchanged by using this method after their life-cycle.

(5) In making procurement pursuant to sub-rule (1), the public entity shall so procure only after preparing a list of the old goods and new goods available in the market and obtaining the approval of the head of department.

(6) The method referred to in sub-rule (1) shall not be used in the procurement actions requiring the multi-year contract.

31E.<sup>50</sup>Procurement to be made through competition between native bidders only: (1) In inviting single stage open bids pursuant to sub-section (2) of Section 11 of the Act, a construction work the cost estimate of which is above twenty million rupees but not exceeding two thousand million rupees<sup>51</sup> has to be procured upon having competition between native bidders only through the national open bidding, except in the circumstances referred to in Section 15 of the Act.

(2) In making procurement pursuant to sub-rule (1), the notice on invitation to bids and bidding documents have to specify that bids have to be submitted by having kept the technical and financial proposals in two separate envelopes to be sealed, with each envelope clearly stating which proposal it contains, and then by sealing both proposals in another separate outer envelope.

(3) The bidding documents to be prepared pursuant to sub-rule (2) shall, for the technical proposal, specify the qualification

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<sup>50</sup> Inserted by the Fourth Amendment.

<sup>51</sup> Amended by the Eighth Amendment.



criteria establishing the technical and economic and financial capacity referred to in Rules 25, 26, 28 and 29.

(4) The technical proposals referred to in sub-rule (3) shall be opened in accordance with the process referred to in Section 32 of the Act, and the substantive responsive bid shall be determined by making examination pursuant to Rules 59, 60, 62 and 63.

(5) The bids that meet all the qualifying criteria referred to in sub-rule (4) shall be considered to be the substantively responsive bids, and all such successful bidders shall be notified giving a period of at least seven days of the venue, date and time for opening financial proposals, asking them to appear at that date and time.

(6)<sup>52</sup> The financial proposals of the bidders who are not successful on the basis of the qualifying criteria upon evaluation of their technical proposals pursuant to sub-rule (4) shall be returned to the concerned bidders.

Provided that the financial proposal of any bidder who submits the bid through the electronic procurement system shall not be returned.

(7) The lowest evaluated substantively responsive bid shall be selected by opening the financial proposals of the successful bidders pursuant to sub-rule (4) in accordance with the process referred to in Rule 79 and making their financial and special evaluation pursuant to Rules 61, 64 and 65.

31F.<sup>53</sup> Preference to be given to domestic bidders: (1) Domestic preference shall be given to the domestic firms, organizations or companies that

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<sup>52</sup> Amended by the Sixth Amendment.

<sup>53</sup> Amended by the Sixth Amendment.

participate solely or in joint venture with domestic firms, organizations or companies in the case of an international bidding.

(2) In giving preference pursuant to sub-rule (1), the proposal of a domestic firm, organization or company whose bid price exceeds by up to five percent of the bid price offered by a foreign firm, organization or company that offers the lowest price may be accepted.

31G.<sup>54</sup> Procedure for procurement by making invitation to financial proposals of construction works: (1) If it needs to procure such construction work pursuant to sub-section (9) of Section 59 of the Act upon termination of the procurement contract pursuant to sub-section (7) of the said Section, such procurement may be made by making invitation to financial proposals from the bidders selected pursuant to Section 25 of the Act, on giving a period of fifteen days to that end.

(2) If the procurement is to be made by giving the period referred to in sub-rule (1), it shall be specified that only sealed financial proposals are to be submitted.

(3) In preparing the bidding documents for the purpose of procurement pursuant to sub-rule (1), the design as per the requirement or cost estimate for the remaining work, after deducting the works already completed in conformity with the design or cost estimate at the termination of the procurement contract, has to be revised and approved pursuant to Rule 5A.

(4) The lowest evaluated substantively responsive bid shall be selected by opening the financial proposals referred to in sub-rule (1) in accordance with the process referred to in Rule 79 and making

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<sup>54</sup> Amended by the Sixth Amendment.

their financial and special evaluation pursuant to Section 25 of the Act and Rules 61, 64 and 65.

32. Matters to be specified in pre-qualification documents: If a public entity is to make invitation to bids upon determining the pre-qualification, it shall prepare pre-qualification documents prior to inviting bids. Such pre-qualification documents shall contain the following matters:

- (a) The qualification required for the proposed work, and in the case of a joint venture, the qualification of its partners,
- (b) The documents and information to be submitted by a proponent to establish his or her qualification and eligibility,
- (c) If procurement needs to be made by making separate lots or packages of the goods or construction works, such a lot or package,
- (d) The method of preparing a proposal,
- (e) The process of evaluating pre-qualification proposals,
- (f) The main conditions of the procurement contract,
- (g) Other matters so specified from time to time by the Public Procurement Monitoring Office as to be included in the pre-qualification documents, and
- (h) The manner, place, deadline and time for submitting the pre-qualification proposal.

33. Pre-qualification criteria to be approved: Prior to making invitation to pre-qualification proposals, the public entity shall get the pre-

qualification criteria specified pursuant to Rules 25 and 26 to be approved by the head of department.

34. Pre-qualification documents to be provided: (1)<sup>55</sup> The public entity shall provide the pre-qualification documents to any interested person, firm, organization or company by collecting the fees as follows, on the basis of the costs incurred in the preparation of such documents:

- (a) Five thousand rupees for above twenty million rupees but not exceeding one hundred million rupees,
- (b) Ten thousand rupees for above one hundred million rupees but not exceeding two hundred fifty million rupees,
- (c) Fifteen thousand rupees for any amount whatsoever above two hundred fifty million rupees.

(2) The documents referred to in sub-rule (1) shall bear the signature of the chief of the public entity or the employee designated by him or her and the seal of the office. The pre-qualification documents may be provided by the concerned public entity or two or more other entities specified by such an entity.

35. Selection of qualified applicants: (1) The evaluation committee shall make necessary examination as to whether an applicant for pre-qualification has met each qualifying criterion specified in the pre-qualification documents or not. In so examining, any applicant who has met all the qualifying criteria shall be deemed to have been selected in the qualification examination, and any applicant who has not met all the qualifying criteria shall be deemed not to have been selected.

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<sup>55</sup> Amended by the Fourth Amendment.

(2) The applicants for pre-qualification selected from the examination referred to in sub-rule (1) shall be deemed to be qualified to submit bids for the related procurement proceeding.

36. Report to be submitted: (1) The evaluation committee shall, within fifteen days of the date on which it opened the proposals,<sup>56</sup> prepare and submit a report together with the detailed analysis of the examination made pursuant to Rule 35 to the public entity.

(2) The evaluation committee shall specify the following matters in the report referred to in sub-rule (1):

- (a) Name and address of the applicant,
- (b) Document that establish each criterion of the qualification of the applicant,
- (c) Table, if so required,
- (d) If the proposal has been submitted as a joint venture, whether the documents relating to the joint venture are complete or not and the share and liability of each partner of such a joint venture,
- (e) If procurement needs to be made by making separate lots or packages of the goods or construction work, the process adopted to examine such a lot and package and the applicants selected for participation in the procurement proceeding of such a lot and package.
- (f) The reason for selecting or not selecting the applicant.

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<sup>56</sup> Amended by the Sixth Amendment.

37. Matters to be specified in bidding documents: The public entity may, in addition to the matters referred to in Section 13 of the Act, specify the following matters, as required, in the bidding documents:

- (a) Plan, drawing of the proposed work,
- (b) Bill of quantities,
- (c) Quantity of goods,
- (d) Incidental works to be done by the bidder,
- (e) Time for supplying the goods, completing the construction work,
- (f) Provision concerning warranty and maintenance,
- (g) Type and quantity of necessary training and supervision to be provided by the bidder,
- (h) Requirement that the goods or spare-parts to be supplied must be new and original,
- (i) Source of funds required for the proposed procurement,
- (j)<sup>57</sup> Such other matters as specified by the Public Procurement Monitoring Office.

38. Prohibition of discrimination: (1) Except in the circumstances set forth in clause (h) of sub-section (2) of Section 13 and sub-section (8) of Section 14<sup>58</sup> of the Act, no public entity shall discriminate among the bidders in procurement proceeding on the basis of nationality.

(2) In cases where a bidder is unable to obtain any document required as per the bidding documents, the concerned public entity

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<sup>57</sup> Inserted by the Fourth Amendment.

<sup>58</sup> Inserted by the Fourth Amendment.

shall recognize other document submitted by him or her which is equivalent to such a document.

39. Details of agent to be set out: (1) In cases where a foreign bidder has appointed his or her agent in Nepal in the course of submission of the bid, he or she shall set out the following details in respect of such an agent:

- (a) Name and address of the agent,
- (b) Figure of the commission the agent is entitled to, type of currency and the mode of payment,
- (c) Any other condition related to the agent,
- (d) If he or she is a local agent, the certified copy of his or her permanent account number registration certificate and a letter showing his or her acceptance to become the agent.

(2) The agent shall, in submitting a bid on behalf of the foreign bidder, clearly set out the matters set forth in clauses (b) and (c) of sub-rule (1).

(3) If the foreign bidder fails to clearly set out the matters set forth in sub-rule (1) or if he or she has submitted a bid setting out that he or she has no local agent but the contrary is subsequently proved or if he or she has quoted less amount of commission to be given to the agent but it is subsequently proved that the agent has received more commission, the public entity shall take action to blacklist such a bidder pursuant to Rule 141.

40. Criteria and documents relating to eligibility of bidder to be mentioned: (1) The public entity shall mention in the bidding documents the criteria as to eligibility of the bidder and copies of the documents to be submitted by the bidder to prove such eligibility.

- (2) The documents set forth in sub-rule (1) shall be as follows:
- (a) Firm, organization or company registration certificate,
  - (b) Business registration license,  
Explanation:<sup>59</sup> For the purpose of this clause, the term "business registration license" means the certificate or license obtained by an entrepreneur pursuant to the prevailing law if such a certificate or license is so required under such law to carry on his or her business.
  - (c) Value added tax registration certificate and permanent account number (PAN) registration certificate,
  - (d)<sup>60</sup> Tax clearance certificate or the certified document obtained from the concerned entity showing the filing of income returns for up to such period as specified by the public entity or proof or evidence showing extension of the time-limit for the filing of income returns,
  - (e) A written declaration made by the bidder to the effect that he or she is not ineligible to participate in the procurement proceeding, he or she has not any conflict of interest in the proposed procurement proceeding, and he or she has not been sentenced for any offence related to the concerned profession or business,
  - (f)<sup>61</sup> Such other documents as the public entity considers necessary, without being contrary to the Act, this Regulation and standard bidding documents.

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<sup>59</sup> Amended by the Fourth Amendment.

<sup>60</sup> Amended by the Fourth Amendment.

<sup>61</sup> Amended by the Sixth Amendment.



(2a)<sup>62</sup> Notwithstanding anything contained in sub-rule (2), a non-resident bidder is not required to submit the documents referred to in clauses (c) and (d) of that sub-rule.

(3) If the bidding documents omit to specify or do not clearly specify the documents referred to in sub-rule (2) or require amendment in some respect, the public entity may specify, clarify or amend such documents by publishing a notice in a national daily newspaper and, in the case of an international bidding, in an international media, within the period for submission of bids.

Provided that in so publishing a notice, if the bidders require additional time for submission of bids, the deadline for submission of bids shall also be extended.

(4) No bid of the bidder who fails to submit the documents referred to in sub-rules (1) and (2) shall be entertained.

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

(2) A bidder may submit any documents or materials relating to procurement written or printed in both Nepali and/or English languages to the public entity.

Provided that the relevant portion of such documents or printed materials shall have been translated into the English language by the authorized body of the concerned country, and in the event of any

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<sup>62</sup> Inserted by the Third Amendment.

divergency between such documents or printed materials and such translated portion, the translated portion shall prevail.

42. Matters to be specified in technical specifications of goods: In specifying the technical specifications of goods in the bidding documents, the public entity shall, as required, specify the following matters:

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

- (k) Such other necessary matters as specified by the public entity.

43. Matters to be specified in technical specifications of construction works: In specifying the technical specifications of a construction work in the bidding documents, the public entity shall, as required, specify the following matters:

- (a) Scope and objective of the proposed construction work,
- (b) Physical nature and condition of the construction site,
- (c) Description of works such as the design, construction, erection of equipment, production and installation of the proposed construction work,
- (d) Bill of quantities containing the estimated quantity of each unit item of the construction work,
- (e) If the construction work causes environmental impact, description of, and the measures to be taken to mitigate, such an impact,
- (f) If the work also involves mechanical, sanitary and plumbing and electricity installation works, special technical specifications thereof,
- (g) Detailed description of the equipment and spare parts to be supplied,
- (h) Description relating to expected performance or guarantee of the quality,
- (i) Inspection and test to be carried out at various stages of the construction work,

- (j) Completion test of work,
- (k) Technical documents to be provided by the construction entrepreneur upon completion of the construction work, as built drawings, equipment operating manuals, as required,
- (l) Inspection and performance test to be carried out by the public entity for acceptance of the construction work,
- (m) Schedule of time for commencing and completing the construction work, and
- (n) Such other necessary matters as specified by the concerned public entity.

44. Matters to be specified in specifications of other services: In specifying the technical specifications of other services in the bidding documents, the public entity shall, as required, specify the following matters:

- (a) The purpose and scope of the service,
- (b) Expected performance, the work to be discharged and services to be rendered by the service provider,
- (c) Descriptive booklet or sample to be provided by the bidder together with the bid,
- (d) Conditions to be complied with by the service provider,
- (e) Criteria and method for the evaluation of the services provided by the service provider,
- (f) Quality testing and inspection of the work or service,

- (g) Description as to the guarantee of performance and quality,
- (h) Type and quantity of training to be provided and supervision to be made by the service provider, and
- (i) Such other necessary matters as specified by the public entity.

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

- (a) Instruction to bidder and bid form,
- (b) Format of the bid security,
- (c) Format of the performance security,
- (d) Format of the advance payment security,
- (e) Conditions and sample of procurement contract,
- (f) Specifications and drawings,
- (g) Time schedule for commencement and completion of the work, currency of payment, the source from which and place<sup>63</sup> where materials may be available, and
- (h)<sup>64</sup> Description referred to in clause (n3) of sub-section (2) of Section 13 of the Act,
- (i)<sup>65</sup> The matter that the concerned bidder shall be responsible for the validity of documents submitted with the bid,

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<sup>63</sup> Amended by the Fourth Amendment.

<sup>64</sup> Inserted by the Fourth Amendment.

<sup>65</sup> Amended by the Fourth Amendment.

(j)<sup>66</sup> Such other documents as the public entity considers necessary, without being contrary to the Act, this Regulation and standard bidding documents.

46. Instruction to prepare and submit bids: (1) .....<sup>67</sup> A public entity may, in providing instructions in the bidding documents for preparing and submitting the bid, provide instructions in respect of the following matters:

- (a) The language in which the bid is to be prepared,
- (b) Manner of expressing the price in accordance with the international commercial terms (Incoterms) used in international trade,
- (c) Necessary information as to joint venture,
- (d) A list of the documents to be submitted along with the bid by the bidder,
- (e) Sample of goods and the number of samples to be submitted by the bidder to the concerned public entity,
- (f) In the case of procurement of goods, whether there requires to be specified the list of stocked spare parts of such goods recommended by the manufacturer and the quantity of stock of each spare part with him or her, their per unit price and whether the price of these spare parts will escalate or not after the expiry of the contract,

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<sup>66</sup> Amended by the Sixth Amendment.

<sup>67</sup> Deleted by the Second Amendment.

- (g) Requirement that the bidder should state in his or her bid the manufacturer of the goods to be supplied, country of manufacture, brand, model and catalogue number thereof,
- (h) The name, post and address of the contact employee designated by the public entity to clarify any matter on procurement proceeding if the bidder wants to inquire the public entity about it.
- (i) If the bidder has to provide training to the employees of the public entity or transfer technology to such an entity as per the procurement contract, matters relating thereto,
- (i1)<sup>68</sup> Matter that technical capacity will not be counted pursuant to clause (n4) of sub-section (2) of Section 13 of the Act,
- (j) Statement that the public entity reserves the right to accept or reject the submitted bids, and
- (k)<sup>69</sup> Such other documents as the public entity considers necessary, without being contrary to the Act, this Regulation and standard bidding documents.

47. Bidding documents to be approved: After the preparation of bidding documents, documents relating to invitation to proposals, the chief of the concerned Public entity shall approve such documents prior to the invitation to bids.<sup>70</sup>

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<sup>68</sup> Inserted by the Fourth Amendment.

<sup>69</sup> Amended by the Sixth Amendment.

<sup>70</sup> Inserted by the Fourth Amendment.

48. Fees for bidding documents: (1) A person, firm, organization or company wishing to purchase bidding documents shall obtain the bidding documents signed by the chief of the concerned public entity or an employee designated by him or her and bearing the seal of the office from that entity or other two or more entities specified by it, upon payment of the following fees:

- (a)<sup>71</sup> Three thousand rupees for above two million rupees but not exceeding twenty million rupees,
- (b) Five thousand rupees for above twenty million rupees but not exceeding one hundred million rupees,
- (c) Ten thousand rupees for one hundred million rupees but not exceeding two hundred fifty million rupees,
- (d) Twenty thousand rupees for any amount whatsoever exceeding two hundred fifty million rupees.

(2) If any person, firm, company or organization requests in writing, by paying the fees referred to in sub-rule (1) and applicable fees for postage or courier, to send the bidding documents or documents relating to request for proposal, the concerned public entity shall send the bidding documents to such a person, firm, company or organization through post or courier.

Provided that if such a person, firm, company or organization does not receive in time the bidding documents so sent, the public entity shall not be responsible for it.

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<sup>71</sup> Amended by the Fourth Amendment.



49. Cost estimate to be specified in notice of invitation to bids: The cost estimate of a construction work of not exceeding twenty million rupees<sup>72</sup> shall be specified in the notice of invitation to bids.

49A.<sup>73</sup> Matters to be specified in notice of invitation to bids: The public entity shall also specify the following matters, in addition to the matters set forth in Section 14 of the Act, in the notice of invitation to bids:

- (a) Information as to national or international bidding,
- (b) Information as to prequalification, with or without qualification bid,
- (c) Information as to the method of procurement for which invitation to bids has been made,
- (d) Information as to the manner of submission of electronic bids,
- (e) Amount of the cost estimate pursuant to sub-rule (1) of Rule 31A.
- (f) In the case of the limited tendering referred to in Rule 31C., notice to be given to such limited bidder,
- (g) In the case of the bidding referred to in sub-section (8) of Section 14 of the Act, the matter that only domestic bidders can participate,
- (h) In the case of the bidding referred to in sub-section (11) of Section 14 of the Act, the matter that preference will be given to joint ventures with domestic construction entrepreneurs,

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<sup>72</sup> Amended by the Fourth Amendment.

<sup>73</sup> Inserted by the Fourth Amendment.

- (i) <sup>74</sup>The matter that a new firm, company or organization opened and owned fully or partially by a person, firm, organization or director of a company who is already blacklisted pursuant to the Act or another firm, organization or company being held in the name of either himself or herself or persons including him or her cannot submit bids,
- (j) Such other matters as the public entity considers necessary.

50.<sup>75</sup> .....

51. Visit of site of works: (1) A bidder may, in order to obtain necessary information for preparing the bid or entering into a procurement contract, himself or herself visit or cause his or her employee or agent to visit the site of construction works at his or her own expense and at his or her responsibility for the possible risk.

(2) If the public entity has to grant permission for the visit of the site of construction works pursuant to sub-rule (1), it shall grant such a permission.

(3) In order to provide actual information about the site of construction works, the public entity may arrange a visit of the site of construction works for the bidders prior to the meeting to be held pursuant to Rule 52.

52. Pre-bid meeting: (1) A public entity may, in order to provide the bidders with information relating to the bidding documents, technical specifications, site of construction works or similar other matters, organize a meeting of bidders in advance of at least ten days of the deadline for submission of bids in the case of a notice on invitation to

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<sup>74</sup> Amended by the Sixth Amendment.

<sup>75</sup> Repealed by the Third Amendment.

national bidding and of at least fifteen days of such deadline in the case of a notice on invitation to international bidding.

<sup>76</sup>Provided that in cases where a notice on re-invitation to bids pursuant to sub-sections (4a) and (4b) of Section 14 of the Act has been published and a pre-bid meeting has not yet been held, such a meeting may, in order to provide the bidders with further information as to the re-bidding, be organized in advance of at least five days in the case of the national bidding and of at least seven days in the case of the international bidding.

(2) A bidder may ask or make any question or query on the procurement proceeding to the public entity at the meeting referred to in sub-rule (1), and such an entity shall make available as promptly as possible the answer of such a question or query without identifying the source of questioners and the minutes of the meeting to all bidders.

(3) If any modification to any technical or commercial aspects of the bidding documents becomes necessary as a result of the meeting organized pursuant to sub-rule (1), the public entity shall, within five days of such a meeting, modify the documents accordingly and send a notice of such modification to all the bidders who have purchased the bidding documents.

53. Bid security: (1) The public entity shall specify in the notice on invitation to bids certain amount which is within a minimum of two to three percent of the amount of approved cost estimate and applicable to all bidders according to the nature of procurement as the amount bid security to be furnished by a bidder along with the bid. Such an

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<sup>76</sup> Inserted by the Fourth Amendment.

amount shall be in form of a cash deposit or of a bid security equal to that amount issued by a commercial bank or financial institution.<sup>77</sup>

Provided that in cases where an invitation to bids is made without specifying the amount of cost estimate or specifying only the unit rate, the public entity may specify a lump sum amount for the bid security in the bidding documents or prequalification documents and notice on <sup>78</sup>invitation to bids.

(2) The validity period of the bid security referred to in sub-rule (1) shall be for a minimum of thirty days beyond the validity period of the bid.

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

(4) The bid security issued by a foreign bank must be counter guaranteed by a commercial bank within Nepal.

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

(5a)<sup>79</sup> The public entity shall send a letter to extend the validity period of bids pursuant to sub-rule (5) only if there exists sufficient ground justifying the extension of the validity period of bids upon making an analysis of the reason for extending such a period. In cases where the extension of the validity period of bids in the absence of

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<sup>77</sup> Amended by the Sixth Amendment.

<sup>78</sup> Inserted by the Fourth Amendment.

<sup>79</sup> Inserted by the Sixth Amendment.

such ground and reason for extending the validity period of bids results in any loss or damage because of failure to evaluate the bids in time or to make a decision in time on the evaluation submitted, the employee involved in such an act and officials of the evaluation committee shall be responsible for such loss or damage.

(6) The bidders may decide whether or not to extend the validity period as per the letter referred to in sub-rule (5). The bid security of a bidder who does not extend the validity period of the bid shall not be liable to forfeiture. Those bidders who extend the validity period of the bids shall submit the bid security by also getting the validity period accordingly extended by the concerned bank. If a bidder fails to submit the bid security by so extending its validity period, the bidder shall not be deemed to have extended the validity period of the bid.

(6a)<sup>80</sup> A bidder who extends the validity period of the bid pursuant to sub-rule (6) shall not mention any additional condition which is contrary to the provisions set forth in the bidding documents.

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

(8) Except for a bid security liable to forfeiture under the Act or this Regulation, the public entity shall return the bid security to the concerned bidder within three days of the conclusion of the procurement contract.

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<sup>80</sup> Inserted by the Sixth Amendment.

54. Validity period of bid: A public entity shall, in specifying the validity period of a bid or proposal of consultancy services in the bidding documents or documents relating to request for proposal, specify the period as follows:

(a) Ninety days for a bid or proposal of consultancy service with the cost estimate of up to one hundred million rupees,

(b) One hundred and twenty days for a bid or proposal of a consultancy service with the cost estimate whatsoever exceeding one hundred million rupees.

54A. <sup>81</sup>.....

55. Necessary copies of bid to be submitted: In submitting a pre-qualification proposal, bid or proposal for a consultancy service, a bidder or proponent shall submit such number of copies thereof as specified in the pre-qualification document, bidding documents or documents relating to request for proposal.

<sup>82</sup>Provided that no bidder or proponent shall be deprived of competition for the reason that he or she has failed to submit such copies of the bid or proposal as required.

56. Register to be maintained and receipt to be given: (1) A public entity shall separately maintain the records of sale and registration of the pre-qualification documents, bidding documents or proposals for consultancy service.

(2) If a bidder or proponent personally or through his or her agent tenders to submit a pre-qualification proposal, bid or proposal

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<sup>81</sup> Repealed by the Sixth Amendment.

<sup>82</sup> Inserted by the Fourth Amendment.

for a consultancy service, the public entity shall receive it and give him or her a receipt specifying the date and time.

(3) The public entity shall mention the registration number registered in the register pursuant to sub-rule (1) in the outer envelope of the bid received pursuant to sub-rule (2).

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

57. Safety of bids: (1) The public entity shall keep the bids or the proposals for the consultancy service received pursuant to this Regulation safely so that they cannot be opened by any one prior to the time for opening the bids.

(2) The public entity shall keep the characteristics of the sample submitted along with the bid in such a confidential and safe manner that it cannot be made public prior to opening the bids.

58.<sup>83</sup> Withdrawal or modification of bids: (1) In the case of an electronic bid or proposal, such a bid or proposal may be withdrawn or modified through electronic means of communication until the deadline for submission of such a bid or proposal.

(2) If a bidder or proponent who submits a bid or proposal other than an electronic bid or proposal referred to in sub-rule (1) wishes to withdraw or modify the bid or proposal submitted by him or her, he or she shall, in advance of twenty four hours of the expiry of the deadline specified for submission of bids or proposals, submit an application for withdrawal or modification thereof to the concerned

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<sup>83</sup> Amended by the Fourth Amendment.

public entity in a sealed envelope by specifying the following matters in the outer part of envelope:

- (a) Subject of the bid or proposal,
- (b) Name and address of the public entity or authority inviting bids or proposals,
- (c) Matter that the bid or proposal for consultancy service is amended or a request is made for withdrawal, and
- (d) Matter that it has to be opened only on the day and at the time for opening bids or proposals.

(3)<sup>84</sup> Except where the bid already registered has to be modified as a result of modification made by the public entity itself, the application referred to in sub-rule (2) cannot be made more than once.

(4) The application referred to in sub-rule (2) and the bid or proposal once modified cannot be withdrawn.

(5) If a bidder or proponent is to withdraw or modify the bid or proposal submitted by him or her, the bidder or proponent may withdraw or modify the bid or proposal only through the same medium as that of submission of the bid or proposal, and no application submitted through different medium shall be entertained.

(6) If sealed envelopes referred to in sub-rule (1) are received, the concerned public entity shall keep such envelopes safely pursuant to Rule 57.

59. Opening of bids: (1)<sup>85</sup> The chief of public entity shall form a committee under convenorship of the procurement official referred to in Rule 16 and consisting of at least two members to open the bids or

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<sup>84</sup> Amended by the Sixth Amendment.

<sup>85</sup> Amended by the Fourth Amendment.



proposals registered with the public entity, and cause such bids or proposals to be opened in presence of the bidders or their representatives at the pre-determined time.

Provided that nothing shall bar the opening of bids or proposals for the sole reason that a bidder or his or her representative is not present.

(2) The public entity shall, prior to opening bids pursuant to sub-rule open(1), separate the envelopes of the bids received after the expiry of the deadline, the envelopes containing applications made for modification or withdrawal of bids and the envelopes of the bids duly registered and return unopened the bids received after the expiry of the deadline. In so returning, a report of the procurement proceeding setting out, *inter alia*, the content, date and time of the same shall be prepared.

(3) The public entity shall, after returning the bids pursuant to sub-rule (2), open the envelope of every bid which is requested by the bidder for withdrawal and read out the name of such a bidder and then open all envelopes submitted for modification of bids and read out the content inside such envelopes.

(4) The public entity shall, after reading out the content referred to in sub-rule (3), open every submitted bid one by one, and read out the following contents of such a bid, prepare a record (*Muchulka*) thereof and cause such a record (*Muchulka*) to be signed by the concerned bidder or his or her representative who is present:

- (a) Name and address of the bidder,
- (b)<sup>86</sup> Quoted price of the bid,
- (c) If any discount is offered to be given in the bid, statement thereof,

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<sup>86</sup> Amended by the Fourth Amendment.

- (d) If any alternative to technical specifications is offered, the quoted price thereof,
- (e) Whether the bid security is accompanied or not,
- (f) If there is discrepancy between figures and words, details of such discrepancy,
- (g)<sup>87</sup> Whether the letter of bid and price schedule contains the signature of the bidder or his or her representative or not,
- (h) In the case of correction or obliteration of the bidding documents, the amount and statement written after such obliteration,
- (i)<sup>88</sup> Whether the place of correction or obliteration contains the signature of the bidder or his or her representative or not,
- (j) In the case of any remarks mentioned by the bidder in the letter of bid, the content thereof, and the description of the rate, if any, invited, and
- (k) Other necessary matters which the public entity considers appropriate.

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

(6)<sup>89</sup> In opening bids or proposals pursuant to sub-rule (1), in the case of the bids or proposals referred to in Rules 31E. and 31F., the outer envelopes of the bids or proposals shall be opened pursuant to Section

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<sup>87</sup> Amended by the Fourth Amendment.

<sup>88</sup> Amended by the Fourth Amendment.

<sup>89</sup> Inserted by the Fourth Amendment.

32 of the Act, financial proposals shall be segregated unopened and safely retained pursuant to Rule 57.

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

- (a) Whether the bidder is involved individually or as a partner of a joint venture in more than one bids or not,
- (b) Whether the bidder is disqualified for participation in procurement proceeding pursuant to sub-sections (2) and (3) of Section 63 of the Act or not,
- (c) Whether the bid is submitted in the bidding documents sold by the concerned public entity or such other body as designated by it or not,
- (d) Whether the concerned person, firm, organization or company has filled in and submitted the same bidding documents purchased by himself or herself or not.

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

(2) In evaluating and comparing a bid, comparison shall be made after fixing the quoted price by excluding the value added tax.

(3) Except as provided for in the prevailing and this Regulation, information relating to the examination of bids, the

information asked or received from the bidder in the course of such an examination and the information relating to evaluation and comparison shall not be provided to any bidder or any other person not involved officially in the decision making process.

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

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

(6) Bids having minor deviations without any material deviation from and serious effect on the scope, quality, characteristics, conditions, performance or any other requirements set out in the bidding documents and acceptable to the public entity shall be deemed to be substantially responsive bids, and if, in evaluating such bids, the cost is affected in any way, the evaluated price of the bid shall be drawn by ascertaining the price of such effect on an equal basis and then by adjusting the same to the quoted price of the bid.

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

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

(9) The evaluation committee shall, while fixing the price of minor deviation pursuant to sub-rule (6), fix on the basis of the cost

estimate of the concerned work or prevailing market price or interest rate. Where such cost estimate, prevailing market price or interest rate is not definite, the price shall be determined on the basis of average price of the same item stated in another substantially responsive bid.

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

62. Evaluation of technical aspect of bids: (1) The evaluation committee shall, while evaluating the technical aspect of a bid pursuant to sub-rule (5) of Rule 61, evaluate the following matters:

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

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

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

63. Evaluation of financial aspect of bids: (1) After evaluating the technical aspect of a bid pursuant to Rule 62, the evaluation committee shall, while evaluating the financial aspect of such a bid pursuant to sub-rule (5) of Rule 61, evaluate the following matters:

- (a) Period for the supply or completion of goods, construction work or other service,
- (b) Conditions of payment,
- (c) Liquidated damages to be paid by the bidder for not completing the work in time and the bonus to which the bidder is entitled for completing the work before time,
- (d) Bidder's liability towards warranty,
- (e) Liability to be fulfilled by the bidder,
- (f) If the bidder has added any other conditions to the proposed procurement contract, such conditions.

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

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

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

(2) In evaluating the financial aspect pursuant to sub-rule (1), the evaluated price of the bid shall be fixed by determining the price of the necessary matters out of the matters of technical and financial aspects, and of the following matters as well, as required, in

accordance with the criteria and method specified in the bidding documents:

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

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

(4) Where the bidding documents provide that preference shall be given to domestic goods and local construction entrepreneurs, the evaluation committee shall, in evaluating the financial aspects of a bid, fix the evaluated bid price by computing the amount of preference to be given to the domestic goods and local construction entrepreneurs and then adding such amount to the quoted price of a foreign bidder.

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

65. Special evaluation of bids of construction works: (1) The evaluation committee shall, in evaluating a bid of a construction work, evaluate the following matters in addition to the matters set out in Rules 62, 63 and 64:

- (a) Whether the work plan, performance schedule and mobilization time of the construction work conform to the bidding documents or not,
- (b) Whether the per unit rate quoted by the bidder for the item contained in the bill of quantities is reliable or not,

(c) Whether the quoted price is imbalanced or not for the following reasons:

(1) the bidder has quoted unusual high rate for an item of the work to be executed at the initial stage of the procurement contract, or

(2) the bidder has quoted unusual high rate for any item of the bill of quantity believed by him or her to have been underestimated.

(d)<sup>90</sup> Whether the bidder has technical capacity to complete the construction work in conformity with the description referred to in clause (n3) of sub-section (2) of Section 13 of the Act or not.

(2) The evaluation committee shall examine whether or not the bidder has quoted low price in the circumstance referred to in clause (c) of sub-rule (1) or has quoted in such a manner that he or she cannot complete the work satisfactorily or has quoted low price whether or not upon wrongly understanding the scope or technical specifications of the construction work or has quoted high rate for the work to be executed at the preliminary stage (front loading) or <sup>91</sup>in the circumstance referred to in clause (c) of sub-rule (1). Where low price has been so quoted, the evaluation committee shall seek clarification along with a rate analysis from such a bidder.

(3) The evaluation committee may recommend the public entity for acceptance of the bid by taking from such a bidder additional performance security equivalent to an amount of eight percent of his or her quoted bid price if the clarification sought

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<sup>90</sup> Inserted by the Fourth Amendment.

<sup>91</sup> Inserted by the Sixth Amendment.



pursuant to sub-rule (2) is found to be satisfactory and for rejection of such a bid if the clarification is not found to be satisfactory.

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

(4a)<sup>92</sup> In evaluating the bids pursuant to Section 25 of the Act, the evaluation committee shall not count for additional work the bidder's technical and financial capacity which is in use in any public entity or project to the extent it is necessary for such an entity or project as set out in the bidding documents.

(4b)<sup>93</sup> For the purpose of sub-rule (4a), the bidder shall obtain from a public entity or project a description as to the extent the bidder's financial and technical capacity out of the financial and technical capacity which is already in use in the public entity or project required for such a public entity or project and submit it along with the bidding documents.

(4c)<sup>94</sup> The matter that a bidder can obtain a tender of only such amount that does not exceed the amount to be set by a maximum of seven times of the average annual turnover of the annual turnover of construction works in any three fiscal years with maximum turnover made by the bidder shall be taken as a criterion for the bidder's qualification and evaluation. In so calculating the annual turnover of three fiscal years, such calculation shall be made from within the immediately preceding ten fiscal years.

(4d)<sup>95</sup> In calculating the amount to be set by seven times of the amount of annual turnover pursuant so sub-rule (4c), it shall be

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<sup>92</sup> Inserted by the Eighth Amendment.

<sup>93</sup> Inserted by the Eighth Amendment.

<sup>94</sup> Inserted by the Eighth Amendment.

<sup>95</sup> Inserted by the Eighth Amendment.

ascertained only upon subtracting the amount of annual liability for the running contract.

(4e)<sup>96</sup> For the purpose of this Rule, the bidder shall make a self-declaration as to the financial and technical capacity and submit its description together with the bidding documents. If the description so submitted is found to be false, the bid submitted by the bidder shall be excluded from the evaluation process and action shall be taken in accordance with the prevailing law.

(4f)<sup>97</sup> The assets has to be more than the net liabilities of the bidder in the balance sheet of the last fiscal year, and the credit line facility has to be available in such form as determined by the Public Procurement Monitoring Office.

(4g)<sup>98</sup> Notwithstanding anything contained in sub-rules (4a), (4b), (4c), (4d), (4e) and (4f), the bids in the process of evaluation prior to the commencement of this Rule shall be subject to the provisions in force prior to the commencement of this Rule.

(5)<sup>99</sup> .....

(6)<sup>100</sup> .....

(7)<sup>101</sup> .....

(8)<sup>102</sup> .....

65A.<sup>103</sup> Special provision relating to evaluation: (1) The evaluation committee shall, in evaluating the proposals, ascertain whether a case

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<sup>96</sup> Inserted by the Eighth Amendment.

<sup>97</sup> Inserted by the Eighth Amendment.

<sup>98</sup> Inserted by the Eighth Amendment.

<sup>99</sup> Deleted by the Seventh Amendment.

<sup>100</sup> Deleted by the Seventh Amendment.

<sup>101</sup> Deleted by the Seventh Amendment.

<sup>102</sup> Deleted by the Seventh Amendment.

<sup>103</sup> Amended by the Seventh Amendment.

on offence of corruption has been filed against any bidder, sealed quotation proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or director of a company who submits a proposal singly or in joint venture, and if it appears that such a case has been filed, the committee shall write to the Government of Nepal, through the concerned body.

(2) If an intimation is received pursuant to sub-rule (1), the Government of Nepal may give direction to exclude from the evaluation process the proposal submitted singly or in joint venture by such a bidder, sealed quotation proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or director of a company.

(3) If direction is received pursuant to sub-rule (2), the evaluation committee shall exclude such a proposal from the evaluation process and evaluate the remaining proposals.

66. Report to be submitted: The evaluation committee shall prepare a report setting out the detailed analysis of the examination and evaluation conducted pursuant to Rules 60, 61, 62, 63, 64 and 65 and the following matters, and shall submit the report to the public entity within such period as specified by the chief of public entity, subject to Rule 54A.:

- (a) Name and address of the bidder,
- (b) Total quoted price of the bidders and currency,
- (c) If an error has been corrected pursuant to sub-sections (8) and (9) of Section 23 of the Act, the total quoted price fixed after the correction of such error and the currency,

- (d) If the record (*Muchulka*) prepared for the opening of a financial proposal mentions that the bidder has offered to provide any discount, the matter that the evaluation committee has adjusted the amount so offered for discount,
- (e) Currency used for the comparison of bids pursuant to clause (f) of sub-section (2) of Section 13 of the Act and the amount fixed on the basis of the exchange rate of the date specified,
- (f) Grounds found from the examination made pursuant to sub-sections (2), (3), (4), and (6) of Section 23 of the Act,
- (g) Criteria and method for the evaluation of the lowest evaluated substantially responsive bid pursuant to sub-section (8) of Section 25 of the Act.

67. Authority to approve the bid: (1) The following authority shall have the power to approve the bid of the following amount:

- (a)<sup>104</sup> For an amount not exceeding thirty million rupees, gazetted third class chief of the office,
- (b)<sup>105</sup> For an amount not exceeding seventy million rupees, gazetted second class chief of the office,
- (c)<sup>106</sup> For an amount not exceeding one hundred fifty million rupees, gazetted first class chief of the office,
- (d)<sup>107</sup> For an amount exceeding one hundred fifty million rupees, the head of department.

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<sup>104</sup> Amended by the Fourth Amendment.

<sup>105</sup> Amended by the Fourth Amendment.

<sup>106</sup> Amended by the Fourth Amendment.

<sup>107</sup> Amended by the Fourth Amendment.

(1a)<sup>108</sup> If the chief of any public entity is not allowed to approve the bid pursuant to sub-rule (1), he or she shall cause it to be approved by one level higher authority.

(2) Notwithstanding anything contained in sub-rule (1), the secretary or administrative chief of a constitutional organ or body, Ministry, secretariat and other office of similar nature may approve a bid of any amount whatsoever for procurement to be made for his or her office.

68. Sample of goods: (1) A bidder who is unsuccessful in the evaluation of bid may, not later than seven days from the date of conclusion of the procurement contract, make a request in writing to the concerned public entity for returning the sample of the goods submitted by him or her.

(2) Where a request is made pursuant to sub-rule (1), the public entity shall return to the bidder the sample of such goods if it is not destroyed during its testing, subject to the condition that all the expenses including its transportation and packaging expenses shall be borne by the bidder himself or herself.

(3) The public entity shall safely keep the sample of goods submitted by the bidder whose bid has been accepted, upon getting it certified by the bid evaluation committee, for the purpose of comparing it with the goods to be supplied.

## Chapter-6

### Provisions Relating to Consultancy Services

69. Terms of reference to be prepared: The public entity shall, in order to procure a consultancy service, prepare the terms of reference containing, inter alia, the following matters:

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<sup>108</sup> Inserted by the Third Amendment.

- (a) Background and objective of the work to be performed by the consultant,
- (b) Scope of work of the consultant and the work to be performed by him or her,
- (c) Details of the study and basic data concerning the assignment, if any, available,
- (d) If the consultant is required to transfer any knowledge or skill to the public entity, details thereof,
- (e) If training is to be provided, the number of the employees to be trained,
- (f) Functions and qualifications of the key human resource of the consultant and the estimated time required for the work to be performed by him or her,
- (f1)<sup>109</sup>Matter that the key human resource of the consultant as proposed cannot be changed for any reason other than the reason that, following the contract, he or she becomes so sick that he or she cannot work or meets an accident or dies or cannot perform such work for other reasonable reason,
- (f2)<sup>110</sup>Matter that in the case where any consultant, in the capacity of the key human resource, is involved as whole timer in accordance with the contract, the bio-data of the same person cannot be so used in

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<sup>109</sup> Inserted by the Sixth Amendment.

<sup>110</sup> Inserted by the Sixth Amendment.

the process of procurement of other consultancy service that it overlaps with the schedule of work under the contract, until the work under the contract is completed,

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

70. Short list to be prepared by inviting open expression of intent: (1) A public entity shall, in order to procure a consultancy service the cost of which exceeds two million<sup>111</sup> rupees, invite expression of intent by publishing a notice pursuant to Section 30 of the Act.

(2) If a consultancy service of an amount exceeding hundred million<sup>112</sup> rupees is to be procured, generally an international expression of intent shall be invited.

(2a)<sup>113</sup> If a consultancy service the cost estimate of which exceeds two million rupees but not exceeding hundred million rupees is to be procured in the circumstance other than that referred to in Section 15 of the Act, expression of intent shall be invited upon having competition only between domestic proponents expressing such intent.

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<sup>111</sup> Amended by the Fourth Amendment.

<sup>112</sup> Amended by the Fourth Amendment.

<sup>113</sup> Inserted by the Fourth Amendment.

(3) The notice inviting expression of intent pursuant to sub-rules (1) and (2) shall set out the following matters:

- (a) Name and address of the public entity,
- (b) General description of the proposed work or project,
- (c) Source of funding for the proposed work,
- (d) Qualifications of the intent expressing proponent,
- (e) In the case of the intent expressing proponent being a firm or company,

- (1) Description, organization and employees of the firm or company,

- (2) If two or more firms or companies are to provide the consultancy service as a group, organization or joint venture, the name, address, description of such firms or companies, and the name of lead firm or company,

- (3) Description of the work of similar nature completed in the last seven years<sup>114</sup> and their location,

- (4) Bio-data of the key human resource to be involved in the proposed work,

- (f) In the case of an individual consultant, description of the work of similar nature

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<sup>114</sup> Amended by the Fourth Amendment.



completed in the last four years<sup>115</sup> and their location and his or her bio-data,

- (g) Estimated time required for the completion of the proposed work,
- (h) Matter that proposals relating to procurement of consultancy service shall be invited only from the short-listed persons, firms, organizations or companies,
- (i) Documents to be submitted by the intent expressing proponent,
- (j) Instructions to prepare the expression of intent and deadline and place for the submission of expression of intent, and
- (k) Address for contact with the public entity and contact person.

(4) The public entity shall, in inviting international expression of intent, obtain approval from one level higher authority.

(5)<sup>116</sup> The public entity shall select a consultant capable of providing such consultancy service after evaluating, *inter alia*, the qualification, experience and capacity of those who have submitted expression of intent pursuant to this Rule, and also ascertaining the criteria for evaluation of their qualification, experience and capacity.

Provided that no accepted criteria for evaluation may be changed and evaluation be made after the submission of the expression of intent.

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<sup>115</sup> Amended by the Fourth Amendment.

<sup>116</sup> Amended by the Fourth Amendment.

(6) The public entity shall, while selecting an international expression of intent, select a firm or company from various countries, background and a local .....<sup>117</sup> firm or company.

(7) The name of a reputed consultant who has not submitted expression of intent pursuant to the notice referred to in sub-rule (1) may be included in the short-list upon making contact with him or her.

(8) If, in selecting intent expressing proponents pursuant to this Rule or including the name pursuant to sub-rule (7), at least three intent expressing proponents cannot be selected, the public entity shall invite expression of intent by re-publishing a notice.

(9) If at least three intent expressing proponents cannot be selected even after publishing the notice for the second time, the list may be prepared including only the intent expressing proponents who have been selected.

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

(11)<sup>118</sup> If, in the case of procurement of a consultancy service pursuant to sub-rule (2), a foreign intent expressing proponent makes a joint venture with a domestic consultant person, firm or company, preference may be given to such a foreign proponent.

Provided that, in so maintaining a joint venture, the joint venture cannot be so maintained as to be overlapping.

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<sup>117</sup> Deleted by the Fourth Amendment.

<sup>118</sup> Inserted by the Fourth Amendment.

(12)<sup>119</sup> In evaluating the capacity pursuant to sub-rule (5), it shall be so evaluated on the basis of the turnover that it does not exceed one hundred fifty percent of the total cost estimate of the consultancy service.

(13)<sup>120</sup> In selecting the intent expressing proponent pursuant to sub-rule (5), such selection shall be so made that the work is completed within the period referred to in Rule 54A.

(14)<sup>121</sup> If, with respect to the selection of the intent expressing proponent pursuant to this Rule, any intent expressing proponent requests the public entity for the marks obtained by him or her and the reason why he or she could not be included in such selection, it shall, not later than five days, give the intent expressing proponent information as to the marks obtained by him or her and the reason why he or she could not be selected.

71. Invitation to proposals: (1) Once a shortlist has been prepared pursuant to Rule 70, the public entity shall invite proposals from the intent expressing proponents included in that list by sending them the documents relating to proposal by post, courier or in person or through electronic communication means, giving the time of at least fifteen days in the case of procurement of which cost estimate does not exceed two million rupees and at least thirty days in the case of procurement of which cost estimate exceeds the said amount.<sup>122</sup> No fee shall be charged for the documents relating to proposal to be so sent.

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<sup>119</sup> Inserted by the Fourth Amendment.

<sup>120</sup> Inserted by the Fourth Amendment.

<sup>121</sup> Inserted by the Fourth Amendment.

<sup>122</sup> Amended by the Fourth Amendment.

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

- (a) Request for proposal,
- (b) Matter that the key human resource proposed by the proponent must have certified that his or her recent bio-data is true and complete,
- (c) Matter that the financial proposal shall be opened only after evaluating the technical proposal,
- (d) Pass marks to be secured by the proponent in the technical proposal,
- (e) Whether the proponent can propose his or her separate work plan and human resource for the concerned work or not,
- (f) Whether the proponent can make comments on the terms of reference or not, and
- (g) Source of funding required for carrying out the proposed work.

(3) The public entity shall state the weightage marks for evaluation of proposals in the documents relating to proposal.

(4) While stating the weightage marks pursuant to sub-rule (3), it shall be stated as follows:

- (a) If the proposal is to be selected on the basis of the quality and cost method, weightage marks shall be so determined according to the nature and complexity of the work that the total weightage marks of the technical and financial proposal is one hundred and out of such total weightage

marks, the total weightage marks of the technical proposal is in the range of seventy to ninety and the that of the financial proposal is in the range of ten to thirty,

- (b) If the proposal is to be selected on the basis of the quality method, fixed budget method and the least cost method, the total weightage marks of the technical proposal shall be so determined as to be one hundred.

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

(6) While mentioning the weightage marks for the selection of a consultant in the documents relating to proposal, the public entity shall so mention appropriate marks, according to the nature and complexity of the work, that the marks do not exceed the following marks:

(a)	Proponent's experience of specific work	<u>Up to twenty-five percent</u> <sup>123</sup> of the total marks
(b)	Method of performance and responsiveness to the terms of reference	<u>Twenty to thirty-five percent</u> <sup>124</sup> of the total marks
(c)	Qualification and experience of key human resource	Thirty to sixty percent of the total marks
(d)	Transfer of technology or training	Up to ten percent of the total marks
(e)	Participation of domestic	Up to ten percent of the

<sup>123</sup> Amended by the Fourth Amendment.

<sup>124</sup> Amended by the Fourth Amendment.

	human resource	total marks
	Total	Total marks 100

(7) The weightage marks set forth in clause (e) of sub-rule (6) shall not be applicable to a domestic proposal.

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

(9) In mentioning the weightage marks pursuant to sub-rule (3), the pass marks shall also be mentioned.

(10)<sup>125</sup> In mentioning the weightage marks for the selection of a consultant in the documents relating to proposal of procurement of a consultancy service, it shall be so mentioned the human resource that is work in hand in any consultant person, firm or company shall not be calculated to that extent in the evaluation of the latest proposal.

(11)<sup>126</sup> In evaluating proposals pursuant to this Rule, such an evaluation shall be made only on the basis of the distribution made pursuant to sub-rule (8) and weightage marks for the same.

72. Consultancy service may be procured by inviting proposals from consultants in the standing list: (1) A public entity may procure a consultancy service the cost of which is less than two million rupees<sup>127</sup> by inviting written technical and financial proposals from the consultants included in the standing list referred to in Section 6A. of the Act.<sup>128</sup>

<sup>125</sup> Inserted by the Fourth Amendment.

<sup>126</sup> Inserted by the Fourth Amendment.

<sup>127</sup> Amended by the Fifth Amendment.

<sup>128</sup> Amended by the Fourth Amendment.

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

(3) The method for evaluation of the proposals referred to in sub-rule (2) shall be selected according to the quality and cost method.

73. Matters to be specified in instructions to prepare proposals: The public entity shall specify the following matters in the instructions to be given to prepare proposals pursuant to clause (c) of sub-section (2) of Section 31 of the Act:

- (a) Format of technical and financial proposals,
- (b) Method of preparing and submitting technical and financial proposals,
- (c) Number of the stages at which the work is to be completed and whether additional work can be assigned or not,
- (d) If the proponent needs to obtain any information as to the documents relating to proposal, the manner of obtaining such information,
- (e) Matter of whether the consultant can sub-contract any portion of the proposed work or not,
- (f) Information as to the notice, service or equipment to be provided by the public entity,
- (g) Matter whether a pre-proposal meeting of proponents will be held or not,
- (h) Validity period of the proposal,

- (i) Matter that if the public entity considers that the award to the consultancy firm or person or organization affiliated with it of any work relating to the supply of goods, construction work, other service or consultancy service to be created under the proposed procurement action may constitute a conflict of interest with the proposed consultancy service, such a work cannot be awarded to such a proponent or person,
- (j) Information about the tax to be paid by the proponent and his or her human resource and other competent body to be contacted by the proponent if he or she wants to obtain further information as to tax or any other matters,
- (k) Language of the proposal,
- (l) Procedure for modification of the documents relating to the proposal by the public entity,
- (m) Method of submitting proposals,
- (n) Method of opening proposals,
- (o) Condition relating to confidentiality.

74. Method of selecting proposal: (1) A public entity may procure a consultancy service for the following work by selecting the quality method:

- (a) A work of such nature that expected work from the consultant cannot be clearly ascertained like economic or sectoral study of the country, multi-sector feasibility study, design of a mechanism for managing and disposing hazardous wastes, design of urban master plan, financial sector reform and in respect of which the public entity expects a research proposal from the consultant,



- (b) A work of a type that requires higher expertise and that causes serious and long-term impacts in the future, such as feasibility study or structural engineering design of large dams or major infrastructure building or policy studies of national importance, management study of large governmental bodies,
- (c) A work of a type the service charge of which depends upon the quality of work or that may be performed substantially in different ways by each individual or organization and cost of the competitive proposal of which cannot be compared, such as management consultancy or sectoral and policy studies.

(2) Approval of the head of department shall be obtained to select the quality method pursuant to sub-rule (1).

(3) The least cost method may be selected for the work which has already been well practiced, is of regular nature and requires low cost, such as auditing, general engineering design and procurement agent.

75. Manner of opening proposals: (1) A public entity shall, while opening proposals pursuant to Section 32 of the Act, open them in the presence of proponents or their representatives.

Provided that it shall not bar the opening of a proposal for the reason that the proponent or his or her representative is not present.

(2) Prior to opening proposals pursuant to sub-rule (1), the public entity shall segregate the envelopes of the proposals received after the deadline and those of the proposals duly registered, and shall return unopened the proposals received after the deadline to the

concerned proponents. The public entity shall mention the matter of such return, date and time in the report of procurement action.

(3) After returning the proposals pursuant to sub-rule (2), the public entity shall open the outer envelope of every proposal duly registered respectively, and the envelope of technical proposal contained in that envelope and read out the following matters and then prepare a record (*Muchulka*) thereof:

- (a) Name and address of the proponent,
- (b) Whether the proposal is signed by the proponent or not,
- (c) In the event of any correction or overwriting in the documents relating to proposal, whether the proponent or his or her representative has signed such correction and overwriting or not,
- (d) Such other necessary matters that the public entity deems appropriate.

(4) The public entity shall cause the record (*Muchulka*) referred to in sub-rule (3) to be signed by the proponent or his or her agent present.

(5) The public entity shall send as soon as possible the technical proposals opened pursuant to sub-rule (4) to the evaluation committee.

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

(1a)<sup>129</sup> The evaluation committee may form a three-member sub-committee consisting of concerned experts to render assistance in the evaluation of technical proposals.

(2) After fixing the marks pursuant to sub-rule (1), the evaluation committee shall find out the average marks obtained by such a proposal, upon computing the marks given by each member of the committee.

(3) Upon the evaluation under sub-rules (1) and (2), the evaluation committee shall prepare a list of the proponents who have obtained the pass marks referred to in sub-rule (9) of Rule 71.

(4) The list referred to in sub-rule (3) shall be prepared in descending order starting from the proponent securing the highest marks, respectively.

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

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

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

77. Evaluation report to be prepared: (1) The evaluation committee shall, upon completing the evaluation referred to in Rule 76, prepare a report as to the quality of each proposal.

(2) The report referred to in sub-rule (1) shall set out, inter alia, the following matters:

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<sup>129</sup> Inserted by the Fourth Amendment.

- (a) Name and address of the proponent,
- (b) Whether it has been signed by the proponent or his or her authorized representative or not,
- (c) Whether the documents establishing that the proponent is qualified under law to submit the proposal have been submitted or not,
- (d) Where the joint venture agreement is required, whether such an agreement has been submitted or not,
- (e) Whether or not the proposal is complete in conformity with the instructions to proponents given in the documents relating to proposal, and
- (f) Relative strengths, weaknesses and the result of evaluation of each proposal.

78. Notice to be given to the proponents selected from evaluation of technical proposals: (1) A public entity shall give a notice containing the place, date and time for opening financial proposals to the proponents included in the list referred to in sub-rule (3) of Rule 76 to appear at that place and time.

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

(3) The financial proposal of the proponent failing to obtain the pass marks shall be returned to him or her, accompanied by a notice setting out the reason why his or her technical proposal has not been selected.

(4)<sup>130</sup> In selecting proponents pursuant to this Regulation, if any proponent requests the public entity for the provision of the marks obtained by him or her and the reason why he or she could not be selected, it shall provide the marks obtained by him or her and the reason for not being selected to the proponent not later than five days.

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

Provided that nothing shall bar the opening of financial proposals for the reason that any proponent or his or her representative is not present.

(2) After opening the envelope of the financial proposal pursuant to sub-rule (1), the evaluation committee shall read out the name of the proponent, the marks obtained in the technical proposal and the service charge proposed by him or her in the financial proposal and prepare the record (*Muchulka*) as follows:

- (a) Name and address of the proponent,
- (b) Proposed service charge,
- (c) If any offer is made to discount the proposed service charge, details thereof,
- (d) Description of the discrepancies, if any, between figures and words,
- (e) Whether the financial proposal has been signed by the proponent or his or her representative or not,
- (f) If any matter or content of the financial proposal is overwritten, whether the overwriting has been

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<sup>130</sup> Inserted by the Fourth Amendment.

signed by the proponent or his or her representative or not and the amount and content overwritten,

(g) Such other necessary matters as the public entity considers appropriate.

80. Evaluation of financial proposals: (1) Except as otherwise mentioned in the documents relating to proposal, for the purpose of evaluation of a financial proposal, the service charges of the consultant specified in the proposal shall be deemed to include reimbursable expenses such as tax, other than value added tax, leviable on the consultant pursuant to the prevailing law, consultant's travel, translation of the concerned documents, report printing or overhead cost.

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

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

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

(5) After the evaluation referred to in sub-rules (2), (3) and (4), a list of the fixed quoted price of every proponent shall be prepared.

81. Selection of proponent: (1) If the quality and cost method is applied to select a proposal, the evaluation committee shall select the successful proponent by evaluating the technical and financial proposals as follows:

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

Example:

- (1) Total weightage marks allocated for the technical proposal =80

Marks obtained in the technical proposal by proponents A, B and C who have obtained the specified pass marks:

$$A = 90$$

$$B = 85$$

$$C = 80$$

Method of computing the marks to be obtained in the technical proposal on the basis of the said marks:

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

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

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

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

The amount quoted in the financial proposal by the bidders A, B and C who have passed the technical proposal:

$$A = 4,50,000.00$$

$$B = 4,30,000.00$$

$$C = 4,20,000.00$$

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

The method for computing the marks to be obtained by the financial proposal on the basis of the said marks:

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

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



4, 30,000

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

4, 20,000

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

Proponent	Net score of the technical proposal	Net score of the financial proposal	Total marks	Remarks
A	72	18.66	90.66	Proponent 'A' who has scored the highest marks shall be selected.
B	68	19.53	87.53	
C	64	20.00	84	

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

(3) If the fixed budget method is applied to select the proposal, the evaluation committee shall cancel the proposal with cost exceeding the ceiling of such budget pursuant to clause (c) of sub-section (1) of Section 35 of the Act and select the proposal of the

proponent who has scored the highest marks in the technical proposal subject to such ceiling.

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

(5) If it is required to negotiate with the proponent selected pursuant to this Rule, the public entity shall, not later than seven days of the selection of the proposal,<sup>131</sup> give a notice containing the date, time and place to such a proponent for holding negotiations.

(6)<sup>132</sup> In inviting the proponent for negotiation pursuant to sub-rule (5), the time-limit of seven days shall be given in the case of a national proposal and that of fifteen days shall be given in the case of an international proposal.

(7)<sup>133</sup> The proponent who makes contract pursuant to Section 38 of the Act shall submit professional liability insurance covering the total price of the contract and payable unconditionally to the public entity, not later than three days of the signature of the contract.

(8)<sup>134</sup> If the proponent who makes contract pursuant to this Regulation fails to submit the professional liability insurance within the time-limit referred to in sub-rule (7), the public entity shall terminate such a procurement contract and make recommendation to the concerned body for blacklisting such a proponent.

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<sup>131</sup> Inserted by the Fourth Amendment.

<sup>132</sup> Inserted by the Fourth Amendment.

<sup>133</sup> Inserted by the Fourth Amendment.

<sup>134</sup> Inserted by the Fourth Amendment.

81A.<sup>135</sup> Authority to approve proposal relating to consultancy service: (1)<sup>136</sup>

The following authority shall have the power to approve the following proposal relating to consultancy service:

- (a) For an amount not exceeding one million rupees, gazetted third class chief of the office,
- (b) For an amount not exceeding five million rupees, gazetted second class chief of the office,
- (c) For an amount not exceeding thirty million rupees, gazetted first class chief of the office,
- (d) For an amount exceeding thirty million rupees, the head of department.

(2) If the chief of any public entity is not allowed to approve the proposal relating to consultancy service pursuant to sub-rule (1), he or she shall cause it to be approved by one level higher authority.

(3) Notwithstanding anything contained in sub-rule (1), the secretary or administrative chief of a constitutional organ or body, Ministry, secretariat and other office of similar nature may approve the proposal of any amount whatsoever for procurement to be made for his or her office.

82.<sup>137</sup> Procurement through direct negotiation: (1) If it is required to acquire a service only for such matters as a training, workshop and seminar which are useful and necessary for the public entity, such service may be so procured through direct negotiation by the chief of the public entity himself or herself in the case of a service the cost of which does not exceed five hundred thousand rupees, and with the approval of

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<sup>135</sup> Inserted by the Third Amendment.

<sup>136</sup> Amended by the Fourth Amendment.

<sup>137</sup> Amended by the Sixth Amendment.

one level higher authority in the case of a service the cost of which exceeds such an amount but not exceed two million rupees that it is not contrary to Section 37 of the Act.

(2) In the case where it is required to procure a consultancy service the cost of which does not exceed two million rupees with the approval of one level higher authority for the work referred to in sub-rule (1), procurement shall be made by obtaining at least three proposals and holding direct negotiations with the proponent whose proposal is the most useful and offers the lowest price, for the purpose of ascertaining, *inter alia*, the quality and price.

83. Other method: A consultant may be appointed on the basis of expertise and<sup>138</sup> qualification in the following circumstance:

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

## Chapter-7

### Other Provisions Relating to Procurement

84. Provisions Relating to sealed quotations: (1)<sup>139</sup> The public entity may, as per the approved program and procurement plan, procure goods, construction work or any service the cost estimate of which does not

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<sup>138</sup> Amended by the Fourth Amendment.

<sup>139</sup> Amended by the Fourth Amendment.

exceed two million rupees by inviting sealed quotations pursuant to Section 40 of the Act.

(1a)<sup>140</sup> Notwithstanding anything contained elsewhere in this Regulation, procurement of X-ray, ECG, medicinal goods, medical equipment used for diagnosis and treatment of a disease, the cost of which does not exceed five million rupees may be made by inviting sealed quotations.

(2) The public entity shall specify the following matters, in addition to the matters set out in sub-section (2) of Section 14 of the Act, in the sealed quotation form:

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

(3) Once the form is prepared pursuant to sub-rule (2), the public entity shall, in order to invite sealed quotations, publish a notice pursuant to sub-section (3) of Section 40 of the Act, and such a notice shall contain the following matters:

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<sup>140</sup> Inserted by the Fourth Amendment.

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

(3a)<sup>141</sup> If, upon publication of a notice pursuant to sub-rule (3), less than three sealed quotations are submitted or no sealed quotation is submitted, a notice shall be published for the second time pursuant to that sub-rule, without mentioning any matter with respect thereto.

(3b)<sup>142</sup> If, even upon publication of a notice for the second time pursuant to sub-rule (3a), a required number of sealed quotations are not submitted, nothing shall bar the approving of a sealed quotation, out of the submitted sealed quotations.

(4) A person, firm, organization or company wishing to submit a sealed quotation shall purchase the quotation form from the concerned public entity upon payment of one thousand rupees<sup>143</sup> and submit the sealed quotation in the same form.

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

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<sup>141</sup> Inserted by the Third Amendment.

<sup>142</sup> Inserted by the Third Amendment.

<sup>143</sup> Amended by the Fourth Amendment.

(6)<sup>144</sup> In requiring the security for the sealed quotation, the public entity shall, subject to the ceiling of two to three percent amount of the approved cost estimate, specify a certain amount and set out the amount of security in the notice inviting sealed quotations. A person, firm, organization or company who submits the sealed quotation shall submit, along with the sealed quotation, such security in cash or in the form of such a bank guarantee with the validity period of seventy-five days as issued by a commercial bank

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

(8) The public entity shall open the sealed quotation forms immediately after the expiry of the deadline for submission of sealed quotations at the place specified in the notice inviting sealed quotations in the presence of the sealed quotation bidders or their representatives, as far as possible.

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

(9a)<sup>145</sup> Only in the case where a minimum of three sealed quotations, out of the sealed quotations submitted pursuant to the notice for the first time, become substantially responsive, the evaluation committee shall select the quotation with the lowest quoted price for acceptance.

(10) The public entity shall, within fifteen days of the date of the opening of sealed quotations pursuant to sub-rule (8), accept the sealed quotation pursuant to sub-section (5) of Section 40 of the Act and give a notice thereof to all sealed quotation bidders.

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<sup>144</sup> Amended by the Third Amendment.

<sup>145</sup> Inserted by the Sixth Amendment.

(11) The public entity shall, within seven days of the acceptance of the sealed quotation pursuant to sub-rule (10)<sup>146</sup>, give a notice to the concerned sealed quotation bidder to appear to sign the procurement contract.

(12)<sup>147</sup> The sealed quotation bidder receiving the notice referred to in sub-rule (11) shall sign the procurement contract within seven days of the date of receipt of such a notice, upon furnishing the performance security referred to in Rule 110.

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

- (a) If the selected sealed quotation bidder does not sign the procurement contract,
- (b) If he or she fails to furnish the performance security specified in the sealed quotation form within the time for signing the procurement contract,
- (c) If he or she does an act contrary to the conduct referred to in Section 62 of the Act.

(14) Other procedures relating to the sealed quotations shall be as per the provisions set out in Chapter-5.<sup>148</sup>

85. Provisions relating to direct procurement: (1)<sup>149</sup> In making procurement pursuant to clause (a) of sub-section (1) of Section 41 of the Act, direct procurement may be made not exceeding the following ceiling, subject to sub-rule (4):

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<sup>146</sup> Amended by the Third Amendment.

<sup>147</sup> Amended by the Fourth Amendment.

<sup>148</sup> Amended by the Sixth Amendment.

<sup>149</sup> Amended by the Third Amendment.



(a)<sup>150</sup> Construction work, goods or consultancy service the cost estimate of which does not exceed five hundred thousand rupees,

(b) .....<sup>151</sup>

(1a)<sup>152</sup> Notwithstanding anything contained elsewhere in this Regulation, medicinal goods the price of which does not exceed two million rupees or goods the price of which does not exceed one million five hundred thousand rupees which have been manufactured in Nepal may be directly purchased at the selling price specified by the manufacturer of such goods by publishing a notice in a newspaper of national circulation. In so making direct procurement, goods with Nepal Standard Marks shall be procured to the extent available.

Provided that if there is only one pharmaceutical company prequalified by the World Health Organization to manufacture any pharmaceutical product, such a pharmaceutical product may be procured through direct negotiation, irrespective of the amount of such product.

(1b)<sup>153</sup> Notwithstanding anything contained in sub-rules (1) and (1a), no procurement exceeding the ceiling set out in those sub-rules may be made directly from the same person, firm, company or organization at one time or several times in one fiscal year.

(1c)<sup>154</sup> Notwithstanding anything contained elsewhere in this Regulation, direct procurement of up to five million rupees may be made for hospitality and hotel accommodation for any very important person or important person of the government of a foreign country or

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<sup>150</sup> Amended by the Fourth Amendment.

<sup>151</sup> Deleted by the Fourth Amendment.

<sup>152</sup> Amended by the Fourth Amendment.

<sup>153</sup> Amended by the Sixth Amendment.

<sup>154</sup> Inserted by the Fourth Amendment.

of an international inter-governmental organization who is paying a visit to Nepal at the invitation of the Government of Nepal.

(1d)<sup>155</sup> Notwithstanding anything contained elsewhere in this Regulation, direct procurement of up to twenty-five thousand American Dollars may be made for the maintenance of the building or apartment of a Nepalese embassy or mission situated abroad.

(2) The procurement referred to in sub-rule (1) may be made by making a framework or unit rate contract.

(3) In cases where only one supplier has the right to supply proprietary goods or pharmaceutical products<sup>156</sup> pursuant to clause (c) of sub-section (1) of Section 41 of the Act, such goods or products may be procured from such a supplier or through his or her authorized seller or authorized agent.

(3a)<sup>157</sup> Notwithstanding anything contained in sub-rule (3), if there is only one manufacturer of such goods as required for any public entity in Nepal and there is no other appropriate alternative, the chief of the public entity making procurement may, upon recording the same matter, make direct procurement from the manufacturer.

(3b)<sup>158</sup> In making direct procurement from a manufacturer pursuant to sub-rules (1a) and (1b), it shall be made from the manufacturer who has fulfilled the following conditions:

- (a) Such a manufacturer has published a list of retail and dealer selling price of his or her product in a newspaper of national circulation,

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<sup>155</sup> Inserted by the Fourth Amendment.

<sup>156</sup> Inserted by the Fourth Amendment.

<sup>157</sup> Inserted by the Third Amendment.

<sup>158</sup> Inserted by the Third Amendment.

(b) Such a manufacturer gives the same discount to the procuring public entity as is given to the local dealer.

(3c)<sup>159</sup> In the event of procurement being made pursuant to sub-rule (3a), the Public Procurement Monitoring Office may examine or cause to be examined the cost of production by the industry related to such procurement. If the cost is found unusual upon making such examination, such an industry may be blacklisted.

(3d)<sup>160</sup> Notwithstanding anything contained elsewhere in this Regulation, a public entity may make direct procurement of such goods the price of which does not exceed two million five hundred rupees as manufactured by any cottage industry which is so specified by the Government of Nepal by notification in the Nepal Gazette as to be a domestic cottage industry, upon making a procurement contract with such a cottage industry.

(4)<sup>161</sup> The public entity shall, in making direct procurement exceeding one hundred thousand rupees,<sup>162</sup> make procurement by inviting written quotations or proposals from at least three suppliers, construction entrepreneurs, consultants or service providers included in the standing list.

(5) In making direct procurement of proprietary goods referred to in clause (d) of sub-section (1) of Section 41 of the Act, such procurement may be made up to thirty percent price of the previous contract price.

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<sup>159</sup> Inserted by the Third Amendment.

<sup>160</sup> Inserted by the Fourth Amendment.

<sup>161</sup> Amended by the Third Amendment.

<sup>162</sup> Amended by the Fourth Amendment.

(5a)<sup>163</sup> If any public entity is to procure any goods or service produced or distributed by another public entity, it may directly procure such goods or service at the selling price specified by the competent authority of the public entity producing or distributing such goods or service.

(5b)<sup>164</sup> If any public entity is to procure any goods from any international inter-governmental organization or government of a foreign country or any public entity of such a country, it may directly procure such goods at the selling price specified by such an organization, government or entity.

(5c)<sup>165</sup> Notwithstanding anything contained elsewhere in this Rule, if any public entity is to make procurement pursuant to sub-rules (5a) and (5b), it does not need to require any security.

(6) In the case of a direct procurement made in the circumstances referred to in the other clauses than the circumstances referred to in clauses (a) and (e) of sub-section (1) of Section 41 of the Act, the public entity shall publicly publish a notice thereof, setting out the name of the supplier, construction entrepreneur, consultant or service provider, together with the nature of, reason and basis for, such procurement.

(7) Approval of one level higher authority shall be obtained to make procurement in the circumstance referred to in clause (d) of sub-section (1) of Section 41 of the Act.

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

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<sup>163</sup> Inserted by the fourth Amendment.

<sup>164</sup> Inserted by the fourth Amendment.

<sup>165</sup> Inserted by the fourth Amendment.

- (a) Whether the goods to be procured are in stock in the storage or not,
- (b) Whether the proposed construction entrepreneur, supplier, consultant or service provider possesses the qualification required to perform the work under the procurement contract or not,
- (c) Whether the proposal submitted by the proposed construction entrepreneur, supplier, consultant or service provider as per the invitation of the public entity conforms to the specifications and technical quality determined by such an entity or not, and
- (d) Whether the price proposed by the proposed construction entrepreneur, supplier, consultant or other service provider is reasonable or not.

(2) In order to ascertain whether the price referred to in clause (d) of sub-rule (1) is reasonable or not, the public entity may, after making rate analysis on the basis of market study, previous procurement price and the cost estimate, negotiate with the construction entrepreneur, supplier, consultant or other service provider.

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

87. Design may be procured through competition: In procuring a design of such matter as architectural or urban planning, the public entity shall prepare a document together with detailed description relating to such design and may procure an appropriate design by having competition as per such document.

87A.<sup>166</sup> Other provisions relating to procurement: In making procurement pursuant to clause (b) of sub-section (1) of Section 67 of the Act, the matters not set forth in the procurement guidelines of the donor party referred to in the agreement concluded between the Government of Nepal and the donor party shall be governed by the Act and this Regulation.

(2) For the purpose of clause (c) of sub-section (1) of Section 67 of the Act, the details of the public entities doing business transaction in competition with the private sector shall be as referred to in Schedule-5A.

(3) In making procedures pursuant to sub-section (3) of Section 67 of the Act, such procedures shall be so made as not to be inconsistent with the fundamental principles relating to public procurement.

## Chapter -8

### Provisions Relating to Procurement of Ration

88. Preparation and approval of cost estimate: (1) The chief of every public entity which is required to arrange for ration shall, not later than the last day of the month of Bhadra (mid-August) of each year, prepare a cost estimate as per the ration quota approved for his or her office, on the basis of the consumer price index of the concerned sector to be published by the Nepal Rastra Bank, the price index published by the governmental body responsible for fixing the price of agricultural products, road facilities, local market rate, the procurement contract rate of the previous year and the guidelines, if any, issued by the Public Procurement Monitoring Office.

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<sup>166</sup> Inserted by the Fourth Amendment.

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

(a)	Chief District Officer	- Chairperson
(b)	Chief, Treasury Controller Office or officer representative of that Office	- Member
(c)	Chief, District Agricultural Development Office	-Member
(d)	Representative, District Chamber of Commerce and Industry	-Member
(e)	Chief of the public entity to arrange for ration	-Member-secretary

(3) The committee referred to in sub-rule (2) shall, in approving the cost estimate pursuant to this Rule, approve it in the format set out in Schedule-6, taking into account the matters referred to in sub-rule (1).

(4) The public entity shall send a notice of the approval of the cost estimate pursuant to sub-rule (3) to the superior office, Regional Administration Office and Public Procurement Monitoring Office, within seven days.

89. To arrange for procurement of ration: (1) A public entity which is required to arrange for ration may procure ration by inviting sealed quotations or bids pursuant to the Act and this Regulation, subject to the condition that the new supplier shall supply ration from the first day of the month of Magh (mid-January) each year.

(2) While inviting sealed quotations or bids to be invited pursuant to sub-rule (1), the public entity shall specify, inter alia, the following matters:

- (a) Type and quality of ration, *Sida*, feed and fodder,
- (b) Daily required quantity,
- (c) Matter that price increment shall not be given during the contract period, and
- (d) Matter that contract can be concluded only with the Nepalese citizen.

(3) Ration arrangements for a security entity shall be made as provided hereunder:

- (a) Sealed quotation forms or bidding documents may be sold by the concerned security entity, District Administration Office and Treasury Controller Office as well, and the notice for invitation to sealed quotations or bids shall set out that such quotation forms or bids can be submitted to the concerned security entity. The sealed quotation forms or bidding documents shall also specify the time and place for opening such sealed quotations or bids.
- (b) Prior to inviting sealed quotations or bids, the security entity to arrange for ration shall send at least twenty copies<sup>167</sup> of the sealed quotation forms or bidding documents relating to ration arrangement each to the entities referred to in clause (a) for sale and in the case of shortfall of such forms or documents, the concerned

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<sup>167</sup> Amended by the Third Amendment.



security entity shall send such forms or documents to such entities as per their request.

- (c) The entities referred to in clause (a) shall sell the forms and bidding documents received pursuant to clause (b) to the interested sealed quotation bidders or bidders and send the records thereof to the concerned security entity.
- (d) A sealed quotation bidder or bidder who buys such sealed quotation forms or bidding documents may, after duly filling such forms or documents and sealing them, so send or deliver to the concerned security entity personally or through his or her representative or through postal or courier service as to reach within the time specified in the notice inviting such sealed quotations or bids.
- (e) The security entity shall receive the sealed quotation forms or bids received pursuant to clause (d) and maintain records thereof.
- (f) The concerned security entity shall, immediately after the last date and time for submission of sealed quotations or bids, open the sealed quotations or bids received by its office at the time specified in the sealed quotation forms or bidding documents.

Explanation: For the purpose of this clause, "security entity" means the Nepal Army, Nepal Police, Armed Police Force or any entity specified by the Government of Nepal.

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

(5) The public entity shall examine and evaluate the sealed quotations or bids referred to in sub-rule (4) in accordance with the Act and this Regulation and accept the sealed quotation or bid quoting the lowest rate, and then conclude the contract with such a lowest rate provider.

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

(7) The chief of the public entity shall, not later than seven days of conclusion of the procurement contract pursuant to this Rule, prepare a report together with the comparative chart referred to in sub-rule (4) and give information to the superior office and the Public Procurement Monitoring Office.

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

(9) If an arrangement for ration, *Sida* cannot be made or loss or damage is caused to the Government due to delay of any kind, the chief of the concerned public entity shall be responsible for such loss or damage.

(10) The public entity to arrange for ration shall arrange ration in accordance with the provisions contained in this Chapter, and with the provisions of the Act and this Regulation in the case of the other matters than those contained in this Chapter.

90. Direction to be complied with: If a procurement contract for ration arrangement could not be concluded or where such contract, even if concluded, is violated or where the public entity has terminated the procurement contract pursuant to the Act or this Regulation, the chief of such an entity shall commence new procurement process not later than fifteen days,<sup>168</sup> and write to the superior office for direction and provide ration as directed by the superior office, until the new process is completed.<sup>169</sup>

91. Power to make inspection: (1) The chief of public entity may, as required, make inspection as to whether the supplier has supplied ration of the quality specified in the contract or not, and if the ration supplied is not found to be of the quality specified in the contract, he or she may initiate action to terminate the contract.

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

92. Security to be taken for advance: (1) If a public entity making arrangement for ration is to give advance to the supplier after

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<sup>168</sup> Inserted by the Fourth Amendment.

<sup>169</sup> Inserted by the Fourth Amendment.

concluding the procurement contract, it may give an advance up to twenty-five percent of the quoted price against a bank guarantee covering such advance amount which is issued by a commercial bank and has the validity period of at least seven months.

(2) If the sanctioned budget amount is insufficient to give advance pursuant to sub-rule (1), the concerned public entity shall request the concerned Treasury Controller Office to sanction additional amount, and, if so requested, that Office too shall sanction additional amount subject to the approved budget.

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

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

(5) The supplier shall stock in his or her warehouse the ration equivalent to the amount of advance given pursuant to sub-rules (1) and (4).

93. Other arrangement may be made for ration: If the concerned central office directs the public entity to arrange for ration to provide cash instead of ration, such an entity may provide such amount in cash as to be calculated on the basis of the rate of the approved cost estimate pursuant to Rule 88 and the approved number of positions.

## Chapter -9

### Provisions on Renting House, Land and Service Contract

94. Provision on renting a house, land: (1) If a public entity is required to rent a house or land, it shall invite for rent proposals by publishing a notice of at least fifteen days in a newspaper of national circulation in the case of a central level public entity located within the Kathmandu Valley, and by posting a notice of at least seven days on the notice board of such an entity and of the following offices in the case of a regional or district level public entity:
- (a) District Administration Office,
  - (b) District Coordination Committee, and
  - (c) Treasury Controller Office.
- (2) The public entity shall set out the following matters in the notice referred to in sub-rule (1):
- (a) Name and address of the concerned public entity,
  - (b) Area or location where the house, land is required,
  - (c) Nature, area and other necessary details of the house, land sought to be rented,
  - (d) Information that the house, land shall be rented only at the rate fixed by the committee referred to in sub-rule (4),
  - (e) Procedures to be followed by the house, land owner to submit a proposal and minimum details matters to be submitted with the proposal,
  - (f) Place for submitting the proposal and the last date for its submission,

(g) Conditions for payment of the house, land rent and deduction of tax, and

(h) Such other matters as the public entity considers appropriate.

(3) The public entity shall open the proposals on providing house, land on rent submitted within the period referred to in sub-rule (1) and submit them to the committee referred to in sub-rule (4).

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

(a)	Chief District Officer	- Chairperson
(b)	Chief, Treasury Controller Office	-Member
(c) <sup>170</sup>	Technician designated by the District Coordination Committee	-Member
(d)	Chief of the public entity renting house, land	-Member
(e)	Employee of the District Administration Office designated by the Chief District Officer (officer level so far as available)	-Member-Secretary

(5) The procedure relating to meetings of the committee referred to in sub-rule (4) shall be as determined by the committee itself.

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<sup>170</sup> Amended by the Sixth Amendment.

(6) The committee referred to in sub-rule (4) shall fix the rent of house, land by evaluating the proposal submitted pursuant to sub-rule (3) on the following basis:

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

(7) Once the rent of the house, land is fixed pursuant to sub-rule (6), the house rent fixation committee shall give information thereof in writing to the concerned public entity.

(8) After receiving the information referred to in sub-rule (7), the concerned public entity shall rent the house, land by concluding a contract with the concerned house, land owner.

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

(10) If it is required to increase the rate of rent of house, land, a proposal shall be submitted to the committee referred to in sub-rule (4) for fixation of house, land rent after obtaining the approval of the Ministry of Finance.

(11)<sup>171</sup> If a public entity is required to rent a house, land for an annual rent amount not exceeding one million five hundred rupees within the Kathmandu Valley and that not exceeding five hundred thousand rupees outside the Kathmandu Valley, the entity may rent

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<sup>171</sup> Amended by the Fifth Amendment.

the house, land by negotiating directly with the house, land owner as to services, facilities and amount of rent, upon selecting the appropriate proposal, out of the proposals received pursuant to the notice referred to in sub-rule (1).

95. Procedures relating to service contract: (1) If a public entity is required to take services on service contract to operate its day-to-day works such as office security, transportation of letters, sanitation, operation and supervision of telephone, electricity and water supply system, animal health and agricultural dissemination, maintenance and care of garden, typing or computer type and driving, it may take such services by concluding a contract with any person, firm, organization or company.

(2) In contracting the services referred to in sub-rule (1), the requirements, type, duration, quality, service operation method, tentative expense to be incurred and the terms of reference of such service shall be prepared and caused to be approved by the chief of the public entity.

(3) The public entity may, by way of negotiation, procure a service the service fee of which does not exceed five hundred thousand rupees.<sup>172</sup> In the case of the service the service fee of which exceeds that amount, the public entity may invite proposals by publishing a notice of fifteen days in a newspaper of national circulation if it is an entity located in the Kathmandu Valley or a central level public entity, and by publishing a notice of fifteen days in a local newspaper if it is a regional or district level entity, and by posting such a notice on the notice board of the entity and of the following offices:

- (a) District Administration Office,

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<sup>172</sup> Amended by the Fourth Amendment.



(b)<sup>173</sup> District Coordination Committee, and

(c) Treasury Controller Office.

(4) The public entity shall specify the following matters in the notice referred to in sub-rule (3):

(a) Name and address of the concerned public entity,

(b) Nature, quantity, conditions of service and other necessary matters,

(c) Place and duration of the service to be provided,

(d) Minimum documents and details to be submitted by the proponent along with the proposal,

(e) The place and last date for submission of the proposal,

(f) Conditions of payment of service fees and the matter of tax deduction, and

(g) Other necessary matters.

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

(6) While evaluating the proposals pursuant to sub-rule (5), the public entity shall accept the proposal of the proponent who has offered the lowest service charge by fulfilling the terms of reference referred to in sub-rule (2) and conclude the service contact agreement.

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

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<sup>173</sup> Amended by the Sixth Amendment.

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

(9)<sup>174</sup> Notwithstanding anything contained elsewhere in this Rule, if it is required to perform the work to be performed by class-less posts through service contract by making contract with a person or organization specifying the minimum remuneration pursuant to the Civil Service Act, 1992 (2049), the matter shall be governed by the provisions of that Act accordingly.

96. Procedures for repair and maintenance of goods: (1) If any goods existing in the public entity require repair or maintenance, the user of such goods shall give written information thereof to the chief of that entity. Upon receipt of such information, he or she shall have a cost estimate prepared pursuant to sub-rule (5) of Rule 13 and approve the same.

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

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<sup>174</sup> Inserted by the First Amendment.

(3) In the event of procurement of equipment or spare parts pursuant to sub-rule (2), the public entity shall cause such goods or equipment to be delivered to store and keep records of the equipment or spare parts the per unit price of which exceeds five thousand rupees, and get it certified by the concerned technician that such spare parts have been replaced for the old equipment or spare parts, and deliver the old goods to store.

(4) A public entity which does not have its own workshop or repair center shall have repair and maintenance of the goods by application of the process set out in the Act and this Regulation.

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

97. Procedures of carrying out work through users' committee or beneficiary community: (1)<sup>175</sup> Notwithstanding anything contained elsewhere in this Regulation, a construction work or service related thereto the cost estimate of which does not exceed ten million rupees may be caused to be executed by or obtained from a users' committee or beneficiary community consisting only of the inhabitants residing in that place and from the community using such service.

(1a)<sup>176</sup> The cost estimate not exceeding ten million rupees<sup>177</sup> as referred to in sub-rule (1) shall include value added tax, overhead contingency amount and amount of portion of public participation.

(2) For the purpose of sub-rule (1), a public entity may invite proposals by publishing a public notice setting out the nature, quantity

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<sup>175</sup> Amended by the Sixth Amendment.

<sup>176</sup> Inserted by the Third Amendment

<sup>177</sup> Inserted by

of the concerned work or service, required amount, amount to be borne by the users' committee or beneficiary community and other necessary matters or such committee or community itself may submit a proposal or application.

(3) Upon receipt of the proposal or application referred to in sub-rule (2), the concerned public entity and such users' committee or beneficiary community shall conclude a procurement contract in respect of such work or services, upon discussing, negotiating or visiting the construction site, as required. Such a contract shall contain the following matters:

- (a) Nature, quantity, cost estimate of the construction work or services, the amount that the users' committee will bear or has to bear, period for completion of the work or services,
  - (a1)<sup>178</sup> In the case of a work the cost estimate of which exceeds six million rupees, contribution to be made by the users' committee or beneficiary community to each work unit,
- (b) Matter that the public entity shall carry out the work of preparing and approving the design and cost estimate of the concerned work, providing technical advice, carrying out measurement, final acceptance and providing other necessary technical assistance, supervision and quality control,
- (c) Matter that the construction work or service shall be completed or made available with the

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<sup>178</sup> Inserted by the Fifth Amendment.

participation of the public entity and the users' committee or beneficiary community,

- (d) Statement that the users' committee or beneficiary community shall operate or repair and maintain the completed construction work,
- (e) Advance amount to be made by the public entity to the users' committee or beneficiary community,
- (f) Conditions and mode of payment for the completed construction work or service, and
- (g) Other necessary matters.

(4) In awarding the construction work or service to the users' committee or beneficiary community, payment shall be made only after deducting value added tax, overhead contingency amount and amount of portion of public participation specified in the cost-estimate referred to in clause (b) of sub-rule (3).

(5) Once the procurement contract is concluded pursuant to sub-rule (3), the public entity may give earlier advance payment not exceeding one third amount of the contract amount to such a committee or community. The public entity shall settle the advance so given before payment of the final installment.

(6) The users' committee or beneficiary community shall have the technical evaluation of the work, bills, receipts and other documents proving the expenditure of the work of each installment endorsed by its meeting and submit the same to the concerned public entity.

(7)<sup>179</sup> The users' committee or beneficiary community shall post a notice in the public place of the expenditure made by it in each instalment, and have social audit of the acts and actions performed by it within such period and in accordance with such process as specified by the Public Procurement Monitoring Office.

(8) If the public entity is unable to provide technical assistance to the users' committee or beneficiary community for the concerned work, the committee or community itself may appoint technical human resource required for the work. The remuneration required to be paid to the technician so appointed shall be paid from the contingency deducted by the public entity. Provided that such remuneration shall not exceed three percent of the cost estimate.

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

<sup>180</sup>Provided that if the work is so mentioned when the cost estimate was prepared as to be work of complex nature requiring the use of heavy machines, such machines may be used with the consent of the public entity, on recommendation of the concerned technician.

(9a)<sup>181</sup> If it is found that any heavy machine has been used contrary to the proviso to sub-rule (9), the contract concluded with such a users' committee or beneficiary community shall be canceled.

(10) The users' committee or beneficiary community itself shall complete the work obtained by it and cannot cause such work to be executed by a construction entrepreneur or sub-contractor. If, for

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<sup>179</sup> Amended by the Fifth Amendment.

<sup>180</sup> Inserted by the Fifth Amendment.

<sup>181</sup> Inserted by the Fifth Amendment.

any reason, such a committee or community itself cannot complete that work in time, it shall give a notice thereof to the public entity. Upon receipt of such a notice, the public entity shall, after making necessary inquiry into the matter, terminate the contract concluded with such a committee or community and have the remaining work executed in accordance with the Act and this Regulation.

(11)<sup>182</sup> After completing the construction work, the users' committee or beneficiary community shall cause such work to be finally examined and accepted by a technical employee deputed by the concerned public entity and submit to that entity the statements of the total expenditure including the money received from such an entity and the cost of labor, cash or goods-in-kind provided or borne through public participation. The concerned public entity shall prepare a work completion report setting out, inter alia, the statements so received and the survey, design, cost estimate, supervision of the construction work and name and post of the person and official having performed the work and keep the records thereof.

(12) Once the construction work is completed pursuant to sub-rule (11), the public entity shall transfer the ownership of the project to the users' committee or beneficiary community, also specifying the responsibility of care, repair and maintenance thereof.

(13) If the users' committee or beneficiary committee is found to have misused any amount received by it, the concerned public entity shall inquire into the matter and recover such an amount as government dues on pro-rata basis from the office-bearers of the users' committee. It shall be the duty of the concerned Chief District Officer to render assistance to such an entity in making such recovery.

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<sup>182</sup> Amended by the Fifth Amendment.

(13a)<sup>183</sup> If the users' committee or beneficiary community is found to have involved a construction entrepreneur in any work obtained by it, the public entity shall cancel the contract concluded with that users' committee or beneficiary community, maintain records to the effect that any of such kind of work will not be awarded to such a users' committee or beneficiary community in the future, and make a recommendation to the Public Procurement Monitoring Office to blacklist the construction entrepreneur who has executed that work.

(14) The Public Procurement Monitoring Office may determine the procedures to be followed by a public entity in having a work executed by the users' committee or beneficiary community with respect to the following matters:

- (a) Determination of labour-intensive work,
- (b) Method of formation, and functions, duties and powers of the users' committee or beneficiary community,
- (c) Manner of increasing economy, quality, sustainability of the work or service,
- (d) Keeping the records of incomes and expenditures,
- (e) Supervision and monitoring of the work or service,
- (f) Settlement and final examination and acceptance of the construction work, and
- (g) Other necessary matters.

(15) The users' committee or beneficiary community may fix the service charge to be paid by the users for using the service of the project transferred pursuant to sub-rule (12) and shall establish a fund

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<sup>183</sup> Inserted by the Fifth Amendment.



consisting of such charges and operate, repair and maintain such construction work from such fund.

98. To have construction work executed through force account: (1) A public entity shall obtain prior approval of one level higher authority for the execution of a work through force account.

(2) If the public entity is required to execute a work through force account, it shall execute the work on wage basis by procuring the technical service and construction materials required for that work in accordance with the process set forth in the Act and this Regulation.

(3) If a construction work is to be executed through force account pursuant to this Regulation, such a work may be caused to be executed through negotiation after breaking it into pieces not exceeding one hundred thousand rupees or be awarded on wage basis by making available the necessary construction materials.

99. Provisions relating to execution of work by a non-governmental organization: (1) In order to have a work executed by a non-governmental organization pursuant to Section 46 of the Act, the terms of reference specifying the requirement, type, period, quality of work, human resource, operational modality of such work and a tentative estimate of the required amount shall be prepared.

(2) In order to have the work of up to one million rupees,<sup>184</sup> the public entity shall request proposals from non-government organizations registered pursuant to the law in force with the objective of carrying out such work and included in the standing list

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<sup>184</sup> Amended by the Sixth Amendment.

referred to in Rule 18, by publishing a notice in a daily newspaper of national or local circulation,<sup>185</sup> giving a period at least of fifteen days.

(3) The following matters shall be set out in the notice referred to in sub-rule (2)<sup>186</sup>:

- (a) Name and address of the public entity inviting proposals,
- (b) Nature, quantity and other necessary details of the proposed work,
- (c) Place for the performance and period for the completion of the proposed work,
- (d) Deadline and place for submission of proposals,
- (e) Format of the proposal,
- (f) Documents to be submitted by the proponent along with the proposal,
- (g) Conditions of payment and tax deduction, and
- (h) Such other matters as the Public Procurement Monitoring Office considers necessary.

(4) The public entity shall open the proposals received pursuant to the invitation referred to in sub-rule (2)<sup>187</sup> in the presence of the proponents and prepare a record (*Muchulka*) thereof.

(5) The evaluation committee shall recommend the proposal of a proponent who offers the lowest amount after fulfilling the terms of reference referred to in sub-rule (1) to the public entity for acceptance.

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<sup>185</sup> Inserted by the Fourth Amendment.

<sup>186</sup> Amended by the Fourth Amendment.

<sup>187</sup> Amended by the Fourth Amendment.

(6) If the proposal recommended pursuant to sub-rule (5) appears to be appropriate, the public entity shall accept such a proposal and give a notice specifying the date to the concerned proponent to appear to conclude a contract, and conclude the contract with him or her if he or she appears on such date.

(7) If the proponent whom the notice was given to pursuant to sub-rule (6) fails to appear to conclude the contract, a contract may be concluded with the proponent who offers the next lowest amount to him or her after fulfilling the terms of reference referred to in sub-rule (1).

(8)<sup>188</sup> Notwithstanding anything contained elsewhere in this Rule, for the execution of a work the cost estimate of which exceeds one million rupees, open letters of intent shall be invited pursuant to Rule 70 and the process applicable for procurement of a consultancy service shall be followed.

## Chapter-10

### Provision Relating to Review

100. Matters to be specified in application to be made to the chief of public entity: A bidder or proponent desiring to make an application to the chief of public entity pursuant to Section 47 of the Act for the review of procurement action or decision shall specify the following matters in such an application and sign it:
- (a) Name, address, telephone, fax number and e-mail of the applicant,
  - (b) If the applicant is a corporate body, power of attorney given by that body to make such an application,
  - (c) Bid number,

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<sup>188</sup> Inserted by the Sixth Amendment.

- (d) Factual and legal grounds for making application,
- (e) Copy of the relevant document.

101.<sup>189</sup> Ceiling of the amount: (1) For the purpose of sub-section (8) of Section 47 of the Act, no application may be made to the review committee in respect of the procurement action of less than twenty million rupees.<sup>190</sup>

(2) Notwithstanding anything contained in sub-rule (1), application may be made to the review committee against the evaluation of bids or proposals of such nature that the price cannot be set out such as prequalification or technical proposals.

102.<sup>191</sup> Details to be submitted: The chairperson and member of the review committee shall submit to the Office of the Prime Minister and Council of Ministers through the Public Procurement Monitoring Office the details referred to in clauses (a) and (b) prior to assuming their respective office, and the details referred to in clause (c) after the assumption of their respective office:

- (a) Biodata including educational qualification and experience in the concerned field,
- (b) In the event of involvement in any trade, business, details thereof,
- (c) Details of the property in his or her name and family's name not later than thirty-five days of the date of assumption of office for the first time and sixty days of the expiry of each fiscal year.

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<sup>189</sup> Amended by the Sixth Amendment.

<sup>190</sup> Amended by the Eighth Amendment.

<sup>191</sup> Amended by the Fourth Amendment.

103. Matters to be set out in application to be made for review....<sup>192</sup>: (1) A bidder or proponent who wishes to make an application for review .....<sup>193</sup> pursuant to Section 49 of the Act shall set out the following matters in, and sign, the application:

- (a) Name, address, telephone number, fax number and e-mail address of the applicant,
- (b) If an application is to be filed on behalf of a corporate body, document providing authority to so make application,
- (c) Brief description of the procurement action,
- (d) Where the procurement contract has already been concluded, the date of its conclusion and the supplier, construction entrepreneur, consultant or service provider who has obtained such a contract,
- (e) Factual and legal grounds that the applicant should have obtained the procurement contract,
- (f) Factual and legal grounds that one who has obtained the procurement contract should not have obtained such a contract,
- (g) If the review committee has to take any special measure to protect the proprietary, trade and confidential information of the applicant, such special measure, and
- (h) The actual loss and damage caused to or likely to be caused to the applicant as a result of his or her failure to obtain the contract.

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<sup>192</sup> Deleted by the Third Amendment.

<sup>193</sup> Deleted by the Third Amendment.

(2) The applicant shall, along with the application referred to in sub-rule (1), attach copies of the document substantiating the claim made by him or her. If the document is of such nature that it cannot be in his or her possession, he or she may request the review committee to cause the concerned public entity to produce such document.

(3) If the applicant wishes to make hearing as to the matter stated in the application referred to in sub-rule (1) before the review committee, he or she shall set out the reason and ground for it.

104. Security to be furnished: (1) An applicant who makes an application pursuant to Section 50 of the Act shall submit cash amount or bank guarantee having the validity period of at least of ninety days equivalent to 0.1 (zero decimal one) percent<sup>194</sup> amount of the amount quoted by him or her in the bid or proposal.

(1a)<sup>195</sup> In making an application to the review committee against the evaluation of a proposal of such nature as the price cannot be set out such as a prequalification or technical proposal, there shall be furnished a security equivalent to a lump sum amount specified subject to the proviso to sub-section (1) of Rule 53 in the case of the prequalification proposal and equivalent to the amount to be set by ten percent of the bid security in the case of the technical proposal.

(2) If the cash amount or bank guarantee referred to in sub-rule (1) is not furnished, the review committee shall not take action on the application made to it.

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

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<sup>194</sup> Amended by the Eighth Amendment.

<sup>195</sup> Inserted by the Fourth Amendment.

105. Method of sending application for review: (1) A bidder or proponent may himself or herself deliver or send by post, courier service or electronic means the application to be made for review to the chief of public entity or review committee.

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

(3)<sup>196</sup> Upon receipt of the application for review pursuant to sub-rule (1), the public entity shall withhold the procurement contract until decision is made by the review committee.

106. Matters to be stated in information and comments: (1) The information and comments to be given by a public entity pursuant to sub-section (3) of Section 50 of the Act shall contain the factual statement of the claim, legal grounds of procurement action and copies of the relevant documents.

(2) The review committee may order the public entity to submit the appropriate document or portion thereof out of the documents relating to procurement.

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

107. Hearing concerning review: (1) The review committee may, if it considers necessary to inquire into both the applicant and the concerned public entity, make such inquiry after the public entity has submitted the information, comments and documents referred to in Rule 106.

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<sup>196</sup> Inserted by the Fifth Amendment.

(2) If inquiry has to be made pursuant to sub-rule (1), the review committee shall notify the concerned party to make appearance, by specifying the period.

(3) The review committee shall keep records of the actions referred to in this Rule, and the concerned party may take copy thereof upon payment of the applicable charges.

108. Records of decisions on complaints: The concerned public entity shall maintain records of the decision made by it, review committee or other body with respect to the review and remedial measures taken with respect to such decision, and give information thereof to the Public Procurement Monitoring Office each year.<sup>197</sup>

## Chapter- 11

### Provisions Relating to Procurement Contract

109. Budget code to be mentioned: A public entity shall mention the budget code in the procurement contract.

110. Performance security to be furnished for conclusion of contract: (1) A bidder whose bid is accepted shall, while furnishing the performance security pursuant to sub-section (4) of Section 27 of the Act, furnish the performance security issued by a commercial bank in the format specified in the bidding documents within the time referred to in sub-section (3) of Section 27 of the Act

(2)<sup>198</sup> In submitting the performance security referred to in sub-rule (1), the amount referred to in sub-section (4) of Section 27 of the Act shall be set out.

(3) In the case of a procurement contract which does not set out the amount pursuant to sub-rule (2), such a performance security

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<sup>197</sup> Amended by the Fifth Amendment.

<sup>198</sup> Amended by the Fourth Amendment.



as stipulated in the bidding documents by the public entity shall be furnished.

(4) Unless otherwise provided for in the procurement contract, the validity period of the performance security referred to in sub-rule (1) shall exceed at least one month beyond the last period of time for the supply or delivery of the goods or the warranty period or the defects liability period of the construction work referred to in such a contract.

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

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

- (a) To hold, if necessary, a post-bid conference with the concerned suppliers, consultants, service providers or construction entrepreneurs,
- (b) To prepare a work plan and work schedule relating to contract implementation,
- (c) To make arrangement for opening a letter of credit within the time as per the conditions of the contract,
- (d) To form a contract implementation team, if necessary,
- (e) To monitor the progress of the implementation of the procurement contract in accordance with the procurement administration work plan and to inspect and test quality aspects,

- (f) To hand over the possession of the construction site to the construction entrepreneur and to make arrangements for access thereto, to manage procurement contract modification, variation order, price adjustment, suspension or termination of the procurement contract, work completion certification, payment etc,
- (g) If any dispute arises between the public entity and the supplier, consultant, service provider or construction entrepreneur, to have recourse to the mechanism for dispute settlement referred to in such a contract; where the contract is breached, to institute action as per the provisions relating to remedies referred to in the contract,
- (h) To manage the financial aspects of the contract implementation including the budget and cost accounting aspect,
- (h1)<sup>199</sup> To make provision requiring that the construction entrepreneur mandatorily post the details referred to in Schedule-8 on its notice board at the construction site,
- (i) To keep the documents relating to contract implementation orderly and systematically,
- (j) To approve the performed work, and
- (k) To submit periodic reports of contract implementation to one level higher authority.

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<sup>199</sup> Inserted by the Fourth Amendment.

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

112. Insurance to be made: (1) Except as otherwise provided in the procurement contract, a construction entrepreneur executing a construction work the price of which exceeds one million rupees shall insure the following matters:

(a) Full replacement costs of the construction work including construction materials, machine, equipment or plant to be used,

Explanation: For the purpose of this clause, "costs" includes the profit as well.

(b) Fifteen percent amount of the replacement costs referred to in clause (a) or additional amount as set out in the procurement contract, in order to cover professional charges, expenses to be incurred in the demolition, removal of any portion of the construction work, in the removal of debris or wasted materials, expenses for loss or damage occurred or incidental cost relating thereto,

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

- (d) Every loss and damage caused to any part or portion of the construction work by whatsoever reason other than that referred to in sub-rule (2), arising from the date of the handing over of the construction site till the date of issuance of the taking over certificate to the construction entrepreneur,
- (e) The following liabilities of the construction entrepreneur:
  - (1) Loss and damage caused in the course of discharging construction entrepreneur's obligation during the defects liability period, and
  - (2) Loss and damage caused during the defects liability period by any reason arisen prior to the commencement of the defects liability period.

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

- (a) War, enmity or invasion,
- (b) Rebellion, revolution, insurrection or military rule or civil war,
- (c) Ionizing radiation, radiation of nuclear fuel or nuclear waste originated from the combustion of nuclear fuel or explosion of radioactive toxic or explosion of other

hazardous elements or nuclear assembly or pollution of nuclear portion thereof, and

- (d) Pressure wave caused by an aircraft or aerial device that flies at a sonic or supersonic speed.

(3) Except as otherwise provided for in the procurement contract, the construction entrepreneur shall bear the claims for compensation for the following loss and damage caused from the execution of construction work or correction of any defect underlying therein or resulted from such work and the costs and charges incurred in the institution of action relating to such claims:

- (a) If any person suffers injury or dies or,
- (b) Loss and damage caused to any property except the construction work in the course of work operation and completion.

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

(4a)<sup>200</sup> In the case of procurement of a consultancy service, professional liability insurance of the total contract price covering all kinds of risks and payable unconditionally to the public entity shall be made by the consultant not later than thirty days of the conclusion of the contract.

(5) The conditions of insurance cannot be changed without written approval of the chief of the concerned public entity.

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<sup>200</sup> Inserted by the Fourth Amendment.

(6)<sup>201</sup> If approval given to modify the conditions of insurance contrary to the provisions set forth in this Rule and it results in any loss and damage, the employee involved in the giving of such approval and the chief of the public entity shall be responsible therefor.

113. Provisions on payment and settlement of advance: (1)<sup>202</sup> Advance payment may be made to a supplier, construction entrepreneur, service provider or consultant as provided for in the procurement contract, subject to Section 52A. of the Act.

(2)<sup>203</sup> The supplier, construction entrepreneur, service provider or consultant shall regularly provide monthly statements setting out the bank account to which amounts of advance paid pursuant to sub-rule (1) and purposes of expenses to the public entity.

(3)<sup>204</sup> In making payment of advance pursuant to sub-rule (1), such advance payment shall be made after obtaining from the supplier, construction entrepreneur, service provider or consultant a bank guarantee so issued by a commercial bank that it covers such an advance and is payable to that entity immediately upon a request made by such entity if he or she fails to perform the work in accordance with the contract and a counter-guarantee issued by a commercial bank within Nepal if such a bank guarantee is issued by a foreign bank.

(4) The validity period of the bank guarantee referred to in sub-rule (3) shall be more than at least one month beyond such period within which the settlement of advance has to be made as set forth in the procurement contract.

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<sup>201</sup> Inserted by the Sixth Amendment.

<sup>202</sup> Amended by the Fourth Amendment.

<sup>203</sup> Amended by the Fourth Amendment.

<sup>204</sup> Amended by the Fourth Amendment.

(5) The public entity shall deduct the advance paid pursuant to sub-rule (1) from every running bill or other bill, invoice as provided for in the procurement contract.

(6) If the advance payment referred to in this Rule cannot be settled due to failure of the supplier, construction entrepreneur or service provider<sup>205</sup> to perform the work under the procurement contract within the period set forth in such a contract, the public entity shall settle the advance by obtaining the bank guarantee amount referred to in sub-rule (3) from the concerned bank and also recover from him or her an interest at the rate of ten percent on such advance.

(7) The public entity shall, while importing goods through a letter of credit, settle the advance amount applied for opening the letter of credit, within thirty days of the receipt of goods by its office.

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

114. Pre-shipment inspection: (1) If it is required to make pre-shipment inspection of the goods to be procured from a foreign country, the public entity may have such inspection by appointing its agent in that country.

(2) In appointing an agent pursuant to sub-rule (1), appointment shall be made by following the procedures referred to in the Act and this Regulation.

115. Inspection and acceptance of goods: (1) The public entity shall inspect or examine, or cause to be inspected or examined, whether the

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<sup>205</sup> Amended by the Third Amendment.

supplied goods conform to the technical specifications and quality set out in the contract or not.

(2) The inspection or examination under sub-rule (1) shall be made or cause to be made pursuant to the prevailing law relating to inspection or examination of goods, if any, and, failing such law, in accordance with the procedure set forth in the procurement contract. If there is no even such procedure, it shall be made in accordance with such procedure as the public entity considers appropriate.

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

(4) The entity, authority or committee referred to in sub-rule (3) shall, while inspecting or examining the supplied goods, inspect or examine the goods by comparing with the sample and characteristics kept sealed, if any, by such public entity. In so examining those goods which are consistent with such sample and specialties shall be accepted and those which are not consistent with the sample and specialties shall be returned back to the supplier.

(5) In making inspection or examination pursuant to sub-rule (4), all goods or selected sample thereof may be inspected or examined, as required.

(6) Once the inspection or examination is made pursuant to sub-rules (4) and (5), the inspecting or examining entity, authority or committee shall prepare an inspection report containing the description of the accepted and the rejected goods. Such a report shall contain the name, percentage, specifications, the result of inspection



or examination of the examined goods, and the public entity shall keep such a report as the record of the procurement proceeding.

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

(8) Notwithstanding anything contained elsewhere in this Rule, the chief of the store section of the public entity may take over the goods the value of which does not exceed twenty-five thousand rupees after making necessary inspection or examination.

116. Auction of goods and recovery of amount: (1) If the supplier does not immediately take back the goods rejected pursuant to sub-rule (4) of Rule 115, the public entity shall give information in writing to the supplier to take back such goods within the period specified in the procurement contract and supply, in lieu thereof, the goods conforming to the specifications.

(2) If the public entity sends the information referred to in sub-rule (1) by post or courier service, it shall send a letter along with the return receipt.

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

(4) The amount that is not recovered also from the proceeds of the auction referred to in sub-rule (3) shall be recovered from the supplier as government dues according to the prevailing law.

117. Work acceptance report: (1) A public entity shall, in accepting a completed construction work, goods delivered or services rendered, prepare a report thereof.

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

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

(3) Once the report referred to in sub-rule (2) is prepared, the public entity shall, upon completing the necessary process, ask, without any delay, the concerned financial administration section or body for the payment.

(4)<sup>206</sup> Notwithstanding anything contained in this Rule, no structure built shall be accepted unless it is proved, upon conducting examination of appropriateness of the structure, that such structure is appropriate for operation in consonance with its objective.

118.<sup>207</sup> Procedures relating to variation: (1) If, in the course of implementation of a procurement contract, there arises a circumstance that could not be foreseen at the time of conclusion of the contract and

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<sup>206</sup> Inserted by the Sixth Amendment.

<sup>207</sup> Amended by the Fourth Amendment.

the public entity has to issue a variation order pursuant to Section 54 of the Act, the entity shall issue it upon completing the process referred to in this Regulation.

(2) If it is required to issue a variation order of a construction work pursuant to sub-rule (1), the order shall set out the following details and be certified by the chief of public entity who has authority to approve such variation pursuant to Section 54 of the Act:

- (a) Whether the drawing, design and specifications etc. of the construction work need to be changed or not, and where such change is to be made, whether the basic nature or scope of the construction work will be changed or not,
- (b) Technical justification and reason for the variation quantity of work,
- (c) If it affects the cost estimate pursuant to sub-section (2) of Section 5A. of the Act, percentage thereof,
- (d) Whether it is included in the approved budget and program or not.

(3) If it is required to issue a variation order of goods or other service pursuant to sub-rule (1), the order shall set out the following details and be certified by the chief of public entity who has authority to approve such a variation pursuant to Section 54 of the Act:

- (a) Whether the drawing, design and specifications etc. of the goods or other service need to be changed or not, and where such change is to be made, whether

the basic nature or scope of the goods or service will be changed or not,

- (b) Technical justification and reason for the variation quantity,
- (c) If it affects the cost estimate pursuant to subsection (2) of Section 5A. of the Act, percentage thereof,
- (d) Whether it is included in the approved budget and program or not.

(4) If it is required to issue a variation order of a consultancy service pursuant to sub-rule (1), the order shall set out the following details and be certified by the chief of public entity who has authority to approve such a variation pursuant to Section 54 of the Act:

- (a) Whether the scope, requirements, terms of reference, qualification, expertise etc. of the consultancy service need to be changed or not, and where such change is to be made, whether the basic nature or scope of such service or proposed expert or specialist will be changed or not,
- (b) Technical justification and reason for the variation quantity,
- (c) If it affects the cost estimate pursuant to subsection (2) of Section 5A. of the Act, percentage thereof, and
- (d) Whether it is included in the approved budget and program or not.

(5) In issuing a variation order pursuant to sub-rule (1), the public entity may issue such order only upon having necessary inquiry into the matter by a group of experts and on the basis of the recommendation by such a group.

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

(2) In providing for the price adjustment in the procurement contract, the following matters shall also be set out:

- (a) Circumstances in which price adjustment may be made,
- (b) The formula to determine it,  
  
In determining a formula pursuant to this clause, the formula shall be so determined as to adjust the price only of the labor, materials and equipment used in the work completed,
- (c) Maximum amount of price adjustment,
- (d) Component of price to be used in the formula under clause (b) (the price of labor, equipment, materials, fuel etc.),
- (e) The relevant price indices to be used to adjust each price component,
- (f) The manner of measuring the fluctuation of exchange rate between the currency to be used to mention price indices and the currency to be used for making payment,
- (g) Baseline date to be taken for the application of the price adjustment formula,

- (h) Interval of time for the application of the price adjustment formula, and
- (i) Minimum price escalation to be demonstrated by the application of the price adjustment formula and other conditions and restrictions to be fulfilled for the application of the provision relating to price adjustment.

(3) The maximum amount of price adjustment to be made pursuant to this Rule shall not generally be more than twenty five percent of the original contract price. The procurement contract may provide that if the amount of price adjustment exceeds that price, the public entity may terminate the procurement contract or negotiate with the construction entrepreneur, supplier, service provider or consultant in order to limit the contract price within the approved budget or may pursue other measures or that additional budget shall be arranged.

120. Period of procurement contract may be extended: (1) If the work under the procurement contract cannot be completed within the period of such a contract because of the occurrence of the circumstance set out in Section 56 of the Act, the concerned construction entrepreneur, supplier, service provider or consultant shall make an application, stating the reason therefor, to the concerned public entity for the extension of the period, at least twenty-one days<sup>208</sup> before the expiration of the term of such contract.

(1a)<sup>209</sup> Notwithstanding anything contained in sub-rule (1), in the case of a procurement contract which has been concluded and of which term has expired prior to the commencement of this sub-rule,

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<sup>208</sup> Amended by the Sixth Amendment.

<sup>209</sup> Inserted by the Seventh Amendment.

the concerned construction entrepreneur, supplier, service provider or consultant shall make an application for the extension of term, not later than twenty-one days of the commencement of this sub-rule.

(2) Upon receipt of an application pursuant to sub-rules (1) and (1a),<sup>210</sup> the concerned competent authority may make, or cause to be made, necessary inquiry into the matter. In so making or causing to be made inquiry, the authority shall have regard to the following matters:

- (a) Whether the concerned construction entrepreneur, supplier, service provider or consultant has made best efforts to complete the work under the procurement contract in time or not,
- (b) Whether the concerned public entity has provided the construction entrepreneur, supplier, service provider or consultant with the matters required to be provided under the contract or not, .....<sup>211</sup>
- (b1)<sup>212</sup> Whether the delay in work has been made because of the requirement of documents pursuant to Section 67A. of the Act or not,
- (c) Whether the delay in work has been made because of a *force majeure* event or not,

(3)<sup>213</sup> If, upon inquiry made pursuant to sub-rule (2), the reason referred to in the application appears to be reasonable, the authority accepting the bid may extend the term if it is required to extend the term not exceeding fifteen percent of the original period of the

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<sup>210</sup> Amended by the Seventh Amendment.

<sup>211</sup> Deleted by the Fourth Amendment.

<sup>212</sup> Inserted by the Fifth Amendment.

<sup>213</sup> Amended by the Sixth Amendment.

contract, and the head of department may extend the term if it is required to extend the term exceeding the said period but not exceeding twenty-five percent period of the term.

(4)<sup>214</sup> If there is a reasonable for extending the term of a period exceeding the period set forth in sub-rule (3), the secretary of the concerned Ministry or entity<sup>215</sup> may extend the term.

(5)<sup>216</sup> The decision on extension of the term referred to in sub-rules (3) and (4) shall be made within the period of the contract.

(6)<sup>217</sup> Notwithstanding anything contained in this Rule, no extension of term shall be so made as to exceed fifty percent of the original term of the contract.

<sup>218</sup> Provided that if, in the case of any procurement contract concluded prior to 6 June 2019 (23 Jesta 2076) and for the extension of the period of which an application has been made, it appears on the basis of, *inter alia*, the technical report and upon an analysis of the work progress and remaining work that the work under the contract can be completed if the period is extended, the special class or equivalent officer of the concerned Ministry or entity may so extend the period not exceeding one year that such extension does not result in any additional financial burden on the public entity or project. In the case of one who fails to complete the work under the contract even within the period so extended, the performance security and other security or guarantee, if any, furnished by such a person shall be forfeited and the loss and damage resulted from such failure to complete the work shall be recovered in accordance with the

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<sup>214</sup> Inserted by the Sixth Amendment.

<sup>215</sup> Amended by the Seventh Amendment.

<sup>216</sup> Inserted by the Sixth Amendment.

<sup>217</sup> Inserted by the Sixth Amendment.

<sup>218</sup> Amended by the Eighth Amendment.



prevailing law and such person shall be blacklisted and subject to action under the prevailing law.

(7)<sup>219</sup> If the term is not extended pursuant to sub-rules (3), (4) and (6),<sup>220</sup> the contract shall be terminated.

121. Liquidated damages: The following provisions may be made in the procurement contract in regard to the liquidated damages:

(a) If the work under the procurement contract could not be completed within the time specified in the contract due to the delay on the part of the supplier, consultant, service provider or construction entrepreneur, he or she shall pay to the public entity liquidated damages, generally of zero decimal zero five (0.05) percent of the contract price per day not exceeding ten percent of the contract price; however, he or she is not required to pay liquidated damages if the performance of work or delivery of goods is delayed due to the occurrence of a *force majeure* event or without any fault or negligence on his or her part, and

(b) The concerned construction entrepreneur, supplier, service provider or consultant shall not be released from the obligation of performing the work under the procurement contract even upon payment of the liquidated damages referred to in clause (a).

122. Matters to be set out in bills or invoices: (1) The construction entrepreneur, supplier, service provider or consultant shall set out at

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<sup>219</sup> Inserted by the Sixth Amendment.

<sup>220</sup> Inserted by the Seventh Amendment.

least the following matters in a running bill, any other bill or invoice to be presented by him or her for payment pursuant to this Rule:

- (a) Date of the bill or invoice,
- (b) Name, address of the supplier, construction entrepreneur, service provider or consultant,
- (c) Procurement contract,
- (d) Details of the goods or services supplied or measurement, size, quantity and price of the construction work completed,
- (e) Conditions of shipment and payment,
- (f) Necessary documents to be submitted along with the bill or invoice as per the procurement contract,
- (g) In the case of procurement of goods, the bill or invoice is to be accompanied by shipping or other required documents in the format prescribed by the public entity, in accordance with the instructions provided in the procurement order, letter of acceptance of bid or procurement contract, and
- (h) His or her contact address.

(2) Upon receipt of the bill or invoice pursuant to sub-rule (1), the public entity shall examine whether the bill or invoice conforms to the provisions referred to in the procurement contract, and if it fails to so conform, the entity shall forthwith give information thereof to the concerned supplier, construction entrepreneur, service provider or consultant.

123. Payment of bills or invoices: (1) The procurement contract may provide that in making payment of a running bill or any other bill or

invoice, the public entity may, as per the conditions of contract, make payment on any or all of the following bases:

- (a) On monthly basis,
- (b) On the basis of the actual work performed as technically measured and recorded in the measurement book,
- (c) If the procurement contract sets out the work performance indicator, upon achievement of such indicator, and if no such indicator is set out, on the basis of the work performed,
- (d) On the basis of the quantity of the work handed over or completed, and
- (e) Pursuant to sub-rule (1) of Rule 122 or on the basis of conditions of the letter of credit.

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

(3)<sup>221</sup> The concerned authority shall, not later than thirty (30) days, approve the running bill or any other bill, invoice and documents submitted pursuant to sub-rule (1), and the public entity shall make payment of such a bill or invoice as per the procurement contract within that period.

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

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<sup>221</sup> Amended by the Third Amendment.

<sup>222</sup>Provided that if the procurement contract, in view of any specific nature of procurement except a construction work,<sup>223</sup> provides that retention money is not required to be deducted, such an amount shall not be deducted.

(5) If the procurement contract provides that where prompt payment of the bill or invoice is made by the public entity, the supplier, construction entrepreneur, service provider or consultant shall provide discount of a certain amount or percentage of such payment, the public entity shall make such payment only after deducting such discount.

(6) The public entity may provide the following provisions in the procurement contract:

- (a) That if amount of payment requires to be corrected for the reason that anything written in any previous running bill or any other bill, invoice has been written erroneously or otherwise, the public entity may itself or at the request of the concerned supplier, construction entrepreneur, service provider or consultant correct or alter such amount of payment in the subsequent running bills or any other bills or invoices, and
- (b) That if the supplier, construction entrepreneur, service provider or consultant does not perform the work in accordance with the conditions of the procurement contract, the public entity may deny or deduct the payment under a running bill or any other bill, invoice.

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<sup>222</sup> Inserted by the Third Amendm

<sup>223</sup> Inserted by the Sixth Amendment.

(7) The public entity shall make the payment referred to in sub-rule (1) within the period specified in the procurement contract. If it does not make payment within that period, it shall pay interest thereon as per the procurement contract.

(8) While making payment of more than twenty-five thousand rupees to the supplier, construction entrepreneur, service provider or consultant .....,<sup>224</sup> it shall be made through the account payee cheque.

124. Final payment: (1) Once the public entity has accepted the work completed as per the procurement contract, the final payment shall be made to the supplier, construction entrepreneur, service provider or consultant as per the conditions of the contract.

(2) In making final payment pursuant to sub-rule (1), in the case of a construction work, the performance security and fifty percent amount of the retention money deducted pursuant to sub-rule (4) of Rule 123 shall be returned after the expiry of the defects liability period. The remaining fifty percent amount of the retention money shall be paid after the concerned supplier, construction entrepreneur or service provider has submitted documentary evidence showing the submission by him or her of tax returns to the concerned Inland Revenue Office.<sup>225</sup>

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

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<sup>224</sup> Deleted by the Third Amendment.

<sup>225</sup> Amended by the Third Amendment.

(2a)<sup>226</sup> Notwithstanding anything contained elsewhere in this Rule, payment of retention money shall, in the case of a joint venture, be made after the submission of document showing the submission of tax returns in the Inland Revenue Office.

(3) The procurement contract may provide that the construction entrepreneur, supplier, service provider or consultant shall, for getting the final payment, not make any claim other than the following with the public entity:

- (a) Special claim,
- (b) The liability of the construction entrepreneur, supplier, service provider or consultant towards a third party that has arisen or may arise in carrying out the procurement, and
- (c) Claim for the reimbursement relating to the liability borne by the construction entrepreneur, supplier, service provider or consultant in respect of a third party while performing the procurement contract, but which has not been claimed with the public entity and which has not been informed in time.

125. Work completion report to be submitted: (1) The concerned construction entrepreneur shall submit as-built drawing to the public entity within thirty days of the completion of the construction work as per the procurement contract.

(1a)<sup>227</sup> After the completion of the construction work as per the procurement contract, if any defect is seen prior to the expiry of the

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<sup>226</sup> Inserted by the Third Amendment.

<sup>227</sup> Inserted by the Sixth Amendment.

defects liability period of the construction work as per the contract, the public entity shall ascertain such defect and make claim in time. In making such a claim, the concerned public entity shall prepare records showing work progress of each month and have the records certified by the concerned authority.

(1b)<sup>228</sup> The public entity shall give information of the records referred to in sub-rule (1a) to the Public Procurement Monitoring Office, and such records shall also be made public through the e-procurement system, website of the Public Procurement Monitoring Office or other appropriate means.

(2) The chief of public entity shall, after expiry of the defects liability period of a completed construction work, cause such construction work to be examined by a technical employee as to whether it conforms to the approved drawing, design or specifications and a work completion report to be prepared.

(2a)<sup>229</sup> In preparing the work completion certificate pursuant to sub-rule (2), the records referred to in sub-rule (1a) shall also be attached therewith.

(3) The technical employee making examination pursuant to sub-rule (2) shall examine whether the completed work has been completed as per the approved drawing, design or specifications or not and submit a report thereof to the public entity.

(4) The concerned public entity shall submit the as-built drawing referred to in sub-rule (1) and the work completion report submitted pursuant to sub-rule (3) to the bid accepting authority, and in cases where the chief of the public entity and the bid accepting

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<sup>228</sup> Inserted by the Sixth Amendment.

<sup>229</sup> Inserted by the Sixth Amendment.

authority are the same person, to one level higher authority to him or her.

(5) If the authority referred to in sub-rule (4) considers necessary, he or she himself or herself may examine the matter referred to in the work completion report, or cause the same to be examined by any technical employee or a team of technical employees.

(6) If, in making examination pursuant to sub-rule (5), the completed construction work is found to conform to the approved drawing, design or specifications, such an authority shall accept such construction work.

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

(8) Notwithstanding anything contained elsewhere in this Rule, where the work completion report submitted pursuant to sub-rule (3) is in respect of a construction work the value of which does not exceed one million rupees, the chief of the concerned public entity may examine it himself or herself, if he or she is a technical employee, and if he or she is not a technical employee, he or she may cause it to be examined by another technical employee. In so examining or causing to be examined, if such a construction work is found to have been constructed as per the approved drawing, design or specifications, he or she shall approve the work completion report, and give information of the work completion to one level higher authority.



(9) Once the work completion report is accepted pursuant to this Rule, the public entity shall issue the work completion certificate to the concerned construction entrepreneur.

126. Reward may be given to those who complete work prior to time: (1) It may be provided that the public entity may reward the construction entrepreneur who completes the work prior to the period specified in the procurement contract.

(2) The amount of reward referred to in sub-rule (1) shall be determined on the basis of sub-rule (3) for such a number of days by which the work was completed before the period specified in the procurement contract.

(3) While determining the rate referred to in sub-rule (2), the rate shall be so determined as equivalent to the same amount that the construction entrepreneur has to pay as liquidate damages to the public entity on daily basis for failure to complete the work within the period specified in the procurement contract.

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

127. Payment to be made in case of termination of procurement contract on ground of convenience: (1) Where the public entity has terminated the contract on the ground of convenience for public interest pursuant to sub-section (4) of Section 59 of the Act, it shall pay the following amount to the concerned supplier, construction entrepreneur, consultant or service provider. In making such payment, payment shall be made only after deducting the advance amount, if any, paid to him or her:

- (a) Payment of the amount, if any, due and payable for the work, supply or service that has been completed acceptably,
- (b) The price of the goods manufactured for the purpose of the public entity as per the procurement contract, construction materials brought onto the construction site,
- (c) A reasonable cost to be incurred for the removal of equipment from the construction site,
- (d) Repatriation expense for expatriate employees employed only in the construction work, and
- (e) If necessary, cost for safety and protection of the construction work.

(2) Notwithstanding anything contained in sub-rule (1), the public entity shall accept the goods prepared and to be prepared for shipment within seven days of the receipt by the supplier of the notice given by it for termination of the procurement contract on the ground of convenience subject to the conditions and price of such a contract.

(3) In respect of the goods other than those referred to in sub-rule (2), the public entity may do the following:

- (a) To get any portion of the goods to be completed and obtain the same on the conditions and at the price set out in the procurement contract, or
- (b) To cancel the supply order of remaining goods, and make payment of an amount agreed by mutual consent to the supplier for the goods or services partially prepared by him or her and materials or spare parts purchased by him or her prior to termination of contract.

128. Remedies to be available in event of breach of procurement contract:

(1) The procurement contract shall contain a provision of remedy to be available to the public entity in the event of breach of the procurement contract by the supplier, construction entrepreneur, consultant or service provider.

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

- (a) To reject a defective work,
- (b) To remove the defective goods at one and to cause the concerned supplier, construction entrepreneur, consultant or service provider to replace them,
- (c) To obtain liquidated damages for the failure to complete the work in time,
- (d) To terminate the contract and to have such work completed at the cost of the supplier, construction entrepreneur, service provider or consultant who has not performed the work under the contract,
- (e) To recover consequential damages,
- (f) Other remedies to be available under the prevailing law or the procurement contract.

## Chpater-12

### Provisions Relating to Dispute Resolution

129.<sup>230</sup> Dispute resolution: (1) The procurement contract shall set forth, *inter alia*, the matters of dispute to be resolved through mutual consent, process for making application for the settlement of a dispute,

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<sup>230</sup> Amended by the Fourth Amendment.

meeting to be held for mutual consent and process of making decisions, and such a dispute shall be settled accordingly.

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135.<sup>236</sup> Resolution of dispute by arbitration: If any dispute that has arisen between the public entity and the construction entrepreneur, consultant or service provider in relation to the implementation of the procurement contract cannot be resolved through the process referred to in Rule 129, action shall be initiated for the resolution of such a dispute by arbitration in accordance with the prevailing law.

## Chapter-13

### Provisions Relating to Transparency and Conduct

136. Documents relating to procurement proceeding to be provided: If the entity competent to carry out audit, monitoring, investigation or inspection under the prevailing law asks for any document relating to procurement proceeding, the concerned public entity shall provide such documents within a reasonable time.

137. Public notice of procurement contract: (1)<sup>237</sup>The concerned public entity shall, not later than three days of the conclusion of the

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<sup>231</sup> Repealed by the Fourth Amendment.

<sup>232</sup> Repealed by the Fourth Amendment.

<sup>233</sup> Repealed by the Fourth Amendment.

<sup>234</sup> Repealed by the Fourth Amendment.

<sup>235</sup> Repealed by the Fourth Amendment.

<sup>236</sup> Amended by the Fourth Amendment.

<sup>237</sup> Amended by the Sixth Amendment.

procurement contract, put in the electronic procurement system of the Public Procurement Monitoring Office a notice containing the name, address of the contracting party, work under the contract, objective, amount, period and other necessary details with respect to procurement with the following cost estimate:

- (a) Other service and goods exceeding two million rupees,
- (b) Consultancy service exceeding two million rupees,
- (c) Public construction work exceeding twenty million rupees.

(2)<sup>238</sup> The concerned public entity shall make arrangements for putting the description referred to in sub-rule (1) on its website, if any, and also affixing the same on the notice-board of the District Coordination Committee, District Administration Office, Province Comptroller General Office, District Treasury Controller Office and also of the concerned Local Level.

(2a)<sup>239</sup> The concerned public entity shall so display the notice referred to in sub-rule (2) on a notice board at the construction site in the case of a construction work that it is conspicuous to all.

138. Consultant to avoid conflict of interest: (1) The consultant shall provide professional, objective and impartial consultancy service in a manner to serve the best interests of the public entity taking consultancy service.

(2) The consultant shall, while providing the consultancy service, not so serve as to conflict interest with his or her other present or future work.

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<sup>238</sup> Amended by the Sixth Amendment.

<sup>239</sup> Inserted by the Sixth Amendment.

(3) If the nature of the work relating to consultancy service is of the type of conflicting interest with his or her past or present obligation towards any other client or of preventing him or her from completing the work as to serve the best interests of the concerned public entity, he or she may not be appointed as a consultant.

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

Provided that this provision shall not apply to a turn key contract or design and construction contract.

(4) No firm supplying goods or executing construction works for any project and other body or person associated with it may provide consultancy service for the same project, and no consultancy firm appointed for the preparation or implementation of a project and any other body or person association with it may supply goods for such a project.

139. Information as to inducement, corruption or fraudulent practice: If any official of the public entity is offered any inducement by a bidder or proponent or has the knowledge of the commission of any corrupt or fraudulent practice, he or she shall give information thereof to the chief of such an entity or the Public Procurement Monitoring Office.
140. Power to make supervision and examination: The superior office may from time to time make supervision and examination as whether the official involved in the procurement proceeding has complied with the procedures referred to in the Act or this Regulation.

141. Blacklisting: (1) If it is required to blacklist any bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company pursuant to Section 63 of the Act, the public entity shall send a request in writing, along with the relevant details and the reason, as well as the relevant documents, to the Public Procurement Monitoring Office.

(2)<sup>240</sup> Upon receipt of the request pursuant to sub-rule (1), if, in examining such details, reasons and documents, it appears that such a bidder, proponent, service provider, consultant, supplier, construction entrepreneur or other person, firm, organization or company has to be immediately prevented from participating in public procurement, the Public Procurement Monitoring Office may so prevent from participating in new procurement proceeding until the process for blacklisting referred to in this Rule is completed.

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

(4) Upon receipt of the request pursuant to sub-rule (1), except in cases where prevention is to be made immediately pursuant to sub-rule (2),<sup>241</sup> the Public Procurement Monitoring Office shall send a notice in writing of thirty days, accompanied by a copy of the statement, reason and document so received to the office or house of the concerned bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization

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<sup>240</sup> Amended by the Sixth Amendment.

<sup>241</sup> Amended by the Sixth Amendment.

or company, requiring him or her to submit the grounds and clarification, if any, for not blacklist him or her.

(4a)<sup>242</sup> If he or she is not found upon sending the written notice referred to in sub-rule (4) to his or her office or house, .....<sup>243</sup> a public notice to that effect shall be published in a newspaper of national circulation, and such a notice shall be deemed to have been given if the notice is so published.

(5) Upon receipt of the notice pursuant to sub-rule (4), the concerned bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company shall submit to the Public Procurement Monitoring Office, clarification, together with relevant documents, setting out the reason and ground, if any, for not blacklisting.

(6) The concerned bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company may, in submitting explanation pursuant to sub-rule (5), request the Public Procurement Monitoring Office that joint hearing be conducted in the presence of him or her and the concerned public entity.

(7) Where a request is made pursuant to sub-rule (6) for hearing and the Public Procurement Monitoring Office considers it appropriate to conduct such hearing, it shall give a written notice as to the time and place of such hearing to the concerned public entity and the bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company.

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<sup>242</sup> Inserted by the Fourth Amendment.

<sup>243</sup> Deleted by the Sixth Amendment.



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

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

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

(10) The Public Procurement Monitoring Office shall, in consideration of, inter alia, the hearing, if any, conducted pursuant to sub-rule (9), and failing such hearing, on the basis of the documents submitted by the public entity and the concerned bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company, make a decision to or not to blacklist him or her.

(11) Where the Public Procurement Monitoring Office, while making a decision pursuant to sub-rule (10), decides to blacklist him or her, it shall give information thereof in writing to the concerned public entity and the bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company and publish it in a newspaper of national circulation.

(12) Where the Public Procurement Monitoring Office, in making a decision pursuant to sub-rule (11), decides not to blacklist, the prevention, if any, made pursuant to sub-rule (2) shall, *ipso facto*, be removed and the Office shall publicly publish the matter to that effect.

(13) Where a decision is made pursuant to sub-rule (10) to blacklist a bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company who has been prevented pursuant to sub-rule (2), the time of blacklisting shall be computed from the date on which such a prevention has been made.

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

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

142. To release from blacklist: (1) The Public Procurement Monitoring Office shall prepare criteria for releasing from blacklist the bidders, proponents, consultants, service providers, suppliers, construction entrepreneurs or other persons, firms, organizations or companies who are blacklisted pursuant to Section 63 of the Act.

(2) If, pursuant to the criteria referred to in sub-rule (1), any blacklisted bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company has to be released from blacklist, the Public Procurement Monitoring Office shall release him or her pursuant to the criteria.

143. Records to be kept: The Public Procurement Monitoring Office shall keep in its office and web-site the updated records of preventing bidders, proponents, consultants, service providers, suppliers,

construction entrepreneurs or other persons, firms, organizations or companies from participating in the procurement proceeding, *ipso facto* release from such prevention, blacklisting and releasing from the blacklist.

## Chapter-14

### Provisions Relating to Monitoring of Procurement Activities

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

- (a) To monitor the public procurement activities by making observation visit of procurement proceedings of the concerned public entities or by asking reports and information relating to procurement activities from public entities,
- (b) To give direction to public entities in respect of the information, data to be incorporated in the report relating to procurement activities and the period of submitting such a report,
- (c) To operate such kinds of programs that assist public entities in conducting procurement activities and bidders, proponents, sealed quotation bidders, suppliers in participating in procurement proceeding,
- (d) To simplify and facilitate procurement proceeding,
- (e) To maintain records of the performance of work relating to contract implementation by establishing a central data bank,

- (f) To develop the methods of disseminating information relating to public procurement,
- (g) To conduct study, research on policy, law, experience, practice relating to procurement proceeding of other countries, in order to improve the public procurement system,
- (h) To prepare a plan for management of employees having capability or expertise and professional efficiency in procurement in public entities,
- (i) To ascertain whether the persons to be appointed to the procurement units of public entities, evaluation committees and the Public Procurement Monitoring Office have acquired necessary professional efficiency as per the plan referred to in clause (h),
- (j) To prepare the description of the functions, duties, and powers and responsibilities of the chief of public entity, employees of the procurement unit of such entity and member of the evaluation committee,
- (j1)<sup>244</sup> To monitor implementation of decisions of the review committee and submit a report thereof to the Office of the Prime Minister and Council of Ministers,
- (k) To render assistance to conduct training programs required to enhance the professional skill of the

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<sup>244</sup> Inserted by the Fourth Amendment.

employee engaged in the procurement activities of the Public entities, and

- (1) To conduct training program required for enhancing professional expertise of employees.

#### Chapter-15

#### Miscellaneous

145. Provision concerning procurement in special circumstance: (1) A public entity shall, in making procurement pursuant to Section 66 of the Act, prepare written details of the procurement requirements, quality, quantity, conditions and period for the completion of work and shall procure only the quantity and for the period required to face the emerging circumstances by having competition made as far as practicable or by concluding negotiations for fair and proper price after receiving written quotation or proposal from a single construction entrepreneur, supplier, consultant or service provider.

(2) Where procurement has been made pursuant to sub-rule (1), the documents setting out the following matters shall be kept in the records referred to in Rule 149:

- (a) Description relating to special circumstances,
- (b) The crisis that may occur in public security, interest and community health, if procurement is not made immediately,
- (c) The reason and ground why the other methods of procurement cannot be applied.

(3) Where a Public entity has made a procurement exceeding one million Rupees pursuant to sub-rule (1) it shall publish a public notice of the details of the procurement so

made and send information thereof to the Public Procurement Monitoring Office.

(3a) In cases where the office referred to in sub-rule (1) has not been established, the central level public entity referred to in sub-clause (1) of clause (b) of Section 2 of the Act may procure essential pharmaceuticals and such *Masalanda* or stationery required for the operation of the office through open bidding. Model of the bidding documents relating to such procurement proceeding and framework contract shall be as approved by the Public Procurement Monitoring Office.

145A.<sup>245</sup> Establishment of government procurement service office: (1) Notwithstanding anything contained elsewhere in this Regulation, the Government of Nepal may establish a government procurement service office at the central level in order to assist the public entities referred to in sub-clause (1) of clause (b) of Section 2 of the Act in selecting suppliers and procuring goods.

(2) The public entities referred to in sub-clause (1) of clause (b) of Section 2 of the Act shall, in understanding with the government procurement service office established pursuant to sub-rule (1), procure such goods as specified by the Government of Nepal by a notification in the Nepal Gazette from such suppliers as selected by that office.

(3) The functions of the office established pursuant to sub-rule (1) shall be as follows:

(a) To collect procurement requisitions along with description relating to the type, quality, quantity of

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<sup>245</sup> Inserted by the Third Amendment.

the goods, time when goods will be required and budget provision from the public entities referred to in sub-clause (1) of clause (b) of Section 2 of the Act and make understandings with such entities,

- (b) To analyse procurement requisitions and prepare specification of goods, cost estimate and bidding documents,
- (c) To invite bids and select suppliers,
- (d) To give notice to the concerned public entities to make procurement in accordance with the procurement terms concluded with the suppliers.

(4) The Public Procurement Monitoring Office shall issue separate procurement guidelines for the operation of government procurement service.

(5) Notwithstanding anything contained elsewhere in this Rule, if the market price is cheaper than the price determined by the office established pursuant to sub-rule (1), nothing contained in this Rule shall bar procurement from the market.

145B.<sup>246</sup> .....<sup>247</sup>

146.<sup>248</sup> Use of electronic communication means: (1) The Public Procurement Monitoring Office shall, for the purpose of Section 69 of the Act, establish, operate and manage the electronic procurement system in a manner that it has only one portal.

(2) .....<sup>249</sup>

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<sup>246</sup> Inserted by the Sixth Amendment.

<sup>247</sup> Repealed by the Seventh Amendment.

<sup>248</sup> Amended by the Fourth Amendment.

<sup>249</sup> Deleted by the Sixth Amendment.

(3) A public entity shall conduct procurement proceeding upon being registered in the electronic procurement system established pursuant to sub-rule (1).

(4) The Public Procurement Monitoring Office shall, from time to time, issue procedures, system of procurement through the electronic procurement system and its inherent principles.

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

(a)	The chief of the public entity or a senior officer designated by him or her (a technical employee as far as possible)	-Chairperson
(b)	Chief of the financial administration section of the concerned public entity	-Member
(c)	Technical expert concerned with the subject matter (officer level as far as possible)	-Member
(d)	Law officer of the public entity, where such a position exists in that public entity	-Member

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

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

(4) If the committee referred to in sub-rule (1) requires the assistance of a consultant, the public entity may, subject to the



approved program and budget, appoint a consultant by application of the procedure set forth in the Act and this Regulation.

(5) The committee referred to in sub-rule (1) may form a sub-committee to assist it in evaluating quotations, bids or proposals.

(6) The secretary of the evaluation committee shall prepare minutes of the meeting of the committee and keep a file containing all matters discussed in the meeting.

(7) The evaluation committee may determine its procedures on its own.

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

148. Rate fixation committee: (1)<sup>250</sup> There shall be a rate fixation committee consisting of the following members in each district in order to fix the rate of construction materials and transportation, rent of machines and equipment and the wages of workers to be applicable to the whole or any part of the district:

(a)	Chief District Officer	-Chairperson
(b)	One member of the District Coordination Committee designated by the District Coordination Committee	-Member
(c)	District Coordination Officer	-Member
(d)	Chief, Treasury Controller Office	-Member
(e)	Representative, Nepal Federation of Construction Entrepreneurs	-Member

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<sup>250</sup> Amended by the Sixth Amendment.

(f)	Representative, Chamber of Commerce and Industry	-Member
(g)	Chief, District Technical Office	-Member-secretary

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

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

(2a)<sup>251</sup> The rate shall be fixed pursuant to this Rule on the basis of, inter alia, the rate fixed by the rate fixation committee of the district adjoining its boundary with that district.

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

(4) The concerned Chief District Officer shall send a notice of the rate fixed pursuant to this Rule to all offices in his or her district and give an intimation thereof to the Public Procurement Monitoring Office, Auditor General's Office and concerned Treasury Controller Office.

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

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<sup>251</sup> Inserted by the Sixth Amendment.

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

(2) The public entity shall keep, *inter alia*, the following documents in the file referred to in sub-rule (1):

- (a) Index of the contract file,
- (b) Notice on the invitation to bid or prequalification,
- (c) Documents relating to invitation to bid, pre-qualification or proposal,
- (d) Request made by the bidder for clarification with respect to the bidding documents, prequalification documents or proposal, and the answers sent by the public entity in respect thereof to all participating bidders or proponents,
- (e) Minute of the pre-bidding conference held with the bidders or consultants and the evidence that the public entity has sent the copy of such minute to all participating bidders or proponents,
- (f) Minute of the opening of bids,
- (g) Original copy of the bid,
- (h) Questions asked to the bidders or proponents by the bid evaluation committee in the course of bid evaluation and the answers sent by the concerned bidders or proponents to the public entity,
- (i) Report of evaluation of the qualifications of the pre-qualified bidders,
- (j) List of the pre-qualified bidders,
- (k) If negotiation was held, minutes thereof,

- (l) Copy of the preliminary notice of acceptance sent to the successful bidder,
- (m) Copy of the notice sent to the unsuccessful bidders,
- (n) All notices published in respect of procurement,
- (o) Application made to the chief of public entity and the review committee, and the opinion, comment and information submitted by the concerned public entity in respect thereof and decision made on it,
- (p) Procurement contract,
- (q) Documents relating to implementation of the procurement contract such as progress report, invoice and inspection report,
- (r) In the event of amendment to the procurement contract, document relating thereto,
- (s) Documents concerning receipt, inspection and acceptance of goods,
- (t) All correspondences made with the construction entrepreneur, supplier, consultant or service provider,
- (u) Request made by the sub-contractor and answer given by the public entity in respect thereof,
- (v) Evaluation report and all documents relating thereto, and
- (w) Documents relating to actions taken to resolve dispute relating to the procurement contract.

(3) The records referred to sub-rule (1) shall be kept safely for up to at least seven years of the completion of the procurement proceeding.

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

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

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

(7)<sup>252</sup> After the implementation of the contract of procurement to be made through bidding, the public entity shall certify short description on the completion of that work and make it public by putting it on the website of the concerned public entity or Public Procurement Monitoring Office.

150. Delegation of authority: (1) No power conferred by the Act and this Regulation to amend the cost estimate, amend the procurement contract, extend the term of the procurement contract and issue a variation order may be delegated.

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

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

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<sup>252</sup> Inserted by the Fourth Amendment.

(4) The authority delegating power pursuant to sub-rule (2) shall obtain necessary information on the work carried out as per the power delegated by him or her from the concerned authority from time to time.

151. To specify format: The Government of Nepal may, on recommendation of the Public Procurement Monitoring Office, and by a notification published in the Nepal Gazette, specify a format of any matter referred to in this Regulation including that of the cost estimate of goods, cost estimate of consultancy service, cost estimate of other service.
152. Change or alteration in schedules: The Government of Nepal may, by a notification published in the Nepal Gazette, make necessary change or alteration in schedules.
153. Repeal and saving: (1) Chapters 7, 8, 13 and 17 of the Financial Administration Regulation, 1999 are hereby repealed.

(2) Any acts and actions performed under the provisions repealed pursuant to sub-rule (1) shall be deemed to have been performed under this Regulation.

<sup>253</sup>Schedule-1

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

Method of finding out cost estimate of construction work

(a) Method of finding out the rate of item:

Labor cost ..... (a)

Cost of construction materials ..... (b)

Machine, equipment fare (including oil and lubricants) ..... (c)

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<sup>253</sup> Amended by the Sixth Amendment.

Rate of item (a + b+ c) = (d)

Bidder's overhead (15 percent of d) =0.15 (d)

Total rate (e) = 1.15 (d)

(b) Method of finding out the cost estimate:

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

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

Work chart staff cost- by 2.5 percent of (w)=0.025 x (w)

Other small costs- by 2.5 percent of (w)=0.025 x (w)

Total cost estimate figure (p) =1.05 x (w)

Note:

- (a) In comparing the bid figure, figure (w) shall be taken as the cost estimate figure.
- (b) After the cost estimate has been prepared as stated above, cost estimate shall be fixed by adding, according to the need, ten percent for price adjustment contingency and ten percent for physical contingency to the total cost of project/program.
- (c) Procedure on work charge, staff expense, other petty expense and physical consultancy cost has to be approved by the concerned Ministry or central entity.

- (d) For the purpose of approval of the cost estimate of a project/program and selection of the procurement method, the total cost estimate shall be found out by adding value-added tax and various contingencies to the addition (a).



Schedule-1A.<sup>254</sup>

(Relating to sub-rule (4) of Rule 12)

Format of cost estimate of consultancy service

Heading of service expenses (a)	Unit (b)	Rate of per unit of heading (c)	Total quantity of heading (d)	Total cost of heading (e)
<u>Heading (1)</u> Remuneration of human resource (e1)				(e1)= (c x d)
<u>Heading (2)</u> Reimbursable expenses including visit, accommodation or equipment or service (e2)				e2= (c x d)
<u>Heading (3)</u> Other miscellaneous expenses including training, symposium, document printing or translation (e3)				e3= (c x d)
Total cost estimate (f)				(f)= (e1+e2+e3)
Office management expense (four percent) (g)				(g)=(f x 0.05)

Note:

- (a) The total estimate figure for the comparison of bids shall be (f).

<sup>254</sup> Amended by the Sixth Amendment.

- (b) Detail description of the remuneration expense (e1), reimbursable expense (e2) and other miscellaneous expense (e3) shall be prepared and presented along this cost estimate form.
- (c) After preparing the cost estimate as above, the total cost estimate shall be found out by adding amounts by ten percent for price adjustment contingency, by ten percent for various taxes and value-added tax to the total cost estimate, as per the need, for budget management.
- (d) For the purposes of approving the cost estimate of the consultancy service and selecting the procurement method, the total cost estimate shall be the estimate to be found out by adding value added tax and various contingencies and office management expense to addition (f).
- (e) Procedure on making office management expense has to be approved by the concerned or central entity and expense made accordingly.

Schedule-2

(Relating to clause (f)<sup>255</sup> of sub-rule (3) of Rule 16)

Government of Nepal

.....Ministry

.....Office

Ledger of letter of credit

Ledger page No.

S N	Name of the firm for which letter of credit to be open ed	Num ber and date of lette r of credi t	Amo unt	Subj ect	Peri od	Nam e and addr ess of the ban k whe re lette r of cred it is ope ned	Dat e of clos ing	Date of exten sion of term	Dat e wh en clos ed	Adva nce acco unt page No.	Origin of goods		Rem arks
											Cou ntry	Date of produ ction and	

<sup>255</sup> Amended by the Fourth Amendment.

												model	

Entry made by: Name and surname:

Name and surname:

Signature:

Date:

Certified by:

Name and surname:

Signature:

Date:

Schedule-2A.<sup>256</sup>

(Relating to sub-rule (1) of Rule 18)

Format of application to be made for being registered in the standing list

Date:

To the chief of office,

.....office,

.....

Subject: Application for being registration in the standing list.

I hereby submit this application for being registering with the standing list, attaching herewith the documents establishing the following details, pursuant to sub-rule (1) of Rule 18 of the Public Procurement Regulation, 2007 (2064).

1. Details of the person, organization, supplier, construction entrepreneur, consultant or service provider making application for the standing list	
(a) Name:	(b) Address
(c) Address for correspondence	(d) Name of main person:
(e) Telephone No.	(f) Mobile No.
2. Please, attach the following certificate for being registered in the standing list	
(a) Whether you have the association or firm registration certificate: Yes. No.	

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<sup>256</sup> Inserted by the Fourth Amendment.

<p>(b) Whether it is renewed: Yes. No.</p> <p>(c) Whether you have the value added tax or permanent account registration certificate: Yes. No.</p> <p>(d) Whether you have the tax clearance certificate: Yes. No.</p> <p>(e) Whether you have a copy of the license, if any, required for the procurement for which have applied for being registered in the standing list: Yes. No.</p>			
<p>3. Description of nature of procurement to be made by the public entity for which the applicant wishes to be registered:</p>			
<p>(a) Supply of goods (also mention nature of goods)</p>		<p>(b) Construction work</p>	
<p>(c) Consultancy service (also mention the nature of consultancy service)</p>		<p>(d) Other service (mention the nature of other service)</p>	
<p>Date when application made:</p> <p>Fiscal year:</p>	<p>Seal of the firm:</p>		<p>Applicant's:</p> <p>Name:</p> <p>Signature:</p>

Schedule-2B.<sup>257</sup>

(Relating to sub-rule (2) of Rule 18)

Format of evidence of being registered in the standing list

Government of Nepal

.....Ministry

.....Department

.....office,

.....

Evidence of being registered in the standing list.

Certificate No.:

List registration No.:

Whereas, an application has been received from ..... by this office on..... (date) for being registered in the standing list for the purpose of executing or providing construction work/service/goods for fiscal year..... in the governmental offices situated in this district;

Now, therefore, this evidence is hereby provided upon registering him or her in the standing list.

Registering authority's:

Name:

Post:

Date:

Signature:

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<sup>257</sup> Inserted by the Fourth Amendment.

Schedule-2C.<sup>258</sup>

(Relating to sub-rule (3) of Rule 18)

Format of records register of the standing list

Government of Nepal

.....Ministry

.....Department

.....office,

.....

Register of records of the standing list.

SN	Registration No.	Date of registration	Description of person/firm				Description of work (construction, goods, consultancy service, NGO, other service)	Nature of goods/service	Remarks
			Name	Address	Contact Person	Contact No.			

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<sup>258</sup> Inserted by the Fourth Amendment.



### Schedule-3

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

#### Procurement contract of goods or other service

In procuring goods or other service, procurement may be made by concluding any of the following contracts:

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

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

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

- (c) Multi-year contract: The multi-year contract may be concluded in the following circumstances:
  - (a) If the public entity obtains substantial benefit in procuring by making multi-year contract rather than an annual procurement contract,

- (b) If the quantity of procurement will not be substantially altered during the procurement contract period,
  - (c) If the design of the goods to be procured will not be changed during the procurement contract period, and
  - (d) If the technical risk relating to the supply of goods is not higher.
- (d) Design, supply and installation contract: The design, supply and installation contract may be concluded for making arrangement for designing goods of high or complex technology such as large power plant or pumping station, supplying to construction site, installing, testing, operating and providing training, according to the need, to the employees of the concerned public entity to operate such goods. Such a contract may also be concluded to carry out any two works out of the design, supply and installation work.
- (e) Turn key contract: The turn key contract may be concluded for making arrangement for completing the work of design, supply and installation of an industrial plant of high technology such as fertilizer production plant, milk processing as provided for in the procurement contract by mentioning the performance capacity of such a plant and transfer the same to the public entity Note: The contracts referred to in clauses (a), (b), (d) and (e) may also be multi-year contract.
- (f)<sup>259</sup> Design, supply, installation and maintenance contract: The design, supply, installation and maintenance contract may be concluding for designing goods with high or complex technology such as a big boiler, big power plant, pumping station, turbine, ropeway,

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<sup>259</sup> Inserted by the Fourth Amendment.

railway, cable car, assembly line and industrial plant, supplying them to the construction site and installing them, conducting testing, giving training, as required, to the employees of the concerned public entity for the operation of such goods and also maintaining such structure.

## Schedule-4

(Relating to Rule 22)

### Procurement contract of construction work

A public entity may, in order to carry out a construction work, conclude any one of the following contracts:

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

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

- (b) Lump sum contract: A lump sum contract may be concluded to carry out a construction work which is difficult to measure such as installation of underground water pipeline or a construction work that can be measured such as structure of a bridge. This contract shall be so concluded that all risks and liabilities relating to the construction work remain with the construction entrepreneur.

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

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

- (b) The paid amount of the price of the material used for maintenance, subject to the limitation of the amount referred to in the procurement contract.
- (e) Design and build contract: The design and build contract may be concluded to have a design and construction of a construction work to be executed by the same construction entrepreneur. The public entity shall start the work under this contract only after causing the design of construction work to be examined and approved by a technician or a team of technicians. The technician or team of technicians who so examines the design shall examine and approve such design, drawing and cost estimate by following the procedure set forth in this Regulation for examination and approval.
- (f) Management contract: The management contract may be concluded to have a construction work executed by different sub-contractors subject to the conditions that legal and contractual obligation relating to the quality and completion period of the construction work shall be undertaken by the construction entrepreneur himself or herself with whom the public entity concludes the procurement contract and such work is executed under his or her management and supervision. Payment for the work under this contract shall be made only to the construction entrepreneur who has concluded the procurement contract with the public entity.
- (g) Performance-based maintenance or management contract: The performance-based maintenance or management contract may be concluded to execute a construction work without mentioning the equipment required to maintain and manage the construction work and item wise work and by mentioning only the final performance.

- (h) Piecework contract: To execute a construction work related to small scale maintenance and repair required to be executed frequently as and when required, the piecework contract may be concluded by establishing the list of price of such work.

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

- (i)<sup>260</sup> Build and maintenance contract: The build and maintenance contract may be concluded to build a big fast track, power plant with a big reservoir or pumping station or turbine, ropeway, railway cable car or similar other physical structure with sophisticated or complex technology, conduct testing, give training, as required, to the employees of the concerned public entity for operating such structure and also to repair and maintain such structure.
- (j)<sup>261</sup> Turnkey contract: The turnkey contract may be concluded to build a big fast track, power plant with a big reservoir or pumping station or turbine, ropeway, railway cable car, bridge or road with sophisticate technology or similar other physical structure with sophisticated or complex technology, conduct testing, complete operation of such structure and hand it over to the public entity.

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<sup>260</sup> Inserted by the Fourth Amendment.

<sup>261</sup> Inserted by the Fourth Amendment.

## Schedule-5

(Relating to Rule 23)

### Procurement contract of consultancy service

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

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



- (c) Performance-based fee payment contract: Where a consultancy service is to be acquired on the condition that the consultant shall be called to do the work as and when required or that the service fee shall be provided on the basis of the work he or she has completed, the performance-based fee paying contract may be concluded. The service fee of such a consultant shall be as specified in the procurement contract.
- (d) Percentage-based contract: The percentage-based contract may be concluded to procure such service as inspection of goods, architect's service, supervision or monitoring service or other service of similar nature. This contract shall provide that payment to the consultant shall be made according to the percentage of the estimated or actual cost of the concerned construction work or project or the cost of goods procured or inspected.
- (e) Indefinite service period contract: The indefinite service period contract may be concluded to acquire consultancy service in respect of specific work as and when basis and service period of which is not definite such as a consultant required from time to time to bring a construction work into operation, a adjudicator or arbitrator of a dispute relating to procurement contract, consultant for institutional reform or procurement, technical trouble shooter. This contract shall provide the following matters:
  - (a) The consultant shall carry out the work referred to in the contract as and when necessary for the public entity at the rate set out in the procurement contract.
  - (b) Remuneration shall be paid on the basis of actual time taken by the consultant to carry out the work.

Schedule-5A.<sup>262</sup>

(Relating to sub-rule (2) of Rule 87A.

Public entities doing business transaction in competition with private sector

1. Nepal Telecom Company Limited
2. Nepal Food Corporation
3. National Trading Limited
4. Nepal Airlines Corporation
5. Janak Siksha Samagri Kendra Limited
6. Nepal Drugs Limited
7. *Singhadurbar Vaidhyakhana* Development Board
8. Herbs Production and Processing Company Limited
9. Such other public entities as designated by the Government of Nepal by a notification in the Nepal Gazette

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<sup>262</sup> Inserted by the Fourth Amendment.

Schedule-6

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

Government of Nepal

.....Ministry

.....Department/Office

Description of cost estimate of ration

Office for which ration is required:

Location of office:

SN	Description of food	Type/ quality of ration	Unit	Quantity	Rate approved in last FY	NRB price index rate	Local market rate	Rate fixed by the governmental body fixing the concerned agro-product	Approved cost estimate		Remarks
									Per unit rate	Total cost estimate	

Signature:

Chief District Officer:

District Administration Office:

Schedule-7

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

Government of Nepal

.....Ministry

.....Department/Office

Comparison chart of ration procurement

District.....

Place.....

SN	Description of food	Unit	Required quantity	Contract rate of last year	Rate of approved cost estimate	Contract of this year						Remarks	
						1		2		3			
						Rate	Total amount	Rate	Total amount	Rate	Total amount		

Schedule-8<sup>263</sup>

(Relating to clause (h1) of sub-rule (1) of Rule 111)

Construction site notice board

Name of the project:

Name of the concerned public entity:

Name of the construction company/firm/organization:

Address:

Name of the consulting company/firm/organization:

Address:

Date of the project contract:

Date of commencement of work:

Date for completion:

Cost estimate amount:

Contract amount:

Source of budget: (Government of Nepal Rs. ...., foreign loan/grant Rs.....)

Time schedule of major works

SN	Description of major works	Period of time for completion	If not completed within the specified time, the reason for it	Additional time required	Remarks
1.					
2.					

<sup>263</sup> Inserted by the Fourth Amendment.

3.					
4.					
5.					
6.					
7.					