

## **PREFACE**

One of the principal mandates and powers of the Ministry of Finance, as provided under section 104 (i) of the Public Finance (amendment) Act of Bhutan 2012 is to issue rules, manuals, directives, instructions or notifications ensuring an equitable, transparent, competitive and cost-effective procurement system in the country for which the Procurement Rules and Regulations 2023 drafted.

This Rules and Regulations supersedes the Procurement Rules and Regulations 2019, Simplified Procurement Rules and Regulation 2020 & Simplified Procurement Rules and Regulation 2021 and various notifications and fiscal measures issued thus far as amendment to Procurement Rules and Regulations.

This Rules and Regulations has been finalized through a series of consultations with relevant stakeholders including the public servants, private sector, regulatory bodies and independent experts. Subsequently, constructive feedback and wisdom that emerged from the consultation workshops have been incorporated.

Ministry of Finance in the exercise of the power conferred by the section 104 (i) of the Public Finance (amendment) Act of Bhutan 2012 hereby adopts Procurement Rules and Regulation 2023 vide 141<sup>st</sup> Policy and Planning Coordination Meeting on 20th February, 2023 which shall come into effect from 1<sup>st</sup> July 2023.

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In exercise of the power granted by section 104 of the Public Finance (amendment) Act of Bhutan 2012, the Ministry of Finance hereby frames the Rules and Regulations for Procurement to be implemented by Government Agencies.

## Table of Contents

CHAPTER 1 GENERAL.....	8
1.1. Objectives, Application, Definitions & General .....	8
1.1.1. Objectives .....	8
1.1.2. Application.....	8
1.1.3. Definitions .....	10
1.1.4. Fraud and Corruption .....	17
1.1.5. Market Research and Analysis.....	19
1.1.6. Identification of Need.....	20
1.1.7. Annual Procurement Plan (APP).....	20
CHAPTER 2 REGISTRATION & QUALIFICATION OF BIDDERS.....	21
2.1. Registration System .....	21
2.1.1. General .....	21
2.1.2. Creation of Registration Systems .....	21
2.1.3. Qualification Criteria for Registration or Prequalification .....	23
2.1.4. Exclusion of Bidders.....	24
2.1.5. Pre-Qualification.....	25
2.1.6. Registration of Bidders for Works and Consultancy Services .....	27
2.2. Maintaining List of qualified Suppliers and Contractors .....	28
2.3. Information on Rejection of Registration or prequalification .....	28
CHAPTER 3 ORGANIZATION OF PROCUREMENT .....	29
3.1. Tender Committee.....	29
3.1.1. Levels and Composition.....	29
3.1.2. Responsibilities and Powers of Tender Committee.....	36
3.1.3. Responsibilities and Powers of Tender Opening Committee .....	38
3.1.4. Responsibilities and Powers of Tender Evaluation Committee .....	38

CHAPTER 4 THRESHOLDS, METHODS AND PROCESSES.....	40
4.1. Procurement Thresholds .....	40
4.1.1. Thresholds .....	40
4.1.2. International Competitive Bidding .....	41
4.1.3. National Competitive Bidding.....	42
4.2. Procurement Methods .....	42
4.2.1. General .....	42
4.2.2. Open Tender/ Bidding Method .....	42
4.2.3. Limited Tender Method.....	43
4.2.4. Direct Contracting Method.....	44
4.2.5. Community Contracting .....	46
4.2.6. Framework Contracting.....	47
4.2.7. Electronic reverse auction (e-Reverse Auction) .....	47
4.3. Procurement Processes.....	48
4.3.1. Application of Procurement Process .....	48
CHAPTER 5 THE BIDDING PROCESS & DOCUMENTS .....	51
5.1. Essentials of the Bidding Process .....	51
5.1.1. General .....	51
5.1.2. Invitation for Bids .....	52
5.1.3. Minimum Time limits for Submission of Bids .....	53
5.1.4. Eligibility of Bidders .....	53
5.1.5. Clarification of Bidding Documents .....	54
5.1.6. Amendment of Bidding Documents .....	55
5.1.7. Submission of Bids.....	56
5.1.8. Bid Validity.....	57
5.1.9. Bid Security.....	58
5.1.10. Performance Security .....	58
5.1.11. Retention Money/Security Deposit.....	59

5.1.12.	Advances & Securities in Works Contracts .....	61
5.1.13.	Advances in Supplies Contracts .....	62
5.1.14.	Advances in Consultancy Services Contracts.....	63
5.2.	Bidding Documents .....	63
5.2.1.	General .....	63
5.2.2.	Components .....	64
5.3.	Processing of Bids.....	67
5.3.1.	Transparency of Process .....	67
5.3.2.	Receipt of bids .....	67
5.3.3.	Confidentiality of bid documents and proceedings.....	68
5.3.4.	Bidders’ participation in the Bid Opening .....	68
5.3.5.	Opening of the Bids .....	68
5.3.6.	Storage of Bid Documents.....	70
5.3.7.	Rules applicable to Communication .....	71
5.4.	Evaluation of Bids .....	72
5.4.1.	Purpose.....	72
5.4.2.	Responsive Bids .....	72
5.4.3.	Evaluation Criteria .....	73
5.4.4.	Bid Evaluation Procedure .....	74
5.4.5.	Abnormally Low Bid.....	74
5.4.6.	Seriously unbalanced or front-loaded Bids .....	75
5.4.7.	Rejection of Bids.....	75
5.4.8.	Action following Rejection of all Bids .....	76
5.4.9.	Stand still period.....	76
5.4.10.	Debriefing .....	76
5.5.	Negotiation.....	77
<b>CHAPTER 6 CONCLUSION OF CONTRACT AND CONTRACT MANAGEMENT .....</b>		<b>78</b>
6.1.	Award and Conclusion of Contract.....	78

6.1.1.	Award and Information on Award of Contract.....	78
6.1.2.	Conclusion of Contract .....	78
6.2.	Elements of Contract – General .....	79
6.2.1.	The Contract Documents.....	79
6.3.	Important Conditions of Contract .....	80
6.3.1.	Price and Methods of Payment .....	80
6.3.2.	Price Adjustments.....	83
6.3.3.	Period and Place of Performance/Delivery .....	84
6.3.4.	Scope, Quantity and Quality.....	84
6.3.5.	Sub-Contractors.....	87
6.3.6.	Variation in Quantities.....	88
6.3.7.	Termination .....	90
6.3.8.	Dispute Resolution .....	91
6.4.	Contract Management .....	91
6.5.	Monitoring of contracts.....	92
6.6.	Goods Receiving Committee .....	93
CHAPTER 7 PROCUREMENT OF CONSULTANTS’ SERVICES .....		94
7.1.	Use of Consultants.....	94
7.2.	Conflict of Interest.....	94
7.3.	Method of Selection of Consultants.....	95
7.3.1.	Quality and Cost Based Selection (QCBS) .....	95
7.3.2.	Other Methods of Selection .....	101
ii.	Selection under a Fixed Budget (FBS) .....	101
iii.	Least-Cost Selection (LCS).....	102
iv.	Selection Based on the Consultants’ Qualifications (CQS).....	102
v.	Single-Source Selection (SSS).....	102
vi.	Selection of Independent Individual Consultant.....	103
vii.	Selection of Particular Types of Consultants .....	104

viii.	Government Officials and Civil Servants .....	105
ix.	Procurement Agents .....	105
7.4.	Types of Contracts and Important Provisions .....	105
7.4.1.	Types of Contracts .....	105
7.4.2.	Important Provisions .....	106
CHAPTER 8 INSTITUTIONAL ARRANGEMENTS.....		108
8.1.	Procurement Grievance Mechanism .....	108
8.2.	Procurement Management and Development Division (PMDD) .....	110
8.2.1.	Establishment of a Procurement Management and Development Division (PMDD) 110	
8.2.2.	Functions of the Procurement Management and Development Division .....	110
CHAPTER 9 ELECTRONIC GOVERNMENT PROCUREMENT .....		113
9.1.	Electronic Government Procurement System (e-GP) .....	113
PROCUREMENT RULES & REGULATIONS FORMS.....		114
RECORD OF BID OPENING.....		114
BID OPENING COMMITTEE .....		116
TENDER COMMITTEE.....		117
SAMPLE EVALUATION REPORT .....		119
DECLARATION FORM.....		127

# **CHAPTER 1 GENERAL**

## **1.1. Objectives, Application, Definitions & General**

### **1.1.1. Objectives**

- 1.1.1.1. The purpose of the provisions contained in this rule is to:
- a. ensure transparency of Government procurement through the application of standard procurement procedures;
  - b. achieve uniformity of procurement procedures in the Government Agencies;
  - c. achieve economy and efficiency in the procurement of goods, works, and services;
  - d. ensure fair and equal access to the suppliers, consultants, and contractors for the award of contracts for the supply of goods, services or works.

### **1.1.2. Application**

- 1.1.2.1. These rules shall apply to all the Government Agencies including Armed Forces, except in the following cases:
- a. When the government grants exemption from the application of these rules in view of the basic security interests of the state or the requirements of special security measures in particular works, goods, and services contracts.
  - b. When, due to some special circumstances, the government grants an exemption to the application of these rules for the execution of a project funded by external assistance and provides for adherence to some specific procurement procedures under the relevant financing agreement.
- 1.1.2.2. Notwithstanding section 1.1.2.1 (a) and (b), the execution of projects funded by external assistance may be governed by the Royal Government of Bhutan's procurement policies.



### 1.1.2.3. **Domestic Preference:**

- a. In the case of any procurement, goods of Bhutanese origin may be given preferential treatment. Where two or more tenders are equivalent in the light of the evaluation methods and factors set out in 5.4, preference shall be given to the bid offering goods of Bhutanese origin, provided that the price difference does not exceed twenty percent (20%). The use of preferences shall be indicated in the bidding documents. Similarly, in the case of works when tenders from foreign bidders are invited, a twenty percent (20%) margin of preference may be given to the national bidders.
- b. Notwithstanding paragraph (a), a bid shall not be preferred to another where its acceptance would oblige the Procuring Agency to acquire material having technical characteristics different from those of the existing material, resulting in incompatibility or technical difficulties in operation and maintenance or disproportionate costs.

### 1.1.2.4. These rules shall not apply to all Government Agencies in the case of:

- a. entrusting an assignment as deposit work to another agency of the Government provided that the entrusted agency shall be guided by the provisions of these rules in the procurements relating to the assignment. The concerned budgetary body shall take up the execution of a work departmentally or entrust it to another specialized budgetary body as deposit work where:
  - the work to be executed is of specialized nature and the required level of skills and/or technical know-how is not available with the contractors;
  - under an emergency situation (an 'emergency' being a sudden, unforeseen event that can result in injury, loss of life, critical damage to property or infrastructure or economic loss) that needs urgent attention;
  - the works are to be carried out through community participation;  
or

- the work needs to be carried out without interrupting the ongoing work;
  - b. procurement of items which are required to be canalized through agencies specified by the government provided that, if such agencies express their inability to supply the items in writing, the procurement of such items shall be guided by these rules;
  - c. public private partnership (PPP) projects, which shall be carried out as per the PPP Rules & Regulations issued by the Ministry of Finance;
  - d. purchasing or renting land, buildings, or other immovable property (excluding refurbishment or construction works); and/ or
  - e. employing staff (excluding the engagement of contractors and consultants).
- 1.1.2.5. Corporations (except Thromde) and Financial Institutions, fully or partly owned by the Royal Government, Trust Funds, and Welfare Funds may adopt separate rules and regulations for the management of their procurements, provided such rules are within the broad principles of these rules and are approved by their respective Boards of Directors/Trustees. In the absence of such separate rules and regulations, procurements conducted by these bodies shall be governed by the rules under this Procurement Rules & Regulations.
- 1.1.2.6. The procurement of online air tickets shall be done as per the guidelines issued by the Ministry of Finance.
- 1.1.2.7. Unless the context indicates otherwise, the singular shall include the plural and the masculine shall include the feminine in these rules.
- 1.1.3. Definitions**
- 1.1.3.1. Unless the contents are repugnant to the context, the following words and phrases shall be understood as defined hereunder:

- (a) Administrative Sanction: the formal acceptance of the work proposal by the competent authority of the Government Agency, for which a preliminary estimate along with drawings shall be submitted. The Administrative Sanction shall lapse if the work is not commenced within a period of twelve months.
- (b) Autonomous Body: an agency, that is governed by the Constitution, Acts, a board of directors, a commission or a council and/or does not fall under any of the Ministerial organizations.
- (c) Award of Contract: the decision of the Procuring Agency to enter into a contract with a supplier, service provider, or contractor for the delivery of specified items, services, or execution of works.
- (d) Bid: an offer to supply goods, services, or the execution of works made in accordance with the terms and conditions set out in a document inviting such offers. The term “tender” is synonymous with the term “bid”.
- (e) Bid Security: a security, serving as a guarantee that the bid shall remain valid until the contract is awarded or until the expiry of a specific period, delivered along with the bid by a bidder in a form and in accordance with the terms and conditions specified in the document inviting the bid. The terms “bid security”, “bid bond”, “bid guarantee”, “bid securing declaration”, and “earnest money” are synonymous in terms of their effect and purpose.
- (f) Bidder: an eligible individual or legal entity that participates in a competitive procedure defined by this rule.
- (g) Bidding Documents: the set of documents sold or issued by the intending employer/purchaser/procuring agency to potential bidders in which the specifications, terms and conditions of the proposed procurement are prescribed. The terms “bidding documents” and “tender documents” are synonymous.
- (h) Bill of Quantities (BOQ): summary of the units and the unit prices of the items proposed under the contract.

- (i) Bhutan Schedule of Rates (BSR): a publication delivered by the Ministry of Infrastructure and Transport prescribing the rates for works by individual component, the quality, quantity, and scope of which is governed by the Specifications for Building and Road Works (“SBRW”). It is designed primarily as a tool for estimating construction project costs.
- (j) Client: see employer.
- (k) Community Contracting: means direct contracting of small works to a local community by the gewog administration as the per community contract protocol.
- (l) Competent Authority: an authority or a government body who/ which, in accordance with delegation of financial powers, has power to exercise or discharge any duty or function under this procurement rules.
- (m) Competitive Bidding: the process whereby bidders compete for the supply of goods, services, or execution of works under one of the procurement procedures set out in these rules.
- (n) Conclusion of Contract: the point at which a contract for the supply of goods, services, or execution of works is considered legally binding in accordance with the relevant laws of the Kingdom.
- (o) Consultant: an individual or a legal entity entering into a contract to provide consultancy services.
- (p) Consultancy Services: covers a range of services that are of an advisory or professional nature and are provided by consultants. These services typically involve providing expert or strategic advice, for example, management consultants, policy consultants, or communications consultants. Advisory and project-related consulting services include, for example, feasibility studies, project management, engineering services, finance and accounting services, training and development.

- (q) Contract: a formal agreement in writing entered between the procuring agency and the supplier, service provider or the contractor on an acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the Kingdom. The term “contract” will also include “framework contract”.
- (r) Contractor: an individual or a legal entity entering into a contract to execute works, supplies, or services.
- (s) Day: means calendar day unless otherwise provided in the relevant provision.
- (t) Development Partner/ Donor: an individual, country, institution, fund, organization, non-governmental organization, or financial institution that takes part in the socioeconomic development process of Bhutan by financing or co-financing it through grants, loans, or services.
- (u) Eligible Bidder: Is a bidder who is (i) authorized to conduct business in Bhutan, (ii) complies with section 5.1.4, and (iii) otherwise complies with the requirements of the bidding documents.
- (v) Procuring Agency: the Government Agency, which enters into a contract with a supplier, service provider, or a contractor for procurement of goods, services, or execution of works for the government. The terms “procuring agency” “procuring entity”, “client”, “purchaser” and “employer” are synonymous.
- (w) Engineer: a person or a consulting firm appointed by the employer to act as an engineer for the purposes of the contract and named as such in the special conditions of the contract.
- (x) Framework Contract: a contract awarded in accordance with the procurement rules set out in this rule, whereby the Procuring Agency and the supplier agree to the terms and conditions, in particular the price, which shall apply to the supply of designated materials over a given period of time, which shall not exceed one (1) year.

- (y) Goods: any object in solid, liquid, or gaseous form that has an economic utility or value that can be exchanged or traded.
- (z) Government Agency: an entity of the government whose source of funding is the government.
- (aa) Head of Procuring Agency (HoPA): means the Secretary of a Ministry; or the Head of Departments or Directorate; or the Head of Dzongkhag/Drungkhag/Gewog Administration or Thromde Administration; or the Chief Executive Officer of Autonomous Bodies; or any other head of Procuring Agency having administrative and financial powers to undertake procurement of Goods, Works, or Services using public money as defined under this procurement rules.
- (bb) Historical Documents: supporting documents such as the trade license, BCTA license, tax clearance certificate, and any other such documents as required by the SBDs as a part of eligibility criteria. This does not include documents required for the evaluation of bids.
- (cc) Invitation for Bids: a document published or notified by the Procuring Agency, which informs the potential bidders that it intends to procure goods, services, and/or works.
- (dd) Labour and Material Coefficients: a document published by the Ministry of Infrastructure and Transport, which provides an analysis and breakdown of the rates determined in the BSR. The purpose of this document is to provide an understanding of how the rates are calculated.
- (ee) Local Community: an association of local residents which shall include a chairman, treasurer, secretary, and has a memorandum of understanding which has the consensus of the entire community and endorsed by the Gewog Tshogde (GT) or Dzongkhag Tshogdu (DT).
- (ff) Lowest evaluated bid: the bid which offers the best value for money, evaluated on the basis of various objective criteria set

out in the bidding document. It does not necessarily mean the “lowest quoted price”.

- (gg) Non-Consulting Services: Services which are not consulting services. Non-consulting Services are normally bid and contracted on the basis of performance of measurable outputs, and for which performance standards can be clearly identified and consistently applied. Examples include: drilling, aerial photography, satellite imagery, mapping, catering services, printing services, hiring of training facilities, and similar operations.
- (hh) Procurement: means all aspects of purchasing or hiring of goods, services or engagement of contractors spanning the whole life cycle from identification of needs to the end of the useful life and subsequent disposal of an asset.
- (ii) Procurement procedure: process of procuring goods, services and execution of works as outlined in this Rules & Regulations.
- (jj) Public Money: All money received by the Government and by budgetary bodies, including the proceeds of all loans raised, grants received, money collected for specific purposes and retained in separate accounts by law, and any other money that the Minister of Finance determines as public money, but not money held in trust or custody on behalf of non-government parties, or money received by State Enterprises.
- (kk) Public Procurement: means procurement using public money.
- (ll) Rules and Regulations: the rules and regulations prescribed in this document in relevant provisions and any revisions thereof.
- (mm) Services: consulting and other services.
- (nn) Specifications for Building and Road Works (SBRW): the official publication, published by the Ministry of Infrastructure and Transport, prescribing the standard specifications for

an item of work, including the method of carrying out the work and the method of measurement that describes how an item of work is to be measured and paid for. SBRW forms part of contract unless a different or a higher specification is used in the contract.

- (oo) Supplier: an individual or a legal entity entering into a contract for the supply of goods or services.
- (pp) Technical Sanction: formal acceptance of technical soundness of a work to be executed either departmentally or as a deposit work or on contract by an appropriate technical authority, based on submission of drawings, designs and specifications including detailed estimates.
- (qq) Tender Committee: a committee that has the responsibility of supervising and ensuring that the procurement procedures outlined in these rules are followed.
- (rr) Threshold Value: monetary value, expressed in Ngultrum, for determining the procurement procedure to be followed.
- (ss) Work: any activity involving construction, fabrication, repair, overhaul, renovation, decoration, traditional Bhutanese painting, installation, erection, excavation, dredging which make use of a combination of labour, machinery, equipment, material and technology.

The term “Work” shall include:

- a. Civil works such as works for the purposes of roads, bridges, buildings, irrigation systems, water supply, sewerage facilities, dams, tunnels and earthworks in connection with other works.
- b. Mechanical & electrical works such as works of a mechanical or electrical nature for the purposes of, for example, fabrication, turbines, generators, transformers or other mechanical and electrical equipment in power plants, substations or other works.



(tt) Large and complex procurement: one where the specification is difficult to define or is complex or innovative, the procurement is high risk, the competition is restricted to a limited market, the contract will be based on unusual commercial models.

#### **1.1.4. Fraud and Corruption**

1.1.4.1. It is RGoB policy to require that Purchasers, Bidders, Suppliers, Contractors and their Subcontractors observe the highest standards of ethics during the procurement and execution of contracts.<sup>1</sup> In pursuance of this policy, the RGoB:

a. defines, for the purposes of this provision, the terms set forth below as follows:

- “Corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value<sup>3</sup> to influence improperly the actions of another party<sup>2</sup>;
- “Fraudulent practice”<sup>4</sup> is any intentional act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- “Collusive practice”<sup>5</sup> is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- “Coercive practice”<sup>6</sup> is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

<sup>1</sup>In this context, any action taken by a Bidder, Supplier, Contractor or a Subcontractor to influence the procurement process or contract execution for undue advantage is improper.

<sup>2</sup>“another party” refers to a public official acting in relation to the procurement process or contract execution. In this context, “public official” includes staff and employees of any organizations (including any institutions providing finance for the Goods) taking or reviewing procurement decisions.

<sup>3</sup>“anything of value” includes, but is not limited to, any gift, loan, fee, commission, valuable security or other asset or interest in an asset; any office, employment or contract; any payment, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part; any other services, favour or advantage, including protection from any penalty or disability incurred or apprehended or from any action or proceeding of a disciplinary or penal nature, whether or not already instituted and including the exercise or the forbearance from the exercise of any right or any official power or duty.

<sup>4</sup>A “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

<sup>5</sup>“parties” refers to participants in the procurement process (including public officials) and an “improper purpose” includes attempting to establish bid prices at artificial, non competitive levels.

<sup>6</sup>a “party” refers to a participant in the procurement process or contract execution.

- "Obstructive practice" is
  - a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede any investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
  - b) an act intended to materially impede the exercise of the inspection and audit rights of the Purchaser or any organization or person appointed by the purchaser and/ or any relevant RGoB agency provided for under 1.2.3.1(d) below.
  
- b. will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
  
- c. will sanction a firm or individual, including declaring them ineligible, either indefinitely or for a stated period of time, to be awarded an RGoB-financed contract if it at any time determines that they have, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for, or in executing, an RGoB-financed contract;
  
- d. will have the right to require that a provision be included in Bidding Documents and in contracts financed by the RGoB, requiring Bidders, Suppliers, Contractors and their Subcontractors to permit the Purchaser, any organization or person appointed by the Purchaser and/or any relevant RGoB agency to inspect their accounts and records and other documents relating to their Bid submission and contract performance and to have them audited by auditors appointed by the Purchaser;

- e. requires that Bidders, as a condition of admission to eligibility, execute and attach to their bids an Integrity Pact Statement in the form provided in the Bidding Documents which shall also be signed by procuring agencies; and
- f. will report any case of corrupt, fraudulent, collusive, coercive, or obstructive practice to the relevant RGoB agencies, including but not limited to the Anti-Corruption Commission (ACC) of Bhutan, for necessary action in accordance with the statutes and provisions of the relevant agency.

### **1.1.5. Market Research and Analysis**

1.1.5.1. The procuring agency shall conduct market research and analysis to develop a thorough understanding of the nature of market, how it works and how it impacts upon your approach to the market and overall procurement strategy. It allows you to make informed decisions to get the best results.

1.1.5.2. The extent of market research will depend on:

- i. The nature and scope of the goods/services
- ii. The degree of difficulty in specifying the requirement.
- iii. The level of risk to the agency if there is failure in the delivery.
- iv. Whether it is a one-off purchase or ongoing procurement.

1.1.5.3. The following are some of the common options to obtain information about the market:

- i. Internet research
- ii. Request for information (RFI)
- iii. Previous experience
- iv. Industry bodies

1.1.5.4. The market research and analysis shall assess market-related risks and opportunities that will affect the preferred approach-to-market strategy. The market research and analysis shall be consolidated into a list of conclusions and implications that are used to select a fit-for- purpose approach to market for the contracts in the project.

#### **1.1.6. Identification of Need**

1.1.6.1. All procurement under this rule shall be initiated after first determining the need for the subject matter. While assessing the need, the procuring agency shall take into account the estimated cost of the procurement and also decide on the following matters, namely: -

- a. The scope or quantity of procurement;
- b. Ensure that the need is neither artificially created nor exaggerated, with the intention to channel benefits to certain individual(s) or organization(s);

1.1.6.2. The Procuring Agency shall prescribe Minimum Order Quantity in the price schedule having carried out detailed demand aggregation, need analysis, and trend analysis.

#### **1.1.7. Annual Procurement Plan (APP)**

1.1.7.1. The Procuring Agency shall prepare a procurement plan of goods, works, and services in the prescribed format for each fiscal year.

1.1.7.2. The Head of Procuring Agency/appropriate authority shall approve the procurement plan and exercise control over its implementation. The procurement plan shall be fully integrated with applicable budget processes and circulars or the budget preparation instructions issued by the Ministry of Finance.

1.1.7.3. The APP is indicative only and does not create a legal or binding commitment to go to tender

## **CHAPTER 2 REGISTRATION & QUALIFICATION OF BIDDERS**

### **2.1. Registration System**

#### **2.1.1. General**

2.1.1.1. The purpose of the registration system is to limit the waste of time caused by the repeated qualification of bidders for similar procurements and to ensure a continued pool of suitably qualified suppliers and contractors. It is a system of general pre-qualification signifying the capability of a bidder to handle a type and volume of contract and is not limited to a particular contract.

2.1.1.2. Proof of enrolment in an authorized and properly constituted registration system shall constitute a presumption of overall suitability of a bidder to participate in a public procurement procedure.

2.1.1.3. Bidders who are not registered in accordance with the procedures set out in this chapter shall not benefit from such a presumption of suitability and will be required to demonstrate their qualifications to the concerned registering authority prior to participating in the procurement procedure.

2.1.1.4. A procedure for registration shall be based on the provisions of this chapter.

2.1.1.5. The Registering Authority shall protect the technical or trade secrets of the applicants disclosed during the process of registration.

#### **2.1.2. Creation of Registration Systems**

2.1.2.1. Appropriate Registering Authorities of the relevant sectors, as may be identified by the government from time to time, may establish a list of Registered Suppliers/Contractors/Consultants, hereinafter called Registers.

2.1.2.2. Such a Registering Authority shall create a Committee, comprising of appropriately qualified members known for their competence in the sector, from across the various organizations. The Committee shall deliberate and determine the general requirements it considers

relevant and necessary for an applicant to possess in order to demonstrate the applicant's capability to service contracts in the sector.

2.1.2.3. Once these selection and classification criteria have been finalized, the opening of the Register shall be notified by the Authority in a mass circulated newspaper and/or by announcements through the available media or any other means. The notification shall also be displayed on the notice board of the Authority.

2.1.2.4. By opening the Register and announcing it to the public, the intending suppliers, consultants and contractors shall be offered an opportunity for a specified time initially to apply for admission in the Register. Such applications shall be in writing or through an electronic means and complete with all necessary information and supporting documents as prescribed by the Registering authority.

2.1.2.5. The evaluation of suitability of the applicants which shall be made in accordance with the selection criteria set out in 2.1.3 shall be conducted and completed by the appropriately qualified officers of the Authority within a specified period announced in the notification or prescribed in the legal instruments of the Registering Authority.

2.1.2.6. Following evaluation, the Registering Authority shall establish a list of Registered Suppliers, Consultants or Contractors as the case may be. The list shall be kept at the relevant Government Agency where it may be consulted by any interested party upon request. Upon registration, a certification will be issued to the successful applicant valid for the period specified by the Registering Authority.

2.1.2.7. Request for admission to the Register may thereafter be made at any time as prescribed in the legal instruments of the Authority or instruction from the Ministry of Finance.

2.1.2.8. Where a Register provides for a system of classification, registered Suppliers, Consultants or Contractors may, at any time, apply in writing for re-classification and categorization in order to reflect their changed capabilities. The re-classification and categorization will be done in accordance with the relevant provisions of this chapter.

### 2.1.3. **Qualification Criteria for Registration or Prequalification**

2.1.3.1. Registers maintained by the Competent Authorities of the Royal Government of Bhutan shall generally be in compliance with the criteria listed below. Further, the procuring agencies may conduct prequalification of bidders as appropriate based on the selection criteria listed in section;

i. General suitability

The credentials of an applicant shall be established first for which It may require:

- a. the applicant to furnish evidence establishing that none of the conditions enlisted under section 2.1.4.1 applies to it;
- b. the Registering Authority shall exercise due diligence to ensure the debarred applicants are not considered for renewal of their registration certificates; and
- c. the Procuring Agency shall exercise due diligence to ensure the debarred applicants are not considered for prequalification.

ii. Financial Capacity

2.1.3.2. It may require the parties to furnish evidence of their financial and economic capacity as may be applicable. Evidence of such capacity may be:

- a. The audited balance sheets for the last three (3) years by a recognized firm or Chartered Accountants/Certified Accountants/Certified Public Accountant or extracts there from;
- b. A certified statement of the previous five (5) years' overall turnover and the turnover in respect of works, supplies or services; and
- c. A valid Tax clearance certificate from the Relevant Authorities.

iii. Technical Ability

2.1.3.3. Evidence of the party's technical ability may be furnished by any of the following means as may be applicable:

- a. The educational and professional qualifications of the minimum managerial and supervisory staff of the party, and in particular, those of the person or persons responsible for carrying out the assignments or for day to day administration of the firms;
- b. A list of all works carried out over the last three to five (3-5) years, together with certificates of satisfactory execution for the most important works, issued by previous clients. Such certificates shall indicate the value, date and site of works and shall specify whether they were properly completed;
- c. List of principal deliveries of goods effected or services provided in the past three (3) years, with the sums, dates and purchasers involved. Such lists shall be evidenced by certificates issued or countersigned by the procuring authority; and
- d. A description of the party's technical facilities, including reference to the tool, plant and technical equipment available.

2.1.4. **Exclusion of Bidders**

2.1.4.1. A bidder shall be excluded from registration or prequalification and participating in a procurement procedure under the following circumstances:

- a. He is insolvent or is in receivership or is a bankrupt or is in the process of being wound up, or have entered into an arrangement with creditors;
- b. His business affairs are being administered by a court, judicial officer or by an appointed liquidator;

Definition: Business affairs being administered by a court here means the constitution of the legal entity/company is in question and therefore, under litigation.



- c. He has suspended business, or is in any analogous situation arising from similar procedures under the laws and regulations of the country of establishment;
- d. He has been found guilty of professional misconduct by a recognized tribunal or professional body;
- e. He has not fulfilled obligations with regard to the payment of taxes, social security or other payments due in accordance with the laws of the country in which he is established or of the Kingdom of Bhutan;
- f. He is debarred from participation in public procurements by any competent authority as per law;
- g. He has not fulfilled his contractual obligations with the Employer in the past; or
- h. Any other predetermined circumstances as deemed necessary by the procuring agency.

#### 2.1.5. **Pre-Qualification**

2.1.5.1. Pre-qualification may be done in the following circumstances:

- i. In the case of large or complex procurements, or in any circumstances in which the high costs of preparing detailed bids could discourage competition, the procuring agency may engage in pre-qualification proceedings with a view to identifying, prior to the submission of tenders, suppliers and contractors that are qualified; and
- ii. For limited tendering and direct contracting for the procurement of works.

2.1.5.2. The invitation to pre-qualify for bidding on specific contracts or groups of similar contracts shall be advertised and notified in accordance with 5.1.2.

2.1.5.3. The procuring entity shall provide to those who respond to the invitation a set of pre-qualification documents setting out the scope of the contract and a clear statement of the requirements for qualification.

2.1.5.4. The pre-qualification documents shall include, at a minimum:

- i. Instructions for preparing and submitting pre-qualification applications;
- ii. A summary of the principal required terms and conditions of the procurement contract to be entered into as a result of the procurement procedure;
- iii. Any documentary evidence or other information that must be submitted by suppliers or contractors to demonstrate their qualifications;
- iv. The manner and place for the submission of applications to pre-qualify and the deadline for the submission, expressed as a specific date and time and allowing sufficient time for suppliers or contractors to prepare and submit their applications, taking into account the reasonable needs of the procuring entity, such date not to be less than twenty (20) days.

2.1.5.5. The Procuring Agency shall make a decision with respect to the qualifications of each supplier or contractor submitting an application to pre-qualify. In reaching that decision, the procuring entity shall apply only the criteria set forth in the pre-qualification documents.

2.1.5.6. The Procuring Agency shall promptly notify each supplier or contractor submitting an application to pre-qualify whether or not it has been pre-qualified. Only suppliers or contractors that have been pre-qualified are entitled to participate further in the procurement procedure.

2.1.5.7. The Procuring Agency shall upon request communicate to suppliers or contractors that have not been pre-qualified the grounds for their failure to pre-qualify.

2.1.5.8. At the time of the award of the contract, the procuring entity may require a supplier or contractor that has been pre-qualified to confirm the information provided in the submission for pre-qualification. The award may be denied to a bidder that is judged to no longer have the capability or resources to successfully perform the contract.

2.1.6. **Registration of Bidders for Works and Consultancy Services**

2.1.6.1. The Bhutan Construction and Transport Authority (BCTA) shall be the competent authority of the Government to establish and maintain the List of Registered Contractors and Consultants for Works as specified under section 2.1.2.1. It shall issue guidelines on registration of contractors and consultants for works from time to time to facilitate efficient functioning and effective implementation of works in the best interest of the Government.

2.1.6.2. Registration with the BCTA and possession of a valid BCTA certificate shall, in accordance with section 2.1.1.2, constitute a presumption of overall suitability of a bidder to participate in a public procurement procedure in respect of the classification for which he has been registered.

2.1.6.3. Bidders who are not registered with the BCTA and are not in possession of a valid BCTA certificate shall not benefit from such a presumption of suitability and will be required to demonstrate their qualifications to participate in the procurement procedure. The BCTA shall make the determination by no later than 1 month from the date of request made by the bidder.

2.1.6.4. The List of Registered Contractors, Sub-contractors, Consultants including Construction Personnel shall be formally established by the BCTA and shall be updated from time to time. The List of Registered Contractors Sub-contractors, Consultants including Construction Personnel shall be made available in the web site of BCTA.

2.1.6.5. Admission to the List of mentioned in section 2.3.1.4 shall be made by written application pursuant to the procedure set out in the Registration Guidelines of the BCTA. Potential bidders may seek admission to the Register at any time by written request to the appropriate authority.

2.1.6.6. The grounds for exclusion from the Register will be the grounds enumerated in section 2.1.4.

## **2.2. Maintaining List of qualified Suppliers and Contractors**

2.2.1. The Procuring Agency may maintain list(s) of qualified bidders for use only in case of Limited Tendering Method based on the criteria enumerated in section 2.1.3. The list shall be used as the basis for determining which suppliers are invited for procurement of goods and works.

2.2.2. The Procuring Agency shall invite potential bidders to submit their qualifications documents and allow bidders (on an ongoing basis) to submit applications to join the list.

2.2.3. The Procuring Agencies may maintain the list by types and categories of supply or works. The list shall be approved by the procuring agency and updated once a year to ensure the consistent qualifications of the potential bidders.

## **2.3. Information on Rejection of Registration or prequalification**

2.3.1. On a written request from the concerned party, the procuring agency/registering authority shall inform any unsuccessful bidder of the reasons for the rejection of their application for pre-qualification or registration as quickly as possible.

2.3.2. The time taken may in no circumstances exceed fifteen (15) working days from receipt of the written request.

## **CHAPTER 3 ORGANIZATION OF PROCUREMENT**

### **3.1. Tender Committee**

#### **3.1.1. Levels and Composition**

- 3.1.1.1. A Tender Committee of an appropriate level shall be constituted by the HoPA to ensure that the procedures of this rule have been complied with in all cases of procurements.
- 3.1.1.2. In constituting a Tender Committee, the Procuring Agency shall ensure that no members of the Tender Committee have any Conflict of Interest with any of the participating Bidders.
- 3.1.1.3. The Procuring Agency shall maintain lists of spouse and dependents (father, mother, brother, sister, and own children) of their employees engaged in formal and informal business to verify conflict of interest during the procurement process.
- 3.1.1.4. It is mandatory for all the members of the Tender Committee to attend the meetings and if absences, temporary or permanent, are inevitable, officers of appropriate level should be appointed in writing to replace the designated member.
- 3.1.1.5. The procurement procedures shall be executed and contracts awarded by the HoPA. The HoPA shall be responsible for all decisions made in accordance with the provisions of this rule.
- 3.1.1.6. The HoPA shall ensure that the Tender Committee and Evaluation Committee members, including other relevant procurement personnel have attended procurement training/capacity development/sensitization program. Within six (6) months upon designation, the Tender Committee and Evaluation Committee members should have satisfactorily completed such program conducted, authorized or accredited by the Procurement Management and Development Division.

- 3.1.1.7. The HoPA shall review and approve annual procurement plans and any revisions thereof in order to ensure it supports the objectives and operations of the procuring agency.
- 3.1.1.8. The HoPA shall review and approve bidding documents to ensure that it has been prepared and issued in accordance with this procurement rules and regulations.
- 3.1.1.9. The HoPA shall ensure, wherever necessary, that an appropriate opening committee has been constituted, chaired by one member of the Tender Committee.
- 3.1.1.10. The HoPA shall appoint the evaluation committee members who need not necessarily be from the Procuring Agency concerned but could also be from other departments which should not be less than three in number. The members of the Tender Committee shall not represent or be part of the evaluation committee;
- 3.1.1.11. The following shall be the levels of Tender Committees:
- i. Gewog Tender Committee
    - a. The Gewog Tender Committee shall comprise of:
      - i. The Gup as the chairperson;
      - ii. The Gewog Administrative Officer;
      - iii. The Gewog Accountant or the Dzongkhag Finance Section/ Services/Unit head as the case maybe;
      - iv. Engineer representative from the Dzongkhag; and
      - v. The relevant field staff or the Dzongkhag's relevant sector head as the case may be.
    - b. The Gewog Tender Committee shall ensure that the procedures of this rule have been complied with in the case of procurements whose estimated values are higher than the threshold levels prescribed for Limited Tendering method and:

- i. Up to Nu.3(three) million in the case of goods; and
  - ii. Up to Nu.10 (ten) million in the case of works.
- c. Cases of Procurements in which the estimated values are higher than the thresholds mentioned at (b) (I & ii) above, shall be referred to the Dzongkhag Tender Committee.
- ii. Dzongkhag Tender Committee
    - a. The Dzongkhag Tender Committee shall comprise of:
      - i. The Dzongdag (Chairperson);
      - ii. Dzongrab/ Head of Administration and Finance Section/ Service/ Unit;
      - iii. Dzongkhag Sector Head concerned;
      - iv. Head of Finance Section, Administration and Finance Section/ Services/Unit; and
      - v. In the case of works, the engineer or engineering consultant responsible for preparing the technical documents. In the case of goods & Services, the appropriate officer responsible for preparing the tender documents.
    - b. The Dzongkhag Tender Committee shall ensure that the procedures of this rule have been complied within the cases of procurements in which the estimated values are higher than the threshold levels prescribed for Limited Tendering method and:
      - i. Up to Nu.20 (twenty) million in the case of goods; and
      - ii. Up to Nu.100 (hundred) million in the case of works.
    - c. Cases of Procurements in which the estimated values are higher than the thresholds mentioned at (b) (I & ii) above, shall be referred to:

- i. The Ministerial Tender Committee, Ministry of Infrastructure and Transport for procurement of works; and
- ii. Respective ministry for procurement of goods and services.
- iii. Field Level Tender Committee
  - a. The Field Level Tender Committees shall be constituted where individual spending units at the field level are delegated with powers to conduct procurement. The Field Level Tender Committee shall comprise of:
    - i. Head of Office (Chairperson);
    - ii. Head of the Administration Section/Services/Unit of the office;
    - iii. Head of the Finance Section/Services/Unit of the office; and
    - iv. In the case of works, the engineer or engineering consultant responsible for preparing the technical documents. In the case of goods & services, the appropriate officer responsible for preparation of tender documents.
  - b. The Field Level Tender Committee shall ensure that the procedures of this rule have been complied with in the cases of procurements in which the estimated values are higher than the threshold levels prescribed for Limited Tendering Method and:
    - i. Up to Nu. 20 (twenty) million in the case of goods; and
    - ii. Up to Nu. 100 (hundred) million in the case of works.
  - c. Cases of Procurement in which the estimated values are higher than the thresholds mentioned at (b) (i & ii) above, shall be referred to the concerned Dzongkhag/Departmental/Ministerial Tender Committee as appropriate.



- d. Where required all Dungkhaq and regional offices shall constitute a tender committee as outlined above and chaired by the head of the agency for any procurement within the threshold defined above.
- iv. Departmental Level Tender Committee
  - a. The Departmental Tender Committee shall comprise of:
    - i. Head of the Department (Chairperson);
    - ii. Head of the relevant Division;
    - iii. Head of Division of Support Services;
    - iv. Head of Finance Section, Division of Support Services; and
  - v. In the case of works, the engineer or engineering consultant responsible for preparing the technical documents. In the case of goods & Services, the appropriate officer responsible for preparation of tender documents.
- b. The Departmental Level Tender Committee shall ensure that the procedures of this rule have been complied with, in case of procurement in which the estimated values are higher than the threshold levels prescribed for Limited Tendering method and:
  - i. Up to Nu.20 (twenty) million in the case of goods; and
  - ii. Up to Nu.100 (hundred) million in the case of works.
- c. Cases of Procurement in which the estimated values are higher than the thresholds mentioned at (b) (i&ii) above, shall be referred to the Ministerial Tender Committee by the head of the agency.
- v. Ministerial Tender Committee

- a. The Ministerial Tender Committee shall comprise of:
  - i. Secretary of the Ministry (Chairperson);
  - ii. Head of Department concerned;
  - iii. Head of Division of Support Services;
  - iv. Head of Finance Section, Division of Support Services; and
  - v. In the case of works, the engineer or engineering consultant responsible for preparing the technical documents. In the case of goods & services, the appropriate officer responsible for preparation of tender documents.
- b. The Ministerial Tender Committee shall ensure that the procedures of this rule have been complied with, in case of procurement whose estimated values are:
  - i. Above Nu.20 (twenty) million in the case of goods; and
  - ii. Above Nu.100 (hundred) million in the case of works.
- vi. Autonomous Bodies Tender Committee
  - a. The Tender Committee for the Autonomous Bodies shall comprise of:
    - i. Head of Autonomous Body (Chairperson);
    - ii. Head of Administration and Finance Section/Services/Unit;
    - iii. Head of Finance Section in the Administration and Finance Section/Services/Unit;
    - iv. One Officer of Managerial level; and

- v. In the case of works, the engineer or engineering consultant responsible for preparing the technical documents. In the case of goods & services, the appropriate officer responsible for preparation of tender documents.
- b. The Autonomous Body Tender Committee shall ensure that the procedures of this rule have been complied with, in case of procurement in which the estimated values are higher than the threshold levels prescribed for Limited Tendering method.
- vii. Thromde Tender Committee
  - a. The Thromde Tender Committee shall comprise of:
    - i. The Executive Secretary (Chairperson);
    - ii. Head of the relevant Division;
    - iii. Head of Administration and Finance Division/Section/ Services/ Unit;
    - iv. Head of Finance Section in Administration and Finance Division/ Section/ Services/Unit; and
    - v. In case of works, Engineer or Engineering consultant responsible for technical documents. In the case of goods & services, the appropriate officer responsible for preparation of tender documents.
    - b. The Thromde Tender Committee shall ensure that the procedures of this rule have been complied with in the case of procurements in which the estimated values are higher than the threshold levels prescribed for Limited Tendering method and:
      - i. Up to Nu. 20 (twenty) million in the case of goods; and
      - ii. Up to Nu. 100 (hundred) million in the case of works.

- c. Cases of Procurement in which the estimated values are higher than the thresholds mentioned at (b) (I & ii) above, shall be referred to the relevant Ministerial Tender Committee by the head of the agency.

3.1.1.12. The Procurement Officer of the respective agency shall serve as member secretary to the Tender Committee. However, in absence of a Procurement Officer, relevant official of the agency shall serve as member secretary to the Tender Committee.

### **3.1.2. Responsibilities and Powers of Tender Committee**

3.1.2.1. Before each sitting, the Chairperson and each of the members of a Tender Committee shall render the following certificate;

“Declared that none of my spouse and dependents (father, mother, brother, sister, and own children) have taken part in the competitive bidding and that I do not have any direct interest in any of the parties participating in the bidding.”

3.1.2.2. Procuring Agency officials who have an interest, directly or indirectly, with a firm or individual participating in a bidding process shall declare and not participate in the procurement proceedings of this bidding process. In such cases, officers of appropriate level should be appointed to replace the designated member. All members shall sign a declaration attached to this rule (annex PRR-4);

3.1.2.3. The Tender Committee shall perform the following functions but not limited to:

- a. ensure that appropriate procedure has been properly identified and notified to the bidders;
- b. ensure the bidders have been given sufficient and equal time and opportunity for the submission of bids;
- c. ensure there have been no breaches of the provisions under this rule;
- d. ensure that at each stage of procurement activity, procedures specified in this rule have been followed;

- e. review and approve tender evaluation report and satisfy itself that the work of evaluation committee has been carried out timely with due regard to the propriety and regularity of the procedures;
- f. review and approve quantity deviations, variations and changes during contract implementation;
- g. review and approve the procurement referred by the line agencies in cases of procurement in which the estimated values exceed the threshold;
- h. function as a first-tier grievance redressal body for complaints related to the pre-award stage of procurement;
- i. function as a first-tier dispute resolution body for any contractual disputes before referring the case to adjudication or arbitration;
- j. review and approve procurement activities at any stage of the procurement cycle in accordance with procedures and methods specified under this rule;
- k. The Tender Committee shall work within the procurement thresholds and procedures specified in this Rules in carrying out their responsibilities for procurement of goods, works or services;
- l. The Tender Committee shall further comply with procedures specified in manuals, guidelines and circulars/notices issued by Ministry of Finance; and/or
- m. Tender Committee shall be responsible and accountable for all the decisions taken under this rule.

3.1.2.4. The respective Tender Committee shall be the Competent Authority and shall have the power vested in making any procurement decision beyond the functions prescribed in section 3.1.2.3 having exercised due diligence and best of their judgment but not contravening the existing provisions.

3.1.2.5. Proper minutes and records of the deliberations and decisions of the Tender Committee and the reasons for any decision or action shall be maintained.

3.1.2.6. No member of a Tender Committee shall communicate any information on the bid proceedings to any outside party.

3.1.2.7. For the completion of their tasks, members of the tender committee shall complete and sign the check list attached to this rule (annex PRR-2).

### **3.1.3. Responsibilities and Powers of Tender Opening Committee**

3.1.3.1. The HoPA shall appoint a Bid Opening Committee of at least two members, which shall include one member of the Tender Committee who shall be the chairman of this Bid Opening Committee. All members shall declare that there is no conflict of interest. If any conflict of interest arises, the same member shall withdraw from the committee in writing and a new member shall be nominated. The members shall sign a declaration attached to this Rules & Regulations (annex PRR - 4). The Tender Opening Committee shall carry out its functions in accordance with the procedures outlined in section 5.3.5 of these rules.

3.1.3.2. Any bid price or alternative bid price, which is not announced and recorded during bid opening, shall not be taken into account in bid evaluation.

3.1.3.3. Handover the bid opening record and copies of the bids to the evaluation committee.

### **3.1.4. Responsibilities and Powers of Tender Evaluation Committee**

3.1.4.1. The HoPA shall appoint the evaluation committee members who need not necessarily be from the procuring agency concerned but could also be from other departments and should not be less than three in number. The members of the tender committee shall not represent or be part of the evaluation committee. All members shall declare that there is no conflict of interest. If any conflict of interest

arises, the same member shall withdraw from the committee in writing and a new member shall be nominated. The tender evaluation committee shall perform the following responsibilities:

- a. Evaluate bids using the criteria and methodologies specified in the bidding documents;
- b. The Chairperson on behalf of evaluation committee without disclosing his name may seek clarification of bids to assist the examination and evaluation but shall ensure that no change in prices or substance of the bids are sought, offered, or permitted;
- c. Ensure that no clarification is accepted or considered if it is not in response to a request by the evaluation committee;
- d. Maintain minutes and records of the deliberations and recommendations of the committee duly signed by all members and prepare evaluation report using sample attached to this rule (annex PRR-3);
- e. Maintain confidentiality of information related to bid evaluation proceedings until the letter of intent to award is issued;
- f. Make a presentation of the evaluation results to the tender committee to examine the evaluation and decide for award of contract. Both tender committee and evaluation committee shall be responsible for any misrepresentation; and
- g. Any other responsibilities and powers delegated by Tender Committee or Competent Authority.

## CHAPTER 4 THRESHOLDS, METHODS AND PROCESSES

### 4.1. Procurement Thresholds

#### 4.1.1. Thresholds

4.1.1.1. The estimated value of contracts, including all applicable taxes and duties shall be used to determine the method of procurement to be adopted.

4.1.1.2. The threshold levels for application of appropriate competitive procurement method are as follows:

Type	Open Tender/ Bidding	Limited Tender	Direct contracting
Works	Above Nu.15,000,000	Above Nu.10,000,000 and up to Nu.15,000,000	Up to Nu.10,000,000
Goods	Above Nu.1,000,000	Above Nu. 50,000 and up to Nu. 1,000,000	Up to Nu.50,000

#### i. Revision of Threshold Values

4.1.1.3. The threshold values shall be reviewed from time to time and, if necessary, revised by the Ministry of Finance in relation to the consumer price index.

#### ii. Application of Threshold Values

4.1.1.4. Procurement of works, supplies or services shall not be split or based on unusual or peculiar methods of calculation with the purpose of avoiding the application of particular methods prescribed under section 4.1.1.1 and 4.1.1.2.

4.1.1.5. The value of a work for the purposes of the thresholds shall take into account the total value of the estimated payments pertaining to the totality of the work, which taken as a whole, provide a functional and fully operational result.



4.1.1.6. In the case of supplies or services, the estimated value of the total supplies/services shall be taken into account for the purpose of the thresholds.

4.1.1.7. Notwithstanding the provisions under section 4.1.1.4, a procuring agency may break up a work, supply or service assignment into separate lots or components for awarding to different contractors, suppliers or service providers. Under such circumstances, the total value of all such lots shall be taken into account for the purposes of the thresholds and determining the procurement method to be applied.

#### **4.1.2. International Competitive Bidding**

4.1.2.1. Procuring Agency may conduct open or limited tendering to seek tenders/proposals/quotations from foreign bidders under following circumstances:

- a. When certain goods or domestic contractors with required capacity to undertake certain works or the service providers are not available in the country; or
- b. For donor funded projects when the funding agreement requires the procuring agency to resort to international market.

4.1.2.2. In such cases, the Procuring Agency shall also be guided by the Foreign Exchange Rules and Regulations issued by the Royal Monetary Authority for the purpose of payments.

4.1.2.3. The procuring agency shall be required to give international publicity to the tender notice using appropriate medium as follows:

- a. Advertise at least in one widely circulated national newspaper;
- b. Relevant websites including e-GP website;
- c. Internationally such as in UNDB and Development Gateway's dg Market; and/or
- d. Transmit such invitations to embassies and trade representatives of the countries from where bidders are likely to participate.

4.1.2.4. The procuring agency shall require that all the financial instruments (bid securities, performance securities, etc) be issued by a financial institution in Bhutan acceptable to the procuring agency. If the institution issuing those instruments is located outside Bhutan it shall have a correspondent financial institution located in Bhutan to make the financial instrument enforceable.

#### **4.1.3. National Competitive Bidding**

4.1.3.1. All RGoB funded projects shall be conducted in accordance with methods and procedures prescribed in section 4.2.

### **4.2. Procurement Methods**

#### **4.2.1. General**

4.2.1.1. Subject to the conditions prescribed against each, public procurements shall be processed in one of the following methods:

- a. Open tender/bidding;
- b. Limited tender/bidding;
- c. Direct contracting;
- d. Framework contracting; or
- e. Electronic Reverse Auction (e-Auction).

#### **4.2.2. Open Tender/ Bidding Method**

4.2.2.1. Open Tender/Bidding shall be the basic method of Government procurements and shall be applied unless there are circumstances, which justify the use of the other exceptional methods specified in section 4.2.3 to 4.2.5.

4.2.2.2. Under this method, all contenders who are capable of providing the works, goods or services sought and are eligible for entering into a contract shall be given an equal opportunity of submitting bids following a notification. For works contracts, bidders registered with BCTA shall benefit from the presumption of suitability referred in section 2.3.1.2.

### **4.2.3. Limited Tender Method**

4.2.3.1. Under this method, the number of bidders may be limited to at three (3) to five (5) individuals or companies who are capable of providing works, goods, or services sought and who will be given an equal opportunity of submitting bids following a notification. Dzongkhags and Gewogs may opt to limit their tenders for procurements within the Dzongkhag up to the threshold values of limited tender/bidding method. However, there should be at least three business units capable of meeting the requirements within the Dzongkhag. The Dzongkhag shall compile a list of business units based within the Dzongkhag for this purpose. Such business units should not only be physically based in the Dzongkhag but also the official address of the business license should be within the Dzongkhag.

This method may be used under any of the following circumstances:

- a. The estimated value of goods, works or services does not exceed the threshold value as may be prescribed from time to time for this method under section 4.1.1;
- b. The available time is insufficient (appropriately justified and properly documented) to follow the Open Tender/Bidding method but where it is still possible to seek competition without resorting to the Direct Contracting methods;
- c. Where a pre-qualification procedure has been adopted in accordance with section 2.2.1; and/or
- d. In case of re-tender, following Open Bidding, the time limit applicable for Limited Bidding shall be observed.

4.2.3.2. The procuring agency shall send Invitation for bids to selected bidders capable of providing the goods, services, and/or works as set out in section 4.2.3.1. However:

- a. In case of works contracts under a or b or d in section 4.2.3.1, the bidders invited to submit tenders shall, where such lists exist, be selected from among those bidders appearing on the list maintained by procuring agency in accordance with section 2.4, who shall be registered with the BCTA and have valid BCTA registration certificate;

- b. In case of supplies or services contracts under a or b or d in section 4.2.3.1, the bidders invited to submit tenders shall, where such lists exist, be selected from among those bidders appearing on the list maintained by the procuring agency in accordance with section 2.4 of these rules. This applies to works, goods, or services contracts under a or b or in limited tender method; and
- c. In case under section 4.2.3.1 (c), all pre-qualified bidders shall be invited to submit a tender.

4.2.3.3. If at least three bids are received, the bid prices offered by the responsive bidders shall be compared for arriving at the best evaluated bid.

4.2.3.4. If the method fails to result in the award of a contract, the Direct Contracting method may be used.

#### **4.2.4. Direct Contracting Method**

4.2.4.1. This method of procurement allows the procuring agency to negotiate both the price and terms and conditions of its procurement directly with one or more bidder(s).

4.2.4.2. This method shall only be applied under any of the following circumstances:

- a. In case of purchase up to a maximum of 0.050 (point zero five) million for procurement of goods for the purpose of day to day administration;
- b. In the absence of at least three bids following the application of Limited Tender methods, provided the terms of bidding documents have not changed;
- c. Where, for technical reasons or for reasons connected with the protection of industrial property rights, the contract may be executed by only one supplier or contractor, provided that there is no suitable substitute;

- d. In the case of additional supplies which are intended as a partial replacement, for repair of equipment, and supplies in continuation of an existing procurement contract where a change of supplier would oblige the procuring agency to acquire material having different technical characteristics which would result in incompatibility or technical difficulty in operation and maintenance or disproportionate additional cost;
- e. In the case of Repeat Order for supplies previously procured through competitive bidding, where the unit prices are same as or lower than those in the original contract, provided that such prices are still the most advantageous to the procuring agency after price verification;
- f. In the case of additional works provided that the value of the additional work does not exceed twenty percent (20%) of the original contract amount. Additional works exceeding twenty percent (20%) of the initial contract price and subject to availability of budget within the same program, special approval must be sought from the competent authority;
- g. In case of emergency situation. An 'emergency' is a sudden unforeseen event which can result in injury, loss of life or critical damage to property or Infrastructure or economic loss or situation with extremely tight deadlines to complete the Projects and will lead to delay through the other procurement methods. However, situations that are created by an agency through a lack of planning or risk mitigation do not constitute an emergency;
- h. In case of works in remote areas where potential bidders are not available after open tender and where the estimated value of the works does not exceed three (3) Million provided that the quoted/negotiated amount is within the estimate;
- i. The Procuring agency may opt for direct procurement of any large and complex procurement from the manufacturer or dealers with Original Equipment Manufacturer (OEM) dealership;
- j. Annual maintenance contract other than works;

- k. In case of works with contract amount up to ten (10) Million may be awarded upon fulfillment of the criteria prescribed; and/or
- l. The public official travelling to foreign country may opt to directly purchase goods from that country upon approval by Head of the Procuring agency if the rates are lower than the market price of Bhutan.

4.2.4.3. Having sought approval from Tender Committee, the procuring agency may rely on the quotation rates of another procuring agency including the rates of United Nations and other international agencies as may be applicable, subject to the condition that the unit prices are same or lower than original contract and, provided that such prices are still the most advantageous to the procuring agency after price verification. The procuring agency shall execute a separate contract agreement with the supplier.

4.2.4.4. In this method:

- a. A quotation shall be invited from either one, or where possible, more suppliers or contractors indicating the specifications sought and terms and conditions of supply;
- b. A time limit as may be considered necessary may be given to the bidders to prepare and submit their bids as per mutual agreement;
- c. The offer(s) which complies with the specifications, terms and conditions shall be considered to determine whether the price is consistent with the current market price; and
- d. Negotiations to bring down the prices may be carried out if the prices offered are deemed to be excessive or substantially in excess of the prevailing market prices or departmental estimate.

#### **4.2.5. Community Contracting**

4.2.5.1. In case of works with estimated value of not more than Nu. 1.5 (one point five) million, the work can be awarded to the local community as per the Community Contract Protocol developed by competent authorities.

#### **4.2.6. Framework Contracting**

- 4.2.6.1. This method of procurement may be used for the supply of designated supplies over a given period of time which shall not exceed one year. Under this method the procuring agency and the supplier agree the terms and conditions and in particular the price.
- 4.2.6.2. Supplies may be ordered under the contract at different intervals depending on the needs of the procuring agency without a requirement of further competitive bidding.
- 4.2.6.3. For the purpose of applying procurement procedures under this rule, the value to be taken into account is the total estimated annual value for all the supplies to be procured.

#### **4.2.7. Electronic reverse auction (e-Reverse Auction)**

- 4.2.7.1. An electronic reverse auction (e-Reverse Auction) is a scheduled online event in which prequalified/registered bidders bid against each other on their prices and the bidder with the lowest bid price is considered for award.
- 4.2.7.2. The e-Reverse Auction is a particular application of a Request for Quotation (RFQ) and shall start within a reasonable time after bidders that have been prequalified/registered and have met the minimum qualification criteria. The bidders shall receive information on:
  - a. the automated evaluation method that will be used to rank bidders during the e-Reverse Auction; and
  - b. any other relevant information on how the e-Reverse Auction is to be conducted, including clear instructions on how to access and participate in the auction.
- 4.2.7.3. e-Reverse Auction may be used when requirements are unambiguously specified and there is adequate competition among the bidders.

### **4.3. Procurement Processes**

#### **4.3.1. Application of Procurement Process**

4.3.1.1. Procurements shall be conducted under any of the following processes:

- a. One Envelope Process; or
- b. Two-Stage Process.

##### **i. One Envelope Process**

4.3.1.2. Except for the cases defined under section 4.3.1.3, One Envelope Process shall be adopted in the procurement of works, goods and services.

##### **ii. Two Stage Process**

4.3.1.3. The Two-Stage Process may be adopted under the following conditions:

- a. In large and complex contracts where technically unequal proposals are likely to be encountered;
- b. Where the procuring agency is aware of its options in the market, but for a given set of performance requirements, there are two or more equally acceptable technical solutions available to it; or
- c. Where the procuring agency is unable to set the specifications precisely in advance and needs to obtain the input from experienced bidders in order to finalize the scope of work and set the specifications in a way, which guarantees the best and most appropriate outcome.

4.3.1.4. The two-stage process shall be conducted as follows:

- a. In the first stage of the Process, bidders shall be invited to submit their Technical Proposals only. As a part of the Technical Proposal, the bidders shall be asked to submit documentary evidence in a format to be prescribed in the Instructions to Bidders, establishing the bidder's qualifications to perform the contract if his bid is accepted.



- b. The Technical Proposals shall be reviewed to determine their responsiveness to the requirements.
- c. During the review of Technical Proposals, the Procuring Agency shall determine to its satisfaction whether the bidders are qualified to perform the contract satisfactorily. An affirmative determination shall be a pre-requisite for further consideration of the Technical Proposal. A Negative determination shall result in disqualification of the bid.
- d. The un-priced substantially responsive Technical Proposals shall be examined and discussed with the bidders to arrive at a most suitable technical solution.
- e. Following discussions between the Procuring Agency and the responsive bidders, the bidders may revise or adjust their proposals to better meet the Procuring Agency's requirements. The Technical Proposals of bidders who are unable or unwilling to amend their proposals so as to conform to the agreed technical standard may be rejected by the Procuring Agency.
- f. In the second stage, the responsive bidders shall be provided the addenda of the agreed technical changes which shall form part of the technical specifications based on which technical proposal will be submitted and requested to submit their revised Technical Proposals in conformity with the technical solution as agreed upon and their Financial Proposals along with the required Bid Security. Bidders shall be given sufficient time to calculate the prices to be offered.
- g. At a date and time fixed by the Procuring Agency and advised to the bidders, the revised Technical Proposals and the Financial Proposals shall be opened in public in accordance with the provisions under 5.3.5 of Chapter 5.

- h. The revised Technical Proposals and the Financial Proposals shall be evaluated in accordance with the provisions under 5.4 of Chapter 5. Following verification by the Tender Committee of the procedure by way of signed checklist, the award of contract shall be made to the lowest evaluated bidder.

## **CHAPTER 5 THE BIDDING PROCESS & DOCUMENTS**

### **5.1. Essentials of the Bidding Process**

#### **5.1.1. General**

- 5.1.1.1. In order to achieve the objectives of public procurements as prescribed under this rule 1.1.1, it is essential that as far as practicable all public procurements be conducted through an open and fair competitive bidding process. Depending on the urgency, volume and value of the procurement and the method adopted for procurement, the bidding process can vary from making of reasonable enquiries in the local market to observation of elaborate procedural requirements in the cases of open or international procurements. The steps required to be followed and the documentation prescribed under this chapter is aimed mostly to cover the bidding process under the Open Tender Bidding method. Reasonably simplified form of these shall however be followed in the other procurement methods too.
- 5.1.1.2. The procuring agency shall prepare bidding documents specific to the goods, works or services to be procured. The applicable standard bidding documents shall be used with minimum changes as necessary to address project specific conditions. Reasons for changes, if any, shall be recorded and seek approval from the Head of the Procuring Agency.
- 5.1.1.3. The rights and obligations of the procuring agency and the provider of goods, works, and services for the procurement activities are governed by the bidding documents, and the contracts signed by the procuring agency with the providers of goods, works, and services and not by this Procurement Rules and Regulations.
- 5.1.1.4. The agency shall ensure that Technical and Administrative sanction are obtained and funds including any foreign exchange requirement is secured for works, goods services prior to;
- a. Tendering or award of additional works; and
  - b. Adopting any deviations from the approved drawings, designs and specifications.

- 5.1.1.5. Procurement of works, goods and non-consulting services which exceeds departmental threshold shall be subject to mandatory pre-requisites studies such as pre-feasibility studies, detailed project reports, geotechnical investigation and detailed estimates.
- 5.1.1.6. For the framework contract, the procurement cycle shall be from October to September. However, for the regular contract with approved budget the tendering process shall be completed by the end of December.
- 5.1.1.7. For procurement of works above 100 million, the procuring agency shall mandatorily conduct Detailed Project Report (DPR). For projects with quoted amount below 100 million, DPR may be conducted for complex procurement or if it is a pre-requisite while submitting for budget proposal.

## **5.1.2. Invitation for Bids**

- 5.1.2.1. Depending on the method chosen for procurement, invitations for bids shall be notified to the bidders as follows:
  - a. In the Open Tender Bidding method, the notification for invitation of bids shall be published in a mass circulated newspaper and where applicable/feasible announced over the website, national radio, TV and other mass media. In addition, the notification shall be displayed on the notice board of the procuring agency concerned
  - b. In the Limited Tendering method, the invitations for bids shall be sent by registered post or any other means of delivery, as long as it is ensured that the documents are dispatched at the same time to the potential bidders selected by the procuring agency. Notice shall not be given to one potential bidder in advance of notification to others.
  - c. In the Direct Contracting methods, the procuring agency may directly approach the bidder/s from whom it intends to solicit quotations.

- 5.1.2.2. The notification shall include reference to:
- a. The identity of the Procuring agency;
  - b. A summary of the assignment underbid;
  - c. Period for execution of assignment;
  - d. Address for obtaining the bidding documents, further information and submission of bids;
  - e. Cost of bidding documents where applicable;
  - f. Procedural requirements; and
  - g. Final date and time for submission of bids.

**5.1.3. Minimum Time limits for Submission of Bids**

5.1.3.1. The time limits for submission of bids shall be reasonable, taking into account the nature of goods, services or works to be procured, including the time necessary for site visits where appropriate, and give adequate and equal time for all bidders to prepare their bids. The following minimum time limits shall be observed:

Minimum Time Limits	Open Bidding		Limited Tendering		Direct Contracting
	International Competitive Bidding	National Competitive Bidding	International Limited Bidding	National Limited Bidding	
From the Day the documents are made available	30 days	21 days	6 days	5 days	By mutual agreement

5.1.3.2. Calculation of the relevant time limits shall commence from the day the documents are made available and shall be made available till a day prior to the last day of submission. The agency shall upload the bidding documents in their website. If the documents are not available in the website, then the agency shall ensure the availability of documents during working hours for the entire period of sale of the documents.

**5.1.4. Eligibility of Bidders**

5.1.4.1. The Procuring agency shall ensure that:

- a. A bidder, (including all members of a joint venture/partnership and all sub-contractors of the bidder) is not affiliated with a firm or entity which has:

- i. Provided consulting services during the preparatory stages of the assignment or of the project of which the assignment forms a part; or
  - ii. Been hired or is proposed to be hired as Engineer for the contract.
- b. The spouse or dependent of the HOPA shall not be allowed to participate in supply of goods and services to the particular office where he/she is employed or has an authority over it.

5.1.4.2. Government-owned enterprises in Bhutan shall be eligible only if they can establish that they:

- (i) are legally and financially autonomous;
- (ii) operate under commercial law; and
- (iii) are not a dependent agency of the Procuring agency.

#### **5.1.5. Clarification of Bidding Documents**

5.1.5.1. The bidders shall not be allowed to seek any clarifications on the bidding documents in person. A section shall be incorporated in the Instructions to Bidders (ITB) prescribing the process of seeking any clarification on the Bidding Documents. Such a section shall normally instruct that:

- a. A prospective bidder requiring any clarification of the bidding document may notify the same to the Procuring Agency in writing or by cable (including facsimile and telex) so as to be received by the Procuring Agency no later than a predetermined number of days prior to the deadline for submission of the bids;
- b. The Procuring Agency shall respond to such requests for clarification received by it within the prescribed period. Copies of the Procuring Agency's response shall be forwarded to all purchasers of the bidding documents, including a description of the enquiry without disclosing the name of the bidders seeking clarification. Any changes shall be affected by issuing amendments; and
- c. Pre-bid meeting shall be conducted for procurement of works above fifty (50) Million, Goods above twenty (20) Million and consultancy services above five (5) Million to clarify doubts and concerns of the bidders prior to submission of bids. Minutes of the pre-bid meeting shall be circulated to all bidders. However, for small projects, procuring agency may conduct pre-bid meeting based on nature and complexity of the project.

#### **5.1.6. Amendment of Bidding Documents**

1.6.1.1. A Procuring Agency shall reserve the right to amend or modify the bidding documents for any reasons by issue of addendum either in its own initiative or in response to a clarification request from a prospective bidder any time prior to the deadline for submission of bids. A section to this effect shall be incorporated in the bidding documents. The section shall specify that:

- a. Any addendum thus issued shall be part of the bidding documents and shall be binding on the prospective bidders.

1.6.1.2. The addendum shall be communicated in writing or by cable (including facsimile and telex) to all prospective bidders who have purchased or received the bidding documents, and who shall confirm receipt thereof before bid opening;

- a. The Procuring Agency may, at its discretion, extend the deadline for submission of bids to allow the prospective bidders reasonable time for taking the addendum into account in preparation of their bids.

### **5.1.7. Submission of Bids**

5.1.7.1. Bidders shall be advised on the latest date, time and place by which the bids would have to be submitted. The procuring agency shall reserve the right to extend the last date of submission of bids if necessary.

5.1.7.2. Bidders shall be advised on the manner of submission of bids as follows:

- a. The bids shall be delivered by hand or by registered post in sealed envelopes to the appropriate addressee and shall be marked "Confidential". A "sealed envelope" shall mean that:
  - i. A bid shall be contained in an inner envelope sealed with adhesive or other sealant, which will prevent re-opening;
  - ii. The inner envelope shall be signed across the seal;
  - iii. The name of the bidder shall be written on the inner envelope; and
  - iv. The inner envelope shall be placed inside a further outer envelope similarly sealed. On this outer envelope, only the addressee, the words "Confidential", and any other relevant information in accordance with the bidding documents shall appear.

5.1.7.3. In case the bids are required to be submitted in more than one copy, the specific number of copies to be submitted shall be mentioned in the bidding documents. The bidders shall be advised in such cases to mark the outer envelope of the original document as "ORIGINAL" and the envelopes of the others as "COPY". The bid document marked as "ORIGINAL" shall be opened in presence of the bidder and retained by the Procuring Agency in safe custody.



The evaluators for evaluation purpose shall use the document marked "COPY". In case of discrepancy the original copy shall be referred and in case of any dispute regarding the bid document, the original shall prevail.

5.1.7.4. The bids shall be complete with both the technical details as well as the financial bid and the bid shall be submitted in a single sealed envelope.

5.1.7.5. In the Two-Stage Process, the bidders shall be advised to submit only the technical proposal in the first stage. In the second stage, the bidders shall be requested to submit both their technical proposals as modified and agreed with the Procuring Agency and the financial proposals based on the modified technical proposal simultaneously in two separate sealed envelopes.

#### **5.1.8. Bid Validity**

5.1.8.1. The bid validity period should normally be sixty (60) days from the date of bid closing. The procuring agency may however prescribe a realistic bid validity period taking into consideration the time that would be required to complete the processes of bid evaluation and award of Contract.

5.1.8.2. If the procuring agency sees that it is not possible to complete the bid evaluation and award of contract within the given period due to reasons beyond its reasonable control, it may solicit bidder's consent to an extension of the bid validity period. Under such circumstances:

- a. The request and the responses there to shall be made in writing or by fax to all participating bidders;
- b. A bidder agreeing to the extension request shall also agree to an extension of the validity of the bid security. The period of the validity of the bid securities shall be suitably extended accordingly. Such a bidder shall not be required to or permitted to modify its bid; and

- c. A bidder may refuse the request to extend the bid validity which would lead to his disqualification without forfeiting his bid security. In such a case the bid shall not be further considered for evaluation and award.

### **5.1.9. Bid Security**

5.1.9.1. In place of a Bid Security, the Procuring Agency may instruct bidders to sign a Bid Securing Declaration in the form provided in the bidding documents accepting that they will be required to pay bid security amount specified in the Bidding Document within five (5) days if;

- a. they withdraw or modify their Bids during the period of validity;
- b. a bidder fails to accept the arithmetical corrections of its bid price; or
- c. they are awarded the contract and they fail to sign the contract, or to submit a performance security before the deadline defined in the bidding document.

5.1.9.2. Failure to pay as provided in section 5.1.9.1. will lead to debarment of the bidder from being eligible to submit bids for contracts with all the government procuring agencies for the period determined by the Debarment Facilitation Committee.

5.1.9.3. Bid Securing Declaration In lieu of Bid security shall not be required in case of direct contracting.

### **5.1.10. Performance Security**

5.1.10.1. The Procuring agency shall require the successful Bidder to submit a Performance Security, within fifteen 15 working days after the issuance of letter of acceptance, but always before the signing of the contract.

5.1.10.2. The Performance Security shall be valid until the successful completion of the assignment/works under the contract and for any extension thereto. It shall serve as a guarantee that the supplier or contractor will perform his contractual obligations under the contract.

5.1.10.3. The Performance Security shall be denominated in the currency of the bid. It shall be in one of the following forms:

- a. Unconditional Guarantee issued by a reputed Financial Institution acceptable to the procuring agency in the form provided in the bidding documents or any other form satisfactory to the procuring agency;
- b. Banker's cheque/Cash warrant; or
- c. Demand draft Account Payee.

5.1.10.4. Generally, the amount of Performance Security shall be ten percent (10%) of the contract amount.

5.1.10.5. In the case of works, the performance security shall be discharged and returned to the contractor within fourteen (14) days of the completion of the assignment/successful handing over of the works.

5.1.10.6. In the case of supplies, the performance security shall be discharged and returned to the supplier upon expiration of the warranty period. If the supplier fails to remedy any reported defect within the Warranty Period, the Procuring Agency shall be entitled to either in cash or to remedy the defect at the expense of the supplier.

#### **5.1.11. Retention Money/Security Deposit**

5.1.11.1. A Procuring Agency shall provide for retaining a part of the amounts due to a contractor till the end of the Defects Liability Period (DLP).

5.1.11.2. The procuring agency may prescribe a realistic defect liability period based on the type and complexity of the project which is defined in the bidding documents and contract agreement. However, the minimum Defects Liability period which shall be as follows:

- a. In case of works up to Nu. Five (5) million, the DLP shall be a minimum of twelve (12) months; and
  - b. In case of works above Nu. Five (5) million, DLP shall be minimum of twenty-four (24) months or double the contract duration whichever is lower.
- 5.1.11.3. The amount of Retention Money shall be ten percent (10%) of the payments due to the contractor.
- 5.1.11.4. The Retention Money shall be deducted from the amounts payable to the contractor in accordance with the progress of the assignment.
- 5.1.11.5. The Retention Money shall be returned to the contractor on completion of Defect Liability Period. In case of contracts of duration more than 12 months, fifty percent (50%) of the Retention Money may be returned to the contractor upon completion of work against the submission of an unconditional guarantee issued by a reputed financial institution and acceptable to the Procuring Agency. Such a guarantee shall be valid until the issue of a No Defects Liability Certificate.
- 5.1.11.6. If the contractor fails to remedy any reported defect within the Defects Liability Period, the Procuring Agency shall withhold the payment or realize claims from the guarantee, of an amount, which in the opinion of the Procuring Agency, represent the cost of the defects to be remedied.
- 5.1.11.7. Subject to the provisions under section 5.1.11.6, the Retention Money or the balance of it shall be discharged and returned to the contractor within 14 days of the issue of the No Defects Liability Certificate.
- 5.1.11.8. Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defect liability period shall be remedied by the Contractor at the Contractor's cost, if the loss or damage arises from the Contractor's act or omission.

## **5.1.12. Advances & Securities in Works Contracts**

### **ii. Mobilization Advance**

5.1.12.1. A Procuring Agency may provide for payment of interest free Mobilization Advance in respect of a works contract on submission of the required Performance Security and an unconditional bank guarantee for an equivalent amount of the Mobilization Advance by the Contractor.

5.1.12.2. The provision for Mobilization Advance shall be incorporated in the bidding documents along with the following conditions:

- a. The amount of Mobilization advance shall be up to maximum of ten percent (10%) of the Initial Contract Price;
- b. The contractor shall be required to furnish an unconditional guarantee issued by a reputed Financial Institution and acceptable to the Procuring Agency for an amount equal to the required advance payment. The guarantee shall remain valid till the advance is recovered in full;
- c. The advance payment shall be recoverable through percentage deduction from the interim progress payments. The percentage of deduction shall be fixed on pro-rata basis so that the full amount of Mobilization Advance is recovered prior to the time when eighty percent (80%) of the Contract Price is certified for Interim Progress payment; and
- d. The amount of the guarantee against Mobilization Advance may be proportionately reduced with repayments made by the Contractor or with the progressive recovery of Mobilization Advance from the Interim Progress payments.

### **ii. Secured Advance**

5.1.12.3. A Procuring Agency may provide for payment of Secured advances to the contractor against the construction materials brought at site by the contractor for incorporating in the works. In case of fabrication works off site, secured advance may be paid to the contractor after the site inspection is carried out by the client at the cost of the contractor, submission, of proof of payment (work material) and

submission of supply order.

5.1.12.4. The provision for secured advances, if provided for, shall be incorporated in the bidding documents with the following conditions:

- a. The materials shall be in accordance with the specifications and shall not be in excess of the requirements;
- b. The materials shall be delivered at the site of the works, properly stored and protected against loss, damage or deterioration;
- c. A declaration shall be given by the contractor passing on the lien on the rights of the materials to the Procuring Agency;
- d. The amount of the secured advance may be hundred percent (100%) of the cost of materials delivered at the site of works which shall be supported by the original invoices/bills from the suppliers. All materials imported from other countries shall be supported by Bhutan Sales Tax Receipts or customs clearance; and
- e. The secured advance shall be recovered from the interim progress payments in the months in which these materials are used in the works.

### **5.1.13. Advances in Supplies Contracts**

5.1.13.1. In case of purchase of goods following open tender, an interest free advance of ten percent (10%) may be considered. The advance will be secured against a bank guarantee and the terms of payment will be developed considering the advance payment made.

5.1.13.2. In case of direct contracting by procuring agency from manufacturer or principal company, where staggering payment procedures is not practical due to the size of demand, hundred percent (100%) advance may be considered against provision of unconditional bank guarantee. However, in case of purchase from government owned companies or enterprises, advance guarantee may be waived off if the procuring agency is convinced that there is no risk in delivery of goods or recovery of the advance amount.

#### **5.1.14. Advances in Consultancy Services Contracts**

5.1.14.1. In case of consultancy contracts an interest free advance of ten percent (10%) may be provided. This advance will be secured against a bank guarantee and will be recovered against the stage payment for the consultancy.

5.1.15. The Procuring Agency shall authenticate all financial guarantees submitted by the bidders with the respective financial institutions for their validity.

### **5.2. Bidding Documents**

#### **5.2.1. General**

5.2.1.1. The purpose of bidding documents shall be to help the bidder arrive at an informed decision on whether or not to submit a bid, and to enable bidders to prepare responsive bids. These documents shall explain in detail the requirements of the purchaser or employer regarding the assignment under bid, the instructions and conditions of bidding and the provisions of the proposed contract.

5.2.1.2. In the case of works, if the information required for preparation of estimate cannot be collected through section 1.1.5. and 1.1.6., the procuring agency may use the Bhutan Schedule of Rates (BSR) where applicable to establish an estimate for the cost of the works. Detailed estimates shall not be disclosed to the bidders. The bidders shall be expected to make their own estimates based on the specifications set out in the bidding documents, carryout site visits where necessary for calculation of estimates and submit the bids to the procuring agency.

5.2.1.3. Procuring agencies shall not revise, add or delete provisions of ITB and GCC as these instructions and conditions are those which are generally acceptable within the threshold.

5.2.1.4. Modifications for specific project or contract needs should be provided only in the Bidding Data Sheet and the Special Conditions of Contract, which shall not result into amendments to the Instructions to Bidders and the General Conditions of Contract as far as possible.

## **5.2.2. Components**

5.2.2.1. While there may be variation in the components of bidding documents, the following items shall, as far as possible, be included in the bidding documents, especially in the Open Bidding Method:

### **i. Invitation for Bids**

5.2.2.2. An invitation shall be extended to the bidders to participate in the bidding in accordance with the provisions under 5.1.2. In the case of Open Tender Bidding method, a copy of the notification on the invitation to the bidders to participate in the bidding shall be provided in the bidding documents.

### **ii. Bidding Instructions**

5.2.2.3. The bidding instructions shall state the bidder's responsibilities in the preparation and submission of his bid and explain how the bids will be handled once they are received. These shall, among others, contain provisions on:

- a. Scope of Bid and the expected time of completion of the assignment;
- b. Qualification or eligibility of bidder where applicable, including the requirement for production of licenses or certificates;
- c. The contents of the bidding documents and the procedure for preparation and submission;
- d. The method of clarification or amendment of the bids before submission;
- e. Documents accompanying the bids;
- f. The procedure for bid opening and evaluation (including preferential treatments to national bidders or goods of Bhutanese origin in International procurements); and
- g. The contents of the proposed contract to be awarded to the successful bidder.



- 5.2.2.4. The methods and factors or criteria for evaluating and comparing bids shall be indicated in the bidding documents, where possible in descending order of importance. The factor and methods of giving preferential treatment to national bidders shall be explained especially in international bidding. The methods that will be used for making adjustments shall also be explained therein. The bid evaluation sample report (annex PRR-3) shall be used for evaluation of bids for civil works.
- 5.2.2.5. The bidders shall be directed to quote their final all-inclusive net price including all incidental cost of carrying out the contract such as taxes, duties, royalties insurance etc. Tax exemptions and any offers of discount should also be declared.
- 5.2.2.6. The currency (ies) in which the price(s) are to be quoted in the bid shall be specified in the bidding instructions. Except for International procurements, the bid shall be quoted in Ngultrum only.

### **iii. Bid Form and Price Schedules**

- 5.2.2.7. The Bid Form shall be the letter with which the bidder shall be required to submit his bid. A sample Bid Form shall be a part of the bid documents. The Bid Form shall contain the commitments of the bidder to comply with the provisions of the contract, abide by the bid validity date and provide the performance guarantee, if required, on award of contract. The bidder shall be instructed to submit the Bid Form with his bid.
- 5.2.2.8. A Price Schedule Form, to enable the bidder to indicate the description, quantity, unit and total prices of the goods as well as information on the country of origin, taxes and duties payable, shall be provided with the bid documents. In the case of the civil works, it shall be referred to as Priced Bill of Quantities and shall show the description and quantity of the works to be done and the corresponding unit and total prices. The priced Bill of Quantities shall have the provisions for rates to be filled in by the bidders both in figures and words. The rates in words shall be requested from the bidders if the rates are not computer typed.

5.2.2.9. The prospective bidders shall be instructed to include or mention in the Price Schedule Form about any discount that may be offered by him on the quoted prices. The presence of alternate bids, if any, shall also be mentioned in the Price Schedule Form.

#### **iv. Form of Contract and Contract Conditions**

5.2.2.10. A sample agreement that will be entered into between the parties shall form a part of the bid documents. Conditions setting out the rights and obligations of the parties and the terms and conditions under which the contract will be executed shall form an integral part of the contract. Most of these conditions shall be standard or general conditions, but there can be a number of special or particular conditions that may be peculiar to the particular contract.

#### **v. Specifications/Scope of Works**

5.2.2.11. The technical description of the goods, services or works under the bid shall be provided in the bid documents. The specifications or scope of works shall include all essential features or components desired in accordance to the Specifications for Building & Road Works issued by the Ministry of Infrastructure and Transport or as specified by the Procuring Agency, performance and standard requirements with which goods, equipment or materials shall comply and where possible requirement of goods, equipment or materials which are environment friendly. It shall be stated that any non-conformity therewith would render the bid as non-responsive.

5.2.2.12. In both the cases of goods and works, care shall be taken not to use any particular brand name or catalogue number that would tend to restrict competition or to favour any particular supplier. If the use of such brand names or catalogue number is unavoidable, the words "or their equivalent" should follow them.

5.2.2.13. Catalogues, brochures or other publications to provide additional information about the specifications may be called for.

### **5.3. Processing of Bids**

#### **5.3.1. Transparency of Process**

- 5.3.1.1. In accordance with the principle that public procurements shall be fair to all potential eligible bidders, the receiving, opening and recording of bids shall be carried out in a manner that ensures and reflects complete transparency and integrity.
- 5.3.1.2. It shall be the responsibility of the Bid Opening Committee to ensure that bids received prior to the time and date specified in the bidding documents are opened at the time, date and place of opening stipulated in the bidding documents.

#### **5.3.2. Receipt of bids**

- 5.3.2.1. Bids shall be received up to the time limit specified in the bidding documents or any extensions made to it.
- 5.3.2.2. Arrangements shall be made to receive the bids in a wooden or metal sealed box. A responsible person of the procuring agency may be assigned to receive the bids where large bid documents are involved.
- 5.3.2.3. Where a person is made responsible for receiving the bids, the procuring agency shall ensure that the submitted bids are safely and confidentially stored. The person made responsible for receiving the bids shall issue a receipt to the bidder dropping the bid and mark the bids received with serial numbers and enter the receipt of bids in a bid register. The following details shall be entered in the bid register on each occasion of receipt:
  - a. Serial number of the bid received; and
  - b. The time and date the bid was received.
- 5.3.2.4. Where a bid/tender box is used, the box shall be fitted with a sealed lock and one officer shall be made responsible as guardian of the bid/ tender box and the keys. As soon as the deadline for submission of the bids is reached, the guardian of the box shall seal the opening of the bid/tender box so that no more bids can be deposited. The sealed bid/tender box shall be opened in the presence of the Bid Opening Committee.

5.3.2.5. For open tender lack of competition shall not be determined solely on the basis of the number of bidders. Even when only one bid is submitted, the bidding process may be considered valid, if the bid was satisfactorily advertised and prices are reasonable in comparison to market values. If none of the received bids are found responsive or the bid prices are abnormally high then the procuring agency may reject all bids and re-tender or follow the Limited Bidding procedure as applicable.

### **5.3.3. Confidentiality of bid documents and proceedings**

5.3.3.1. Bid documents shall be treated with confidentiality at all times and kept under secured conditions until the opening of the bids by the Bid Opening Committee.

5.3.3.2. After the bid opening, the opened bid documents or the contents of the documents shall not be released to any unauthorized person/ party.

5.3.3.3. Bid evaluation proceedings after the opening of bids shall be kept confidential until the award of contract is announced.

### **5.3.4. Bidders' participation in the Bid Opening**

5.3.4.1. Bidders or their authorized representatives shall be allowed to attend the bid opening.

5.3.4.2. The bidders or their authorized representatives who choose to attend the bid opening shall sign the attendance sheet provided in the Record of Bid Opening (Form PRR –1).

5.3.4.3. Bidders or their authorized representatives shall not be permitted to approach the members of the Bid Opening Committee or any of the officials, unless permitted by the Chairperson of the Bid Opening Committee.

### **5.3.5. Opening of the Bids**

5.3.5.1. Bid opening shall take place on the same day immediately following the deadline for the submission of bids.

- 5.3.5.2. The bids shall be arranged so that the original and the copy/copies of the bid documents are kept together.
- 5.3.5.3. All members of the Bid Opening Committee including the Chairperson shall examine the conditions of the envelopes and shall sign on the envelopes. In the event that an envelope of the original bid document(s) is found to have been tampered with or opened, the Bid Opening Committee shall decide whether the bidding is to be cancelled or to proceed with the bid opening.
- 5.3.5.4. The bids shall be opened in full view of all participating parties and the contents shall be checked by the Bid Opening Committee against the requirements of the bidding documents. Envelopes marked "Withdrawal" shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted shall not be opened.
- 5.3.5.5. The Chairperson of the Bid Opening Committee shall publicly announce:
- a. The name of the bidder;
  - b. The price offered (lot-wise or total price);
  - c. The presence or absence of bid security and its amount;
  - d. Alternative bids, if any;
  - e. Discounts if offered;
  - f. Any modification;
  - g. Response to amendments, if issued; and
  - h. Fulfillment of specific formal requirements as might have been prescribed in the bid documents.
- 5.3.5.6. These details provided in section 5.3.5.5. shall be written on a notice board for the public to copy.

- 5.3.5.7. The bidders' representatives, if present in the meeting will be required to sign the Record of Bid Opening in Form PRR – 1.
- 5.3.5.8. The bid form including appendices to bid form, bill of quantities, price schedules, bid securities, any discounts offered, and any other important documents shall be initialed by all members of the Bid Opening Committee. All members of the Bid Opening Committee shall also initial all corrections and irregularities in bid documents.
- 5.3.5.9. The Record of Bid Opening in form PRR – 1 shall be prepared before closing of bid opening session. All members of the Bid Opening Committee shall sign the form.
- 5.3.5.10. Any bid received after the deadline or in incorrect form (such as by fax or cable) shall be rejected.
- 5.3.5.11. For the completion of their tasks, members of the bid opening committee shall complete and sign the checklist attached to this rule (annexPRR-1).

### **5.3.6. Storage of Bid Documents**

- 5.3.6.1. All original copies of the bid documents, which are recorded in the bid opening, shall be kept in a secure place.
- 5.3.6.2. The copies of the original bid documents shall also be kept securely by the Procuring Agencies for future reference in case of any disputes with regard to the bid documents.
- 5.3.6.3. The Procuring Agency shall maintain records and documents regarding their public procurement activities from beginning of the need assessment/market research and analysis /procurement planning up to the full completion of contractual obligation for a minimum period as prescribed and defined in the Finance and Accounting Manual, Financial Rules and Regulations:

5.3.6.4. The minimum period for record keeping shall be reckoned from the date of completion of audit by the Royal Audit Authority and settlement of observations pertaining to the contents of the records, if any.

5.3.6.5. The destructions of the records shall be as per the procedures prescribed in the Finance and Accounting Manual, Financial Rules and Regulations.

### **5.3.7. Rules applicable to Communication**

5.3.7.1. All communication and information exchange referred to in this Rules and Regulations may be made in writing and sent by post or by electronic means in accordance with sections 5.3.7.4, 5.3.7.5, and

5.3.7.6 or by a combination of those means, according to the choice of the procuring agency.

5.3.7.2. The means of communication chosen must be generally available and not restrict economic operators' access to the procurement procedure.

5.3.7.3. Communication and the exchange and storage of information shall be carried out in such a way as to ensure the integrity of data and the confidentiality of tenders and other communications, including applications for pre-qualification, registration, clarifications, etc. Procuring agencies shall examine the content of tenders only after the expiry of the time limit set for submission of the bid.

5.3.7.4. The tools to be used for communicating by electronic means, as well as their technical characteristics, must be non-discriminatory, generally available, and interoperable with the information and communication technology products in general use in Bhutan.

5.3.7.5. The following rules are applicable to devices used for the electronic transmission and receipt of tenders and other communications:

- a. Information regarding the specifications necessary for the electronic submission of tenders and other communications,

including encryption, shall be made available to interested parties with the bidding documents.

- b. Procuring agencies may require that electronic tenders be accompanied by an electronic signature in conformity with the laws in force in Bhutan.
- c. Where electronic forms of communication are used for the submission of tenders, bidders shall undertake to submit, before the expiry of the time limit laid down for submission of tenders, the documents, certificates, and declarations referred to in Chapter 2 of this rule if they do not exist in electronic format.

5.3.7.6. Electronic means of communication shall be permitted once the Ministry of Finance issues a notification to the effect that the conditions of sections 5.3.7.4 and 5.3.7.5 are fulfilled.

## **5.4. Evaluation of Bids**

### **5.4.1. Purpose**

5.4.1.1. The purpose of bid evaluation process shall be to determine which of the bids received are responsive and thereafter compare the responsive bids against each other to select the best evaluated bid. If any license or clearance documents forming part of eligibility criteria specified in the Bidding Document are found to be missing, the bidder shall be asked to submit it within a reasonable time specified by the Evaluation Committee before finalization of the Evaluation. Such communication shall be given in writing.

5.4.1.2. For ensuring quality and price competitiveness there shall be information sharing among the procuring agencies and regulatory bodies on the goods imported.

### **5.4.2. Responsive Bids**

5.4.2.1. "Responsive bids" under these rules shall mean "substantially responsive bids". Bids are substantially responsive where:

- a. The bidders fulfill the conditions of eligibility and qualification, if any laid down in the Bidding Document;



- b. The bids comply with the terms and conditions set out in the bidding documents, and are complete with the required information and duly filled in forms prescribed in the bidding documents; and
- c. The bids respond to the terms, conditions and technical specifications detailed in the bidding documents without “material deviation or reservation”.

5.4.2.2. A material deviation or reservation is one:

- a. Which affects in any substantial way the scope, quality or performance of the assignment under bid;
- b. Which limits in any substantial way and is inconsistent with the bidding documents, the Procurement Agency’s rights or the bidder’s obligations under the contract; or
- c. Where the rectification would affect unfairly the competitive position of other bidders presenting responsive bids.

### **5.4.3. Evaluation Criteria**

5.4.3.1. The price offered by a bidder shall be only one of the criteria amongst many others for evaluation of bids.

5.4.3.2. In addition to the price, the evaluation criteria shall include criteria from the following non-exclusive list, as appropriate and if laid down in the Standard Bidding Documents. Such criteria shall be expressed in monetary value where applicable:

- a. Preferential treatment for goods of Bhutanese origin, if laid down in the bidding documents;
- b. Date of completion of works, services and/or delivery of goods;
- c. Running cost and cost effectiveness;
- d. After-sales service and technical assistance;

- e. Commitments with regard to spare parts, security of supplies and the prices thereof; and
- f. Quality and technical merit of the works, services or supplies.

5.4.3.3. Additional criteria, if any used, shall be objective and non-discriminatory and shall be expressed in monetary value where applicable.

#### **5.4.4. Bid Evaluation Procedure**

5.4.4.1. Such methods and factors as specified in the bidding documents shall only be used in actual evaluation and not some other methods or criteria. Introduction of methods and factors not mentioned in the bidding documents would be considered unfair and shall be prohibited.

5.4.4.2. Irrespective of the currencies specified in the bidding documents, the quoted prices shall be converted into Ngultrum for the purposes of bid evaluation. The date for conversion of prices shall be chosen by the procuring agency. It shall be usually thirty (30) days before the bid opening in the case of works and the date of bid opening in the case of goods. The telegraphic transfer selling exchange rate prevailing at that date as posted by the Royal Monetary Authority of Bhutan shall be used for the conversion of prices.

#### **5.4.5. Abnormally Low Bid**

5.4.5.1. An Abnormally Low Bid is one where the Bid price, in combination with other constituent elements of the Bid, appears unreasonably low to the extent that the Bid price raises material concerns as to the capability of the Bidder to perform the Contract for the offered Bid price. Before proceeding to further analysis, the Procuring agency shall revisit their departmental estimate to ensure its realistic compared to the prevailing market rates.

5.4.5.2. After revisiting the departmental estimate as provided in section 5.4.5.1, if the procuring agency determines that the bid offered by the bidder is 20% below or above the agency estimate, the procuring agency shall eliminate the Bid(s) before proceeding towards bid evaluation.

#### **5.4.6. Seriously unbalanced or front-loaded Bids**

5.4.6.1. If the Bid that results in the lowest evaluated bid is, in the Procuring Agency's opinion, seriously unbalanced or front-loaded, the Procuring Agency may require the Bidder to provide written clarifications, including detailed price analyses to demonstrate the consistency of the prices with the scope of Works, proposed methodology, and schedule. After evaluating the detailed price analyses the Procuring agency may as appropriate:

- a. Accept the bid; and require that the total amount of the performance security be increased from ten percent (10%) up to maximum of 30% of the initial contract price; or  
Alternatively, the procuring agency may ask the successful bidder to deposit the difference between departmental estimate and contract amount in the form of cash warrant in addition to 10% performance security. However, the total performance security amount shall be limited to maximum of 30% of initial contract price; or
- b. Reject the bid/proposal.

#### **5.4.7. Rejection of Bids**

5.4.7.1. Without incurring any liability towards the contenders, the procuring agency may reject bids under any or all circumstances as given below:

- a. Bid/s being found not responsive as specified in the SBD;
- b. If the bid prices are found substantially exceeding the departmental estimate but after reviewing the departmental estimate; or
- c. Any or some of the bids appearing to have been tampered with.

#### **5.4.8. Action following Rejection of all Bids**

5.4.8.1. Following the rejection of all bids, the Procuring Agency may, after taking measures to remove the causes of failure of the earlier bidding, proceed with a fresh bidding following the same bidding method or following an alternate method prescribed under 4.2 Procurement Methods under Chapter4.

#### **5.4.9. Stand still period**

5.4.9.1. Notification of Intention to Award

5.4.9.1.1. Following the decision to award the contract, the procuring agency shall promptly provide letter of intent to award the contract to the successful bidder. Copies of such notification shall also be sent to all unsuccessful bidders.

5.4.9.1.2. The issuance of Letter of Intent which precedes the letter of acceptance is information to the intended winning bidder and other unsuccessful bidders who participated in the bid, on the outcome of the procurement process.

5.4.9.1.3. The Procuring Agency shall observe 5 (five) days of standstill period from the date of the issuance of letter of intent to award to allow the bidders to lodge complain if aggrieved by the decision of the tender committee.

#### **5.4.10. Debriefing**

5.4.10.1. The purpose of debriefing is to inform the aggrieved bidder of the reasons for lack of success, pointing out the specific shortcomings in the bid without disclosing contents of other bids.

5.4.10.2. After issuing the letter of intent to award, the procuring agency shall provide debriefing to the unsuccessful bidders if the bidder desires to know the grounds on which his bid was not selected. An unsuccessful Bidder shall within three (3) working days make a written request to the procuring agency for a debriefing. The procuring agency shall provide a debriefing to all unsuccessful Bidders whose request is received within this deadline. Where a request for debriefing is received within the deadline, the procuring agency shall provide a debriefing within five (5) working days.

5.4.10.3. The procuring agency shall discuss only such bid and not the bids of other competitors. The debriefing shall not include:

- a. Point-by-point comparisons with another bid; and
- b. Information that is confidential or commercially sensitive to other bidders.

## **5.5. Negotiation**

5.5.1 Negotiation shall be carried out on terms and conditions for all types of procurement methods.

## **CHAPTER 6 CONCLUSION OF CONTRACT AND CONTRACT MANAGEMENT**

### **6.1. Award and Conclusion of Contract**

#### **6.1.1. Award and Information on Award of Contract**

6.1.1.1. At the end of the Standstill Period, if the procuring agency has not received any complaint from an aggrieved bidder, or after successful resolution of complaint if any, the procuring agency shall proceed to award the contract in accordance with its decision to award through issuance of letter of Acceptance. Award of Contract shall be determined on the result of the bid evaluation exercises in the case of procurements conducted under the Open Tender/Bidding, Limited Tender methods.

6.1.1.2. Subject to the provisions under Chapter 5, the procuring agency shall award the contract to the lowest evaluated bidder.

6.1.1.3. Procuring Agencies shall as soon as possible notify bidders in writing of decisions reached concerning the award of the contract. Such Notifications shall also be published on the Procuring Agencies website and the PMDD website within 15 days after the date of award of decision.

That notification shall include:

- a. The name of successful bidder;
- b. The date of the award of decision; and
- c. The price to be paid for the goods, works or services.

#### **6.1.2. Conclusion of Contract**

6.1.2.1. Following a decision to award the contract to the chosen bidder, the parties shall enter into a written contract binding on both parties. The contract shall become compatible with the applicable laws of the Kingdom of Bhutan.

6.1.2.2. The contract shall be signed by the duly authorized representatives of the parties and shall bear the date of signature.

6.1.2.3. Where the contract is not signed by both the parties simultaneously:

a. The procuring agency shall send to the chosen bidder two original copies of (1) the full agreed contract and (2) the letter of acceptance, each signed by its duly authorised representative together with the dated signature;

b. The bidder shall sign and date all original copies of the contract and the letter of acceptance and return one copy of each to the procuring agency before the expiry of the deadline indicated in the letter of acceptance; and

c. In case the selected bidder fails to sign the contract agreement within the deadline specified in the letter of acceptance it shall lead to cancellation of the award and recover the positive difference in contract amount with the next lowest evaluated bid in addition to forfeiture of bid security of the selected bidder.

## **6.2. Elements of Contract – General**

### **6.2.1. The Contract Documents**

6.2.1.1. The contract is the formal document, which sets out the complete agreement between the parties. It shall, therefore, contain all the terms and conditions of the contract, define the rights and obligations of the contracting parties and incorporate any documents necessary for the fulfillment of the contract as appropriate. Any such documents shall be clearly marked and referred to in the signed and dated contract.

6.2.1.2. Conditions of contract may be based on standard form contracts such as the model contract documents provided in this rule or as may be issued by the Ministry of Finance from time to time. These standard form contracts will contain “general” conditions of contract. Where the parties agree to include further conditions of contract or where further conditions are required by the standard form contracts, such conditions shall usually be referred to as “special” conditions of contract.

- 6.2.1.3. A contract shall contain among other things:
- a. The purpose of the contract, which shall be clear, precise, lawful and enforceable;
  - b. The Conditions of Contract;
  - c. A set of precise and clear technical specifications including drawings; and
  - d. A set of priced Bill of Quantities listing the supply or works items and their unit rates or prices.

### **6.3. Important Conditions of Contract**

#### **6.3.1. Price and Methods of Payment**

- 6.3.1.1. Subject to the provisions under 6.3.2, the rates and prices in a contract shall be on a fixed basis with the following exceptions:
- a. A Procuring Agency may prescribe conditions relating to price adjustments due to difference/deficiencies in qualities within tolerable limits determined by it;
  - b. Increase or decrease in all duties, taxes, and levies payable by the contractor as a result of Government orders after the date, twenty one (21) days prior to the deadline for submission of bids; and
  - c. The increase or decrease shall be payable/ adjustable to/from the contractor or supplier in respect of the works executed or for the materials purchased after the date of effect of the Government order.
- 6.3.1.2. In a works contract, all materials required for the construction shall generally be supplied by the contractor and the cost included in the respective item rates. When the Procuring agency undertakes to supply some of the materials for ensuring quality or for security reasons, the contract shall specify the items that will be supplied by the Procuring Agency and the contractor shall be instructed to exclude the cost of those materials from their bills.



- 6.3.1.3. In the case of a work estimated to cost up to Nu. 0.10 (point one) million, the contract shall specify that no amounts shall be payable to the contractor till the whole work has been completed and a certificate of completion is issued to the contractor.
- 6.3.1.4. In case of works costing more than Nu.0.10 (point one) million, the contracts shall generally specify that amounts shall be payable at such times as agreed between the parties or at prescribed intervals coinciding with the physical progress of the work (Interim payments or Running account payments).
- 6.3.1.5. In a works contract, if the contractor does not quote rates or prices against any items, the cost of such items shall be deemed to have been covered by other rates and prices quoted in the Bill of Quantities. No payments against execution of such items shall be made.
- 6.3.1.6. In all cases of work contracts and in applicable case of supply contracts, provisions shall be incorporated for deduction of Retention money, commonly known as Security Deposit from the amounts considered to be due and payable to the contractor or supplier. Provision for deduction of any other sums, which may become due and payable by the contractor to the employer, shall also be incorporated.
- 6.3.1.7. All kinds of bills/invoices shall be paid within twenty-five (25) days after the submission of correct bills/invoice in complete form and such provisions shall be incorporated in the contract documents.
- 6.3.1.8. The price and methods of payment shall normally be based on one of the followings:

**a) Lump Sum Contracts**

- 6.3.1.9. Under a lump sum contract, the contractor agrees to perform the scope of work for a fixed contract amount. Payment percentages or amounts may be linked to the completion of contractual milestones or determined as a percentage of the value of work done.

6.3.1.10. Lump Sum Contracts may be appropriate when the scope of the procurement activity can be clearly and accurately specified and can be linked to milestone payments.

6.3.1.11. The contract shall specify that the amounts shall be payable in accordance with the provisions of sections 6.3.1.3 to 6.3.1.7 depending upon the value of the contract within the agreed time period.

**b) Ad measurement (unit price or unit rate) Contract**

6.3.1.12. This type of contract is based on estimated quantities of items and contractual unit prices for each of these items, and is paid on the actual quantities and contractual unit prices.

6.3.1.13. It is appropriate for works, when the nature of works is well defined, but the quantities cannot be determined with reasonable accuracy prior to execution.

6.3.1.14. The contract shall specify that amounts shall be payable in accordance with the sections 6.3.1.3 to 6.3.1.7 within the agreed time period.

**c) Cost plus fee/Reimbursable-cost Contracts**

6.3.1.15. Under reimbursable-cost contracts, payments cover all actual costs, plus an agreed fee to cover overhead and profit.

6.3.1.16. To minimize risk to the procuring agency:

a. the contractor shall make all records and accounts available for inspection by the procuring agency or by some agreed neutral third party; and

b. the contract shall include appropriate incentives to limit costs.

6.3.1.17. A contract of this type should include a “maximum payment” section with an obligation on the service provider to complete the tasks assigned without exceeding the amount of the agreed maximum payment.

6.3.1.18. The contract shall specify that payment of the fee shall be made at prescribed time intervals (weekly or monthly, for example) generally coinciding with the progress of the execution of the services and following the submission of an “invoice” detailing the services provided during the relevant period. Payment of the costs shall similarly be made upon the submission of an “invoice” which shall include all relevant receipts required by the contract.

**d) Advance payments**

6.3.1.19. The types, limits and the required documents for payment of advances and the method of their adjustments shall be incorporated in accordance with the bid documents if provisions for advance payments are required to be made. Generally, such advances shall be in accordance with the provisions of 5.1.12 in Chapter 5.

**e) Payment/Discharge of Securities**

6.3.1.20. The time, procedure and the formalities for payment or discharge of each type of the securities shall be incorporated in the contract, generally along with the terms prescribing their submission, recovery or adjustments in favour of the employer due to the default of the contractor.

**6.3.2. Price Adjustments**

6.3.2.1. Adjustments in Rates and Prices shall be provided for in a contract agreement only under the following conditions:

- a. These shall be mandatorily applicable only in the cases of works and supply contracts of more than twelve (12) months duration. Irrespective of the duration of contract, no price adjustments shall be allowed for the works and supplies made within first twelve (12) months of any contract.

6.3.2.2. Where the rates and prices are subject to adjustments due to rise and fall in the cost of labour and/or materials, provisions relating to the possibility and method of price adjustments may be prescribed and included in the Standard Bidding Documents. Either party, under such circumstances, shall be allowed to seek a price adjustment by submission of documentary evidence of the changes in the market prices of the components.

### **6.3.3. Period and Place of Performance/Delivery**

6.3.3.1. All contracts shall specify the period of performance, place of performance, time and place of delivery. In construction contracts, for example, this may include such things as:

- a. The time limit for the contract in a detailed schedule or program (Resource Based Work Plan) setting out the specific manner in which the contractor shall perform the contract and a description of the construction plan and its proposed operation; and
- b. The starting and completion dates, particularly where complex projects are broken down into several “stages/milestones” or “key dates”.

6.3.3.2. The supply order for one-time purchases shall be sent within five (5) working days after signing of contract.

### **6.3.4. Scope, Quantity and Quality**

6.3.4.1. The scope, quantity and quality of the contractual obligations shall be the fundamental conditions of the contract and will consist, among others, of:

- a. The identification and proper definition of the key elements of the contract such as the parties, the nature and quantity of the works, goods or services concerned, the specifications used, etc.;
- b. The Specifications shall provide for any or all of the following:
  - i. Fair and open competition so as not to restrict competition or favour a particular bidder;
  - ii. Name or description of Goods or Services required;
  - iii. All essential features or components desired in accordance to the Specifications for Buildings & Roads Works issued by the Ministry of Works and Human Settlement in case of works or as specified by the procuring agency;

- iv. Performance and standards requirements with which goods, equipment or materials shall comply;
- v. Where possible requirement of goods, equipment or materials which are environment friendly;

**Note:** during the bidding procedure, any reference to brand names, catalogue numbers, or any other method of specification which results in the identification of a single supplier shall be avoided UNLESS the goods cannot be described sufficiently objectively without recourse to such a specification. If such a specification is used, the reference shall be followed by the words “or equivalent or higher” and the specifications shall permit offers of alternative goods which offer equivalent guarantees of performance, safety, and reliability;

- c. The Standards with which goods, equipment or materials shall comply, or any performance standard wherever possible. To the extent possible the procuring agency shall specify nationally accepted standards with which the goods, equipment, materials or workmanship shall comply. Where such national standards do not exist or are inappropriate, international standards may be specified. These shall be defined, both in the bidding and contract stages, by reference to internationally or nationally accepted standards. In all cases, the procuring agency should mention that any standards which ensure equivalent or superior quality or performance to the standards mentioned would be acceptable. The Procuring Agency should also ensure that the goods, equipment or materials delivered are as per the standards and specifications specified in the Bidding Document;
- d. The responsibilities of the parties, which shall include liability of the parties in respect of all applicable laws;
- e. Provisions relating to a guarantee of the quality of workmanship and materials for a stipulated period beyond the completion of the contract and a requirement for the contractor or supplier to make good at his own expense, any defects that may arise

during the warranty period. The warranty period for procurement of goods (Above Nu. 0.500 million) shall not be less than 12 months and the defects liability period for all new civil construction works shall not be less than the period prescribed in Section 5.1.11 of this rule from the date of taking over the completed works or any section of it.

- f. Provisions relating to the costs of insurance and transportation, the use of internationally recognised contract terms such as the ICC's INCOTERMS being preferred;
- g. Provisions relating to compensation for the procuring agency in the event of delays in the completion of works or delivery of goods resulting in extra cost, loss of revenues or deprivation of other benefits to the procuring agency. These shall be subject to the conditions and limits prescribed under section 6.3.4.2.
- h. Lawful requirements relating to the use of local labour and materials;
- i. Provisions relating to performance securities to ensure the completion of works or of the supply, installation and proper performance of goods and to protect the procuring agency against the failure of the contractor or supplier to perform his contractual obligations. These may be in the form of cash warrant/demand draft for the period of the validity of the contract or bank guarantees. The level of such securities shall generally be ten percent (10%) of the initial contract value;

6.3.4.2. Compensation for the Procuring agency, which is generally referred to as "Liquidated Damages" in the contract documents, if applied, shall be within the following limits:

- a. It should not be less than point zero five (0.05%) percent and should not be more than zero-point one (0.1%) percent for every day of delay; and

- b. The total amount of compensation shall not exceed ten percent (10%) of the Initial Contract Price. Similarly in case of revenue generating projects, a bonus may be paid to the contractor/supplier for completion of work/delivery ahead of completion date when such early completion/delivery would be of benefit to the employer. However, such bonus payment would be subject to the approval of Ministry of Finance.

### **6.3.5. Sub-Contractors**

#### 6.3.5.1. The procuring agency:

- a. Shall define the mechanism for sub-contracting of parts of works to Specialized firms registered with BCTA or any other competent authority for specialized categories of works provided in the guidelines for registration of such firms; or
- b. May define the mechanism for sub-contracting of parts of works to general contractor registered with BCTA or any other competent authority for categories of works for which specialized firms are not available.

6.3.5.2. For section 6.3.5.1 a, the principal contractor shall commit the Specialized firms with their names during the bidding and deploy the same once selected as winning bidder with a notification to the procuring agency of such deployment.

6.3.5.3. For section 6.3.5.1 b, the principal contractor shall seek approval of the procuring agency for sub-contracting of works to the contractor registered with BCTA or any other competent authority. In the event an approval is accorded by the Procuring Agency, such approval does not relieve the principal contractor of his obligations under the contract.

6.3.5.4. Payments shall be made directly to the successful bidder, not to the specialized firms or sub-contractor unless explicitly agreed otherwise between the procuring agency and the contractor with the specific mechanism to do so.

6.3.5.5. The principal contractor shall execute a contract with the specialized firm or a general subcontractor which shall bind the parties throughout the contract including the defect liability period.

### **6.3.6. Variation in Quantities**

6.3.6.1. Proper conditions for variations in the contract shall be made in case there are strong possibilities that such variations would occur during the period of execution of a contract. Generally, such conditions would be necessary in works contracts. The conditions for variations in a work contract shall cover the possibilities of:

- a. Increase or decrease in the quantity of works;
- b. Deletion of any item of works;
- c. Change in level, lines, positions, and dimensions of any part of the Works;
- d. Change in the character, quality, or kind of any work;
- e. Additional works of any kind [but not exceeding twenty percent (20%) of the initial contract amount, or the maximum threshold value for the use of Limited Tender whichever is lower]; or/and
- f. Changes in the sequence or timing of construction activities.

6.3.6.2. All variations shall be ordered by issuing written instructions to the Contractor. The contract conditions shall specify the authority, which will be responsible to issue variation orders.

Note: Generally, HoPA shall, in accordance with the powers delegated to him, issue variation orders in writing as and when necessary. All powers in a Procuring Agency shall be exercised by the HoPA who shall be primarily accountable for all affairs in the agency.

#### **i. Pricing of the Variation**

6.3.6.3. The conditions of variations in a works contract shall specify the



mechanism for valuation of the varied items in accordance with the following:

- a. All variations, except for those listed under item 6.3.6.1 (a), shall be valued at the contract rates and prices as mentioned in the priced Bill of Quantities. If the contract does not contain any rate(s) applicable to the variation, suitable rates or prices will be agreed upon between the Procuring Agency and the Contractor. In the event of disagreement between the parties, the procuring Agency shall fix the rates as may be considered fair and appropriate and those shall be notified to the contractor;

**Note:** Generally, the average percentage above or below the applicable BSR quoted by the contractor shall be taken into consideration for fixing prices of the varied items not existing in the contract (Bill of Quantities).

- b. For variations listed under item 6.3.6.1(a), variations shall be valued at the contract rates and prices, if the variations in quantities are within the limit of twenty percent (20%) for each item of work;
- c. If the final quantity of the varied work falling under item 6.3.6.1 (a) exceeds or decreases by more than twenty percent (20%) from the quantity in the contract Bill of Quantities, and the value of this variation exceeds one percent (1%) of the Original Contract Price, the excess quantities executed over the limit of twenty percent (20%) only shall be valued at a suitable rate or price agreed upon between the Procuring Agency and the contractor. In case where executed quantity is less than the limit of 20%, the executed quantity for the varied work shall be valued at a suitable rate or price agreed upon between the Procuring Agency and the contractor. In the event of disagreement between the parties, the procuring Agency shall fix the rates as may be considered fair and appropriate and those shall be notified to the contractor;
- d. For works up to Nu. 50 million, when quantity deviation exceeds twenty percent (20%) from the quantity in BOQ and the total

cost of such deviations exceeds twenty percent (20%) of the initial contract price, prior approval shall be sought from the Competent Authority (Finance Committee constituted in respective agency). Similarly, for additional works exceeding 20% of the initial contract price approval shall be sought from the same committee; and

- e. For works above Nu. 50 million, when quantity deviation exceeds twenty percent (20%) from the quantity in BOQ and the total cost of such deviations exceeds twenty percent (20%) of the initial contract price, the procuring agency shall seek prior approval of the Competent Authority (Public Investment Board/Public Investment Coordination Committee). Similarly, for additional works exceeding 20% of the initial contract price approval shall be sought from the same committee/board.

### **6.3.7. Termination**

6.3.7.1. The conditions for early termination of the contract may be specified in the contract. These may also include a force majeure section, which shall provide that the failure on the part of the parties to fulfill their contractual obligations will not be considered to be a breach of contract if such a failure is due to unforeseeable events outside the control of the parties. The conditions for termination should set out the consequences of such an event.

6.3.7.2. In addition to section 6.3.7.1., early termination of contract for procurement of works shall be invoked if:

- a. If the contractor fails to achieve all the three milestone agreements consecutively; or
- b. In the event the contractor achieves at least one milestone agreement, but fails to achieve minimum of 50% in every item specified in the agreements at the end of three milestone period.

6.3.7.3. The method of payment upon termination shall be prescribed in the contract. The percentage to be applied to the value of work not completed at the time of termination shall usually be twenty (20%) percent subject to a maximum limit often (10%) percent t of the initial Contract Price.

6.3.7.4. Following the termination of contract, the procuring agency may:

- a. Directly award or purchase from the market for procurement of goods; or/and
- b. Re-tender or execute departmentally for procurement of works.

### **6.3.8. Dispute Resolution**

6.3.8.1. The mechanisms for dispute resolution, intended to regulate events following the breach of a contract by one of the parties, shall be prescribed in the contract. This will include:

- a. The language and interpretation of the contract. Where more than one language is used, reference must be made to the language version which takes precedence;
- b. For contracts to be performed in Bhutan, the governing law should be the law of Bhutan or any other laws specified in the contract and the forum may be any mediation or arbitration prior to settlement before court of law; and
- c. A section requiring the parties to attempt to reach an amicable settlement before turning to the courts or tribunals.

6.3.8.2. The dispute resolution shall not prohibit continuation of execution of the work unless injunction order or such other orders are issued by the court of law.

### **6.4. Contract Management**

6.4.1. The contract management shall include all administrative, financial, managerial and technical tasks to be performed by the procuring agency from contract award until it is successfully concluded or terminated and, payment is made and disputes or claims under it has been resolved.

- 6.4.2. The procuring agency shall apply professional ethics and due diligence in contract management to ensure proper implementation of the signed contracts in line with the agreed conditions of the contract. The procuring agency shall ensure that Goods, Works or Services to be procured conform to technical requirements set forth in the contract document.
- 6.4.3. The activities of contract management amongst others, may include;
- a. Reviewing and approval of the Resource-Based Work Plan;
  - b. Signing of Milestone agreement for effective implementation of contract;
  - c. Monitoring periodically progress in implementation of the contract, including determination of volume of works accomplished according to Resource-Based Work Plan, Milestone agreement and inspection and testing of quality aspects; and
  - d. Management of variation orders, contract suspension and termination, price revisions, contract remedies such as imposition of liquidated damages, delayed payments and disputes or claims settlement procedures.
- 6.4.4. Any other elements of contract management shall be covered by terms and conditions of the contract.

## **6.5. Monitoring of contracts**

- 6.5.1. Project Engineer shall submit the monthly progress report to the Head of Procuring Agency.
- 6.5.2. The Tender Committee or a Monitoring Committee shall MANDATORILY carry out compliance monitoring.

**6.6. Goods Receiving Committee**

6.6.1 Good Receiving Committee with minimum of three (3) members led by the Procurement Officer or any other relevant officer shall be constituted to carry out the full inspection and conformity check during receipt of goods.

6.6.2 The committee mentioned in section 6.6.1. shall be accountable for any certification of faulty acceptance of the goods.

## **CHAPTER 7**

### **PROCUREMENT OF CONSULTANTS' SERVICES**

#### **7.1. Use of Consultants**

- 7.1.1. The procuring agency may contract with firms of consultants or individual consultants for the purposes of the provision of expert advice or assistance in institutional matters and specialized services in connection with the implementation of projects and detailed engineering and design.
  
- 7.1.2. Consulting firms will be preferred where the work involves the application of multi-disciplinary expertise and requires the support of an organization with competent personnel. Individual consultants will be used where a particular assignment can be best carried out by an individual expert with the requisite qualifications and experience.

#### **7.2. Conflict of Interest**

- 7.2.1. While selecting, the procurement agency will ensure that consultants provide professional, objective, and impartial advice and at all times hold the client's interest paramount, without any consideration for future work, and that in providing advice they avoid conflicts with other assignments and their own corporate interests. Consultants shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of being unable to carry out the assignment in the best interest of the procuring agency. Consultants shall not be hired under the circumstances set forth below:
  - a. a firm that has been engaged by the Procuring Agency to provide goods, works, or services (other than consulting services) for a project, and each of its affiliates, shall be disqualified from providing consulting services.
  
  - b. a firm hired to provide consulting services for the preparation or implementation of a project, and each of its affiliates, shall be disqualified from subsequently providing goods, works or services resulting from or directly related to the firm's consulting services for such preparation or implementation.

- c. Neither consultants (including their personnel and sub-consultants) nor any of their affiliates shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultants unless otherwise provided by this Rules and Regulations.
- d. Consultants hired to prepare Terms of Reference (TOR) for an assignment shall not be hired for the assignment in question.

### **7.3. Method of Selection of Consultants**

#### **7.3.1. Quality and Cost Based Selection (QCBS)**

##### **i. The Selection Process**

7.3.1.1. QCBS uses a competitive process among short-listed firms that takes into account the quality of the proposal and the cost of the services in the selection of the successful firm. Cost as a factor of selection shall be used judiciously. The relative weight to be given to the quality and cost shall be determined for each case depending on the nature of the assignment.

7.3.1.2. The selection process shall include the following steps:

- a. preparation of TOR and criteria for evaluation;
- b. preparation of cost estimate and the budget;
- c. advertising for expression of interest (EOI);
- d. preparation of the short list of consultants;
- e. preparation and issuance of the Request for Proposal (RFP) [which should include: the Letter of Invitation (LOI); Instructions to Consultants (ITC); the TOR and the proposed draft contract];
- f. receipt of proposals/criteria to be used for evaluation;
- g. evaluation of technical proposals: consideration of quality;
- h. public opening of financial proposals;

- i. evaluation of financial proposal;
- j. final evaluation of quality and cost; and
- k. negotiations and award of the contract to the selected firm.

**ii. Preparation of Terms of Reference (TOR)**

7.3.1.3. The Procurement Agency shall be responsible for preparing the TOR for the assignment. TOR shall be prepared by a person(s) or a firm specialized in the area of the assignment. The scope of the services described in the TOR shall be compatible with the available budget. TOR shall define clearly the objectives, goals, and scope of the assignment and provide background information (including a list of existing relevant studies and basic data) to facilitate the consultants' preparation of their proposals. If transfer of knowledge or training is an objective, it should be specifically outlined along with details of number of staff to be trained, and so forth, to enable consultants to estimate the required resources. TOR shall list the services and surveys necessary to carry out the assignment and the expected outputs (for example, reports, data, maps, surveys). However, TOR should not be too detailed and inflexible, so that competing consultants may propose their own methodology and staffing. Firms shall be encouraged to comment on the TOR in their proposals. The Procurement Agencies and consultants' respective responsibilities should be clearly defined in the TOR.

**iii. Preparation of Cost Estimate (Budget)**

7.3.1.4. Preparation of a well-thought-through cost estimate is essential if realistic budgetary resources are to be earmarked. The cost estimate shall be based on the Procurement Agency's assessment of the resources needed to carry out the assignment: staff time, logistical support, and physical inputs (for example, vehicles, laboratory equipment). Costs shall be divided into two broad categories: (a) fee or remuneration (according to the type of contract used) and (b) reimbursable, and further divided into foreign and local costs. The cost of staff time shall be estimated on a realistic basis for foreign and national personnel.



**iv. Advertising for shortlist**

7.3.1.5. To obtain expressions of interest, the Agency shall advertise a request for expressions of interest for each contract for consulting firms in the national media and, where feasible, on a website which has free access, including if appropriate and based on nature of consultancy in an international newspaper or a technical magazine. The information requested shall be the minimum required to make a judgment on the firm's suitability and not be so complex as to discourage consultants from expressing interest. Minimum seven (7) days from the date of publication shall be provided for responses, before preparation of the shortlist.

**v. Preparation of Short List of Consultants**

7.3.1.6. The procuring agency is responsible for preparation of the short list with due consideration to those firms expressing interest that possess the relevant qualifications. It is advisable that the Shortlists should comprise, where possible, about six firms or individuals. However, the shortlist may comprise a smaller number of firms in special circumstances (for example, when only a few qualified firms in the field exist or have expressed interest for specific assignment, or when the contract amount does not justify the cost of wider competition). The short list shall be comprised of consultants of the same category with similar capacity, and business objectives. The short list of firms shall not include Individual Consultants.

**vi. Preparation and Issuance of the Request for Proposals (RFP)**

7.3.1.7. The RFP shall include (a) a Letter of Invitation, (b) Information to Consultants, (c) the TOR, and (d) the proposed contract. The procurement agency shall use the applicable standard RFPs with minimal changes, as necessary to address project-specific conditions.

**vii. Receipt of Proposals**

7.3.1.8. The Procurement Agency shall allow enough time for the consultants to prepare their proposals. The time allowed shall depend on the nature of the services, but normally shall be minimum seven (7) days. During this interval, the firms may request clarifications about the information provided in the RFP. The Agency shall provide these clarifications in writing and copy them to all firms on

the short list (who intend to submit proposals). If necessary, the Agency shall extend the deadline for submission of proposals. The technical and financial proposals shall be submitted at the same time. No amendments to the technical or financial proposal shall be accepted after the deadline. To safeguard the integrity of the process, the technical and financial proposals shall be submitted in separate sealed envelopes. The technical envelopes shall be opened immediately by a committee of officials after the closing time for submission of proposals. The financial proposals shall remain sealed until they are opened publicly. Any proposal received after the closing time for submission of proposals shall be returned unopened.

**viii. Evaluation of Proposals: Consideration of Quality and Cost**

7.3.1.9. The evaluation of the proposals shall be carried out in two stages: first the quality, and then the cost. Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation, is concluded. Financial proposals shall be opened only thereafter. The evaluation shall be carried out in full conformity with the provisions of the RFP.

**ix. Evaluation of the Quality**

7.3.1.10. The evaluation committee shall evaluate each technical proposal (using an evaluation committee of at least two specialists in the sector), taking into account several criteria (a) the consultant's relevant experience for the assignment, (b) the quality of the methodology proposed, (c) the qualifications of the key staff proposed, (d) transfer of knowledge, if required in the TOR, and (e) the extent of participation by nationals among key staff in the performance of the assignment. Each criterion shall be marked on a scale of 1 to 100. Then the marks shall be weighted to become scores. The proposed weights shall be disclosed in the RFP. The indicative /suggestive scores range could be:

- a. Consultant's specific experience: 0 to 10points;
- b. Methodology: 20 to 50points;
- c. Key personnel: 30 to 60points;

d. Transfer of knowledge: 0 to 10points; and

e. Participation by nationals: 0 to 10points.

Total: 100 points

7.3.1.11. The evaluation committee shall normally divide these criteria into sub-criteria. The number of sub-criteria should be kept to the essential. The evaluation committee shall evaluate each proposal on the basis of its responsiveness to the TOR. A proposal considered unsuitable shall be rejected at this stage if it does not respond to important aspects of the TOR or it fails to achieve a minimum technical score specified in the RFP.

7.3.1.12. At the end of the process, the evaluation committee shall prepare a Technical Evaluation Report of the “quality” of the proposals. All records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the project and its audit.

**x. Evaluation of Cost**

7.3.1.13. After the evaluation of quality is completed, the procuring agency shall inform the consultants who have submitted proposals of the technical points assigned to each consultant and shall notify those consultants whose proposals did not meet the minimum qualifying mark or were considered non-responsive to the RFP and TOR that their financial proposals will be returned unopened after the signature of the contract. The procuring entity shall simultaneously notify the consultants that have secured the minimum qualifying mark, the date, time, and place set for opening the financial proposals. The opening date shall be defined allowing sufficient time for consultants to make arrangements to attend the opening of the financial proposals. The financial proposals shall be opened publicly by the Bid Opening Committee in the presence of representatives of the consultants who choose to attend.

7.3.1.14. The name of the consultant, the technical points, and the proposed prices shall be read aloud. The Bid Opening Committee shall also prepare the minutes of the bid opening and a copy of this record shall be promptly sent to all consultants who submitted proposals.

7.3.1.15. The evaluation committee shall then review the financial proposals. If there are any arithmetical errors, they shall be corrected. For the purpose of comparing proposals, the costs shall be converted to a single currency as stated in the RFP. The proposal with the lowest cost may be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices. Alternatively, a directly proportional or other methodology may be used in allocating the marks for the cost. The methodology to be used shall be described in the RFP.

**xi. Combined Quality and Cost Evaluation**

7.3.1.16. The total score shall be obtained by weighting the quality and cost scores and adding them. The weight for the “cost” shall be chosen, taking into account the complexity of the assignment and the relative importance of quality. The weight for cost may normally be 40 points out of a total score of 100. The proposed weightings for quality and cost shall be specified in the RFP. The firm obtaining the highest total score shall be invited for negotiations.

**xii. Negotiations and Award of Contract**

7.3.1.17. Negotiations shall include discussions of the TOR, the methodology, staffing, Agency’s inputs, and special conditions of the contract. These discussions shall not substantially alter the original TOR or the terms of the contract, lest the quality of the final product, its cost, and the relevance of the initial evaluation be affected. Major reductions in work inputs should not be made solely to meet the budget. The final TOR and the agreed methodology shall be incorporated in the “description of services”, which shall be a part of the contract.

7.3.1.18. The selected firm should not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were included in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm. The key staff proposed for substitution shall have qualifications equal to or better than the key staff initially proposed.

7.3.1.19. Financial negotiations shall include clarification of the consultants' tax liability in Bhutan (if any) and how this tax liability has been or would be reflected in the contract. As Lump-Sum Contracts payments are based on delivery of outputs (or products), the offered price shall include all costs (staff time, overhead, travel, hotel, etc.). Consequently, if the selection method for a Lump-sum contract included price as a component, this price shall not be negotiated. In the case of Time-based Contracts, payment is based on inputs (staff time and reimbursable) and the offered price shall include staff rates and an estimation of the amount of reimbursable. When the selection method includes price as a component, negotiations of staff rates should not take place, except in special circumstances, like for example, staff rates offered are much higher than typically charged rates by consultants for similar contracts. Consequently, the prohibition of negotiation does not preclude the right of the Agency to ask for clarifications, and, if fee are very high, to ask for change of fees. Reimbursable are to be paid on actual expenses incurred at cost upon presentation of receipts and therefore are not subject to negotiations. If the negotiations fail to result in an acceptable contract, the Agency shall terminate the negotiations and invite the next ranked firm for negotiations. The consultant shall be informed of the reasons for termination of the negotiations. Once negotiations commence with the next ranked firm, the procuring agency shall not reopen the earlier negotiations.

### **7.3.2. Other Methods of Selection**

#### **i. General**

7.3.2.1. This section describes the selection methods other than QCBS, and the circumstances under which they are acceptable. All the relevant provisions of 7.3.1(QCBS) shall apply whenever competition is used.

#### **ii. Selection under a Fixed Budget (FBS)**

7.3.2.2. This method is appropriate only when the assignment is simple and can be precisely defined and when the budget is fixed. The RFP shall indicate the available budget and request the consultants to provide their best technical and financial proposals in separate envelopes,

within the budget. TOR should be particularly well prepared to make sure that the budget is sufficient for the consultants to perform the expected tasks. Evaluation of all technical proposals shall be carried out first as in the QCBS method. Then the price proposals shall be opened in public and prices shall be read out aloud. Proposals that exceed the indicated budget shall be rejected. The Consultant who has submitted the highest ranked technical proposal among the rest shall be selected and invited to negotiate a contract.

**iii. Least-Cost Selection (LCS)**

7.3.2.3. This method is only appropriate for selecting consultants for assignments of a standard or routine nature (engineering design of noncomplex works, and so forth) where well-established practices and standards exist. Under this method, a “minimum” qualifying mark for the “quality” is established. Proposals, to be submitted in two envelopes, are invited from a short list. Technical proposals are opened first and evaluated. Those securing less than the minimum qualifying mark are rejected, and the financial proposals of the rest are opened in public. The firm with the lowest price shall then be selected. Under this method, the minimum qualifying mark shall be established, understanding that all proposals above the minimum compete only on “cost.” The minimum qualifying mark shall be stated in the RFP.

**iv. Selection Based on the Consultants’ Qualifications (CQS)**

7.3.2.4. This method may be used for small assignments for which the need for preparing and evaluating competitive proposals is not justified. In such cases, the procuring agency shall prepare the TOR, request expressions of interest and information on the consultants’ experience and competence relevant to the assignment, establish a short list, and select the firm with the most appropriate qualifications and references. The selected firm shall be asked to submit a combined technical- financial proposal and then be invited to negotiate the contract.

**v. Single-Source Selection (SSS)**

7.3.2.5. Single-source selection of consultants does not provide the benefits of competition with regard to quality and cost, lacks transparency in selection, and could encourage unacceptable practices. Therefore,

single source selection shall be used only in exceptional cases. The justification for single-source selection shall be examined in the context of the overall interests of the project. Single-source selection maybe appropriate only if it presents a clear advantage over competition:

- (a) for tasks that represent a natural continuation of previous work carried out by the firm
- (b) in emergency cases, such as in response to disasters and for consulting services required during the period of time immediately following the emergency
- (c) for very small assignments; or
- (d) when only one firm is qualified or has experience of exceptional worth for the assignment.

**vi. Selection of Independent Individual Consultant**

7.3.2.6. Individual consultants are employed on assignments for which (a) teams of personnel are not required, (b) no additional outside (home office) professional support is required, and (c) the experience and qualifications of the individual are the paramount requirement.

7.3.2.7. Individual consultants are selected as per the procedures outlined in the standard request for expression of interest documents. However, consultants do not need to submit proposals. Consultants shall be selected through comparison of qualifications of at least three candidates among those who have expressed interest in the assignment or have been approached directly by the agency. Individuals considered for comparison of qualifications shall meet the minimum relevant qualifications and those selected to be employed by the agency shall be the best qualified and shall be fully capable of carrying out the assignment. Capability is judged on the basis of academic background, experience, and an appropriate knowledge of the local conditions, such as local language, culture, administrative system, and government organization.

7.3.2.8. From time to time, permanent staff or associates of a consulting firm may be available as individual consultants. In such cases, the conflict of interest provisions described in this rule shall apply to the parent firm.

7.3.2.9. Individual consultants may be selected on a sole-source basis with due justification in exceptional cases such as:

- a. tasks that are a continuation of previous work that the consultant has carried out and for which the consultant was selected competitively;
- b. assignments with total expected duration of less than six (6) months;
- c. emergency situations resulting from natural disasters; and
- d. when the individual is the only consultant qualified for the assignment.

#### **vii. Selection of Particular Types of Consultants**

7.3.2.10. State-Owned Enterprises (SOEs)

State-owned enterprises (SOEs) may be eligible to compete and be awarded contracts only if they can establish that they:

- i. are legally and financially autonomous;
- ii. operate under commercial law; and
- iii. are not a dependent agency of the Employer.

SOEs or institutions and not-for-profit organizations (such as NGOs, and universities), shall not be included in the same short list with private firms unless they operate as commercial entities that meet the requirements of section 7.3.2.10. If such entities are included in the list, the selection should normally be made using CQS. The Shortlist shall not include individual Consultants.

As an exception to section 7.3.2.10, where Consulting Services provided by SOEs, government-owned universities, research



centers, or institutions are of a unique and exceptional nature because of the absence of suitable private sector alternatives, or as a consequence of the regulatory framework, or because their participation is critical to project implementation, the employer may agree to the contracting of these entities on a case-by-case basis provided the criteria outlined in paragraph 7.3.2.5 of these rules are fulfilled.

#### **viii. Government Officials and Civil Servants**

7.3.2.11. Government officials and Civil Servants may be hired under consulting contracts, either as individuals or as members of the team of a consulting firm, only if they fulfill the Bhutan Civil Service Rules.

#### **ix. Procurement Agents**

7.3.2.12. When procuring agency lacks the necessary organization, resources, or experience, it may be efficient and effective for it to employ, as its agent, a firm that specializes in handling procurement. Procurement agents may be selected using QCBS or LCS. The procurement agent shall conduct the procurement on behalf of the employer following all the procurement arrangements outlined in their Legal Agreement and Procurement Plan.

### **7.4. Types of Contracts and Important Provisions**

#### **7.4.1. Types of Contracts**

##### **i. Lump Sum Contract**

7.4.1.1. Lump sum contracts are used mainly for assignments in which the content and the duration of the services and the required output of the consultants are clearly defined. They are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, and so forth. Payments are linked to outputs (deliverables), such as reports, drawings, bills of quantities, bidding documents, and software programs. Lump sum contracts are easy to administer because payments are due on clearly specified outputs.

## **ii. Time-Based Contract**

7.4.1.2. This type of contract is appropriate when it is difficult to define the scope and the length of services, either because the services are related to activities by others for which the completion period may vary, or because the input of the consultants required to attain the objectives of the assignment is difficult to assess. This type of contract is widely used for complex studies, supervision of construction, advisory services, and training assignments. Payments are based on agreed hourly, daily, weekly, or monthly rates for staff (who are normally named in the contract) and on reimbursable items using actual expenses and/or agreed unit prices. The rates for staff include salary, social costs, overhead, fee (or profit), and, where appropriate, special allowances. This type of contract shall include a maximum amount of total payments to be made to the consultants. This ceiling amount should include a contingency allowance for unforeseen work.

## **7.4.2. Important Provisions**

### **i. Price Adjustment**

7.4.2.1. To adjust the remuneration for foreign and/or local inflation, a price adjustment provision shall be included in the contract if its duration is expected to exceed twelve (12) months. Contracts of shorter duration may include a provision for price adjustment when local or foreign inflation is expected to be high and unpredictable.

### **ii. Payment Provisions**

7.4.2.2. Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, shall be agreed upon during negotiations. Payments may be made at regular intervals (as under time-based contracts) or for agreed outputs (as under lump sum contracts). Payments for advances (for example, for mobilization costs) exceeding ten percent (10%) of the contract amount should normally be backed by advance payment securities.

### **iii. Bid and Performance Securities**

7.4.2.3. Bid and performance securities are not required for consultants' services. Their enforcement is often subject to judgment calls, they can be easily abused, and they tend to increase the costs to the

consulting industry without evident benefits.

**iv. Agency's Contribution**

- 7.4.2.4. The Agency may assign members of its own professional staff to the assignment in different capacities. The contract shall give the details governing such staff, known as counterpart staff, as well as facilities that shall be provided by the Agency such as housing, office space, secretarial support, utilities, materials, and vehicles. The contract shall indicate measures the consultant can take if any of the items cannot be provided or have to be withdrawn during the assignment, and the compensation the consultant will receive in such a case.

## **CHAPTER 8 INSTITUTIONAL ARRANGEMENTS**

### **8.1. Procurement Grievance Mechanism**

- 8.1.1. The obligations of this rule and imposed on Procuring Agencies are duties owed to suppliers, contractors and service providers.
- 8.1.2. Any supplier, contractor or service provider who has or is likely to suffer, loss or injury resulting from an alleged breach of such duty, may make a complaint or seek review in accordance with this section, provided that the complaint or review procedure shall be brought promptly and in any event within the prescribed time.
- 8.1.3. A supplier, contractor or service provider may, in the event of a perceived breach of a duty imposed upon a Procuring Agency in respect of a specific procurement procedure, submit a written complaint to the head of the procuring agency responsible for such procedure promptly and in any event within five (5) days of the letter of intent to award the contract.
- 8.1.4. The head of agency shall, within seven (7) days after the submission of the complaint, issue a written decision which shall:
  - a. state the reasons for the decision; and
  - b. if the complaint is upheld in whole or in part, indicate the corrective measures are to be taken.
- 8.1.5. Where such a decision has not been delivered within the time specified, or the complainant is not satisfied with the decision, the complainant may initiate a review procedure before the Independent Review Body established by the Ministry of Finance.
- 8.1.6. A review procedure shall be brought by the complainant within five (5) days of the decision of the Head of the Procuring Agency or, where no such decision has been taken, within ten (10) days of the original complaint after which the Secretariat shall review the admissibility of the grievance.

- 8.1.7. The Independent Review Body may, by interlocutory decision, where necessary, or final decision on the substance:
- a. make a declaration with regard to the legal rules or principles which apply to the subject matter of the proceedings;
  - b. annul in whole or in part any unlawful act or decision of the procuring agency, whose power shall include the power to remove any unlawful technical or other specifications;
  - c. prohibit the procuring agency from acting unlawfully, from making an unlawful decision or from following an unlawful procedure; or
  - d. order the termination of the procurement procedure.
- 8.1.8. The Independent Review Body may also order the suspension of the procurement procedure pending its final decision on the merits of the claim where:
- a. the complainant demonstrates a prima facie case, such that it is more likely than not that he will succeed in his claim;
  - b. the complainant is likely to suffer irreparable harm in the absence of a suspension; and
  - c. the grant of the suspension would not cause disproportionate harm to the public interest, the procuring agency or to other suppliers and contractors.
- 8.1.9. If the decision of the Independent Review Body is not acceptable then an appeal may be made to the Court only on a question of law. In such a case, any concession granted by the Review Body shall stand withdrawn.
- 8.1.10. The constitution, rules of procedures and operation of the Independent Review Body shall be established by the Ministry of Finance.

8.1.11. If the facts disclose a potential issue of corruption, the Independent Review Body shall immediately refer the case to the Anti-Corruption Commission.

## **8.2. Procurement Management and Development Division (PMDD)**

### **8.2.1. Establishment of a Procurement Management and Development Division (PMDD)**

8.2.1.1. PMDD shall be established within the Ministry of Finance to facilitate policy and professional development in the field of procurement.

8.2.1.2. The PMDD shall report to the Secretary, Ministry of Finance on its activities.

8.2.1.3. The PMDD and its staff shall not make contract award recommendations, serve as a member of any Tender Committee or carry out any activity as a procuring agency.

### **8.2.2. Functions of the Procurement Management and Development Division**

8.2.2.1. The PMDD shall have the following duties and authorities:

- a. monitor the implementation of the rule through the collection and analysis of reports provided by the procuring agencies based on reporting formats developed by the PMDD;
- b. provide annual reports to the Secretary, Ministry of Finance on the functioning of the national procurement system;
- c. based on such reports, propose improvements to the rule and supporting regulations, guidelines, and documentation;
- d. develop and promulgate implementing regulations, methodologies, guidelines, and documentation such as standard bidding and contract documents for the benefit of procuring agencies;

- e. act as a focal point for enquiries and information regarding public procurement in Bhutan;
- f. provide advice and guidance on the interpretation and application of the rule, and supporting regulations, guidelines, and documentation to procuring agencies upon request;
- g. carry out and/or commission studies and research on procurement, comparisons, and future projections with a view to improving the procurement system;
- h. coordinate, in consultation with the relevant training organizations in the Kingdom, the development of a national capacity building strategy and encourage the professionalization of the procurement function;
- i. liaise with the relevant governmental organizations in the Kingdom to implement measures aimed at developing human resources and professionalism in procurement within the central and local government;
- j. liaise and cooperate with the relevant governmental organizations in the Kingdom whose activities are connected with the implementation and/or enforcement of the procurement system;
- k. coordinate and facilitate, in consultation with the relevant governmental and private organizations in the Kingdom, the policy for the use of information technology in procurement, including the establishment of a PMDD website for the dissemination of procurement-related information and the creation and use of databases for the collection and analysis of procurement reports as defined in (a) above;
- l. coordinate and facilitate, in consultation with the relevant governmental and private organizations in the Kingdom, the development of advanced electronic procurement mechanisms with a view to improving the efficiency of the procurement system;

- m. develop and administer the review mechanism set out in 8.1 of this chapter;
- n. act as the central counterpart for any procurement-related issues in connection with donors or foreign investors;
- o. keep abreast of and disseminate as appropriate information regarding international developments in procurement and best practice which may impact on and assist in the improvement of the national procurement system;
- p. provide and conduct, in collaboration with relevant governmental and private organizations in the Kingdom and outside the Kingdom, workshops, conferences, and seminars aimed at improving awareness and understanding of the government's procurement policy and practices;
- q. develop and promulgate the code of conduct that shall apply to each official of a procuring entity involved in public procurement. The code of conduct shall address:
  - i. Conflict of interest in procurement;
  - ii. Measures to regulate matters concerning personnel responsible for procurement;
  - iii. Screening procedures and training requirements.
  - iv. Any other matter related to the ethics of public procurement.



## **CHAPTER 9**

### **ELECTRONIC GOVERNMENT PROCUREMENT**

#### **9.1. Electronic Government Procurement System (e-GP)**

- 9.1.1. To promote transparency and efficiency, information and communications technology (ICT) shall be utilized in the conduct of procurement procedures. There shall be a single portal that shall serve as the primary source of information on all government procurement. Accordingly, the e-GP system shall serve as the primary and definitive source of information on government procurement.
  
- 9.1.2. All government agencies shall use e-GP system for all kinds of procurement activities and it shall be guided by e-GP guideline issued by Ministry of Finance.

# PROCUREMENT RULES & REGULATIONS FORMS

PRR – 1

## RECORD OF BID OPENING

Contract Title/No.

Bid No.

1. The following bids were received on or before the deadline for submission of bids that was fixed as (date) at (time) and were publicly opened on (date) at (time) at (place)

Name of Bidder	Nationality	Bid Price <sup>1</sup>	Bid Security Amount	Validity of Bid Security	Remarks

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<sup>1</sup>Show prices by sections/schedules if desired. Bid prices should be in the currency of the bid. Any discount offered should also be announced and recorded.

2. The following bidders' official representatives attended the public opening of bids:

Name of Representative	Bidder Represented	Signature

3. The following complaints/manifestations were received during the opening of bids.

Name of Representative	Bidder Represented	Signature

Chairperson  
(Signature, Name, Designation)

Member  
(Signature, Name, Designation)

Member  
(Signature, Name, Designation)

Member  
(Signature, Name, Designation)

Member  
(Signature, Name, Designation)

Member  
(Signature, Name, Designation)

Member  
(Signature, Name, Designation)

**BID OPENING COMMITTEE****Bid Opening Checklist**

The following is a list of items which fall under the responsibility of the Bid Opening Committee established for the opening of the bids pursuant to this rule.

<b>Sl. No</b>	<b>Particulars</b>	<b>Yes</b>	<b>No</b>
1	Have the bids been presented in the correct format?		
	Are the envelopes properly sealed, unopened and addressed to the Procuring Agency?		
	Are the original documents and copies properly marked?		
	Do the persons signing the documents have the necessary authority to sign?		
	Are all the bid securities in order: form, amount, validity?		
	Have the bidders used the prescribed bid form, price schedule and bill of quantities?		
2	Have the bidders submitted the required documents establishing eligibility and qualification?		
	Where required are they registered/licensed?		
	Have they supplied all documents set out in the bidding documents from the third parties such as bank statements etc?		
3	Have the bidders supplied brochures, catalogue, literature and drawings?		
4	Have all members of the bid opening committee seen and approved the above and signed the documents?		
5	Has the record of bid opening been duly completed?		

**Total Number of Bid Opening Committee Members:**

**Each member must sign and add his/her name below**

## TENDER COMMITTEE

### Procurement Checklist

The following is a list of items which fall under the responsibility of the Tender Committee established for the supervision of the procurement process pursuant to this rule.

The members of the Tender Committee should satisfy themselves that the following procedures have been complied with by the procuring agency. All proceedings of the Tender Committee must be recorded in minutes and, where a decision is taken to amend or reverse a decision of the procuring agency, the reasons for doing so must also be precisely recorded in the minutes.

Sl. No	Particulars	Yes	No
1	Is the procurement procedure chosen appropriate to the value of the contract?		
	Has the value been verified to ensure that there has been no splitting of contracts to defeat the threshold values?		
2	If an exceptional procedure has been used, is it justified?		
	If emergency, is it necessary to conduct the procurement within 15 days?		
3	Has the procurement been properly notified to potential bidders?		
	Have tenderers been given sufficient time to respond in view of the scope of the proposed contract?		
	Have they all been given the same time?		
4	Have complete sets of documents been delivered to all bidders?		
	Do the bidding documents properly specify deadlines, date of bid opening etc?		
	Have bid securities been requested? Are the levels correct and notified?		
	Do the bidding documents specify the proper selection and award criteria?		

	Have the sample bidding documents been used without modifications? If amended, have the reasons been recorded?		
5	Where bidders are rejected, has that been done on the basis of the stated criteria?		
	Have the bidders been notified of the reasons for rejection?		
	Have the reasons for rejection been recorded and submitted to the committee?		
6	Have the questions of bidders been answered adequately?		
	Have the answers been circulated to all bidders?		
7	In making the technical evaluation, are you satisfied that the evaluation committee has applied only the criteria set out in the bidding documents?		
8	In the event of an abnormally low price, has the evaluation committee properly sought clarifications to show good reason for such a price?		

Total Number of Tender Committee Members:

Each member must sign and add his/her name below:

## SAMPLE EVALUATION REPORT

### EVALUATION REPORT FOR THE CONSTRUCTION OF

(insert name of work)

1. Scope of contract and estimated cost:

The works covered under this bid is for the construction of (insert name of work, project name)

2. Bidding document:

Salient points of bidding document:

- i. Stipulated period of completion - (specify duration and mention whether including or excluding mobilization period and monsoon)
- ii. Price adjustment- (specify whether price adjustment is applicable or not)
- iii. Pre-bid meeting - (specify date of pre-bid meeting, if any)

3. Bid invitation process:

Bids were invited by the (insert name of the Procuring Agency, Department, Ministry and the date of invitation) in (insert name of the media of invitation and date of publication). A copy of the invitation to bid is enclosed in Annexure II.

The bidding documents were made available for sale from (specify date) to (specify date). The date of bid opening was (specify date). Thus, a minimum bidding period of (specify number of days) days was provided.

The following prospective bidders purchased the bidding document (give the list of prospective bidders who purchased the bidding document). Pre-bid conference was held on (specify date) as scheduled. The copy of minutes of the pre-bid meeting and the addendum was sent immediately to all the bidders who had purchased the bidding document and was incorporated in the bidding documents. A copy of the minutes of pre-bid meeting and the copy of the addendum is enclosed in Annexure III.

4. Bid response:

In all (insert number of bids) bids were received.

In time: (insert number)

Late: (insert number)

Total (insert number)

5. Bid opening:

The bids were opened on (insert date) at (insert time) in the (insert venue) in the presence of the bidders and/or their authorized representatives. All the (insert number) bids received were opened one by one. The quoted bid price, bid securities furnished by the bidders, and discounts (if any) offered by the bidders were read out at the meeting. The minute of the bid opening was prepared, and a copy of the minutes is enclosed in Annexure IV.

Table of Bid Prices as read out at the time of bid opening is as follows:

Sl. No.	Name of Bidder/Company	Bid Price (Nu.)	Remarks

6. Clarification obtained:

(Describe the type of clarifications sought from the bidders)

7. Arithmetical check:

All bids were arithmetically checked. Arithmetical errors were found in the bill of quantities of the bid submitted by the following bidders:

(Specify bids in which arithmetical errors were found)

Table of Bid Prices after the arithmetical check is as follows:

Sl. No.	Name of Bidder/Company	Corrected Bid Price (Nu.)	Remarks



**Completeness and legal validity:**

(Specify the legal validity of bids, for e.g.; all bids are duly signed by the bidders or by persons holding proper power of attorney and hence are legally valid. They have quoted for all the items and are thus complete etc.)

**Bid validity:**

As per section 15.1 of Instructions to the Bidders, the bids shall remain valid for a period not less than (insert number of days) days after the deadline for the submission of the bid. The bids were opened on (insert date), and hence, the bids should be valid up to (insert date).

**Bid Security:**

As per Section 16 of the Instructions to the Bidders, the bid security should be (insert amount) in the form of a Bank Guarantee or a Demand draft which shall be valid for 30 days after the date of expiry of the validity of the bid, i.e., up to (specify date). The bid security furnished by the prospective bidders are as follows:

<b>Sl. No.</b>	<b>Name of Bidder/ Company</b>	<b>Bid security amount (Nu.)</b>	<b>Bid Security type &amp; issuing bank</b>	<b>Bid validity</b>

(Describe whether the bid securities were in the prescribed format and state whether they are valid or not. Give reasons for invalid bids)

**Responsiveness to commercial conditions:**

The bidders have (state whether bidders have stipulated any conditions). They have (state whether the bid form has been signed) the contractor's bid form as well as bidding documents and hence it is taken that they are agreeable to the commercial conditions.

8. Bids rejected/eliminated as non-responsive to the bidding documents:

<b>Sl. No.</b>	<b>Name of Bidder/ Company</b>	<b>Bid Price (Nu.)</b>	<b>Brief reasons for rejection/ elimination</b>

The details of determination of responsiveness of bids are furnished in Annexure V.

9. Substantially responsive bids:

In view of the above the bids of the following bidders are determined as substantially responsive to the provisions of the bidding documents.  
(List the substantially responsive bids)

10. Comments on the unbalanced bid:

The following bidders have quoted unbalanced bid prices.

(List the bids with unbalanced bid prices for major items of works only)

The above bidders were requested to furnish the analysis of rates with detailed estimate and breakdown of cost for each unbalanced rates.

The information were:

(Specify whether received and scrutinized).

11. Evaluation of the substantially responsive bids:

There are (state any conditions) which warrant loading of the bid prices. No other specific evaluation criteria have been stipulated in the bidding document. The loading of the prices is therefore (specify the loading factor; if none, specify as NIL).

As per Section 4.5 of the Instructions to the Bidders, in order to qualify for award of the Contract, the substantially responsive bidders should meet the minimum qualifying criteria. Therefore, the substantially responsive bids are evaluated against the following minimum qualifying criteria and evaluation table showing ranking of the bids are as follows: [for evaluation under new point-based system, attach the evaluation table showing the ranking of the bids generated from e-tool here].

12. Evaluation: In accordance with the Instruction to Bidders ITB 29, the work can be awarded to (insert name of Bidder) who has scored the maximum price preference – financial score as shown in the above table.

Signature of the Evaluation Committee:

- 1.
- 2.
- 3.

**Enclosures:**

Copy of bidding document (Annex I)  
Copy of bid invitation and press advertisement (Annex II) Copies of amendment issued (Annex III)  
Minutes of bid opening (Annex IV)  
Determination table of responsiveness (Annex V) Minutes of pre-bid meeting (Annex VI) Comparative statement of offers (Annex VII)

Sample Preliminary examination (Determination of responsiveness)

SINo.	Name of bidders	Verification	Eligibility	Bid security	Completeness of bid	Substantial responsiveness	Acceptance for detailed examination
1	A	Yes	No <sup>1</sup>	Yes	Yes	No	No
2	B	Yes	Yes	Yes	Yes	Yes	Yes
3	C	Yes	Yes	Yes	No <sup>4</sup>	No	No
4	D	No <sup>2</sup>	Yes	No <sup>3</sup>	Yes	No	No
5	E	Yes	Yes	Yes	Yes	Yes	Yes
6	F	Yes	Yes	Yes	Yes	Yes	Yes

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1 Government owned enterprise and legally not autonomous.

2 Business license not valid

3 Bid security valid only for 91 days

4 Rates not quoted for day works & power of Attorney not submitted

**DECLARATION FORM**  
(to be filled by each member)

**Tender Committee / Opening Committee / Evaluation Committee**  
(choose as appropriate)

Name:

Office:

Designation:

Contract Title:

Contract Reference:

1. I, the undersigned (Insert the name of the member) ..... appointed as member of the Tender Committee / Opening Committee / Tender Evaluation Committee (select appropriate committee) for the above contract, fully understand the “commercial-in-confidence” nature of the proceedings of the procurement process and declare that I will not discuss any matters pertaining to the proceedings, including our recommendations, with any party other than the members of the Tender Committee, Opening Committee, and the Tender Evaluation Committee appointed for this procurement and who are officially involved in the process;
2. I, the undersigned, declare that I am in no way linked, associated, or involved with any of the bidders whose bids are under consideration;
3. I will maintain strict confidentiality of information related to the evaluation of bids and recommendations for the award of the contract until the issuance of the letter of intent to award the contract;
4. I will adhere to the conditions of the integrity pact attached in the bidding document and hold myself responsible for any action related to this procurement;
5. I am fully aware of the responsibilities of the Tender Committee/Opening Committee/Tender Evaluation Committee (Insert as applicable) and also the ethics of procurement.

6. Declared that none of my spouse or dependents (father, mother, brother, sister and own children) have taken part in the bidding and that I do not have any direct interest in any of the parties participating in the bidding.”

7. I do have conflict of interest in view of following reasons:

.....  
.....  
.....

I hereby confirm that the above information is true to the best of my knowledge. In the event the above declaration is found to be incorrect, I shall be liable for administrative / legal action.

NAME & Signature of the Member:

Tender Committee/Opening Committee/Tender Evaluation Committee  
(choose as appropriate)

Date: