



Democratic Socialist Republic of Sri Lanka

PROCUREMENT GUIDELINES

2006

GOODS & WORKS

NATIONAL PROCUREMENT AGENCY

PREFACE

President of Sri Lanka

THE Government of Sri Lanka has placed the highest priority to ensure that development efforts across all sectors are evenly balanced and distributed to all cross sectors of the society, in order to meet the overall national development and enhance the quality of life of its citizens. To achieve the desired results it is imperative to ensure speed, transparency and integrity in all the development spheres and in regard to which the procurement function of goods, works and services plays a critical role.

The development programmes which are instituted and other in the pipe line include those which are financed by public funds as well as by external funding. Within this context the availability of a set of guidelines on procurement which harmonizes the processes to be followed under the different funding agency procedures has been identified and acknowledged by all providers of development funding as a vital factor.

It is in this context that the National Procurement Agency has been established under Presidential directive. The institution which functions directly under my purview is mandated to study, revise and adopt the procedures and processes in order to govern this vital aspect. The efforts taken by the National Procurement Agency, within a period of one year from its inception, to study the several procedural documents which prevail in the sphere of public procurement and to formulate a single harmonized procurement guideline applicable over the different funding agency procedure is a significant and commendable achievement.

I trust that this publication on procurement guidelines in the areas of goods and works would be made use of by all stakeholders of national development in order that the overall national development goals as well as the individual organization development objectives are realized on a timely and cost effective manner.



Mahinda Rajapaksa,
President.

January 27, 2006

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My No: NPA/CEO/18

National Procurement Agency
Level 22, West Tower
World Trade Centre
Colombo 01.
25th January 2006.

To All : **Secretaries of Ministries,
Chief Secretaries of Provincial Councils,
Heads of Government Departments,
State Corporations & Statutory Bodies,
Fully Government Owned Companies; and
Heads of Local Authorities**

Government Procurement Guidelines - 2006

The Government Procurement Guidelines -2006 are issued with the approval of the Cabinet of Ministers in order to enhance the transparency of Government procurement process to minimize delays and to obtain financially the most advantageous and qualitatively the best services and supplies for the nation.

The Guidelines on Government Tender Procedure (Revised Edition, 1997), Revised Guidelines on Government Tender Procedure for Projects assisted by the Foreign Financing Agencies (Revised Edition- 2000) and Treasury circulars pertaining to the Guidelines on Government Tender Procedure issued upto 20.10.2005 are hereby repealed and are replaced by these Guidelines.

Unlike the current Guidelines, these Guidelines have two components; The Guidelines & the Manual. The Manual will be issued separately. The provisions of these Guidelines will be **effective from 01.02.2006** in respect of all procurements of Goods, Works and Services other than the Selection and Employment of Consultants. These guidelines are applicable to the ongoing tenders in which bidding documents or pre-qualification documents are issued after the effective date of these Guidelines.

These Guidelines have been drafted in association with the major funding agencies such as the World Bank, the Asian Development Bank and the Japan Bank for International Cooperation, to ensure that the Government Procurement Guidelines are harmonized to the maximum extent in order to use for the foreign funded projects as well.

NPA has taken steps to launch a series of Training programmes for public sector officials to introduce these Guidelines. Details of the Training programmes are available in the NPA Training calendar -2006 which has already been circulated among Government institutions and in the NPA web. (www.npa.gov.lk)

Sinhala and Tamil translations of these Guidelines will be issued soon.

These Guidelines are issued with the concurrence of the General Treasury.

Any clarification/interpretation on these Guidelines should be sought from the National Procurement Agency.

Daya Liyanage
Chairman/CEO
National Procurement Agency

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DEFINITIONS

Unless the Context otherwise requires, the following terms whenever used in these Guidelines have the following meanings:

- “Bid or Quotation”** means a formal offer by a potential bidder indicating the price and other terms at which the bidder agrees to provide the Goods or Services or to execute the Works, where the offer tendered by the bidder is accepted by the Procuring Entity.
- “Foreign Funding Agency”** Means any multi-lateral or bi-lateral agency which has entered/intends to enter into an agreement with the Government of Sri Lanka and is not limited to the World Bank, Asian Development Bank, Japan Bank for International Co-operation.
- “Foreign Funded Project”** means a project fully or partly financed by a Foreign Funding Agency.
- “Goods”** means commodities, raw materials, products, equipment and other physical objects of every description, whether in solid, liquid or gaseous form and electricity.
- “Procurement”** means the obtaining by Procuring Entities of Goods, Services or Works by the most appropriate means, with public funds or funds from any other source whether local or foreign received by way of loans, grants, gifts, donations, contributions and similar receipts. It would include purchase, rental, lease or hire purchase, including services incidental to the provision of the said Goods or Services or the execution of the Works.
- “Procuring Entity”** means a Government ministry, provincial council, Government department, statutory authority, government corporation, government owned company, local authority or any subdivision thereof or any other body wholly or partly owned by the Government of Sri Lanka or where the Government of Sri Lanka has effective control of such body, that engages in Procurement.

“Procurement Action”	means any action in furtherance of Procurement of Goods, Services or Works.
“Services”	means services other than consultancy services.
“Works”	means all activities associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or associated activities, such as site preparation excavation, erection, building, installation of equipment or materials, decoration and finishing.

INTERPRETATIONS

- * Headings are for convenience only and do not limit, alter or affect the interpretations of these Guidelines.

- * Words importing the singular include the plural and vice-versa.

ACRONYMS

BOQ	- Bills of Quantity
CAPC	- Cabinet Appointed Procurement Committee
CBO	- Community Based Organization
DPC	- Department Procurement Committee
GOSL	- Government of Sri Lanka
ICB	- International Competitive Bidding
ICTAD	- Institute for Construction, Training & Development
MPC	- Ministry Procurement Committee
MPP	- Master Procurement Plan
NCB	- National Competitive Bidding
NPA	- National Procurement Agency
PC	- Procurement Committee
PE	- Procuring Entity
PG	- Procurement Guidelines
PPC	- Project Procurement Committee
PTS	- Procurement Time Schedule
RPC	- Regional Procurement Committee
SCAPC	- Standing Cabinet Appointed Procurement Committee
SBD	- Standard Bidding Document
SLR	- Sri Lanka Rupees
TEC	- Technical Evaluation Committee
TCE	- Total Cost Estimate
UNDB	- United Nations Development Business
VAT	- Value Added Tax

CHAPTER I

GENERAL

1.1 Purpose

- 1.1.1 The purpose of these Guidelines is to set forth the procedures that should be adhered to by the PE, in carrying out any Procurement Action financed in whole or in part by GoSL or a Foreign Funding Agency.

1.2 Objectives

- 1.2.1 The Procurement process should ensure:–
- (a) maximizing economy, timeliness and quality in Procurement resulting in least cost together with the high quality;
 - (b) adhering to prescribed standards, specifications, rules, regulations and good governance;
 - (c) providing fair, equal and maximum opportunity for eligible interested parties to participate in Procurement;
 - (d) expeditious execution of Works and delivery of Goods and Services;
 - (e) compliance with local laws and regulations and international obligations;
 - (f) ensuring transparency and consistency in the evaluation and selection procedure; and
 - (g) retaining confidentiality of information provided by bidders.

1.3 Scope of Application

- 1.3.1 These Guidelines repeal, replace or otherwise supersede all previous guidelines, circulars and financial regulations issued by the Treasury and the Department of Public Finance on the subject of procurement except those relating to disposal of inventory items and divestiture of public assets.
- 1.3.2 Guidelines are applicable to all Procurements, irrespective of the source of funding.

Guidelines of Foreign Funding Agencies

- 1.3.3 In the case of a Foreign Funded Project, if the Foreign Funding Agency mandates the use of Procurement Guidelines of such funding

agency, such funding agency guidelines shall prevail over these Guidelines to the extent applicable. In the event of a conflict between these Guidelines and that of the funding agency, the funding agency guidelines shall take precedence over these Guidelines.

1.4 Ethics in Procurement

Confidentiality

- 1.4.1 Parties associated with Procurement Actions, namely, suppliers/contractors and officials shall ensure that they maintain strict confidentiality throughout the process.

1.4.2 Corruption

The officials involved in a Procurement Action shall not abuse their powers. An official who abuses one's position in a Procurement Action to derive benefits for oneself or one's close family or business associates, would be deemed to be engaged in corrupt practices.

Conflict of Interest

- 1.4.3 Officials shall declare that they shall remain without a conflict of interest throughout the process. Should such a compromising situation arise, the official shall declare his/her interest and disassociate himself/herself from the process.

No gifts or inducement to be accepted

- 1.4.4 Officials shall refrain from receiving any personal gain from any Procurement Action. No gifts or inducement shall be accepted. Suppliers/contractors are liable to be disqualified from the bidding process if found offering any gift or inducement which may have an effect of influencing a decision or impairing the objectivity of an official.
- 1.4.5 For the purpose of Guideline 1.4 (Ethics in Procurement), officials shall mean any public officer or any other person who is engaged in any activity related to a specific Procurement Action.

1.5 Laws applicable to Procurement Actions

The laws applicable to Procurement Actions shall be the Laws of the Democratic Socialist Republic of Sri Lanka.

CHAPTER 2

**INSTITUTIONS, PROCUREMENT COMMITTEES
AND THEIR FUNCTIONS****2.1 National Procurement Agency (NPA)**

- 2.1.1 The NPA is the principal authority for formulating and effecting amendments to these Guidelines; issuance of manuals, SBDs, evaluation methodologies, standard contracts, and specifications. Any clarification of the provisions of these Guidelines or the aforementioned documents may be sought from the NPA.

2.2 Secretaries to the Line Ministries

- 2.2.1 The responsibility of Procurement Actions shall be vested with the Secretaries of the respective Line Ministries, who are deemed to be the Chief Accounting Officers of such Ministries.

2.3 Responsibilities of the Procuring Entity

- 2.3.1 Prior to a request being made for the appointment of a PC, the PE shall confirm to the NPA that:–
- (a) it has carried out initial environmental examination, (IEE) environmental impact assessment (EIA), social impact assessment (SIA), and all other such procurement preparedness activities as may be relevant to the project;
 - (b) it has completed land acquisition and resolved compensation, re-settlement issues, including relocation of utilities and such other matters which are necessary for the uninterrupted implementation of the project.
- 2.3.2 The officer-in-charge of a Procurement Action, such as Heads of Department and Project Directors, together with the assistance of the Procurement Specialists, Consultants and other staff shall be responsible for the following:
- (a) Maintenance of necessary communication with all stake holders of the Procurement process;

- (b) preparation of invitation for pre-qualification and its submission to the Technical Evaluation Committees (TEC) for review and approval;
- (c) preparation of the draft bidding documents including the specifications and the submission of same to the TECs for review and approval;
- (d) preparation of data and information prior to the evaluation report;
- (e) issuance of invitations and facilitating the meetings of TECs and PCs;
- (f) circulation of the minutes of the meetings of TECs and PCs; and
- (g) provision of any requisite assistance to TECs and PCs on any request made by them to facilitate the Procurement process and all other matters incidental thereto.

2.4 Joint responsibilities of Procurement Committees and Technical Evaluation Committees

2.4.1 PC and the TEC shall be responsible for the entire Procurement process:

Authority of Procurement Committees is given in Procurement Manual 2.14.1

- (a) The relevant PC and the TEC as described in these Guidelines shall carry out the entire Procurement process.
- (b) All components of a complex Procurement, such as design, different construction aspects (i.e. electrical, structural, piling, etc.) shall be carried out by a single/same PC within applicable limits of authority.
- (c) However, there may be different TECs for such different Procurement Activities.

Details given in Procurement Manual 2.4

2.4.2 Any Procurement that will lead to other downstream Procurement/s such as selection of consultants for designing and the subsequent selection of contractors for construction activities shall be aggregated and the appropriate PC shall be selected.

2.4.3 All members of PCs and TECs serving in their respective committees shall give priority to the duties assigned to them in the PCs/TECs over their routine functions.

2.5 Responsibilities and Duties of Procurement Committees

- 2.5.1 The members of the PCs are jointly and severally responsible for the following:
- (a) ensuring that the funds are available for the Procurement Action under consideration;
 - (b) reviewing and agreeing upon the PTS in order to award the contract as planned;
 - (c) at the first meeting determining the dates and manner of advertising the Procurement, sale of bidding documents, and closing and opening of Bids;
 - (d) agreeing with the TEC on the type and nature of bidding and contract documents to be used;
 - (e) participating and directing the TEC in providing/requesting clarifications where deemed appropriate; and
 - (f) reviewing the evaluation report and recommendation of TEC and making determinations/recommendations in accordance with Guideline 8.1.

2.6 Responsibilities and Duties of Technical Evaluation Committees (TEC)

- 2.6.1 (a) The members of the TECs are jointly and severally responsible for the following activities:
- (i) to recommend and agree with the PC, the PTS in order to award the contract within the minimum time period possible;
 - (ii) to review and approve of specifications to ensure that the specifications are generic in nature and competitiveness could be promoted on an equal level;
 - (iii) in the case of Procurements handled by Cabinet Appointed Procurement Committees and Ministry Procurement Committees, to revisit specifications if objections are received from any bidder 10 days prior to closing of Bids, the PE shall convey its decision to all the bidders who have purchased the bidding documents;

See also
Procurement
Manual 2.4

- (iv) to review and to approve the pre-qualification documents/ bidding documents prepared by the PE to ensure that the requirements of these Guidelines and accepted principles of Procurement are complied with;
- (v) to direct the PE to obtain clarifications from bidders in writing, where appropriate;
- (vi) to approve and issue addenda to the bidding documents where necessary;
- (vii) to agree upon the Bid opening procedure with the PE;
- (viii) to participate in negotiations, if directed by the PC; and
- (ix) to review the draft contract prepared by the PE to ensure that it complies with the determination of the PC;

(b) The TEC may get assistance from any external consultant (if any). However, any services performed by the consultant during the Procurement process should be under the guidance and supervision of the TEC.

(c) The Chairperson of TEC or his nominee selected from amongst the members of the TEC shall participate at the pre-bid meeting.

2.7 Composition of Procurement Committees (PC) and Cabinet Appointed Procurement Committees (CAPC)

Composition of CAPC is given in Procurement Manual 2.7.1

2.7.1 Under delegated authority by the Cabinet of Ministers, the NPA shall appoint CAPCs to undertake high value Procurements.

Standing Cabinet Appointed Procurement Committee (SCAPC)

2.7.2 (a) In extraordinary situations, a ministry may submit a Cabinet memorandum, specifying the special circumstances, which require a deviation from the general procurement procedures in order to meet such situation, and shall seek Cabinet approval to appoint a SCAPC indicating the limits of Procurement.

(b) The TEC for such SCAPC shall be appointed by the NPA.

2.7.3 SCAPC may be justified where;

(a) expeditious processing of Procurement is necessary;

- (b) extraordinary speedy decisions have to be taken for Procurement of Goods, Services and/or Works;
- (c) supplies are immediately required to avoid acute shortages in the market;
- (d) Bids have a very short validity period;
- (e) the prices of Goods fluctuate frequently;
- (f) items are needed to be purchased very frequently without significant changes in specifications;
- (g) security consideration warrants; and
- (h) a project contains a large number of bid packages spread over a long time span.

Ministry Procurement Committee (MPC)

- 2.7.4 The Secretary to the Line Ministry shall appoint the MPC.

Composition of MPC is given in Procurement Manual 2.7.4

Department Procurement Committee

- 2.7.5 The Secretary to the Line Ministry shall appoint the DPC.

Composition of DPC is given in Procurement Manual 2.7.5

Project Procurement Committee (PPC)

- 2.7.6 The Secretary to the Line Ministry shall appoint the PPC.

Composition of PPC is given in Procurement Manual 2.7.6

Regional Procurement Committee (RPC)

- 2.7.7 Heads of Department having a large number of regional/district offices may set up RPCs under delegated authority or with the approval of the Secretary to the Line Ministry, on a case by case basis.

Composition of RPC is given in Procurement Manual 2.7.7

Members of Cabinet Appointed Procurement Committee (CAPC) or Ministry Procurement Committee (MPC)

- 2.7.8 (a) *Ex-officio Member:*
- (i) a person appointed to a CAPC or MPC as a ex-officio member shall ensure that in his/her absence the officer acting in his/her post or the alternate member appointed in accordance with Guideline 2.7.8 (c) below, attends the

CAPC or MPC meetings and performs all such functions as would have been required to be performed by such ex-officio member;

- (ii) a specific letter of appointment or a nomination is not required for an officer acting in the post of an ex-officio member.

(b) *Nominee Member:*

Each nominee member of a CAPC or MPC shall ensure that in the event such a nominee member is unable to attend a scheduled meeting for whatever reason, the alternate member attends such meeting and performs all such functions as would be required to be performed by such nominee member.

(c) *Alternate Member:*

- (i) Each CAPC or MPC shall have a pre-designated alternate member to act in the place of an ex-officio or nominee member to attend CAPC or MPC meetings and participate in the proceedings of such meetings, in the event an ex-officio member or nominated member for any reason whatsoever, is unable to perform his functions as an ex-officio or nominated member;
- (ii) the appointment of an alternate member shall be simultaneously carried out by the NPA/appointing authority with that of the appointment of the other members of the CAPC or MPC;
- (iii) the nominated member should brief the alternate member on the progress made and issues involved in the Procurement Action, if he/she is unable to attend a scheduled meeting. Alternate member may attend any meeting as an observer whenever possible;
- (iv) all acts done in good faith by officers acting in the post of ex-officio members or the alternate member shall for all intents and purposes be deemed to have been carried out by such ex-officio members or nominee members.

(d) ***Chairperson:***

- (i) Chairperson of a CAPC or MPC can be an ex-officio member or a nominated member and shall preside at all meetings of the CAPC or MPC. In the absence of the Chairperson, the members of the CAPC or MPC may elect anyone amongst them to act as an interim Chairperson;
- (ii) in the event of Chairperson being unable to attend a scheduled meeting, he/she shall ensure that either the officer acting in his/her place or the alternate member as the case may be, attend such meeting and participates in the proceedings thereof and perform all such functions as is required, so that the meeting can proceed as scheduled;
- (iii) the Chairperson shall inform in writing to the officer acting in his/her place or the alternate member as the case may be, of his inability to attend such a meeting with copy to the Secretary to the Line Ministry and the NPA.

(e) ***Absence of Members:***

If a member of a CAPC or MPC is absent from participating in three consecutive scheduled meetings, without a valid reason, then such member is liable to be removed from being a member of such committee.

2.8 Composition of Technical Evaluation Committees (TEC)

- 2.8.1
- (a) There shall be TECs for all Procurements falling under the purview of CAPC, MPC, DPC and PPC. No member should serve in both the PC and TEC.
 - (b) TECs should consist of subject specialist/s, and at least one member who is sufficiently knowledgeable on Procurement procedures.
 - (c) A TEC where necessary may obtain expert advice from external members or institutions on specific subject matters.
 - (d) A TEC may also obtain assistance for drafting bidding documents and evaluation of Bids from external consultants who shall be guided and directed by the TEC.
 - (e) A TEC is however solely responsible for the technical evaluation.

Technical Evaluation Committees (TEC) for Cabinet Appointed Project Committees (CAPC)

Composition of TEC for CAPC is given in Procurement Manual 2.8.2

2.8.2 The NPA shall appoint the TEC for the CAPC giving due consideration to the recommendations made by the Secretary to the Line Ministry.

Technical Evaluation Committees (TEC) for Ministry Procurement Committees (MPC)

Composition of TEC for MPC is given in Procurement Manual 2.8.3

2.8.3 Secretary to the Line Ministry shall appoint the TEC giving due consideration to the recommendations made by the Head of Department/Project Director.

Technical Evaluation Committees (TEC) for Project Procurement Committees (PPC) or Department Procurement Committees (DPC)

Composition of TEC for DPC and PPC are given in Procurement Manual 2.8.4

2.8.4 Head of Department/Project Director shall appoint the TEC.

Technical Evaluation Committees (TEC) for Regional Procurement Committees (RPC)

Composition of TEC for RPC is given in Procurement Manual 2.8.5

2.8.5 (a) The Head of Department shall decide on the requirement of a TEC.

(b) If the Head of Department is satisfied that the RPC appointed for the purpose is comprised of subject specialists and an officer conversant with the Procurement concerned, he may direct the RPC to determine the contract award, without the assistance of a TEC.

2.9 Payments for Members of Procurement Committees (PC) and Technical Evaluation Committees (TEC)

The applicable fees structure is given in Procurement Manual 2.9.1

2.9.1 Members of the PCs, TECs and alternate members shall be paid for participation at such meetings.

2.9.2 The payment shall be reduced by forty percent (40%) in the first instance of absence. Any further absence by the same member shall result in no payments at all and such occurrence shall be immediately notified to the NPA. However, in the case of CAPC and MPC if prior arrangement were made by the member for an alternative member to attend the meeting such member is entitled to a payment proportionate to number of meetings attended. The balance payment will be made to the alternate member.

The format for informing absent members is given in Procurement Manual 2.9.2

2.10 Absence of Members – Excluding Cabinet Appointed Procurement Committees (CAPC) and Ministry Procurement Committees (MPC)

2.10.1 (a) The provisions of this Guideline 2.10 do not apply to members of CAPCs and MPCs.

(b) Members of PCs and TECs shall make every possible effort to attend all the meetings.

(c) In the event a member of a PC or a member of a TEC is unable to attend a scheduled meeting for whatever reason and perform all such functions as are required of him/her, then such member is required to communicate his inability to attend such meeting in writing to the secretary of that committee.

(d) In the absence of such member, the members present may decide to proceed with the meeting as scheduled. The secretary shall circulate the observations of the absent member, if any, to other members of the committee.

(e) The secretary to that committee shall despatch minutes of the meeting to the absent member at the earliest possible time.

2.10.2 In the event the Chairperson of a PC or TEC is unable to attend a scheduled meeting for any reason whatsoever, and perform his functions as Chairperson, the most senior attending member of that committee shall act as an interim Chairperson so that the meeting can proceed as scheduled.

2.10.3 If a member of a PC or a TEC is absent from three consecutively scheduled meetings, without a valid reason, then such member is liable to be removed from being a member of such committee in addition to payment provision made under Guideline 2.9.2.

2.11 Procedures for Meetings of Procurement Committees (PC) and Technical Evaluation Committees (TEC)

Scheduling of Meetings

- 2.11.1 (a) The secretary of the committee in consultation with the Chairperson should notify the members in advance of the date, time and venue of every meeting.
- (b) Dates and times of meetings of the committee should be fixed in accordance with the PTS.
- (c) There shall be a first meeting jointly with PC and TEC to agree PTS, procurement method and type of bidding document.

Register of Attendance

- 2.11.2 The secretary of the committee shall maintain a register of attendance of members for purposes of record.

Minutes of the Meetings

The prescribed format is given in Procurement Manual 2.11.3

- 2.11.3 (a) The proceedings of the meetings of the committee should be recorded in the specified format given in the Procurement Manual and authenticated by the members present.
- (b) Any member may record a dissent.
- (c) The PE shall provide for the safe custody of the records which should be preserved for a period of at least five (05) years.

2.12 Declarations by Members of Procurement Committees (PC) and Technical Evaluation Committees (TEC)

The prescribed format is given in Procurement Manual 2.12

- (a) All members of PCs and TECs are required to sign a declaration in the prescribed format at its first meeting, affirming:
- (i) their respect for the commercial confidentiality of the proceedings of the committee;
 - (ii) their impartiality and probity; and
 - (iii) absence of personal interest.

- (b) The PE shall provide for the safe custody of such declaration, which shall be preserved for a period of at least five (05) years.

2.13 Review of Performance of Procurement Committees (PC) and Technical Evaluation Committees (TEC) by the National Procurement Agency

2.13.1 The NPA shall:

- (i) monitor the performance of PCs and TECs;
- (ii) conduct random post procurement reviews;
- (iii) examine on random basis, the regularity of attendance at meetings and whether the decisions taken by member/s are in accordance with the accepted procurement procedures and these Guidelines.

2.13.2 Pursuant to 2.13.1 (iii), if it is established that the members were negligent, inactive or irresponsible in the conduct and the performance of duties at PCs and TECs, resulting in procurement delays, NPA may at its sole discretion:

- (i) advise the members to expedite the procurement process by rescheduling the PTS; or
- (ii) advise the members to adopt corrective measures; or
- (iii) replace such irresponsible members; or
- (iv) cancel the names of such members from the panel.

2.14 Limits of Authority for Contract Awards

2.14.1 Limits of authority to make recommendation/determination of contract award and thresholds shall be decided from time to time, and shall be communicated by circulars issued under these Guidelines by the NPA.

The applicable limits are given in Procurement Manual 2.14.1

CHAPTER 3

PROCUREMENT METHODS**3.1 International Competitive Bidding (ICB)**

ICB shall be used:

- 3.1.1 (a) when the capacity of the domestic contractors, suppliers and service providers are limited and the advantage of ICB is evident;
- (b) for Foreign Funded Projects, when the Foreign Funding Agency agreement requires the PE to resort to ICB procedures;
- (c) however, in the case of Works contracts in view of the development of domestic construction industry, the possibility of slicing the contract and following “slice and package approach” to suit domestic contractors may be considered.
- 3.1.2 Domestic preference criteria stipulated under Guideline 7.9.4 shall be applicable when ICB is used.
- 3.1.3 All other conditions including currencies, taxes and other statutory levies, except domestic preference consideration, shall be applicable equally to foreign and domestic bidders.

For details see
Procurement
Manual 3.1

International Publicity

- 3.1.4 The PE is required to give international publicity to the procurement notice in various media to ensure maximum competition. PE is required to:
- (i) advertise in one widely circulated national newspaper;
 - (ii) relevant websites where possible;
 - (iii) internationally, such as in UNDB and Development Gateway’s dg Market; and
 - (iv) transmit such invitations to embassies and trade representatives of countries from where suppliers and contractors are likely to participate, and post them in the relevant websites.

3.2 National Competitive Bidding (NCB)

For details see
Procurement
Manual 3.2

3.2.1 NCB is the competitive bidding procedure that shall be generally applicable for most GoSL funded projects.

When NCB is used the procurement notice:

3.2.2 (a) should be advertised at least in one widely circulated national newspaper, NPA website and other relevant websites where possible;

(b) any supplier, service provider or contractor who desires to obtain the bidding document should be allowed to purchase same, provided the bidder is prepared to pay any specified fees;

(c) the contractors/suppliers/service providers should be allowed to purchase the bidding document up to a day prior to the bid closing date; and

(d) in the case of contract for Works, to be eligible for contract award, the domestic contractors shall have a valid and appropriate registration at the time of submitting the Bid, under the National Registration System of ICTAD. However, ICTAD registration should not be an eligibility criterion for purchasing the bidding document or submitting a Bid.

The ICTAD
equivalent
registration
parameters are
given in
Procurement
Manual 3.2.3

3.2.3 NCB in Foreign Funded Project shall be used:

(a) with the agreement of the Foreign Funding Agency;

(b) by allowing foreign contractors or suppliers to bid on same terms with the domestic contractors or suppliers;

(c) by not giving preference to the state owned agencies or approved societies etc; and

(d) by considering registration in appropriate category under the national registration system of ICTAD, as equivalent to the experience and qualification criteria described in the bidding document.

3.3 **Limited / Restricted International Competitive Bidding (LIB) and Limited/Restricted National Competitive Bidding (LNB)**

These procedures are followed when the invitation to bid is directly addressed to a pre-selected list of international or national suppliers or contractors. The procedure is chosen when only a few sources are available.

For details see
Procurement
Manual 3.3

All procedures followed under ICB or NCB apply except the requirements for advertising and domestic preference.

3.4 **Shopping**

3.4.1 (a) Shopping is an appropriate procurement method for procuring:

- (i) readily available off the shelf Goods of small value;
- (ii) small value commodities for which specifications are standard;
and
- (iii) small value Works or Services

The limits and
minimum
number of
Quotations are
given in
Procurement
Manual 2.14

(b) The selection is based on comparison of price Quotations obtained from several invited bidders.

(c) These Procurements are confined to limits specified under Guideline 2.14.

3.4.2 (a) Requests for quotations shall be addressed to individuals/firms borne in a register of suppliers/contractors and shall indicate:

- (i) the description and quantity of the Goods;
- (ii) time and place of delivery, and
- (iii) warranties

(b) The comparison of Quotations shall follow NCB principles wherever applicable. The terms of the accepted offer shall be incorporated in a purchase order.

Registration of Suppliers

- 3.4.3 (a) This procedure should be applied for Procurement of items of small value or for purchases of items used frequently, for which advertising may be uneconomical.
- (b) The PE may:–
- (i) publish a notice for registration of suppliers; and
 - (ii) prepare a list comprising names of suppliers who are able to supply particular categories of Goods and Services such as stationery, electrical items, motor vehicle repairs, etc., periodicals and publications.
- (c) The PE must confine shopping to names appearing on the list.
- (d) The registered list of suppliers should be updated periodically, at least once a year.

Yellow Pages and Rainbow Pages

- 3.4.4 When the appropriate authority is satisfied, in the case of supplies of Goods that sufficient number of reputed vendors are registered in the Yellow Pages and Rainbow Pages, quotations may be invited from that list.

3.5 Direct Contracting

- 3.5.1 (a) Direct contracting is a means of Procurement of Goods or Services or Works from a single supplier source.
- (b) It entails no competition and shall be used only under exceptional circumstances.
- (c) This method is appropriate under the following circumstances:
- (i) When the prices or rates are fixed pursuant to legislation by regulatory bodies;
 - (ii) Standardization of equipment, for compatibility with existing equipment, may justify additional purchases of the same type of Goods;
- in such purchases –
- * the number of such items in the new Procurement shall generally be less than 50 % of the existing number;

The upper limit for Direct Contracting is given in Procurement Manual 2.14.

- * the price shall be reasonable, and
 - * the advantages of another make or source of equipment shall have been considered;
 - (iii) the required equipment is proprietary and obtainable only from one source such as proprietary software, text books, spare parts, defence items; and
 - (iv) the process design requires the purchase of critical items from a particular supplier as a condition of a performance guarantee.
- (d) When direct contracting is used under any of the reasons above, the value of the Procurement shall be subjected to the upper limits given under Guideline 2.14. No government agency will qualify for automatic direct contract award unless the above requirements are satisfied.

3.6 Repeat Orders

- 3.6.1 Orders placed with the original supplier over a short period of time for the supply of the same Goods shall be considered as repeat orders.

Repeat orders for the Procurement of Goods may be authorized only in exceptional circumstances up to a limit of fifty percent (50 %) of the original contract value, provided that not more than a six month period has lapsed from the date of award of the original contract and the PE certifies that –

- (a) the necessity for additional requirement was not foreseen and identified at the time the original invitation to Bid was issued;
 - (b) it is not economical to follow the bidding procedure again;
 - (c) price of the Goods have not dropped since the original order; and
 - (d) appropriate PC has no objection to such repeat order.
- 3.6.2 (a) Prior to the placement of repeat orders, the PC shall use its best endeavours to negotiate with the supplier to obtain more favourable terms and conditions.
- (b) However, if the PC is of the view that the prices of particular items display a downward trend, repeat orders should not be authorized.

3.7 Force Account

- 3.7.1 Force Account means the execution of Works by using the PEs own personnel and equipment.
- 3.7.2 If the PE determines that it has the required workforce to undertake execution of such Works, this method is appropriate in the following circumstances:
- (a) when quantities are difficult to define in advance;
 - (b) contractors are unlikely to bid at reasonable prices;
 - (c) work should be carried out without interrupting the ongoing work; and
 - (d) emergency situations that need urgent attention.

3.8 Emergency Procurement

Details of emergency procurement is given in Procurement Manual 3.8.1

- 3.8.1 (a) A PE may utilize this method of Procurement –
- (i) in exceptional circumstances, such as manmade or natural disasters;
 - (ii) to meet unforeseen social obligations and such other similar situations which shall be determined and declared by the GoSL as being an emergency situation which warrants Procurements under the provisions contained herein;
- (b) to initiate Procurements exceeding the financial thresholds stipulated under Guideline 2.14, a formal approval shall be obtained from the relevant authorities at the first available opportunity.

Provisions available to meet Emergency Procurement needs

- 3.8.2 For Works not exceeding SLR 25 Million (Sri Lanka Rupees Twenty Five Million), the PE may also use any of the following provisions to meet the emergency Procurement requirements:
- (a) The bidding document will disclose an itemized priced Bills of Quantity based on the Engineer's/Consultant's estimate;
 - (b) All bidders who participate in bidding will be allowed to bid a percentage above or below the Engineer's/Consultant's estimate;

- (c) The lowest Bid price is selected as the winner provided the Bid is substantially responsive otherwise;
- (d) The bidding period may be reduced to three (03) days in the case of limited bidding by invitation and seven (07) days when open advertisement is used;
- (e) The concessions given to the suppliers and the contractors in respect to the advance payment/interim payments will be determined by NPA and details will be included in updated circulars as and when required ;
- (f) Lump sum contracts shall be used wherever possible, with milestone payments identified at intermediate levels;
- (g) Purchases from government institutions must be given preference.

3.9 Community participation in Procurement

- 3.9.1 In the interest of project sustainability, or to achieve certain specific social objectives, such as creating employment opportunities in an identified geographical area, it is desirable to call for the participation of local community based organizations (CBO).

The CBOs and conditions are given in Procurement Manual 3.9.1

Direct Contracting for GOSL funded Projects

- 3.9.2 Subject to the above Guidelines and on the recommendation of a committee comprising two members nominated by the Head of Department and the Divisional Secretary of the location, the PE may entrust Works to approved societies, subject to the conditions specified in the Procurement Manual.

Acceptable societies and conditions are given in Procurement Manual 3.9.1

Direct Contracting for communities under Foreign Funded Projects

- 3.9.3 Direct contracting to community organizations may be awarded under a Foreign Funded Project, provided the procedures for same are stipulated in such Foreign Funding Agency Agreement.

Award of District/Divisional level Construction Contracts

- 3.9.4 Subject to the procedures laid down in the Procurement Manual, the PE under delegated authority of Head of Department may invite bids for construction Works not exceeding SLR 2,000,000 (Rupees Two million) from approved societies and other contractors registered by Government Agents/District Secretaries.

The procedures are given in Procurement Manual 3.9.4

3.10 Two Stage Bidding

For details see
Procurement
Manual 3.10

- 3.10.1 (a) For Turnkey contracts or contracts for large complex plants/ equipment or information technology systems or Works of a special nature, all of which require innovative approaches, or where the problem of technically unequal Bids are likely to be encountered, a two-stage bidding procedure is recommended.
- (b) This method should be used with specific Cabinet approval.
- 3.10.2 (a) In the first stage un-priced technical proposals on the basis of a conceptual design or performance specifications shall be invited. Subject to clarifications on technical and commercial issues and adjustments, if any, amended bidding documents shall be prepared.
- (b) During the second stage there shall be an invitation for final technical proposals and priced Bids.

3.11 Two Envelope System

- 3.11.1 (a) Two envelope system may be used when the PC determines in circumstances such as–
- (i) “turnkey”, “design and build” or “supply and installation” contracts, and
 - (ii) where alternate types of technical proposals are possible.
- (b) In the two envelope system, bidders are required to submit their technical and financial proposals simultaneously, but in two separate envelopes.
- (c) technical proposals are to be opened first and reviewed to determine their response to specifications and the financial proposal shall be opened in public.

3.12 Pre-qualification of Bidders

The details of
pre-
qualification
are given in
Procurement
Manual 3.12.

- 3.12.1 (a) Pre-qualification is generally required in circumstances where the high cost of preparing detailed bids by potential bidders could discourage competition, such as Procurements involving–

- * large or complex Works contracts, *i.e.* turnkey, design and build, or management contracts; or
 - * custom-designed equipment, industrial plants, specialized Services.
- (b) This method ensures that invitations to bid are extended only to those who have adequate capabilities and resources.
- (c) Pre-qualification should be carried out by giving wide publicity and calling for information on a given format.
- (d) A clear statement of the scope of the contract and the criteria for selection should be sent to all firms who have expressed an interest in being considered for pre-qualification.
- (e) All applicants who fulfill the pre-qualification requirements specified shall be pre-qualified.
- (f) Pre-qualification shall not be used as a tool with a motive to limit competition among qualified bidders.

3.12.2 Pre-qualification Criteria

Pre-qualification shall be based exclusively upon the capability of and resources available with the prospective bidders to perform the particular contract satisfactorily, taking into account their –

- (i) experience and past performance on similar contracts;
- (ii) resources available in regard to personnel, equipment ; and construction or manufacturing facilities; and
- (iii) the financial resources at their disposal.

CHAPTER 4

PROCUREMENT PREPAREDNESS AND PLANNING**4.1 Advance Procurement Action**

- 4.1.1 (a) Efficient planning of the entire Procurement process is vital to ensure timely completion of the project and to obtain the best market value for it. The time frame for various Procurement Actions are given in Procurement Manual 4.1
- (b) Invitations to bid or pre-qualification of bidders shall be made with the concurrence of the Secretary to the Line Ministry or in respect of Foreign Funded Projects with that of the Foreign Funding Agency.
- (c) Procurement Action should not be commenced without a firm commitment of funds.

4.2 Master Procurement Plan (MPP)

- 4.2.1 (a) The PE shall prepare the MPP. The format of MPP is given in Procurement Manual, 4.2.1
- (b) Procurement activities envisaged at least for a period of three-years shall be listed in the MPP.
- (c) Procurement activities for the immediately succeeding year shall be prepared in detail.
- (d) MPP shall assess the relative advantages of–
- (i) centralized versus decentralized Procurement;
 - (ii) packaging/slicing of contracts; and
 - (iii) size of the packages for Works, etc.
- (e) MPP shall be regularly updated at intervals not exceeding six months.

Procurement Time Schedule (PTS)

- 4.2.2 (a) PTS is a schedule describing in chronological order, steps of each individual Procurement Action, from the point of commencement until its completion.
- (b) PTS shall be prepared in two stages as described below:

4.2.3 Stage 1 –

The format items that should be considered for PTS are given in Procurement Manual, 4.2.3

- (a) Stage I of PTS shall include all activities from the commencement up to the preparation of draft bidding documents which shall be prepared without delay.
- (b) Preparation and regular updates of Stage 1 lies with the PE.

Stage 2 –

- (a) Stage 2 of PTS shall include all activities after the preparation of the bidding document.
- (b) Responsibility of preparing draft of Stage 2 of PTS also rests with the PE.
- (c) It is an obligation of the respective PC, to consider the PTS and approve it at the first meeting. The PE shall forward the draft PTS for the Procurement concerned, together with any connected downstream Procurement to the PC. Once the PTS is agreed upon, the Chairpersons of the PC and TEC shall monitor the progress in consultation with the PE. Where a major delay occurs, it is the responsibility of the Chairperson of the PC to explain the cause/s for the delay, effect remedial measures and inform NPA. In the case of CAPCs, MPCs and in all other cases, such responsibility shall vest in the Secretary to the Line Ministry.

4.3 Total Cost Estimate (TCE)

- 4.3.1 (a) TCE including all associated costs shall be prepared by the PE.
- (b) The TCE should identify cost of Procurement preparedness activities and post contract award activities separately.
- (c) For post contract award activities the TCE shall include the following contingency provisions:
 - (i) a maximum of five percent (5%) for Procurement preparedness activities;
 - (ii) a maximum of ten percent (10%) for physical contingencies; and
 - (iii) a reasonable estimated amount for price contingencies.

(d) TCE shall also include applicable VAT, shown separately.

4.3.2 Sanctioning of Total Cost Estimate (TCE)

TCE shall be sanctioned by the appropriate authority indicated in the Procurement Manual, except in the case of a Foreign Funded Project where TCE is agreed upon with the Foreign Funding Agency.

The authority for sanctioning the TCE is given in Procurement Manual 4.3.2

Revision of Total Cost Estimate (TCE)

- 4.3.3 If considerable time is taken to invite bids after preparation of the initial TCE, the TCE shall be updated, taking in to consideration inflation and other factors and shall be sanctioned by the respective authority.

4.4 Packaging and Slicing of Contracts

- 4.4.1 The size of the contract is an important consideration to note.

For details see Procurement Manual 4.4

- 4.4.2 Bids may be invited under alternative contract options:

- (a) In order to facilitate large and small contractors to participate, large contracts may be divided into smaller slices and procured on “slice and package” method by pre or post qualification ;
- (b) both small and large contractors may be allowed, at their option, to bid for one or more slices or the whole package according to their established capacity ;
- (c) all Bids shall be received by the same closing date and opened and evaluated simultaneously so as to determine the Bid or combination of Bids that offer the lowest evaluated cost.

CHAPTER 5

BIDDING DOCUMENTS**5.1 Initiation of Drafting Bidding Documents**

- 5.1.1 (a) The PE should initiate the drafting of bidding documents including technical specifications, drawings, etc.
- (b) The PE should commence the aforementioned task prior to the appointment of the TEC.

5.2 Contents of Bidding Documents

- 5.2.1 (a) The bidding documents shall contain all relevant information necessary for a prospective bidder to prepare a bid for the Goods or Services or Works to be offered in response to the invitation to bid (or quote). The contents of the bidding document should be unambiguous.
- (b) The detail and complexity of these documents may vary with the size and nature of the proposed Procurement.

The contents of the bidding documents are given in Procurement Manual, 5.2.1

5.3 Standard Bidding Document (SBD)

- 5.3.1 (a) PEs shall use the appropriate specimen SBDs approved by NPA, with minimum changes, if necessary, to address contract specific issues.
- (b) Whenever the SBDs consists of different sections, i.e. instruction to bidders, bid data, general conditions of contract, contract data and special conditions of contract, any such changes shall be introduced only through bid or contract data sheets, or through special conditions of contract, and not by modifying the instructions to bidders and general conditions of contract.
- (c) Where no relevant SBDs have been issued, the PE may use other documents with the concurrence of NPA.
- (d) All such documents must be vetted and approved by the TEC and the PC, respectively, who shall take the entire responsibility for the contents of such documents.
- (e) In the case of Procurements funded by a Foreign Funding Agency, the PEs may use the SBDs mandated by such agencies.

A list of approved SBDs available in NPA website

Invitation to Bid

The details of eligibility and qualification requirements are given in Procurement Manual 5.3.2

5.3.2 The Invitation to bid shall contain appropriate and relevant basic information required by prospective bidders to prepare the Bid or Quotation, including main eligibility criteria and qualification requirements of the successful bidder.

Instructions to Bidders

The details are given in Procurement Manual 5.3.3

5.3.3 Instructions to bidders shall contain all relevant information as provided in the Procurement Manual.

Eligibility of Bidders

Names of Blacklisted contractors/suppliers available in NPA web site

5.3.4 (a) No contract shall be awarded to any contractor or supplier who is blacklisted by NPA.

(b) A list of blacklisted contractors/suppliers, updated periodically, will be circulated by the NPA to the PEs from time to time and will also be published in the NPA web site.

(c) No contract shall be awarded to any contractor or supplier who has been engaged by the PE to provide consulting services for the design or preparation of bidding documents for the same contract.

The details of ICTAD registration categories are given in Procurement Manual 5.3.5

5.3.5 (a) In the case of Procurement of Works one of the post qualification criteria for domestic contractors shall be the appropriate ICTAD registration.

(b) Such contractors should have a valid registration at the time of submission of bid, and must submit proof of such registration with bid submission.

(c) ICTAD registration should not be criteria for purchasing bidding documents.

5.3.6 (a) In ICB or NCB Procurements under Foreign Funded Projects both foreign and domestic bidders shall have equal opportunity of participating in the bidding process.

(b) However, domestic bidders must comply with the requirement stipulated in Guideline 5.3.5 (b) and 5.3.5 (c).

5.3.7 (a) Any Bidder should be allowed to bid independently or in a joint venture or in a consortium. However a bidder should be allowed to submit only one bid for each procurement.

(b) If a Bid is submitted as a joint venture or as a consortium, all parties of the joint venture or the consortium shall be jointly and severally liable for the performance of obligations under the contract and must submit a written declaration to this effect.

5.3.8 **Foreign and Domestic Bidders to be treated equally**

In Procurements under ICB, bidding and contract conditions, shall have equal application to both domestic and foreign bidders, except in complying with the requirements of ICTAD registration and domestic preference for domestic bidders.

5.3.9 (a) If any foreign currency payments are envisaged under the contract, both the foreign and domestic bidders shall be eligible to quote and be paid in foreign currency.

(b) To be eligible for foreign currency payment, bidders are required to submit justification to that effect. Import of plant, equipment and machinery, and payment of remuneration for expatriates etc., would for instance be deemed to be valid justifications.

Bid Validity period

5.3.10 (a) Bidders shall be required to submit bids valid for a period specified in the bidding documents.

(b) The PE shall ensure that the period so specified is sufficient to enable the PE to complete the evaluation of bids, obtain all requisite approvals and in the case of a Foreign Funded Project to obtain the concurrence of the Foreign Funding Agency for the recommendation of award in order that the contract can be awarded within the bid validity period.

The information on Bid validity periods are given in Procurement Manual 5.3.10

- (c) The suggested bid validity periods are stated in the Procurement Manual.

Bid Security

- 5.3.11 (a) A Bid security in the prescribed format must be submitted by all the bidders participating in ICB, LIB, NCB or LNB bidding process.
- (b) The Bid security is obtained to ensure the following:
- (i) that the bidder will not withdraw or modify the Bid during the period of validity;
 - (ii) that the bidder will agree to an adjusted bid price after the correction of arithmetical errors, pursuant to the criteria described in the bidding documents;
 - (iii) that the bidder will sign the contract if the contract is awarded within the validity period of the bid; and
 - (iv) that the bidder will submit a performance security prior to the deadline specified in the bidding documents.
- (c) Either of the options described in Guidelines 5.3.12 or 5.3.13 may be used to comply with this requirement.

Option 1 – Bid Declaration

Format for Bid security declaration is given in Procurement Manual 5.3.12

- 5.3.12 (a) The PE may require the bidders to sign and submit a declaration in the prescribed format, consenting that the bidder is liable to be suspended for a specified period of being awarded contracts by GoSL, if the bidder fails to fulfill the conditions of the bid security.
- (b) In the event of the bidder's default to comply with the provisions of this Guideline, the PE shall promptly report of such default to the NPA.
- (c) The NPA may at its sole discretion suspend the defaulted bidder for a specified period of time.

Option 2 – Bid Guarantee/Cash Deposit

5.3.13 (a) The PE may opt for either of the following:

- (i) to obtain a bid security in the form of guarantees only generally for a fixed lump sum amount equivalent to one percent to two percent (1% to 2%) of the estimated contract value; or
- (ii) to obtain a cash deposit for a fixed lump sum amount generally of point five percent to one percent (0.5% to 1%) of the estimated contract amount.

The types of format for Bid security guarantee are given in Procurement Manual 5.3.13

(b) Requesting guarantees/cash deposits by a mere reference to a percentage of the bid price, is strongly discouraged.

(c) If a bid security has been submitted in the form of a guarantee it shall be irrevocable and unconditionally en-cashable upon the first written request from the PE and shall incorporate all the conditions stated in Guideline 5.3.11 (b).

(d) If a Bidder fails to agree with any of the conditions stipulated in Guideline 5.3.11 (b) above, the bid guarantee/cash deposit shall be forfeited by the PE.

Clarity of Documents

5.3.14 (a) All prospective bidders shall be provided with the same information and shall be assured of equal opportunities to obtain additional information.

(b) PE shall provide reasonable opportunity of access to the project sites for visits by prospective bidders.

(c) In the case of Works or complex Goods contracts a pre-bid meeting may be arranged whereby potential bidders have the opportunity of seeking clarifications from the PE's representative/s.

(d) Minutes of such pre-bid meetings shall be circulated to all prospective bidders.

Clarifications

- 5.3.15 (a) Any additional information, clarification, correction of errors or modifications of bidding documents shall be circulated to each and every recipient of the original bidding document.
- (b) Sufficient time prior to the expiry of the deadline of bid closing, should be given in order that the bidders are able to take appropriate action.
- (c) If deemed necessary, the PE may extend the deadline for bid closing giving due consideration to the PTS.

Alternative Bids

- 5.3.16 (a) If bidders are permitted to submit alternative bids it shall be clearly stated in the bidding document.
- (b) Alternative bids submitted by a bidder, shall be considered as a separate bid and it shall be supported with an independent form of bid and bid security. However, the alternative bid shall not be considered for the purpose of evaluation.
- (c) If the original Bid submitted by the Bidder is considered as the lowest evaluated and substantially responsive Bid, the bidder's alternative Bid will be compared with his original Bid.
- 5.3.17 In the event where no alternative bid is permitted, but a bidder submits alternative bids, the second and the subsequent alternative bids shall be rejected.

Value Added Tax

- 5.3.18 (a) The bidders should be instructed to indicate the VAT separately and provision should be made in BOQs or price schedules appropriately.
- (b) VAT shall not be considered for evaluation.

Evaluation Criteria

- 5.3.19 (a) The bidding documents shall also specify the relevant factors, in addition to price, to be considered in bid evaluation and the manner in which they will be applied for the purpose of determining the lowest evaluated bid.

(b) Post qualification criteria should also be clearly stated in the Bidding documents.

5.3.20 (a) If Bids based on alternative designs, materials, completion schedules, payment terms, etc., are permitted, conditions for their acceptability and the method of their evaluation shall be expressly stated.

(b) The disclosed criteria shall not be modified or additional criteria shall not be introduced during evaluation.

5.4 Conditions of Contract

Draft Contract to be issued

5.4.1 (a) The draft contract shall be issued with the bidding document.

(b) The draft contract document shall:

- (i) clearly define the scope of Works to be performed, the Goods to be supplied or the Services offered;
- (ii) the rights and obligations of the PE;
- (iii) the rights and obligations of supplier or contractor:
- (iv) if the PE envisages the engagement of an engineer or a consultant, for the purpose of contract supervision and administration, the authority and functions of the engineer or consultant must be clearly spelt out.
- (v) Conditions of contract shall also stipulate that failure on the part of the parties to perform their obligations under the contract will not be considered a default, if such failure is the result of an event of Force Majeure, as defined in the contract.
- (vi) In addition to the general conditions of contract, any special conditions particular to the specific Goods or Works or Services to be procured and the location and modality of the project shall be included.

For details see
Procurement
Manual 5.4.1

Terminology
detailed in the
Procurement
Manual 5.3.19

Price Adjustment

ICTAD
formulae are
given in
Procurement
Manual 5.4.2

- 5.4.2 In any contract for Works, exceeding a period of three months, the price variation formulae for the SLR component shall be included in the bidding document and the contract agreement. Price variation formulae developed by ICTAD shall be used.
- 5.4.3 For Foreign Funded Projects, if it is a requirement of the Foreign Funding Agency, that price adjustments shall be made for the foreign currency component, such recommended formulae may be used for the foreign currency component. However, in such cases the ICTAD formulae shall be used for the SLR component.

Advance Payment for Works Contracts

The
acceptable
securities are
given in
Procurement
Manual 5.4.4

- 5.4.4 Advance payment for any contract for Works shall be as follows:
- (i) a maximum of twenty percent (20%) of the contract sum (less any provisional sums and contingencies) against the submission of an acceptable advance payment guarantee;
 - (ii) a maximum of Rupees Two Hundred Thousand (Rs. 200,000) may be paid as an advance to Samurdhi Balakayas and Farmer Organisations without a guarantee provided PE is satisfied with their capability to complete the works; and
 - (iii) the advance payment shall be fully recovered before ninety percent (90%) of the payments are made to the contractor.

Advance Payment for Import of Goods/Equipment and Machinery

- 5.4.5 When the bidding documents require opening of letters of credit (LC) in favour of the PE, the cost of which shall be borne by the supplier, an advance payment not exceeding the SLR equivalent of thirty percent (30%) of the value of LC may be paid, on the submission of a guarantee acceptable to the PE.

Retention for Construction Works contracts

The amounts
recommended
to be retained
and the format
of retention
guarantee are
given in
Procurement
Manual 5.4.6

- 5.4.6. (a) The PE shall retain from each payment due to the contractor a specified amount as retention money.
- (b) On the final completion of the Works half the total amount retained shall be re-paid to the contractor and the balance half shall be retained until the expiry of the defects liability period.

- 5.4.7 Alternatively, after the final completion of Works, contractors may be allowed to replace the second half of retention money with a unconditional and irrevocable guarantee.

Performance Security

5.4.8 Works

- (a) Any contract for Works shall require a performance security of not less than five percent (5%) of the estimated contract sum to safeguard the PE in case of breach of contract by the Contractor.
- (b) This security shall be provided by a performance guarantee issued from an acceptable agency, and valid till twenty eight (28) days beyond the intended completion date.

The acceptable form of performance security and acceptable agencies are given in Procurement Manual 5.4.8

5.4.9 Waiver of Performance Security

However, in smaller Works contracts, not exceeding Rs. 2m., the requirement of submitting a performance security may be waived off by the PE.

5.4.10 Goods

- (a) In contracts for the supply of Goods, the need for performance security depends on the market conditions and commercial practice for the particular kind of Goods.
- (b) Suppliers are required to provide a performance guarantee to safeguard the PE against non performance of the contract.
- (c) Such security in an appropriate amount of not less than 10% (ten percent) of the estimated contract sum may also cover warranty obligations.
- (d) If warranty obligation is a requirement a percentage of the payments may be withheld as retention money to cover such obligations and any installation or commissioning requirements.

The acceptable performance securities are given in Procurement Manual 5.4.10

Payment of Value Added Tax

- 5.4.11 The amount of VAT on the Goods supplied or Works done shall be paid to VAT registered contractors/suppliers after obtaining tax invoice, if such Works, Goods or Services are not exempted from VAT.

The Detailed procedure is given in Procurement Manual 5.4.11

- 5.4.12 After making the payment to cover VAT, details of such payment shall be informed to the Commissioner General of Inland Revenue with a copy to Auditor General, on or before the 15th day of the following month.

Liquidated Damages

General guidelines relating to the computation of liquidated damages are given in Procurement Manual 5.4.13

- 5.4.13 (a) Provision shall be made in the contract setting out the basis for computation of liquidated damages, subject to a maximum, for delays in the delivery of Goods, provision of Services or completion of Works, resulting in additional costs or loss of revenue or loss of other benefits to the PE.
- (b) The contracting parties are at liberty to agree on the quantum and the basis of damages. However, any sum that is payable as damages should be reasonable and not extravagant or unconscionable, as such would open the possibility for a Court of Law to consider the quantum more as a penalty and not as damages.

Dispute Resolution

The Details are given in Procurement Manual 5.4.14

- 5.4.14 (a) All disputes arising out of contract agreements shall be governed in accordance with the provisions of the Arbitration Act No. 11 of 1995 of Sri Lanka, as amended.
- (b) A reference must be made in the bidding documents, that settlement of disputes would be by way of arbitration and a detailed arbitration clause should be included in the contract to such effect.
- (c) For Foreign Funded Projects dispute resolution provisions recommended by the Foreign Funding Agency shall be complied with.
- 5.4.15 Subject to the provisions of the Arbitration Act, the Rules of Arbitration of the International Chamber of Commerce (ICC) or the United Nations Commission on International Trade Law (UNCITRAL) or any other set of acceptable rules are recommended for usage.

5.4.16 The venue of arbitration shall be in Sri Lanka, for GoSL funded projects. The venue of arbitration for Foreign Funded Projects would be determined in accordance with the requirements of the Foreign Funding Agency.

5.5 The Law of Contract

5.5.1 The law governing the Contract shall be the laws of the Democratic Socialist Republic of Sri Lanka.

5.6 Specifications

5.6.1 (a) The specification for the Goods or Works to be procured shall not be defined more narrowly than it is necessary to achieve the relevant Procurement objective.

(b) All the specifications included in the bidding documents should be of generic nature which shall reflect functional aspects than the technical aspects.

For details see
Procurement
Manual 5.6

(c) It shall not to be related with brand names, catalog numbers or country of manufacture.

(d) If it is necessary to quote a brand name or catalog number of a particular manufacturer to clarify an otherwise incomplete specification, the words “or equivalent” shall be added after such reference.

5.6.2 The specification shall permit the acceptance of offers for Goods which have similar characteristics and which provide performance at least substantially equivalent to those specified.

5.6.3 (a) To the maximum extent possible, the standards adopted by Sri Lanka Standard Institution (SLSI) should be used.

(b) Where the SLSI standards are not available, acceptable international standards shall be used.

5.6.4 (a) Specifications for Works would be those which are recommended by ICTAD.

(b) NPA will issue specifications for a limited category of Goods which would be periodically updated.

(c) PEs shall use specifications recommended by ICTAD and NPA as far as possible and practicable.

CHAPTER 6

INVITATION TO BID AND CLOSING/OPENING OF BIDS

6.1 Issuance of Bidding Documents

- 6.1.1 (a) The bidding documents should be made available during business hours, by mail or in person to any bidder, (including pre-qualified bidder subject to Guideline 6.1.1 (b) below), on the payment of the prescribed fees, if any, at least up to one day prior to deadline of submission of bids.
- (b) In the instances where pre-qualification of bidders are carried out, the bidding documents shall be issued only to the pre-qualified bidders.
- 6.1.2 (a) The bidding documents should be made available for inspection, free of charge, for any prospective bidder who wishes to do so.
- (b) The bidding document may be sold at different locations.
- 6.1.3 The prescribed fee (if any) for purchase of bidding documents should not be fixed so high as to discourage the bidders.
- 6.1.4 The PE shall keep a record pertaining to the issuance of the bid documents.

The details of handling complaints from the bidders are given in Procurement Manual 6.1.1

6.2 Bidding Period

- 6.2.1 (a) The bidding period shall commence from the date on which the bidding documents are available for purchase by potential bidders.
- (b) The period shall end with the deadline for bid submission.
- (c) The bidding period shall be reasonably adequate to prepare the bids.

6.2.2 Minimum period of bidding time shall be maintained as stated below:

ICB/LIB	42 days (more for complex Procurement)
NCB/LNB	21 days
Restricted competitive bidding under District/Divisional level Construction Contracts	14 days
Shopping	7 days minimum
For emergency Procurement under Guidelines 3.20 & 3.21	The above periods may be reduced.

6.3 Submission/Receipt of Bids

6.3.1 (a) The bids shall be received only at one location by;

- (i) mail under registered post; or
- (ii) personal delivery against receipt, to the officer authorized by the PE to receive such bids at the specified location; or
- (iii) depositing in the sealed tender box identified for such purpose by the PE, if so specified in the bidding documents.

(b) All bids must be submitted only under sealed cover and the bidding documents should stipulate a condition to this effect.

(c) Bids shall be submitted in one original and such number of copies as stipulated in the "Instruction to Bidders" sealed separately and clearly marked as "Original" or "Copy". All these envelopes shall together be enclosed in one envelope and delivered as per (a) above.

Rejection of Late Bids

6.3.2 Bids shall be closed at the time specified in the bidding documents. Late Bids shall not be accepted and shall be returned unopened.

Public Bid Opening

Further details are provided in Procurement Manual 6.3.3

6.3.3 (a) Responsibility of opening of Bids is vested with the PC. The PC may delegate such authority to a "Bid Opening Committee" which shall comprise of a minimum of two members approved by the PC.

CHAPTER 7

BID EVALUATION**7.1 Meetings of Technical Evaluation Committees (TEC)**

- 7.1.1 Upon the receipt of Bids, the Chairperson of the TEC shall convene a meeting for the purpose of attending to matters relating to the evaluation of Bids.

7.2 Confidentiality

- 7.2.1 After bid opening, information relating to substance, clarification, examination and evaluation of Bids and recommendations concerning awards shall not be communicated to bidders nor to any other person, (unless they are formally involved in the process), until after the date on which the award of contract is formally notified to the successful Bidder.

7.3 Services of Consultant/s for Evaluation of Bids

- 7.3.1 (a) If the evaluation of Bids is entrusted to consultant/s, it shall be made under the supervision and guidance of TEC.
- (b) Consultants shall not form part of a TEC.
- (c) The TEC shall submit to the PC its own formal report along with the consultants' report.

7.4 Time Frame for Bid Evaluation

- 7.4.1 Bid evaluation shall be undertaken expeditiously, leaving ample time to seek all the requisite formal approvals. Hence, Bids shall be evaluated within the period specified in the PTS.

The Details are given in Procurement Manual 7.4

7.5 Extension of Bid Validity

- 7.5.1 (a) PC must endeavour to make the award in keeping with the PTS and within the bid validity period.
- (b) In exceptional situations where this is not possible, the validity period may be extended so long as the bid security is also extended likewise.

- (c) If a bidder does not agree to extend the validity of the bid security, such Bid shall be excluded from further consideration. However, the bid security will not be forfeited.

7.6 Original Bid to be Evaluated

- 7.6.1 (a) Only the Bids marked “original” shall be evaluated by the TEC. Late Bids, as well as those not opened and read out at a bid opening shall not be considered for evaluation ;
- (b) If required, the PC may use the copy of the Bid for comparison purposes.

7.7 Purpose and Stages of Bid Evaluation

- 7.7.1 (a) The purpose of bid evaluation is to determine the lowest evaluated substantially responsive bid out of the Bids received ;
- (b) Therefore, bid evaluation process could be divided into three broad stages:
- (i) Bid examination: To determine the eligibility of bidders, legal validity of bid and substantial responsiveness of Bids received.
 - (ii) Detailed Bid evaluation: To determine the lowest evaluated Bid, from among the substantially responsive Bids received.
 - (iii) Post qualification: to determine the qualification and experience of the lowest evaluated bidder .

7.8 Bid Examination

General Principles

Bid examination may be carried out in two stages:

- (a) Stage 1:

To ascertain whether the:

- * bidder is eligible,
- * if the bid is signed,
- * Bid is legally valid, and
- * Bid accompanied by the required bid security.

If the answer is negative to any of the above, the Bid is rejected and excluded from further consideration.

(b) Stage 2

To ascertain the deviations from the provisions of bidding documents and categorize such deviations into major or minor deviations. Also, to identify deviations (debatable deviations) which may be categorized as either minor or major deviations depending upon the requirements of the specific provisions in the bidding document, the criticality of the deviation, the value of the contract in comparison to the value of the deviation and the judgment of the TEC. The purpose is to identify substantially responsive Bids with a view to subjecting such Bids for detailed bid evaluation.

Ascertain the deviations from the provisions of bidding documents

7.8.1 Deviation from any provisions of the bidding documents (instruction to bidders, price schedules, condition of contracts and technical specifications, etc.) is a common feature in many Bids. These deviations are not limited to but may include:

- * exceptions;
- * omission in scope/incomplete offers;
- * qualifications/conditions;
- * stated assumptions;
- * alternative proposals (when not specifically solicited);
- * other changes to the requirement of bidding documents.

Categorization to major and minor deviations

7.8.2 Deviations from bidding conditions must be clearly identified. Deviations which are deemed acceptable would be categorized as “minor deviations,” whilst deviations which are unacceptable would be categorized as “major deviations.”

Minor deviations

7.8.3 Minor Deviations would be one which:

- (a) has no effect on the validity or legality of the Bid, or
- (b) has no effect on the functionality, quality or delivery of the Goods or Services offered or the execution of Works; or

- (c) is a slight deviation from commercial or contract conditions or technical specifications which can be ignored/corrected; or
- (d) can be quantified and given value which can be added to or subtracted from the price for purposes of comparison.

Major deviations

7.8.4 The following events, the list of which is not meant to be exhaustive should be considered as major deviations:

- (a) non-submission of bid security/declaration;
- (b) insufficient bid security or bid security declaration form;
- (c) failure to provide sufficient validity period of the bid;
- (d) unsigned Bid or not signed by an authorized person/s;
- (e) eligibility requirements (if specified);
- (f) failure to bid on specified documents;
- (g) bidder requires price fluctuation whereas bidding document specifies otherwise;
- (h) deviation from bid documents which affects the bid price but cannot be given monetary value;
- (i) departure from technical specifications of critical nature;
- (j) bidder proposes to subcontract major components of the work against the conditions provided;
- (k) absence of documents intended to substantiate the legitimacy of the bid (i.e. that the Bid is not a 'speculative', 'exploratory' or 'wait-and-see' Bid) or proof of reliability of the equipment offered;
- (l) conditional bids, that is, subject to prior sale, availability of components in the market;
- (m) unacceptable technical features;
- (n) bids which are not responsive to critical, technical or commercial requirements in the bidding documents.

Debatable deviation

- 7.8.5 There may be some other deviations which do not appear at first sight as so serious or material deviation but may be considered further in the subsequent evaluation process, the acceptance of which will be unfair to other bidders or which when rectified will make a non responsive Bid into a responsive Bid.

The following are situations of such deviations:

- (a) request for a different amount of advance payment or and other payment terms (including retention money, guarantees, etc.);
- (b) proposed changes in construction period which is not critical;
- (c) changes in specified method of construction or execution of a non-critical nature;
- (d) omission (deliberate or unintentional) of minor Works or items included in the scope of work;
- (e) modification of, or a limit to, the amount specified for liquidated damages.

Determination of Substantially Responsive Bids

- 7.8.6 A substantially responsive bid should be one which conforms to all the terms, conditions and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one:
- (a) which affects in any substantial way the scope, quality or performance of the Works, or
 - (b) which limits in any substantial way, inconsistent with bidding documents, the employers rights or bidders obligations under the contract; or the rectification of which would affect unfairly the competitive position of other bidders presenting substantially responsive Bids.

All Substantially Responsive Bids to be Evaluated

- 7.8.7 All Bids that are considered as substantial responsive shall be subjected to detailed evaluation.

7.9 Detailed Bid Evaluation

General Principles

The general principles of detailed Bid evaluation is given in Procurement Manual 7.9.1

- 7.9.1 (a) The manner in which the bids are to be evaluated, including the criteria for selection of the lowest evaluated bid must be stipulated in the bidding document.
- (b) The evaluation of bids shall be consistent with the method, terms, and conditions disclosed in the bidding documents.
- (c) A systematic and logical sequence should be followed and such a procedure is enumerated below.

Principles/ methodology is explained in detail in Procurement Manual 7.9.2.

- 7.9.2 Step-by-step procedure to be followed:
- * correction of arithmetical errors;
 - * discounts, if any;
 - * evaluation of acceptable omissions (line items or parts of work);
 - * conversion to a common currency;
 - * delivery periods or completion times;
 - * adjustments for various minor deviations.
 - * operational costs or life cycle costing (if applicable);
 - * the availability of after sales service and spare parts;
 - * the acceptable departures of warranties;
 - * discounts, if any;
 - * domestic preference;
 - * assessment of monetary implications on deviations and other matters;
 - * adjustments for various minor deviations.

Omissions/Missing Items

Methodology is provided in Procurement Manual 7.9.3

- 7.9.3 The bid price should be adjusted to account for items not included in the Bid, provided that the Bid:
- (i) can be accepted as substantially responsive on account of the unquoted items being not of a critical nature; and
 - (ii) value of such items is marginal.

Domestic Preference

- 7.9.4 With a view to providing a realistic value addition to local raw materials and domestic bidders, thereby promoting national industry and enterprise, when competing with foreign bidders, the domestic bidder's bid shall be given the following margins of preference during Bid evaluation:

Domestic Preference for Works contracts:

7.9.5	Domestic bidders in Works contracts funded by World Bank and Asian Development Bank.	7.5% (seven & half percent)
	Domestic bidders in Works contracts funded by GoSL.	10 % (ten percent)

Application of the margins of preference stated above would apply to domestic bidders and joint ventures that meet the following criteria:

- (a) For an **individual/sole proprietorship** the bidder shall be a Sri Lankan ;
- (b) For **partnerships** more than fifty percent (50%) of the members of the partnership, shall be Sri Lankans ;
- (c) For an **individual firm** -
 - (i) such firms shall be registered in Sri Lanka;
 - (ii) should have more than fifty percent (50%) ownership by Sri Lankans; and
 - (iii) should not sub contract more than ten percent (10%) of the contract price, excluding provisional sums to foreign contractors.
- (d) The application of the margin of preference for a **joint venture of domestic firms:**
 - (i) would be limited only to joint ventures of individual firms who meet the criteria stipulated in (c) (i) & (ii) above;
 - (ii) the joint venture should be registered in Sri Lanka; and

- (iii) should not sub contract more than ten percent (10%) of the contract price, excluding provisional sums to foreign contractors.

Preference for domestically manufactured Goods:

7.9.6	Domestically manufactured Goods for contracts funded by the World Bank and Asian Development Bank	15% (fifteen percent)
	Domestically manufactured Goods for contracts funded by the GoSL	20% (twenty percent)

- (a) Application of the margins of preference stated above would apply only to manufactured Goods, if the bidder establishes to the satisfaction of the PC that -
- (i) labour, raw material, components from within Sri Lanka will account to thirty percent (30%) of EXW (Ex. Works) price of the product offered; and
 - (ii) the production facility in which those Goods would be manufactured or assembled has been engaged in manufacturing/assembling such Goods at least since the time of Bid submission.
- (b) In addition to the above, in GoSL funded projects, the bidder should satisfy the following:
- (i) For an **individual/sole proprietorship** the bidder shall be a Sri Lankan.
 - (ii) For **partnerships** fifty percent (50%) of members of the partnership shall be Sri Lankans.
 - (iii) For an **individual firm**:
 - * such firm shall be registered in Sri Lanka; and
 - * should have more than fifty percent (50%) ownership by Sri Lankans

(iv) for a **joint venture:**

- * application of the margin of preference would be limited only to joint ventures of individual firms who meet the criteria stipulated in (b) (iii) above; and
- * it should be registered in Sri Lanka.

Clarifications from Bidders

7.9.7 During the evaluation of bids (particularly for complex Works) there may be a need to seek clarification from a bidder with the sole purpose of ensuring that the Bid can be properly and fairly evaluated. These clarifications should not:

- (a) permit any substantive change to the bidder's initial response; and
- (b) change in the bid price, except correction of arithmetical errors in the pricing of the bid.

7.9.8 The bidder should be able to clearly comprehend that any clarification sought is only for the aforementioned purpose only.

7.9.9 At the request made by the TEC, the PE will seek such clarifications from the bidder in writing.

Lowest Evaluated Substantial Responsive Bid

General Principles:

7.9.10 Bids shall be first evaluated strictly according to the criteria and methodology specified in the bidding documents and such evaluated Bids shall be compared to determine the lowest evaluated substantially responsive Bid.

Unrealistic Rates

7.9.11 Upon selection of the lowest substantially responsive Bid:

- (a) If such bidder has quoted unrealistically low rates on critical or very important items, the bidder shall be requested to prove to the satisfaction of the TEC, how the bidder intends to procure

such items/perform the Works/provide the Services as per the quoted rates, for such purposes the bidder may be asked to provide a rate analysis.

- (b) If the TEC is of the view that the justification/explanation provided by the bidder is unacceptable, and hence the bidder would fail in the performance of his obligations within the quoted rates, such Bid may be rejected.
- (c) If the justification/explanation of the bidder is acceptable, the TEC should proceed with the evaluation.
- (d) If the TEC continues to entertain some doubt about the contractor's/supplier's ability to procure such items/perform the Works/provide the Services as per the quoted rates despite explanation/justification provided, a higher performance security may be requested to mitigate such risks.
- (e) If the bidder refuses to provide such additional performance security, his Bid shall be rejected.

7.10 Post Qualification

The details of post qualification are given in Procurement Manual 7.10.1

- 7.10.1 (a) Post-qualification of bidders serves as a safety measure to ensure that the lowest evaluated bid has been submitted by a responsible and trustworthy bidder.
- (b) Prior to the award of contract, it is necessary to determine that the bidder who has submitted the lowest evaluated bid has the required capacity and resources to carry out the contract effectively.
- 7.10.2 Even if pre-qualification was done, if there is a considerable time from the date of pre-qualification up to the time bids were invited, it may be necessary to update the information furnished with the pre-qualification application to ascertain whether there are material changes.
- 7.10.3 A bidder not complying substantially with the post-qualification criteria disclosed in the bidding document may be rejected at this stage. If so, post-qualification is carried out with the next lowest evaluated bidder.

7.11 Bid Evaluation Report

- 7.11.1 Immediately after the evaluation is completed the TEC should prepare a bid evaluation report in the format given in the Procurement Manual and submit to the PC together with all supporting documents.

The format of Bid Evaluation report is given in Procurement Manual 7.11.1

7.12 Rejection of all Bids Received

- 7.12.1 Rejection of all bids received can be justified when lack of effective competition is clearly evident. Lack of competition shall not be determined solely on the number of Bids received.
- 7.12.2 (a) Even when only one bid is received, after wide publicity has been given, the bidding process may still be considered valid, if the prices quoted are reasonable in comparison to market values.
- (b) In such a situation, if prices quoted by the single bidder are high, the TEC may negotiate with the bidder for a downward revision of prices.
- 7.12.3 (a) If in the view of the PC, lack of effective competition is evident, which results in rejection of all bids received, wider publicity must be given when re-inviting bids.
- (b) In re-inviting Bids, the same bidding documents shall not be used.
- (c) Re-inviting Bids must not be for the sole purpose of obtaining lower prices.
- 7.12.4 The PC shall keep a record of matters agreed with the bidder during negotiations and execute a Memorandum of Understanding with the bidder relating to the agreed negotiated terms and conditions.

CHAPTER 8

AWARD OF CONTRACT**8.1 Recommendation/Determination of Contract Award**

8.1.1 After the PC has carefully examined the TEC report and has sought any required clarifications from the TEC, the PC may exercise any of the following options:

- (a) if it agrees with the findings of the TEC the Chairperson of the PC shall:
 - (i) in the case of CAPC may make a recommendation of contract award to the Secretary to the Line Ministry; and
 - (ii) in all other cases convey the determination of contract award to the Secretary to the Line Ministry in the case of MPC, to the Head of Department in the case of DPC and RPC, and to the Project Director in the case of PPC; or
- (b) request the TEC to resubmit the report after due consideration to the observations made by the PC; in such situations if PC agrees with the subsequent report submitted by TEC, the decision should be conveyed in accordance with Guideline 8.1(a) above; or
- (c) if the PC continues to dispute on any specific matter in the TEC report, the disputed matter shall be discussed with all members of the TEC in order to arrive at a consensus. Thereafter, if the members of the PC are unable to reach a unanimous decision on such disputed matter, then the majority decision of the PC shall prevail and the decision should be conveyed in accordance with Guideline 8.1(a) above. However, any member may submit a dissenting report.

8.2 Communication to all Bidders of the Intention to Award Contract

8.2.1 The Secretary to the Line Ministry shall within one week of being informed of the recommendation of the CAPC/MPC inform in writing to all the bidders of the selection of the successful bidder and the intention to award the contract to such bidder.

8.3 Appeals against Contract Awards recommended by the CAPC

- 8.3.1 (a) The Secretary to the Line Ministry shall within one week of being informed of the recommendation of the CAPC inform the unsuccessful bidders in writing, to make their representations, (if any) against the recommendation of the CAPC/intention to award the contract to the successful bidder, to the **Procurement Appeal Board** at the Presidential Secretariat.
- (b) Such representation of the bidders shall:
- (i) be submitted within one week of the bidder being informed by the Secretary to the Line Ministry, of the intention to award the contract to the successful bidder;
 - (ii) be self-contained to enable the Appeal Board to arrive at a conclusion.

8.4 Appeal Board

- 8.4.1 (a) The Appeal Board upon receipt of any representations from the bidder against any recommendation of the CAPC shall promptly notify same to the Secretary of the Line Ministry.
- (b) After investigating into such representations, the Appeal Board shall submit its independent report to the Cabinet of Ministers, with copy to the Secretary of the Line Ministry and such report shall:
- (i) provide their reasons for endorsement of the decision of the CAPC; or
 - (ii) for rejecting same together with their independent recommendation of contract award.

8.5 Contract Award in relation to MPC

- 8.5.1 (a) The Secretary to the Line Ministry shall within one week of being informed of the determination of MPC inform in writing simultaneously to all the bidders:

- (i) of the selection of the successful bidder and the intention to award the contract to such bidder.
 - (ii) to make their representations, (if any) to him/her against the determination of the MPC within one week of being so notified. Such representations should be self-contained.
- (b) If any representations are received within the said one week period, the Secretary to the Line Ministry in consultation with the Chairperson of MPC and TEC shall organize a joint meeting of the MPC and TEC to consider such representations.
- (c) The joint committee so appointed shall adopt its own procedure for expeditious inquiry and disposal.
- (d) The findings/recommendations of the joint committee will be forwarded to the Secretary of the Line Ministry no later than fourteen (14) days of appointment of such committee and the Secretary shall act in accordance with such findings/recommendations.
- 8.5.2 If no such representations are received, the Secretary to the Line Ministry shall promptly award the contract to the successful bidder.

8.6 Contract Award in Relation to Cabinet Appointed Procurement Committee (CAPC)

- (a) After the Secretary to the Line Ministry has duly informed the bidders of the intention to award the contract, to the successful bidder within two (02) weeks of being informed of the recommendation of the contract award pursuant to Guideline 8.1(a) above, the Secretary to the Line Ministry in consultation with the Minister is required to submit a Memorandum to the Cabinet of Ministers, with copy to NPA, informing the Cabinet of the CAPC recommendation together with his/her observations, if any.
- (b) Secretary to the Cabinet of Ministers would communicate the decision of the Cabinet to the Secretary of the Line Ministry with copy to NPA.

- (c) If the Secretary to the Line Ministry has pursuant to Guideline 8.3 above, received any representations from unsuccessful bidders against the contract award to the successful bidder, the timeframe of two (02) weeks stipulated in paragraph (a) above, shall be extended to four weeks.

8.7 Award of Contract

Standard
Letter of
acceptance is
given in
Procurement
Manual 8.7.1

- 8.7.1 (a) Prior to contract award the PE should ensure that budgetary provision is available to meet the cost of contract.
- (b) Letter of Acceptance shall be issued within the validity period of the bid, and no sooner the final determination of contract award is completed.

8.8 Debriefing

8.8.1 The Purposes of debriefing are to:

- (a) Inform the aggrieved bidder of the reasons for lack of success, pointing out the specific shortcomings in its bid without disclosing contents of other bids, with the overall objective of educating the bidder to submit more responsive and competitive bids in future.
- (b) minimize the level of complaints and to demonstrate clearly the principle and practice of probity and transparency.

8.8.2 After the notification of contract award, a bidder who wishes to ascertain the grounds on which its Bid was not selected should address its request to the PE. In such situation the PE should discuss only such Bid and not the bids of other competitors.

8.9 Execution of Contract

8.9.1 Following the acceptance of a bid submitted by a bidder, a formal letter of acceptance shall be issued forthwith to the bidder by the Procuring Entity. This shall be followed by the execution of a formal contract for the following:

- (a) any contract for Works exceeding SLR 250,000 (Sri Lanka Rupees Two hundred and Fifty thousand); and

(b) any Goods or Service contract exceeding SLR 500,000.00 (Sri Lanka Rupees Five Hundred Thousand).

8.9.2 For any contract less than the amounts specified under Guideline 8.9.1 above, the PE may at its discretion enter into a formal contract. If a formal letter of acceptance is not issued nor a formal agreement is not executed, a purchase order or any other appropriate written document shall be used.

8.9.3 The formal contract shall be signed by the appropriate authority.

Limits of authority for contract execution and format for requesting contract signature are given in Procurement Manual 8.9.3

8.10 Publication of Contract Award

8.10.1 The PE should publish promptly in its website (if available), the NPA website and/or any other appropriate media, the following particulars in regard to contracts on which awards have been made:

- (a) description of the items/Works for which bids were invited;
- (b) total number of bids received;
- (c) name of the successful bidder;
- (d) amount at which the contract was awarded;
- (e) in the case of a contract awarded to a foreign principal who has a local agent, the name of the local agent.

8.10.2 If the contract value exceeds SLR 250,000,000 (Sri Lanka Rupees Two Hundred and Fifty Million), publication of contract awards in at least one widely circulated national news paper, the NPA website and government gazette is mandatory.

8.11 Default

8.11.1 Data Base of Defaulting Contractors/Suppliers - NPA.

- (a) In every case involving a contract exceeding the value of SLR 5,000,000 (Sri Lanka Rupees Five Million), the NPA shall maintain a data base of defaulting contractors/suppliers which would be updated regularly. The names of defaulting contractors/suppliers will also be published in its website.

- (b) The NPA will issue half-yearly, a list of such defaulting contractors/suppliers to all Line Ministries for circulation among departments/corporations under their purview.
- (c) The PEs should not award any contracts to any contractors/suppliers, as long as their names remain in this data base.

The placement of a defaulting contractor's/supplier's name in the NPA website is merely for the purpose of informing PEs that they must refrain from dealing with such parties, until such time their names are removed from the data base at the sole discretion of the NPA and is not intended to imply any moral delinquency on the part of such contractor/supplier.

Format for reporting defaulting contractors/suppliers is given in Procurement Manual 8.11.2

8.11.2 **Default on Bid Security Declaration**

When a bid security declaration is requested with the bid and any particular bidder fails to fulfill any of the conditions in the bid security declaration, the PE shall promptly inform the NPA of such failure, with relevant details.

- 8.11.3 (a) Upon receipt of such notification from a PE, NPA will issue a letter to the bidder granting a period of seven (07) days to respond.
- (b) If no satisfactory reply is received the bidders name shall be included in the "Defaulted contractors and suppliers data base" maintained by the NPA and will also be published in the NPA website.

Default on Implementation

- 8.11.4 (a) In every case involving a contract exceeding the value of SLR 5,000,000 (Sri Lanka Rupees Five Million) in which a successful contractor/supplier:
 - (i) informs the PE of his inability to carry out the contract after contract award; or
 - (ii) fails to submit the Performance Security; or
 - (iii) fails to carry out his contract in a satisfactory manner; or
 - (iv) abandon the Works; or
 - (v) is guilty of improper conduct;

the PE shall serve on the contractor/supplier a written notice requiring him to show cause in writing, within two weeks, why his name should not be included in the list of defaulting contractors/suppliers.

(b) If the PE is not satisfied with the explanation furnished by the contractor/supplier, the PE should submit a report to the Secretary of the Line Ministry providing details with regard to such default.

8.11.5 (a) On receipt of the aforementioned report, the Secretary to the Line Ministry shall appoint a committee to inquire into the alleged default or improper conduct of the contractor/supplier.

(b) If the committee so appointed decides to treat the contractor as a defaulting contractor, the Secretary to the Line Ministry shall furnish a report to the NPA stating all facts pertaining to such default.

(c) If NPA is satisfied with the findings of the committee, the contractors/suppliers name;

(i) shall be included as a defaulting supplier/contractor in the data base; and

(ii) will be published in the NPA website.

Departmental Data Base of Defaulting Contractors/Suppliers

8.11.6 (a) For contracts, the value of which is less than SLR 5,000,000.00 (Sri Lanka Rupees Five Million), PEs may maintain a departmental data base of defaulting contractors/suppliers.

(b) This information could be made available to other departments on inquiry only.

8.12 Contract Administration

8.12.1 (a) The PE shall be responsible for ensuring that the execution of Works, supply of Goods or the provision of Services are adequately supervised and assessed for the purpose of making interim and final payments.

- (b) The quality of the Goods and the Services supplied and the execution of, Works should be checked independently before acceptance/taking over respectively.
- (c) Particular attention should be paid to claims arising from disputes and differences during implementation.

Certification of Completion of Works

8.12.2 For Works, the Engineer/Consultant shall issue a Certificate of Completion certifying:

- (a) that the Works have been carried out in accordance with the specifications and other agreed terms and conditions; and
- (b) that the payments certified are in accordance with the conditions of contract.

Certification for Receipt of Goods

8.12.3 For Goods, the officer in charge shall issue a certificate that:

- (a) the Goods supplied are in accordance with the specifications and other agreed terms;
- (b) the quantity supplied is in accordance with the contract provisions;
- (c) all warranties, guarantees and manuals which are customarily supplied for such Goods or have been specifically agreed upon, have been provided.

Certification of Services Completed

8.12.4 For Services the officer-in-charge shall issue a certificate that the Services provided have been carried out in accordance with contractual provisions.

8.13 Variation Orders – Works

8.13.1 The conditions of contract will normally empower the Employer to vary the form, quality or quantity of the Work to be executed at any time during the progress of the work and provide the basis for such variation and valuation of such variations within approved limits.

- 8.13.2 A contract variation order is used to obtain approval to order variations and, more particularly to obtain authorization to incur the financial effects of them.

Approving Authority for Aggregate Variations not exceeding the contingency provision

- 8.13.3 Contract variation orders may be authorized by the Head of Department/Project Director provided that the net sum of the variation and any previous variations does not exceed the amount of the contingency provision provided in the approved contract budget. Contingency provision generally should not exceed ten percent (10%) of the estimated contract amount.

Approving Authority when Contingency Provision is Exceeded

- 8.13.4 When the approved contingency provision is exceeded or where there is no contingency provision, the contract variation order should be submitted for approval to the appropriate level of authority given in the Procurement Manual.

Format for requesting variation orders and evaluation procedure are given in Procurement Manual 8.13.4

8.14 Extension of Time

- 8.14.1 Extensions of time may be granted by an authorized person, in exceptional circumstances or due to Force Majeure situations, when the contractor or the supplier establishes to the satisfaction of the PE, that delays are attributable to circumstances beyond the control of the contractor/supplier.

CHAPTER 9

SPECIAL PROCUREMENTS**9.1 Procurement of Commodities**

- 9.1.1 Procurement of commodities often involve multiple awards for partial quantities to assure continuity of supply and multiple purchases over a period of time to take advantage of favorable market conditions.
- 9.1.2 (a) A list of pre-qualified bidders may be drawn up to whom periodic invitations are issued.
- (b) Bidders may be invited to quote prices linked to the market price at the time of or prior to the shipments.
- (c) Bid validities shall be as short as possible.
- (d) A single currency, in which the commodity is usually priced in the market, may be used for bidding and payment. The currency shall be specified in the bidding document.
- (e) Bidding documents may permit electronic, telexed or faxed bids, if there is no requirement for bid security, or if standing bid securities valid over a specified period of time have been submitted by pre-qualified bidders.
- (f) Standard contract conditions and forms consistent with market practices shall be used.

9.2 Procurement of Spare parts

- 9.2.1 PEs may purchase spare parts from the original manufacturer of equipment, or their authorized local agent or independent manufacturers of spare parts, or spare part dealers.

9.3 Repairs to Motor Vehicles and Equipment

- 9.3.1 (a) Repairs to motor vehicles and other equipment may be carried out through the local accredited agents of the manufacturer provided that the PE is satisfied that the quotation is reasonable, having taken into account the economy of the repair cost, the age and condition of the vehicles.

- (b) Head of Department may delegate the authority as given in the Procurement Manual. However, the approval of the Secretary to the Line Ministry should be obtained for repairs exceeding the cost of SLR100, 000/- (Sri Lanka Rupees One Hundred Thousand)

9.4 Periodicals and Publications

- 9.4.1 Periodicals and publications may be purchased directly from the publishers or from their agents and if there is any discount it should be so stated in the invoice.

9.5 Purchasing of Fuel

- 9.5.1 Requirements of fuel may be purchased from depot/s closer to the PE.

9.6 Procurement of Pharmaceuticals and Medical Equipment

- 9.6.1 Procurement of drugs, vaccines, medical devices, biological products, nutritional additives and contraceptives hereinafter collectively referred to as Pharmaceuticals is a complex and a unique process which requires special attention.
- 9.6.2 A separate publication containing Guidelines relating to the Procurement of Pharmaceuticals (hereinafter called and referred to as “Guidelines for the Procurement of Pharmaceuticals” will be issued by the NPA to address the special concerns relating to Pharmaceuticals Procurement.
- 9.6.3 The broad principles of procurement outlined in these Guidelines, will however, continue to be applicable to the extent possible, for the Procurement of Pharmaceuticals, unless they have been amended/ modified in the Guidelines for the Procurement of Pharmaceuticals. In the event of a conflict between these Guidelines and the Guidelines for the Procurement of Pharmaceuticals, the latter shall prevail.
- 9.6.4 These Guidelines will continue to be applicable as the appropriate Guidelines for the Procurement of Medical Equipment.

9.7 Information Systems

9.7.1 Large information technology and systems contracts are among the most challenging to procure because:

- * their technical content is diverse and difficult to define;
- * they are highly affected by changing business objectives, organizational politics, and institutional capacity of the end-user;
- * they are subject to rapid technological change over the project life-cycle; and
- * they entail mixtures of professional engineering services and supply of diverse hard and soft technologies.

9.7.2 Two key features distinguish supply and installation of IT systems from goods procurement namely, increased supplier's risk and complex service requirements. Together these two features increase significantly the complexity and risk of the procurement and require different evaluation and contracting terms. Thus, specialized bidding documents in consultation with NPA shall be used in procuring complex IT systems.

9.8 E-Procurement

PEs if they so wish, may carry out following Procurement activities electronically with the prior concurrence of the respective PCs.

- (a) in addition to the general advertising process, publish Procurement invitations on Web site;
- (b) the bidders/consultants will be allowed to inspect pre-qualification (PQ) applications and bidding documents, electronically or otherwise, according to their preference;
- (c) the bidders may be allowed to obtain clarifications through electronic media;
- (d) electronic submission of Bids will not be allowed.