

**GOVERNMENT OF RAJASTHAN**

# Rajasthan Public Procurement Rules

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(Procurement of Goods, Works and Services)

**2012**

*Issued by Government of Rajasthan in exercise of powers conferred by section 55 of the Rajasthan Transparency in Public procurement Act, 2012.*

**Abbreviations and acronyms:**

BEC	Bids Evaluation Committee
BIFR	Bureau of Industrial Finance and Restructuring
BOQ	Bill of Quantities
CE	Chief Engineer
CMC	Contract Monitoring Committee
CQCBS	Combined Quality cum Cost Based Selection
DGS&D	Directorate General of Supplies and Disposals
EE	Executive Engineer
EIC	Engineer-in-Charge
Eoi	Expression of Interest
FA	Financial Advisor
FCS	Fixed Cost Selection
GCC	General Conditions of Contract
GF&AR	General Financial and Accounts Rules
GoR	Government of Rajasthan
ICB	International Competitive Bidding
ISO	International Organization for Standardization
IT	Information Technology
ITB	Instruction to Bidders
JV	Joint Venture
LCS	Least Cost Selection
LOI	Letter of Invitation
MIS	Management Information System
MoU	Memorandum of Understanding
NCB	National Competitive Bidding
NGO	Non-Governmental organization
NIB	Notice Inviting Bids / Tenders

O & M	Operating and Maintenance
PDR	Public Demands Recovery
P.O.	Purchase Order
PE	Procuring Entity
PR	Procurement Register
PWD	Public Works Department
PWF&AR	Public Works Financial & Accounts Rules
QBS	Quality Based Selection
QCBS	Quality and Cost Based Selection
RFP	Request for Proposal
SBD	Standard Bidding Documents
SCC	Specific Conditions of Contract
SE	Superintending Engineer
SPFC	State Procurement Facilitation Cell
SSI	Small Scale Industry
ToR	Terms of Reference
UTN	Unique Tender Number
WLC	Whole Life Costing

In exercise of the powers conferred by section 55 of Rajasthan Transparency in Public Procurement Act (Rajasthan Act No. 21 of 2012), the Government of Rajasthan hereby makes the following rules to give effect to the provisions of the aforesaid Act for public procurement in departments of the State Government, namely:-

## **Rajasthan Public Procurement Rules**

### **PART – I**

#### **CHAPTER- I**

##### *Introductory*

**1. Title and commencement.-** These rules may be called the Rajasthan Public Procurement Rules, 2012. These rules shall come into force on \_\_\_\_\_, 2012.

**2. Applicability.-** These rules shall apply to the public procurement of goods, works and services by the procuring entities of all the departments of the State Government or their attached or subordinate offices. Other procuring entities may adopt these rules or continue to follow their rules, orders, codes, manual, bye-laws, official memoranda or circulars relating to procurement of goods, works or services in so far as they are not inconsistent with the provisions of the Act.

**3. Definitions:** In these rules, unless the context requires, -

- (i) “Act” means the Rajasthan Transparency in Public Procurement Act, 2012 (Rajasthan Act No. 21 of 2012);
- (ii) “bid” means a formal offer made in pursuance of an invitation by a procuring entity and includes any tender, proposal or quotation;
- (iii) “bidder” means any person participating in a procurement process with a procuring entity;
- (iv) “bidder registration documents” means the documents issued by a procuring entity, including any amendments thereto, that set out the terms and conditions of registration proceedings and includes the invitation to register;
- (v) “bidding documents” means documents issued by the procuring entity,

including any amendments thereto, that set out the terms and conditions of the given procurement and includes the invitation to bid.

- (vi) “bid security” means a security provided to the procuring entity by a bidder for securing the fulfillment of any obligation in terms of the provisions of the bidding documents;
- (vii) “electronic reverse auction” means an online real-time purchasing Technique utilised by the procuring entity to select the successful submission, which involves presentation by bidders of successively lowered bids during a scheduled period of time and the automatic evaluation of bids;
- (viii) “goods” includes all articles, material, commodities, electricity, livestock, furniture, fixtures, raw material, spares, instruments, software, machinery, equipment, industrial plant, vehicles, aircraft, ships, railway rolling stock and any other category of goods, whether in solid, liquid or gaseous form, purchased or otherwise acquired for the use of a procuring entity as well as services or works incidental to the supply of the goods if the value of services or works or both does not exceed that of the goods themselves;
- (ix) “invitation to bid” means a document published by the procuring entity inviting bids relating to the subject matter of procurement and any amendment thereto and includes notice inviting tender and request for proposal;
- (x) “notification” means a notification published in the Official Gazette;
- (xi) “prescribed” means prescribed by these rules;
- (xii) “pre-qualification” means the procedure set out to identify, prior to inviting bids, the bidders that are qualified;
- (xiii) “pre-qualification documents” means the documents issued by a procuring entity, including any amendments thereto, that set out the terms and conditions of the pre-qualification proceedings and includes the invitation to pre-qualify;
- (xiv) “procurement” or “public procurement” means the acquisition by purchase, lease, licence or otherwise of works, goods or services, including award of Public Private Partnership projects, by a procuring

entity whether directly or through an agency with which a contract for procurement services is entered into, but does not include any acquisition without consideration, and “procure” or “procured” shall be construed accordingly;

- (xv) “procurement contract” means a contract entered into between the procuring entity and a successful bidder concerning the subject matter of procurement;
- (xvi) “procurement process” means the process of procurement extending from the issue of invitation to pre-qualify or to register or to bid till the award of the procurement contract or cancellation of the procurement process, as the case may be;
- (xvii) “procuring entity” means an entity referred to in sub-section (2) of section 3 of the Act;
- (xviii) “Public Private Partnership” means an arrangement between the State Government, statutory entity or any other government owned entity on one side and a private sector entity on the other, for the provision of public assets or public services or both, through investments being made or management being undertaken, or both investments being made and management being undertaken, by the private sector entity, for a specified period of time, where there is well defined allocation of risk between the private sector and the State Government, statutory entity or any other government owned entity , as the case may be, and the private entity receives performance linked payments that conform (or are benchmarked) to specified and pre-determined performance standards, measurable by the State Government, statutory entity or any other government owned entity, as the case may be, or its representative;
- (xix) “rate contract” means an agreement between a procuring entity and one or more bidders which specifies the terms and conditions including the price, for the supply of a subject matter of procurement required on a recurring basis;
- (xx) “registered bidder” means any bidder who is on a list of registered bidders of the procuring entity maintained under section 19 of the Act;
- (xxi) “services” means any subject matter of procurement other than goods or

works and includes physical, maintenance, professional, intellectual, consultancy and advisory services or any service classified or declared as such by a procuring entity and does not include appointment of any person made by any procuring entity;

(xxii) “subject matter of procurement” means any item of procurement whether in the form of goods, services or works;

(xxiii) “works” mean all works associated with the construction, reconstruction, site preparation, demolition, repair, maintenance, or renovation or railways, roads, highways or a building, an infrastructure, or structure or an installation or any construction work relating to excavation, drilling, installation of equipment and materials, as well as services incidental to the works if the value of those services does not exceed that of the works themselves;

**4. Procurement overview.-** (1) Procurement is a process, for the acquisition of property, plant and/or equipment, goods, works or services through purchase, hire, lease, license, rental, exchange or otherwise from any source including award of Public Private Partnership projects. Actions undertaken to carry out procurement are procurement activities, which include all actions from planning and forecasting, identification of needs, sourcing and solicitation of offers, evaluation of offers, review and award of contracts.

(2) Procurement is to ensure obtaining the goods, works or services at the right time, price, quality, quantity, and place. The forms, protocols, or conditions that regulate the conduct of procurement activities are called procurement modalities.

**5. Fundamental Principles of Public Procurement.-** (1) The State Government considers it necessary that every procuring entity shall have responsibility and accountability to ensure efficiency, economy and transparency in matters relating to procurement and for fair and equitable treatment to bidders, promotion of competition in public procurement and mechanisms to prevent corrupt practices.

(2) The procuring entity shall strive to get best value for money and maintain the standards of financial propriety for procurement.

**6. Restriction on splitting.-** A procuring entity shall neither divide its procurement nor use a particular valuation method for estimating the value of procurement so as to avoid its obligations to obtain sanction of a higher authority or to limit competition among bidders or otherwise avoid its obligations under the Act;

Provided that in the interest of efficiency, economy and timely completion or supply, a procuring entity may, for reasons to be recorded in writing, divide its procurement into appropriate packages.

## CHAPTER- II

### ***Organisational Structure for Procurement***

**7. State procurement facilitation cell.-** (1) The State Government shall set up a State Procurement Facilitation Cell (SPFC) in Finance Department which shall be headed by an officer not below the rank of a Secretary to the Government. The Cell shall comprise of administrative, accounts, technical and professional personnel as may be required.

**(2) Functions of SPFC.-** The State Procurement Facilitation Cell shall discharge the following functions, namely:-

- (a) to ensure maintenance and updating of the State Public Procurement Portal set up under section 17 of the Act;
- (b) to arrange for training and certification specified in terms of section 48 of the Act;
- (c) to recommend to the State Government measures for effective implementation of the provisions of the Act;
- (d) to provide guidance, consistent with the provisions of this Act and the rules and guidelines made thereunder, to the procuring entities with respect to the matter relating to public procurement;
- (e) to study different methods of public procurement and prepare and recommend standard bidding documents, pre-qualification documents or bidder registration documents;
- (f) subject to the provisions of sub-section (2) of section 28 of the Act, encourage procuring entities to adopt electronic procurement;
- (g) to discharge such other functions as may be assigned to it by the State Government.

**8. Public procuring entity or procuring entity.-** Public procuring entity or procuring entity may be a department of the State Government or its subordinate office or its empowered committee or body engaged in public procurement. The head of a procuring entity may be a Head of Office, a Regional officer, a Head of

Department, an Administrative Secretary to the Government, or any other authority or body to whom the financial powers have been delegated by the State Government for procurement.

**9. Procurement committees.-** (1) One or more committees, each consisting of not less than three members including senior most accounts official of the procuring entity (for purview of matters related to finance), a technical official (if required) shall be constituted by a procuring entity for every financial year for the purposes of preparation of pre-qualification documents, if any; preparation of bidding documents; and opening, examination and evaluation of bids. If required, separate committees may be constituted for a particular procurement. The members of the committees may be common, depending on availability and expertise of officials. Alternative members, who, if required, can replace the originally nominated persons, shall also be identified and nominated.

(2)(a) Each procuring entity shall constitute atleast one committee named Bids Evaluation Committee (BEC) which may be assigned the functions of preparation of bidding documents, bids opening, etc. in addition to the evaluation of bids. If required, the BEC may engage technical experts who shall have the professional knowledge required to assist in the evaluation, with the prior approval of the Administrative Department of the procuring entity.

(b) The procedure to be followed by BEC for the evaluation of bids has been prescribed in chapter IV.

**(3) Contract Monitoring Committee (CMC).-** For each contract, a CMC with at least three members shall be appointed by the procuring entity. The members in BEC and CMC may be common.

**(4) Spot Purchase Committee.-** (a) For procurement of readily available goods or services a Spot Purchase Committee consisting of at least three members (including an accounts personnel of appropriate level) will be constituted by the procuring entity.

(b) The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate bidder.

**(5) Committee for competitive negotiation.-** If the method of competitive negotiations for procurement is adopted by a procuring entity, it shall use this method through a committee comprising of three members including an accounts personnel of appropriate level.

**10. State public procurement portal.-** (1) The State Government shall set up and maintain a State Public Procurement Portal for posting matters relating to public procurement, which shall be accessible to the public.

(2) Each procuring entity shall cause the procurement related information to be published as required under the Act and these rules on this Portal.

(3) Without prejudice to the generality of sub-rule (2), the State Public Procurement Portal shall provide access to the following information in relation to procurement governed by the provisions of the Act and the rules, namely:-

- (a) pre-qualification documents, bidder registration documents, bidding documents and any amendments, clarifications including those pursuant to pre-bid conference, and corrigenda thereto;
- (b) list of bidders who presented bids including during pre-qualification or bidder registration, as the case may be;
- (c) list of pre-qualified and registered bidders, as the case may be;
- (d) list of bidders excluded under section 25 of the Act, with reasons;
- (e) decisions under sections 38 and 39 of the Act;
- (f) details of successful bids, their prices and bidders;
- (g) particulars of bidders who have been debarred by the State Government or a procuring entity together with the name of the procuring entity, cause for the debarment action and the period of debarment;
- (h) any other information as may be relevant.

**11. e-Procurement and e-procurement portal:** (1) e-procurement is the use of information & communication technology (especially the Internet) in conducting the procurement of goods / works / services from bidders and contractors for the complete bidding process including advertising, issuance of bidding documents,

receipt of bids, bid opening, clarification and modification, evaluation of bids, notification and award of contract.

(2) For the clarification of doubts, pre-qualification, pre-bid conference, technical evaluation and negotiation, if required and permitted under these rules will be conducted manually.

(3) All contracts of an estimated value of Rs. 50 lakh or more (in case of Public Works Department Rs.25 lakh or more) shall be procured through e-procurement using the GoR e-procurement portal. This shall be applicable for goods and works for all procuring entities of GoR and progressively, all bids based on competitive bidding shall be obtained through the e-procurement portal.

(4) Registration Charges as specified in the bidding documents shall be deposited through e-payment gateway as per Reserve Bank of India Guidelines, as and when the facility is made available.

(5). Conditions of participation by bidders:-

- (a) Every bidder will need to have digital signature issued as per IT Act, 2000.
- (b) Every bidder shall be allotted a user ID and password on furnishing requisite details on e-procurement website.

## CHAPTER- III

### *Methods of Procurement*

**12. Methods of Procurement.-** (1) Subject to the provisions of the Act and these rules, a procuring entity may procure a subject matter of procurement by means of any of the following methods, namely :-

- (a) Open Competitive Bidding; or
- (b) Limited Bidding; or
- (c) Two-stage Bidding; or
- (d) Single Source Procurement; or
- (e) Electronic Reverse Auctions; or
- (f) Request for Quotations; or
- (g) Spot Purchase; or
- (h) Competitive negotiations; or
- (i) Rate Contract; or
- (j) any other method of procurement notified by the State Government satisfying the principles of procurement contained in the Act and which the State Government considers necessary in public interest.

(2) The State Government may, by notification, declare adoption of electronic procurement as compulsory for different stages and types of procurement, and on such declaration, every requirement for written communication shall be deemed to have been satisfied if it were done by electronic means.

**13. Open competitive bidding (Open tendering).-** (1) When to use method of open competitive bidding-

- (a) Every procuring entity shall prefer the Open Competitive Bidding as the most preferred method of procurement to be followed.
- (b) Where the procuring entity chooses a method of procurement other than the open competitive bidding, it shall record the reasons and circumstances thereof.
- (c) Open competitive bidding may also be followed in case of two stage

bidding in terms of section 32, electronic reverse auction in terms of section 33 and rate contract in terms of section 36 of the Act.

- (d) The procuring entity may follow the pre-qualification procedure specified in section 18 or registration / empanelment procedure specified in section 19 of the Act and invite bids from pre-qualified or registered / empanelled bidders only through this method.

**(2) Procedure for open competitive bidding-**

- (a) The detailed general process of procurement of goods, works and services described in chapter V shall be followed as such in open competitive bidding.
- (b) the procuring entity shall invite bids by publishing an invitation to bid on the State Public Procurement Portal and by such other modes as specified in chapter V. In order to promote domestic industry, normally the procedure of National Competitive Bidding (NCB) shall be adopted for open competitive bidding. The procedure of International Competitive Bidding (ICB) may be adopted if there is such a condition of adopting ICB for certain procurements under an obligation of an agreement with intergovernmental international financing institution, or the subject matter of procurement is such that in the opinion of the procuring entity it will be in the public interest to adopt ICB.

**14. Limited bidding (Limited tendering).- (1) Conditions for adopting the method of limited bidding:** - A procuring entity may choose to procure the subject matter of procurement by the method of limited bidding if -

- (a) the subject matter of procurement can be supplied only by a limited number of bidders; or
- (b) the value of the subject matter of procurement is upto rupees two lakhs at a time, provided that the total value of procurement by the method of limited bidding by a procuring entity during a financial year shall not exceed rupees ten lakh; or
- (c) owing to an urgency brought about by unforeseen events, the procuring entity is of the opinion that the subject matter of procurement cannot be

usefully obtained by adopting the method of open competitive bidding;  
or

- (d) procurement from a category of prospective bidders is necessary in terms of sub-section (2) of section 6 of the Act.
- (e) limited bids may also be invited in place of open tenders for procurement of a subject matter of procurement estimated to cost more than Rupees two lakhs, if -
  - (i) the authority competent to sanction the tender is satisfied that sufficient reasons, which shall be recorded in writing, exist that it is not in the public interest to call for open tenders, or
  - (ii) the sources of supply are definitely known and possibility of fresh source beyond those being tapped is remote, or
  - (iii) in cases where tenders are not received in open competitive bidding even after two attempts.

**(2) Procedure of limited bidding.-** The procedure of limited bidding / tendering shall include following, namely:-

- (a) the procuring entity shall issue an invitation to bid by writing directly, and on the same day, to-
  - (i) all the bidders who can supply the subject matter procurement in terms of clause (a) and (e)(ii) of sub-rule (1);
  - (ii) all the bidders who are registered for the subject matter of procurement with the procuring entity or where a procuring entity does not register bidders in respect of a subject matter of procurement, it may use the list of registered bidders of any other procuring entity, if any.
  - (iii) In case registered bidders are not available, to at least three manufacturers or authorised dealers or authorised service centres/ providers.
- (b) a procuring entity may allow all prospective bidders who fulfill the qualification criteria laid down for the procurement, in the bidding documents and these rules, whether an invitation to bid has been issued to such a bidder or not, to participate in the bidding process.
- (c) A minimum period of 7 days (3 days in case of emergency) shall be

given to the firms to offer their bids.

- (d) Bid security shall not be obtained in case of limited bidding, but performance security deposit shall be obtained from the successful bidder.
- (e) If limited bids are invited in place of open bids, the remaining procedure of bidding and the terms and conditions of the RFP / contract including provision for bid security, performance security, liquidated damages, procurement of undelivered quantities of the subject matter of procurement, etc. shall be similar to those prescribed for procurement through open competitive bidding.
- (f) Notice Inviting Bids (NIB) and bidding documents shall be prepared as per the provisions of chapter IV.

**15. Single source procurement.- (1) Conditions for adopting the method of single source procurement.-** A procuring entity may choose to procure the subject matter of procurement by the method of single source procurement if-

- (a) the subject matter of procurement is available only from a particular prospective bidder, or a particular prospective bidder has exclusive rights in respect of the subject matter of procurement, such that no reasonable alternative or substitute source exists, and the use of any other procurement method would therefore not be possible; or
- (b) owing to a sudden unforeseen event, there is an extremely urgent need for the subject matter of procurement, and engaging in any other method of procurement would be impractical; or
- (c) the procurement of substitute is technically not feasible for the existing goods, equipments etc. or cannot be economically procured considering the quantity required and value and the cost involved in adopting other methods of procurement; or
- (d) the procuring entity determines that the use of any other method of procurement is not appropriate for the protection of national security interests; or
- (e) procurement from a particular prospective bidder is necessary in terms

of sub-section (2) of section 6 of the Act; or

- (f) subject matter of procurement is of artistic nature up to the limit of delegation of financial power; or
- (g) subject matter of procurement is of such nature as requires the procuring entity to maintain confidentiality, like printing of examination papers; or
- (h) hiring of consultancy services – maximum period – 12 months and financial limits of Rs. 5.00 lakh, subject to delegation of financial powers.
  - (i) a team / firm - where multidimensional knowledge is required
  - (ii) an individual – where outside support is not required and experience of the individual is the paramount requirement; or
  - (iii) price of subject matter of procurement is administered by the State or Central Government.

**(2) Procedure of single source procurement.-** The procedure for single source procurement shall include the following, namely:-

- (a) the procuring entity shall solicit a bid from the single prospective bidder.
- (b) the procuring entity may engage in negotiations in good faith with the bidder.
- (c) the single source may be selected out of the list of empanelled / registered bidders for the subject matter of procurement with the procuring entity or with any other procuring entity, where procuring entity uses the list of registered bidders of such other procuring entity in terms of sub-section (5) of section 19 of the Act or other reliable sources may be used for identification of a suitable firm.
- (d) bid security / earnest money deposit shall not be obtained in case of single tender inquiry.

**16. Two stage bidding.- (1)** The Two-stage bidding procedure should be used in large and complex contracts where technically unequal proposals are likely to be encountered or where the competent authority is aware of its options in the market but, for a given set of performance requirements, there are two or more equally acceptable technical solutions available to the competent authority.

**(2) Conditions for adopting the method of two stage bidding.-** A procuring entity may choose to procure the subject matter of procurement by the method of two stage bidding if-

- (a) it is not feasible for the procuring entity to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders; or
- (b) the character of the subject matter of procurement is subject to such rapid technological advances and market fluctuations to make open competitive bidding unfeasible; or
- (c) the procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of items in quantities sufficient to establish their commercial viability or to recover research and development costs; or
- (d) the bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement; or
- (e) open tendering was engaged in but no tenders were presented or the procurement was cancelled by the procuring entity and where, in the judgement of the procuring entity, engaging in new open-tendering proceedings or a procurement method under these rules would be unlikely to result in a procurement contract.

**(3) Procedure of two stage bidding.-** the procedure for two stage bidding shall include the following, namely:-

- (a) in the first stage of the bidding process, the procuring entity shall invite proposals containing the professional and technical competence and qualifications of bidders regarding the subject matter of procurement and contractual terms and conditions of the proposed procurement;
- (b) all first stage bids, which are otherwise eligible, shall be evaluated in accordance with the procedure laid down in these rules through an appropriate committee constituted by the procuring entity;
- (c) the committee may hold discussions with the bidders and if any such

discussion is held, equal opportunity shall be given to all bidders to participate in the discussions;

- (d) in revising the technical design and stipulations and relevant terms and conditions of the procurement, the procuring entity shall not modify the fundamental nature of the procurement itself, but may add, amend or delete any specification of the subject matter of procurement or criterion for evaluation;
- (e) Notwithstanding anything contained in sections 29 and 30 of the Act, in the second stage of the bidding process, the procuring entity shall invite bids from all those bidders whose bids at the first stage were not rejected, to present final bid with bid prices and detailed technical bid in response to a revised set of terms and conditions of the procurement;
- (f) any bidder, invited to bid but not in a position to supply the subject matter of procurement due to changes in the specifications, may withdraw from the bidding proceedings without forfeiting any bid security that he may have been required to provide or being penalised in any way, by declaring his intention to withdraw from the procurement proceedings with adequate justification.

**17. Electronic reverse auction.- (1) Conditions for adopting the method of electronic reverse auction.-** A procuring entity may choose to procure a subject matter of procurement by the method of electronic reverse auction, if-

- (a) it is feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement; and
- (b) there is a competitive market of bidders anticipated to be qualified to participate in the electronic reverse auction, such that effective competition is ensured; and
- (c) the criteria to be used by the procuring entity in determining the successful bid are quantifiable and can be expressed in monetary terms.

**(2) Procedure of electronic reverse auction as a stand-alone method of procurement.- (a)** The procuring entity shall solicit bids by causing an invitation to the electronic reverse auction to be published in accordance with chapter V. The invitation shall include:-

- (i) the name and address of the procuring entity;
- (ii) a detailed description of the subject matter of the procurement, and the desired or required time and location for the provision of such subject matter;
- (iii) the terms and conditions of the procurement contract, to the extent they are already known to the procuring entity, and the form of the contract, if any, to be signed by the parties;
- (iv) the criteria and procedures to be used for ascertaining the qualifications of bidders or contractors and any documentary evidence or other information that must be presented by bidders or contractors to demonstrate their qualifications.
- (v) the criteria and procedure for examining bids against the description of the subject matter of the procurement;
- (vi) the criteria and procedure for evaluating bids, including any mathematical formula that will be used in the evaluation procedure during the auction;
- (vii) the manner in which the bid price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the subject matter of the procurement itself, such as any applicable transportation and insurance charges, customs duties and taxes;
- (viii) the minimum number of bidders or contractors required to register for the auction in order for the auction to be held, which shall be sufficient to ensure effective competition;
- (ix) if any limit on the number of bidders or contractors

- that can be registered for the auction is imposed, the relevant maximum number and the criteria and procedure, that will be followed in selecting it;
- (x) how the auction can be accessed, including appropriate information regarding connection to the auction;
  - (xi) the deadline by which the bidders must register for the auction and the requirements for registration;
  - (xii) the date and time of the opening of the auction and the requirements for identification of bidders at the opening of the auction;
  - (xiii) the criteria governing the closing of the auction;
  - (xiv) other rules for the conduct of the auction, including the information that will be made available to the bidders in the course of the auction, the language in which it will be made available and the conditions under which the bidders will be able to bid;
  - (xv) references to the Act and these rules, and other laws and regulations directly pertinent to the procurement proceedings, including those applicable to procurement involving classified information, and the place where those laws and regulations may be found;
  - (xvi) the means by which the bidders may seek clarification of information relating to the procurement proceedings;
  - (xvii) the name, functional title and address of one or more officers or employees of the procuring entity who are authorised to communicate directly with and to receive communications directly from the bidders in connection with the procurement proceedings before and after the auction without the intervention of an intermediary;
  - (xviii) notice of the right provided under section 38 of the Act to appeal against decisions or actions taken by the

procuring entity that are allegedly not in compliance with the provisions of the Act and these rules;

(xix) any formalities that will be required after the auction for a procurement contract to enter into force, including, where applicable, ascertainment of qualifications or responsiveness and execution of a written procurement contract;

(xx) Any other requirements established by the procuring entity in conformity with the Act and these rules.

(b) The procuring entity may impose a maximum limit on the number of bidders that can be registered for the electronic reverse auction only to the extent that capacity constraints in its communications system so require, and shall select the bidders or contractors to be so registered in a non-discriminatory manner. The procuring entity shall include a statement of the reasons and circumstances upon which it relied to justify the imposition of such a maximum limit in the record.

(c) The procuring entity may decide, in the light of the circumstances of the given procurement, that the electronic reverse auction shall be preceded by an examination or evaluation of initial bids. In such case, the invitation to the auction shall, in addition to information listed in paragraph 1 of this rule, include:

(i) an invitation to present initial bids, together with instructions for preparing initial bids;

(ii) the manner, place and deadline for presenting initial bids.

(d) Where the electronic reverse auction has been preceded by an examination or evaluation of initial bids, the procuring entity shall promptly after the completion of the examination or evaluation of initial bids:-

(i) dispatch the notice of rejection and reasons for rejection to each bidder whose initial bid was rejected;

- (ii) issue an invitation to the auction to each qualified bidder whose initial bid is responsive, providing all information required to participate in the auction;
- (iii) where an evaluation of initial bids has taken place, each invitation to the auction shall also be accompanied by the outcome of the evaluation, as relevant to the bidder to which the invitation is addressed.

**(3) Electronic reverse auction as a phase preceding the award of the procurement contract.-**

- (a) Where an electronic reverse auction is to be used as a phase preceding the award of the procurement contract in a procurement method, as appropriate, the procuring entity shall notify the bidders when first soliciting their participation in the procurement proceedings that an auction will be held, and shall provide, in addition to other information required to be included under provisions of these rules, the following information about the auction:-
  - (i) the mathematical formula that will be used in the evaluation procedure during the auction;
  - (ii) how the auction can be accessed, including appropriate information regarding connection to the auction.
- (b) Before the electronic reverse auction is held, the procuring entity shall issue an invitation to the auction to all bidders remaining in the proceedings, specifying:-
  - (i) the deadline by which the bidders must register for the auction and requirements for registration;
  - (ii) the date and time of the opening of the auction and requirements for the identification of bidders at the opening of the auction;
  - (iii) criteria governing the closing of the auction;

- (iv) other rules for the conduct of the auction, including the information that will be made available to the bidders during the auction and the conditions under which the bidders will be able to bid.
- (c) Where an evaluation of initial bids has taken place, each invitation to the auction shall also be accompanied by the outcome of the evaluation as relevant to the bidder to which the invitation is addressed.

**(4) Registration for the electronic reverse auction and the timing of the holding of the auction.-**

- (a) Confirmation of registration for the electronic reverse auction shall be communicated promptly to each registered bidder.
- (b) If the number of bidders registered for the electronic reverse auction is less than three, to ensure effective competition, the procuring entity may cancel the auction. The cancellation of the auction shall be communicated promptly to each registered bidder.
- (c) The period of time between the issuance of the invitation to the electronic reverse auction and the auction shall be of minimum 7 days to allow bidders or contractors to prepare for the auction, taking into account the reasonable needs of the procuring entity.

**(5) Requirements during the electronic reverse auction.-**

- (a) The electronic reverse auction shall be based on:-
  - (i) price, where the procurement contract is to be awarded to the lowest-priced bid; or
  - (ii) price and other criteria specified to the bidders as applicable, where the procurement contract is to be awarded to the most advantageous bid.
- (b) During the auction:-

- (i) all bidders shall have an equal and continuous opportunity to present their bids;
- (ii) there shall be automatic evaluation of all bids in accordance with the criteria, procedure and formula provided to the bidders;
- (iii) each bidder must receive, instantaneously and on a continuous basis during the auction, sufficient information allowing it to determine the standing of its bid vis-à-vis other bids;
- (iv) There shall be no communication between the procuring entity and the bidders or among the bidders, other than as provided for in subparagraphs (a) and (c) of this sub-rule.

(c) The procuring entity shall not disclose the identity of any bidder during the auction.

(d) The auction shall be closed in accordance with the criteria specified to the bidders.

(e) The procuring entity shall suspend or terminate the auction in the case of failures in its communication system that put at risk the proper conduct of the auction or for other reasons stipulated in the rules for the conduct of the auction. The procuring entity shall not disclose the identity of any bidder in the case of suspension or termination of the auction.

**(6) Requirements after the electronic reverse auction.-**

(a) At the closure of the electronic reverse auction the lowest-priced bid or the most advantageous bid, as the case may be, shall be the successful bid.

(b) In procurement by means of an auction that was not preceded by examination or evaluation of initial bids, the procuring entity shall ascertain after the auction the responsiveness of the successful bid and the qualifications of the supplier or

contractor submitting it. The procuring entity shall reject that bid if it is found to be unresponsive or if the supplier or contractor submitting it is found unqualified. Without prejudice to the right of the procuring entity to cancel the procurement, the procuring entity shall select the bid that was the next lowest-priced or next most advantageous bid at the closure of the auction, provided that that bid is ascertained to be responsive and the bidder submitting it is ascertained to be qualified.

**18. Competitive negotiations.- (1) Conditions for adopting the method of competitive negotiations.-** Subject to the limit of delegation of financial powers a procuring entity may choose to procure a subject matter of procurement by the method of competitive negotiations, if -

- (a) owing to an urgency brought about by unforeseen events, the procuring entity is of the opinion that the subject matter of procurement cannot be usefully obtained by adopting the method of open competitive bidding or any other method because of the time involved in using those methods; or
- (b) the subject matter of procurement involves livestock, cotton, oilseeds or such other agricultural produces prices of which fluctuate frequently and in the opinion of the procuring entity the subject matter of procurement cannot be usefully obtained by adopting the method of open competitive bidding or any other method.

**(2) Procedure of competitive negotiations.-** the procedure for competitive negotiation shall include the following, namely:-

- (a) purchase of the subject matter of procurement under this section shall be made through a purchase committee including accounts person of appropriate level, within the procuring entity. The purchase committee shall record a certificate as given in Rule 20(2)(a);
- (b) to ensure effective competition, an adequate number, not being less than three, of potential bidders selected in a non-discriminatory manner shall be included in procurement process;

- (c) an equal opportunity shall be given to all bidders to participate in the negotiations. Any requirements, guidelines, documents, clarifications or other information related to the negotiations that is communicated by the procuring entity to a bidder before or during the negotiations shall be communicated at the same time and on an equal basis to all other bidders engaging in negotiations with the procuring entity related to the procurement, unless such information is specific or exclusive to that bidder or such communication would be in breach of the confidentiality provisions contained in section 49 of the Act;
- (d) following completion of negotiations, the procuring entity shall request all bidders remaining in the proceedings to present, by a specified date, a best and final offer with respect to all aspects of their proposals;
- (e) no negotiations shall take place between the procuring entity and bidders with respect to their best and final offers;
- (f) the successful offer shall be the offer that best meets the needs of the procuring entity;
- (g) nothing contained in sections 5 to 10 (both inclusive), sections 12 to 27 (both inclusive) and Chapter III of the Act shall apply to purchases made by competitive negotiations.

**19. Rate contract.-** (1) A running rate contract for a period, commonly known as Rate Contract (RC) is an agreement between the procuring entity and the bidder or service provider for supply of goods or execution of a work or rendering specified services at specified price and terms and conditions (as incorporated in the agreement) during the period covered by the rate contract. A rate contract is in the nature of standing offer from the bidder or service provider. The period of rate contract will be generally one year, preferably a financial year to match with budget provisions and levy of taxes. It may be a shorter period, if variations in market prices are expected to be significant. It may also be a longer period upto two years if the variations in market prices are not expected to be significant. The reasons for selecting the period for RC shall be recorded.

**(2) Conditions for adopting the method of rate contract.-**

- (a) A procuring entity may choose to engage in a rate contract procedure in accordance with these rules, where it determines that-
  - (i) the need for the subject matter of procurement is expected to arise on an indefinite or repeated basis during a given period of time;
  - (ii) by virtue of the nature of the subject matter of procurement, the need for that subject matter may arise on an urgent basis during a given period of time.

**(3) Procedure of entering into a rate contract.-**

- (a) A procuring entity may award a rate contract on the basis of open competitive bidding. If it is not possible to adopt the method of open competitive bidding, by means of other procurement methods in accordance with the provisions of these rules. An approximate quantity of required goods, works or service during the period will be indicated in the NIB, but no minimum quantity is guaranteed.
- (b) The procedure for entering into a rate contracts and award of work order fall in two stages and shall include the following, namely:-
  - (i) in the first stage single part or two part bids shall be invited;
  - (ii) a rate contract will be entered for price without a commitment for quantity, place and timing of placing supply or work order with the bidder of lowest priced bid or most advantageous bid;
  - (iii) in the second stage supply or work order will be placed at the contracted price for supply or execution of the required quantity of the subject matter of procurement, as and when needed;
  - (iv) rate contracts may be concluded with more than one bidder as parallel rate contracts provided there is such provision in the bidding documents, in the order of their standing in final evaluation, by giving them counter offer of prices of the lowest bidder. This may be done in order to secure prompt delivery or execution of goods, works or service, if the quantity of the subject

matter of procurement required is beyond the capacity of the lowest bidder;

- (v) the terms and conditions of the rate contract including provision for liquidated damages, shall be similar to those prescribed for procurement by open competitive bidding;
- (vi) the prices under a rate contract shall be subject to price fall clause to be incorporated in the terms and conditions of RC. Price fall clause is a price safety mechanism in rate contracts and it provides that if the rate contract holder quotes / reduces its price to render similar goods, works or services at a price lower than the rate contract price to anyone in the State at any time during the currency of the RC, the rate contract price shall be automatically reduced with effect from the date of quoting lower price for all delivery of goods and services under that RC and the RC shall be amended accordingly. The firms holding parallel RCs shall also be given opportunity to reduce their price by notifying them the reduced price giving them 15 days time to intimate their agreement to the revised price. If a parallel RC holding firm does not agree to the reduced price, further transaction with it shall not be conducted. Similarly, if a parallel RC holding firm reduces its price under the price fall clause during currency of the RC, its reduced price shall be conveyed to other parallel RC holding firms and the original RC holding firm for corresponding reduction in their prices. Care should be taken to ensure that declaring reduction in prices does not become a guise to unethical means of securing more orders;
- (vii) it should be ensured that new rate contracts are made operative right after the expiry of the existing rate contracts without any gap. In case it is not possible to conclude the new rate contracts due to unavoidable reasons, the existing rate contracts may be extended on same price, terms and conditions for a period not exceeding 3 months. In such cases it shall be ensured that market prices have

not fallen down during the period for the subject matter of procurement or its constituents, to be procured under the RC.

**20. Registration or Empanelment procedure.- (1) Registration.-** (a) The provisions relating to pre-qualification and registration of bidders contained in section 18 and 19 of the Act and open competitive bidding contained in this chapter shall apply to registration proceedings except to the extent those provisions are derogated from in this section.

- (b) The procuring entity may prepare a list of registered bidders. The list shall be revised periodically.
- (c) The procuring entity shall solicit participation in the registration procedure by causing an invitation for pre-qualification (called registration in this section) to be published as per requirements for open competitive bidding.
- (d) The invitation for registration shall include the following information:
  - (i) The name and address of the procuring entity establishing and maintaining the register and the name and address of any other procuring entities that will have the right to award procurement contracts using the register;
  - (ii) Whether parties, not originally registered following registration proceedings, can get registered subsequently;
  - (iii) Information about the operation of the registration procedure and how notifications of forthcoming procurement contracts can be accessed; and
  - (iv) The terms and conditions of the registration including the duration of the registration; the description of the subject matter of procurement, to the extent known; the procedures and anticipated frequency of the second-stage competition.
- (e) The procuring entity, during the period of registration, shall republish the invitation for registration, at least annually.

- (f) The procuring entity shall issue bidding documents to each registered bidder that responds to the invitation to present submissions and pays the price of the documents, if any.
- (g) Detailed procedure for registration of bidders for goods, works and services is given in the guidelines.

**(2) Empanelment.-** (a) The provisions relating to pre-qualification and empanelment of bidders contained in section 18 and 19 of the Act and open competitive bidding contained in this chapter shall apply to empanelment proceedings except to the extent those provisions are derogated from in this section.

- (b) The procuring entity may prepare a list of empanelled bidders which may remain valid normally for one year.
- (c) The procuring entity shall solicit participation in the empanelment procedure by causing an invitation for pre-qualification (called empanelment in this section) to be published as per requirements for open competitive bidding.
- (d) The invitation for empanelment shall also include the following information:
  - (i) The name and address of the procuring entity establishing and maintaining the panel;
  - (ii) Information about the operation of the empanelment procedure and how notifications of forthcoming procurement contracts can be accessed; and
  - (iii) The terms and conditions of the empanelment including the duration of the empanelment, the description of the subject matter of procurement, to the extent known.
- (e) In the second stage, the procuring entity shall issue a written invitation to present bids, simultaneously to each empanelled bidder.
- (g) The procuring entity shall issue bidding documents to each empanelled bidder that responds to the invitation to present submissions and pays

the price of the documents, if any.

- (h) Detailed procedure for empanelment of bidders for services is given in the guidelines.

**21. Procurements below rupees one lakh.-** (1) The methods and the procedures to be used for a subject matter of procurement valuing below rupees one lakh, may be as follows:-

**(1) Request for quotations and spot purchase – (a) conditions for adopting these methods.-** A procuring entity may choose to procure a subject matter of procurement by these methods in the following situations, namely:-

- (i) procurement of readily available commercial-off-the-shelf goods that are not specially produced to the particular description of the goods required by the procuring entity and for which there is an established market; or
- (ii) physical services that are not specially provided to the particular description of the requirement of the procuring entity and are readily available in the market; or
- (iii) procurement of any goods or works or services which are urgently required for maintenance or emergency repairs;

**(b) Financial Limits.-**

- (i) Request for quotations.- Below rupees one lakh on one occasion subject to rupees five lakh during a financial year;
- (ii) Spot Purchase.- rupees fifty thousand on one occasion subject to rupees three lakhs during a financial year;

**(c) Procedure of request for quotations.-** The procedure for request for quotations shall include the following, namely:-

- (i) quotations shall be requested from as many potential bidders as practicable, subject to a minimum of three;
- (ii) each bidder from whom a quotation is requested shall be informed whether any elements other than the charges for the subject matter of the procurement itself, such as any applicable transportation and insurance charges, customs

duties and taxes, are to be included in the price.

- (iii) each bidder shall be permitted to give only one quotation.
  - (iv) the successful quotation shall be the lowest priced quotation meeting the needs of the procuring entity as set out in the request for quotations.
- (d) Procedure of spot purchase.-** A procuring entity may procure the subject matter of procurement specified in sub-rule (1) through a purchase committee comprising three members including accounts person of appropriate level, within the procuring entity. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier. Before recommending placement of the purchase order, the members of the committee will jointly record a certificate as under :-

“Certified that we \_\_\_\_\_, members of the spot purchase committee are jointly and individually satisfied that the goods recommended for purchase are of the requisite specifications and quality, priced at the prevailing market rate and the supplier recommended is reliable and competent to supply the goods in question.”

**(2) Procurement valuing more than rupees ten thousand but below rupees one lakh.-**

- (a) Works valuing below rupees one lakh in each case may be procured subject to a limit of rupees five lakh during a financial year by work order system or piece work system.
- (b) In case of purchases of the spare parts of motor-vehicles, machinery and equipments of the particular make of the value exceeds Rs.10,000/- quotations shall be invited from the authorised dealers and original equipment suppliers.

**(3) Procurement valuing upto rupees ten thousand.-** Procurement of a subject matter of procurement valuing upto rupees ten thousand may be procured on one occasion subject to a limit of below rupees one lakh during a financial year

without inviting quotations from the Government Departments / Corporations, authorised dealers, co-operative stores or Bhandars, and retailers who are bonafide dealers in the subject matter of procurement.

(4) Except the provisions of sections 4 and 11, the provisions of separate Chapters II and III shall not apply to any procurement valuing below rupees one lakh.

(5) The other methods of procurement prescribed in these rules may also be used for procurement of a subject matter, recording reasons for selecting a particular method.

**22. Direct procurement from notified agencies.-** In order to promote its socio- economic policy, the State Government may notify agencies and organisations from whom direct procurement of certain subject matter of procurement may be made without inviting bids upto the monetary limit and on conditions specified in the notification.

**23. Purchase and price preference and other concessions in procurement.-** The State Government, by notification, may declare purchase and price preference and conditions of their application in procurement from cottage or small scale industries and industries situated in Rajasthan.

## CHAPTER- IV

### ***Bid Process Management- General Process of Procurement***

#### ***(Goods, Works and Services)***

**24. Determination of need.-** (1) In every case of a procurement the procuring entity shall first determine the need for the subject matter of procurement.

(2) While assessing the need under sub-section (1), the procuring entity shall take into account the estimated cost of the procurement and also decide on the following matters, namely:-

- (a) the scope or quantity of procurement, if determined;
- (b) the method of procurement to be followed with justification thereof;
- (c) need for pre-qualification, if any;
- (d) limitation on participation of bidders in terms of section 6 of the Act, if any applicable, and justification thereof; and
- (e) any other matter as may be prescribed.

(3) The procuring entity shall maintain documents relating to the determination of the need for procurement under sub-rule (1) and the assessment made under sub-rule (2).

**25. Procurement plan.-** (1) A procurement plan is to be prepared by every procuring entity for each of the item of goods, works or services to be procured during the year, based on the sanctions and allocation of budget. This is to ensure timely execution and monitoring of bid processes.

(2) The Procurement plan shall specify the following:

- (a) Nature of Procurement – Goods / Works / Services.
- (b) Major Specifications – Quantity / Type / Quality.
- (c) Estimated Value
- (d) Source of Funds – Plan / Non-Plan, Scheme, Project
- (e) Budget Code – under which funds have been allocated
- (f) Procurement Method likely to be followed

- (g) Timeframe for Bid Process
  - (h) Timeframe for Delivery or Execution of Contract (this shall help the Procuring Entity identify the extent to which funds required to finance the resultant contract need to be earmarked in the next fiscal year or subsequent fiscal years)
- (3) This plan shall be based on inputs on requirements for each item received from various hierarchical nodes in each Procuring Entity.

**26. Numbering convention.-** Each procurement process undertaken by any Procuring Entity shall have a Unique Tender Number (UTN) which shall be used for tracking purpose during and after the bid process. The UTN shall be designed like a code to reflect department / Procuring Entity, type of procurement, threshold value of procurement and method, year and serial number of bid in that particular year.

**27. Procurement MIS and tracking.-** (1) Procurement MIS.-

- (a) In order to track performance of the procurement system, a procurement MIS shall be collated at the procuring entity level on a regular basis and be available for reference at procuring entity level at all times and shall be sent for collation to the respective Administrative Department. The Administrative Department will further send the aggregated Procurement MIS to the SPFC regularly.
- (b) This MIS shall cover the entire procurement cycle and incorporate performance targets set for various processes. Over a period of time, this shall allow for meaningful analysis of the ability of the procurement framework to deliver the desired outcomes. This shall also ensure efficiency as well as transparency in the procurement system. All the goods, works and services procured shall form part of the MIS. This shall also help facilitate the post procurement audit and fiduciary reviews.
- (c) Further, the Procurement MIS shall be developed in a query based format to allow for in-depth analysis and ease of use, providing real-time information about the status of the bid at any point of time. This

shall be integrated with the e-procurement portal in order to further track performance on various parameters, including performance of contracts, delays and penalties imposed.

**28. Procurement Register.-** Each Procuring Entity shall be responsible for the maintenance and ensuring the safe custody of the Procurement Register (PR). The PR shall be stored safely and securely at the premises of the office undertaking the procurement process at all times. The official entrusted to maintain the PR shall ensure that all documents are filed centrally in a sequential order. Different procurement activity shall be filed in a separate file.

**29. Administrative, Financial and Technical sanctions and availability of budget provision.-** For each procurement, it is necessary to obtain all required approvals and sanctions as applicable. In case of procurement of works, this shall include Administrative Sanction, Financial Sanction, Technical Sanction and Appropriation and Re-appropriation. The procuring entity must have the necessary financial powers delegated to it by the state government for the subject matter of procurement.

**30. Obligations related to value of procurement.-** (1) Every procuring entity shall obtain the approval of the authority which has the required financial powers before initiating a procurement process.

(2) A procuring entity shall neither divide its procurement nor use a particular valuation method for estimating the value of procurement so as to avoid its obligations under sub-rule (1) or to limit competition among bidders or otherwise avoid its obligations under the Act:

Provided that in the interest of efficiency, economy and timely completion or supply, a procuring entity may, for reasons to be recorded in writing, divide its procurement into appropriate packages.

**31. Participation of bidders.-** (1) The procuring entity, when inviting the participation of bidders in the procurement process, shall declare whether participation of bidders is limited pursuant to this rule and on what ground and any

such declaration may not ordinarily be later altered.

(2) Nothing in this rule shall be construed as preventing the State Government or any procuring entity from imposing or enforcing measures limiting participation on account of the need -

- (a) to protect public order, morality or safety;
- (b) to protect human, animal or plant life or their health;
- (c) to protect intellectual property;
- (d) to protect the essential security and strategic interest of India.

**32. Description of subject matter of procurement.-** (1) The description of the subject matter of procurement shall be set out in the pre-qualification documents, bidder registration documents and the bidding documents and shall -

- (a) be such as to meet the essential needs of the procuring entity;
- (b) to the extent practicable-
  - (i) be objective, functional, generic and measurable;
  - (ii) set out the relevant Technical, quality and performance characteristics;
  - (iii) There shall be no requirement for or reference to a particular trademark or trade name, brand, patent, design or type, specific origin or producer unless there is no sufficiently precise or intelligible way of describing the characteristics of the subject matter of the procurement and provided that words such as "or equivalent" are included.
- (c) The procuring entity shall set out in the bidding documents the detailed description of the subject matter of the procurement that it will use in the examination of submissions, including the minimum requirements that submissions must meet in order to be considered responsive and the manner in which those minimum requirements are to be applied.

(2) Where applicable, the Technical specifications shall, to the extent practicable, be based on national Technical regulations or recognised national standards or building codes, wherever such standards exist or in their absence,

relevant International Standards may be used.

(3) The description of the subject matter of the procurement may include specifications, plans, drawings, designs, requirements, testing and test methods, packaging, marking or labeling or conformity certification, and symbols and terminology.

**33. Criteria for evaluation of bids.-** (1) The evaluation criteria shall relate to the subject matter of procurement and may include-

- (a) the price;
- (b) the cost of operating, maintaining and repairing goods or works, the time for delivery of goods, completion of works or provision of services, the characteristics of the subject matter of procurement, such as the functional characteristics of goods or works and the environmental characteristics of the subject matter, the terms of payment and of guarantees in respect of the subject matter of procurement; and
- (c) where relevant, the experience, reliability and professional and Technical competence of the bidder and of the personnel to be involved in providing the subject matter of procurement.
- (d) where relevant, the discounted cash flow techniques may be included.

(2) Where considered necessary, the procuring entity may also specify trials, sample testing and other additional methods of Technical evaluation of a bid:

Provided that the requirement of such trials, sample testing or additional methods of evaluation shall be indicated in the bidding documents and a record of such trials and testing shall be maintained.

(3) To the extent practicable, all non-price evaluation criteria shall be objective and quantifiable;

(4) The criteria for evaluation of bids, including whether the requirements laid down in sub-section (2) of section 6 of the Act are applicable, shall be contained in the bidding documents;

(5) Where applicable, the relative weights to be attached to each criterion shall be specified in the bidding documents;

(6) No criteria or procedure, other than those mentioned in the bidding documents shall be used by the procuring entity in evaluating bids, nor shall the criteria mentioned in the bidding documents be relaxed.

**34. Preparation of bidding documents.-** (1) Before issuing a notice inviting bids the procuring entity shall ensure that the bidding documents are ready for sale. If required, a committee may be constituted by the procuring entity for preparation of bidding documents.

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

- (a) Notice Inviting Bids ( NIB );
- (b) Instruction to Bidders ( ITB );
- (c) Bid Data Sheet;
- (d) Bid Forms;
- (e) Technical Specifications and Schedule for Delivery/execution as also Qualification Criteria including the eligibility and experience of bidders
- (f) Draft Contract:
  - (i) General Conditions of Contract
  - (ii) Special Conditions of Contract
  - (iii) Contract Forms

For further details and instruction, the Standard Bidding Documents issued by the State Government are to be referred to.

(3) The bidding documents shall include, at a minimum, the following information, namely-

- (a) instructions for preparing bids;
- (b) the criteria and procedures that will be applied in the ascertainment of the qualifications of bidders;
- (c) the requirements as to documentary evidence or other information that must be submitted by bidder to demonstrate his qualifications;
- (d) a detailed description of the subject matter of the procurement, including but not limited to, technical specifications, plans, drawings and designs as appropriate, the quantity of the goods, any incidental services to be performed, the location where the goods are to be delivered, the work

is to be executed or the services are to be provided and the required time, if any;

- (e) the detailed procedure for presentation, opening, examination and evaluation of bids; minimum requirement, if any, with respect to technical, quality and performance characteristics that bids must meet in order to be considered responsive; and the criteria to be used by the procuring entity in evaluation of bids and determining the successful bid, including any margin of preference and any criteria other than price to be used and the relative weight of such criteria;
- (f) the terms and conditions of the procurement contract or the rate contract, to the extent they are already known to the procuring entity, and the contract or agreement form, if any, to be signed by the parties;
- (g) if alternatives to the characteristics of the goods, works or services, contractual terms and conditions or other requirements set forth in the bidding documents are permitted, a statement to that effect, and a description of the manner in which alternative bids are to be evaluated and compared;
- (h) if bidders are permitted to submit bids for only a portion of the goods, works or services to be procured, a description of the portion or portions for which bids may be submitted;
- (i) the manner in which the bid price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the goods, works or services themselves, such as any applicable transportation and insurance charges, customs duties and taxes;
- (j) any requirements of the procuring entity with respect to the issuer and the nature, form, amount and other terms and conditions of any bid security to be provided by bidder submitting bid, and any such requirements for any security for the performance of the procurement contract or the rate contract to be provided by the bidder that enters into the procurement contract, including securities such as labour and

materials bonds;

- (k) the manner, place and deadline for the submission of bid;
- (l) the means by which, bidders may seek clarifications of the bidding documents, and a statement as to whether the procuring entity intends, to convene a meeting of bidders;
- (m) the period of time during which bids shall remain valid;
- (n) the place, date and time for the opening of bids;
- (o) the procedures to be followed for opening and examining bids;
- (p) references to the Act, these rules and other laws and regulations directly pertinent to the procurement proceedings, provided, however, that the omission of any such reference shall not constitute grounds for appeal or give rise to liability on the part of the procuring entity;
- (q) the name, functional title and address of one or more officers or employees of the procuring organisation who are authorized to communicate directly with and to receive communications directly from bidders in connection with the procurement proceedings, without the intervention of an intermediary;
- (r) any commitments to be made by the bidder outside of the procurement contract, such as commitments relating to the transfer of Technology;
- (s) notice of the right provided to seek appeal of an unlawful act or decision of, or procedure followed by the procuring entity in relation to the procurement proceedings;
- (t) if the procuring entity reserves the right to cancel bid proceedings and reject all bids, a statement to that effect;
- (u) any formalities that will be required once a bid has been accepted for a procurement contract or rate contract to enter into force, including, where applicable, the execution of a written procurement contract and approval by a higher authority or the State Government and the estimated period of time following the despatch of the notice of acceptance that will be required to obtain the approval; and

- (v) any other requirements laid down by the procuring entity in conformity with the Act and these rules relating to the preparation and submission of bids and to other aspects of the procurement proceedings.

(4) The procuring entity shall provide the bidding documents to each bidder that responds to the invitation to bids in accordance with the procedures and requirements specified therein. If pre-qualification proceedings have been engaged in, the procuring entity shall provide a set of bidding documents to each bidder that has been pre-qualified and that pays the price, if any, charged for that document.

(5) The State Government has prescribed standard bidding documents for procurement of goods works and services separately.

**35. Single part and two part bids.-** (1) A procuring entity may choose to-

- (a) call for bids in which the technical, quality and performance aspects, commercial terms and conditions and the financial aspects including the price are contained in a single envelope; or
- (b) if it is of the opinion that it is essential to evaluate the Technical aspects of a bid before considering its financial aspect, call for bids in two envelopes, namely:-
  - (i) the Techno-commercial bid containing the Technical, quality and performance aspects, commercial terms and conditions; and
  - (ii) the financial bid containing financial aspects including the price.

(2) In case the procuring entity calls for bids in terms of sub-rule (1)(b), the Techno-commercial bid shall be opened and evaluated first and the financial bid of only those bids which have been found Technically acceptable, shall be opened and evaluated.

**36. Qualification of bidders.-** (1) A procuring entity may determine and apply one or more of the requirements specified in sub-rule (2) for a bidder to be qualified for participating in a procurement process.

(2) Any bidder participating in the procurement process shall -

- (a) possess the necessary professional, technical, financial and managerial resources and competence required by the bidding documents, pre-

qualification documents or bidder registration documents, as the case may be, issued by the procuring entity;

- (b) have fulfilled his obligation to pay such of the taxes payable to the Union or the State Government or any local authority as may be specified in the bidding documents, pre-qualification documents or bidder registration documents;
- (c) not be insolvent, in receivership, bankrupt or being wound up, not have its affairs administered by a court or a judicial officer, not have its business activities suspended and must not be the subject of legal proceedings for any of the foregoing reasons;
- (d) not have, and their directors and officers not have, been convicted of any criminal offence related to their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a procurement contract within a period of three years preceding the commencement of the procurement process, or not have been otherwise disqualified pursuant to debarment proceedings;
- (e) not have a conflict of interest as may be prescribed and specified in the pre-qualification documents, bidder registration documents or bidding documents, which materially affects fair competition;

(3) Subject to the right of bidders to protect their intellectual property or trade secrets the procuring entity may require a bidder to provide any such information or declaration as it considers necessary to make an evaluation in accordance with sub-rule (1).

(4) Any requirement established pursuant to this rule shall be set out in the pre-qualification documents or bidder registration documents, if any, and in the bidding documents and shall apply equally to all bidders.

(5) The procuring entity shall evaluate the qualifications of bidders only in accordance with the requirement specified in this rule.

(6) (a) The procuring entity shall disqualify a bidder if it finds at any time that the information submitted concerning the qualifications of the bidder was false or constituted a misrepresentation;

(b) A procuring entity may disqualify a bidder if it finds at any

time that the information submitted concerning the qualifications of the bidder was materially inaccurate or materially incomplete;

(c) Other than in a case to which sub-rule (a) of this rule applies, a procuring entity may not disqualify a bidder on the ground that information submitted concerning the qualifications of the bidder was inaccurate or incomplete in a non-material respect. The bidder may, however, be disqualified if it fails to remedy such deficiencies promptly upon request by the procuring entity;

(d) The procuring entity may require a bidder that was pre-qualified to demonstrate its qualifications again in accordance with the same criteria used to pre-qualify such bidder. The procuring entity shall disqualify any bidder that fails to demonstrate its qualifications again if requested to do so. The procuring entity shall promptly notify each bidder requested to demonstrate its qualifications again as to whether or not the bidder has done so to the satisfaction of the procuring entity.

**37. Eligibility of bidders.-** (1) A Bidder may be a natural person, private entity, government-owned entity or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Joint Venture (JV). In the case of a JV: -

(a) all parties to the JV shall be jointly and severally liable; and

(b) a JV shall nominate a Representative who shall have the authority to conduct all businesses for and on behalf of any and all the parties of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.

(2) A bidder should not have a conflict of interest in the procurement in question. The State Government considers a conflict of interest to be a situation in which a bidder has interests that could improperly influence its performance of contractual obligations, or compliance with applicable laws and regulations, and that

such conflict of interest may contribute to or constitute a prohibited practice under the Code of Integrity for Bidders. The procuring entity will take appropriate actions, against the bidder, if it determines that a conflict of interest has flawed the integrity of any procurement process. Consequently, all bidders found to have a conflict of interest shall be disqualified. A bidder may be considered to be in a conflict of interest with one or more parties in the bidding process if, including but not limited to:

- (a) have controlling shareholders in common; or
  - (b) receive or have received any direct or indirect subsidy from any of them;  
or
  - (c) have the same legal representative for purposes of the bid; or
  - (d) have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another bidder, or influence the decisions of the competent authority regarding the bidding process; or
  - (e) a bidder participates in more than one bid in the bidding process. participation by a bidder in more than one bid will result in the disqualification of all bids in which it is involved. However, this does not limit the inclusion of the same subcontractor, not otherwise participating as a bidder, in more than one bid; or
  - (f) a bidder or any of its affiliates participated as a consultant or in any other capacity in the preparation of the design or technical specifications of the goods, works or services that are the subject of the bid.
- 3 (a) A bidder shall not be eligible to participate in any procurement process undertaken by any procuring entity if it has been debarred by the State Government.
- (b) A bidder shall not be eligible to participate in any procurement process undertaken by a procuring entity if it has been debarred by that procuring entity.

(4) Bids shall be given only by manufacturer/ distributors/ bonafide dealers in the goods. The bidders shall, therefore, furnish necessary proof for the same in the prescribed format. Where applicable, proof of authorization, by the manufacturer or country distributor in India, in the prescribed format shall invariably be enclosed.

**38. Time frame for procurement process.-** (1) Every procuring entity shall pre-determine a reasonable time frame for completion of various stages of the process of procurement and indicate the same in the pre-qualification documents, bidder registration documents or bidding documents, as the case may be.

(2) The procuring entity shall endeavour to adhere to the time frame indicated under sub-rule (1) and in case of failure to do so extend such time frame for reasons to be recorded in writing.

(3) An outer time frame between publication of NIB and major milestones for the bid cycle for procurement by National Competitive Bidding is given below:-

**Table : Bid cycle of outer time frame for various procurement methods (applicable for goods and works) – By One Stage Bidding**

<b>Procurement Method</b>	<b>Open Competitive Bidding</b>	<b>Limited Bidding</b>
Publication of NIB and launch of Bidding documents	Day 0	Issue of Bidding documents - Day 0
Submission of Bids <sub>1</sub>	- 30 days from issue of Bidding documents  - where the pre-bid conference is held 15 days from date of issue of clarification / addendum	07days from issue of Bidding documents / date of issue of clarification / addendum
Technical Bid Opening	Within 1 day of last day of submission	Within 1 day of last day of submission of bids
Issue of Letter of Award	Within 3 days of approval of award	Within 3 days of approval of award
Contract Signing	Within 15 days of Issue of	Within 15 days of Issue of

	Letter of Award	Letter of Award
Declaration of the Bid results on State Public Procurement Portal and Departmental website	Within 3 days of issue of letter of acceptance.	Within 3 days of issue of letter of acceptance.

<sup>1</sup> In case of Open Competitive Bidding by ICB, the period of submission of bids will be 45 days from issue of NIB and at least 20 days from the date of issue of clarifications.

(4) Approval of Award:- A decision on acceptance or rejection of bids invited in a procurement process must be taken by the competent sanctioning authority within the period as given below, even if the period of validity may be more, from the date of opening of Technical bids where two envelope system is followed, otherwise from the date of opening of financial bids. If the decision is not taken within the given time period by the concerned sanctioning authority, the bids shall be submitted to the next higher authority for decision with reasons of not taking decision within the given time period. In exceptional circumstances, State Government may relax the limit of time period prescribed for Finance Committee/ Board/ Empowered Committee, etc.:

**Table : Time schedule for acceptance of bids by respective authority**

1.	For bids to be accepted by an Executing Engineer or an Head of Office	20 Days
2.	For bids to be accepted by a Superintending Engineer or a Regional Officer	30 Days
3.	For bids to be accepted by an Additional Chief Engineer	40 Days
4.	For bids to be accepted by a Chief Engineer or Head of the Department	50 days
5.	For bids to be accepted by an Administrative Department	60 Days
6.	For bids to be accepted by a Finance Committee/ Board/ Empowered Committee/ Empowered	70 Days

	Board, etc.	
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[Note: Communication of acceptance of tender shall also take place within the above limits of time period.]

**39. Prequalification proceedings.-** (1) A procuring entity may engage in a pre-qualification process, with a view to identifying, prior to inviting bids, the bidders that are qualified for any specified period of time. Registration or empanelment of prospective bidders may also be done following pre-qualification proceedings.

(2) For the purpose of sub rule (1), a procuring entity may invite offers from prospective bidders by giving wide publicity to the invitation to pre-qualify.

(3) The procuring entity shall take a decision with respect to the qualifications of each bidder presenting an application to pre-qualify. In reaching that decision, the procuring entity shall apply only the criteria and procedures set out in the invitation to pre-qualify and in the pre-qualification documents.

(4) The procuring entity shall promptly notify each bidder presenting an application to pre-qualify whether or not it has been pre-qualified and also publish the result of prequalification proceedings on the State Public Procurement Portal.

(5) The procuring entity shall promptly communicate to each bidder that has not been pre-qualified the reasons therefor.

(6) Where a procuring entity has undertaken a pre-qualification process in respect of any procurement, only such pre-qualified bidders shall be entitled to continue in the procurement proceedings.

**40. Bid security.-** (1) Bid security will not be taken in case of petty procurement valuing upto rupees ten thousand and procurement by the methods of limited bidding valuing upto rupees two lakh, request for quotations, spot purchase, single source procurement and competitive negotiations.

(2) In case of open competitive bidding, two-stage bidding, rate contract, electronic reverse auction, bid security would be 2% (in case of SSIs of Rajasthan it will be 0.5% of the quantity offered for supply and in case of sick industries, other than SSIs, whose cases are pending with BIFR it will be 1% of the value of bid) of the estimated value of subject matter of procurement put to bid. Every bidder, if not

exempted, participating in the bid process shall be required to furnish the bid security as specified in the notice inviting bids (NIB).

(3) Bid security will not be required to be taken from Undertakings, Corporations, Autonomous bodies, Registered Societies, Cooperative Societies which are controlled / managed by Government, Government Undertakings and Companies of Union Government and Government of Rajasthan. However, a Bid Securing Declaration will be taken from them.

(4) Receipt of the bid security deposited or a Bid Securing Declaration shall necessarily accompany the sealed bid.

(5) Bid security of a bidder lying with the procuring entity in respect of other bids awaiting decision will not be adjusted towards bid security for the fresh bids. The bid security originally deposited may, however, should be taken into consideration in case bids are re-invited.

(6) Form of bid security: The bid security may be deposited in the form of cash, a banker's cheque or demand draft or bank guarantee, in prescribed format, of a scheduled bank or cash deposited through treasury challan deposited under head "8443- Civil Deposits".

(7) The bidding documents may stipulate that the issuer of the bid security and the confirmer, if any, of the bid security, as well as the form and terms of the bid security, must be acceptable to the procuring entity. In cases of domestic procurement (NCB), the bidding documents may in addition stipulate that the bid security shall be issued by an issuer in India;

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

(9) The bank guarantee presented as bid security shall be got confirmed from the concerned issuing bank. However, the confirmation of the acceptability of a proposed issuer or of any proposed confirmer does not preclude the procuring entity from rejecting the bid security on the ground that the issuer or the confirmer, as the case may be, has become insolvent or has otherwise

ceased to be creditworthy;

(10) Refund of Bid security: The bid security of unsuccessful bidders shall be refunded soon after final acceptance of bid and signing of contract.

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

- (a) when the bidder withdraws or modifies his bid after opening of bids;
- (b) when the bidder does not execute the agreement, if any, after placement of supply / work order within the validity period of bid;
- (c) when the bidder fails to commence the supply of the goods or service or execute work as per supply / work order within the time specified;
- (d) when the bidder does not deposit the performance security deposit after the supply / work order is placed;
- (e) to adjust any dues against the bidder from any other contract with the procuring entity;
- (f) if the bidder breaches any provision of code of integrity prescribed for bidders in chapter-VI.

(12) In case of the successful bidder, the amount of bid security may be adjusted in arriving at the amount of the Performance Security Deposit.

(13) The procuring entity shall make no claim to the amount of the bid security and shall promptly return, or procure the return of, the security document after the earliest of the following events, namely:-

- (a) the expiry of the bid security;
- (b) the entry into force of a procurement contract and the provision of a security for the performance of the contract, if such a security is required by the bidding documents;
- (c) the cancellation of the procurement;
- (d) the withdrawal of a submission prior to the deadline for presenting bids, unless the bidding documents stipulate that no such withdrawal is permitted.

**41. Contents and publicity of Notice Inviting Bids (NIB).-** (1) A procuring entity shall solicit bids in open competitive bidding and two stage bidding, or, where applicable, applications for pre-qualification by causing an invitation to bid or pre-

qualify, as the case may be, to be published in the State Public Procurement Portal maintained by the State Procurement Facilitation Cell. An abridged notice shall also be published in newspapers of adequate circulation, as prescribed in sub rules 6 and 7 of this rule.

(2) An invitation to bid to be published in the State Public Procurement Portal shall contain, atleast, the following information, namely:-

- (a) the name and address of the procuring entity;
- (b) a summary of the principal required terms and conditions of the procurement contract or rate contract to be entered into as a result of the procurement proceedings, including the nature, quantity and place of delivery of the goods to be supplied, the nature and location of the works to be effected, or the nature of the services and the location where they are to be provided, as well as the required time for the supply of the goods or for the completion of the works, or the timetable for the provision of the services;
- (c) whether the bid procedure will be conducted in a single stage or two stages and whether it is to be presented simultaneously in two envelopes: one envelope containing the technical, quality and performance characteristics of the bid, and the other envelope containing the financial aspects of the bid;
- (d) the criteria and procedures to be used for evaluating the qualifications of suppliers or contractors;
- (e) the means of obtaining the solicitation documents and the place from which they may be obtained;
- (f) the price, if any, charged by the procuring entity and the means of payment for the solicitation documents and the amount of bid security and its form; and
- (g) the manner, place and deadline for the submission of bids;
- (h) right of the procuring entity to cancel the bid process and reject any and all of the bids;.

(i) any other important information.

(3) An invitation to prequalify to be published in the State Public Procurement Portal shall contain, atleast, the following information, namely:-

- (a) the name and address of the procuring entity;
- (b) a summary of the principal required terms and conditions, to the extent known at the time of invitation to pre-qualify, of the procurement contract or rate contract to be entered into or the empanelment to be done as a result of the procurement proceedings, including the nature, quantity and place of delivery of the goods to be supplied, the nature and location of the works to be effected, or the nature of the services and the location where they are to be provided, as well as, the required time for the supply of the goods or for the completion of the works, or the timetable for the provision of the services;
- (c) the criteria and procedures to be followed for evaluating the qualifications of bidders;
- (d) the means of obtaining the pre-qualification documents and the place from which they may be obtained;
- (e) the price, if any, charged by the procuring entity and the means of payment for the pre-qualification documents and subsequent to pre-qualification, for the bidding documents; and
- (f) the manner, place and deadline for presenting applications to pre-qualify and if already known, the manner, place and deadline for presenting submissions.

(4) The NIB for goods, works or services estimated to cost above Rs.100.00 lakh may also be sent to the Director General, Intelligence and Statistics, Kolkata for publication in Indian Trade Journal.

(5) The NIB to be published in the newspapers must be brief. Bids for more than one lot of or goods, works or service to be procured must be included in one NIB.

(6) Publicity in newspapers and notice boards to NIB for goods and services will be given as per the table given below:-

**Table : Modes of Publicity for Procurement of Goods and Services**

S.N.	Estimated Value of procurement	Period of publicity	Mode of publication	
(i)	Upto rupees 5.00 lakh	10 days	(1)	Notice Board of the procuring entity and all Regional and Divisional H.Qs.as the case may be.
			(2)	One Regional newspaper.
(ii)	Above rupees 5.00 lakh and upto Rs 50.00 lakh	15 days	(1)	Notice Board of the procuring entity and all Regional and Divisional H.Qs.as the case may be.
			(2)	One Regional newspaper.
			(3)	Publication in <b>one</b> leading daily State Level newspaper having circulation of 50,000 copies & above.
(iii)	Above rupees 50.00 lakh	30 days	(1)	Notice Board of the procuring entity and of all Regional and Divisional H.Qs.as the case may be.
			(2)	<b>One</b> State level newspaper having circulation of 50,000 copies & above.
			(3)	One all India level English newspaper with wide circulation.
			(4)	Any Trade Journal specialising for publication of NITs.]

Publicity in newspapers and notice boards, etc. to NIB for works will be given as per the table given below:-

**Table : Modes of Publicity for Procurement of Works**

S. No.	Estimated Value of work to be procured	Period of publicity	Mode of Publication
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1.	Upto rupees one lakh	7 days	(i) Notice Board of the Division and all the Sub- divisions
2.	Above rupees one lakh to rupees five lakh	10 days	(i) Notice Board of the Circle, Division and all the Divisions in the Circle and all the Sub- Divisions of the Division. (ii) One regional Newspaper.
3.	Above rupees five lakh to rupees ten lakh	15 days	(i) Notice Board of the Circle office, all Divisions of the Circle and all Sub- Divisions of the Division (ii) Publication in one leading Regional daily Newspaper and one state level leading daily newspaper having circulation of 50,000 copies & above.
4.	Above rupees ten lakh to rupees one crore	21 days	(i) Notice Board of zone, Circle offices, Division and Sub- Divisional offices of the Division. (ii) Publication in one leading Regional daily newspaper, one state level leading daily newspaper having circulation of 50,000 copies & above. and one all India level daily newspaper. (iii) Any trade Journal specializing for publication on NIB's.
5.	Above rupees. one crore	30 days	(i) Notice Board of Head Quarters office of Zone, Circles, Division and Sub- Divisional offices of the Division. (ii) Publication in one leading Regional daily newspaper, two state level leading daily newspaper having circulation of 50,000 copies & above. and one all India level daily newspaper. (iii) Any trade Journal specializing for publication on NIB's.

(8) In case of International Competitive Bidding in which the bid notice is to be addressed to international bidders, the NIB shall additionally be publicised using suitable mediums that attract international responses. This may include circulation of NIB to the Indian embassies abroad, foreign embassies in India, international trade journals, etc. The period of publicity in such cases should also be of minimum 45 days.

(9) The advertisement in newspapers shall be made through Director, Information and Public Relations, Rajasthan, Jaipur, with request on which category of newspapers to be published.

(10) In emergent conditions the publicity period may be reduced to half of the prescribed period. The procuring entity shall record in writing the reasons of emergency.

(11) Right of the procuring entity to annul the bid process and reject any and all of the bids.

(12) Any other important information.

(13) For allotting by single source selection, works of emergent nature arising out of floods and other natural calamities without issuing an NIB, a committee comprising of following officers shall be constituted. The committee shall decide the ceiling rates for each work on the basis of rates received during the last 6 months or the prevailing market rates analysis. The committee constitution will be as follows:

- (a) District Collector - Chairman
  - (b) Superintending Engineer of the concerned department - Member
  - (c) Treasury Officer - Member
  - (d) Executive Engineer of the concerned department – Member Secretary
- (14) A template for NIB has been provided in all Standard Bidding Documents.

**42. Cost (fee) of bidding documents or pre-qualification documents.-** The price for the bidding documents should take care of its preparation and delivering costs. A fee may be charged for sale of bidding documents depending upon its volume and other specific information and drawings attached to it.

**43. Sale of bidding documents.-** (1) The sale of bidding documents shall be commenced with the issue of bid inquiry and shall be stopped one day prior to the date of opening of bids. The complete bidding document shall also be placed on the e-procurement portal, if e-procurement is being done. The prospective bidders shall be permitted to download the tender document from the website and pay its cost while depositing back the filled-up bidding document to the department.

(2) The bidding documents or pre-qualification documents shall be made available to any bidder who pays the price for it in cash or by bank demand draft, unless the procurement is reserved for specific category of bidders.

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

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

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

**44. Pre bid clarifications.-** (1) Any bidder may, in writing, seek clarifications from the procuring entity in respect of the bidding documents.

(2) The period within which the bidders may seek clarifications under subsection (1) and the period within which the procuring entity shall respond to such requests for clarifications shall be specified in the bidding documents;

(3) All requests for clarification and responses thereto shall be intimated to all bidders and where applicable, shall be published on the State Public Procurement Portal.

(4) If the procuring entity convenes a pre-bid conference of bidders, it shall prepare minutes of the meeting containing the requests submitted at the meeting for clarification of the bidding documents and its responses to those requests, without identifying the sources of the requests. The minutes shall be provided promptly to all bidders to which the procuring entity provided the bidding documents, so as to enable those bidders to take the minutes into account in preparing their submissions, and where applicable, shall be published on the State Public Procurement Portal.

**45. Changes in the bidding documents.-** (1). At any time prior to the deadline for presenting submissions, the procuring entity may for any reason, whether on its own initiative or as a result of a request for clarification by a

bidder, modify the bidding documents by issuing an addendum. The addendum shall be published in the same manner as the publication of the initial bidding documents and shall be communicated promptly to all bidders to which the procuring entity has provided the bidding documents and shall be binding on those or bidders.

(2) In case a clarification or modification is issued to the bidding documents, the procuring entity may, prior to the last date for submission of bids, extend such time limit in order to allow the bidders sufficient time to take into account the clarification or modification, as the case may be, while submitting their bids.

(3) Any bidder who has submitted his bid in response to the original invitation shall have the opportunity to modify or re-submit it, as the case may be, within the period of time originally allotted or such extended time as may be allowed for submission of bids, when changes are made to the bidding documents by the procuring entity:

Provided that the bid last submitted or the bid as modified by the bidder shall be considered for evaluation.

**46 Period of validity of bids.-** (1). Bids shall remain valid during the period specified in the bidding documents. This period should normally be not more than 90 days, but depending on the nature of the procurement it may be more. A bid valid for a shorter period shall be rejected by the procuring entity as non-responsive.

(2). Prior to the expiry of the period of validity of bids, the procuring entity, in exceptional circumstances may request the bidders to extend the bid validity period for an additional specified period of time. A bidder may refuse the request without forfeiting its bid security.

(3) Bidders that agree to an extension of the period of validity of their bids shall extend or procure an extension of the period of validity of bid securities provided by them or provide new bid securities to cover the extended period of effectiveness of their bids. A bidder whose bid security is not extended, or that has not provided a new bid security, is considered to have refused the request to extend the period of validity of its bid.

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

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

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

**48. Sealing and marking of bids.-** (1) Bidders may always submit their bids by post or by hand. When so specified in the bidding documents, bidders have the option of submitting their bids electronically. Bidders submitting bids electronically shall follow the electronic bid submission procedure specified in the bidding documents.

(2). Bidders submitting bids by post or by hand shall enclose the original and each copy of the bid in separate sealed envelopes, duly marking the envelopes as "ORIGINAL", and "COPY." These envelopes containing the original and the copies shall then be enclosed in one single envelope.

(3). The inner and outer envelopes shall:

- (a) bear the name and address of the bidder mentioning his complete address with telephone/ mobile number;
- (b) bear complete address of the procuring entity;
- (c) bear the specific identification of this bidding process pursuant to NIB and any additional identification marks as specified in the bidding documents; and
- (d) bear a warning not to be opened before the time and date for bid opening, in accordance with the NIB.

(4) If all envelopes are not sealed and marked as required, the procuring entity will assume no responsibility about it.

**49 Deadline for the submission of bids.-** (1) Bids must be received by the designated person or committee at the address and no later than the date and time indicated in the NIB.

(2). Normally, the date of submission and opening of bids should not be extended. In exceptional circumstances or when the bidding documents is required to be substantially modified as a result of discussions in pre bid conference or otherwise and the time with the prospective bidders for preparation of bids appears insufficient, the date may be extended by the procuring entity but due publicity as was given to the original NIB shall be given to such change in date of opening of bids. In such cases, it should be ensured that after issue of corrigendum, reasonable time is available to the bidders to prepare and submit their bids. Any change in date of submission and opening of bid should also be placed on the State Public Procurement Portal. However, when the modifications in the bidding documents, specifications of subject matter of procurement are substantial, fresh publication of original bid inquiry may become necessary. If in the office of the bids receiving and opening authority the date of deadline for submission and opening of bids is a non working day, the bids may be received and opened on the next working day.

**50. Late bids.-** The person authorised to receive the bids shall not receive any bid that is submitted personally, after the deadline for submission of bids. Any bid which arrives by post after the deadline for submission of bids shall be declared and marked as “Late” and returned unopened to the bidder by registered post at the earliest.

**51. Receipt & Custody of Bids.-** (1) The bids shall be received by hand delivery, by courier or by post in the specified format before the specified time and at the specified address, by the official or the committee designated by the procuring entity in all cases except when bids are received through e-procurement portal.

(2) The official authorised to receive the bids shall provide a receipt signed by him with date and time to the bearer of the bid (template A.7).

(3) All bids received unsealed or in torn / damaged condition through post or by personal delivery shall be so marked on the cover by the authority receiving the

same and get signed on it by the person delivering it, put in a fresh cover and reseal if so warranted. All such entries shall be attested by that authority.

(4) Preferably, all bids received shall be put in a duly locked bid box placed for receiving the bids. In the absence of a bid box the received bids shall be kept in safe custody in lock and key by the bids receiving authority.

(5) The location of bid box shall be such as to facilitate easy access to bidders. The bid box shall have two sealed locks. The key to one of the lock shall be with the head of the bid opening committee where bids are to be received, while the key for the other lock shall be with the official authorised to receive the bids.

(6) The record of bids received including the bids received late by post shall be kept in Bids Receipt Register.

(7) The Register of bids shall be closed at the scheduled time giving in words and figures the number of bids received upto the deadline for submission of bids.

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

(9) In case of e-tendering, that is to say bid proposals submitted through electronic methods, the same should be submitted in accordance with the procedure outlined in the Instructions to Bidders (ITB).

**52. Withdrawal, substitution and modification of bids.-** (1) A bidder may withdraw, substitute, or modify his bid after it has been submitted by sending a written notice, duly signed by him or his authorized representative (authorization letter be enclosed). Corresponding substitution or modification of the bid must accompany the written notice. The notice must be:

- (a) submitted in accordance with the bidding documents, and in addition, the envelope shall be clearly marked "Withdrawal," "Substitution," or "Modification"; and
- (b) received by the authorised official prior to the deadline prescribed for submission of bids.

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

(3) No Bid shall be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of the specified bid validity or any extension thereof.

**53. Opening of bids.-** (1) Bids shall be opened by the bid opening committee constituted by the procuring entity at the time, date and place specified in the bidding documents.

(2) The bid opening committee may co-opt experienced persons in the committee to conduct the bid opening, as inappropriate procedures at bid opening are usually irreversible and may require cancellation of the bidding process with consequent delays and waste of resources.

(3) Any specific electronic bid opening procedures required, if electronic bidding is permitted, shall be as specified in the bidding documents. The bidders should be able to witness the opening of bids online in such procedure.

(4) The bids receiving official shall hand over all the bids received by it upto the deadline of submission of bids to the chairperson of the bids opening committee and obtain his signature in the bids receipt register.

(5) The bids shall be opened by the bids opening committee in the presence of the bidders or their authorised representatives who choose to be present.

All Envelopes containing Technical / financial bids shall be signed with date by the members of the committee in token of verification of the fact that they are sealed. The envelopes shall be numbered as a/n, where 'a' denotes the serial number at which the tender envelop has been taken and 'n' denotes the total number of tenders received by prescribed time.

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

(7) First, envelopes marked "WITHDRAWAL" shall be opened, read out, and recorded, and the envelope containing the corresponding bid shall not be opened, but returned to the bidder. If the withdrawal notice is not accompanied by a copy of

the valid authorization, the withdrawal shall not be permitted and the corresponding bid shall be opened. Next, envelopes marked "SUBSTITUTION" shall be opened, read out, recorded, and exchanged for the corresponding bid being substituted, and the substituted bid shall not be opened, but returned to the bidder. No bid shall be substituted unless the corresponding substitution notice contains a valid authorisation to request the substitution and is read out and recorded at bid opening. Envelopes marked "MODIFICATION" shall be opened next, read out, and recorded with the corresponding bid. No bid shall be modified unless the corresponding modification notice contains a valid authorisation to request the modification and is read out and recorded at bid opening. Only envelopes that are opened, read out, and recorded at bid opening shall be considered further.

(8) All other envelopes shall be opened one at a time, and the following read out and recorded: the name of the bidder and whether there is a modification; the bid prices (per lot if applicable); the bid security, if required; and any other details as the committee may consider appropriate. After the bids have been opened, they shall be initialed and dated on the first page by the members of the committee authorised to open the bids. All the pages of the price schedule and letters, BOQs attached shall be initialed and dated. Key information such as prices, delivery period, etc. are to be encircled, initialed and dated. Unfilled space/s in the bid/s need to be marked accordingly by members of the committee. Also the original and additional copies of the bid shall be marked accordingly. Alterations / corrections / additions / over-writings shall be initialed legibly to make it clear that such alteration, etc., were existing in the bid at the time of opening.

(9) No bid shall be rejected at bid opening except the late bids, alternative bids (if not permitted) and bids not accompanied with the required bidding documents fee and bid security.

(10) The bid opening committee shall prepare a record of the bid opening that shall include, as a minimum: the name of the bidder and whether there is a withdrawal, substitution, or modification; the bid price, per lot (if applicable), any discounts and offers (if they were permitted); any conditions put by bidder and the presence or absence of a tender fee, bid security. The bidders' representatives who are present shall be requested to sign the record. The omission of a bidder's

signature on the record shall not invalidate the contents and effect of the record. The members of the committee shall also sign the record.

(11) In case of two bid system, only outer envelopes and envelopes marked “technical Bid” shall be opened in the sequence of the serial numbers marked on them. The envelopes containing “Financial Bid” shall be kept intact and safe and shall be opened on the date and time to be intimated to the bidders who qualify in the evaluation of Technical bids in the manner as mentioned above.

(12) In case of two stage bidding the envelopes received in response to invitation of Expression of Interest will be opened similar to the process for single bid system.

**54. Preliminary examination of bidding documents.-** The Bid Evaluation Committee (BEC) constituted by the procuring entity shall conduct a preliminary scrutiny of the opened bids to assess the responsiveness. This shall include:

- (a) The bid is signed, as per the requirements listed in the bidding documents.
- (b) The bids have been sealed as per instructions provided in the bidding documents.
- (c) The bid validity is as defined in the bidding documents.
- (d) The bid is accompanied by bid security / bid securing declaration.
- (e) The bid is unconditional and the bidder has agreed to give the required performance security.
- (f) Other conditions as specified in the bidding documents.

**55. Tabulation of bids.-** The bids opened shall be tabulated for evaluation in a form which may include the following details, namely:-

- (a) Names of bidders;
- (b) Reference of registration / empanelment with the procuring entity;
- (c) Specifications of subject matter of procurement;
- (d) Quantities mentioned in the bid;
- (e) Rates quoted per unit;
- (f) Taxes, Rajasthan VAT, CenVAT, separately;

- (g) Excise duty;
- (h) Local taxes, packing and forwarding, freight, insurance, etc.;
- (i) Quantity and specifications offered;
- (j) Delivery / completion period;
- (k) Mode of payment;
- (l) Rebate or discount;
- (m) Previous supply / performances of the bidders with name of the departments;
- (n) Validity period of offer ;
- (o) Proof of payment of bid security or exempted (supported by prescribed certificates);
- (p) Price preference, if any;
- (q) VAT clearance certificate/ Permanent Account Number (PAN) of Income Tax;
- (r) Capacity to perform the contract;
- (s) Sample(s) offered or report on the sample(s) offered;
- (t) Guarantee / Warranty period / information / conditions if any.

**56 Determination of responsiveness.-** (1) The bid evaluation committee's determination of the responsiveness of a bid should be based on the contents of the Bid itself.

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

- (a) "deviation" is a departure from the requirements specified in the bidding documents;
- (b) "reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the bidding documents; and
- (c) "Omission" is the failure to submit part or all of the information or documentation required in the bidding documents.

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

- (a) if accepted, would: -
  - (i) affect in any substantial way the scope, quality, or performance of the subject matter of procurement specified in the bidding documents; or
  - (ii) limits in any substantial way, inconsistent with the bidding documents, the procuring entity's rights or the bidder's obligations under the proposed contract; or
- (b) if rectified, would unfairly affect the competitive position of other bidders presenting responsive bids.

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

(5) (a) Subject to sub-rule (b) of this rule, the procuring entity shall regard a bid as responsive if it conforms to all requirements set out in the solicitation documents.

(b) The procuring entity may regard a bid as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the bidding documents or if it contains errors or oversights that can be corrected without touching on the substance of the bid. Any such deviations shall be quantified, to the extent possible, and appropriately taken account of in the evaluation of bids.

**57. Clarification of bids.-** (1) To assist in the examination, evaluation, comparison and post qualification of the bids, the bid evaluation committee may, at its discretion, ask any bidder for a clarification of his bid. The committee's request for clarification and the response shall be in writing.

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

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

by the committee in the evaluation of the financial bids.

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

(5) No negotiations shall take place except in case of first stage of two stage bidding, competitive negotiations and single source selection between the procuring entity and a bidder with respect to qualification information or submissions, nor shall any change in price be made pursuant to a clarification that is sought under this rule.

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

**58. Non-material Non-conformities.-** (1) Provided that a bid is substantially responsive, the bid evaluation committee may waive any nonconformities in the bid that do not constitute a material deviation, reservation or omission.

(2) Provided that a bid is substantially responsive, the bid evaluation committee may request the bidder to submit the necessary information or documentation like audited statement of accounts, VAT clearance certificate, PAN, etc. within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the bid. Failure of the bidder to comply with the request may result in the rejection of its bid.

(3) Provided that a Bid is substantially responsive, the bid evaluation committee shall rectify nonmaterial nonconformities or omissions on the basis of the information or documentation received from the bidder.

**59. Exclusion of bids.-** (1) A procuring entity shall exclude a bid if-

- (a) the bidder is not qualified in terms of qualifications set out in the bidding documents;
- (b) the bid materially departs from the requirements specified in the bidding

documents or it contains false information;

- (c) the bidder submitting the bid, his agent or any one acting on his behalf, gave or agreed to give, to any officer or employee of the procuring entity or other governmental authority a gratification in any form, or any other thing of value, so as to unduly influence the procurement process.
- (d) a bidder, in the opinion of the procuring entity, has a conflict of interest materially affecting fair competition.

(2) A bid shall be excluded as soon as the cause for its exclusion is discovered.

(3) Every decision of a procuring entity to exclude a bid shall be for reasons to be recorded in writing.

(4) Every decision of the procuring entity under sub-rule (3) shall be -

- (a) communicated to the concerned bidder in writing;
- (b) published on the State Public Procurement Portal.

**60. Evaluation of Technical bids in case of two part bids.- (1)** The criteria fixed for evaluation of Technical bids shall be clearly mentioned in the bidding documents so as to keep transparency in selection process. The criteria once fixed for evaluation of technical bids shall not be changed or relaxed.

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

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

(4) The number of firms qualified in technical evaluation should not generally be less than three. If the number is less than three and it is considered necessary by

the procuring entity to continue with the bid process, reasons shall be recorded in writing and included in the record of the procurement proceedings.

(5) The bidders which qualified in the technical evaluation shall be informed in writing about the date, time and place of opening of their financial bids. This date should generally be not later than 15 days from the date of issue of letter.

**61. Correction of arithmetic errors in financial bids.-** Provided that the a bid is substantially responsive, the bid evaluation committee shall correct arithmetical errors on the following basis, namely: -

- (a) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the bid evaluation committee there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
- (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

**62. Evaluation of financial bids.-** (1) The procuring entity shall consider a bid as successful -

- (a) where price is the only award criterion, the bid with the lowest bid price;
- (b) where there are price and other award criteria, the most advantageous bid ascertained on the basis of the criteria and procedures for evaluating bids as specified in the bidding documents;
- (c) where there are no financial criteria, the most advantageous bid ascertained on the basis of selected non-financial criteria or other parameters for evaluating bids as specified in the bidding documents.

(2) A bid shall be treated as successful in terms of sub-rule (1), only after the competent authority has approved the procurement in terms of that bid.

(3) In case of single part bid system where bid is received in single cover alongwith requisite bid security and bid fee within specified time, it shall be considered for final financial evaluation by the bid evaluation committee.

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

- (b) The process of opening, marking and signing on the envelopes of financial bids shall be similar to that of technical bids.
- (c) The names of the bidders, the rates given by them and conditions put, if any, shall be read out and recorded.
- (d) Conditional bids are liable to be rejected.
- (e) The evaluation shall include all costs and all taxes and duties applicable to the bidder as per law of the Central/ State Government/ Local Authorities.
- (f) The offers shall be evaluated and marked L 1, L2, L3 etc. L1 being lowest offer and then others in ascending order, H1, H2, H3 etc. In descending order in case quality is also a criteria.
- (g) The bid evaluation committee shall prepare a comparative statement in tabular form and its report on evaluation of financial bids and recommend the lowest offer for acceptance to the procuring entity. If it recommends acceptance of an offer other than the lowest one, detailed reasons and justification shall be recorded in writing.
- (h) It shall be ensured that the offer recommended for sanction is justifiable looking to the prevailing market rates of the goods works or service required to be procured.
- (i) In case a rate contract is being entered, more than one firms at the same lowest rate may be recommended to ensure uninterrupted service delivery but for this purpose, counter offer of lowest rate will be given for acceptance to the bidders quoting higher rates in the order of ascending value.

- (j) In case the method of selection is Combined Quality cum Cost Based, the best bid as per the combined technical and financial evaluation criteria mentioned in the bidding documents shall be selected.

**63. Comparison of rates of firms outside and those in Rajasthan.-** While tabulating the bids of those firms which are not entitled to price preference, the element of Rajasthan VAT shall be excluded from the rates quoted by the firms of Rajasthan and the element of Central VAT shall be included in the rates of firms outside Rajasthan.

**64. Price / purchase preference in evaluation.-** Price and / or purchase preference notified by the state government and as mentioned in the bidding documents shall be considered in the evaluation of financial bids.

**65. Lack of competition.-** (1). A situation may arise where, after evaluation of bids the bid evaluation committee may end-up with one responsive bid only In such situation, the bid evaluation committee should check as to whether while floating the bid inquiry all necessary requirements like standard bid inquiry conditions, industry friendly specifications, wide publicity, sufficient time for formulation of bids, etc. were fulfilled. If not, the bid inquiry should be refloated after rectifying deficiencies. However, the bid process shall be considered valid even if there is one response to the call for bids, in so far as the bid is technically qualified and:-

- (a) the price quoted by the bidder is assessed to be reasonable;
- (b) the bid is unconditional and complete in all respects;
- (c) there are no obvious indicators of cartelisation amongst bidders.

(2) The bid evaluation committee shall prepare a justification note for approval by the next higher authority of the procuring entity, in which the concurrence of the finance member shall be necessary.

(3) In case of dissent by finance member of bid evaluation committee the next higher authority in delegation of financial powers shall decide as to whether to sanction the single bid or re-invite bids after recording reasons.

(4) If a decision to re invite the bids is taken, market assessment shall be carried out for estimation of market depth, eligibility criteria and cost estimate.

**66. Procuring entity's right to accept or reject any or all bids.-** The Procuring entity reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to the bidders. Reasons for doing so shall be recorded in writing.

**67. Acceptance of the successful bid and notification of award.-**

(1) Prior to the expiration of the period of bid validity, the Procuring entity shall notify the successful bidder, in writing, that his bid has been accepted.

(2) The procuring entity shall award the contract to the bidder whose offer has been determined to be the lowest or most advantageous bid in accordance with the evaluation criteria set out in the bidding documents, provided that the bidder has been determined to be qualified to perform the contract satisfactorily on the basis of qualification criteria fixed for the bidders in the subject matter of procurement.

(3) The bid evaluation committee after due consideration of the bids received, their conditions, financial implications, seeing samples, test reports, if any, etc., shall recommend regarding acceptance or rejection of the bid. If the finance member of the bid evaluation committee has disagreed or given his note of dissent in the recommendations, the matter shall be referred to the next higher authority in delegation of financial powers for decision.

(4) Decision on bids shall be taken within original validity period of offers and within the time period allowed to an authority of procuring entity for taking decision. If the decision on acceptance of a bid is not taken within the time limit allowed to that authority and within the original validity period, the matter shall be referred to the next higher authority in delegation of financial powers for decision.

(5) If the decision on acceptance or rejection of a bid can not be taken within the original bid validity period due to unavoidable circumstances, all the bidders shall be requested to extend validity period of their bids up to a specified date. Reasons for not taking the decision within original validity period shall be recorded in writing.

(6) As soon as a bid is accepted by the competent authority its written intimation should be sent to the concerned bidder by registered post and email. If the issuance of formal Work Order is likely to take time, a Letter of Intent (LOI) may be sent in the meanwhile. In the same intimation the bidder may be asked to execute an agreement in the format given in the bidding document on a non judicial stamp of requisite value and deposit the amount of prescribed performance security deposit within 15 days from the date of issue of acceptance.

(7) The acceptance of an offer is complete as soon as the letter of communication is posted and/ or sent by email (if available) to the address of the bidder given in the bidding document.

(8) The bid security of the bidders whose bids could not be accepted shall be refunded soon after the agreement with the successful bidder is executed and his performance security deposit obtained. Until a formal contract is prepared and executed, the letter of award shall constitute a binding contract.

**68. Publication of award of contract on the State Public Procurement Portal.-** As soon as the procuring entity, with the approval of the competent authority, decides to accept a bid, it shall communicate that fact to all participating bidders and also publish the decision on the State Public Procurement Portal.

**69. Restriction on negotiations.-** (1) In case of single source procurement or procurement by competitive negotiations, the negotiations will be conducted in accordance with rule 15 and 18, respectively.

(2) To the extent possible, no negotiations shall be conducted after the pre-bid stage. All clarifications needed to be sought shall be sought in the pre-bid itself. The bidding documents shall have a copy of the contract enclosed and the same shall not be altered.

(3) Negotiations may, however, be undertaken only with the lowest tenderer under the following circumstances :-

- (a) When ring prices have been quoted by the bidders for the subject matter of procurement;
- (b) When the rates tendered vary considerably and considered much higher than the prevailing market rates.

(4) Powers of negotiations: The bid evaluation committee shall have full powers to undertake negotiations. Detailed reasons and results of negotiations shall be recorded in the proceedings.

(5) Procedure of negotiations: Negotiation will be conducted with the lowest bidder only. The lowest bidder shall be informed in writing either through messenger and email (if available) if he is local and by registered letters and email (if available) in case he belongs to outstation. A minimum time of 7 days shall be given prior to negotiations. In case of urgency the bid evaluation committee may reduce this time provided the lowest bidder has received the intimation and consented to regarding holding of negotiations. Reasons in such cases will be recorded.

(6) Negotiations will not make the original offer made by the bidder inoperative. The bid evaluation committee will have option to consider the original offer in case the bidder decides to increase rates originally tendered or imposes new terms and conditions.

(7) Counter Offer: In case of non-satisfactory achievement of rates from lowest bidder, the bid evaluation committee may choose to make a written counter offer to the lowest bidder and if this is not accepted by him, the committee may decide to reject and re-invite bids or to make the same counter-offer first to the second lowest bidder, then to the third lowest bidder and so on in the order of initial bidding, and work / supply order be awarded to the bidder who accepts the counter-offer. This procedure should be used in exceptional cases only.

(8) In case the rates even after the negotiations are very high, fresh bids should be invited.

**70. Right to vary quantity at the time of placing supply / work order.- (1)**

At the time the contract is awarded, the quantity of goods, works or services originally specified in the bidding documents may be increased or decreased, provided this change does not exceed the limits/ ceilings of minimum and maximum quantity, usually twenty percent, indicated in the bidding documents, and without any change in the unit prices or other terms and conditions of the bid and the bidding documents.

(2) Repeat orders for extra items or additional quantities may be placed, if provided in the bidding document, on the rates and conditions given in the bid, provided the original order was given after inviting open competitive bids. Delivery / completion period may also be proportionately increased. The limits of repeat order shall be as follows –

- (a) 50% of the quantity of the individual items subject to 20% of the value of originally tendered and finalised contract in case of works
- (b) 25% of the value of goods and services originally tendered and finalised contract

(3) If the Procuring entity does not procure any of the tendered quantities of subject matter of procurement or procures less than the quantity indicated in the bid documents due to changed circumstances, the bidder shall not be entitled to any claim / compensation.

**71. Dividing quantities among more than one bidder at the time of award.-**

As a general rule all the quantities of the subject matter of procurement required to be procured through a bid inquiry shall be procured from the lowest responsive bidder. However, when it is considered that the quantity of the subject matter of procurement to be procured is very large and it may not be in the capacity of the lowest bidder to deliver the entire quantity or when it is considered that the subject matter of procurement to be procured is of critical and vital nature, then in such cases, the quantity may be divided between the lowest and the second lowest bidders or even more bidders in that order, in a fair, transparent and equitable manner at the rates of the lowest bidder after negotiations, provided that such condition already exists in the bidding documents.

**72. Performance security.-** Performance security acts as a safeguard against unsatisfactory performance or violation of contract agreement by the supplier / contractor of the contract.

(1) Performance security shall be solicited from all successful bidders except undertakings, corporations, autonomous bodies, registered societies, cooperative societies which are controlled / managed by Government, Government undertakings

and companies of Union Government and Government of Rajasthan. However, a Bid Performance Security Declaration will be taken from them.

(2) The amount of performance security shall be five percent of the amount of supply order in case of procurement of goods and services and ten percent of the amount of work order in case of procurement of works. In case of SSIs of Rajasthan it will be one percent of the quantity ordered for supply of goods and in case of sick industries, other than SSIs, whose cases are pending with BIFR, it will be two percent of the amount of supply order.

(3) Performance security shall be furnished in the following forms:

- (a) Cash through Treasury challan deposited under head "8843 - Civil Deposit 103 - Security Deposit";
- (b) Bank Draft or Banker's Cheque of a scheduled bank;
- (c) Post Office savings bank pass books of post offices in Rajasthan;
- (d) National Savings Certificates and any other script/instrument under National Savings Schemes for promotion of small savings issued by a Post Office in Rajasthan, if the same can be pledged under the relevant rules. They shall be accepted at their surrender value at the time of bid and formally transferred in the name of procuring entity with the approval of Head Post Master.
- (e) Bank guarantee. Bank guarantee/s supplied by the bidder as performance security shall be immediately got verified from the issuing bank. Other conditions regarding bank guarantee shall be same as mentioned in the rule for bid security.
- (f) Fixed Deposit Receipt: The Fixed Deposit Receipt (FDR) shall be of a Scheduled Bank, it should be in the name of procuring entity bearing contents "Received from ..... Department ..... on account of M/s .....( Name of bidder)" and discharged by the bidder. The procuring entity shall ensure before accepting the Fixed Deposit Receipt that the bidder furnishes an undertaking from the bank to make payment / premature payment of the security on demand to the procuring authority without requirement of consent of the bidder

concerned. In the event of forfeiture of the FDR, the FDR will be forfeited along with interest earned on the FDR.

(4) Performance security is to be furnished as specified and it shall remain valid for a period of 60 days beyond the date of completion of all contractual obligations of the supplier/ contractor, including warranty obligations – maintenance period / defect liability period.

(5) For contracts valuing below rupees rupees one lakh, performance security shall not be necessary.

**73. Signing of contract agreement and entry into force of procurement contract.-** (1) Unless a written procurement contract and / or approval by another authority is/are required, a procurement contract in accordance with the terms and conditions of the successful submission enters into force when the notice of acceptance is despatched to the bidder concerned, provided that the notice is despatched while the submission is still in effect.

(2) The procuring entity and the bidder concerned shall sign the procurement contract within a reasonable period of time, normally 15 days, after the notice of acceptance is despatched to the bidder concerned;

(3) Unless the bidding documents stipulate that the procurement contract is subject to approval by another authority, the procurement contract enters into force when the contract is signed by the bidder concerned and by the procuring entity. Between the time when the notice of acceptance is despatched to the bidder concerned and the entry into force of the procurement contract, neither the procuring entity nor that bidder shall take any action that interferes with the entry into force of the procurement contract or with its performance.

(4) Where the bidding documents stipulate that the procurement contract is subject to approval by another authority, the procurement contract shall not enter into force before the approval is given. The solicitation documents shall specify the estimated period of time following despatch of the notice of acceptance that will be required to obtain the approval. A failure to obtain the approval within the time specified in the solicitation documents shall not extend the period of effectiveness of submissions specified in the solicitation

documents or the period of effectiveness of the bid security, unless extended.

(5) If the bidder whose bid has been accepted fails to sign any written procurement contract as required or fails to provide any required security for the performance of the contract, the procuring entity may either cancel the procurement or decide to select the next successful submission from among those remaining in effect, in accordance with the criteria and procedures set out in the bidding documents. In the latter case, the provisions of this rule shall apply mutatis mutandis to such submission.

**74. Cost of execution of contract agreement .-** The bidder shall be asked to execute the agreement bond on a non-judicial stamp paper of prescribed value at his cost.

**75. Confidentiality.-** (1) Subject to the provisions of any other law for the time being in force providing for disclosure of information, a procuring entity shall not disclose any information if such disclosure, in its opinion, is likely to -

- (a) impede enforcement of any law;
- (b) affect the security or strategic interests of India;
- (c) affect the intellectual property rights or legitimate commercial interests of bidders;
- (d) affect the legitimate commercial interests of the procuring entity in situations that may include when the procurement relates to a project in which the procuring entity is to make a competitive bid, or the intellectual property rights of the procuring entity.

(2) Except as otherwise provided in the Act, a procuring entity shall treat all communications with bidders related to the procurement process in such manner as to avoid their disclosure to competing bidders or to any other person not authorised to have access to such information.

(3) The procuring entity may impose on bidders and sub-contractors, if there are any, for fulfilling the terms of the procurement contract, conditions aimed at protecting information, the disclosure of which violates sub-rule (1).

(4) In procurement involving classified information, the procuring entity may:

(a) Impose on bidders requirements aimed at protecting classified information; and

(b) Demand that bidders ensure that their sub-contractors comply with requirements aimed at protecting classified information.

**76. Cancellation of procurement process.-** (1) A procuring entity may, for reasons to be recorded in writing, cancel the process of procurement initiated by it -

(a) at any time prior to the acceptance of the successful bid; or

(b) after the successful bid is accepted in accordance with sub-rules (4) and (5).

(2) The procuring entity shall not open any bids or proposals after taking a decision to cancel the procurement and shall return such unopened bids or proposals.

(3) The decision of the procuring entity to cancel the procurement and reasons for such decision shall be immediately communicated to all bidders that participated in the procurement process.

(4) If the bidder whose bid has been accepted as successful fails to sign any written procurement contract as required, or fails to provide any required security for the performance of the contract, the procuring entity may cancel the procurement process.

(5) If a bidder is convicted of any offence under the Act, the procuring entity may-

(a) cancel the relevant procurement process if the bid of the convicted bidder has been declared as successful but no procurement contract has been entered into;

(b) rescind the relevant contract or forfeit the payment of all or a part of the contract value if the procurement contract has been entered into between the procuring entity and the convicted bidder.

(6) A procurement process, once cancelled, shall not be reopened. However, this shall not prevent a procuring entity from initiating a new procurement process for the same procurement, if required.

## CHAPTER- V

### *Documentary Record of Procurement Process*

#### **77. Requirement of maintenance of record related to procurement.-**

(1) For reasons of transparency and accountability, the procuring entities shall maintain a record of all the procurement proceedings containing, atleast, the following information, namely:-

- (a) a brief description of the subject matter of the procurement, including the assessment of need for procurement;
- (b) the names and addresses of bidders who presented submissions, the name and address of the bidder from whom the procurement is made and the agreed price, and in case of rate contract procedure, the names and addresses of the bidders with which the rate contract is concluded;
- (c) a summary of any requests for clarification of the pre-qualification or solicitation documents, the responses thereto, as well as, a summary of any modification of that documents;
- (d) information related to the qualifications, or lack thereof, of bidders that made submissions including reasons for not qualifying or disqualifying any bidder;
- (e) the contract price and terms and conditions of the procurement contract and where a written procurement contract has been concluded, a copy thereof;
- (f) in the case of a rate contract procedure, the terms and conditions of the rate contract or a copy of the rate contract that was concluded;
- (g) in the case of an empanelment procedure, the terms and conditions of the empanelment or a copy of the agreement, if any, that was concluded;
- (h) a summary of the evaluation and comparison of bids, including the application of any margin of preference and reasons for rejection or

non-consideration of a bid, if any;

- (i) if the procurement is cancelled, a statement to that effect and the grounds therefor;
- (j) in procurement proceedings involving the use of a procurement method other than open tendering, the grounds and circumstances on which the procuring entity relied to justify the selection of the method of procurement used;
- (k) in the case of proceedings relating to appeals penalty, copies of appeals made and all decisions in reference to them;

(2) The procuring entity shall not be liable to bidders for damages owing solely to a failure to maintain a record of the procurement proceedings in accordance with this rule.

(3) Any document, notification, decision or other information generated in the course of a procurement, including in connection with appeals under section 38 of the Act or in the course of a meeting, or forming part of the record of the procurement process, shall be in a form that provides a record of the content of the information and is accessible so as to be usable for subsequent reference.

(4) Subject to the provisions of the Right to Information Act, 2005 or of any other law for the time being in force relating to retention of records, the procuring entity shall retain the documentary record indicated in sub-sections (1) and (2), for a reasonable period after the expiry of the procurement process or procurement contract, as the case may be, so as to enable audit or such other review.

**78. Period of maintenance of record.-** All records pertaining to procurement shall be maintained:-

(1) for a minimum period of 5 years: after the contract agreement is fulfilled, or terminated and final claim is settled, or annulment of a failed procurement process; and

(2) 2 years after the audit by statutory auditors and/ or Accountant General but in case of audit objections the record shall be kept till settlement of audit objections or review by Public Accounts Committee.

(3) In case of any enquiry or examination, etc. by any Government authority or matter pending before a court of law, the record shall be maintained till final outcome.

**79. Maintenance of files pertaining to procurement.-** Some of the broad steps to be followed for the filing structure for maintenance of record of procurement are given below:-

(1) A general file / box labelled "PG" (Procurement General) shall be used to record / store the following documents:-

- (a) Rajasthan Transparency in Public Procurement Act and Rules;
- (b) Standard Bidding Documents;
- (c) Guidelines issued for procurement;
- (d) Training Manuals, Departmental Manuals;
- (e) Any subsequent Notifications or Government Orders issued regarding procurement.

(2) Separate filing cabinets / almirahs / files shall be maintained for procurement related to goods, works and services, which will be used for keeping of records pertaining to procurement processes, complaints, appeals, etc.

(3) Specific files will be maintained for each procurement process which is initiated by a procuring entity. General norms for keeping various folders of documents related to each procurement process are given in guidelines.

(4) After conclusion of the procurement process, a separate file shall be maintained for each contract.

## CHAPTER VI

### *Code of Integrity for Procuring Entities & Bidders*

#### **80. Code of integrity for procuring entities and bidders.-**

(1) No officer or employee of a procuring entity or a person participating in a procurement process shall act in contravention of the code of integrity.

(2) The code of integrity referred to sub-rule (1) includes:-

(a) prohibiting -

- (i) any offer, solicitation or acceptance of any bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process;
- (ii) any omission, including a misrepresentation that misleads or attempts to mislead so as to obtain a financial or other benefit or avoid an obligation;
- (iii) any collusion, bid rigging or anti-competitive behaviour to impair the transparency, fairness and progress of the procurement process;
- (iv) improper use of information shared between the procuring entity and the bidders with an intent to gain unfair advantage in the procurement process or for personal gain;
- (v) any financial or business transactions between the bidder and any officer or employee of the procuring entity;
- (vi) any coercion including impairing or harming or threatening to do the same, directly or indirectly, to any party or to its property to influence the procurement process;
- (vii) any obstruction of any investigation or audit of a procurement process;

(b) the procuring entity or bidders shall disclose conflicts of interest, if there are any;

(c) the bidder shall disclose any previous transgressions with any entity in India or any other country during the last three years or of any

debarment by any other procuring entity.

**(3) The detailed Code of Integrity.-** The detailed Code of Integrity for personnel involved in procurement and for bidders is given below:-

- (a) All procurement personnel shall maintain an unimpeachable standard of integrity in all business relationships, both inside and outside their offices. Ethical conduct shall apply in all dealings with bidders or prospective bidders. Procurement personnel shall never use their authority or office for personal gain and will seek to uphold and enhance the standing of their department/ organisation.
- (b) All individuals are responsible for the regularity of actions taken by them in the course of their official duties, and any staff member that takes action contrary to the Act, these rules and other relevant rules/ regulations may be held personally responsible and financially liable for the consequences of such action.
- (c) The standard of conduct for all personnel of the procuring entity involved in procurement actions includes, but is not limited to:
  - (i) Personnel shall not allow any bidders to have access to information on a particular acquisition, before such information is available to the public at large,
  - (ii) Personnel shall not intentionally use unnecessarily restrictive or “tailored” specifications, terms of reference or statements of work that can discourage competition,
  - (iii) Personnel shall not solicit or accept, directly or indirectly any promise of future employment from anyone who has sought or is seeking to obtain business from the procuring entity,
  - (iv) Personnel shall not have a financial interest in any bidder(s) responding to a procuring entity’s bidding exercise and are prohibited from any involvement in the procurement action,
  - (v) Personnel shall not disclose proprietary and source selection information, directly or indirectly, to any person other than a person authorised to receive such information.

- (vi) Procuring entity's personnel shall seek to treat all bidders in a fair and equitable manner in line with the principle of fairness, integrity and transparency in the procurement process.
- (vii) During the solicitation phase, all bidders must receive identical information. Any clarifications to the solicitation documents must be provided at approximately the same time, in writing, to all bidders;
- (viii) Specifications should be linked to function and to performance as much as possible. They must not be limit competition nor be unnecessarily restrictive;
- (ix) During the evaluation, the evaluation criteria specified in the bidding documents must be applied in the same manner for each evaluated offer. Under no circumstances shall new evaluation criteria not mentioned in the bidding documents be introduced during the evaluation process.
- (x) In cases where the personal interest of the procurement official is in conflict with the interest of the organization, such cases shall be immediately reported by the concerned official to appropriate authority.
- (xi) The procurement officials shall not entertain any favour, recreation, presents, services, etc. by the potential bidders.
- (xii) The interest of the Procuring Entity shall be protected under all circumstances while dealing with information and information sources by the procurement officials.
- (xiii) It shall be ensured by procurement officials that all suppliers and service providers get the same correct information.
- (xiv) Any information about competitors shall not be solicited by suppliers and service providers.
- (xv) All bids shall be handled confidentially by procurement officials.
- (xvi) It shall be ensured that selection of suppliers is done according to predetermined objective basis and is not influenced by personal reasons attributable to concerned officials in any manner.

**(d) Conflict of interest.-** A conflict of interest is considered to be a situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations.

(i) The situations in which a procuring entity's personnel may be considered to be in conflict of interest includes, but not limited to, following:-

1. A conflict of interest occurs when procuring entity's personnel's private interests, such as outside professional or other relationships or personal financial assets, interfere or appear to interfere with the proper performance of his professional functions or obligations as a procurement official.
2. Within the procurement environment, a conflict of interest may arise in connection with such private interests as personal investments and assets, political or other outside activities and affiliations while in the service of the procuring entity, employment after retirement from the procuring entity's service or the receipt of a gift that may place the procuring entity's personnel in a position of obligation.
3. A conflict of interest also includes the use of procuring entity's assets, including human, financial and material assets, or the use of procuring entity's office or knowledge gained from official functions for private gain or to prejudice the position of someone procuring entity's personnel does not favour.
4. A conflict of interest may also arise in situations where procuring entity's personnel is seen to benefit, directly or indirectly, or allow a third party, including family, friends or someone they favour, to benefit from procuring entity's personnel's actions or decisions.

If any procuring entity's personnel believe that he may have a conflict of interest, he shall promptly and fully disclose the conflict to the procuring entity and shall refrain from participating in any way in the matter to which the potential conflict relates, until the conflict has been resolved satisfactorily.

- (ii) A Bidder may be considered to be in conflict of interest with one or more parties in a bidding process if, including but not limited to:-
1. they have controlling partners in common; or
  2. they receive or have received any direct or indirect subsidy from any of them; or
  3. they have the same legal representative for purposes of the bid; or
  4. they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another; or
  5. A bidder participates in more than one bid in the same bidding process. However, this does not limit the inclusion of the same sub-contractor, not otherwise participating as a bidder, in more than one bid; or
  6. A bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the subject matter of procurement of the bidding process. All bidders shall provide in Qualification Criteria and Bid Forms, a statement that the bidder is neither associated nor has been associated directly or indirectly, with the consultant or any other entity that has prepared the design, specifications and other documents for the project or being proposed as Project Manager for the contract.

**(e) Ethical behaviour of the bidders.**-The extreme case of unethical behaviour is when bidders engage in corrupt practices. The list of definitions set forth below indicates the most common types of corrupt practices among bidders:

- (i) "Corrupt Practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the action of another party;

- (ii) "Coercive Practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or property of the party to influence improperly the actions of a party;
- (iii) "Fraudulent Practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iv) "Collusive Practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party result in bids at artificial prices that are not competitive.

**(4) Debarment from bidding.** - (a) A bidder shall be debarred by the State Government if he has been convicted of an offence -

- (i) under the Prevention of Corruption Act, 1988 (Central Act No.49 of 1988); or
  - (ii) under the Indian Penal Code, 1860 (Central Act No. 45 of 1860) or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.
- (b) A bidder debarred under sub-section (1) shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date on which he was debarred.
- (c) If a procuring entity finds that a bidder has breached the code of integrity prescribed in terms of section 11, it may debar the bidder for a period not exceeding three years;
- (d) Where the entire bid security or the entire performance security or any substitute thereof, as the case may be, of a bidder has been forfeited by a procuring entity in respect of any procurement process or procurement contract, the bidder may be debarred from participating in any procurement process undertaken by the procuring entity for a period not exceeding three years.

- (e) The State Government or a procuring entity, as the case may be, shall not debar a bidder under this section unless such bidder has been given a reasonable opportunity of being heard.

**(5) Environmental considerations and Social responsibility.-** Bidders have the obligation with the procuring entity to comply with the rules, regulation and other laws concerning child labour, sexual exploitation and the fundamental rights of workers, health and safety, working conditions, freedom of association, environment, non-discrimination, human rights, and anti-corruption measures. By signing any contract with the procuring entity the bidder confirms that he adheres to the provisions made in them. The procuring entity also is committed to doing business only with those bidders sharing its values of respect for fundamental human rights, social justice, human dignity, and respect for the equal rights of men and women.

**81. Action to be taken in case of breach of code of integrity.-** Without prejudice to the provisions of Chapter IV of the Act, in case of any breach of the code of integrity by a bidder or prospective bidder, as the case may be, the procuring entity may take appropriate measures including-

- (a) exclusion of the bidder from the procurement process;
- (b) calling off of pre-contract negotiations and forfeiture or encashment of bid security;
- (c) forfeiture or encashment of any other security or bond relating to the procurement;
- (d) recovery of payments made by the procuring entity along with interest thereon at bank rate;
- (e) cancellation of the relevant contract and recovery of compensation for loss incurred by the procuring entity;
- (f) debarment of the bidder from participation in future procurements of the procuring entity for a period not exceeding three years under section 46 of the Act.

## CHAPTER VII

### ***Grievance Redressal During Procurement Process***

**82. Appeals.-** Subject to rule 85, if any bidder or prospective bidder is aggrieved that any decision, action or omission of the procuring entity is in contravention to the provisions of the Act or these rules or guidelines issued under them, he may file an appeal to such officer of the procuring entity, as may be designated by it for the purpose, within a period of ten days or such other period as may be specified in the pre-qualification documents, bidder registration documents or bidding documents, as the case may be, from the date of such decision or action, omission, as the case may be, clearly giving the specific ground or grounds on which he feels aggrieved:

Provided that after the declaration of a bidder as successful in terms of section 27, the appeal may be filed only by a bidder who has participated in procurement proceedings:

Provided further that in case a procuring entity evaluates the technical bid before the opening of the financial bid, an appeal related to the matter of financial bid may be filed only by a bidder whose technical bid is found to be acceptable.

### **83. First and Second Appellate Authorities.-**

(1) The First Appellate Authority shall be atleast one stage higher in administrative rank to the procuring entity in the department which is competent to sanction the relevant procurement and shall be specified in the bidding documents.

(2) The Second Appellate Authority shall be atleast one stage higher in administrative rank to the First Appellate Authority in the department and shall be specified in the bidding documents : Provided that in case the First Appellate Authority is the Administrative Secretary of the department, the Second Appellate Authority shall be the head of the State Procurement Facilitation Cell.

(3) Each department shall specify and declare the First and Second Appellate Authorities of the department.

**84. Grounds of appeals.-** A bidder or a prospective bidder may file an appeal on any grounds including following, except those mentioned in rule 85:

(1) In the event that the bidder is not satisfied with the decision of the procuring entity or that authority fails to give a decision in due time.

(2) Deficiency / deviation in the procurement process.

(3) Non-payment or delay in return of bid security to unsuccessful bidders

(4) Any procurement in contravention of provisions of the Act or these Rules.

(5) Procuring entity or any of its officials receiving directly or indirectly improper inducement.

(6) Procuring entity or any of its officials engaging in corrupt or fraudulent practice or involving in such act.

(7) Intervening in the participation by competing bidders or proponents to be involved in any way in the proceedings relating to the bid or proposal.

(8) Any threat directly or indirectly to cause harm to the bidder, person or property of any person to be involved in the procurement proceedings or coercive act.

(9) Collusion or involving in groupism prior to or after submission of bid or proposal with the objective of allocating procurement contract among the bidders or proponents or fixing the price of bid or proposal artificially or non-competitively or otherwise forbidding the procuring entity of the benefit of open and free competition.

(10) An irregularity in the confidentiality clause wherein a bidder has been found contacting the procuring entity from the time of the opening of bid or proposal until the notice of acceptance of bid or proposal is given with the objective of causing interference upon bid or proposal or committing an act of interference in the examination or evaluation of bid or in the evaluation of proposal.

**85. Appeals not to lie in certain cases.-** No appeal under section 38 shall lie against any decision of the procuring entity relating to the following matters, namely:-

(1) determination of need of procurement in terms of section 5 of the Act;

(2) provisions limiting participation of bidders in the bid process in terms of the

provisions of section 6 of the Act;

(3) the decision of whether or not to enter into negotiations in terms of section 15 of the Act;

(4) cancellation of a procurement process in terms of section 26 of the Act;

(5) applicability of the provisions of confidentiality under section 49 of the Act.

**86. Fee for filing appeals.-** (1) A first appeal must accompany a non refundable fee of rupees 2500 and a second appeal must accompany a non refundable fee of rupees 10000 without which the appeal shall not be entertained.

(2) The fee shall be deposited with the Appellate Authority in cash or a bank demand draft / a banker's cheque of a scheduled bank or a cash treasury challan.

**87. Stay of procurement proceeding.-** While hearing of an appeal under section 38 of the Act, the officer or authority hearing the appeal may, on an application made in this behalf and after affording a reasonable opportunity of hearing to the parties concerned, stay the procurement proceedings pending disposal of the appeal, if he, or it, is satisfied that failure to do so is likely to lead to miscarriage of justice.

**88. Procedure of filing and disposal of appeals.-** (1) Procedure for filling memorandum of appeal:-

(a) A memorandum of appeal to the First Appellate Authority or Second Appellate Authority, as the case may be, may be presented by the appellant or his authorised representative or an Advocate in person to the office of the concerned Appellate Authority during office hours or may be sent by the appellant by registered post to the office of the concerned Appellate Authority.

(b) A memorandum of appeal sent by post under sub-rule (a) shall be deemed to have been presented to the Appellate Authority on the date of its receipt in his office.

(2) Date of representation of Appeal:- The Appellate Authority shall endorse on every memorandum of appeal the date on which it has been presented or is deemed to have been presented and shall sign the endorsement.

(3) Receipt Slip:- The appellant may attach to and present with his appeal a receipt slip which shall be signed by a person nominated by the Appellate Authority in acknowledgement of the receipt of the appeal.

(4) Contents of memorandum of appeal - Every memorandum of appeal shall be in the form No.1 and shall:-

- (a) state the name and address of the appellant;
- (b) state the name and address (to the extent known) of the necessary respondents; and
- (c) set out concisely and under distinct heads the grounds of appeal without any argument or narrative.

(5) Signing of memorandum of appeal:- The appellant himself shall sign or put his-thumb impression on the memorandum of appeal.

(6) Copies of memorandum of appeal to be presented to the Appellate Authority - The appellant shall submit the following number of copies of the memorandum of appeal to the Appellate Authority -

- (a) 2 copies for the Appellate Authority: and
- (b) as many copies as there are respondents in the case.

(7) What to accompany memorandum of appeal:- Every memorandum of appeal shall be accompanied by:-

- (a) a certified or a photo-stat copy of the order appealed against of the procuring entity or a statement of a decision, action or omission of the procuring entity in contravention to the provisions of the Act by which the appellant is aggrieved and in case of second appeal, a copy of the order passed by the First Appellate Authority;

- (b) where the appellant, for reasons beyond his control, is not in a position to furnish a duly certified copy or photo-stat copy of the order under item (i) above or where the appeal is based on a statement of a decision, action or omission of the procuring entity, the appeal shall be accompanied by an affidavit of the appellant to that effect;
- (c) copy or copies of the documents photo-stat or otherwise on which he wishes to rely along with a list of documents; and
- (d) proof of having deposited the required fee for filing appeal.

(8) Filing of affidavits :- Where a fact as alleged in the appeal or reply thereof cannot be borne out by, or is contrary to the records, it shall be stated clearly and concisely and supported by a duly stamped and attested affidavit.

(9) Scrutiny :- on presentation of memorandum of appeal and before initiating any action on it, the Appellate Authority shall have the scrutiny made on the following points:-

- (a) whether it is within the jurisdiction of the Appellate Authority;
- (b) whether the appeal is within the period of limitation or whether the appellant has given sufficient cause for not preferring appeal within the limitation period;
- (c) whether the memorandum is in the prescribed form;
- (d) whether it bears the signatures or thumb impression of the appellant;
- (e) whether it is accompanied by a certified or a photo-stat copy of the order against which the appeal has been filed along with the requisite number of copies or an affidavit under item (b) of sub-rule 7;
- (f) whether affidavits duly sworn, in case a fact cannot be borne out by, or is contrary to the records, accompany the appeal;
- (g) whether it contains the grounds of appeal and that the any of the grounds contained therein is not one on which an appeal can not lie as per rule 88;

- (h) whether the necessary parties have been impleaded;
- (i) whether the proof of depositing requisite fee has been enclosed;
- (j) any other relevant point affecting the admissibility of appeal.

(10) Admissibility of the appeal:- On the basis of the scrutiny referred to in sub-rule 9 the Appellate Authority shall:-

- (a) admit the appeal against the necessary parties; or
- (b) permit the appellant to amend the memorandum of appeal or produce necessary document and there after admit the appeal against the necessary parties; or
- (c) reject the appeal.

(11) Hearing in case of rejection :- The Appellate Authority shall hear the appellant or his representative or advocate in case it is proposed not to admit his appeal.

(12) Summoning of Respondent and production of record:- On the admission of an appeal, the Appellate Authority shall order the:-

- (a) issue of summons in form No.2 to the respondents considered as necessary parties by the him;

Explanation:- In case any order passed by the Government has been challenged, the summons shall be issued to the secretary to the Government in the department concerned.

- (b) production within the period laid down by him, of the record considered necessary by the bench for the hearing and disposal of the appeal.

(13) What to accompany the summons to respondents:- Along with the copy of the summons to the respondents, the following documents shall be sent to the respondents:-

- (a) copy of memorandum of appeal;

- (b) copy of the order appealed against which shall be supplied by the appellant.

(14) Service of summons:- Every summon shall be served:-

- (a) by tendering or delivering a copy of it to -
  - (i) the person summoned; or
  - (ii) his duly authorised representative or advocate; or
  - (iii) in his absence any adult male member of his family usually residing with him; or
- (b) in case the person summoned cannot be found or refuses to sign the acknowledgment, by affixing a copy thereof to some conspicuous part of his usual or last known place of his residence or publication of the summons in the newspapers, at the cost of the appellant;

provided that in any appeal the Appellate Authority may in its discretion send the summons to the respondent by registered post in addition to or in alternative to the mode of service laid down in this rule. An acknowledgement purporting to be signed by the respondent or an endorsement by postal servant that the respondent refused to take the delivery may be deemed by the Appellate Authority to be prima facie proof of service.

(15) Reply of respondent:-

- (a) In the summons issued to the respondent the time allowed for reply shall be stated and the reply shall have to be filed with in the prescribed time, unless reasons for not doing so are accepted by the Appellate Authority, or when the respondent expresses his intention in writing to submit the reply orally at the time of arguments.
- (b) The respondent shall submit 2 copies of the written reply for the Appellate Authority and one copy for the appellant.

(16) Inspection of documents and records:- On application of a party, the Appellate Authority may permit the inspection of records and the document relevant to the case and in the possession of the Appellate Authority.

(17) Discovery and production of documents:- On the request of the party the Appellate Authority may require the discovery or production of any document provided it is relevant to the hearing and disposal of the Appeal.

(18). Dismissal on non-appearance of appellant:- On the non-appearance of the appellant or his duly authorised representative or advocate, the Appellate Authority may dismiss the appeal or may pass and other orders as it thinks fit.

(19) Restoration of appeal:- On sufficient grounds the Appellate Authority may restore an appeal dismissed under sub-rule 18 even without hearing the respondent, provided application for restoration is made within 30 days of the order passed under sub-rule 18. The Appellate Authority may impose such cost, as it thinks fit.

(20) *ex-parte* proceedings against respondent:- If the respondent does not submit the reply within time mentioned in the summons or extended by the Appellate Authority or does not express his intention in writing to argue his case orally at the time of arguments or the respondent or his authorised representative or Advocate does not appear on the day of hearing, the Appellate Authority may proceed *ex-parte* against him.

(21) Review of *ex-parte* order.- On sufficient grounds the Appellate Authority even without hearing the appellant may rescind its *ex-parte* order.

(22) Summoning of witnesses and payment of their expenses:-

(a) At any stage, on the request of a party, or on its own motion, the Appellate Authority may order summoning of witnesses.

(b) Where, the witness is a person in the service of the Government of Rajasthan, Central Government or other State Governments, he shall be given a certificate of attendance enabling him to draw travelling allowance as on tour in accordance with the rules applicable to such government servants.

- (c) (i) In case of an M.P. or M.L.A. he shall be entitled to draw travelling and daily allowance as per rules admissible to him for attending meetings of the committees constituted by the Government.
- (ii) In case of other non-official witness not covered by sub-rule (22)(b) and (c)(i) above including retired officials, they shall be entitled to travelling allowance and daily allowance as provided in Rajasthan Travelling Allowance Rules;
- (iii) Where a local witness is summoned by the Appellate Authority, he shall be paid as provided in Rajasthan Travelling Allowance Rules;
- (d) Where the Appellate Authority orders the payment of expenses under sub-rule 22(c) it shall also pass an order as to whether the expenses are to be borne by the State Government or by any party to the proceedings.
- (e) The summon to witness shall be issued in form No.3.

(23) Adjournment:- Except for the reasons to be recorded in writing, the Appellate Authority shall hear an appeal on day to day basis. On sufficient cause being shown it may grant adjournment subject to such costs or other conditions as are considered appropriate by the Appellate Authority.

(24) Appearance before Appellate Authority:- A party may appear before Appellate Authority either personally or through his representative or advocate duly authorised in form No.4.

(25) Arguments:- The parties may, either personally or through their authorised representative or advocates submit orally or in writing or in both, their arguments before the Appellate Authority. The appellant shall not except by leave of the Appellate Authority, urge or be heard in support of any ground not set forth in the memorandum of appeal.

(26) Order:- The order of the Appellate Authority shall be in writing and shall state the points of determination, its findings thereon and the reasons for these

findings in a concise manner. One copy of the order shall be provided free of cost to the appellant.

(27) Copies:- On the application of parties, certified copies of the documents or orders shall be supplied to the parties by the Appellate Authority on payment of fees as prescribed in Schedule A. No such fee shall be charged from the Government.

(28) Continuation of proceedings after the death of a party:- An appeal shall abate, unless on the death of appellant his legal representative applies for its continuance to the Appellate Authority within a period of thirty days from the date of the death of the appellant. In the event of the death of any respondent, his legal representative, if he so desires, may apply for being impleaded as a party within a period of thirty days for the date of the death of the respondent.

(29) Procedure regarding matters not covered by rules:- The Appellate Authority shall follow such procedure as it may think fit on the matters not provided by and not inconsistent with the Act and these rules.

(30) Caveat :- Any procuring entity or the State Government may file a caveat with the Appellate Authority in respect of any matter which such party consider likely to be raised before the Appellate Authority and where such a caveat is filed the Appellate Authority shall, before passing any interlocutory order, give an opportunity of being heard to the party which has filed the caveat.

**89. Power to remove difficulties.-** If any clarification is required or difficulty arises in giving effect to the provisions of these rules, the State Government may make such provisions not inconsistent with the provisions of the Act and these rules, as may appear to it, to be necessary for removing the difficulty.

**90. Savings.-** All rules, regulations, orders, notifications, departmental codes, manuals, by-laws, official memoranda or circulars relating to procurement of goods, services or works provided for in these rules, which are in force on the date of commencement of these rules, shall continue to be in force to the extent they are consistent with the provisions of these rules, until they are repealed or superseded by any rule, guidelines, notification or order, as the case may be, made or issued under these rules.

FORM No. 1

(See sub-rule 1 of rule 88)

**Memorandum of Appeal**

Appeal

No .....

of .....Before.....(First / Second Appellate Authority)

**Appeal under the Rajasthan Transparency in Public Procurement Act, 2012**

1 (i) Name and father's name of the appellant

(ii) Official address

(iii) Residential address

2. Name and address of the respondent(s)

3. Number and date of the order appealed against and name and designation of the officer / authority who passed the order, or

a statement of a decision, action or omission of the procuring entity in contravention to the provisions of the Act by which the appellant is aggrieved

4. If the Appellant proposes to be represented by a representative / or advocate their names and postal addresses.

5. Number and nature of affidavits furnished alongwith this appeal

7. Grounds of appeal:-

8. Prayer

Place .....

Date .....

Appellant's Signature

FORM No.2

**Summons to Respondents**

(See sub-rule 12 of rule 88)]

Office of.....

(First / Second Appellate Authority under Rajasthan Transparency in Public Procurement Act, 2012)

Appeal No..... of ..... 20..... To

..... (Name, description and  
..... Place of office / residence).  
.....

Whereas (name of appellant)..... has filed an appeal against the order dated ..... passed by ..... (copy of memorandum of appeal and order enclosed); you are hereby summoned to appear in this office, in person or by a representative or Advocate duly instructed and authorised and able to answer all material questions relating to the appeal on the ..... Day of ..... 20.....

You may file your reply and produce all the documents upon which you intend to rely in support of your case within 15 days from the service of the summons.

In default of filing of reply and your appearance on the day before mentioned, the appeal shall be heard and determined in your absence.

Given under my hand and the seal of the Appellate Authority, on this... .. day of the month of ..... of 20.....

Seal

Appellate Authority

FORM No. 3

**Summons to Witnesses**

[See sub-rule 22 of rule 88]

Office of.....

(First / Second Appellate Authority under Rajasthan Transparency in Public Procurement Act, 2012)

Appeal No..... of ..... 20.....

To

..... (Name, description

..... and Place).

Title .....

Whereas your attention is required on behalf of the .....

In the above case, you are hereby required (personally) to appear before this Appellate Authority on the ..... day of ..... 20..... at..... AM/PM and to bring with you all documents relevant to the case.

Given under my hand and seal of the Appellate Authority on this ..... day of the month of ..... 19.....

Seal  
Authority

Appellate

FORM No. 4

**Letter of Authorisation**

[See sub-rule 24 of rule 88]

Before.....(First / Second Appellate Authority)

Appeal No. .... Date .....

Title .....

Appellant .....

Respondent/s .....

I have appointed Shri ..... as my representative /advocate in the above appeal. I hereby authorise the said Shri ..... to appear on my behalf and represent me in the proceedings before the Appellate Authority. He shall have all power to file appeal, reply, application, inspect record, obtain copies and to do all other acts necessary in connection with the proceedings.

Appellant / Respondent.

Signature of the Advocate / Representative.

## SCHEDULE A

### **Fees of supplying copies of documents**

(See sub-rule 27 of rule 88)

Fees shall be charged for copies according to the following scale :-

1 (a) For a foolscap sheet in double space or any portion there of Rs. 1/- per sheet.

(b) For urgent copies double fee shall be charged.

(c) For map or other tabular work the fee shall be fixed by the officer granting copy with

reference to the quality, difficulty and intricacy of the work to be done.

(d) In case in which the applicant desires to take more than one copy of a document and typed

copies are given each copy after the first shall be supplied at half the rate prescribed above.

2 In case the applicant is unable to give exact particulars of the file and the same is to be

traced additional charges shall be made as below:-

(a) Index for a year - fifty paisa; and

(b) Specified document at fifty paisa each.

3 Application for urgent copies shall receive preference over other ordinary applications and

shall ordinarily be supplied within 24 hours provided the record becomes available.

[No.....]

By order of the Governor

Secretary to Government

### List of the changes have been incorporated

Rule No.	Added / substituted / deleted	
6	Added	As per proviso to sec.8(2) of the Act.
8	Deleted	,of a subject..... (Last line)
9	Deleted	Or tender procedure
9	Added	If required.....
14(2)a(iii)	Added	Service Providers
14(2)f	Replaced	Chapter V by IV
15(1)h	Added	Financial powers
15(1)h(i)	Added	Firm
16(3)a	Added	Regarding the subject matter of procurement
18	Shifted	After rule 20 and renumbered as 21
19(1)	Added	Subject to limit.....
21	Deleted	Procedure for ... (from heading).
21(1)	Added	Request for (in heading)
21(b)(i)	Deleted	Below
21(b)(ii)	Added	During a financial year
21(c)(v)	Deleted	Nothing contained....
21(d)(ii)	Deleted	Nothing contained....
21(2)(b)	Replaced	Limited bids by quotations
21(4)	Added	New

29	Added	Last lines
33(d)	Added	new
38	Table	Deleted one row
40(10)	Replaced	Award by signing
70(2)	Added	For extra items.....
70(2)	Deleted	With the consent of the contractor / supplier
71(c)	Deleted	Last para
88(26)	Added	One copy of the order.....