

**CONSOLIDATED VERSION**

**OF**

**THE PUBLIC PROCUREMENT REGULATIONS 2008**

**09 November 2022**

# A Consolidated Version

of

## The Public Procurement Regulations 2008

*[GN 7/2008, 71/2008, 8/2009, 68/2009, 86/2009, 25/2012, 128/2012, 75/2013, 125/2013, 175/2013, 198/2015, GN 217/2015, GN 227/2016, GN 8/2017, GN 35/2017, GN 209/2017; GN 34/2018; GN 102/2018, GN 146/2018, GN 85/2019, GN 256/2020, GN 302/2020; GN 280/2021; GN 136/2022; GN 292/2022]*

## THE PUBLIC PROCUREMENT ACT 2006

### Regulations made by the Minister under section 61 of the Public Procurement Act 2006

1. These regulations may be cited as the Public Procurement Regulations 2008.
2. In these regulations –

“Act” means the Public Procurement Act;

"departmental work" means any public works to be carried out directly by the public body itself or by another public body without entering into any contract;

"deposit" –

- (a) means the retention money, earnest money, bid bond or performance bond furnished for security or pending the settlement of any work;
- (b) includes any amount furnished for security owing for any other reasons, as well as the security associated with the filing of a complaint;

"exempt organisation" means a public body which is excluded from the application of the Act in relation to contracts referred to in the First Schedule;

*[Amended by GN 68/2009]*

"joint venture" means an association of two or more entities for the purposes of carrying out a procurement contract;

"parastatal body" means an organisation established under an enactment whether body corporate or not and which depends wholly or partly on government funding;

"regional preference" means the margin of preference applicable to suppliers of the countries of the region as per instructions issued by the Policy Office;

“simple project” means a well-defined works project without any likelihood for variations or additional works.

*[Amended by GN 256/2020]*

## **2A. Application of Act to exempt organisations**

Nothing in these regulations shall be construed as excluding the application of the Act to a public body referred to in the First Schedule to these regulations and the Schedule to the Act in respect of a procurement contract to which the public body intends to be a party and which is specified in column 2 of the Schedule

*[Added by GN 68/2009]*

## **2B. Guidelines**

The Policy Office may issue guidelines for the procurement of goods, works and other services specified in the Second Schedule to the Act.

*[Added by GN 256/2020]*

## **3. Procedures and mechanism**

(1) The Policy Office shall inform public bodies and end-users of the types of statistical and reporting information that are required to be furnished, and the periodicity of their submission.

(2) The Policy Office shall establish procedures and mechanisms to -

- (a) ensure the effective and timely solicitation of view points of interested parties in the development of procurement policies, regulations, procedures, documents and forms;
- (b) obtain from the Board, the Review Panel and public bodies information on procurement activities; and
- (c) monitor compliance with the Act.

(3) The Policy Office shall periodically solicit the views of the business community on the effectiveness of the procurement system and make appropriate recommendations to the Minister.

(4) The Policy Office shall devise and implement programmes aimed at assisting public bodies as well as bidders in conducting and participating in public procurement proceedings which shall include –

- (a) assisting in the dissemination of information to bidders on the rules and procedures governing public procurement;
- (b) issuing opinions and guidance and proposing solutions to facilitate the work of public bodies with a view to fulfilling the objectives of the Act;
- (c) maintaining a database of suppliers of goods, works and services and the dissemination thereof;
- (d) establishing a central data base for the purpose of recording the performance of suppliers in the execution of procurement contracts in

order to evaluate their performance;

- (e) developing proposals for methods of disseminating procurement-related information; and
- (f) analysing the procurement experiences and practices of other countries.

(5) The Policy Office shall devise and facilitate the implementation of strategies and programmes for the promotion of professional standards and development concerning procurement.

### **3A. Sharing of information by Board**

(1) The Board shall, following the conclusion of a bidding exercise, provide to the public body a copy of –

- (a) the executive summary of the Bid Evaluation Report; and
- (b) all the bids received.

(2) The public body shall ensure the safe custody of the documents received under paragraph (1) and limit their use to get an update about the evolution of the market and solutions available.

(3) No proprietary information from the documents shall be disclosed to any other party.

(4) The Board may share any other document, which it deems appropriate, with the public body.

*[Added GN 292/2022]*

### **3B. Submission of progress reports**

(1) The Board shall submit to the Policy Office a quarterly progress report on all procurement exercises.

(2) The progress report shall contain the following details –

- (a) name of the public body;
- (b) reference number of the procurement exercise;
- (c) brief description of the procurement;
- (d) date of submission of bidding documents for vetting;
- (e) status of procurement exercise;
- (f) reasons for any delay; and

(g) such other information as the Policy Office may require.

[Added GN 292/2022]

#### **4. Bid evaluation procedures for major contracts**

(1) (a) For the purposes of examination and evaluation of bids, the Board shall constitute a bid evaluation committee within 15 days after the opening of bids.

(b) A bid evaluation committee set up under paragraph (a) shall be composed of at least 3 members who are knowledgeable about the goods or services under procurement and the public procurement procedures.

(2) Subject to paragraph (3), the Board shall select from a list of qualified evaluators maintained by it to act as members of the bid evaluation committee.

(3) No person shall act as a member of the bid evaluation committee where his participation would constitute a conflict of interest.

(4) Where necessary, the Board may, following a request from a bid evaluation committee, appoint an adviser or a technical sub-committee to assist it.

(5) The functions of the bid evaluation committee shall include the examination, evaluation and comparison of bids and determination of the lowest evaluated substantially responsive bid for the award.

(6) The Chief Executive Officer of the public body concerned with the procurement shall designate a member of his staff to act as Secretary of the bid evaluation committee.

(7) The members of a bid evaluation committee may be paid such fees as may be determined by the Board.

(8) The Secretary of the bid evaluation committee shall take minutes of meetings of the committee and keep record of all matters considered by the committee.

(9) The minutes and other records of the bid evaluation committee shall be open for inspection by the Policy Office.

[Amended by GN 86/2009]

#### **5. Open international bidding**

(1) The Policy Office may, in the case of procurement through open international bidding, issue instructions relating to the criteria and the applicable percentage preference for domestic or regional goods, services or contractors.

(2) For the purposes of section 18(1)(a) of the Act and subject to paragraph (3), the estimated value for procurement of goods, works and other services shall be 200 million rupees and for consultancy services 10 million rupees.

(3) Notwithstanding paragraph (2), works –

(a) where no pre-qualification is required; and

(b) with investment not exceeding 300 million rupees,

shall be restricted to local contractors.

(4) In this regulation –

“CIDB Act” means the Construction Industry Development Board Act;

“local contractor” means –

- (a) a contractor registered as such under section 19 of the CIDB Act; and
- (b) includes a foreign contractor referred to in section 20(7) of the CIDB Act and who is registered as a contractor under section 19 of the CIDB Act.

*[Amended by GN 8/2009, 128/2012, GN 125/2013, GN 256/2020]*

#### **5A. Request for sealed quotations**

For the purposes of section 20(1) of the Act, the prescribed threshold shall be 5 million rupees.

*[Added by GN 8/2009]*

#### **5B. Competitive negotiations**

(1) Where a public body engages in competitive negotiations pursuant to section 25B(1)(a), (b) or (c) of the Act, the public body shall, as far as reasonably possible, invite the participation of at least 5 bidders who have the technical and financial capacity to perform the contract.

(2) The minimum number of bidders to be shortlisted for competitive negotiations shall be 3.

(3) An invitation for participation under subsection (1) shall include –

- (a) a description of the subject matter to be procured;
- (b) the minimum requirements to be met by all bidders, confirming their financial and technical capacity;
- (c) the desired contractual terms and conditions;
- (d) the contract award criteria;
- (e) request to the bidders to itemise their prices to facilitate the public body in comparing offers; and
- (f) the deadline for submission of bids.

(4) Any requirement, guideline, document, clarification or other information relative to the procurement that is communicated by the public body to a bidder, before or during the competitive negotiations, shall be communicated at the same time and on an equal basis to the other bidders engaged in the negotiations with the public body, unless such information is specific or exclusive to that bidder or otherwise such communication would be in breach

of the confidentiality provisions of the Act.

(5) A public body may award a contract based on the initial bid, if this option was mentioned in the invitation to bid, or otherwise it can choose one or more stages of negotiation prior to seeking the final bids.

(6) Competitive negotiations between a public body and a bidder shall be confidential and no party to those negotiations shall reveal to any other person any technical, price or other market information relating to the negotiations without the consent of the other party.

(7) A public body may conduct the procedure in successive stages to reduce the number of bidders to negotiate with, provided that such procedure is mentioned in the bidding documents.

(8) Competitive negotiations shall not be based on the minimum requirements and award criteria but on improvements of the bids.

(9) The process of competitive negotiations shall be fully documented.

(10) Following completion of the rounds of competitive negotiations, the public body shall request all remaining bidders in the competition to submit, by a specified date and time, a best and final offer with respect to all aspects of their proposals.

(11) No competitive negotiations shall take place between the public body and bidders with respect to their best and final offers.

(12) The public body shall ensure that at the end of the competitive negotiations, the contract is awarded to the bid that best meets the award criteria.

[Added GN 280/2021]

## **5C. Emergency procurement**

(1) Subject to section 21 of the Act, where public interest demands the emergency procurement of any goods, works, consultancy services or other services, the chief executive officer of the public body shall evaluate the need for the emergency procurement and decide in the manner to proceed in order to guarantee value for money, with due regard to prevailing circumstances.

(2) Depending on the level of emergency and the time available, the chief executive officer of the public body may resort to the selection of the procurement method in the following order of hierarchy –

- (a) call off from an existing framework agreement;
- (b) extending or modifying an ongoing contract under the same terms and conditions;
- (c) call for competition using a restricted or open advertised bidding with accelerated timescales;
- (d) competitive negotiations;
- (e) direct award due to absence of competition or protection of exclusive

rights; or

(f) direct award due to extreme urgency.

(3) Before authorising any procurement under section 21 of the Act, the chief executive officer of the public body shall ensure that –

- (a) recourse to emergency procurement is to efficiently and effectively deal with situations of emergency, which would otherwise not be possible by resorting to normal procurement;
- (b) in case of goods, the quantities being purchased are for the duration of the situation of emergency, which should not exceed the lead time for obtaining delivery through a normal procurement exercise;
- (c) the procurement contract is awarded to suppliers who have a track record of supplying such goods, works, consultancy services or other services; and
- (d) the contract price for the goods, works, consultancy services or other services is fair and reasonable.

(4) For all awards made in respect of procurements under paragraph (3), the chief executive officer of the public body shall –

- (a) maintain appropriate record in accordance with regulation 70;
- (b) promptly publish a notice of award in accordance with regulation 71; and
- (c) thereafter, immediately submit a report to the Policy Office with –
  - (i) details of the emergency situation;
  - (ii) the subject matter of the procurement;
  - (iii) the name of the supplier, consultant or contractor; and
  - (iv) the value of the contract awarded.

*[Added GN 280/2021]*

## **6. Prequalification proceedings**

(1) A prequalification exercise shall be effected for the procurement of –

- (a) any large work for which the estimated cost exceeds 400 million rupees; or
- (b) any work, irrespective of the project costs, the execution of which may require specialised skilled expertise.

*[Amended by GN 8/2009]*

## **7. Bid evaluation procedures for contracts other than major contracts**

(1) For the purpose of designating members of bid evaluation committees, a public body shall maintain a list of qualified evaluators.

(2) When constituting a bid evaluation committee, a public body shall take into account the proper combination of expertise required and ensure that the selected evaluators have the required competence and expertise.

(3) The procedures to be followed by a bid evaluation committee and the manner in which the proceedings shall be carried out shall be in accordance with such guidelines issued by the Procurement Policy Office.

(4) A public body may, at the request of a bid evaluation committee, appoint an adviser or a technical sub-committee to assist it.

(5) The members of a bid evaluation committee may be paid such fees as may be determined by the public body.

## **8. Special circumstances for negotiation**

Negotiations may be carried out with a bidder or supplier where –

- (a) the lowest evaluated substantially responsive bid is substantially above the updated estimated costs and a re-bid exercise is considered not practical;
- (b) direct procurement from a single source under section 25(2)(b) of the Act is resorted to; or
- (c) emergency procurement under section 21 of the Act is resorted to.

*[Amended GN 71/2008]*

## **9. Debriefing of unsuccessful bidders**

The debriefing of an unsuccessful bidder shall be limited to information relating to –

- (a) the reasons for which his bid was unsuccessful;
- (b) reasons for which the bid of the successful bidder was retained.

## **9A. Performance rating of suppliers**

(1) Every public body shall set up a Performance Review Committee, which shall comprise of –

- (a) a senior officer, not below the rank of Deputy Permanent Secretary, as chairperson; and
  - (b) at least 2 other officers who are well conversant with project and contract management procedures.
- (2) The committee shall –
- (a) review the performance of suppliers and contractors in accordance with guidelines issued by the Policy Office;

- (b) assess cases of poor performance of suppliers and make recommendations to the Chief Executive Officer of the public body; and
- (c) review on-going projects, submit reports for works contracts above the threshold of 300 million rupees on a monthly basis to the Chief Executive Officer.

(3) Every contract shall be managed by persons who have been assigned such responsibility and where there is more than one person, a lead person shall be appointed, who shall –

- (a) during the implementation, report to the committee any serious breach by the supplier where it becomes necessary to initiate any action against the supplier; and
- (b) on completion of the contract, submit a report to the committee after evaluating and rating the performance of the supplier as per criteria set, and guidelines issued, by the Policy Office.

(4) The report on the performance and rating of the supplier shall be submitted to the supplier for any comment and representation, which shall be considered and, if required, changes made before it is submitted to the committee.

(5) The committee may make any change it deems appropriate after reviewing the recommendations of the lead person and the comments of the supplier before submitting its report to the Chief Executive Officer.

(6) Every public body shall post the performance rating of suppliers in a portal designated by the Policy Office for access limited to public bodies.

(7) Any supplier who has been poorly rated may not be awarded a contract by a public body where, after having obtained relevant details from the public body which has rated the supplier, sufficient evidence is available to reasonably indicate that the award of the contract to that bidder may pose high risks of deficient performance.

(8) For the purpose of paragraph (7), any poor performance rating older than 12 months shall not be considered.

[Added GN 292/2022]

## **10. Procurement planning**

(1) A public body shall engage in procurement planning in order to ensure that procurement is carried out within financial estimates allocated to it.

(2) A public body shall, in respect of every investment project, prepare a master procurement plan to cover the entire life of the project.

(3) A public body shall, at the beginning of every financial year, prepare an annual procurement plan which shall include –

- (a) the type and quantity of the goods, works or services to be procured;
- (b) the timing and implementation of the procurement;

- (c) an indication of possible packages of procurement, and their value;
- (d) an indication of possible pre-qualification proceedings and procurement methods to be used;
- (e) such other information as may be required in accordance with instructions issued by the Policy Office.

(4) A public body shall publish on its website an annual procurement plan and periodically update and revise it.

(5) In planning procurement for a major contract, a public body shall take into account the following –

- (a) identification and assessment of the need for the procurement;
- (b) designation of procurement planning team;
- (c) conducting market research in order to identify various technical solutions, in particular in the commercial market, to identify the range of available suppliers, and to determine the most favourable contractual and guarantee terms available in the commercial market that would be suitable for procurement;
- (d) identification of the amount and sources of financing;
- (e) studying acquisition history for similar goods, works or services;
- (f) defining and describing the procurement requirements;
- (g) estimate of the cost of a proposed procurement;
- (h) possible aggregation of procurement requirements, taking into account factors such as achieving economies of scale in purchasing, optimising use of procurement and contract administration resources;
- (i) possible slicing of the procurement into lots, provided that such slicing is not done to avoid thresholds beyond which more competitive procurement methods may be used, and where such slicing is indicated by factors such as whether an approach would provide the best overall value for the public body, possibility of technical compatibility regarding items purchased in separate lots, the possibility of allowing bidders to bid for individual lots or for the entire package, and measures to promote participation by small enterprises;
- (j) the availability of any procedures for procurement of common-use items;
- (k) selection of contracting approach and structure, including verification of possible availability of framework or indefinite quantity contract arrangements for the item in question;
- (l) selection of appropriate procurement method in accordance with sections 15 to 25 of the Act, and the reasons for use of a procurement method other than open bidding, and any possible combination and package of task or contract; and

- (m) determination and identification of required contract administration resources and responsibility.

(6) A public body may establish a Committee of Needs in accordance with instructions issued by the Policy Office, to plan any individual procurement identified in its annual procurement plan.

*[Amended GN 71/2008]*

## **11. Disclosure of agents**

(1) Upon submission of a bid, a foreign individual, firm, company or institution, shall specify whether or not any agent has been appointed in Mauritius, and shall mention –

- (a) the name and address of the agent;
- (b) the conditions of the agency agreement;
- (c) the amount of commission payable if any, the type of currency and mode of payment;
- (d) the tax registration number of the agent.

## **12. Non-discrimination**

(1) Subject to section 17 of the Act, a bidder shall be allowed to participate in procurement proceedings without regard to his nationality.

(2) A public body may accept the submission by a bidder of equivalent documentation when any document required by the bidding documents is not available or issued, as may be the case in the bidder's country.

(3) A public body may accept certification from a bidder attesting compliance with eligibility requirements.

## **13. Evidence of qualifications**

(1) The invitation to bid, the pre-qualification document, the bidding document and, in the case of procurement of services, the invitation for expression of interest and the request for proposals shall clearly outline the requirements and require the bidder to submit appropriate documentation to establish the required qualifications.

(2) The pre-qualification, bidding documents and the request for proposals shall specify the documents required to be submitted by the bidder and consultant.

## **14. Groups and associations of bidders**

(1) The bidding document shall disclose the requirements and procedures to be applied for assessing the qualification of a joint venture.

(2) An entity forming part of a joint venture shall not submit a bid, where the joint venture is a bidder, in relation to the same procurement.

## **15. Subcontractor qualifications**

(1) A public body shall require a bidder to provide qualification information and documentation for any major subcontractor involved in the performance of the contract.

(2) A public body may review and approve the qualifications of a subcontractor, if it considers the subcontractor's role as critical.

## **16. Manufacturer's authorisation**

The documentary evidence of the bidder's qualifications to perform the contract, if its bid is accepted, shall establish to the satisfaction of the public body that, in the case of a bidder offering to supply goods under the contract which the bidder did not manufacture or otherwise produce, the bidder has been duly authorised by the manufacturer or producer of the goods to supply and install the goods in Mauritius.

## **17. After-sale service**

(1) Subject to the complexity of equipment and availability of resources in the local market a public body may request proof of local after sale service back-up from a bidder.

(2) For an overseas bidder not doing business in Mauritius, the public body may request documentary evidence to establish to its satisfaction that the bidder will be, if the contract is awarded to the bidder, represented by an agent in Mauritius equipped and able to carry out the maintenance, repair and the stocking of spare parts as specified in the technical specifications.

## **18. Choice between prequalification and post-qualification proceedings**

(1) Subject to regulation 6, a public body may use prequalification or post-qualification procedure for any procurement.

(2) For works contracts and contracts for complex industrial plant and equipment, in which the cost of bid-preparation is high, prequalification procedure, in which only bidders who pass the minimum qualification requirements set forth in the prequalification documents are permitted to submit bids, shall be used.

(3) For contracts involving simple commodities, or manufactured goods, post-qualification procedure, involving the examination of the qualifications of only the first ranked bidder, shall be used.

## **19. Provision of prequalification documents**

Where prequalification proceedings are used, a public body shall provide prequalification document to all applicants that respond to the invitation to apply for prequalification.

## **20. Post-qualification proceedings**

(1) A public body shall determine whether the bidder that is identified as having submitted the lowest evaluated responsive bid is qualified to perform the contract in accordance with the criteria listed in the bidding document.

(2) A determination under paragraph (1) shall be based upon an examination of

the documentary evidence submitted by the bidder in accordance with the requirements specified in the bidding document.

(3) To verify its technical and production capability a bidder shall, if required to do so by the bidding document, provide with its bid documentary evidence to establish that any item offered has been in mass production and has been in satisfactory operation for the minimum period specified in the bidding document.

(4) (a) A determination under paragraph (1) in favour of a bidder shall be a prerequisite for award of the contract to the bidder.

(b) A negative determination under paragraph (1) shall result in rejection of the bid in which case a public body shall proceed to the next lowest evaluated bid to make a similar determination of that bidder's capabilities to perform satisfactorily.

(5) Subject to paragraph (6), where a prequalification proceeding has been carried out in a procurement proceeding, a post-qualification proceeding shall be carried out to verify that the selected bidder is still qualified.

(6) No new qualification criteria other than those specified in the post-qualification proceeding shall be imposed in determining whether a selected bidder is qualified.

## **21. Language of bidding document**

(1) All bidding documents, pre-qualification documents, bids, proposals or contract documents shall be in English.

(2) Any document submitted with a bid in a language other than English shall be accompanied by a certified or otherwise authorised translation into English.

(3) Notwithstanding paragraph (2), a public body may accept a document in French submitted with a bid.

*[Added 8/2009]*

## **22. Notice of procurement method to be used**

A public body shall include in the announcement (whether in the form of an invitation to bid or an invitation to apply for prequalification), or in any other document used to solicit a bid, a statement of the procurement method to be used in the procurement proceeding.

## **23. Confidentiality of bid evaluation**

Except as provided in the Act and in these regulations, any information relating to the examination, clarification, evaluation and comparison of bids shall not be disclosed to bidders or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bids should be accepted.

## **24. Informing diplomatic missions**

For the purposes of an open international bidding, the diplomatic missions accredited to the Government of Mauritius, whose countries are potential sources for the subject matter of the procurement, may be served with the invitation to bid, or the invitation to apply for pre-qualification.

## **25. Price adjustment**

(1) Subject to paragraph (2) a procurement contract may provide for the possibility of price adjustment to take into account changes in economic circumstances.

(2) No price adjustment shall be allowed unless specific provisions are made in the procurement contract.

(3) No price adjustment shall be allowed during the period of delay in performance if the delay is caused by the supplier or contractor.

*[Amended GN 8/2009]*

(4) Where the procurement contract provides for the possibility of price adjustment, the contract shall specify the conditions, such as increases or decreases in the cost of materials, labour, and energy, in which price adjustment is permitted, the formulas and indices to be referred to in order to determine whether economic conditions have altered to a significant enough degree to justify a price adjustment and to identify the amount of increase or decrease, the frequency with which price adjustments may be implemented, and the procedures to be followed.

(5) Where the contractor fails to complete the works to be carried out under the work schedule within the time limit as specified in the contract due to unjustified delays and taking more time than that was prescribed to complete such a work, the price as referred to in paragraph (1) shall not be increased.

## **26. Submission of Bids**

(1) Bids shall be submitted to only one place, in accordance with the instructions in the bidding document.

(2) Deadlines for submission of bids shall not be less than 30 days from the date of issuance of the invitation to bid through open advertised bidding method, except for bids

(a) made by electronic means; or

(b) in relation to simple projects not exceeding 100 million rupees.

*[Amended 71/2008, GN 256/2020]*

(3) A bidder shall submit the bid duly signed by him, and accompanied by a power of attorney, if so required, in the required number of copies and in a sealed envelope, as specified in the bidding documents.

(4) A bidder shall enclose his technical and financial proposals, separately sealed if so required, in a single envelope.

(5) If the bid is delivered by hand, the public body shall, on request, provide a receipt showing the date and time of the receipt of the bid.

(6) A bidding document may provide for submission of quotations by facsimile, e-mail or by any other electronic means in accordance with such instructions as may be issued by the Policy Office.

*[Amended 71/2008]*

## **27. Reception and security of bids**

(1) A public body shall maintain a securely-locked bid box into which bidders may deposit their bids.

(2) If the size of the offer envelope makes it impossible to place them in the bid box, such envelope shall be handed over to the officer in charge of the Registry of the public body, who shall record the date and time of receipt, ensure that the bids are kept in a secure area and handed over to the tender committee at the bid opening.

(3) In addition to direct deposit in the bid box, bids may be submitted by registered mail, courier or any other means that may be specified in the bidding document.

(4) Any bid received in the manner provided for in paragraph (3) shall be promptly placed in the bid box or secured and kept confidential.

(5) A public body shall ensure that all bids received are kept in a secure manner so as not to permit the bids to be opened by accident or viewed.

(6) A bid received without proper sealing of the envelope or one accidentally opened by mistake shall be resealed and inserted in the tender box or other safe location together with other bids.

(7) No disclosure of the bids shall be made to any person prior to opening of bids.

(8) Any sample submitted should be handled in a confidential and secure manner so as not to lead to the disclosure of their characteristics prior to the opening of bids.

## **28. Requirements applicable to bid securities**

(1) Subject to subsections (2) and (3), where a bid security is required, a public body shall indicate in the bidding document the type and form of the security in order to be acceptable.

(2) The type and form of the security indicated in the bidding document shall be in accordance with the instructions provided for in the standard bidding document.

(2A) (a) A bid security shall be required in procurement where the estimated value of the procurement exceeds 200 million rupees.

(b) A public body may request a bid security for procurement of an estimated value which is less than 200 million rupees in accordance with instructions issued by the Policy Office.

*[Amended 8/2009]*

(3) Prior to submitting a bid, a bidder may request the public body to confirm the acceptability of a proposed issuer or confirmer of a bid security and where required, the public body shall respond promptly to such a request.

(4) Any confirmation of the acceptability of a proposed issuer or of any proposed confirmer shall not preclude the public body from rejecting the bid security on the ground that the issuer or the confirmer, as the case may be, has subsequently become insolvent or

otherwise lacks creditworthiness, in such a case, a bidder shall be permitted to replace the unacceptable security by an acceptable one.

(5) A bid security shall be subject to a demand for payment in the following circumstances –

(a) if the bidder withdraws, cancels or substantially modifies the bid after the bid opening, during its period of validity;

(b) if the bidder does not accept a correction of an arithmetical error; or

(c) if the bidder, having been notified of the acceptance of its bid during the validity of the bid, fails to sign the contract if so required or fails to furnish a performance security if so required.

(6) A public body shall make no claim to the amount of the bid security, and shall promptly return the bid security after –

(a) the expiry of validity period 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 document;

(c) the termination of the bidding proceedings without the entry into force of a procurement contract; or

(d) the withdrawal of the bid prior to the deadline for the submission of bids, whichever is earlier.

(7) A public body may not request a bid security for single source procurement or from overseas suppliers in respect of goods obtainable only from a limited number of suppliers.

## **29. Required validity period of bid security**

(1) A bidding document shall require that the bid security provided by a bidder shall have a validity period extending for a period of 30 days beyond the expiry of the validity period of bids, so as to allow the public body sufficient time to make a demand for payment under the bid security.

(2) All bid securities submitted by bidders shall be returned to unsuccessful bidders once it is determined that their bids will not be selected.

## **30. Bid validity period**

(1) A bidding document shall specify a bid validity period so as to enable the public body to complete the examination, evaluation and comparison of bids and to obtain all the necessary approvals so that the award of the contract can be notified within that period.

(2) Subject to paragraph (3) a bid validity period shall –

(a) for local bidding be of a period not exceeding 90 days;

(b) for international bidding be of a period not exceeding 120 days.

(3) For any complex major contracts, a bid validity period shall be of a period not exceeding 180 days.

(4) If, prior to the expiry of the validity period of bids, a public body considers that additional time is required to complete all steps and notify an award, the public body shall request all bidders to extend, subject to paragraph (4A), for a period not exceeding the initial validity period.

(4A) (a) No bid validity period shall be extended more than once, except where further extension is required in the following circumstances –

- (i) pending the determination of an application for review by the Review Panel;
- (ii) to re-evaluate the bids following a decision by the Review Panel;
- (iii) a case, in relation to the bid, is lodged before the Court; or
- (iv) the country is seriously threatened by, or is actually confronted with, a pandemic or any other catastrophe.

(b) Every public body shall maintain a complete record of any extension, with such justifications as may be necessary for audit purposes.

*[Revoked and replaced GN 280/2021]*

(5) A refusal by a bidder to extend the bid validity period shall not result in the forfeiture of his bid security.

(6) Any extension of the bid validity period shall be subject to a corresponding extension of the bid security, failing which a bid shall be deemed not to be extended.

*[Amended GN 8/2009, GN 256/2020]*

### **31. Cancellation of proceedings before opening of bids**

(1) *[Revoked GN 227/2016]*

(2) A cancellation of procurement proceeding may be made –

(a) when the object of the procurement is no longer required; or

(b) when the bidding document has to be modified so substantially that it will be more efficient and convenient to cancel the bid invitation, revise the document and re-issue an invitation to bid.

(3) If the procurement proceeding is cancelled before opening of bids, any bid received shall be returned unopened.

*[Amended GN 227/2016]*

### **32. Opening of bids**

(1) Every bid shall be opened in only one place and at the time specified in the bidding document.

(2) At the opening of bids, in addition to the name and address of each bidder whose bid is opened and the bid price read out, the price of any alternative bid, any discount and presence or absence of any bid security shall be announced to any person present at the opening of bids and recorded in the minutes of the bid opening.

(3) No decision as to the acceptance or rejection of any bid shall be taken or announced in the bid opening session.

### **33. Rejection of late bids**

(1) A bid received by the public body after the deadline for the submission of bids shall not be opened and shall be returned to the bidder.

(2) The date and time of arrival of any late bid shall be noted in the report of the procurement proceedings.

### **34. Time frame for examination and evaluation of bids**

A public body shall carry out promptly and in an efficient manner the examination and evaluation of bids after the opening of the bids, taking into account the validity period of the bids.

### **35. Margin of preference**

(1) Where applicable, the financial evaluation stage shall involve the application of price preference in favour of domestically manufactured goods and domestic and foreign contractors and a regional price preference where the regional preference is applicable.

(2) Any applicable preference shall be stated in the bidding document and shall be in accordance with directives issued by the Policy Office.

*[Amended GN 71/2008, 86/2009]*

### **35A. Advantage to domestic goods**

For the purpose of section 16(2) of the Act, a public body may grant an advantage to domestic goods provided that the criteria to grant the advantage are spelt out in the bidding documents and are in accordance with such directive as the Policy Office may issue.

*[Added GN 256/2020]*

### **36. Cancellation of procurement proceedings after opening of bids**

(1) A public body may, at any time, cancel the procurement proceedings where the object of the procurement is no longer required.

(2) No decision to cancel the procurement proceedings shall be taken unless the Chief Executive Officer of the public body concerned has given the approval to the cancellation.

*[Amended GN 256/2020]*

### **37. Rejection of all bids or cancellation of procurement proceedings**

A notice of the rejection of all bids or cancellation of the procurement proceedings shall state the grounds for the rejection of all bids, or for the cancellation of the procurement proceedings, as the case may be.

### **38. Notification of Award**

(1) Following the identification of the successful bidder in accordance with section 40 of the Act, a public body shall –

- (a) notify the bidder of the proposed award of the contract within 5 days from the date of receipt of approval from the Central Procurement Board;
- (b) promptly publish notice of every procurement award as provided under regulations 71.

(2) Notwithstanding paragraph (1)(a) where a public body considers that it requires more than 5 days, it shall promptly notify the Board and the Policy Office giving reasons for an extension of the delay.

(3) For the purposes of section 40(3) of the Act, the prescribed threshold shall be 15 million rupees.

*[Amended 71/2008, 8/2009, 86/2009]*

### **39. Acceptance and entry into force of contract in bidding proceedings**

(1) Unless the bidding document indicates that a procurement contract is required to be signed by both parties, the bidding document shall indicate that a contract in accordance with the terms and conditions of the accepted bid and the bidding documents enters into force when a notice of acceptance is dispatched to the selected bidder provided that the notice of acceptance is dispatched while the bid is still valid.

(2) A notice under paragraph (1) is dispatched when it is properly addressed or otherwise directed and transmitted to the bidder.

(3) Where a procurement contract is required to be signed, the bidder shall do so within a reasonable period of time after the notice referred to in regulation 38 is dispatched to the bidder, in accordance with such time period as may be indicated in the bidding documents and in the notice.

(4) Between the time when the notice referred to in regulation 38 is dispatched to the bidder and the entry into force of the procurement contract, no action shall be taken by the public body or the bidder that interferes with the entry into force of the procurement contract or with its performance.

(5) In the event of a failure of the bidder whose bid has been accepted, to sign a written procurement contract in accordance with the bidding document, if required to do so, or to provide any required security for the performance of the contract, a public body shall select the next lowest evaluated bid in accordance with the evaluation criteria specified in the bidding document from among the remaining bids.

(6) A public body shall not request or require a successful bidder to sign a contract

which varies with the terms and conditions specified in the bidding document.

(7) *[Revoked GN 75/2013]*

*[Amended GN 75/2013]*

#### **40. Design Contests**

In appropriate cases, such as the procurement of architectural designs or urban planning designs, a public body may conduct a design contest for the purposes of selecting a design in accordance with such procedure as may be approved by the Policy Office.

#### **41. Restricted bidding**

- (1) For the purpose of section 19(1)(b) of the Act, the threshold amount shall –
- (a) for the procurement of goods, be 5 million rupees; and
  - (b) for the procurement of works and other services, be 10 million rupees.

*[Revoked and replaced GN 292/2022]*

(2) For the purpose of section 19(2)(b) of the Act, the bidders from whom bids are directly solicited shall, as far as reasonably possible, include at least 2 SMEs.

(3) For the purpose of this regulation –

“SMEs” has the same meaning as in the Small and Medium Enterprises Development Authority Act.

*[Amended GN 25/2012]*

#### **42. Standing lists (Approved list of suppliers/contractors)**

(1) The following shall apply for the maintenance and use of registration and classification systems in restricted bidding procedures, and to any databases and lists of interested or approved parties –

- (a) the database or list shall only be maintained for the information of various public bodies and any non-inclusion in the database or list shall not preclude consideration of a firm if it meets the eligibility and qualifications specified in the invitation documents;
- (b) requests to be classified, or to be entered in the database or list, shall be receivable at any time from any interested party and shall be acted upon within a reasonably short period of time;
- (c) the existence of the classification system, database or list, the conditions to be satisfied by parties to be entered in the classification system, database or list, the methods according to which satisfaction of each of those conditions is to be verified, the period of validity of an entry in the classification system, database or list and the procedures for entry and for renewal of the entry shall be generally and regularly publicised in such manner so as to bring them to the attention of interested parties; and
- (d) listed parties shall be given prompt notice of their inclusion or removal

from the classification system, database or list.

(2) Any classification system, or other database or list shall be designed to be easily retrievable, including, where feasible, in electronic form, by the widest possible audience, and shall be regularly reviewed and updated.

#### **43. Community and end-user participation**

(1) In the interest of providing employment to local communities, a public body may decide to execute small construction works, including maintenance and repair, through local user committees.

(2) For procurement through a user's committee, the Policy Office shall establish procedures to ensure -

- (a) clarity as to the cases in which a user's committee can be utilised, which should normally be labour intensive and where better value may be obtained by the participation of the community and end user;
- (b) that the arrangement with the user committee is on the basis of an agreement signed between the public body and the user's Committee, which stipulates the outputs, the user's role, mechanisms for community representation, reporting obligations, budget, and procedures for supplementary procurement;
- (c) effective mechanisms for representation of the user;
- (d) effective and accountable use of the funds involved for the specified objectives and outputs, including the monitoring of implementation; and
- (e) record-keeping obligations.

#### **44. Direct Procurement**

(1) For the purpose of section 25(2)(a) of the Act, a public body may resort to direct procurement –

- (a) in the case of procurement of goods, where the value does not exceed 500,000 rupees provided that the total cost per single item does not exceed 100,000 rupees;
- (b) in the case of procurement of works, consultancy services or other services, the value does not exceed 500,000 rupees.

(2) A public body shall maintain records showing details of oral or informal quotations sought from suppliers prior to the award of the contract.

(3) For the purposes of section 25(2)(c) and 25(2)(d) of the Act the limit shall be fifty percent and thirty percent respectively of the initial contract value.

*[Amended GN 71/2008]*

#### **45. General Policy of diligence**

(1) Prior to awarding a procurement contract by way of direct procurement under

section 25 of the Act, a public body shall ascertain that –

- (a) the item to be procured is not available in existing stores or under any applicable framework agreement;
- (b) the provider possesses the qualifications required to perform the procurement contract;
- (c) the quality and technical aspects of the provider's proposal meet the requirements of the public body; and
- (d) the price to be paid to the provider is fair and reasonable.

#### **46. Procurement of goods and services of common use**

The Policy Office may assign the responsibility for the standardisation and bulk contracting of goods and services of common use and the maintenance of a database of suppliers to any public body it deems appropriate.

#### **47. Invitation for expression of interest and preparation of shortlist**

(1) For the purposes of section 24(2)(a) and (b) of the Act, the threshold shall be 20 million rupees.

*[Amended GN 292/2022]*

(2) For the purposes of section 24(3), the public body shall include in the request to the short-listed consultant such information to enable the public body to make a judgment on the firm's suitability and shall not be so complex so as to discourage a consultant from expressing his interest.

(3) A notice seeking an expression of interest shall include –

- (a) the identification of and contact information for the public body;
- (b) an identification and general description of the assignment or project in question, including the working location, and any project identification code;
- (c) the date of issue of the notice, and the closing date and instructions for submission of the expression of interest;
- (d) any source of funding;
- (e) the projected time period for implementation and completion of the assignment;
- (f) the qualification criteria to be met to be short-listed.

(4) In order to determine the capability and experience of consulting firms seeking to be short-listed, the information requested shall include -

- (a) a profile of the company, its organisation and staffing;
- (b) in the case of associations between two or more firms, the name,

address and profile of the participating firm, and nature of the association such as joint venture, subcontract;

- (c) identification of any lead firm;
- (d) details of experience or similar assignments undertaken in the previous 5 years, including their locations;
- (e) the focus on the firms' role in similar assignments in the region or elsewhere;
- (f) the curriculum vitae of staff who could be available to work on the assignment;
- (g) in the case of individual consultant, the curriculum vitae of the consultant;
- (h) a statement that short-listed consultants will be invited to submit proposals;
- (i) the number of copies of the requested information to be submitted, and the address to which submission is to be made, and from which additional information may be obtained.

(5) A minimum of 15 days from the date of publication of the notice shall be provided for submission of expressions of interest.

(6) A consultant who has expressed interest shall be informed of the final short list of firms.

(7) (a) A short list of at least 3 firms shall be prepared pursuant to the assessment of the information furnished.

(b) In preparing the shortlist the public body shall endeavour to include different nationalities and backgrounds and where possible at least one local firm so as to provide a wide variety of approaches for the public body to make a choice.

(8) Where there is not adequate number of responses to result in the minimum number of 3 qualified firms, the advertisement shall be repeated.

(9) The final shortlist may include well-qualified consultants that did not respond to the solicitation of expression of interest where there is a need to make up a minimum number.

(10) Where the value of the procurement does not exceed the amount referred to in paragraph (1), the shortlist may be drawn up on the basis of the public body's own knowledge and information.

*[Amended GN 71/2008]*

#### **47A. Specific types of works contracts and estimated contract values**

(1) For the purpose of section 26B(1) of the Act, the specific types of works contracts, specified in the first column of the Sixth Schedule, which have an

estimated contract value as specified in the second column of that Schedule, shall be reserved for microenterprises, small enterprises and medium enterprises.

(2) (a) Every public body shall, with the approval of the supervising officer of that public body, determine the contract value for the procurement of any specific type of works contract.

(b) Any determination made under subparagraph (a) shall be based on an objective computation of the costs associated with that specific type of works contract.

(3) A public body shall –

(a) conduct procurement proceedings for any specific type of works contract in accordance with the Act and these regulations; and

(b) apply a margin of preference for any specific type of works contract.

(4) Where the value for a project of a specific type of works contract exceeds the estimated contract value, the public body shall not split that project into 2 or more projects with a view to bringing each project within the estimated contract value.

(5) A public body shall, not later than 31 January and 31 July of every financial year, submit electronically or otherwise, to the Policy Office, a half-yearly report of the specific types of works contracts with the following information –

(a) details in respect of number of bidders invited to submit bids;

(b) procurement methods used, including open advertising bidding or restricted bidding;

(c) responses in terms of number of bids received; and

(d) compliant bids and reasons for non-compliance.

*[Inserted 209/2017]*

#### **47B. Reserved contracts for specific types of goods and other services**

For the purpose of section 26B(1) of the Act, for contracts of specific types of goods and other services, specified in the first column of the Seventh Schedule, which have an estimated contract value as specified in the second column of that Schedule, shall be reserved for microenterprises, small enterprises and medium enterprises.

*[Inserted GN 256/2020]*

#### **47C. Reserved contracts for works up to 20 million rupees**

Works contracts up to the value of 20 million rupees shall be reserved to small contractors who –

(a) have an annual turnover of 10 million rupees and above but not exceeding 30

million rupees; and

- (b) are registered as small contractors under the Construction Industry Development Board Act.

*[Amended GN 292/2022]*

#### **48. Challenge and appeal procedures**

(1) A challenge under section 43 of the Act shall be made in the form set out in the Second Schedule.

(2) For the purposes of section 43(3)(b), a challenge shall not be entertained unless it is submitted within 5 days from the invitation to bid or from the opening of bids.

(3) Where the challenge concerns any aspect of the procurement process prior to the award of the contract, the Chief Executive Officer of the public body concerned shall in the case of a major contract, obtain all relevant information from the Board.

(4) Unless the challenge is resolved by mutual agreement, the Chief Executive Officer of the public body shall issue a written decision stating his reasons within 7 days of the filing of the application.

(5) Where the Chief Executive Officer of the public body fails to issue a decision within 7 days or if the bidder is not satisfied with his decision, the bidder may apply for review to the Review Panel, provided that the application is filed within 7 days of receipt of the decision of the public body or the time when that decision should have been received.

(6) For the purposes of section 45(1)(c) of the Act the threshold shall be 1 million rupees.

(7) An application for review under section 45(1)(c) of the Act, from an unsatisfied bidder after the entry into force of a procurement contract the value of which is above the prescribed threshold, as specified in paragraph (6), stating that he is not satisfied with the procurement proceedings on a ground specified in section 43(1), shall be made within 5 days of the date the applicant becomes aware of alleged breach.

*[Amended GN 75/2013]*

#### **49. Required contents of application for review**

An application for review by the Review Panel shall be made in writing in the form set out in the Third schedule.

#### **50. Filing of application**

(1) A challenge or an application for review may be filed by hand delivery, mail or commercial courier. (2) A challenge or an application for review is deemed to be filed on a particular day when it is received by the public body, or, where applicable, by the Review Panel, by close of business on that day.

#### **51. Security Deposit and processing fee**

- (1) The submission of an application for review shall be accompanied by –

- (a) a security deposit of an amount of –
  - (i) 100,000 rupees, in the case where the application relates to the bid opening process or the award of a major contract; or
  - (ii) 25,000 rupees, in any other case; and
- (b) a non-refundable processing fee of 50,000 rupees.

(2) The security deposit shall be forfeited where the Review Panel dismisses the application as frivolous.

*[Amended GN No. 8/2009, 75/2013, 175/2013]*

**52.** *[Revoked GN 75/2013]*

### **53. Disclosure by public body**

(1) The public body shall promptly make available to the Review Panel any information and documentation that the Review Panel may request, including –

- (a) the bid or proposal submitted by the applicant;
- (b) the bid or proposal of the bidder that is being considered for award, or whose bid or proposal is being reviewed;
- (c) all qualification assessment and evaluation documents;
- (d) the invitation to bid or request for proposals, including the specifications;
- (e) the abstract of bids or proposals;
- (f) requests for clarification of the bidding documents or request for proposals and responses thereto; and
- (g) any other relevant documents.

(2) In appropriate case the Review Panel may request the applicant to produce relevant documents, that are not in the custody of the public body.

(3) The Review Panel may request or allow the submission of additional statements by the parties and by other parties not participating in the application for review as may be necessary for the fair resolution of the application for review.

### **54. Expeditious delivery of communications**

All communications related to the application for review shall be sent promptly to the Review Panel.

### **55. Reply and comments on application for review by Independent Review Panel**

(1) For the purposes of section 45(2B)(b) of the Act, the public body shall, not

later than 7 days from the date of receipt of the copy of the application, particulars, statement of case and witness statement, forward its reply and comments thereon to the Review Panel, with copy to the applicant.

(2) On receipt of the copy of the reply and comments referred to in paragraph (1), the applicant may, within 7 days of the date of receipt, submit his reply and comments thereon to the Review Panel, with copy to the public body.

*[Revoked and replaced GN 75/2013, amended 198/2015]*

## **56. Dismissal of Application for Review**

An application for review may be dismissed for –

- (a) failure to comply with any of the requirements of sections 43 to 45 of the Act, and these Regulations;
- (b) setting forth allegations that do not state a valid basis for an application for review, or that do not set forth a detailed legal and factual statement;
- (c) having been filed in an untimely manner, either at the initial level of review by the public body, or with respect to deadlines for filing an application for review by the Review Panel; or
- (d) contract implementation or administration instead of contract award.

## **57. Hearings**

(1) At the request of the applicant for review or on its own initiative, the Review Panel may, where it deems appropriate, conduct a hearing.

(1A) Notwithstanding paragraph (1), the Review Panel shall offer to conduct, as far as reasonably possible, reviews based on submissions without hearings or through remote or virtual hearings.

*[Inserted GN 292/2022]*

(2) A hearing shall be completed –

- (a) within 7 days from the date of receipt of the reply and comments, if any, made by the applicant pursuant to regulation 55(2); or
- (b) in the absence of any reply and comments under subparagraph (a), within 14 days from the date of receipt of the reply and comments made by the public body pursuant to regulation 55(1).

(3) The Review Panel shall request the applicant and the public body concerned to attend a hearing.

(4) The Review Panel may restrict attendance during all or part of the proceeding where it considers appropriate.

(5) During the hearing all proceedings shall be recorded and transcribed.

*[Amended GN 75/2013]*

## **57A. Decision of Review Panel**

(1) For the purposes of section 45(8)(a) of the Act, the period shall, in respect of an application made –

- (a) from 15 August 2015 to 31 October 2015, be not later than 30 November 2015;
- (b) on or after 1 November 2015, be within 30 days of the date of the application.

(2) For the purposes of section 45(8)(b) of the Act, the period in respect of an application made before 15 August 2015 shall be not later than 30 November 2015.

*[Inserted GN 75/2013, revoked and replaced GN 198/2015, GN 217/2015]*

## **58. Recording of dispositions**

Any decision by the public body or the Review Panel pursuant to section 45 of the Act, shall be made part of the record of the procurement proceedings.

## **59. Notice to the Independent Review Panel**

The public body shall promptly notify the Review Panel and the Policy Office of the action it has taken in response to the decision of the Review Panel.

## **60. Inspection and acceptance of goods**

(1) The public body shall establish appropriate procedures and mechanisms for inspecting and examining supplied goods in accordance with applicable supply management procedures.

(2) The public body may designate one or more agencies to supervise and inspect the performance with the technical requirements of procurement contracts and applicable quality standards.

(3) The inspecting official or agency designated under paragraph (2) shall inspect and examine the supplied items and compare with the stamped and approved samples and other specifications, putting aside the rejected goods to be returned to the supplier. The inspecting official or agency shall examine varying percentages following principles of statistical sampling methods.

(4) The inspecting official shall prepare an inspection report indicating acceptance or rejection of the goods. The report shall indicate the percentage that the inspecting official has examined, the names, specifications, results of testing.

(5) In the event of a dispute between the supplier and the inspecting official or agency, such dispute shall be submitted to the dispute settlement procedures under the procurement contract.

## **61. Acceptance report**

(1) An acceptance report by the public body shall contain the following –

- (a) the contract reference number;
- (b) a description of the item or service received;
- (c) the date of delivery and acceptance;
- (d) the authorised signature in writing, or in electronic form where that form is acceptable to the public body and provides the requisite security, subject to approval by the Policy Office.

(2) An acceptance report shall be transmitted promptly to the appropriate disbursement authorities for payment.

## **62. Prompt payment**

(1) Payments due to the supplier shall be made in accordance with the deadlines specified in the procurement contract, failing which, the supplier shall be compensated by payment of interest in accordance with the provisions of the procurement contract.

(2) Where the procurement contract provides for a prompt payment discount, such a discount shall be applied if the public body makes payment in accordance with the terms of the prompt payment discount provision.

## **63. Early completion bonus**

The procurement contract may provide for payment of a bonus to the contractor for early completion.

## **64. Termination for convenience**

(1) Where the contract is terminated for convenience, the public body shall authorise payment for the value of the work done, goods or services supplied, the reasonable cost of removal of equipment, repatriation of the supplier's personnel employed solely on the works, and the supplier's costs of protecting and securing the works, where applicable, and less any advance payment received by the contractor up to the date of the notice of termination.

(2) For any remaining goods, the public body may elect –

- (a) to have any portion completed and delivered at the contract terms and prices; or
- (b) to cancel the remainder and pay to the supplier an agreed amount for partially completed goods and services and for materials and parts previously procured by the supplier.

## **65. Remedies for breach of contract**

(1) The procurement contract shall specify the remedies available to the public body in the event of breach of the procurement contract by the contractor.

(2) The remedies referred to in paragraph (1) shall include –

- (a) rejection of defective performance;

- (b) prompt removal and replacement of defective goods;
- (c) liquidated damages for delay, in accordance with a rate specified for each week or other unit of time, or part thereof, of delay;
- (d) termination of the contract and purchase of replacement performance, at the expense of the defaulting party;
- (e) such other remedies as may be available under the applicable law.

#### **66. Liquidated damages**

(1) The procurement contract may provide that the contractor is liable for payment of an agreed sum for delay in the performance due under the contract.

(2) Where a clause for payment of liquidated damages is provided in the contract, it shall specify –

- (a) the agreed sum to be paid per unit time of delay;
- (b) the maximum amount due under the liquidated damages clause; and
- (c) that the contractor is not relieved of its liability for performance of the procurement contract by virtue of payment under the liquidated damages clause.

#### **67. Agreement to submit disputes to arbitration**

The parties to a procurement contract may agree in the procurement contract, or by a separate agreement, to submit any dispute arising out under the procurement contract for settlement by arbitration.

#### **67A. Variation and amendment of contracts**

For the purpose of section 46(4A) of the Act, any variation, adjustment and amendment to a major contract shall require the approval of the Board where the increase in contract value is at least –

- (a) 10 million rupees in respect of a contract not exceeding 100 million rupees;
- (b) 20 million rupees in respect of a contract of not less than 100 million rupees and not more than 300 million rupees;
- (c) 30 million rupees in respect of a contract exceeding 300 million rupees.

*[Inserted GN 227/2016]*

#### **68. Disclosure**

Except for the purpose of section 51(1)(e) of the Act or as otherwise ordered by a Court, a public body shall not disclose –

- (a) information if its disclosure is contrary to public interest, will prejudice legitimate commercial interests of the parties or will inhibit competition;

- (b) information relating to the examination, evaluation and comparison of bids other than the report prepared pursuant to section 37 of the Act.

[Amended GN 280/2021]

## **69. Availability of record for oversight agencies**

The report and the register of the procurement proceeding, as well as all the documents generated in the planning and procurement proceedings, and implementing procurement contracts, shall be made available for inspection to the Policy Office and the Director of Audit.

## **70. Record keeping and reporting requirements**

- (1) Every public body shall keep record of every procurement proceeding.

(2) The record shall include documentation relating to the proceeding such as the invitation to bid, decision of award, work take-over certificate and any other information on the method of the supplier's completion of his commitment.

## **71. Notice of procurement contract award**

(1) In the case of procurement contracts whose value exceeds the prescribed threshold, the public body shall cause a notice of the procurement contract to be published in its website and in the public procurement portal of the Policy Office within 7 days of the signature of the contract.

[Amended GN 280/2021]

(2) The notice referred to in paragraph (1) shall refer to the announcement of the procurement published at the commencement of the procurement proceedings and shall include the subject matter of the procurement, the name and address of the successful bidder, the contract price and uploading of a scanned copy of the following documents –

- (a) letter of acceptance;
- (b) signed contract agreement form;
- (c) bid submission form;
- (d) addenda, if any; and
- (e) special or particular conditions of contract.

(3) Notwithstanding paragraph (2), the information shall be updated with amendments or variations made during the course of implementation of the contract.

[Amended by GN 8/2009, GN 256/2020]

## **72. Identification of activities of public body subject to conflict of interest restrictions**

For the purpose of section 51 of the Act, the restriction of public official in respect of conflict of interests shall include –

- (a) Procurement planning, including preparation, review or approval of specifications, or a statement of work for a particular procurement;
- (b) assessment of requirements to be fulfilled by a procurement action;
- (c) preparation of procurement documents, including for solicitation of participation in procurement proceedings;
- (d) evaluation and comparison of bids, proposals, offers or quotations, including membership in bid evaluation committees;
- (e) conduct of technical discussions or negotiations;
- (f) selection or approval of selection of bidder; and
- (g) administration of the procurement contract, including payments, and settlement of claims and disputes.

### **73. Avoidance of conflicts of interest in consultant services**

(1) A consultant shall provide professional, objective, and impartial advice and at all times hold the client's interests paramount, without any consideration for future work, and strictly avoid conflicts with other assignments or their own corporate interests.

(2) No consultant shall be hired for any assignment that would, by its nature, be in conflict with their prior or current obligations to other clients, or that may place him in a position of not being able to carry out the assignment in the best interest of the public body.

(3) Without limitation on the generality as provided for in paragraphs (1) and (2), a consultant shall not be hired under the following circumstances -

- (a) a firm which has been engaged by the public body to provide goods or works for a project, and any of its affiliates, shall be disqualified from providing consulting services for the same project;
- (b) a firm hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods or works or services related to the initial assignment, other than in the case when, subject to satisfactory performance of the initial assignment, it is essential for continuity that there be a continuation of the firm's earlier consulting services for the same project.

(4) Paragraph (3) shall not apply to firms (consultants, contractors, or suppliers) that together are performing the supplier's obligations under a turnkey or design-and-build contract.

### **74. Restrictions outside employment and interests**

A public official involved in public procurement proceedings shall not directly or indirectly accept any type of employment from a bidder, or from a party to a procurement contract with the government.

### **75. Undue influence**

(1) If any bidder tries or causes to try to exert undue influence or pressure of any kind in relation to his or anyone else's tender, the bid of such a bidder shall be rejected.

(2) Where a bid is rejected pursuant to paragraph (1), the public body shall keep a record of any rejected bid.

#### **76. Conspicuous notice of prohibitions**

The bidding and contract documents shall specify that a bidder is not permitted to –

- (a) enter into contingent fee or commission arrangements;
- (b) directly or indirectly offer, give or agree to give inducements as referred to in section 51 of the Act.

#### **77. Disclosure of offer of inducement or other corrupt, fraudulent or coercive Practices**

(1) Any public official who is offered an inducement contrary to section 51 of the Act, or becomes aware of any other corrupt, fraudulent or coercive practice in connection with procurement, shall report such offer, or other corrupt or fraudulent practice, to the Chief Executive Officer of that public body or to the Policy Office.

(2) Paragraph (1) shall be in addition to and not in derogation with the provisions of the Prevention of Corruption Act 2002.

#### **78. Confidentiality of procurement information**

(1) Except for the purposes of auditing or upon an order of a Court, no public official is permitted to disclose to any third party, whether for personal gain or for any other motive, confidential or proprietary commercial information obtained by virtue of his involvement in, or contact with officials involved in, procurement proceedings or the planning of procurement.

(2) No information relating to the examination, evaluation and comparison of bids shall be disclosed to bidders or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bid should be accepted, except as provided for in section 37 of the Act.

#### **79. Confidentiality obligations of third parties**

(1) The requirement of confidentiality imposed on public officials by virtue of section 51 of the Act extends to any other person acting on behalf of a public body in procurement proceedings.

#### **80. Oath**

Every member or officer shall, on assumption of duty, take the oath as specified in the Fourth Schedule.

#### **81. Declaration of assets**

Every member or officer shall file with the Secretary to the Cabinet, within 30 days of his appointment and upon termination of his appointment, a declaration of his assets and

liabilities as specified in the Fifth Schedule.

**82. Commencement**

These regulations shall come into operation on 17 January 2008.

Made by Minister on 14 January 2008 on the recommendation of the Policy Office.

## FIRST SCHEDULE

(regulation 2)

<b>Public body</b>	<b>Type of contract</b>
<b>PART I</b>	
	Goods purchased for resale, including services incidental to the purchase or distribution of such goods.
Agricultural Marketing Board	
Central Electricity Board	
Outer Islands Development Corporation	
State Trading Corporation	
<b>PART II</b>	
Independent Commission Against Corruption	All contracts.
<b>PART III</b>	
Mauritius Examination Syndicate	Goods purchased, including services, relating to or for the purpose of the holding of examinations.
<b>PART IV</b>	
Mauritius Broadcasting Corporation	Purchase of films or acquisition of transmission rights for public broadcasting.
<b>PART V</b>	
Competition Commission of Mauritius	Procurement of forensic services in relation to searches and seizures.
Economic Development Board	Procurement of legal, lobbying, consultancy or other services required to protect the national interest by strengthening the position of Mauritius at international level
Ministry responsible for Rodrigues	Procurement of transportation, storage and distribution services for –  (a) petroleum products only, namely MOGAS, Gas Oil and Dual- Purpose Kerosene (DPK); and

- (b) Liquefied Petroleum Gas (LPG) of 5,6 and 12 kilogrammes,

for domestic use, from the Island of Mauritius to the Island of Rodrigues and back

[Added GN 136/2022 w.e.f 26 May 2022]

## **PART VI**

Any public body

Procurement of goods, works, consultancy services or other services funded by at least 50 per cent of the estimated project value, from grant, or concessional financing as the Minister may approve, from a foreign State, where the condition imposed by that State in respect of the grant or concessional financing specifies that the supplier of goods, works, consultancy services or other services shall be from that State or from any other State which that State approves

## **PART VII**

National Assembly

Procurement of catering services

## **PART VIII**

Ministry responsible for the subject of education

Procurement of cleaning services provided by Mauri-Facilities Management Co. Ltd or through its contractors

## **PART IX**

State Informatics Limited

- (a) Goods purchased for resale, including services related to the purchase or distribution of such goods; or
- (b) Ad-hoc hiring of personnel or sub-contracting the provision of services for the sole purpose of enabling the State Informatics Limited to –
  - (i) fulfill its contractual obligations under commercial contracts entered into with third parties following a bid exercise or otherwise;
  - (ii) develop software or software solutions for resale.

## **PART X**

Ministry responsible for the subject of environment Procurement of cleaning services and embellishment works provided by Mauri – Facilities Management Co. Ltd or through its contractors

## **PART XI**

Ministry responsible for the subject of civil service Procurement of government medical insurance scheme provided by SICOM General Insurance Ltd and NIC General Insurance Co. Ltd for the benefit of public officers

## **PART XII**

Ministry responsible for the subject of health Procurement of medical supplies under a pooled procurement agreement with a regional organisation or international organisation of States where Mauritius is a member.

Amended by GN No. 68/2009, Added by GN No. 25 of 2012,  
Amended GN 227/2016, GN 8/2017, GN 35/2017, GN 248/2017; GN 34/2018;  
GN102/2018, GN 146/2018; GN 85/2019; GN 189/2020, GN 302/2020; GN 152/2022]

**SECOND SCHEDULE**  
(regulation 48)

**Challenge under section 43 of the Public Procurement Act 2006**

1. Name of Bidder:.....
  
2. Address of Bidder:.....
  
3. Name of Representative of Bidder (if applicable):.....
  
4. Tel. No./E-mail: .....
  
5. Name of Public Body:.....
  
6. Procurement Reference:.....
  
7. Specific Act or Omission in relation to the procurement:.....  
.....
  
8. Bidder's grounds for challenge:.....  
.....

Date:.....

Signature:.....

**Note:** The completed form should be submitted to the Chief Executive Officer of the public body.

**THIRD SCHEDULE  
(regulation 49)**

**INDEPENDENT REVIEW PANEL**

**Application for Review under section 45 of the Public Procurement Act 2006**

Name of Applicant:.....

Name of Representative (if applicable):.....

Address of Applicant: .....

Tel. No./E-mail:.....

Public Body:.....

Solicitation/Contract reference number:.....

Date of decision of Public Body:.....

Date of filing of challenge:.....

Applicant's grounds for review:.....

.....

Statement of Applicant on economic interest:.....

.....

Special measures sought for:.....

.....

Relief requested:.....

.....

Reasons of request for specific documents to support the application:.....

Reasons of request for hearing:.....

.....

A copy of this application to be sent to the Chief Executive Officer of:.....

.....

Date:.....

Signature:.....

**FOURTH SCHEDULE (regulation 80)**

**OATH**

I, \_\_\_\_\_ being appointed Chairman/Vice Chairman/Member/Officer\* of the Procurement Policy Office, the Central Procurement Board, or the Independent Review Panel\* do hereby swear/solemnly affirm that I shall, to the best of my judgment, act for the furtherance of the objectives of that organisation and shall not, on any account and at any time, disclose, otherwise than with proper authorization or where it is strictly necessary for the performance of my duties, any confidential information obtained by me in virtue of my official capacity.

Taken before me \_\_\_\_\_  
\_\_\_\_\_

Master and Registrar of the Supreme Court

\*delete as necessary

## FIFTH SCHEDULE (regulation 81)

### DECLARATION OF ASSETS

I, \_\_\_\_\_ of \_\_\_\_\_  
make oath/solemn affirmation as a \_\_\_\_\_  
and declare that -

1. I am unmarried/married under the system of \_\_\_\_\_  
\_\_\_\_\_ (matrimonial regime).

2. My assets (extent, nature of interests therein, liabilities regarding these assets) are as follows -

(a) landed property: \_\_\_\_\_

(b) residential, commercial or industrial building: \_\_\_\_\_

(c) motor vehicles: \_\_\_\_\_

(d) boats: \_\_\_\_\_

(e) shares: \_\_\_\_\_

(f) interest in partnership or société: \_\_\_\_\_

3. The assets of my spouse/minor children (extent, nature of interests therein, liabilities regarding these assets) are as follows:

(a) landed property: \_\_\_\_\_

(b) residential, commercial or industrial building: \_\_\_\_\_

(c) motor vehicles: \_\_\_\_\_

(d) boats: \_\_\_\_\_

(e) shares: \_\_\_\_\_

(f) interest in partnership or société: \_\_\_\_\_

4. My liabilities (other than those relating to the assets referred to at paragraph 2) are as follows:-

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. The liabilities of my spouse/minor children (other than those relating to the assets referred to at paragraph 3) are as follows:-

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature \_\_\_\_\_

Sworn/solemnly affirmed by the above named before me at this day \_\_\_\_\_ of 20\_\_\_\_

Master and Registrar; Supreme Court

**SIXTH SCHEDULE**

[Regulation 47A]

**SPECIFIC TYPE OF WORKS CONTRACTS AND ESTIMATED CONTRACT VALUE**

<b>Specific type of works contracts</b>	<b>(Rs)</b>
Maintenance of roads and associated works	Not exceeding 10 million

[Added GN 209/2017]

**SEVENTH SCHEDULE**

[Regulation 47B]

**PART I – SPECIFIC TYPE OF GOODS CONTRACTS AND  
ESTIMATED CONTRACT VALUE**

<b>Specific type of Goods contracts</b>	<b>(Rs)</b>
Office stationery	1 million
Cleaning materials	1 million
School furniture	5 million

**PART II – SPECIFIC TYPE OF OTHER SERVICES CONTRACTS  
AND ESTIMATED CONTRACT VALUE**

<b>Specific type of other services contracts</b>	<b>(Rs)</b>
Cleaning services	1 million
Catering services	1 million

[Added GN 256/2020]