

PART V
METHODS OF PROCUREMENT

Application
of the basic
principles of
procurement
and disposal

58.-(1) All public procurement and disposal by tender shall be conducted in accordance with the basic principles set out in this Act.

Selection of
methods of
procurement

(2) Subject to this Act all procurement and disposal shall be conducted in a manner to maximize competition and achieve economy, efficiency, transparency and value for money.

59.-(1) Except as provided for in sections 60, a procuring entity engaging in the procurement of goods, works or services or disposal by tender shall apply competitive tendering, using the methods prescribed in the Regulations depending on the type and value of the procurement and, in any case, the successful tender shall be the tender offering the lowest evaluated cost.

(2) In circumstances where

- (a) suppliers, contractors or consultants have already been pre-qualified pursuant to section 47;
 - (b) there is an urgent need for the goods, works, or services such that it would be impracticable to engage in open national or international tendering on competitive selection; or
 - (c) there is need to achieve certain social objectives by calling for the participation of local communities
- the procuring entity may either restrict the issue of tenders in accordance with the procedures set out in the Regulations provided that

- (i) the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor caused by dilatory conduct on its part; and
- (ii) the procuring entity shall include in the records required under section 56 of this Act a statement of the grounds for its decision and the circumstances on which it relied on to justify the restriction.

(3) Public bodies undertaking solicited or unsolicited public private partnership projects shall follow procedures set out in the Regulations made under this Act

Competitive tendering for goods or works

60. A procuring entity wishing to commence competitive tendering shall provide all eligible prospective suppliers or contractors with timely and adequate notification of the procuring entity's requirements and an equal opportunity to tender for the required goods or works.

Invitation to tender and advertising

61.-(1) A procuring entity wishing to commence competitive tendering proceedings shall prepare a tender notice inviting suppliers or contractors to submit priced offers for the supply of the goods or for undertaking the works required and such tender notice shall be submitted within reasonable time before the planned issue of the tender to the Secretary of the tender.

(2) The approved tender notice shall be advertised by the procuring entity as set out in the Regulations made under this Act and shall ensure widest reach of potential suppliers or contractors.

(3) Any tender notice shall be published in sufficient time, as prescribed in the Regulations, to enable prospective tenders to obtain tender documents and prepare and submit their responses before the deadline for receipt of tenders.

(4) The time specified for the opening of the tenders submitted shall be the same as the deadline for receipt of tenders or immediately thereafter, and shall be repeated, together with the place for tender opening, in the invitation to tender.

Issue of tender documents

62.-(1) The procuring entity shall provide tender documents immediately after first publication of the tender notice to all suppliers or contractors who respond to the tender notice and pay the requisite fee, if required, for which a receipt shall be given.

(2) All prospective tenderers shall be provided with the same information, and be assured of equal opportunities to obtain additional information.

(3) Tender documents shall not include requirements and terminologies which discriminate unfairly against participation by suppliers, contractors or consultants.

(4) It shall be lawful to deviate from the requirements of subsection (3) if the circumstances demand provided any such deviation is made on basis of provisions of the Regulations made under this Act.

(5) The scale of fees payable for collection of tender documents shall be as set out in the Regulations made under this Act.

Content of
tender
document

63.-(1) The procuring entity shall use the appropriate standard model tender documents specified in the Regulations for the procurement in question.

(2) The tender documents shall be worded so as to permit and encourage competition and such documents shall set forth clearly and precisely all the information necessary for a prospective tenderer to prepare tender for the goods and works to be provided.

Validity of
tenders and
tender
security

64. The procuring entity shall require tenderers to make their tenders and tender securities valid for periods specified in the tendering documents, and such periods shall be sufficient to enable the procuring entity to complete the comparison and evaluation of the tenders and for the appropriate tender board to review the recommendations and give its approval for the contract or contracts to be awarded whilst the tenders are still valid.

Evaluation
criteria

65.-(1) The basis for tender evaluation and selection of the lowest evaluated tender shall be clearly specified in the instructions to tenderers or in the specifications to the required goods or works.

(2) The tender documents shall specify and factor, in addition to price, which may be taken into account in evaluating a tender and how such factors may be quantified or otherwise evaluated.

(3) Notwithstanding the provisions of subsection (2), where tenders based on alternative materials, alternative completion schedules or alternative payment terms are permitted, conditions for their acceptability and the method of the evaluation shall be expressly stated in the tender documents.

Receipt of
tenders and
tender
opening

66.-(1) The tender board that approved the issue of the tender documents shall receive tenders using procedures set out in the Regulations made under this Act..

(2) The Secretary to the tender board shall on request give each bidder a receipt showing the time and the date that the tenders were received, and any tender received after the deadline shall be returned unopened to the tenderer.

(3) All tenders submitted before the deadline time and date for submission shall be opened in public, in the presence of the tenderers or their representatives and other parties with a legitimate interest in the tender proceedings and the tender opening shall take place at, or immediately after the deadline time and date given in the tender documents for the receipt of the tenders and the names of all those present at the tender opening and the organisations they represent shall be recorded by the Secretary of the respective tender board.

(4) The names and addresses of each tender and the total amount of each tender, and of any alternative tenders, if they have been requested or permitted, shall be read aloud by the Chairman of the meeting and recorded by the Secretary of the tender board or his delegate, as each tender is opened.

(5) After the public opening of tenders, information relating to examination, clarification and evaluation of tenders and recommendations concerning awards shall not be disclosed to tenderers or other persons not officially concerned with the process until the award of a contract is notified to the successful tenderer.

Evaluation
and
comparison
of tenders

67.-(1) The procuring entity shall evaluate on a common basis tenders that have not been rejected in order to determine the cost to the procuring entity of each tender in a manner that permits a comparison to be made between the tenders on the basis of the evaluated costs, but the lowest submitted price, may not necessarily be the basis for selection for award of a contract.

(2) Any relevant factor or factors in addition to price to be considered in tender evaluation and the manner in which they will be applied for the purpose of determining the lowest evaluated tender shall be specified in the tender documents for goods and equipment but the tender evaluation for works shall be undertaken strictly in monetary terms and completion period.

(3) Any procedure under which tenders above or below a predetermined assessment of tender value are automatically disqualified may not be accepted.

(4) The procuring entity shall prepare a detailed report on the evaluation and comparison of tenders, setting out the specific reasons on which its recommendations for the award of each contract are based.

Approval **68.** The tender board shall review the evaluation and of award of recommendation made by the procuring entity and may either contract

- (a) approve the recommendation and authorize the procuring entity to accept the tender and award a contract in the form specified in the tender documents; or
- (b) refuse to authorize acceptance of any of the tenders and refer the evaluation back to the procuring entity with an instruction to re-evaluate the tenders or a recommendation for re-tendering or other action.

Alteration and amendments

69.-(1) A procurement contract shall not be altered or amended in any way after it has been signed by both parties unless such alteration or amendments is

- (a) to the benefit of the Government or is not disadvantageous to the Government; and
- (b) is endorsed by the approving authority.

(2) Any additions to the value of a procurement contract shall be reviewed and agreed by the approving authority.

Selection
of
consultants

70.-(1) A procuring entity may, when selecting consultants use anyone of the following principal selection methods

- (a) selection based solely on technical quality by evaluation of the firms competence, the staff seconded to the assignment and the technical value or quality of the proposal, or
- (b) selection based on the technical quality with price consideration; or
- (c) selection based on the lowest price after establishing compatibility of technical proposals and the service to be provided.

(2) Circumstances to justify the Procuring Entity to depart from the use of selection methods set out in subsection (1) shall be set out in the Regulations and the alternative approaches to be used instead.

(3) Procuring entities shall use the appropriate Standard Request for Proposals and Standard Forms of Contract issued by the Authority with minimum changes acceptable to the respective tender board, as necessary to address specific project issues, and any such changes shall be introduced only through contract data sheets, or through special conditions of contract and not by introducing changes in the wording of the general conditions of contract included in the standard form.

(4) Notwithstanding the provisions of subsection (2), where the Standard Request for Proposal and Standard Form of Contract are not appropriate, procuring entities shall, use other contract forms acceptable to the Authority.

Negotiation
and Award
of Contract
for Consul-
tancy
Services

71.-(1) Depending on the method of selection of consultant used, the firm submitting the best proposal shall be invited for negotiations.

(2) Negotiations shall include discussions of the terms of reference, the methodology, staffing, procuring entity's inputs and special conditions of contract and the discussions shall not substantially alter the original terms of reference or the terms of the contract.

(3) Where the negotiation under subsection (2), fail to result in an acceptable contract, the procuring entity shall terminate the negotiations and after consultation with the appropriate tender board, invite the next ranked firm for negotiations.

(4) After negotiations are successfully completed, the procuring entity shall within the time set out in the Regulations notify other firms on the short list that they were un-successfully.