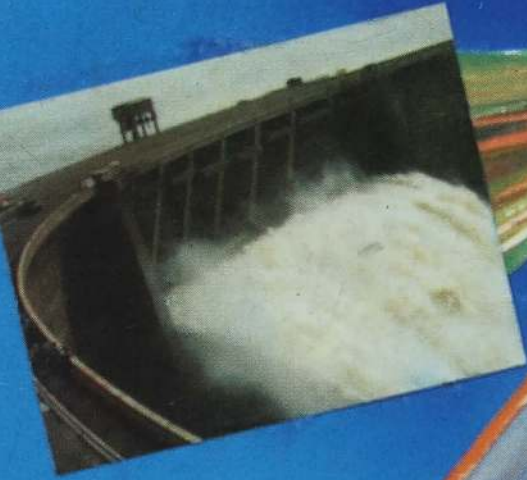


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**GUIDELINES  
ON  
GOVERNMENT  
TENDER  
PROCEDURE**

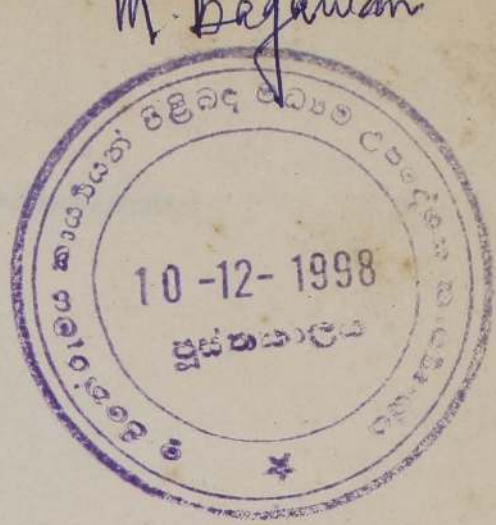
Revised Edition – August, 1997

1997  
**MINISTRY OF FINANCE AND PLANNING  
SRI LANKA**



*M. Sivalingam*

P.M (MSP-1)  
C E C B.



**GUIDELINES**  
**ON**  
**GOVERNMENT TENDER PROCEDURE**

**PART I**  
**(PROCUREMENTS FINANCED BY PUBLIC FUNDS)**  
**(INCLUDING DONOR FUNDS)**

*(REVISED EDITION - AUGUST 1997)*

1997  
General Treasury  
Colombo 1.

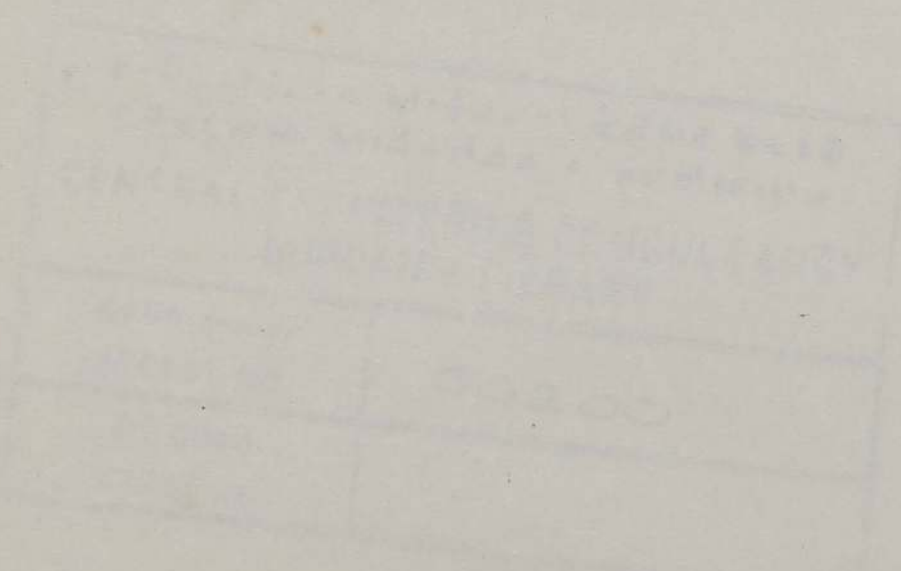
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# GUIDELINES ON GOVERNMENT TENDER PROCEDURE

PART I

PROCUREMENT FINANCED BY PUBLIC FUNDS  
(INCLUDING DONOR FUNDS)

PART II - PRIVATE SECTOR FINANCED PROJECTS  
(WILL BE ISSUED SEPARATELY)



## PREFACE

Government Institutions are expected to follow Tender Procedure to obtain goods and services. This procedure is spelt out by Chapter XIII of Financial Regulations and several circulars issued by the Treasury.

Though the Tender Procedure adopted at present is comprehensive, it has not prevented the occurrence of irregularities. Due to its complexity, the finalization of tenders has taken unusually long periods. It is observed that our procedure takes the longest in this region.

Therefore, the Government decided to prepare Guidelines on Tender Procedure, introducing amendments to the present procedure where necessary, in order to achieve the following objectives:

1. To keep the process fully transparent and honest.
2. To speed up the process.
3. To obtain financially the most advantageous and qualitatively the best services and supplies for the country.

The Financial Regulations, existing circular instructions and practices were closely examined with the above-mentioned objectives in mind.

At present it takes 24 - 36 months to bring a tender process to conclusion. This adversely affects development work and often leads to cost escalations.

Constant allegations of corruption and lack of transparency have a debilitating effect on the Government administration and Government officers. The objective of formulating these guidelines is to eliminate the weaknesses by collating all the instructions, strengthening the procedures and assisting users by introducing features like checklists, standard documents etc.

Therefore, this document attempts to reduce the time taken for the process to six (6) months, while keeping the whole process transparent and ensuring a level playing field to all tenderers.

**Part II** - Clearly defines the procedure by which BOO, BOT and unsolicited proposals can be presented, evaluated and offered.

As these concepts are relatively new to the country, there exists no properly documented procedure. Hence there was no consistency in the procedure applied in such cases. These guidelines are intended to facilitate such procedure for officers as well as potential tenderers.

I hope these guidelines will help tenderers to offer their services with the minimum of problems and delays. These guidelines will make the officers' task easier in completing the process expeditiously and accurately.

As this is the first attempt to formulate guidelines on tender procedure there may be room for improvement and perfection. Therefore, we welcome any suggestions towards further improvement. Such suggestions can be sent to the Secretary to the Treasury.

I sincerely hope that this document will serve to streamline the purchasing and selling procedures of Government, in order to achieve speed, efficiency and transparency and to provide a level playing-field for all citizens who participate in the economic process of the country.

**Chandrika Bandaranaike Kumaratunga,**  
President  
and  
Minister of Finance & Planning.

30th September, 1996.

## **PREFACE**

( Revised Edition)

The Guide Lines on Government Tender Procedure, during the implementation period of nearly one year from August 1996 onwards, has been able to strengthen the public procurement process, reduce weakness and expedite the process, achieving the other main objectives of the economy while maintaining transparency.

However as mentioned in my preface to the first edition, there was much room for further improvement and perfection of the document since it was the first attempt of that nature. Hence any suggestions towards further improvement of the document were welcome. I sincerely thank those who effectively participated in sending comments and suggestions on the original document accordingly.

During this period through the experience gained by implementing the Guide Lines and views received through the Seminars held all over the country in introducing the document with the assistance of MOF/ADB Financial Management Project, together with the specific suggestions and comments received, the Treasury has now been able to prepare a revised edition incorporating all acceptable comments and introducing the following new features:

\* Inclusion of detailed chapters on Evaluation of Tenders, Other Methods for Selection of Tenderers, use of Consultants and procedure under donor funded projects to meet the latest developments.

\*Detailing and explaining some important aspects such as bringing foreign as well as local tenderers on the same level playing field, International Contract Terms, Arbitration procedure etc.

\*Inclusion of updated formats, check lists as well as and flow charts for easy reference.

With the introduction of these new features, I hope a complete set of Guide Lines on Tender Procedure will be available to those who are involved in the procurements to enable them to participate in development process more effectively.

The Revised Edition on "Part II- Private Sector Financed Projects" will be issued separately.

**Chandrika Bandaranaike Kumaratunga,**  
President  
and  
Minister of Finance and Planning.

20th August, 1997.

PREFACE

Minister of Finance and Planning  
New Delhi

The Guide Line on Government Tender Procedure, during the implementation of nearly one year from August 1976 onwards, has been able to strengthen the tender procurement process, reduce wastage and expedite the process. It is the main objective of the economy while maintaining transparency.

However, as mentioned in my address to the first edition, there was much room for further improvement and a second edition was the first attempt of that nature. I am very grateful to the Government of India for the suggestions and comments received from the various departments of the Government and the public. I am also grateful to the various departments of the Government and the public for their suggestions and comments.

During the period through the experience gained by implementing the Guide Line and reviewed through the seminars held all over the country in various forms and with the assistance of MOVAIP (Ministry of Finance and Planning) together with the specific suggestions and comments received, the Treasury has now been able to prepare a revised edition incorporating all acceptable comments and introducing the following new features:

Inclusion of 57 sub-chapters on Evaluation of Tender, Other Methods for Selection of Tender, use of Consultants and procedure under tender based process to meet the latest developments.

Detailing and explaining some important aspects such as binding foreign as well as local tenders in the same level playing field, International Contract Terms, Arbitration procedure etc. to resolve.

Inclusion of updated format, check lists as well as and flow charts for easy reference.

With the introduction of these new features, I hope a complete set of Guide Line on Tender Procedure will be available to those who are involved in the procurement to enable them to participate in development process more effectively.

The Revised Edition on "Part II - Private Sector Financed Projects" will be issued separately.

Chandrika Bose  
President  
and  
Minister of Finance and Planning

20th August 1977



## GUIDELINES ON GOVERNMENT TENDER PROCEDURE

Public Finance Circular No. FIN - 350

My Ref. : FIN-1076-209-208  
Department of Public Finance,  
Colombo 1.  
1996.11.22

To : All Secretaries of Ministries,  
Heads of Departments,  
Heads of All Government Corporations,  
Statutory Bodies, Fully Govt. Owned Companies,  
Chief Secretaries of Provincial Councils and  
Heads of Local Authorities.

### **GUIDELINES ON GOVERNMENT TENDER PROCEDURE - 1996**

On the initiative and guidance of H. E. the President and Minister of Finance and Planning, the General Treasury has prepared a set of guidelines on Government Tender Procedure, incorporating provisions of the Chapter XIII of the Financial Regulations and Circulars issued from time to time on this regard. The Government has now decided to implement these guidelines in respect of all procurement of works, services and supplies and disposal of public assets by all Government Agencies with effect from 01.12.1996. Further, the Government has also decided to direct all the Provincial Councils and Local Authorities to follow these Guidelines as a National Policy with effect from the same date.

Accordingly, all the Govt. Agencies and Provincial Councils are requested to make use of these guidelines for their procurements and disposal of public assets. Any guidelines that may be at variance with existing Financial Regulations (1992 Revision) and Treasury/Public Finance Circulars will supersede such regulations until amendments are made to the Financial Regulations.

The main objective of the guidelines is to expedite procurements, reducing delays, especially in foreign funded projects while obtaining the maximum economic advantages to the nation, keeping in line with the Government's policy of transparency. For the fulfilment of this objective, the new guidelines have collated all the instructions, strengthening procedures and assisting users by introducing features like checklists, specimen forms and standard documents etc. In addition to that Part II of the guidelines provides a comprehensive procedure to be followed in dealing with BOO/BOT Projects.

Corporations, Statutory Bodies and fully Owned Government Companies which may have their own Financial Manuals duly adopted are required to amend them accordingly in line with these guidelines. Provincial Councils having their own Financial Regulations approved by respective Governors are also requested to amend their FRR accordingly or adopt these guidelines. However, Provincial Councils may stipulate reduced financial limits for small Departments if they are of the view that these limits are excessive.

## GUIDELINES ON GOVERNMENT TENDER PROCEDURE

The Treasury has already taken steps to launch a series of seminars for the introduction of these guidelines and a wide discussion thereon with the assistance of MOF/ADB Financial Management Project. The Department of Public Finance will organise these programmes in collaboration with the Department of State Accounts and the Department of Public Enterprises. Please ensure that all senior officers involved in procurements participate at these seminars.

A copy of the Guidelines on Government Tender Procedure - 1996 is attached herewith and any clarification on this may be sought from the Director General of Public Finance.

D. Y. LIYANAGE,  
Deputy Secretary to the Treasury.

## GUIDELINES ON GOVERNMENT TENDER PROCEDURE

Public Finance Circular No. Fin. 352.

My No. : Fin.-1076-209-208  
Department of Public Finance,  
General Treasury,  
Colombo 01.  
25th September, 1997.

Secretaries of all the Ministries,  
Heads of Departments,  
Heads of all Govt. Corporation/Statutory Bodies,  
Chief Executive Officers of Fully Govt. Owned Companies,  
Chief Secretaries of all the Provincial Councils and  
Heads of all Local Authorities.

### **GUIDELINES ON GOVERNMENT TENDER PROCEDURE—REVISED EDITION-1997**

Your kind reference is requested to the Public Finance Circular No. 350 dated 22.11.1996, which introduced the book “ **Guidelines on Government Tender Procedure—1996** ”.

2. Based on various comments and suggestions received in response to the request made by H.E. the President in the preface of the book and the outcome of seminars held, the General Treasury has revised the guidelines. The revised guidelines are published as “ **Guidelines on Government Tender Procedure—Revised Edition-1997** ”. These guidelines will be implemented w.e.f. 01.11.1997 to be followed by all the Government institutions inclusive of Ministries, Departments, Public Corporations and Statutory Bodies, Fully Owned Government Companies (inclusive of companies having more than 50% ownership by the government), Provincial Councils and Local Authorities, for the procurement of works, services and supplies and disposal of government assets.

3. Improvements to revised guidelines are given below :

- \* inclusion of separate detailed chapters on matters such as evaluation of tenders, selection of consultants, donor funded projects, various methods for selection of tenderers etc.
- \* re-formatting the book combining all connected matters together for easy reference.
- \* more details and explanations on procedures such as pre-qualification, bid opening, bid documents etc.
- \* improved formats, check list and flow charts.

4. Your attention is drawn to the following specific changes.

- \* equal treatment for foreign as well as local tenderers in International Competitive Bidding.
- \* mandatory ICTAD registration and NACCSL membership for works procurements, beyond Rs. 5Mn.
- \* use of SBDD prepared by ICTAD for works procurements with necessary amendments to fall in line with these Guidelines.
- \* establishment of Project Tender Boards.

## GUIDELINES ON GOVERNMENT TENDER PROCEDURE

- \* introduction of Bid Opening Committees.
- \* use of SBDD prepared by donor agencies for the projects funded by them.
- \* allowances for members serving on Technical Evaluation Committees and Tender Boards.
- \* acceptance of guarantees issued by authorised Insurance Companies.
- \* streamlining procedure relating to extra contractual payments.

5. Corporation, Statutory Bodies and Fully Owned Government Companies which may have their own Financial Manuals duly adopted are required to amend them accordingly in line with these guidelines. Provincial Councils having their own Financial Regulations approved by respective Governors are also requested to amend their FRR accordingly or adopt these guidelines. However if Provincial Councils are of the view these financial limits are excessive they may decide their own financial limits.

6. Part II of this book on “ Private Sector Financed Projects—Revised Edition ” will be issued separately and until such time Part II of earlier guidelines will be in operation.

7. General Treasury will launch a series of Seminars in Colombo as well as in outstations to explain these guidelines for smooth implementation with the assistance of MOF/ADB Financial Management Project. You are kindly requested to make sure that all the relevant staff will participate in these seminars. Details of seminar programme will follow.

8. Necessary amendments to Financial Regulations to fall in line with these Guidelines will be introduced early and until such time these Guidelines will supersede Chapter XIII of F.R.—1992 Revision.

9. Sinhala and Tamil translations of this book will be issued separately.

10. All the circulars issued hitherto by the Treasury and Department of Public Finance relating to the subjects of tender and procurement are hereby repealed. Even in situation involving circulars hitherto issued by the Department of Public Enterprises on the subject, this book will prevail.

11. Any clarification on this book should be sought from the Director-General of Public Finance of the General Treasury.

D. Y. LIYANAGE,  
Deputy Secretary to the Treasury.

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## PART I

### PROJECTS FINANCED BY PUBLIC FUNDS

#### CHAPTER I

#### GENERAL

1. The procurement of all Works, Services and Supplies financed by the Consolidated Fund inclusive of Foreign Aid or utilizing other public funds should be done following competitive Tender Procedure as laid down in the Financial Regulations and in these Guidelines.

The disposal of State assets and extending State concessions should also be in accordance with the same procedure.

2. Tender process should ensure:

- (a) The least cost which brings maximum benefit to the Government ;
- (b) Adherence to prescribed standards, specifications, rules and regulations ;
- (c) Optimum Economic Advantage to the nation ;
- (d) Maximum income in the disposal of assets or in granting of rights, concessions or exclusive benefits ;
- (e) Equal opportunity for interested parties and persons to participate and compete on identical terms and conditions and emergence of competence and efficiency ;
- (f) Expeditious execution of works and delivery of goods and supplies ;
- (g) Compliance with local laws and international obligations ;
- (h) Transparency and uniformity of the evaluation procedure ;
- (i) Confidentiality of information provided by tenderers ;
- (j) Competence or capability of a contractor ;

3. Cabinet approval should be obtained for any deviations from Tender Procedure except for cases which are specifically or generally provided for under the Government Financial Regulations or in these Guidelines. The instructions stipulated in these guidelines shall have precedence over the Financial Regulations until the appropriate amendments are made to the FR.(1992 Revision)

4. The language of the tender documents should be unambiguous. The tender documents should be drafted in a way that facilitates the evaluation of Tenders on the basis of objective criteria. Adequate time should be taken for the drafting of tender documents with clarity in order to expedite the tender evaluation process.
5. Tenders should be given wide publicity nationally in the case of National Competitive Bidding and internationally in the case of International competitive Bidding, giving adequate time for the submission of Tenders.
6. The tender process should be concluded in the shortest possible time.
7. Draft tender documents and firm Total Cost Estimates, as approved by competent authorities should be available before requesting the appointment of a Tender Board.
- 8.1 The maximum time frame for large and complex local tenders handled by a Cabinet Appointed Tender Board should be -

Approval of documents	-	4 weeks
Submission of tenders	-	3-4 weeks
Evaluation	-	3 weeks
Tender Board determination	-	2 weeks
Appeal	-	2 weeks
Award	-	1 week

International Tenders should be given 6 - 8 weeks for bid submission. The Technical Evaluation and Determination stages should be shortened as far as possible.

- 8.2 Large and complex tenders are, the tenders exceeding the value of Rs.20 Mn. for the purpose of these Guidelines. However, in a case where value of tender not exceeding this limit but depending on the complexity, a Tender Board may decide to follow complete procedure applicable to large and complex tender in order to get more favourable results.
- 9.1 The procedures laid down in these Guidelines should be followed by Ministries and Departments as well as by State Corporations, Government owned Companies, Statutory Boards and all Government Institutions and Agencies. In the following sections, a reference to a Department should be interpreted to include all such

Agencies. The Provincial Councils and local authorities should also adopt these guidelines. However the Provincial Councils, if they so desire, may decide their own lesser financial limits, than the limits stipulated in these Guidelines.

- 9.2 With regard to determination of tenders under the donor funded projects as stipulated in Chapter XIII, Provincial Councils and Local Authorities are considered as Departmental Tender Boards. For this purpose MTB and CATB are Ministry Tender Board of the Line Ministry and Tender Board appointed by the Cabinet, respectively. Provincial Councils and Local Authorities have no limit for determination of tenders in regard to other government grants and their own revenues.
10. Firm Total Cost Estimates (TCE) of projects should be sanctioned by the appropriate authorities specified in Section 12 prior to initiating the Tender Process. This should be done before the application is submitted either to the Treasury or to other financing Authority for funding under the Annual Estimates or under the Corporate Budgets of the Institutions concerned. A project brief and a summary of the Cost Estimates should accompany the request for funding of new projects. Designs, Drawings, Specifications and Bills of Quantities to support the Total Cost Estimate should be available with the client department.
- 11.1 Any clarifications on the provisions in these Guidelines should be sought from the Deputy Secretary to the Treasury. (Director General of Public Finance)
- 11.2 All the Circulars hither to issued by the Treasury or Department of Public Finance on the subject of procurements are hereby repealed.

## CHAPTER II

### COMMENCEMENT OF THE TENDER PROCESS AND APPOINTMENT OF TBB & TECC.

#### Sanctioning of Total Cost Estimates (TCE)

12.1 Total Cost Estimate (TCE) prepared and approved in accordance with F.R.20 should be sanctioned by the following authorities before commencing the procurement process:

Head of Department upto Rs. 100 Mn.

Secretary of the Ministry above Rs. 100 Mn.

12.2 As far as possible, it is the responsibility of Head of the Executing Agency to see that realistic detailed cost estimate is prepared, approved by appropriate authority and kept under confidential cover in a safe place before calling for tenders.

#### Annual Programmes and Rentals

12.3 The annual Block provision should be treated as the Total Cost Estimate for determining authorities for Tender process relating to recurrent expenditure and maintenance programmes. In the case of rentals and leases, a 20 years capitalised cost should be taken as the hypothetical Total Cost Estimate. In the case of Corporations and other public Agencies, the total cost estimate is the total amount in the Corporate Plan/ Annual Budget and approved by the Board of Management or any other authority as per government policy.

#### Initiation of Tender Process

13.1 When the Treasury confirms that the required provision would be included in the Annual Draft Estimates or in other cases when the Board of Management approves the Corporate Plan/Annual Budget, initiation of tender process such as:

- (a) appointment of Tender Board and Technical Evaluation Committee,
  - (b) the approval of tender documents, and
  - (c) inviting bids,
- should be commenced.

## Financing Sanction

13.2 The Award of a contract under a tender should not be made before the funds are sanctioned by the Legislature or other appropriate Authority.

## Limits of Authority

14. The limits of Authority for tender awards for the projects funded by the Consolidated Fund are:

Head of Department	- upto Rs. 100,000/-
Departmental Tender Board	- upto Rs. 10 Mn.
Ministry Tender Board	- upto Rs. 20 Mn.
Cabinet Appointed Tender Board	- above Rs. 20 Mn

**Please refer Chapter XIII for the limits of Tender Boards under the donor funded projects (Projects funded by WB, ADB and OECF)**

## Minor Tender Boards

15. Heads of Departments having Regional/District Offices or having large Divisions may set up Minor Tender Boards with the approval of the Secretary to the Ministry concerned to deal with tenders not exceeding R. 2 Mn. These Tender Boards should be chaired by a Staff Officer not below the rank of Asst. Head of Department and decisions on awards are subject to the approval of the Head of Department.

Other members of Tender Board should be selected from senior officers of the Regional/ District office of the Department and preferably one member from an out side Department.

## Departmental Tender Boards (DTB)

16.1 The Secretary of a Ministry shall appoint in writing, Departmental Tender Boards in respect of each Department under his Ministry. Where the volume of work is large, more than one Departmental Tender Board can be appointed.

## **Composition of Departmental Tender Boards**

16.2 Composition of DTB shall be as follows :

- Head of the Department as Chairman,
- A representative from the Ministry in charge-Member  
(in a case where a Ministry Representative could not participate due to practical reasons, a senior staff officer from an outside Department)
- A staff officer specialized or experienced in the relevant field from the Department or from an outside agency - Member.

## **Ministry Tender Board (MTB)**

17.1 The Secretary of the Ministry shall appoint the Chairman in the case where he is not the Chairman, and the other members of MTB.

## **Composition of Ministry Tender Board**

17.2 Composition of the Ministry Tender Board shall be as follows:

- The Secretary to the Ministry or the Additional Secretary as Chairman
- The Head of the client Department (in a case where there is no client Department a Senior Staff officer from the Ministry)
- A senior staff officer experienced or specialized in the relevant field, preferably from a Department outside the Ministry.

However, in a case where the Secretary of the Ministry concerned is not the Chairman of a Ministry Tender Board, the decisions taken regarding the award should be approved by the Secretary personally.

## **Cabinet Appointed Tender Boards (CATB)**

18.1 Cabinet shall appoint the Cabinet Appointed Tender Boards (CATB)

## **Composition of CATB**

18.2 The composition of Cabinet Appointed Tender Boards shall be as determined by the Cabinet. Normally, the Chairman will be a Secretary other than the Secretary of the Ministry concerned. The Secretary of the Ministry shall be a Member of the Tender Board. A representative of the Secretary to the Treasury shall be appointed as the third member.

### **Standing CATB**

18.3 In extraordinary situations, a Ministry may submit a Cabinet Memorandum, specifying the special circumstances which require a deviation from the normal tender procedure in order to meet such circumstances, and seeking approval to appoint a Standing Tender Board, indicating the limits of tender and the composition of Tender board with a Treasury Representative. TEC for Standing Tender Boards shall be appointed by Secretary to the Treasury taking into consideration the special nature of Tender Board.

### **Justification for Standing CATB**

18.4 Standing Cabinet Appointed Tender Boards may be justified where;

- \* Expeditious processing of tender offers is necessary
- \* Quick decisions have to be taken for procurement of works, supplies and services
- \* Supplies immediately to avoid acute shortage in the market
- \* Tender offers have very short validity period
- \* The prices of supply items fluctuate very quickly
- \* The same procurement to continue repeatedly without significant changes in specifications
- \* Security reasons
- \* A project contains a large number of tender packages spread over a long time span

### **Payments to the Members of Tender Boards**

18.5 Secretary to the Treasury will determine the payments to the members of the Tender Boards and to the officers handling tenders.

The following payments will be applicable for the present ;

#### **(A) Cabinet Appointed Tender Boards: (CATB)**

If the meetings of CATB are held during normal office hours Rs. 600 is payable to members of CATB and to the Staff Officer handling the tenders. However if all the meetings of CATB are held outside normal office hours the

payment is Rs.1,000. The clerical officer handling tenders may be paid Rs.300 and Rs.500 respectively. These payments should be made only after the determinations are approved by the Cabinet.

- (B) **MTB and DTB handling tenders within enhanced limits under the donor funded projects. (Tenders not less than Rs. 10 Mn. and not exceeding Rs. 50 Mn. in the case of DTB/ Rs. 100 Mn. in the case of MTB under the WB, ADB, and OECF Funds.);**

The rates applicable to CATB above, will apply. These rates will apply to the staff officer and the clerical officer handling tenders as well. However the composition of TBB should be limited to 3 members and staff officer/clerical officer handling the tenders should be limited to one each.

- (C) **MTB handling tenders within Rs. 10 to 20 Mn. under the local funds**

Rs. 500 is payable to the members of Tender Boards and to the staff officer handling tenders. The clerical officer handling tenders may be paid Rs. 250.

- (D) No payments should be made to the members of MTB and DTB handling tenders upto the value of Rs.10 Mn.

### **Appeal Board pertaining to CATB**

19. The Cabinet will also appoint a standing Appeal Board as a reviewing Body to entertain any complaints regarding the recommended award by a CATB on any Tender. (Please see Guide line 136 to 138 as well)



### CHAPTER III

## PROCEDURE APPLICABLE TO APPOINTMENT OF TBB AND TECC.

### Appointment of CATB

20. In the case of a Cabinet Appointed Tender Board, (CATB) the application for the appointment of the Tender Board should be made to the Secretary to the Cabinet by the Secretary of the Ministry concerned. A copy of such application should be sent to the Secretary to the Treasury to nominate his representative on the CATB and to appoint the TEC.

### Range of Cost Estimates

21. The application for the appointment of a CATB should indicate the range of the Cost Estimate of the project proposal in order to facilitate the selection of members.

### Alternate Members

- 22.1 Each member other than the members appointed by designation as members of a Tender Board should have a pre-designated alternate member to participate in the Tender Board in the absence of the nominated member. The nominated member should brief the alternate member on the progress made and issues involved in the Tender, before proceeding on leave or otherwise being unable to attend a Tender Board meeting. An alternate member may attend a Tender Board meeting as an observer along with the substantive member whenever he is required to do so by the latter. A substitute member or an alternate member may be delegated with the authority to participate in a Tender Board meeting for part of the proceedings pending the arrival or after the departure before the end of the meeting of the substantive member.

### Priority

- 22.2 Participation in Tender Boards should be given priority over routine duties of a public servant.

### **Meetings of Tender Board**

23. The Convenor/Secretary/Chairman of the Tender Board should notify the members of the date, time and venue of every Tender Board meeting. Dates and times of meetings of the Tender Boards should be fixed after verifying the availability of the members. It is the responsibility of a member of the Tender Board to inform the alternate member to attend the meetings when he is unable to attend.

### **Appointment by Designation**

24. When a member is appointed by designation as a member of the Tender Board, in his absence, the officer acting in the post may participate in the Tender Board meetings without a specific letter of appointment being issued or a nomination being made.

### **Validity of Decisions**

25. No decision of a Tender Board would be valid unless all members are present at the meeting or any absent member consented later. Presence of an alternate member will be deemed to be attendance by the substantive member.

### **Absence of a member**

26. No Tender Board Meeting fixed and confirmed should be postponed merely on account of the absence of one member. When the member or alternate member is not there, the matters on the agenda for the day should be proceeded with and an early date fixed, at which the member who could not attend the previous meeting should be briefed of the deliberations and his views sought. Any tentative decision made at the previous meeting should be either reconfirmed or amended appropriately at the next meeting after obtaining the opinion of the absent member.

### **Minutes of the Meetings**

27. The proceedings of the meetings of the Tender Board should be recorded in a book meant for the purpose, and authenticated by the members present. Any member may record a dissent. The records should be preserved for a period of at least five years.

### **Treasury Information**

28. After the appointment of a Ministry Tender Board, S.T. / Director General, Public Finance of the General Treasury should be intimated of the membership of such Tender Board.

### **Technical Evaluation Committees (TEC)**

29. There should be a Committee of Experts on Finance and Technical matters known as the Technical Evaluation Committee (TEC) in respect of each Tender handled by a CATB as well as MTB/DTB which are handling tenders within enhanced limits as stated in Chapter XIII. In other cases a Tender Board may obtain the assistance of a Technical Evaluation Committee to examine the technical and financial aspects of the Tender if they require so.

### **Examination of Draft Documents**

30. The TEC should examine the Draft Tender Documents and express its views before the Tender Board makes a decision to adopt them.

### **Reports of TEC & Attendance at TB Meetings**

31. The Technical Evaluation Committee shall submit written reports to the Tender Board and its members shall be present at Tender Board Meetings whenever required to clarify matters. The Tender Board may conduct its deliberations, as far as possible, without the presence of the TEC members after the TEC has submitted its written report.

### **Composition of TEC**

32. A variety of representative disciplines relevant to the subject matter should be covered in constituting the TEC. In addition, in a TEC there should be at least one member who is familiar with accounts and finance, and another member who is familiar with the relevant project.

### **Membership of TEC**

- 33.1 Generally, the minimum number of members of a TEC shall be three and the maximum five. The appointing authority may however, decide otherwise depending on the degree of simplicity or complexity of the Tender. No one from the private sector should be appointed to the TEC without the approval of the Cabinet.

### **Assistance of Consultants**

- 33.2 The TEC may get assistance from a consultant who is appointed to the project. However preparation of bid documents as well as evaluation of bids may be done by the Consultants under the supervision and guidance of the TEC.

### **Appointment of TEC to Assist CATB**

34. In the case of a CATB, the appointing authority of the TEC shall be the Secretary to the Treasury. At least one member should be a representative of the client department and at least another one member who is specialised in Finance and/or procurement of works, services or supplies should be included as Treasury Representative.
35. The Secretary to the Treasury will appoint the TEC members at his discretion giving due consideration to the recommendations received from the Secretary to the Ministry concerned. A list of names recommended for consideration to be appointed to the TEC should be forwarded to the Secretary to the Treasury at the time of seeking the setting up of a CATB. Secretary to the Treasury may appoint any specialist public servant to serve on the TEC on the request of the CATB. No private sector personnel should be appointed to serve on the TEC without Cabinet approval.

### **Appointment of other TECC**

36. The Secretary of the Ministry or the Head of the Department, as the case may be, will appoint the TECC to assist MTB/DTB respectively.

### **External Members**

37. At least one member of the TEC assisting DTB/MTB should be an official external to the client agency. A preponderance of members from the client department should be avoided in constituting the TEC.

### **Release from Normal Duties**

38. When an officer is appointed as a member of a TEC, he should be released from his normal duties for the duration of the evaluation in order to expedite the process. Such release on a full-time basis is desirable whenever possible. Every effort should be made to have another officer to cover up the routine duties of an officer released for participation in Tender Evaluation.

### Period of Evaluation

39. The TEC should complete the Evaluation of Tenders as early as possible and in any case within a period not exceeding a period of one month. The CATB may extend or shorten this period depending on the nature and complexity or simplicity of the Tender and the extent of response to the Bid Invitation.

### Expansion of TEC

40. The TB or Ministry concerned may recommend the expansion of a TEC at any stage when required subject to the approval of the appointing authority. However once TEC is appointed, complete dissolution should not be done without specific approval of Cabinet.

## CHAPTER IV

**TENDER DOCUMENTS****Tender Documents**

41. For a large and complex tender, usually following tender documents shall be prepared.
- (i) Tender Notice - Appendix 1
  - (ii) Instructions to Bidders - Appendix 11
  - (iii) The Form of Tender - Appendix 111
  - (iv) General Conditions of Contract
  - (v) Special Conditions of Contract
  - (vi) Bidding Data Sheet / Contract Data Sheet
  - (vii) Specifications, drawings and designs
  - (viii) Bills of Quantities/ List of Goods or requirements
  - (ix) Security and Guarantee forms
  - (x) Form of Contract Agreement
  - (xi) Other Forms, Appendices if any, and information sheets;

**Use of Standard Bidding Documents (SBDD)**

42.1 The main objectives of using SBDD are;

- A. To introduce a degree of consistency for bidders.
- B. To adhere to detailed procedures which are prescribed as well as not prescribed in this Guide Lines.
- C. To save time.

42.2 Standard Bidding Documents shall be used wherever possible with appropriate amendments to suit the requirements of the project and falling in line with these Guidelines. Any amendments shall be included in a "Bid Data Sheet"/"Contract Data Sheet" or in "Special Conditions of Contract".

## **SBDD prepared by Institute for Construction Training And Development (ICTAD)**

- 42.3 Standard Bidding Documents prepared by ICTAD may be used by the Executing Agencies for the procurement of works under Local Competitive Bidding (LCB) terms, using local funds, exceeding the value of Rs. 5 Mn. with appropriate amendments and modifications to suit the requirements of the project and falling in line with the provisions of these Guidelines.
- 42.4 With regard to using of SBDD for procurements funded by donor agencies, please, refer Chapter XIII.

### **Drafting of Tender Documents**

- 43.1 It is the responsibility of executing agency to prepare draft tender documents and submit them to TEC. TEC should scrutinise them and submit a complete set of tender documents to TB for approval.

### **Initiation of drafting Tender Documents**

- 43.2 Drafting of Tender documents including technical specifications, drawings etc. should be initiated by the executing agency soon after the approval of the Total Cost Estimate. Draft tender documents should have been finalised by the time, the request is made for the appointment of a Tender Board. A certificate to the effect that adequate funds have been provided in the Estimates or finance otherwise the tender in question, together with details of financing arrangements should be submitted to the Tender Board by the Head of the executing agency along with the draft Tender documents.

### **Approval for Tender Documents**

- 43.3 Approval for tender documents including the notice should be obtained from the appropriate Tender Board before publishing the tender notice. However in the case of DTB tender documents may be approved by the Head of Department subject to the covering approval of TB and such approval should be obtained before the opening of tenders.

### **Tender Notice**

- 44.1 Tender notice should be prepared in abridged form but with sufficient information to prospective tenderers. The specimen in appendix I may be used by all the agencies with suitable modification if so required.

### **Instruction to Bidders (ITB)**

- 44.2 ITB should be prepared to give sufficient information to tenderers. A specimen is given in appendix II. Executing agencies may prepare ITB according to the specimen or with suitable modification required.

### **Form of Tender (Bid Form)**

- 44.3 Specimens of Bid forms for works and supplies are given separately in appendices III(a) and III(b).

### **General Conditions of Contract (GCOC)**

- 45.1 GCOC apply to the contract implementation period. However these conditions, should be issued with the bid documents. The GCOC to be used should be in accordance with Guideline 42.2, 42.3 and 42.4.
- 45.2 If International Competitive Bids are called, it is recommended to use FIDIC Version IV (Federation International des ingenieurs conseils) or subsequently amended or NEC (New Engineering Contracts) as appropriate with necessary amendments.

However, as GCOC for works procurements upto Rs.500 Mn., ICTAD document for works or WB document for large works may be used with appropriate amendments.

### **Special Conditions of Contract ( Conditions of Particular Application)**

- 45.3 Special Conditions of Contract should be prepared to suit the requirements of Agencies by amending, modifying or adding the General Conditions of contract provided those cannot be included in Bid Data Sheet or Contract Data Sheet. However, if new GCOC prepared by ICTAD and NEC, Bid Data Sheet /Contract Data Sheet may be prepared instead of Special conditions of Contract.



### **Bid Data Sheet / Contract Data Sheet**

- 45.4 All necessary amendments and modifications to the GCOC, as much as possible could be included in a Bid Data Sheet /Contract Data Sheet instead preparing a Special Conditions of Contract to reduce ambiguity.

### **Technical Specifications**

- 45.5 All the specifications included in the tender documents should be tied up purely with the technical aspects and not to be related with brand names or country of manufacture.

Technical specifications should be prepared to achieve the objectives of the project but as far as possible not to prohibit any potential bidder.

### **Securities and Guarantees**

- 46.1 Normally the following formats are required to be issued with tender documents in a large procurement.
1. Bid Bond form.
  2. Performance Bond form.
  3. Mobilisation Advance Guarantee form.

Specimens of these formats are given in appendices IV(a), (b) and (c) respectively.

### **Acceptable Securities and Guarantees**

- 46.2 Securities and Guarantees issued by the following institutions are acceptable.
1. A Bank operating in Sri Lanka, approved by the Central Bank of Sri Lanka.
  2. A Bank based in another country but the security or guarantee “confirmed” by a Bank operating in Sri Lanka.
  3. A reputed Insurance Company operating in Sri Lanka accepted by the Treasury for acceptance of Guarantees.
  4. A Letter of Credit issued by a foreign Bank, but “confirmed” by a Bank operating in Sri Lanka.
  5. A fixed Deposit or a Pass Book of a Bank operating in Sri Lanka, deposits made in the name of the executing agency.
  6. Any other Agency approved by the Treasury from time to time.

### **Unconditional Securities and Guarantees**

46.3 Securities and Guarantees should be unconditionally encashable, on the receipt of first written request from the executing agency. (on demand securities and guarantees) The formats given in appendices have been designed to fulfil this requirement.

### **Quantum of Securities and Guarantees**

46.4 The following quantum are recommended for Securities and Guarantees:

1. Refundable Tender deposit - Upto 1% of Total Cost Estimate.  
or
2. Bid Bond - upto 2% of Total Cost Estimate.
3. Performance Bond (works) - upto 5% of Contract Sum
4. Performance Bond (supplies) - upto 10% of Contract Sum
5. Mobilisation Guarantee - to cover the full advance payment

### **Quantum of Tender Deposit or Bid Bond to be a fixed sum**

46.5 The quantum of Tender Deposit or Bid Bond should be a fixed sum not exceeding 1% or 2% of the TCE respectively, since fixing a percentage may lead to disclosure of the TCE.

### **Refundable Tender Deposit**

46.6 Refundable tender deposits may be accepted for the tenders of small value. Bid Bond instead of refundable tender deposit may be accepted for large or high value tenders since large tender deposits may discourage potential tenderers.

### **Exemption from Refundable Tender Deposit or Bid Bond**

46.7 The following are exempted from refundable tender deposits or Bid Bonds provided they have not defaulted in entering into agreements in earlier occasions.

1. Approved Societies.
2. State Corporations, Statutory Boards and other State Institutions.
3. State Trading Organisations of Foreign Governments.
4. Representatives of Foreign Governments in Sri Lanka.

However this exemption will not apply to non-refundable tender fee, which is charged to cover the cost of tender documents.

### **Performance Bond to be submitted by all contractors**

47. Performance bond should be submitted by all the contractors including those who are exempted from Bid Bond, as per Guide Line 46.7.  
However, approved societies need not furnish a Performance Bond in contracts upto the limit of R. 1 Mn. provided they have not defaulted earlier.

### **Arbitration**

- 48.1 All disputes arising out of contract agreements should be dealt in accordance with the provisions of Arbitration Act No. 11 of 1995. A separate clause to this effect should be included in the tender documents as well as in the contract agreement.

### **Procedural Rules**

- 48.2 Subject to the provisions of the Act the parties involved are free to decide on the procedural rules. Accordingly International Chamber of Commerce (ICC) or United Nation's Conference for International Trade Law (UNCITRAL) or any other acceptable set of rules may be used subject to the provisions of the Act.

### **Place of Arbitration**

49. The place of Arbitration should be in Sri Lanka.

### **Check list for Head of Departments**

50. Before submitting the tender documents to the Tender Board for approval, the Head of the client Department should ensure that —
- (a) appropriate financial provision exists for procurement of works, services and supplies ;
  - (b) a firm Total Cost Estimate has been prepared as accurately and completely as possible and the approval of the relevant authority has been obtained ;
  - (c) where samples are required, adequate provision is made in the Tender Notice and the instruction to bidders for submission of samples by the tenderers ;
  - (d) the Tender Notice and Instructions to Bidders conform substantially to the specimens laid down in Appendices 1 and 11, or other documents approved by Agencies specified in this Section ;

- (e) the necessary Plans/Designs and Specifications and Bills of Quantities, as the case may be, are available ;
- (f) sufficient time has been given for the tenderers to tender;
- (g) the security for the contract is adequate and reasonable and the submission of a Performance Bond is stipulated where necessary ;
- (h) where installation of plant and machinery and supply of equipment is involved, the necessary guarantees are stipulated ;
- (i) the appropriate domestic preferences are provided for ;
- (j) supply of spares and provision for maintenance of plant and equipment and arrangements for training of personnel have been taken into consideration ;
- (k) Tender documents do not violate any laws and are not in conflict with the Government policy ;
- (l) Selection criteria is explicitly provided ;
- (m) Provisions are explicitly given to arrive at the final award and expenditure to be incurred by the employer in accepting and utilising the offer in the tender.

For this purpose the check list in Appendix V may be used.

### **Clarity of Language**

51. The language of the Tender Documents must be clear and unambiguous so as to permit and encourage a wide response and a fair competition. All vital requirements should be stipulated clearly, precisely and explicitly.

### **Tendering Period**

52. A minimum period of three weeks should be given for submission of bids for tenders advertised in Sri Lanka for Local or National Competitive Bidding. (LCB/NCB) A minimum of six weeks should be given for International competitive Bids. (ICB) For larger projects, longer periods as determined by the CATB may be stipulated.

### **Transport by Sea**

53. Tender documents should be drafted so as to provide for transport of goods materials and other inputs by sea with the least possible cost and delay, wherever ocean transport is involved (See Clause 55 also).

## Transport by Air

54. Transport by air should be confined to situations where it is absolutely necessary and that also with the approval of the Treasury.

## The Basis of Supply

55.1 In the case of supplies, under ICB terms, tenders should be called on the basis of International Contract Terms (INCOTERMS) issued by the International Chamber of commerce. (1990 Revision)

55.2 The INCOTERMS provides a set of international rules for the interpretation of the most commonly used trade terms in foreign trade. Accordingly most commonly used INCOTERMS are given below:

### 55.3 EXW-(Ex-work)

- \* Seller fulfils his obligation to deliver when he has made the goods available at his premises (*i.e.* Works, Factory, Ware house etc.)
- \* Seller is not responsible for loading the goods on the vehicle provided by the buyer or for clearing the goods for export, unless otherwise agreed.
- \* Buyer bears all costs and risks involving in taking the goods from the seller's premises to the desired destination.
- \* Represents minimum obligation for the seller.

### 55.4 FOB (Free on Board)

- \* Seller fulfils his obligations to deliver when the goods have passed over the ship's rails at the named port of shipment.
- \* Buyer has to bear all costs and risks of loss of or damage to the goods from that point.
- \* FOB requires the seller to clear the goods for export.
- \* Can only be used for sea or inland waterway transport.

### 55.5 CIF -( Cost, Insurance and Freight)

- \* Seller has the same obligations as under CFR (see 55.7 also) but with the addition that he has to procure marine insurance against the buyer's risks of loss or damage to the goods during the carriage.
- \* Seller contracts for Insurance and pays the insurance premium.
- \* Seller is only required to obtain insurance on minimum coverage.
- \* Seller is required to clear goods for export.

### 55.6 FCA -(Free carrier)

- \* Seller fulfils his obligations to deliver when he has handed over the goods, cleared for export, into the charge of the carrier named by the buyer at the named place or point.
- \* If no precise point is indicated by the buyer, the seller may choose within the place or range stipulated where the carrier shall take the goods into his charge.
- \* Seller's assistance is required in making the contract with the carrier.
- \* Seller may act at buyer's risk and expense.

### 55.7 CFR (Cost and Freight)

- \* Seller must pay the costs and freight necessary to bring the goods to the named port of destination but the risk of loss of or damage to the goods, as well as additional costs due to events occurring after the time the goods have been delivered on board the vessel, is transferred from the seller to the buyer when the goods pass the ship's rail in the port of shipment.
- \* CFR requires the seller to clear the goods for export.

### Local Materials

56. Departments must encourage the use of local materials as far as possible in the execution of works by tenderers. This should be stipulated in the tender documents and a procedure for rejection should be elaborated in tender documents.

### **Standards and Quality**

57. Tender Conditions should include provision to reject any materials or goods, or services which are not up to the standards or quality required. As far as possible, the standards adopted by Sri Lanka Standard Institution (SLS Standards) should be used. Where the SLS standards are not available International Standard or other acceptable Standard may be used.

The required standard of materials or performance should be specified unambiguously, and a procedure for rejection elaborated in the tender documents.

### **Local Labour**

58. It should be specified that only Sri Lankan labour be employed on works executed by tenderers.

### **Insurance of Contractor's Risk**

59. In case where a contractor is required by the contract to insure for Contractor's risks, such insurance cover may be effected with any reputed Insurance Company.

### **Worldwide Tenders**

60. In the case of large works, supplies and services in consideration of their scope and complex nature as well as advantages of International Competitive Bidding, the Tender Board may decide to call for worldwide tenders. However in view of development of local construction industry, in the case of civil construction works, TB should consider the possibility of calling of LCB, even in very large projects.

61. The Tender Board, in approving the tender documents for worldwide tenders, should pay special regard to —

- (a) provision of available local technical, climatic, geographical and legal data, where necessary, to prospective tenderers or references to published data;
- (b) adequacy of the period for tendering which might have to include time for a visit to Sri Lanka in the case of works;
- (c) the testing of the competence of tenderers;

- (d) weather Customs Duty, Turnover Tax and Defence Levy on any imported stores or equipment will be borne by the supplier or by the Department/ Agency calling for tenders ;
- (e) the quantum of tender deposit required and the provision of adequate security ;
- (f) the method of making payments and the currency of payments;
- (g) The party ( contractor or employer) opening the Letters of Credit;
- (h) The studies, surveys and investigations required to be carried out by the Tenderer before Tendering and after the Award;
- (i) Method of payment of taxes by Expatriates employed by the Contractor;
- (j) Any royalties payable or patent fees;
- (k) Participation of a local agent in case where ICBs are called.

### **Foreign and Local Tenderers to be treated equally**

62.1 When worldwide tenders (International Competitive Bids) are called, if any condition in respect of the following is made applicable to foreign tenderers it should be equally applicable to local tenderers as well and a clause to that effect should be included in the tender documents (Instructions to Bidders):

#### **Quoting in Foreign Currency**

62.1.1 Foreign as well as local tenderers may be allowed to quote in foreign currency. However foreign exchange requirement should be justified by both parties and any unjustifiable portion should be considered in local currency.

Foreign exchange requirement so justified may be paid in foreign currency. The local currency component should be paid in local currency. The profit margin of local tenderers may be allowed to quote in foreign currency, to bring both parties to same level playing field. However, profit margin of local tenderers should be paid in local currency but at the rate prevailing on the date of making the payment.

#### **BTT and Custom Duty.**

62.1.2 If BTT and Custom duty are paid by or reimbursed by the Executing Agency as a tender condition it should be applied to both foreign and local tenderers equally. However in case where local manufacturer offers locally produced goods in competition with foreign tenderers, custom duty and BTT already paid by him on raw materials or inputs to manufacture the said articles, may be shown separately without adding to the total tender sum to bring both local and foreign



tenderer to same level playing field. After evaluation and comparison, if such tenderer becomes the successful tenderer the actual quantum of taxes already paid should be added to the tender sum and award should be made accordingly. Determination of actual custom duty and BTT should be done in consultation with Director General of Economic Affairs and Fiscal Policy of the Treasury.

For the purpose of this clause, a local tenderer means a Sri Lankan citizen or company registered in Sri Lanka with majority ownership by Sri Lankans having registered manufacturing plant in the country.

The above concession should be given to a local tenderer in addition to domestic preference stipulated in Guide line 126 provided eligibility criteria are fulfilled.

In the case of International Competitive Bidding, a separate format should be issued with the tender documents to enable the local tenderers to provide information with supporting document on their entitlement to domestic preference and taxes paid.

## **62.2 Corporate Tax and Income Tax**

Government should not undertake to pay the corporate tax or income tax. All the tenderers should pay corporate tax and income tax in accordance with the income tax Law of Sri Lanka. However, foreign tenderers may use the facilities of Double Taxation relief provided such agreements are in force.

### **Currency of Payments**

62.3 In International Competitive Bidding (ICB) tenderers may be allowed to quote in the currency or currencies in which they want to be paid, as well as in Sri Lanka currency subject to a maximum of three foreign currencies.

### **Mobilisation Advance for Works Contract**

62.4 Mobilisation advance should not be paid as a matter of course. However if it is considered that the payment of mobilisation advance is necessary for works contract, having regard to the construction or other work involved, the following instructions should be complied with:

- (i) The fact that Mobilisation Advance can be paid, should be included in the tender documents,

- (ii) Amount of Mobilisation Advance payable should be determined, having regard to the nature of construction or other work involved, and should not exceed 20% of the total estimated cost of the work,
- (iii) The amount of Mobilisation Advance payable, the stage at which it will be paid and the manner of its recovery should be included in the tender documents and the agreement,
- (iv) A guarantee as stated in Guide line 46.2 should be furnished to cover the mobilisation advance before its payment and this requirement also should be stated in the tender documents,
- (v) Mobilisation Advance should not be calculated and paid for any item of a project for which the Executing Agency is supposed to open a Letter of Credit.

### **Recovery of Mobilisation Advance**

62.5 Recovery of Mobilisation Advance should commence from part payments made after the 30% of works are completed, and ending up with final payment. As far as possible recovery instalment should be determined on the basis of a percentage on part payments.

### **Mobilisation advance to certain approved societies without guarantee**

62.6 Mobilisation advance to Samurdhi Balakayas and Farmer Organisations, upto a maximum limit or R. 200,000/= may be paid without a guarantee provided the appropriate authority is satisfied with their capability to complete works.

All the Executing Agencies should take appropriate steps to ensure the recovery of advance and that advance is utilised only for the execution of particular contract.

## CHAPTER V

**OTHER METHODS FOR SELECTION OF TENDERERS****General**

63. As a general rule selection of bidders should be done following the open competitive procedure. However, selection of bidders following the procedures stated hereunder may be adopted by the appropriate authorities under the circumstances stated therein.

**Registration of Suppliers**

- 64.1. A Head of Department may publish a notice for registration of suppliers and prepare a list of firms to supply particular goods and services and confine the issue of tender notices to names appearing on the list. This procedure should be applied for procurement of items of small value or for purchases of items on continuous basis for which following of normal tender procedure may be uneconomical.
- 64.2. The registered list of suppliers should be updated periodically, at least once a year. When preparing and updating the list opportunity should be given to any person to apply for insertion of his name in the list under an accepted procedure.

**Yellow Pages**

- 64.3. When the appropriate authority is satisfied, in the case of supplies of goods that sufficient number of reputed vendors are registered in the Yellow Pages, quotations may be called from that list, instead of the above procedure.

**National Registration System and membership of National Construction Contractors' Association of Sri Lanka (NCCASL)**

65. For procurement of construction works exceeding the value of Rs. 5 Mn., under the Consolidated Fund, issue of tender documents should be confined to those who have registered under the National Registration System of Institute for Construction Training and Development (ICTAD), and have the membership of NCCASL, provided the registration system has covered the relevant construction field.

### **Registration of Contractors for Construction Works**

66. For procurement of works not exceeding the value of Rs. 5 Mn., issue of tender documents shall be done in the following ways:
- (a) A Head of Department with the authority of Secretary of the Ministry concerned may publish a notice and prepare a register of construction contractors who are capable of construction works of specified description, magnitude or value and issue tender documents to names appearing on the register ; and / or
  - (b) Issue of tender documents to those who have registered under the National Registration System of ICTAD.

### **Restricted Tenders**

67. A tender board may, in special cases where it is known that the number of available suppliers/contractors are limited, authorise the issue of tender forms only to those firms. After that the normal tender procedure will apply.

*e.g.* : Calling of tenders for purchasing of a vehicle only from the local agents.

### **Restricted Tenders for Minor Services**

68. In the case of purely local and minor services such as laundry, supply of cooked meals, road metal and firewood and tailoring etc., tenders and quotations may be restricted to those who are engaged in the trade or carrying out business in the area. However, this provision should be used only for procurements of small value not exceeding R.100,000.

### **Limited Quotations**

- 69.1. If it is intended that works, services and supplies are to be awarded from a list of limited number of firms and no others, the authority of Secretary to the Treasury should be obtained giving the justification for such procedure for tenders exceeding the value of Rs. 10 Mn. and not exceeding Rs. 20Mn. In the case of tenders not exceeding the value of Rs. 10 Mn. the approval of the Secretary to the Line Ministry should be obtained. Cabinet approval should be obtained for any tender exceeding Rs. 20 Mn.

### Quotation for Small Contracts

- 69.2. In the case of works, services or supplies costing upto Rs.100,000 where following of open competitive tender procedure is not worthwhile and economical a Head of Department or his delegate may authorise obtaining of quotations from limited number of recognised parties (preferably 3 or more). And thereafter the procedure specified in the previous chapters should be followed.
- 69.3. The same procedure may be followed in the case of repairs to motor vehicles. Quotations can be obtained from registered garages.

### Pre-qualification of Tenderers

- 70.1. Where it is necessary to ensure that invitation of bids is confined to only those who have adequate capabilities and resources, pre-qualification procedure may be followed. Pre-qualification of tenderers is generally required for procurements involving;

- \* large and complex works
- \* custom designed equipment, industrial plants and specialised services.

However, in all the projects exceeding Rs.1000 Mn. pre-qualification is mandatory.

### Procedure for Pre-qualification

- 70.2. Pre-qualification should be done giving wide publicity and calling for information on a given format. A clear statement of the scope of the contract and the criteria for selection should be sent to all firms wishing to be considered for pre-qualification. The criteria used are generally :

- \* Experience or past performance on similar contracts
- \* Capabilities with respect to personnel, equipment and plant
- \* Financial ability

### Criteria for Determination

- 70.3. Pre-qualification document prepared by Executing Agency, scrutinised by TEC and approved by TB should be issued to potential tenderers. The criteria and document developed by ICTAD may be used for pre-qualification of tenderers in works contract under the local funds.

- 70.4. Selection of qualified tenderers should be determined following the criteria stipulated in pre-qualification document. All bidders who meet the criteria should be allowed to bid. The bid document should be forwarded to qualified firms immediately the pre-qualification process has been completed.
- 70.5. The same Tender Board which will eventually handle the processing of bids should decide on the determination of the pre-qualification process. In the case of CATB there is a need to gain Cabinet Approval for the qualified firms if the request for appointment of CATB has not stated that pre-qualification procedure would be followed.
- 71.1. Foreign principals participating in a tender should declare the names and addresses of their local agents if so available and the amount of local agents commission in Sri Lankan Rupees payable to them. In the case of Joint Venture Partnerships (JVPP) the share of responsibility should be specified.
- 71.2. If a Tender Board intends not to allow foreign companies or individuals who do not have local agent or local liaison office to participate in tenders to ensure satisfactory after sales and maintenance services, it should be so stated in the tender documents.
- 71.3. A local agent tendering on behalf of a foreign principle, should be empowered by a duly executed Power of Attorney to participate in tenders.

### **Two Stage Bidding System**

- 72.1. For turnkey contracts and for other large and complex contracts, where the problem of technically unequal bids are likely to be encountered, a two stage bidding procedure may be adopted. Under this procedure, bidders are first invited to submit their technical proposals, in accordance with technical specifications, without prices. All other bidding requirements, conforming to the manner and deadline for bid submission, the furnishing of bid bond etc. must however be complied with by the bidders.

### **Evaluation of Technical Proposal and Second Stage Bid**

- 72.2. For details on evaluation of such tenders and calling for second stage bids, Please refer Chapter IX.

### **Use of Two Stage Bidding System**

- 72.3. Two Stage Bidding System should not be used without specific Cabinet Approval. When it is extremely necessary Cabinet Approval may be sought. *i.e.* conditions of donors.

### **Two Envelope Bidding System**

- 73.1. For certain types of machinery or equipment or for certain type of equipment plants, where alternate types of technical proposals are possible, bidders may be required to submit their technical and financial proposals the same time, but in two separate envelopes. The technical proposals are opened first and reviewed to determine their responsiveness to the specifications.

### **Use of Two Envelop Bidding System**

- 73.2. Two Envelop Bidding System should not be used without specific Cabinet approval, except in the case of procurement of consultants. Cabinet Approval may be sought when it is extremely necessary *i.e.* conditions of donors.

For evaluation of tenders under two envelop system and further details, Please refer Chapter IX.

## CHAPTER VI

### USE OF CONSULTANTS

#### Use of Consultants

74.1. Engagement of consultants may be done in the case where an Executing Agency:

- \* has no necessary expertise knowledge to implement the project, or
- \* has no necessary organisational strength to implement the project.

#### Scope of Consultancy

74.2. Engagement of consultants may be done for any of the following fields :

- \* Pre-investment studies
  - investment priorities
  - sector policies
  - feasibility studies
  - justification of investment project
- \* Detailed engineering and design
  - detailed design
  - specifications
  - cost estimates
  - tender documents
- \* Project implementation
  - execution of training programmes
  - supervision of project execution
  - institution building

#### Authority for Determination

74.3. Authority for determination of consultancy service is the appropriate Tender Board assisted by a TEC.



## **Procedure for selection of Consultants**

### **Preparation of Long List of Consultants**

74.4. As the first step, a long list of consultants should be prepared following one of the methods specified below:

(a) Open invitation.

(b) By collecting names from acceptable agencies.

*e.g.* : World Bank, Asian Development Bank, Diplomatic Missions etc.

### **Short Listing of Consultants**

74.5. Short listing of consultants is made to ensure only the best technically qualified firms submit proposals. For this purpose, if method in Guideline 74(4)(a) is followed, company profiles, past experience and other related details may be called, at the time of invitation. If method in 74(4)(b) is followed, the data available with the respective agencies may be used.

74.6. Usually the number in short list should be between 5-7 firms.

### **Short Listing Criteria**

74.7. Short listing criteria may be defined and approved by the TB covering the following areas :

- \* extensive experience in similar projects,
- \* work experience in the kind of the service being considered,
- \* Experience in similar geographic/ climatic conditions,
- \* work volume in monetary value and manpower.

### **Disqualifications**

74.8. A constructions or manufacturing firm associated with or are affiliates of consultants who are providing consultancy services to a particular project should limit their role to consultancy and disqualify from other works for the same project *i. e.* supply of goods or constructions.

### **Terms of Reference**

75.1. Before the selection proper Terms of Reference should be prepared for the purpose of providing specific instructions on the service to be covered in the assignment.

- \* Reaching agreements on objectives and scope of project.
- \* Advising consultants on scope of work.
- \* Defining services in the contract with selected firm.

### **Components of TOR**

75.2. The following components may be included in the TOR :

- \* background information about the project
- \* objectives
- \* scope of services
- \* tasks and responsibilities of consultants
- \* specialisation and expert month requirements
- \* time frame and manning schedule
- \* budget

### **Budget Estimate on Consultancy**

75.3. It is the responsibility of Executing Agency to prepare a tentative budget estimate on consultancy as a basis for financial allocation and basis for negotiations. The following may be included as components of budget estimate on Consultancy Service :

- \* Remunerations (expert month rates)
- \* Per diem
- \* International travel (air fare and miscellaneous expenses)
- \* Equipment
- \* Communication/Reports
- \* Other expenses (laboratory test, survey, training etc.)
- \* Contingency (maximum 15% )

## Letter of Invitation

75.4. Letter of invitation for proposals should be issued only to the short listed firms. The Letter of invitation should include the following :

- (i) Introduction
- (ii) Content of the technical proposal
- (iii) Transmittal arrangements
- (iv) Proposal evaluation
- (v) Negotiations
- (vi) Intention to submit proposal
- (vii) Visit to project site
- (viii) Additional information
- (ix) Appendices

75.5. The following may be the components of Appendices attached to Letter of Invitation :

- (i) Background information and TOR
- (ii) Major works performed during last 5 years which best illustrates eligibility
- (iii) Present staff deployment format
- (iv) Bio-data format
- (v) Financial proposal format
- (vi) Summary of proposed evaluation criteria
- (vii) Listing of local consultants

## Selection Procedure - Two Envelope System

75.6. For selection of Consultants Two Envelope Bidding System should be followed. Under the system :

- \* Technical and Financial proposals are submitted at the same time but in separate envelopes.
- \* After Technical evaluation completed first ranked firm is invited for negotiations.
- \* If negotiations are successful, all other financial proposals are returned unopened to unsuccessful firms.
- \* If negotiations fail, procedure is repeated with second ranked firm.

### **Time frame for Submission of Proposals**

- 75.7. Minimum period of 8 weeks should be given for submission of proposals from the date of letter of invitation.

### **Evaluation of Technical Proposal**

- 75.8. The envelopes containing Technical proposals should be opened first for evaluation following the approved evaluation criteria to determine the rank.

### **Evaluation Criteria for Technical Proposal**

- 75.9. Evaluation criteria should be based on the following :

- \* Qualifications and experience of the firm
  - Experience in similar projects
  - Experience in similar geographical areas
  - Other factors
- \* Approach and methodology - understanding of objectives
  - quality of methodology
  - innovativeness
  - work programme
  - expert-month requirement
  - counterpart facilities
  - proposal presentation
- \* Personnel
  - general qualifications
  - project related experience
  - language and other factors
  - employment status with the firm

### **Evaluation of Technical Proposal**

- 75.10. Steps for evaluation of Technical proposal may be as follows :

- \* Evaluate technical proposal independently
- \* Identify strengths / weaknesses of each proposal
- \* Rank proposals on Technical merit
- \* Prepare summary evaluation sheet

75.11. The following strategies also may be adopted in the evaluation process :

- \* Measure experience gained by firm by assessing previous projects
- \* Determine if experience claimed resides in staff who are regular staff of the firm
- \* Determine if amount of relevant experience is sufficient for project requirements
- \* Compare experience claimed among the firms to have an indication which firm possesses the best experience
- \* Understanding of objectives
  - the extent to which the firm shows an understanding of the objectives
- \* Quality of methodology
  - whether clear, complete, logical and creative
- \* Innovativeness
  - new and fresh approach on the needs of the project
- \* Work programme
  - logical sequence, continuous workflow, good use of experts time, graphs, charts etc.
- \* Counterpart facilities
  - should be reasonable and realistic
- \* Bio-data
  - evaluate the qualifications of proposed Team Leader
  - leadership quality
  - experience as Team Leader in other projects
- \* evaluate qualifications of the proposed Team Leader as specialist
  - specific experience related to TOR
  - general experience
- \* Team members
  - expert's educational attainment
  - work experience
  - experience in same geographical area
  - fluency in local languages
  - whether permanent employees of the firm or contract for the project

### **Rating for Major Groups of Technical Proposal**

75.12. The following ratings are recommended for major groups of Technical Proposal :  
(out of 1,000 )

- \* Qualifications of the firm - 100-200 (10%- 20%)
- \* Approach and Methodology - 200-400 (20%- 40% )
- \* Personnel - 500-700 ( 50%- 70%)

Thereafter, rank the Technical proposals on merit.

### **Financial Analysis**

75.13. Once the highest ranked consultant is selected, the financial proposal submitted by that firm should be opened and analysed. The purpose of financial analysis is to determine the cost proposed are reasonable and realistic to meet project requirements and can be used as basis for negotiations.

### **Negotiations**

75.14. Once the financial analysis is completed negotiations should be conducted with that firm to reach consensus. If negotiations failed, Financial proposal of next higher ranked firm may be opened and negotiations may be conducted. The procedure may be continued until successful consultant is selected.

75.15. Understanding reached at the negotiations and reasons leading to changes should be recorded.

### **Parameters in Negotiating Financial Terms**

75.16. The following parameters may be used at negotiations :

- (A) \* Maintain open and professional atmosphere
- \* Conduct discussions with mutual respect and courtesy
- \* Clarify misunderstandings
- (B) \* Inform consultant about audit requirements
- \* Ask consultant to explain its firms normal practices, reasons for applying the figures for social charges, overheads, fee etc.

- \* Discuss findings in financial proposal, review and analyse
- \* Request for additional information and question costs and expenses which seems unreasonable
- \* Explain use of contingencies

### **Project Implementation Payment of Mobilisation Advance**

75.17. Mobilisation advance not exceeding 20% of contract value may be paid to the Consultants on an acceptable guarantee. This advance should be recovered from part payments and completed fully with the final payment.

### **Part Payments**

75.18. Part payments may be made to the consultants based on their performance. The performance should be based on the reports submitted by them.

### **Reports to be Submitted by Consultants**

75.19. Usually the following reports are expected from the Consultants :

- \* Inception report - within one month.
- \* Progress report
- \* Interim report
- \* Draft final report
- \* Final report - within one month on completion of project.

The reports to be submitted and time schedule should be stipulated in the agreement too.

### **Regular Periodic Meetings**

75.20. Regular periodic meetings should be conducted by the Executing Agency for the following purposes :

- \* Identify problems or deviations from the TOR.
- \* Promptly resolve difficulties which may arise.

### **Treatment of Contract Variation**

75.21. There should be no material variations in service or conditions without full agreement with concerned parties.

### **Deviation from TOR**

75.22. Deviation from TOR during the implementation period which does not involve additional financial commitment may be approved by the Executing Agency provided reasons are acceptable.

Deviations from TOR or any other deviation with additional financial commitment may be approved by the appropriate TB, provided the TB is satisfied on the reasons. In a case where CATB is the appropriate authority approval of the Cabinet may be sought without going through the process of CATB provided the Ministry is satisfied on the deviation. If the Ministry concerned is not satisfied, the deviation should be considered by a CATB assisted by TEC.

### **Typical Reasons for Deviation from TOR**

75.23. The following may be the reasons for deviation from TOR :

- \* Additional information being available
- \* Funds not adequate
- \* Inclusion of other matters by employer
- \* Encouragement of consultant to expand services

### **Replacement of Personnel**

75.24. Replacement of personnel may be approved by the Executing Agency provided it is satisfied on the reasons for replacement and qualifications of the person to be replaced is similar or higher on all respects.

### **Individual Consultants**

75.25. The above procedure may be used with necessary changes for selection of individual consultants as well.



## CHAPTER VII

**TENDER NOTIFICATION AND ISSUE OF TENDER DOCUMENTS****Publication of Tender Notice**

76. After the approval of the Tender Board is obtained for the tender documents, the Head of the client Department should ensure that the widest possible publicity is given to the tender.
77. The advertisement should specify that tender documents could be purchased by prospective tenderers who are eligible to tender from a given address, giving the final date of issue.
78. The tender notice should be published in an abridged form in approved local newspapers and at least once in the Government Gazette wherever possible.
79. The Notice should contain the essential particulars and indicate how and where further and more detailed information may be obtained and what payments are involved for issue of Tender documents and what other conditions if any have to be satisfied.

**International Competitive Bidding**

80. In the case of worldwide tenders, in addition to normal publication in Sri Lanka and abroad, the client Department should send copies of tender documents to —
  - (a) the Commercial Sections of all Missions of Foreign Governments in Sri Lanka (including those accredited to Sri Lanka, but resident outside),
  - (b) Heads of Sri Lanka Missions abroad, and
  - (c) Approved Overseas Agents of the Government of Sri Lanka.

**Place of Issue**

81. The client Department should maintain an office where tender documents can be inspected or issued to prospective tenderers.

**Free Inspection**

82. The Tender Documents should be made available for inspection free of charge, on a request made by any of the prospective tenderer.

**Non Refundable Tender Fee / Deposit**

83. No tender documents shall be issued unless the non refundable tender fee and/or deposit stipulated in the Tender Notice has been paid and proof of qualifications if any is produced as required in the Tender Notice (Please see clause 88 also).
84. The Tender fee/deposit receipt must be produced for examination to the officer issuing the tender documents.

**Record of Issue**

85. The issuing officer shall write the following on the margin of the tender documents issued and initial the endorsement :
  - (a) the number and date of the receipt produced ;
  - (b) the full name and address of the person/firm to whom the tender documents are issued and particulars of registration ;
  - (c) the date of issue of the documents.

He shall also endorse on the top or on the reverse of the receipt produced that the documents have been issued, giving the serial numbers, if any, assigned to the Tender Documents.

**Defaulters' List**

86. No tender documents shall be issued to any person whose name appears on the list of defaulting contractors.

**Prior Conditions**

87. No tender documents shall be issued to any person who is required to satisfy prior conditions until he has satisfied them.
88. A Tender Board at its discretion may require tenderers to produce a current certificate of worth and proof that they possess or could mobilise adequate equipment and competent staff before they are issued with the tender forms. Such requirements should have been included in the Press Notice relating to the Tender.

**Publication of Pre-Qualification Notice**

89. Publication of Pre-qualification notice and issue of documents should also be done as much as possible in accordance with the above procedures.

## CHAPTER VIII

**RECEIPT OF TENDERS & OPENING OF TENDERS****Sealed Tenders to be Accepted**

- 90.1. All the tenders should be accepted in sealed covers. Tender documents including the tender notice should stipulate a condition to this effect. Even quotations upto the value of R.100,000 as far as possible be accepted in sealed covers.

**Bids to be in Duplicates**

- 90.2. Tenders shall be submitted in one original and such number of duplicates as stipulated in Instructions to Bidders, sealed separately and marked as "Original" or "Duplicate." All these envelopes shall together be enclosed in one envelope and delivered as per Clause 91.

**Mode of Submission**

91. Tenders may be submitted
- (a) By post, under registered cover ;
  - (b) by personal delivery to an officer authorized by the Tender Board to receive tenders ;
  - (c) by depositing in the Sealed Tender Boxes kept in the office of the Tender Board as stipulated in the tender documents ;
  - (d) by Fax or Telex or E-mail when explicitly permitted by the notice of Tender.

However this mode is permitted for the acceptance of quotations upto the value of Rs.100,000 under personal supervision of Head of Department. In all other cases specific cabinet approval should be obtained to use this mode.

**Place of Receipt of Tenders**

- 92.1. Tender notice should clearly specify the place of receipt of tenders.

**Acknowledgement**

- 92.2. A person who delivers the tender by hand is entitled to a receipt.

### Safe Deposit

93. The officer who receives the tenders should deposit them immediately on receipt in the Sealed Tender Box. If tenders are too large and such deposit is not possible they should be deposited in a secured cabinet / cupboard provided for the purpose.

### Tender Box

94. The Tender Box should be
- (a) constructed so as not to permit tampering or retrieval,
  - (b) fastened with a good lock with the key being kept in the custody of a Staff Officer nominated by the Chairman of the Tender Board.
  - (c) Sealed,
  - (d) Kept in a room occupied by a Staff Officer.

### Closing of Tenders

95. Tenders should normally close at the date and time specified in the tender notice and as far as possible should be opened immediately afterwards. If for any reason, the Tenders are not opened immediately, the Tender Box or other receptacle shall be closed and sealed at the closing time. International Tenders, as far as possible, have the closing time adjusted to suit the convenience of foreign tenderers as well.
- 95.1. Estimate of the project should be submitted at the time of opening of tenders for the information of Bid Opening Committee. (BOC)

### Late Tenders

- 96.1. Any tender received later than the closing time should be rejected and returned unopened.
- 96.2. No tender shall be rejected at the bid opening on the grounds other than late tenders.

### Opening of Tenders

97. The opening of tenders is the responsibility of the respective Tender Board. However if the TB is unable to attend to the opening of tenders they may delegate this authority to a Bid Opening Committee (BOC) consisting of at least two Staff Officers and one of whom should be appointed as Chairman BOC.

### Right to be present at Bid Opening

98. The tenderers or their authorised representatives should be allowed to be present when the tenders are opened. The names of the tenderers present or represented should be recorded and their signatures obtained in a register before commencement of the opening.

### Supervision of Opening

99. The tenders shall be opened by or under the immediate supervision of the Chairman, TB/BOC.

### Acceptance of Samples

100. If samples are called as a pre-requisite tender condition, all the samples so received together with identification numbers should be submitted to the TB / BOC. Records of the BOC shall include details of samples received. Samples received should be handed over to the TEC together with the tenders.

### Opening Procedure

- 101.1. The envelopes marked "withdrawals" should be opened first. If the TB/BOC is satisfied with the contents of the letter inside, his original tender should not be opened. If a bidder has withdrawn his bid following the procedure stipulated in the ITB and TB/BOC accepts it, the bid security of the relevant tenderer should be refunded.
- 101.2. The envelopes marked "modifications" should be opened next and the contents of the letter therein will be valid over his original tender.

### Original to be opened

- 102.1. The envelopes marked "original" should be opened next along with the "duplicates".
- 102.2. Where there is no marking as "original" or "duplicate" the TB/BOC should open all envelopes and mark one as original and it will prevail as the original tender for all purposes.

### **Records of TB / BOC**

103.1. The TB / BOC should read out, or cause to be read out to those present, the following details :

- (a) name of each tenderer and the amount in the form of tender,
- (b) whether or not a bid bond is submitted and the amount of bid bond, if submitted,
- (c) if discounts are declared in the bid form, the amount of discount,

However, details or the make-up of tender should not be read out.

103.2. The proceedings of Bid Opening should be recorded and the minutes shall be authenticated by the members of TB / BOC.

### **Numbering of Tenders**

104. On opening, the tenders shall be numbered consecutively and shall forthwith be authenticated by the initials of the officers opening them together with the date on which they were opened. A rubber stamp shall be used for the purpose. Pages consisting the summary of all data which are required as per evaluation criteria should be date stamped and initiated by TB/ BOC.

### **Tenders to be sent for Evaluation**

105.1. Immediate action should be taken to hand over the opened, original and duplicate tenders to TEC for evaluation with the schedule of tenders received.

### **Original is the Governing Document**

105.2. If both original and duplicate tenders are given to TEC, before commencing evaluation process TEC should compare original tender with duplicates, as "original" shall be the governing document for all the purposes.

### **Independent Packages**

106. If the tender consists of several items or lots or packages which are treated separately, for evaluation and award the amounts tendered for each item, lot or package should be read out separately.

## Scheduling of Tenders for Evaluation

107. Immediately after the opening of tenders, the Chairman of the TB/BOC should cause a schedule of the tenders received to be prepared in a suitably designed format. The scheduling may be done either by the TB/BOC or by the Head of the client Department and original of the schedule should be submitted to the Tender Board promptly.

## Safety of Originals

- 108.1. It is the responsibility of the executing agency to keep the "original" tenders in the safe custody, after the evaluation is completed, unless different instructions are received from the TB.

- Name of the Tenderer.. — amount
- bid bond submitted or not if there is amount
- discount we declare or not in bid bond if amount

## CHAPTER IX

## EVALUATION OF TENDERS

**(The procedure laid down in this chapter shall be followed for evaluation of large and complex tenders. However these provisions, mutatis mutandis be applied for evaluation of small tenders also with appropriate simplifications.)**

**109.1 General - Bid Evaluation**

The purpose of bid evaluation is to determine the lowest, qualified (eligible), responsive, evaluated bid out of the bids received. Therefore, Bid evaluation process could be divided into two broad stages:

- A. Bid Examination (including determination of responsiveness) and,
- B. Bid Evaluation.

**109.2 Bid Examination**

The purpose of bid examination is to determine the eligibility of bidders responded and substantial responsiveness of bids received.

**109.3 Bid Evaluation**

The purpose of bid evaluation is to determine the lowest evaluated bid from the substantially responsive bids received.

**109.4 Responsibility of TEC**

TEC is appointed to assist the Tender Board. Their main responsibilities are:

- \* preparation/scrutinisation of bid documents.
- \* preparation of pre-qualification documents and evaluation them. (if required)
- \* opening of bids (if so empowered).
- \* comprehensive evaluation of tenders.
- \* make suitable recommendations to TB to enable them to arrive decisions.
- \* assist TB in any other way as requested by them.

under the guidance and instructions of the TB.



### 109.5 Meeting of TEC

Once the tenders are received by the chairman TEC, matters relating to evaluation of tenders will be considered at a meeting of the TEC to be called for the purpose.

### 109.6 Time frame for bid evaluation

It is important to bear in mind bids are valid for a specific period only. Bid evaluation should, therefore, be undertaken expeditiously, leaving ample time to seek all the necessary formal approvals. Hence a tender should be evaluated within a maximum period of one month.

However, the TB should determine the time to be given to the TEC for the evaluation of tenders depending on the complexity of the tender and extent of response.

### 109.7 Extension of bid validity

All attempts should be made to expedite awards on the original time schedule within the validity period. If this becomes impossible, extension of validity period should be obtained.

Extension of bid validity should be sought by the Executing Agency on the recommendation of TEC.

If a Bidder does not agree for extension of validity his bid should be rejected.

### 109.8 Payments for Evaluation of Tenders

The Secretary to the Treasury will determine the rates of payments to members of TECC. The scheme of payments may provide incentives for early completion of evaluation.

The following scheme of payments will be applicable for the present.

(A) Members of TEC assisting CATB:

- (i) If the value of tender is not less than Rs. 100 Mn.- Rs.2,000 per member.
- (ii) If the value is less than Rs. 100 Mn. Rs. 1,000 per member.

If the final report is submitted within 21 days of opening of tenders, the payment may be Increased to Rs. 4,000 and Rs. 2,000 respectively.

- (B) Members of TECC assisting DTB/MTB handling tenders within the enhanced limits under the Donor Funded Projects (Between Rs.20 Mn.- Rs.100 Mn. funded by WB, ADB & OECF ) as in A (11) with increased Payments where necessary. The Composition of TEC should not exceed 4 members.
- (C) Members of TECC assisting MTB handling tenders between Rs. 10 Mn. and Rs.20 Mn. under local funds.  
Rs.500 per member is payable. If the evaluation report is submitted within 14 days of opening of tenders the payment may be increased to Rs.1,000. The composition of TEC should not exceed 3 members.
- (D) No payment should be made for evaluation of tenders with value less than Rs.10 mn.

Treasury may decide special payments where members of TECC assisting CATBB handles very large and complex tenders exceeding the value of Rs.1,000 Mn.(Rs.1 Billion)

### 109.9 Confidentiality

No information relating to examination, clarification and evaluation of bids and recommendations concerning awards shall be communicated, after the public opening of bids, to any persons, including bidders, until after the award of contract is officially notified to the successful bidder unless they are officially involved in the process.

### 109.10 Obtaining the Consultants' Services for Evaluation of Bids.

If evaluation of bids is entrusted to Consultants it should be done under the supervision and guidance of TECC. Consultants should not form a part of TEC.

TEC should submit a separate report to TB with their comments and recommendations along with Consultants' report.

## 110. Evaluation of bids - General Principles

The bid document must contain a statement on the manner in which the bids received are evaluated. A specimen of possible evaluation criteria is given in the appendix. Accordingly, the evaluation of bids must be consistent with the

method, terms, and conditions set forth in the bid documents. As set out in the appendix the evaluation method may be based on number of factors in addition to the price. Hence the bid documents must specify the relevant factors in addition to price which will be considered in the bid evaluation and the manner in which they will be applied in determination the lowest evaluated bid which is not necessarily the lowest tendered price and evaluated price should reflect the actual expenditure to be incurred by the employer in receiving and utilising the offer.

*e.g.* (1) If past experience in the similar field of a bidder is a critical requirement it should be so stated in the bid documents with the number of works, amount and time period etc. and bidders deviating from the requirement critically, may be rejected. The financial comparison of bids should be based on the lowest evaluated cost of the bid which is not necessarily the lowest priced bid but which are substantially responsive and qualified.

#### 111.1 Bid Examination - Eligibility of Bidders

Before commencing detailed bid evaluation, bids should be examined to ascertain whether bidders comply with all the requirements of the bid conditions to determine the eligibility.

Hence the first step of bid examination shall be the determination of bidder's eligibility. *i.e.* whether the bidders comply with the important qualifications laid down in the bid documents. An essential prerequisite to be considered as a qualified bidder may be:

- \* past experience
- \* financial stability
- \* personal capabilities
- \* equipment capabilities
- \* arbitration/litigation history

Where pre-qualification of bidders occurs this prerequisite could have been already met. However, where pre-qualification has not taken place, all bidders should show evidence of their qualifications in terms of the bid documents and the evaluation is done as a post qualification process.

(Please see Chapter V for Pre-qualification process)

### 111.2 Post qualification process

Post qualification of bidders serves as a safety measure to make sure that the lowest evaluated bid has been submitted by a responsible and trustworthy bidder. It is therefore necessary, before the award is made, to determine that the bidder who has submitted the lowest evaluated bid price has the required capacity and resources to effectively carry out the contract.

Eventhough the offers are from pre-qualified tenderers, if there is a considerable time from the date of pre-qualification upto the time of tenders are called it may be necessary to update the information earlier furnished to ascertain whether there are considerable changes, provided it is so stated in the tender document.

A bidder not complying substantially with the eligibility criteria may be subject to rejection of his bid.

### 112.1 Deviations from the provisions of bid documents (major & minor deviations)

Deviation from any provisions of the Bid documents (Instruction to Bidders, Bid Form and Price Schedule, Condition of Contracts and Technical Specifications etc.) fall into two main categories. They are:

- (A) Major deviations by the bidder results in finding of “substantially non responsiveness” and consequent rejection of the bid.
- (B) Minor deviations - bids with minor deviations are considered as “substantially responsive” and are, therefore evaluated and considered for award.

Hence the deviations from bid conditions should be clearly identified and categorised whether they are major or minor deviations. These deviations may include:

- \* Exceptions
- \* Exclusions/incomplete offer
- \* qualifications
- \* conditions
- \* stated assumptions
- \* alternative proposals (when not specifically solicited)
- \* other changes to the requirement of bid documents

Having identified the deviation a decision should be taken as to whether they are acceptable or unacceptable. Some deviations may be clearly unacceptable. Some that are acceptable may be quantifiable in monetary terms. Others may not be quantifiable. If tender documents permit acceptable and quantifiable deviations should be quantified and considered for final determination.

However the problem is to determine which deviations are major and which deviations are minor. Ways of doing so with respect to the most frequent deviations are given below.

### 112.2 **Completeness of bids**

If it is intended to reject incomplete bids, it should be so indicated in the bid documents.

*e.g.*(1) If it is intended to reject a bid in a procurement of goods on the basis that sufficient number of items are not quoted, that can be done only in the instances where the bids are specifically called for a minimum number of items of the total number of items to be quoted or minimum value of the bid are stated.

In addition to that bid documents should also state how incomplete bids meeting the minimum requirements will be evaluated.

*e.g.*(2) The bid document required bidders to submit prices for spare parts in addition to prices for equipment but did not quote, that incomplete bid may be rejected.

### 112.3 **Delivery schedule**

The time schedule for supply of goods (may be import and supply) should be clearly stated in the bid documents. In this regard, three elements should be considered, *i.e.*,

- (a) the preferred schedule;
- (b) the earliest and latest acceptable delivery date ; and,
- (c) criteria for evaluating the delivery schedule proposed by the bidders.

*e.g.* The bid documents specified a delivery period of 8 to 10 weeks as the stock position locally is not satisfactory. Some bidders offered delivery within that period, others offered delivery upto 24 weeks. Hence the bids quoting later than 10 weeks may be rejected.

#### 112.4 Price escalation

When the bid documents call for firm bids, they should state that bid conditions on the inclusion of an escalation clause will be considered substantially non-responsive and rejected.

*e.g.* The bid documents call for firm price. A bid proposing, an escalation clause may be rejected.

#### 112.5 Subcontracting

The bid documents for civil works contracts should indicate to what extent subcontracting is permitted and whether the proposed subcontractors have to be named in the bids.

*e.g.* The bid document did not contain any statement regarding the permissible extent of subcontracting. One bidder proposed to subcontract all major components of the work. The bid may be rejected.

#### 112.6 Absence of bid security

If the bidder is required to furnish a bid security with his bid, as is normally the case, his failure to submit, it is considered a major deviation and grounds for rejection of bid. Without having furnished the security the bidder suffers no loss if he fails to accept a contract which the employer is prepared to award to him.

#### 112.7 Insufficient amount of security

Usually bid security should be stated as a fixed sum. If that is done, submitting a security in a smaller amount than specified or not accompanied by bid security in the amount specified may be rejected.

However If by mistake, the amount of the required security is stated as a percentage of the total bid price quoted, the security furnished by a tenderer sometime may be little lower than specified due to mistakes in calculations. If there is no doubt on bidder's intention to comply with the bid security requirement, and if the difference between the amount required and actually covered by the security is relatively small, rejection of a bid because of such discrepancy would merely reduce effective competition. Hence such bid should not be rejected.

Such problems can be avoided if a fixed amount of security is specified in the bid documents.

### 112.8 Form of bid security

If the form of bid security is in substantially different form than that described in the bid documents, the bid may be rejected.

*e.g.* The bid documents permitted the bid security to be furnished in the form of a letter of credit issued by a bank operating in Sri Lanka. A bidder submits a letter of credit issued by a foreign bank “advised” but not “confirmed” by a local bank. The local bank thus had no responsibility of its own to honour the letter of credit. Hence the security may be rejected.

### 112.9 Lack of supporting documents

There are two types of documentation which may be required to be submitted with bids. These must be treated differently, depending on the purpose.

- (a) One type is intended to substantiate the legitimacy of the bid (*i.e.* that the bid is not a “speculative”, “exploratory” or “wait-and-see” bid) or proof of reliability of the equipment offered;
- (b) The other is to provide additional details on the technical aspect of the bid. (*e.g.* brochures describing the equipment offered).

Lack of documentation of the first kind is normally considered a major deviation and, therefore, may be considered as grounds for rejection of the bid. Lack of second kind of documentation is usually considered a minor deviation which can be remedied by subsequent submission on request for clarification.

*e.g.* The bid documents for procurement of fertilizer require bidders to submit a certificate from the manufacturer attesting to the bidder’s authority to offer fertilizer. If a bidder fails to submit such “manufacturers” certificate, his bid may be rejected.

Such problems may be avoided if a check list of documents to be submitted with the tender is issued.

### 113. Minor deviations

A minor deviation would be one which either

- \* has no effect on the validity of the bid, or
- \* has no effect on the price, quality or delivery of the goods or services offered,  
or
- \* has not specified in the bid documents as grounds for rejection of the bid.

*e.g.* deviations from formal requirements:

All deviations from the formal requirements regarding the submission of bids other than the bid signature (such as the marking of envelope, the presentation of bid in a bound folder, etc.) are normally considered as minor. Lack of proper signature on the bid form is a major deviation because the bid is not legally binding unless it is signed.

In a case where bids were required to be submitted in bound folders, and a bid, submitted in a loose-leaf binder may be treated as a minor deviation.

### 114. Scheme of Evaluation

The TEC should work out the details of the Scheme of evaluation and brief the TB about it, even though details of evaluation are not included in the tender documents.

The development and determination of evaluation methodology and strategies should be undertaken by the TEC as far as possible at the time of preparation of tender documents. However, if this task is not completed, under exceptional circumstances, this may be done after preparation of tender documents but in advance of the opening of tenders, and submitted to the TB for approval. However once the Scheme of evaluation is approved by the TB and included in the tender documents, there should be no departure from it. The scheme of evaluation should explicitly identify the critical determinants in the specifications on which no variations are permissible and define the criteria that would be adopted in the evaluation.

(a specimen of possible evaluation criteria is given in the appendix VI)



### 115.1 Determination of Technical Responsiveness

Determination of technical responsiveness of a bid is an important part of the tender evaluation. Therefore TEC should check the technical specifications and other connected technical details stated in the bid to satisfy whether they comply with what is given in the bid documents. Only the bids which are substantially responsive in technical aspect should be considered for detailed evaluation.

In determining of substantial responsiveness of a bid on technical aspects, the Guide Lines stated hereunder may be applied.

### 115.2 Determination of substantially responsive tenders

A substantially responsive bid is one which conforms to the terms, conditions and specifications of the bid documents, without material deviation or reservation.

A material deviation or reservation is one:

- (i) Which affects in any substantial way the scope, quality or performance of the works;
- or
- (ii) which limits in any substantial way, inconsistent with bid documents, the employer's rights or bidder's obligations under the contract, or
- (iii) the rectification of which would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

### 116. Rejection of tenders due to material deviations

After the examination of bids to identify actual deviations and potential deviations, a decision has to be taken by TEC/TB on whether the deviations are so **material** as to be unacceptable, and therefore constitute grounds for rejecting particular bids. The following deviations (or some combination thereof) may result in the rejection of the bid at the bid examination stage.

(a) late bids ;

(b) bidder not eligible for various reasons (bidder deviating critically from the requested qualifications - e.g. when past experience of three similar jobs are requested, a bidder complied with experience of one similar job only) ;

- (c) unsigned bids ;
- (d) absence of, or incorrect, bid security ;
- (e) bid submission by a legal entity or joint venture different from that which was pre-qualified ;
- (f) the submission of a bid subject to price adjustment when fixed price bids were called *e.g.* when firm price bids are called instructing no price escalations would be paid, a bidder submitting a bid with price subject to escalation, may be rejected. ;
- (g) the submission of a bid based on an entirely different alternative design, where such had not been requested or permitted ;
- (h) an inflexible time phasing of contract not confirming to prescribed critical key dates or programme ;  
*e.g.* Bids are called for a power project prescribing the time frame for completion indicating no time extensions would be allowed as generating capacity has to be increased on the specific date. A bidder not agreeing to the time frame and requests for an additional period, should be rejected.
- (i) subcontracting in substantially different manner and amount than specified in the bid documents ;
- (j) serious deviation of the arbitration clause (*e.g.* country, procedure etc.) ;
- (k) incomplete bids.

### 117. Debatable deviations

Deviations from bidding requirements which do not appear at first sight so serious or material as to provide immediate grounds for bid rejection may be considered further in the subsequent evaluation process. The following are examples of such deviations:

- (a) request for an amount of advance payment and other payment terms (including retention money, guarantees etc.) ;
- (b) non-compliance with some regulations (labour, taxes, duties etc.) ;
- (c) proposed changes in construction period which is not critical ;

- (d) changes in specified method of construction or execution in non-critical nature ;
- (e) omission (deliberate or unintentional) of minor works or items included in the scope of work ;
- (f) modification of, or a limit to, the amount specified for liquidated damages.

Executing Agency, on the recommendation of TEC may request clarifications and details or implications of any deviation which are not explicit from respective bidders without change in the substance or price of the bids. After clarifications the implication of a deviation may be such as to justify rejection of the bid as non-responsive.

#### **118.1 Substantially responsive tenders not to be rejected**

A tender should not be disqualified from evaluation except on critical determinants identified in the Scheme of Evaluation where substantial compliance with conditions of tender have been met.

#### **118.2 Limit for substantially responsive bids to be evaluated**

After examination of substantially responsiveness, a decision must be taken as to how many of the remaining substantially responsive bids should be evaluated in detail to determine the lowest evaluated bid. An examination of the number of bids remaining valid and the spread of bid prices may help determine the course of action. Where, for example, a fairly large number of substantially responsive bids remain and a few of the bid prices are clustered around the lowest, the low priced bids in the cluster, irrespective of the number, should be evaluated. Where there is no cluster of low priced bids, it is normally suggested that the three lowest priced, substantially responsive bids should be evaluated.

No bid should be excluded from detailed evaluation if there exists a possibility that, as a result of various price adjustments it could become the lowest evaluated bid. Detailed evaluation should include all substantially responsive bids of which could reasonably be determined to become the lowest evaluated bid. (please see Guide Line 123 for detailed evaluation)

### 119. Clarifications of tender responses

Care should be taken in not confusing purpose of clarifications with that of negotiations. Negotiations should not be made by TEC without the approval of TB.

Following the submission of tenders (particularly for complex works) there is invariably a need to seek clarification of some details in order to ensure that the tender can be properly and fairly evaluated. These clarifications;

- (a) should not permit any substantive change to the tenderers' initial response; and,
- (b) there can be no change in the tendered price, except if there is an arithmetical correction to the tendered price.

### 120. Clarifications to be handled through Executing Agency

Any clarification sought by the TEC should be handled through the Executing Agency. On the request of TEC, Executing Agency may ask for written clarifications from the tenderers. If Executing Agency considers necessary, approval of Chairman/TB or Secretary of the Line Ministry may be obtained before requesting clarifications. However tenderers should not be called for oral clarifications without the approval of TB.

### 121. Avoiding deviations

Recognition of the factors contributing to deviations by bidders can help TB/TEC avoid or reduce them in future operations. Clear, unambiguous bid documents should result in fewer deviations by bidders. Experienced staff as well as standard bid documents will facilitate to reduce these deviations too.

Pre-bid meetings during the bidding period may be convened by the Executing Agency to clarify any serious ambiguities and discrepancies in the documents. If the TB decides to call for pre bid meeting the Executing agency should co-ordinate it.

When number of bids are heavily disqualified with respect to the same bidding requirements the reasons for the deviations should be determined by the tendering agency in discussions with the bidders and corrective measures should be taken in future processes.

## 122. Validity of original bid

If a discrepancy appears between original bid and duplicate, the original will prevail.

## 123. Detailed evaluation of bids

Having determined the number of substantially responsive bids which should be evaluated in detail, as stated in Guide line 118.2 the next step is to scrutinise them systematically in order to establish comparison on common basis.

Only bids which have been determined to be substantially responsive to the bidding requirements, *i.e.* do not contain material deviations, should be considered further for detailed evaluation. The purpose of bid evaluation is to determine the lowest evaluated bid from the substantially responsive bids received. The lowest evaluated bid may or may not necessarily be the lowest quoted bid. In order to determine the lowest evaluated bid accurately and efficiently, a systematic procedure designed to cover all aspects of the evaluation process in a logical sequence should be followed. A suggested step by step procedure is outlined hereunder.

- \* check for arithmetical errors, correct if any and confirm with bidder
- \* check for omissions (line items or parts of work)
- \* convert to a common currency for initial bid comparison
- \* apply discounts, if any
- \* seek clarifications from bidders on questionable deviations
- \* assess monetary implications on deviations and other matters (alternative offers etc.)
- \* adjustments for various minor deviations
- \* determine the ranking order
- \* apply preferences, if any
- \* reassess the ranking order of bids
- \* determine the lowest evaluated bid price
- \* prepare the bid evaluation report

### 124.1 Correction of errors

Errors should be corrected as follows:

- (a) where there is a discrepancy between the amounts in figures and in words, the amounts in words will govern; and
- (b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity,
  - (i) the unit rate as quoted will govern,
  - (ii) unless in the opinion of the TB/TEC there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted will govern and the unit rate will be corrected.
- (c) The amount stated in the form of bid adjusted in accordance with the above procedure with the concurrence of the bidder shall be considered as binding upon the bidder. If the bidder does not accept the corrected amount of bid, his bid should be rejected.

The procedure stipulated in (c) above should be followed for the foreign funded projects provided it is stipulated in loan agreements and/or Standard Bid Documents. However, for the locally funded projects, if the total bid price increases due to corrections of above mistakes, the corrections should be readjusted within the tendered price in consultation with the tenderer.

Where the adjusted price is lower than the tendered price the adjusted figure will be the bid price. If the tenderer does not agree for such adjustments, his bid should be rejected without affecting his bid security.

### 124.2 Unrealistic rates

If unrealistically low rates quoted by a tenderer is found on critical or very important items he should be requested to prove to the satisfaction of the TB/TEC how he could perform the particular items within that rate, if relevant with a rate analysis also.

If the TB/TEC is of the view the clarifications given are unacceptable and tenderer would fail in performing on those rates the bid may be rejected. If clarifications are acceptable and TEC is satisfied on that, evaluation should be continued.

### 124.3 Unbalanced bids

Bids for civil works and supply-and-install contracts may be “unbalanced” in several ways ;

- (a) Unit price for those work elements to be performed early during contract performance can be priced relatively high, thus requiring higher payments to the contractor in the early phases of the contract period than justified by the value of the work performed. (Front Loading)
- (b) bidders who have reasons to believe that the quantities given in the bid documents for one or more work items are underestimated, will quote unduly high prices for these items. Since payments in unit price contracts are based on actual quantities of work performed they would attempt to obtain higher payments than justified by the value of the work performed. The same situation can exit in supply-and-install contracts if a bidder believes that the quantity in certain materials indicated in the bid document is considerably underestimated but payments are to be based on quantities actually installed.

### 124.4 Evaluation of unbalanced bids

In the case of overpricing early work items, the present value of all payments (using the work schedule as a basis for timing of payments) can be computed for the unbalanced bid and separately for all other bids, using average unit costs. The difference between the two sets of present values so computed could be added to the unbalanced bid, making it comparable to all other bids.

In the other case of unbalancing mentioned above, not the timing of payments but the reliability of estimate of quantities for the overpriced-items is involved, the first step would, therefore, be to verify the estimate. If it is found that the estimates were, in fact, considerably lower than the quantity likely to be corrected, the difference between the unit price quoted in the unbalanced bid and the average quoted on other bids, multiplied by the revised estimate of quantities, could be added to the unbalanced bid for comparison purposes.

Since other items may have been underpriced by the bidder to maintain his competitive position, an adjustment would also have to be made for underpriced items by deducting from the total price of the unbalanced bid the difference between unit prices quoted in the unbalanced bid and the average of unit prices

in other bids, multiplied by the quantities for each unit involved. However it is clear that such calculations should not be undertaken unless the unbalanced bid is the lowest evaluated bid and unless the amounts are substantial.

### 124.5 Precautionary steps

Adjustment of unbalanced bids for evaluation purposes;

- (a) an attempt may be made to renegotiate unit prices to be used in the contract if the bid is the lowest; or
- (b) If the project is foreign funded one, in the case of overpricing early work items, fixing a higher performance security, should be considered to reduce the chances that the contractor will not complete the work ;
- (c) If the project is funded by local funds, inserting an additional clause in the agreement to the effect that actual payments are made on estimate rates and difference will be paid upon successful completion of the job, could be considered, instead of applying the provisions of (b) above.

However to justify the unbalanced bid price, if a bidder has quoted unrealistically low rates for last items it should be dealt in accordance with the Guide Line 124.1. *i.e.* request for clarification on low rates.

### 124.6 Missing items

Bid price should be adjusted to account for items not included in a bid, provided;

- (a) that the bids can be accepted under the provisions of the bid documents,
- (b) that such adjustments would not exceed a certain percentage of the total bid ; and
- (c) not an item which is in a critical nature.

The adjustment for missing items should be based on prices quoted in other bids. Generally an average of prices quoted in other bids or the highest price quoted by any of the tenderer will be the best measure of the amount to be added to the bid price for missing items. If no bidder quoted for an item, that item should be disregarded in the evaluation of all bids. When price quoted differ by a large percentage, the highest and lowest price should be disregarded in the calculation of the average price.

However the award should be based on lowest quoted rate which was taken into account for calculation of average lowest price as above or lowest rate quoted by any of the tenderer.



### 125.1 Factors Other than Price

Apart from price, other relevant factors such as;

- \* the efficiency and reliability of the equipment or the method of construction to be used
- \* the time of completion of construction or delivery
- \* the availability of after sales service and spare parts
- \* the operating cost etc.

may be taken into account in determining the lowest evaluated bid to the extent and in the manner specified in the bid documents.

### 125.2 Fuel Consumption Cost

Because of the high cost of energy, the evaluation of differences in efficiency or fuel consumption or losses, as the case may be, of machinery and equipment offered by different manufacturers has become especially important. Therefore fuel consumption cost may be considered at the evaluation of bids.

### 125.3 Life Cycle Cost Evaluation (LCC)

Although applied mainly to major industrial equipment and machinery, the principle of LCC may be applied to the evaluation of specialised works projects such as industrial process plants (*e.g.* steel mills, fertilizer plants etc.). The total cost over the life of the plant, including acquisition, ownership, operation and maintenance etc. are normally used to obtain a "cost per unit of output" for bid comparison purposes.

### 125.4 Currency conversion

The bid price should first be broken down into the respective amounts payable in various currencies by using the exchange rates specified in the bid documents. In the second step, the amounts in various currencies should be converted to the Sri Lankan Rupees or if all the bidders have quoted in one foreign currency, to that currency, on the date and at the rate specified in the bid documents.

The conversion rate should be the official selling rate determined by the Central Bank of Sri Lanka on the date stipulated in the bid documents.

### 125.5 Evaluation of alternative bids

Where alternative bids are acceptable, the invitation for bids specify the conditions governing alternative bids. Very often, although no alternative bids are specifically called for in the bidding documents, some bidders will submit on their own initiative alternative bids in addition to their base bids. In such case, if bid documents specifically not stated that alternate bids are accepted, bid comparison should be between lowest evaluated base bid or alternate bids, as the case may be.

### 126. Application of preferences

The General Treasury from time to time will determine and notify quantum of preferences applicable and its eligibility criteria. The preferences presently valid and their eligibility criteria are as follows:

- \* 5% preference for Approved Societies
- \* 20% preference for locally manufactured articles offered in competition with imported articles. ( Eligibility criteria is minimum of 30% added value in Sri Lanka at ex-factory price)
- \* 7 1/2 % preference for works contract (eligibility criteria is more than 50% Sri Lankan ownership of the company)

World Bank and Asian Development Bank has approved the following preferences for the projects funded by WB/IDA and ADB.

- \* 15% preference for locally manufactured goods (Eligibility criteria is minimum of 20% locally added value at ex-factory price)
- \* 7 1/2% preferences for domestic works contractors  
(Eligibility criteria is the Company should have minimum of 50% Sri Lankan ownership)

The method for applying preferences is:

- \* at the first instance all the bidders should be divided into two groups, *i.e.* preference entitled group and preference not entitled group.
- \* at the next step an amount equal to the preference should be added to the each of the bid price of preference not entitled group hypothetically for comparison purpose.
- \* re-rank the bidders on the above basis.

### 127.1 Negotiations with tenderers

Following the evaluation of tenders, but prior to selection of the successful tender there may be a need for negotiations on issues identified as having potential to improve outcome and benefits and reduce uncertainties.

For example negotiations can reduce cost, identify new alternatives and ensure agreements are reached which achieve results by giving improved value.

Another requirement for possible negotiations is where the lowest evaluated cost of a responsive bid exceeds the Total Cost Estimate and the intention is to seek a lower price from the bidder or where there are number of responsive bids all above the Total Cost Estimate.

All price negotiations must be undertaken by the TB with or without the assistance of the relevant TEC. Generally negotiations should be undertaken in writing. However at least an official from Treasury must be in attendance at negotiations on tenders handled by CATBB. (CATB member or TEC member or any other representative)

A record of the negotiations will be maintained for contractual and accountability purposes. The record should clearly show:

- \* the aim of the negotiations
- \* the justification of the negotiations
- \* the plans followed
- \* a record of exchanges between the parties
- \* an evaluation of the effectiveness of the negotiations

At the end of negotiations if a Memorandum of Understanding (MOU) is signed with the successful tenderer it shall form a part of contract agreement.

### 127.2 Comparison with cost estimate

TEC/TB should compare tenders received with Departmental Cost Estimates.

- \* Tenders which are considerably higher than the Total Cost Estimates should normally be rejected. An indicative cut off point would be 30% higher, where there is fairly wide response.

- \* If the tenders are all excessively high, action should be taken to recall tenders, after reviewing the TCE. However, if the TB after review of the TCE is satisfied that the TCE has been unrealistic or is so in the prevailing circumstances, it may recommend a revision of the TCE and pending the approval for revision TEC may proceed the evaluations.
- \* A tender lower than 30 % of the TCE should be rejected.
- \* A tender lower than the TCE by 25 % - 30 % should be requested to prove to the satisfaction of TB/TEC that he could perform contract at the tendered amount.

### 128.1 Evaluation of Bids Under the Two Stage Bidding System

If it is decided to call for two stage bids, ( Please see Guide Line 72.1 ) each of the substantially responsive proposal is examined and discussed with the bidder. Any deficiencies, extraneous provision and unsatisfactory technical features are pointed out to the bidder and whose comments are carefully evaluated. The bidder is allowed to revise or adjust his proposal to better meet the requirements. The objective of the exercise is to ensure that all technical proposals confirms to an equal and acceptable technical standard.

The second stage is to invite bidders to submit their prices based on the technical proposals as modified and agreed to. Accordingly the bids can be evaluated on an equal and acceptable technical basis.

### 128.2 Evaluation of Bids under the Two Envelope System

If two envelop bids are called (Please see Guide line 73.1 also) the technical proposals submitted by all the bidders should be opened and evaluated first to determine their responsiveness. Only the financial proposals submitted by bidders whose technical proposals are responsive, be then opened and evaluated.

## 129. Bid Evaluation Report

Immediately after the evaluation is completed TEC should prepare a Bid Evaluation Report and submit to TB. The information and documentation to be submitted as part of or with the evaluation report includes the following :

- \* copy of record of bid opening;
- \* table showing the bid prices as submitted and as corrected for arithmetical errors;

- \* Evidence that corrections for arithmetical errors have been accepted by the bidders concerned;
- \* tables showing the bidder's compliance with major conditions (e.g. bid security, bid validity, delivery period etc.);
- \* table showing for each bid the adjustments made to the bid price, indicating the method used and giving reference to clause of bid document;
- \* table showing for all bids the bid price, the total amount of adjustments and the adjusted bid price (the total evaluated price);
- \* record of oral discussions or copies of correspondence with bidders relating to clarification of their bids;
- \* table of exchange rates used in converting bid prices to the common currency for bid comparison with the dates on which those rates prevailed and reference to clause of tender document;
- \* Recommendation for negotiation if required; or
- \* Recommendation for award.

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## CHAPTER X

**RESPONSIBILITIES OF THE TENDER BOARD IN RELATION TO FINAL DETERMINATION****Tender Board**

130.1 The Tender Board shall be responsible for all aspects of the Tender process referred to in the preceding sections which are relevant to the tender. In particular;

- (a) the approval and publication of the tender notice,
- (b) approval of Tender documents including evaluation criteria,
- (c) the interpretation of the Instructions to Bidders and Conditions of Contract,
- (d) evaluation of bids,
- (e) negotiations with tenderers,
- (f) determination the final award.

However, the determination of CATB are subject to approval of the Cabinet.

130.2 Tender Board should exercise these authorities with the assistance of the TEC, if there is a TEC so appointed.

**Powers of the Tender Board**

131.1 The Tender Board shall have the power to:—

- (a) accept any tender, or portion of a tender;
- (b) accept portions of more than one tender;
- (c) reject all or any tenders;
- (d) direct that fresh tenders be called for;
- (e) subject to the approval of the Secretary to the Ministry concerned direct, for departmental arrangements to carry out any works prescribed in the Tender where all tenders or any parts of a Tender have been rejected or excluded.

131.2 However Tender Board should exercise these powers in accordance with:

- (a) these Guide Lines, and
- (b) instructions and conditions stipulated in the Tender Documents.

### **Negotiations with Tenderers**

- 132.1 If negotiations in regard to the variation of any of the conditions or specifications, or in regard to any other matter pertaining to the final adjudication other than clarifications, such negotiations have to be conducted by the Tender Board itself or this may be delegated to TEC.
- 132.2 A full record of all such negotiations should be maintained and a Memorandum of Understanding (MOU) should be signed on the agreed conditions and negotiations.
- 132.3 TEC may seek clarifications from tenderers solely for detailing and explaining of statements required for evaluation of tenders. Please refer Chapter IX for details.

### **Decisions to be justified**

- 133.1 If a Tender Board recommends a deviation from tender conditions due to:
- (a) critical nature or,
  - (b) non critical reasons
- the reasons for such deviation should be recorded clearly in the minutes of the proceedings.
- 133.2 If a member of a Tender Board wishes to dissent or disagree on any issue in proceedings of the Board, that matter should be recorded clearly in the minutes.
- 133.3 If the TB disagrees with TEC or wishes to deviate critically from the recommendations of TEC, the implications and reasons should be recorded. However, deviations should be avoided as far as possible.

### **Final determination**

134. Only the bids which are responsive and qualified substantially, conforming to the tender conditions are considered for detailed evaluation. Having completed the detailed evaluation, the Tender Board should recommend the lowest ( in the case of sale, the highest) evaluated bid for acceptance.

### **Determination of Tender Award**

135. The determination of the Tender Award will be notified by the Chairman of the Tender Board to the Secretary of the Ministry concerned or the Head of the Department concerned, as the case may be, who will thereafter pursue residual action, within one week for the completion of the tender award.

### **Appeals against Determination**

136. In the case of a CATB, the Secretary to the Ministry concerned will, within one week of the determination inform in writing, all Tenderers who responded to the Tender Call, the intention to award the Tender to the successful Tenderer and request that if there are any representations to be made against the determination, such appeals should be submitted in writing to the Tender Appeal Board with a copy to the Secretary of the Ministry concerned. Simultaneously, a Cabinet Memorandum should be submitted under the hand of the Minister, forwarding the Reports of the Tender Board and the TEC, with the recommendation of the Minister.
137. An appeal against an award should be lodged with the Appeal Board within one week of the intimation of the determination. The appeal should contain all material required to support the averments and should be self-contained for the Board to arrive at a conclusion. Oral submissions will be entertained only at the discretion of the Board.
- 138.1 The Appeal Board shall report to the Cabinet, through the Secretary to the Cabinet with a copy to the secretary of relevant ministry within two weeks of an appeal being lodged. The appeal Board will determine its own procedures for expeditious inquiry and disposal of representations.
- 138.2 In the case of DTB and MTB the relevant Head of Department or Secretary to the Ministry shall take appropriate actions, if an appeal is voluntarily received.

### **Refund of Deposits**

139. Unsuccessful tenderers, except the three lowest evaluated ( or highest, in the case of a sale) bidders should be informed by letter that their tenders have not been accepted. Their tender deposits should be refunded or bid bonds should be discharged at the same time, or immediately afterwards. The tender deposits or bid bonds of three lowest evaluated tenderers should be refunded/discharged after the successful tenderer has submitted the performance bond and accepted it.
140. Where other specific conditions do not apply, tender deposits of those who fail to tender after obtaining tender forms, should be refunded if they return the forms before the date and time fixed for closing of tenders, provided they return all documents which had been issued to them with the tender forms.



## Publication of Award

141. Departments should publish monthly in local Newspapers and in the earliest possible issue of the Government Gazette the following particulars in regard to tenders on which awards have been taken:

- (a) The description of the items/works for which tenders were called;
- (b) The total number of tenders received;
- (c) The name of the successful tenderer;
- (d) The amount at which the tender was awarded;
- (e) In the case of a Tender awarded to a Foreign Principal who has a Local Agent, the name of the Local Agent.

In the case of Tenders less than Rs. 5.0 million in value, the publication in Newspapers/ Gazette may be dispensed with.

## Preservation of Tender

142. The original of the accepted tender which will form an integral part of the contract with the successful tenderer should be kept securely in the Department/ agency.

The original tenders of unsuccessful tenderers may be destroyed along with the duplicates after are execution of the contract.

## Tender Board Termination

143.1 The Tender Board appointed for a particular tender ceases to exist after the Award is made. Thereafter the entire responsibility for the implementation of the contract, supervision and litigation or arbitration lies with the Executing Agency and the line Ministry.

143.2 Under no circumstances should a Tender Board appointed for a particular purpose be recalled to consider matters relating to a tender which has been awarded, except with a new mandate being obtained from the appropriate Appointing Authority.

143.3 However DTB and MTB may be re-called for consideration of residual matters such as extra contractual payments and defaulting of contractors *etc.* including appeals.

## CHAPTER XI

## IMPLEMENTATION OF TENDER AWARD

**Award of Contract**

144. As soon as the approval of the award of the tender is received, the Executing Agency must cause a letter to be addressed under registered cover or fax or telex, to the party whose tender has been accepted, and take further steps for the completion of the contract agreement by causing the security (performance bond) required to be lodged. A copy of award letter should be sent to the Auditor General.

**Contents of contract Agreement**

145. The contract agreement should contain, inter-alia clauses relating in the following :
- (a) Security /performance bond ;
  - (b) Binding the accepted tender document submitted by the successful tenderer ;
  - (c) Time for completion ;
  - (d) The name and designation of the officer authorised to make decisions on the contract and procedure for settlement of disputes ;
  - (e) Liquidated damages for delays( The file relating to the contract should indicate how they have been computed) or incentive bonus payments for prior completion target ;
  - (f) Procedure relating to incomplete performance ;
  - (g) The currency and precise method of payment for work done, including monies held back ;
  - (h) The employment of Sri Lanka Labour;
  - (i) Arbitration procedure ;
  - (j) Insurance, if any ;
  - (k) Variations of contract ;
  - (l) Procedures relating to cancellation and forfeiture of deposit if contract is not properly carried out ;
  - (m) The application of the Laws of Sri lanka to the Contract ;
  - (n) Retention money ;
  - (o) Notification of lapses and claims ;
  - (p) Procedure relating to issue of taking over certificate.

### **Basis of Payment**

146. The basis of payments under the contract should be clearly defined. For instance, in a non measurement contract, it may be stated clearly that the primary documents determining the work to be done are the plans and specifications and percentage payments will be done for various pre-determined stages.

### **Form of Agreement**

- 147.1 The Contract agreement should be drawn up in legal format so as to be enforceable in litigation and/ or arbitration.

As much as possible, contract agreement should be prepared and signed with the least possible delay on forms approved by the Attorney-General.

### **Authority to sign the Contract**

- 147.2 The officer signing the contract agreement on behalf of the Government shall be as follows:

The Head of Department - Upto Rs. 100 Mn. (may be delegated to a senior staff officer of the Department)

Secretary to the Ministry - Over Rs. 100 Mn. (may be delegated to an Additional secretary or to the Head of Dept.)

### **Contract Documents**

- 147.3 In addition to the form of agreement, all related documents such as the—

The Tender (bid),

The letter of acceptance,

The Memorandum of Understanding,

The Special Conditions of Contract, (including addenda)

The General Conditions of Contract, (including addenda)

The Bid Data ;

The Contract Data ;

The specifications,

The drawings,

The priced Bill of Quantities/Schedule of Supplies/Service,  
Payment schedule,  
Other relevant documents.

will form part of the complete contract Document in the above priority order. Both parties signing the contract agreement, should authenticate, each of the above documents and annex them to the main agreement. All corrections should be initialed by both parties.

### **Clients' obligations**

- 147.4 Clients' obligations under a contract should be clearly defined in the agreement so as to be able to fix responsibility on the right party in case of any default.
- 147.5 All contracts should be signed in triplicate. One copy should be handed over to the contractor, one copy forwarded to the Auditor-General and one kept by the Department/executing agency.

### **Contract Management**

148. The Head of the client Department/ Executing agency will be responsible for ensuring that the work, supply or service is properly supervised and assessed for the purpose of making part and final payments. The quality of the goods, works or services should be checked independently before acceptance. Particular attention should be paid to claims arising from disputes and differences during implementation. Clients' obligations should be clearly defined so as to be able to fix liability for any default on the right party.

### **Extension of Time**

- 149.1 Extensions of time may be granted, when reasonable, and beyond the control of contractor, by the Head of Department/ Executing agency or officer authorised to do so.
- 149.2 For any reason within the control of the contractor, the time period specified in the contract exceeds, then liquidated damages (LD) become operative. For any special reason LD can be waved by the Secretary of the Ministry, provided it is so specified in the agreement. But claims on escalation as per Guideline 156.1 are not payable for this period.

### **Extensions for the Convenience of the Contractor**

- 149.3 Any extension granted purely for the convenience of the contractor should invariably be subject to a penalty by way of liquidated damages.

In case where procedural actions are taken to lodge claims arising from negligence or other failure of the contractor, any extension given should be without prejudice to interests of the client.

### **Part payments**

- 150.1 Part payments for the works performed, may be made in accordance with the Provisions of contract agreement. Any deductions such as retention money, mobilisation advance, taxes etc. should be made from the part payments as provided in the agreement.

### **Completion Report**

- 150.2 Final payment of the contract should not be made until the work, service or supply is completed and "taking over / completion certificate" is issued by the officer authorised to do so and on submission of "no future claims" by the contractor.

### **Taking Over / Completion Certificate**

- 150.3 Taking over/completion certificate should be issued only on successful completion of the contract. Works, service or supply should not be finally taken over in an incomplete condition unless the contract is cancelled or modified in terms of the agreement. Prompt procedural action should be taken to lodge claims arising from the negligence or other failure of the Contractor. In such cases any extension given should be without prejudice to the interests of the client. Any extension granted purely for the convenience of the Contractor should invariably be subjected to a penalty by way of liquidated damages where no claims on escalation of prices are payable.

### **Assigning or Sub-letting of Contract**

151. A contract once entered into cannot be assigned or sub-let, or any conditions varied (except as provided for in the contract itself), without the prior approval of the appropriate authority.
152. A works contract entered into with an Approved Society should not in any case be assigned or sub-let to a third party.

### **Extra Contractual payments**

153.1 The agency which prepares documents for a tender should ensure that all professional and human efforts are taken to include all necessary items to complete the requirement. However, Extra Contractual Payments in works contract may occur due to change of scope, items or quantities or inclusion of extra items or quantities.

### **Approving Authority for Extra Contractual Payments**

153.2 If extra contractual payment is within the contingency provision (10% maximum) appropriate Tender Board may consider and approve it including the award of change order.

153.3 If the extra contractual payment exceeds contingency provision, the Head of Department should take steps to revise the Total Cost Estimate in accordance with F.R. 72 and there after the appropriate Tender Board may approve extra contractual payment including the award of change order.

153.4 In the case where CATB is the appropriate authority, a Cabinet Memorandum may be submitted by the Minister requesting approval for extra contractual payment and award of change order without going through the process of CATB and TEC, provided the Secretary of the Ministry concerned is satisfied with the variation. For this purpose Secretary may obtain the assistance of a TEC appointed by him with a Treasury representative nominated by Secretary to the Treasury. If the Secretary to the Ministry is not satisfied with the variation, Cabinet approval should be sought, through the Minister for the appointment of a CATB to consider it.

153.5 The TEC appointed as per above Guideline may be considered as a TEC assisting a CATB for payment purposes.

153.6 For the purpose of this Guide Line the appropriate authority to handle variation should be determined on the basis of revised total cost estimate.

### **Revision of Total Cost Estimate**

154. Any variation exceeding contingency provision, should have the necessary approval for revision of Total Cost Estimate in terms of F.R.72.

155. Price escalations in a works contract, for the works exceeding a period of twelve months as specified in the agreed work programme, may be paid by the executing agency under an accepted formula, provided, the contract agreement itself provides for them.

However this should not be provided in the contract agreement unless it was not so stipulated in the tender documents.

### **Price Escalation Formula**

156.1 Any accepted Price Escalation Formula may be used by the Executing agencies. However, this formula should be specified in the tender documents. Price escalation formulas developed by ICTAD or donor agencies (WB, ADB and OECF) are acceptable formulas.

156.2 Any extension granted for the convenience of the contractor in terms of Guide line 149.2 & 149.3 should not be considered for price escalations.

156.3 In fixing the time for construction works practically shortest possible time should be fixed to avoid unnecessary price escalations.

### **Defaulting Contractors**

157. In every case involving a contract exceeding the value of Rs. 1.0 Mn. in which a successful tenderer —

(a) fails to carry out his contract in a satisfactory manner, or

(b) is guilty of improper conduct,

the Head of the Department concerned shall serve on him a written notice requiring him to show cause in writing, within two weeks, why his name should not be included in the list of defaulting contractors. If the Head of Department is not satisfied with the explanation furnished, he should report the full particulars to the Ministry with his own recommendation.

158. On receipt of such a report on default or improper conduct, the Ministry Tender Board shall inquire into the reasons for the decision. If the MTB decides to treat the party concerned as a defaulting contractor, the Secretary concerned will report all the facts of the case to the Secretary to the Treasury seeking his

approval to treat the party concerned as a defaulting contractor. If the Secretary to the Treasury gives his approval, the party concerned will be treated as a defaulter.

159. The Director-General of Public Finance, will issue half-yearly, a list of defaulting contractors to all Ministries and Departments. Heads of Departments should be careful that no tender forms are issued to a person or firm whose name appears on the list.
160. The Treasury may, for good reasons stated in writing, remove a name from a defaulters' list. The appropriate notifications should be made of such removal.
161. Defaulters who are concerned with smaller tenders or contracts (less than Rs.1.0 Mn) may be placed on a departmental defaulter's list by the Head of the Department concerned. This need not be communicated to other Departments except on inquiry.

*Note:* The blacklisting or placing a person's name in the list of defaulting contractors merely means that the Government does not wish to do business with that contractor, and does not necessarily imply any moral delinquency attached to the person blacklisted.

### **District Price Fixing Committee**

162.1 The District Secretary/Government Agent will set up a District Price Fixing Committee to fix ceiling rates for the following:

- (a) Construction material such as metal, rubble, sand, lime etc.
- (b) Transport of construction material and hiring charges of equipment.
- (c) Labour engaged in construction, maintenance and repair works.

The rates fixed by the committee may be used by the Departments for their works as ceiling prices within the same District.

### **Procedure for fixing Rates**

162.2 The committee will review and fix the ceiling rates generally twice a year, (January and June) taking into consideration the ruling prices of material etc. in the area and the rates paid by the Member Departments during the previous



half-year. Where necessary the Member Departments may invite tenders for materials and may intimate the committee for consideration of ceiling rates taking account seasonal fluctuations in the prices of materials.

In fixing ceiling rates for all items, the Committees will be guided by the relevant financial and other regulations, circulars and other statutory requirements.

### **Composition of the Committee**

162.3 The committee in each District will consist of:

1. District Secretary / Government Agent or Additional District Secretary (Chairman)
2. At least one representative from each of the main Departments or Corporations carrying out construction, maintenance or repair works in the District.
3. Chairmen of Divisional Price Fixing Committees.
4. Representative of Commissioner of Labour (when fixing labour rates)
5. Representative of Commissioner of Motor Traffic. (When fixing transport rates)

### **Divisional Price Fixing Committees**

162.4 Where necessary, taking into consideration of geographical factors, seasonal fluctuation of materials, transport difficulties affecting only to identical areas, the District Price Fixing Committee may set up Divisional Prices Fixing Committees. The Divisional Secretary will chair the Committee and representatives of the Departments and Corporations carrying out construction, maintenance or repair works in the division shall be the other members.

The District Price Fixing Committee, if necessary may review rates fixed by the Divisional Price Fixing Committees.

## CHAPTER XII

## EXCEPTIONS AND DEVIATIONS

**Exceptions & Deviations from Normal Tender procedure**

163. Except and otherwise provided in this chapter, works, services and supplies, must as far as possible be offered for public competition through the normal tender procedure stipulated in these Guidelines.

**164.1 Entrusting of construction works to approved societies**

Entrusting of construction works to approved societies may be authorised by Head of Department or an officer under delegated authority, subject to following conditions:

1. Total number of works in hand at a given time should not exceed 4.
2. Total value of works at a given time should not exceed Rs. 1.0 Mn.
3. The works so entrusted should be within the area of authority of the society.
4. The works entrusted should not be sub-let or sub contracted.
5. It is the responsibility of the Head of Department/ Executing agency to ensure that the approved society concerned has the required capacity to handle the project.

The General Treasury from time to time will determine the Approved societies.

**164.2 Approved Societies as at present are:**

1. Samurdhi Balakayas,
2. Multi Purpose Co-operative Societies,
3. Co-operative Labour Societies (labour services only),
4. Rural Development Societies,
5. School Development Societies (The area of authority is the relevant school premises only),
6. Farmer Organisations approved by the appropriate authorities.

### 165. **Emergency Purchases**

A Head of Department may purchase articles directly from the open market upto a value of Rs. 10,000/= when it is uneconomical to follow normal tender procedure. However this authority should be used by the Head of Department under his personal supervision only for exceptional cases and not in regular basis. This authority should not be delegated.

Preference should be given to purchase from Government institutions as indicated in Guideline 172.

166. Local Heads of Department or officers in charge of separate units or institutions of Departments may purchase direct articles of small value up to Rs. 1,500/- per day when it is uneconomical to follow normal procedure to procure them. Total of such purchases, during any calendar month, should not exceed Rs. 6,000/-. Preference should be given to purchase from Govt. institutions as indicated in Guide Line 172 in making direct purchases.

167. A Secretary may authorise any other emergency purchase of required stores in the most advantageous manner possible. However, such purchases should immediately be reported to the Auditor General with a copy to the Director General of Public Finance of the Treasury.

However, in case of major emergency the purchase of immediate requirements of stores, irrespective of value may be authorised by the Head of Department or by a Deputy head under delegated authority, in the most advantageous manner possible. Such purchases should be reported to the Secretary, Ministry concerned with copies to the Auditor General and Director General of Public Finance, as soon as possible.

### 168. **Sri Lanka Missions**

Heads of Sri Lanka Missions abroad may make urgent purchases on quotations, provided that the aggregate value of such purchases does not exceed U.S.\$ 1,000 per month. The Secretary to the Ministry of Foreign Affairs will prescribe for each Mission, details regarding the exercise of this authority.

### 169.1 Repairs to Motor Vehicles and other Machinery

Repairs to motor vehicles and other machinery could be done through the local accredited agent of the manufacturer provided the Head of Department is satisfied that the quotation is reasonable. However, the approval of the Secretary of the Ministry concerned should be obtained for the repairs exceeding the cost of Rs. 100,000/-. (Please also see Guide line 169.3 )

169.2 Local accredited agent includes the sub agents duly authorised and appointed by local agent. However in the case of sub agents the appropriate authority should satisfy that their rates are not higher than the local agent's rates and spares provided by them are supplied through the local agent.

169.3 The Head of Department may delegate this authority as stated below:

1. Additional Head with the services  
over 15 years as a Staff Officer - Rs. 75,000/
2. Deputy Head with the services over  
10 years as a Staff Officer - Rs. 50,000/
3. Assistant Head with the services  
over 5 years as a Staff Officer - Rs. 25,000/

169.4 In all other cases repairs should be done following the competitive tender procedure.

### Purchasing of Spare Parts for Vehicles

170.1 Purchasing of spare parts for motor vehicles may be made from the local accredited agent or from the manufacturer following the financial limits stipulated in Guideline 169.3 by the authorities stated therein provided these prices are reasonable or he is the only supplier for such spares. The authority concerned should be satisfied as to the necessity of such spare parts before purchasing and proper records should be maintained on supplying of such spares.

### 170.2 Spare parts for Machinery

Spare parts for machinery may be purchased from the manufacturer or local agent based on their quotation provided the appropriate authority is satisfied that the prices are reasonable and they are the only supplier, not exceeding the financial limits given in Guideline 179. In all other cases competitive tender procedure should be followed for purchase of spare parts.

### 171. Periodicals and Publications

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

### 172. Procurement of Supplies from Government Institutions

Procurement of supplies from Government Institutions as stated below may be authorised by appropriate authorities, without following tender procedure but not exceeding the financial limits stated in Guide Line 179.

(a) Government Departments,

*i.e.* Dept. of Small Industries, Govt. Factory.

(b) through Government Corporations,

*i.e.* C.W.E.

(c) through Govt. Owned Companies, provided appropriate authorities are satisfied that their prices are competitive and reasonable. *i.e.* Purchasing of paper from Ceylon Paper Company. (Govt. Owned Companies means the companies registered under the Companies Ordinance but having more than 50% ownership by the Govt.)

### 173. Responsibility for Construction

All construction Departments are authorised to do construction works in their specialised field for their own use or any work that may be required by other Department within their own Ministry on departmental check-roll basis. Similarly these Departments may also undertake construction works of other departments with the approval of the Secretaries to the Ministries concerned.

174. In the case of works, the extent of which it is difficult to foresee, the Head of a Construction Department may give out works at rates to be agreed on between himself and selected contractors, subject to the condition that these rates must never exceed the departmental rates. If the full cost of the work is likely to exceed Rs. 100,000/-, the authority of the Appropriate Tender Board should be obtained.

175. The Chief Accounting Officer may prescribe general rules or issue specific directions to a construction Department to execute works of particular types, departmentally on check-roll basis.

**176. Exceptions relating to works**

The Head of any Department may grant general or specific approval to incur expenditure on minor urgent repair works, the postponement of which might cause further damage or loss to government property, not exceeding the value of Rs. 10,000 without calling for quotations, provided it is uneconomical or inappropriate to do so. *e.g.* a roof leak in a hospital ward, a broken window in a store.

**177. Preparation of plans, specifications etc.**

Whether or not any works are given out on contract, the construction Department concerned may prepare requisite estimates, plans, specifications, schedules of rates *etc.* and when works are to be given out on contract, the tender documents. These Departments may also provide adequate supervision of the works, if works are given out on contract.

**178. Damages caused by floods etc. emergency situations**

A District Secretary may undertake urgent repairs arising out of damage caused by floods and other disasters deviating from tender procedure provided that the cost does not exceed Rs. 100,000/=

**179. Authority for deviating from tender procedure**

When owing to urgent and exceptional circumstances, it becomes necessary to deviate from prescribed tender procedure and General Authority is not available, the authorities indicated below, may within the limits prescribed, authorise specific deviations for works or services :

	<i>Limits</i>
Head of Department - His personal approval	up to Rs. 100,000
Departmental Tender Board, subject to the personal approval of the Head of Department	Up to Rs. 5,000,000
Ministry Tender Board, subject to the personal approval of the Secretary to the Ministry concerned	upto Rs. 10,000,000
Cabinet of Ministers	above Rs. 10,000,000

The reasons for the deviation should be recorded in the tender minute book. In case of DTB deviations should be reported to the Auditor General and the Secretary to the Ministry. In case of MTB deviations should be reported to the Auditor General and Secretary to the Treasury.

180. In urgent and exceptional circumstances, when real and appreciable injury would be caused to the activities of the Department by the delay in following normal procedures or when the normal procedures are inappropriate, the Competent Authorities specified above may, within the limits prescribed, authorise deviation from the procedures prescribed for the procurement of supplies provided that the reasons therefore are explicitly recorded in writing in the tender minute book. Copies of such deviations should be sent to the,

(1) Auditor General, and

(2) Secretary to the Ministry,

(3) In addition to that copies of deviations exceeding Rs. 5.0 Mn. should be sent to the Secretary to the Treasury.

#### 181. **Late Tenders cannot be entertained**

Acceptance of late tenders is not to be treated as a deviation from Tender procedure and cannot be entertained by any authority under any circumstances.

#### 182. **Register of Deviations**

Every deviation authorisation granted on procurement of works, services or supplies in terms of the Guide Line 179 and 180 should be recorded in a register meant for the purpose in addition to the tender minute book.

#### 183. **Single Source Supply**

Where it is obvious that any public advertisement will not bring in more favourable proposals or better bids or where it becomes necessary to deviate for reasons of national security, a Sole Source procurement may be authorised by the appropriate authority not exceeding the limits stipulated in clause 179.

However single source offers (unsolicited offers) should not be entertained under the above provisions. The procedure to be followed in the case of single source offers is stated in Part II- Private Sector financed projects.

#### 184. Deviations in regard to Foreign Funded Projects

In the case of Foreign Funded Projects, deviations may be permitted only if they are specifically provided for under the Loan Agreements/MOU or Exchange of Notes. Please see Chapter XIII for further details on accepted deviations under the foreign funded projects.

#### 185. Repeat Orders

Repeat orders for procurement of goods may be authorised not exceeding 15% of Contract Value, provided Appropriate Authorities are satisfied;

- (a) The necessity for additional requirement was not identified at the time of original tenders were called.
- (b) It is not economical to follow the tender procedure.

However, if appropriate Authority is of the view the prices of particular items are in a down ward trend repeat orders should not be authorised.

As far as possible repeat orders should be based on negotiations to get more favorable results.

#### 186. Service Agreements

Appropriate authorities may enter into service agreements with the manufacturer or supplier provided they are satisfied with the rates and other conditions offered.

However as far as possible rates and conditions governing the service agreements should be evaluated at the time, when the awards are made for procurement of such equipment and machineries.

#### 187. Procurement of Insurance Services

Procurement of Insurance Services may be done from Government Owned Insurance Companies deviating from tender procedure.

*i.e.* Sri Lanka Insurance Corporation Ltd. and National Insurance Corporation Ltd.



### 188. **Purchasing of Fuel**

Requirements of fuel may be purchased from Ceylon Petroleum Corporation depots or from the authorised agents of the Corporation.

### 189. **Servicing of Vehicles**

Servicing of vehicles may be done from the agents of the Ceylon Petroleum Corporation. However appropriate authority should be satisfied that the prices of labour and other inputs used for the services are reasonable.

However Agencies with large fleets of vehicles are encouraged to follow the tender procedure and select one or more service stations and entrust services to them.

### 190. **Labour Services**

Labour services required by Government Departments, *e.g.* loading, unloading, weighing and stocking of food stuffs, *etc.* may be given to registered Co-operative Labour Societies on contract without inviting public tenders and regardless of the total value of the service.

## CHAPTER XIII

**PROCEDURES FOR DONOR FUNDED PROJECTS  
(ADB/WB/OECF PROJECTS)****Introduction**

191. The Guide lines in this chapter shall be applicable for all the procurements under projects where the principal source of funding is from the World Bank, the Asian Development Bank and the Overseas Economic Corporation Fund of Japan, hereinafter referred to as donor funded projects.

192. The Guide lines in the forgoing chapters of this book are also applicable to all procurements under donor funded projects, subject however to guidelines in this chapter which includes:

- (a) deviations arising from the requirements of donor agencies ;
- (b) some procedural changes agreed upon with the donor agencies.

**Precedence Order**

193. Where these Guidelines differ from those contained in the foregoing chapters the Procedure laid down in this chapter has precedence.

194. Some administrative arrangements included in this chapter though not made mandatory by donor agencies will ensure timely Procurements, *eg.* Pre-planning Conference on the Procurement.

**Guide Lines of the Donor Agencies**

195. Each donor agency has developed it's own Guidelines on procurements that must be followed for the projects funded by them.

196. Generally the Guidelines developed by Donor Agencies are similar except that some go into greater degree of detail than others.

### Authority Limits

197. The authority limits to handle/ recommend awards of tenders under donor funded projects are as follows :

Head of Department/P.D/Project Mgr	: up to Rs.100,000/=
Project Tender Board (PTB)	: upto Rs.10 Mn.
Departmental Tender Boards (DTB)	: up to Rs. 50 million
Ministerial Tender Boards (MTB)	: Rs. 50- 100 million
Cabinet Appointed Tender Boards (CATB)	: above Rs. 100 million

In case of Provincial Councils and Local Authorities, (M.C., U.C. and P.S.) MTB and CATB are the MTB of respective Line Ministry and CATB appointed by the Cabinet of Ministers respectively.

### Project Tender Board

198. Project Tender Board may be established by the Head of Department with the approval of the Secretary, Ministry concerned provided the Project Director/ Project Manager is a Class I officer belonging to any one of the All Island Services, seconded or recruited after retirement on contract basis. If this requirement could not be fulfilled, a PTB should not be established.

### Approving Authorities

199. Approval from the higher authorities as stipulated below should be obtained for the decisions taken by the TBB under the donor funded projects. The approving authorities for awards recommended by Tender Boards are:

Project Tender Board	- Head of Department.
Departmental Tender Boards	- Secretary of the Ministry.
Ministry Tender Boards	- Secretary to the Treasury
Cabinet Appointed Tender Board	- Cabinet.

For tenders handled by the Head of the Department / Project Director/ Project manager upto Rs. 100,000/= no approval of higher authority is required.

### Composition of DTB/MTB

200. The composition of DTB/MTB shall be as stipulated in Chapter 11.

## **Composition of PTB**

201. The composition of PTB shall be as follows :

1. Project Director / Project Manager (Chairman)
2. Representative from the Dept. or Ministry.
3. Senior staff officer from the project or from an outside Department.

Appointment of members for PTB should be approved by the Secretary to the Ministry concerned.

## **Authority of Project Directors in relation to procurements**

202. Project Directors /Project Managers are authorised to operate up to a limit of Rs.100,000/= for determination of tenders without a Tender Board and open order purchases upto Rs. 10,000/= as stipulated in Chapter XII, provided the requirements in Guideline 198 are fulfilled.

## **Pre planning the Procurement**

203. Although, it is the role of the Executing Agency to monitor the progress of each project and the relevant awards, it is essential that an overall time scale is determined and adhered to by the TB.

204. The Chairman, TB, should convene a meeting of the Chairman TEC and the Executing Agency to fix a detailed time schedule upto the award of tender. At this meeting all potential impediments such as the involvement of other agencies should be identified. In setting this time scale, the time frames specified in Guideline 8.1, Chapter I and the time scales required under the donor agency for ICB should be taken into account.

205. Details of the agreed time scale are to be submitted to the Secretary of the Ministry concerned for the information. The Executing Agency and Chairman TEC with other associated representatives must formulate a programme for monitoring the time scale. Any likely overruns are to be communicated to the Secretary of the Ministry and TB with an explanation for the possible delays.

## Standard Bidding Documents

206. In the case of procurements under donor funded projects, all the 3 donors have prescribed Standard Bidding documents (SBDD). Therefore SBDD prescribed by donor agencies should be used in order to fulfil the following objectives;

- (a) maintain a degree of consistency for bidders when responding.
- (b) adhere to procedural changes stipulated by respective donors.
- (c) save time.

## Evaluation Criteria

207. The evaluation procedures stipulated in Chapter IX of these Guide Lines should be used as basis for bid evaluation. However if different procedures are stipulated in SBDD it may be used with the approval of TB.
208. It is mandatory that the bid documents include all important evaluation criteria.

## Prequalification of Tenderers

209. Prequalification of tenderers is generally recommended by donor agencies for procurements involving:
- \* large and complex civil works
  - \* custom designed equipment, industrial plant and specialised services.

In such instances the procedures laid down by donor agencies should be followed, including the use of standard pre-qualification documents prescribed by donor agencies. In the absence of such procedures the Guidelines in Chapter V on Pre-qualifications should be followed.

210. Where prequalification of tenders is followed, only the pre-qualified bidders who meet the criteria should be allowed to bid. The bid documents should be forwarded, to prequalified firms only after the prequalification process has been completed.
211. The same TB handling tenders should handle the pre-qualification process too.

### **Donor Funds cannot be used for payments of local taxes**

212. No donors agree for use of their funds for the payment of local taxes. Therefore all taxes as per Guide Line 62 should be met out of the funds of Excecuting Agencies.

### **Single Stage Bidding**

213. Single Stage Bidding procedure should be used for the procurement of works, services and supplies, otherwise unless provided for in the loan agreements.

### **Two Stage Bidding**

214. Two Stage Bidding procedure may be adopted, if provided for in the agreements.

### **Two envelop Bidding system**

215. Two envelope bidding system detailed in Chapter V may be used if provided for in the loan agreement.

### **Consultancy**

216. Consultants may be engaged to handle the following tasks as provided in the loan agreements. Selection of consultants should be made following the procedure stipulated in the Guidelines 74 and 75. However deviations from the procedure without affecting basic principles, may be approved by the TB to fall in line with the requirements of donor agencies.

- (a) Pre- investment studies / Feasibility studies.
- (b) Detailed engineering and design, including preparation of detailed designs, specifications, cost estimates, and tender documents
- (c) Project implementation including supervision.

217. Detail instructions on procurement procedures for selection of consultancies are contained in:

- World Bank - Guidelines - Use of Consultants by World Bank Borrowers and by the World Bank Executing Agency (August, 1981).

- OECE - Guidelines for the Employment of Consultants by OECE Borrowers (November, 1987).
- Asian Development Bank - Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (April 1979, reprinted 1996).

### **Debriefing of Unsuccessful tenderers**

218. Chairman CATB has the responsibility for the debriefing of unsuccessful tenderers following the determination. The Chairman CATB is empowered and encouraged to utilise the TEC and Executing Agency in this process.

### **The purposes of debriefing are twofold:**

219. 1. to recognise the unsuccessful tenderers as prospective future tenderers and to give an opportunity to learn and improve understanding, the importance of competition in maximising economic benefits.
2. to minimise the level of complaints and to demonstrate clearly the principle and practice of probity and transparency.
220. All unsuccessful tenderers are to be offered, in writing, the opportunity for a verbal debriefing on the reasons for non acceptance of their offer. The Secretary, Ministry concerned will, within one week of the determination of tender inform in writing all tenderers who responded to tender call, the intention to award the tender to the successful tenderer and offer the opportunity for a debriefing on why their tender response was unsuccessful.
221. The evaluation criteria should form the basis of any debriefing of unsuccessful tenderers. Judgement on technical, financial and other matters must be supported by relevant information and advice. It is essential to show how a decision was reached and justified and to inform unsuccessful tenderers why they were not selected, without compromising commercial confidentiality, especially of the winning tender, except for the price tendered which is a matter of public record.

### **Appeals**

222. The appeal procedure stipulated in forgoing Chapters for lodging of appeals with the Appeal Board is applicable in respect of determinations made by CATB.

**Payments for Members of CATB and TEC**

- 223. The payments stipulated in forgoing chapters are applicable for members of CATB and TEC handling tenders under the donor funded projects as well.

**Evaluation / Negotiation Teams proceedings abroad**

- 224. All evaluation/Negotiation teams proceedings abroad on donor funded projects should have the prior approval of the Treasury.



APPENDIX I

**SPECIMEN FORM OF TENDER NOTICE**

1. (Name of Executing Agency ) on behalf of the Cabinet Appointed Tender Board will receive sealed tenders for ..... (name of the contract) and receiving will be closed at ..... (closing time of tenders) on .....(date)

Tenders should be submitted on the forms available from ..... (Place of issue) upto ..... (closing date of issue) on payment of non-refundable tender fee of Rs. ....

2. Tenders will be opened immediatly after the closing at the ..... (name of place). Tenderers or their authorised representatives are requested to be present at the opening of tenders.
3. Tender forms will be issued only to ..... (qualifications or eligibility criteria)
4. Sealed tenders may be dispatched either by Registered post or hand delivered to the ..... (Give the address) to receive before closing time.
5. Tender documents may be inspected free of charge at .....
6. For further details, please contact .....

..... (Designation of authorised officer)

..... (Date)

## APPENDIX II

## SPECIMEN INSTRUCTIONS TO BIDDERS (ITB)

**(This appendix is only a guideline. It may be further modified or amended)**

1. Bids are called for the procurement of ..... Bids should be submitted in the forms available from ..... until ..... on payment of a non refundable form fee of Rs. ....
2. Bids sealed in accordance with clause 19 of this ITB and addressed to the following address should be reached before the closing time of bids. Bids may be sent by registered post or hand delivered to the following address.

Chairman,

..... Tender Board

.....

3. Bids shall be closed at ..... on ..... and opened immediately after that. All the bidders or their authorised representatives are hereby requested to participate at bid opening.
4. Source of funding - \* Donor funded or local funds
5. Scope of bid - Give details
6. Eligible bidders - Give details
7. Eligible goods - Give details.
8. One bid per bidder - \* Each bidder shall submit only one bid  
\* If alternative bids are to be accepted give details
9. Cost of bidding - \* Entirely the responsibility of bidders
10. Joint ventures - \* all members of joint venture should accept joint and several liability for all obligation under the contract.  
\* one partner of the joint venture should be designated as the partner in charge.

11. Site visit & pre bid meetings - \* Should not be made mandatory.
12. Contents of Bid documents - Bid documents comprise of ITB, Bid Form etc.
13. Clarification of Bid Documents - \* Written requests for clarification should be submitted 30 days prior to deadline of submission of bids.
14. Amendments to Bid Documents - \* May be issued anytime prior to deadline of submission of bids.  
\* Amendments form part of Bid Documents.  
\* Bidders should acknowledge receipt.  
\* Deadline for submission of Bids may be extended.
15. Language of Bids - English
16. Documents comprising the Bid - \* Bid form & price schedule.  
\* Documentary evidence covering  
- Bidder's and good's eligibility.  
- bidder's qualifications.  
\* Bid Security etc.
17. Bid currency - \* Currency of bidder's home country or USS  
\* Other currencies may be quoted provided these currencies needed for the contract subject to the maximum of three nos.
18. Bid Securities - \* Upto 2% of total bid price  
\* Acceptable Guarantees only  
\* In the given format  
\* Valid for 30 days beyond validity of bid.
19. Sealing and marking of bids - \* Original and requested no. of copies sealed in separate envelopes.  
\* and then contained in one envelop, sealed and addressed to the given address.  
\* Bear the name of tender and warning not to open before the time and date of bid opening.

20. Period of bid validity - \* No. of days to be determined by the employer  
\* Normally 120- 150 days
21. Format & signing of bid \* Original and all copies of bids shall be typed and written in indelible ink and signed by authorised signatories.  
\* Any change should be initialled.
22. Dead line for submission of bids - \* May be extended at discretion of employer
23. Late bids - \* Reject bids received after dead line and return to bidders unopened.
24. Modification, substitution and withdrawal of bids - \* Permitted before the deadline for submission of bids.  
\* Should be sealed, marked and delivered according to prescribed provisions.
25. Opening of bids - \* Done in presence of bidder' s representatives.  
\* Basic informations announced and recorded at opening.
26. Clarification of bids (at the bid evaluation) - \* No change in price or substance of the bid.
27. Preliminary examination - \* Completeness  
\* Substantial responsiveness of each bid.
28. Conversion to single currency - \* Conversion should be done to SL currency or common hard foreign currency at selling exchange rate determined by Central Bank.
29. Correction of errors - \* Arithmetical errors will be corrected
30. Evaluation & comparison of bids - \* Only the bids determined to be substantially responsive will be evaluated and compared.  
\* As per evaluation criteria given
31. Preference for domestic bidders - \* Quantum and eligibility criteria

- 32. Award of contract - \* Award will be done to the lowest, responsive, evaluated bid
- 33. Acceptance or rejection of bid - \* Employer's right to accept any bid, **reject** any bid or accept any part and reject **any** part.
- 34. Notification of award - \* Before expiration of bid validity  
\* Fax, telex or E-mail and followed by a **letter**
- 34. Performance bond - \* Furnished before 30 days from notification of bids.

Appendix III (A)

**Specimen form of Tender (Local Works)**

To: The Chairman  
Cabinet Appointed Tender Board,  
.....  
.....

Tender for .....

Gentleman,

1. Having examined the conditions of Contract, Specifications, Drawings and Bill of Quantities and Addenda for the execution of the above-named Works, we the undersigned, offer to execute and complete such Works and remedy any defect therein in conformity with the Conditions of Contract, Specifications, Drawings, Bill of Quantities and Addenda for the sum of Sri Lanka Rupees ..... (SL Rs. ....) or such other sums as may be ascertained in accordance with the said Conditions.
2. We acknowledge that the Appendices to Tender for part of our Tender.
3. We undertake, if our Tender is accepted, to commence the works as soon as reasonably possible after the receipt of the Employer's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the tender documents.
4. We agree to abide by this Tender for the period of ..... (insert number of days) days from the date fixed for receiving or any extended period and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
5. Unless and until a formal Agreement is prepared and executed this Tender, together with your written acceptance thereof, shall constitute a binding contract between us.
6. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this (.....) day of (.....) 199... in the capacity of (.....) duly authorised to sign tenders for and on behalf of (.....)

(IN BLOCK CAPITALS)

Signature: (.....)

Address: (.....)

Witness : (.....)

## APPENDIX III (B)

**SPECIMEN FORM OF TENDER (SUPPLIES)**

The Chairman,  
Cabinet Appointed Tender Board

.....  
.....

Tender for the supply (installation, commissioning and  
maintenance) of .....

I/We, the undersigned, having read and fully acquainted myself/ourselves with the contents of the "Information and Instructions to Tenderers and Terms and Conditions of Tender" pertaining to the above Tender, along with Schedules I, II, ..... thereto, do hereby undertake to supply (instal, commission, and maintain) the goods referred to therein, in accordance with the aforesaid Instructions, Terms and Conditions for a total Bid Price of ..... The make up of the aforesaid total Bid Price is given in the accompanying Price Schedules.

2. I/We confirm that this offer shall be open for acceptance until ..... and that it will not be withdrawn or revoked prior to that date.
3. I/We attach hereto the following documents as part of my/our Bid :
  - (1) Price Schedules 1, 2, 3 and 4.
  - (2) Documentary evidence to establish eligibility to bid.
  - (3) Declaration regarding Local Agent and Local Agent's Commission.
  - (4) Documentary evidence to establish that goods offered from an eligible source and origin.
  - (5) Documentary evidence to establish eligibility of goods offered.
  - (6) Statement relating to maintenance of Hardware/Software.
  - (7) Bid Bond.
  - (8) Documentary evidence to establish qualifications for the performance of the Contract.
  - (9) Any other document.
4. I/We understand that you are not bound to accept the lowest tender and that you reserve the right to reject any or all tenders or to accept any part of a Tender without assigning any reasons therefore.

5. We undertake to adhere to the Delivery Schedule attached.

6. My/Our Bank Reference is as follows : .....  
.....

Signature of Tenderer : .....  
Name of Tenderer : .....  
Address : .....  
Cable : .....  
Telex : .....  
Fax : .....  
Date : .....



## APPENDIX IV(A)

**SPECIMEN FORM OF TENDER SECURITY**

By this Bond We.....  
 (hereinafter called "the Tenderer") and We (name of bank or insurance company)  
 whose registered office is at ..... (hereinafter called  
 "the Surety") are held and firmly bound unto .....  
 ..... (hereinafter called "the Authority") in the sum of  
 ..... for the payment of which sum the Tenderer and the  
 Surety bind themselves their successors and assigns jointly and severally by these  
 presents.

**Whereas** the Authority has invited the Tenderer and other persons to complete  
 tenders in similar terms for the construction/supply and installation of  
 ..... and works  
 associated therewith (hereinafter called "the Works") and to submit the same for the  
 consideration of the Authority, and the Tenderer proposes to submit to the Authority  
 a tender (hereinafter called "the Tender") in accordance with such invitation, the  
 Bond shall provide security to the Authority that the Tenderer will honour certain  
 obligations to be undertaken by him in the Tender in accordance with the following  
 conditions.

**Now the Conditions of this Bond are:**

- (a) that it shall remain in full force and effect until the earliest of
- (i) (date), being ( ) days from (submission date), the date stipulated by the Authority for the submission of tenders, or any prolongation of such date above notified to the Authority by the Tenderer and the Surety in writing;
  - (ii) in the event of acceptance of the Tender by the Authority, the date upon which the Tenderer provides a performance security to the Authority in accordance with the terms of the contract thereby made between them, or
  - (iii) in the event of acceptance by the Authority of a tender for the Works from a third party, the date upon which such third party provides the relevant performance security.

(b) subject to this Bond being in full force and effect, the Surety shall pay the full amount specified in this Bond upon receipt of first written demand from the Authority stating that

- (i) the Tenderer has withdrawn his Tender during the validity of this Bond, or
- (ii) the Tenderer has failed to provide a performance security to the Authority in accordance with the terms of the contract between them upon acceptance of the Tender.

No alteration in the terms of the Tender, nor any forbearance or forgiveness in or in respect of any matter or thing concerning the Tender on the part of the Authority, nor any objection from the tenderer shall in any way release the Surety from any liability under this Bond.

The benefit of this Bond shall not be assignable by the Authority and upon its ceasing to be in full force and effect the Authority shall return the same to the Tenderer.

This Bond shall be governed by the laws of ( )

I executed as a Deed this ( ) day of ( ) 19( )

For and on behalf of the Tenderer .....	For and on behalf of the Surety .....
.....	.....

Signed by .....	Signed by .....
In the capacity of .....	in the capacity of .....
and by .....	and by .....
in the capacity of .....	in the capacity of .....

seal (where applicable)

Seal (where applicable).

## APPENDIX IV(B)

**SPECIMEN FORM OF PERFORMANCE BANK GUARANTEE  
(UNCONDITIONAL)**

BOND NUMBER : ..... DATE:.....

SUM GUARANTEED : .....

To : ..... (Name of employer)  
..... (Address of employer)

Whereas ..... (name and address of contractor) [hereafter called "the contractor"] has undertaken, in pursuance of contract No. .... dated ..... to execute ..... (name of contract) [hereafter called "the contract"] ;

And whereas it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognised Bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract ;

And whereas we have agreed to give the Contractor such a Bank Guarantee ;

Now therefore we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of ..... (amount of Guarantee) ..... (amount in words), such sum being payable in the type and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of ..... (amount of Guarantee) as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the contractor before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract document which may be made between you and the Contractor shall in any way release us from any liability under this guarantee, and we hereby waive notice or any such change, addition or modification.

This guarantee shall be valid until a date 28 days from the date of issue of the taking Over Certificate.

Signature and the Seal of the Guarantor :.....

Name of the Bank :.....

Address :.....

Date :.....

Witness :.....

APPENDIX IV(C)

**SPECIMEN FORM OF BANK GUARANTEE FOR MOBILISATION  
ADVANCE PAYMENT**

BOND NUMBER : ..... DATE: .....

SUM GUARANTEED : .....

To : ..... (Name of employer)

..... (Address of employer)

Name of the Contract .....

In accordance with the provisions of the Conditions of Contract, of the above mentioned contract ..... (name and address of contractor) [hereafter called "the contractor"] shall deposit with ..... (name of employer) a bank guarantee to guarantee his proper and faithful performance under the said Contract in and amount of ..... (amount of guarantee) ..... (amount in words)

We, the ..... (Bank), as instructed by the contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as surety merely, the payment to ..... (name of employer) on his first demand without whatsoever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding ..... (amount of guarantee), such amount to be reduced periodically by the amounts recovered by you from the proceeds of the contract.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract document which may be made between you and the Contractor shall in any way release us from any liability under this guarantee, and we hereby waive notice or any such change, addition or modification.

No drawing may be made by you under this guarantee until we have received notice in writing from you that an advance payment of the amount listed above has been paid to the Contractor pursuant to the Contract.

This guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until ..... (name of employer) receives full repayment of the same amount from the Contractor.

Signature and the Seal of the Guarantor :.....

Name of the Bank :.....

Address :.....

Date :.....

Witness :.....

To ..... (Name of employer)  
..... (Address of employer)  
..... (Name of the Contract)

In accordance with the provisions of the Conditions of Contract of the above mentioned contract, the Contractor (hereafter called "the contractor") shall deposit with ..... (name of employer) a bank guarantee to guarantee his proper and faithful performance under the said Contract in and amount of ..... (amount of guarantee)

We, the ..... (Bank), as instructed by the contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as surety merely the payment to ..... (name of employer) on his first demand without whatsoever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding ..... (amount of guarantee), such amount to be reduced periodically by the amount recovered by you from the proceeds of the contract.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract documents which may be made between you and the Contractor shall in any way release us from any liability under this guarantee, and we hereby waive notice or any such change, addition or modification.

No drawing may be made by you under this guarantee until we have received notice in writing from you that an advance payment of the amount listed above has been paid to the Contractor pursuant to the Contract.

## APPENDIX V

**SPECIMEN OF CHECKLIST**

Given below is a specimen of a checklist which should be completed and forwarded with draft tender documents to the TB for their easy reference. This specimen may be used for works and goods procurements and improved by adding further items of importance.

\*Is tender notice attached ?

- what are the sources for publicity ?
- closing and opening time of tenders ?
- place of tender opening ?
- eligibility criteria for tenderers
- Who is opening tenders ? (BOC/EA/TB)

\* Are SBDD used ? If so, what is the document used ?

\* If so, did changes do to fall in line with these guide lines ?

\* Are following documents attached ?

\*\* Instructions to Bidders (ITB)

- Source of funding ?
- \_ Scope of bid ?
- \_ Amount of Bid bond ?
- \_ Eligibility criteria for bidders ?
- \_ Bid validity period ?
- \_ Submission of samples ?
- \_ Bid evaluation criteria ?
- \_ Tax concessions ?
- \_ Mobilisation advance ?
- \_ Foreign currency requirements ?
- \_ Is local agent mandatory ?
- \_ Language of bid ?

**\*\* Conditions of contract**

- \_ What is the document used ? (FIDIC/ICTAD)
- \_ Are important amendments made ? (Engineer' s authority, price escalation etc.)
- \_ Is Bid Data Sheet introduced ?
- \_ Is Arbitration clause included ?
- \_ What is the place for arbitration ?
- What are the rules of Arbitration proceedings ? (ICC, UNCITRAL etc.)

**\*\* Specifications**

- \*\* BOQ/Schedule of requirements**
- \*\* Other technical documents (plans, drawings etc.)**
- \*\* Specimen forms (Tender form, Bid bond, Agreement form etc.)**

\* Is above documents contain all the necessary information ?

\* What is the source of funding ? Are funds available ?

\* What is the method of calling of tenders ?

- ICB or LCB ?

- Is minimum time given ? (42 days for ICB and 21 days for LCB)

\* Are tenders called following a method other than open competitive, single stage bidding ?

(limited tenders, restricted tenders, two stage bidding etc.)

\* Was pre-qualification done ?

\* Did TEC do any major changes to tender documents ? .

\* If so, is Execution Agency agreed with that ?

\* Are all the members of TEC agreed with tender documents ?



## APPENDIX VI

**POSSIBLE EVALUATION CRITERIA**

## 1. Pre-qualification/Post-qualification :

- \* past experience relating to the project
- \* personal capabilities
- \* equipment capabilities
- \* financial capability and ability
- \* arbitration/litigation history

## 2. Status of supplier :

- \* financial viability
- \* technical capability - design etc.
- \* production capability
- \* performance and delivery record
- \* standards

## 3. Financial factors :

- \* price
- \* payment schedule
- \* transport cost *e.g.* to project site
- \* operating cost (generally equipment)
- \* maintenance cost

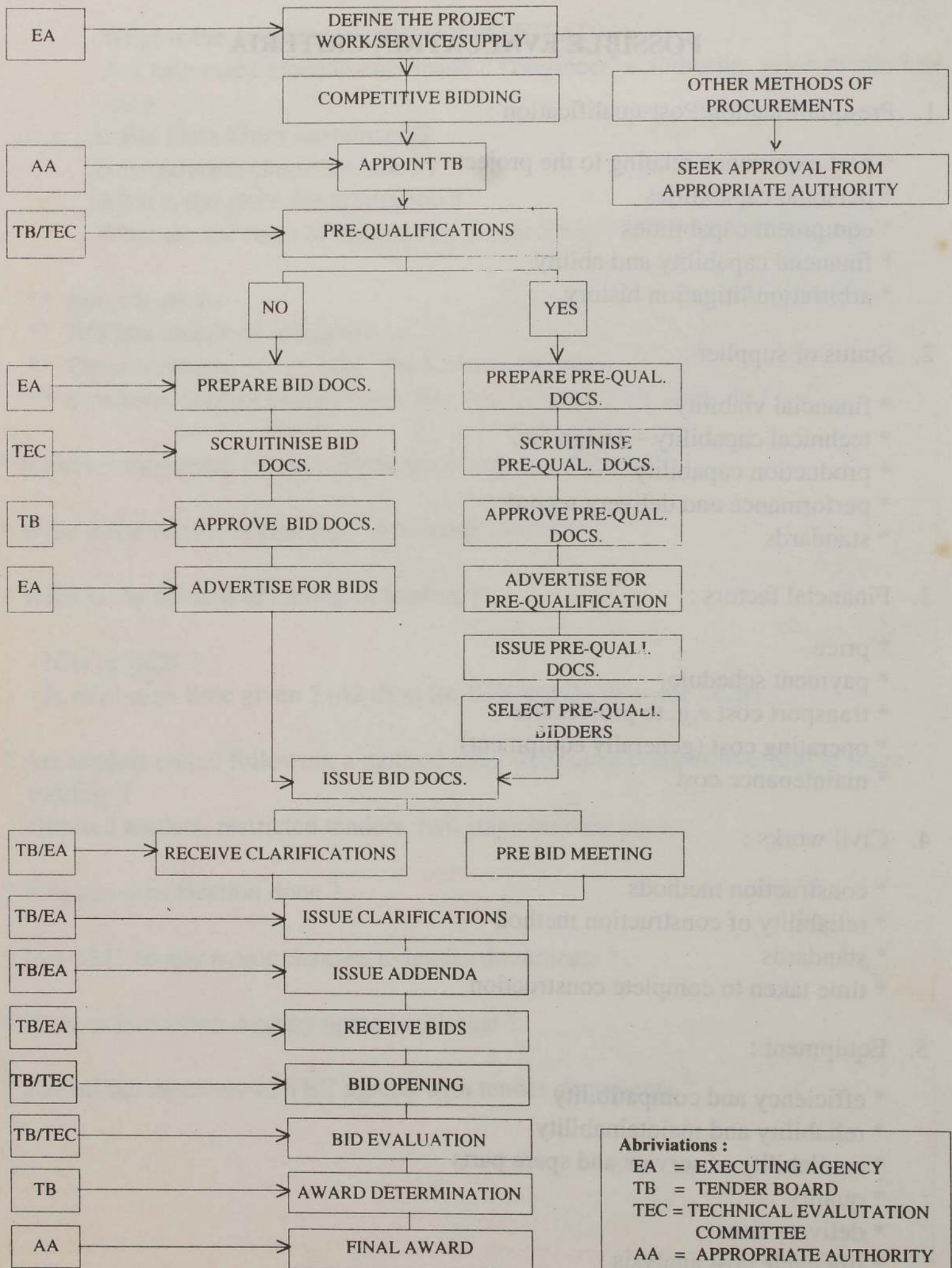
## 4. Civil works :

- \* construction methods
- \* reliability of construction method
- \* standards
- \* time taken to complete construction

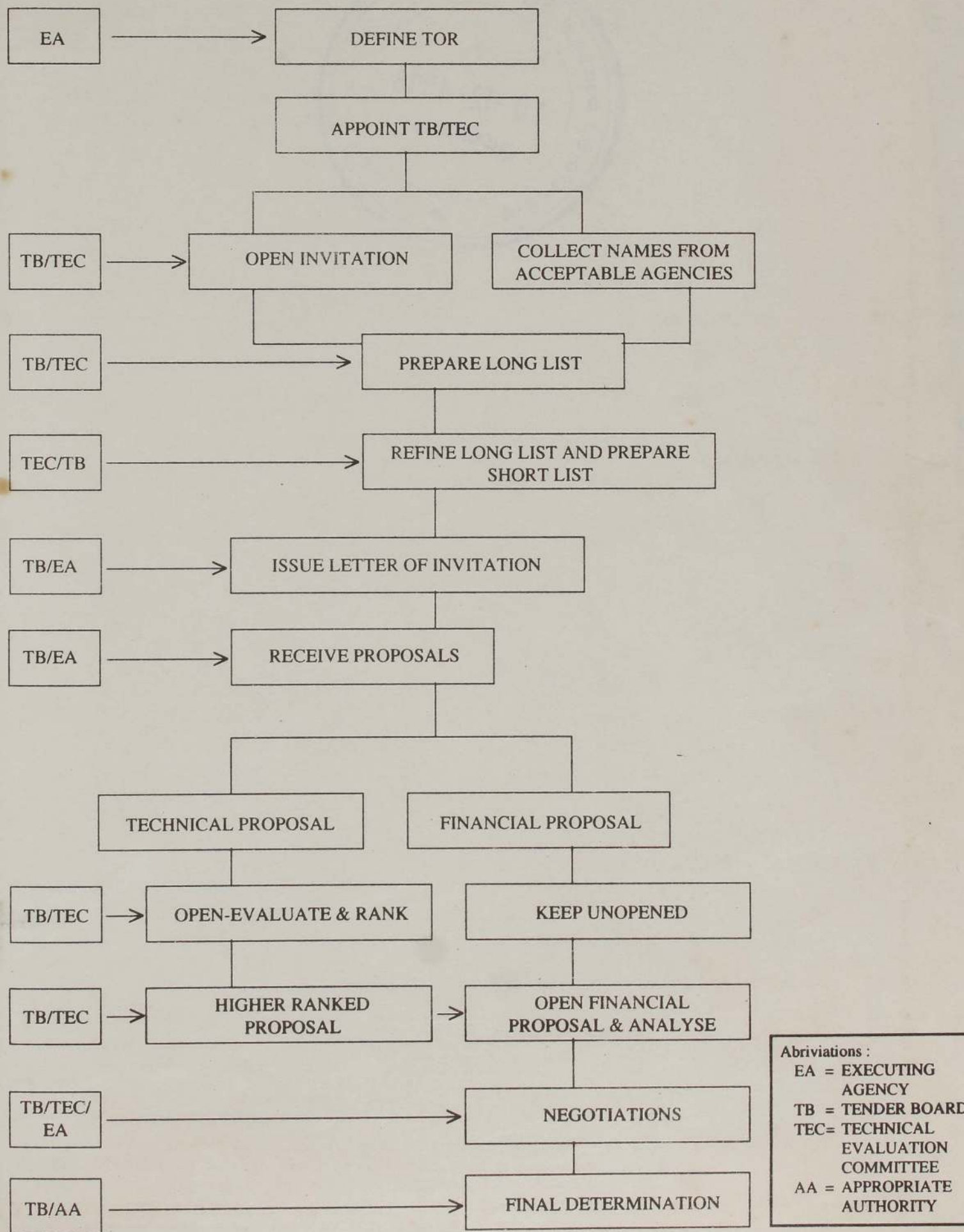
## 5. Equipment :

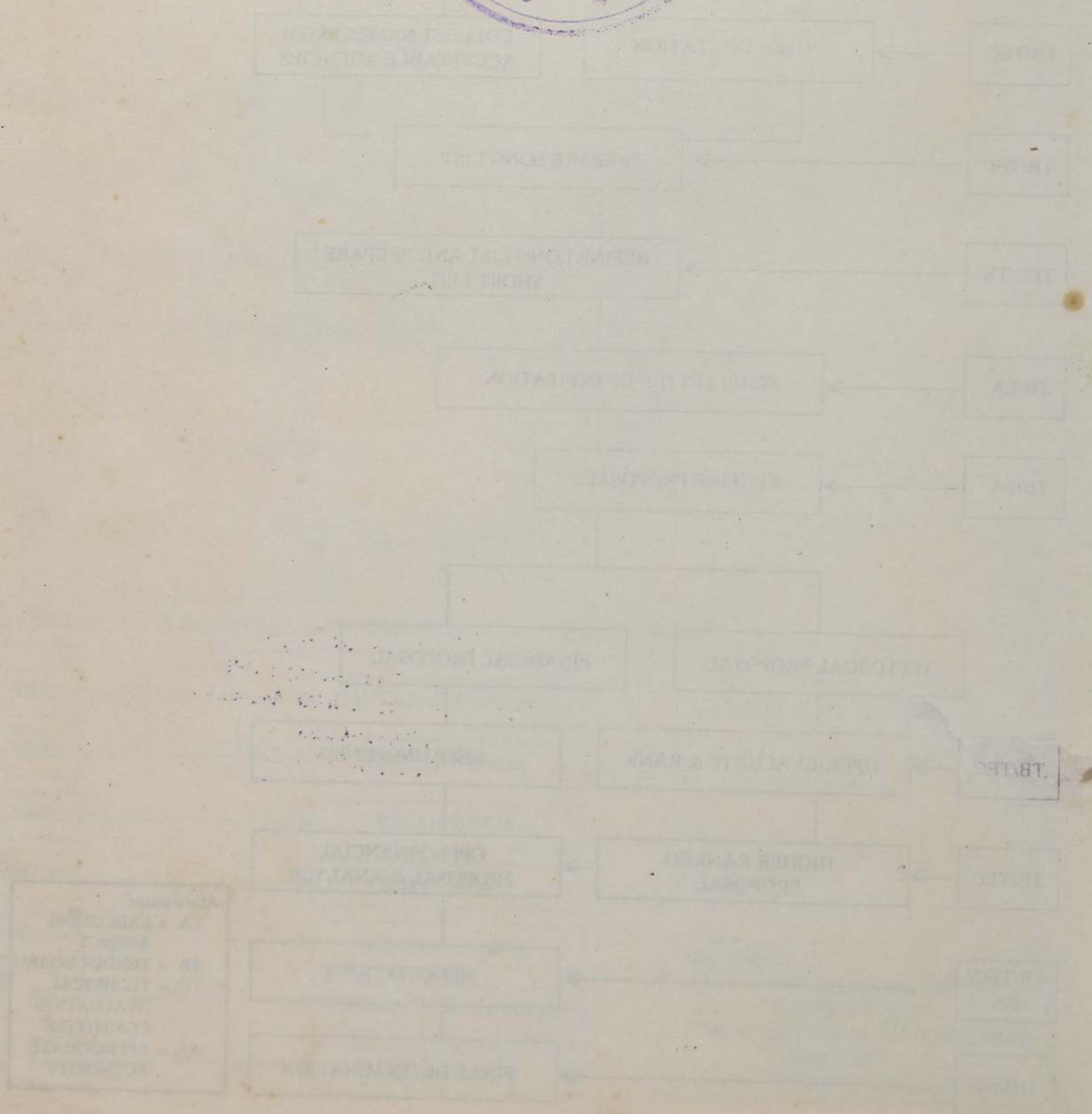
- \* efficiency and compatibility
- \* reliability and maintainability
- \* availability of service and spare parts
- \* quality
- \* delivery time
- \* life cycle cost analysis

**Flow Chart of the Procurement Process**



**Flow Chart – Use of Consultants**





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