

한국수출입은행 EDCF

「대외경제협력기금」

주요 수원국 구매 및
계약 관련 법령 조사

스리랑카



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1. 서론

스리랑카는 다양한 공적개발원조(ODA) 프로젝트의 수혜국이었음. 지원국 중에서도 특히 한국수출입은행(이하 “수출입은행”)은 스리랑카의 ODA 프로젝트에 중요한 역할을 수행하고 있으며, 주로 도로/교통, 수자원, 교육, 의료, 공공 분야 등 사회 인프라 개발 프로젝트에 중점을 두어 왔음.

자금지원기관으로서 수출입은행은 지원 자금이 본래의 목적 달성을 위해 적절히 사용되고 있는지 여부를 감독하는 시스템을 가지고 있음. 특히 스리랑카 ODA 프로젝트 수행에 있어서 스리랑카 구매 및 계약 관련 법령을 사전에 조사하여 스리랑카 ODA 프로젝트가 보다 원할이 이루어질 수 있도록 해야 함.

이를 위하여, 본 보고서는 스리랑카 의 주요 법령 체계, ODA 관련 법령, 건설 관련 법령, 구매 관련 법령, 예산 관련 법령을 조사하여, 스리랑카 가 개발프로젝트의 관점에서 보아 신뢰할만한 법적 시스템을 갖추고 있는지 여부를 살펴보고자 하였으며, 이를 통해 수출입은행의 스리랑카 ODA 프로젝트의 이행에 있어 보다 발전된 모습을 이룩할 수 있을 것으로 생각됨.

2. 조사대상 현지법 개요

2.1. 현지국 법령체계

스리랑카민주사회주의공화국(“스리랑카”)는 의회민주주의 국가임. 입법부(국회)는 단원제이며 총 225인의 국회의원으로 구성됨. 국회의원은 인구에 비례하여 선출되며 그 임기는 5년임.

행정부는 대통령을 그 수반으로 하는데, 대통령은 국가원수로서 행정부를 통괄하고 국군의 통수권을 가짐. 대통령은 국민들에 의해 직접 선출되며 그 임기는 5년임. 내각(Cabinet of Ministers)은 정부의 각 부처를 관할하며, 의회에 대해 집단적으로 책임을 짐. 대통령은 내각의 구성원이면서 그 수반이기도 함. 한편 국무총리는 대통령이 임명함. 사법부는 대법원을 그 정점으로 하며, 그 외에도 항소법원(Court of Appeal), 고등법원(the High Court) 및 기타 각급법원이 존재함. 대법원장, 대법관, 항소법원장은 국회의 승인을 얻어 대통령이 임명함.

스리랑카의 법률은 국회가 제정함. 판례, 지방의회의 조례, 관습법 또한 법원(法源)으로 됨. 헌법, 국회가 제정한 법률(신법 우선의 원칙, 특별법 우선의 원칙에 따라서만 상위관계가 있음), 지방의회의 조례, 판례 및 관습법 순으로 우선권이 있음.

입법 기관

국회는 법률 및 헌법을 개폐할 권한을 보유함. 한편 국회의 일부 입법 권한은 지방의회에 위임되어 있는데, 스리랑카에는 아홉 개의 주(Province)가 있고 각 주마다 지방의회

(Provincial Council)가 설립되어 있음. 각 지방의회는 국회를 거치지 않고 당해 주에만 적용되는 법령을 제정할 수 있음. 단 국회의 법률이 지방의회의 법령에 우선하는 효력을 지님.

국회에서 제안되는 법령의 초기 단계를 법안(Bill)이라고 함. 법안은 정부 법안(Government Bill)과 의원 법안(Private Member's Bill)으로 구분되는데, 전자는 장관과 차관에 의해, 후자는 국회의원에 의해 발의됨.

국회의 법령/법률

국회에서 제정된 법률은 스리랑카의 주요한 법원(法源)임. 법안이 국회에서 법률로 제정되기 위해서는 국회에서 세번의 회독을 거친 뒤, 의원 과반수의 찬성을 얻어, 국회의장의 승인을 얻어야 함. 법안이 국회에서 법률로 통과되기 위해 소요되는 시간은 법안의 성격, 긴급성, 정부의 다수 지원, 법안이 국회에 제출되는 방식 등 다양한 요인에 좌우되며, 몇 주에서 몇 달이 소요될 수 있음.

규칙(Rules), 규정(Regulations), 명령(Orders), 지침(Directives)

관련 부처와 정부기관이 발행하는 규칙, 규정, 명령 및 지침은 법률의 효력을 보충하는 2차 법령(secondary legislation)의 역할을 함.

지방의회에서 제정된 법률

지방의회는 기존 정부 체계 내에서 중간 단계의 지방 정부를 구성함. 지방의회는 지방의회목록(Provincial Councils List) 및 현존목록(Concurrent List)에 규정된 의제에 대하여 당해 주에 적용 되는 법률을 제정할 권한을 보유함. 단, 현재 아홉 개의 지방의회 모두 제대로 기능하고 있지 않음.

현존목록: 지방의회는 당해 목록에 포함된 주제에 대한 법률을 제정하기 전에, 그 법률에 대한 국회의 의견을 청취해야 함. 반면, 국회가 당해 목록에 포함된 주제에 대한 법률을 제정하려는 경우 반드시 지방의회의 의견을 청취해야 하는 것은 아님.

관습

관습은 스리랑카의 공동체에서 준수되는 전통적인 관습으로 보충적인 법원(法源)으로 기능함.

조약

조약과 국제 협약은 스리랑카 정부가 이를 비준한 경우에 법적으로 구속력을 가짐.

판례법

스리랑카는 로마-네덜란드 법과 영국 보통법(Common Law)의 제도를 따름. 판례법은 개별 사건을 결정하는 판사들이 규명한 근본적인 법적 규칙과 원칙을 의미하며, 다른 사건을 판단하는데 중요한 참고자료로 됨.

사법 체계

(a) 수직적 사법 체계

스리랑카의 최고법원은 대법원(Supreme Court)임. 스리랑카의 항소(상고)법원으로는 대법원, 항소법원(Court of Appeal) 및 고등법원(High Court)이 존재함. 제1심 법원(Court of first instance)으로는 고등법원(중대한 범죄에 관하여), 상사 고등법원(Commercial High Court), 지방법원(District Court) 및 치안판사 법원(Magistrates` Court)가 존재함.

(b) 수평적 사법 체계

고등법원, 항소법원 및 대법원은 민사 및 형사재판에 관한 관할권을 보유함. 반면 지방 법원 및 치안판사 법원은 각각 민사 및 형사 사건에 관하여 한정적인 관할권을 보유함.

(c) 행정 법원(Administrative Tribunals)

Rent Board of Review, Rent Boards, Ceiling on Housing Property Board, Land Acquisition Board of Review, Quazis, Board of Quazis, Agricultural Tribunals, Courts Martials, Labour Tribunals 등의 행정 법원은 준사법적 기능을 수행함. 이들의 결정은 당해 기관의 설립 근거법령에 따라 항소법원에서 다투어질 수 있음.

2.2. 조사대상 현지법령 (ODA 시행령, 건설법, 구매법)

2.2.1. 해외 차입(Foreign Loans)

스리랑카에는 해외 차입과 관련하여 다음과 같은 법령이 존재함:

- 1) 외환거래법(Foreign Exchange Act No. 12 of 2017)
- 2) 외환거래규정(Foreign Exchange Regulations No.2 of 2021)
- 3) 외환대출법(Foreign Loans Act No.29 of 1957)

2.2.2. 건설(Construction)

스리랑카에는 해외 차입과 관련하여 다음과 같은 법령 등이 존재함:

- 1) 건설산업발전법 (Construction Industry Development Act No.33 of 2014; “건설산업법”)
- 2) 국가환경법(National Environmental Act No.47 of 1980)
- 3) 도시개발국법(Urban Development Authority Act No.04 of 1982)
- 4) 통신관리국법(Telecommunications Regulatory Authority Act No.21 of 1991)

2.2.3. 구매(Procurement)

스리랑카의 정부구매계약은 법률에 의해 규율되지 아니하고, 내각이 작성한 가이드라인 및 매뉴얼(Procurement Guidelines of Goods & Works 2006 등)에 의해 규율됨. 가이드라인 및 매뉴얼의 위법성은 법원이 심사함.

3. ODA 관련 규정

스리랑카법에는 ODA 등 재정지원 사업을 위한 법적 요구사항이 존재하지 아니하므로, ODA 사업 전반을 규율하는 법령은 존재하지 아니함. 스리랑카법의 부재에 따른 공백은 개별 협정의 내용에 의해 통제됨. 가령, 한국 정부가 EDCF를 통해 제공하는 양허성 차관(Concessional loans)은 한국 정부와 스리랑카 정부 간에 체결된 프레임워크 협정 및 수출입은행과 스리랑카 정부 간의 대출 계약에 따라 규율되고 있음. 그 밖에도 한국 정부로부터의 모든 차관은 이와 유사한 프레임워크 협정에 명시된 조건에 따라 집행됨. 공표된 정보에 의하면, 마지막으로 한국 정부와 프레임워크 협정이 체결된 것은 2020~2022년 한국 정부로부터 5억달러 소정의 차관을 제공받기 위함이었음.

한편, ODA 프로젝트에 참여하는 개별기업에 대한 구체적인 모니터링 시스템 또한 존재하지 아니함. 스리랑카 법령은 스리랑카 정부 및 국영 기업이 해외로부터(외국 정부 또는 국가기관 포함) 외화 대출을 받을 경우, 해당 대출의 세부 내용(대출일, 대출 금액 및 통화, 대출 기간 및 대출기관의 프로필 등)을 대출금액을 수령한 날로부터 1개월 내에 재무부(Ministry of Finance) 산하 유관기관의 장(예를 들어 Department of External Resources, Department of Public Enterprise, Department of National Budget, Department of Foreign Exchange 등. 구체적인 보고 대상은 개별 프로젝트에 따라 달라질 것으로 생각됨)에게 보고하여야 한다고 정하고 있을 뿐¹, 이후 사업진행 절차에서의 모니터링 방법은 정하고 있지 아니함. 실무적으로는 ODA에 참여하는 개별기업의 통제 또한 각 ODA 협정의 내용에 따라 이루어지고 있음.

¹ Foreign Exchange (Classes of Capital Transactions undertaken in Sri Lanka by a person resident outside Sri Lanka) Regulations No.2 of 2021 (vide Gazette Extraordinary No.2213/35 dated 03.02.2021)

4. 건설법

4.1. 건설법 총괄 체계

스리랑카의 건설은 건설산업법 (Construction Industry Development Act No.33 of 2014; “건설산업법”)에 의해 규율되며, 건설산업법에 따라 설치된 건설산업국(Construction Industry Development Authority; “CIDA”)이 스리랑카의 건설행정을 집행함.

그 밖에, 건설공사의 특성에 따라 국가환경법(National Environmental Act No.47 of 1980), 도시개발국법(Urban Development Authority Act No.04 of 1982), 통신관리국법(Telecommunications Regulatory Authority Act No.21 of 1991) 등이 적용될 수 있음.

4.2. EDCF 사업 관련 주요조항 정리

4.2.1. 인증건설공사(Identified Construction Works)

ODA의 지원을 받는 모든 건설공사가 인증건설공사에 해당되는 것은 아님. 다음 중 어느 하나의 건설은 인증건설공사(Identified Construction Works)에 해당함. 단, 거주용으로 개인이 소유하는 일체의 건물은 인증건설공사의 대상이 아님.

- i. 공중의 이용을 위한 편의시설을 수반하는 일체의 건물, 구조물 또는 지형으로 1천만스리랑카 루피 또는 그 이상으로 장관이 지정하는 금액을 초과하는 것
- ii. 일체의 건물, 구조물 또는 지형으로 환경, 지리 또는 문화유산을 관할하는 당국의 허가를 요하는 것

건설산업법에 따른 인증건설공사의 경우 다음의 조건을 만족하여야 함.

1) 유자격자에 의해 시공되어야 함

유자격자만 인증건설공사의 설계, 계약, 감리사무에 종사할 수 있음(건설산업법 제28조). 유자격자란 설계, 계약 문서 작성, 인증건설공사의 감독을 수행할 능력이 있는 자로 유자격자등록부(Register of Qualified Persons)에 등록된 자를 의미함. 유자격자로 등록하고자 하는 자는 CIDA에 직접, 또는 유관기관을 경유하여 신청서를 제출하고 소정의 수수료를 지불하여야 함². 지방정부는 유자격자에 의해 시공되는 경우를 제외하면 인증건설공사를 허가할 수 없음.

2) 등록시공자

모든 인증건설공사는 등록시공자(registered contractor)에 의해 시공되어야 함(건설산업법 제38조). 등록을 원하는 시공자는 CIDA가 요구하는 사항을 구비하여 신청서를 제출하여야 함³. 시공자 등록을 위하여 구비하여야 하는 요건은 다음과 같음:

- i. 스리랑카에서 건설업을 영위하기 위하여 회사법(Companies Act No.07 of 2007) 또는 상호 규정/임시임시 상호 규정(Business Names Ordinance/Provisional Business Names Statutes)에 의하여 등록되어 있을 것;
- ii. 스리랑카 국민(스리랑카인 개인을 포함)이 최소 51% 이상의 지분을 보유하고 있을 것;
- iii. 재무부 또는 기타 국가기관이 발행한 ‘채무 불이행 건설업자 목록’에 포함되어 있지 않을 것;
- iv. 신청시에 법적으로 지급불능 또는 파산상태가 아닐 것.

² Constructions Industry Development (Registration of Qualified Persons) Regulation of 2017 (Gazette Extraordinary No. 2057/5 dated 05.02.2018)

³ Construction Industry Development (Registration of Contractors) Regulations No.1 of 2017 (Gazette Extraordinary No. 2057/5 dated 05.02.2018)

콜롬보증권거래소에 상장된 상장회사(Public Limited Company)이거나, 상장회사가 일부 지분을 소유하는 회사는 다음 갱신/등록 시에 자국민 보유 요건을 충족할 필요가 없음. 단, 당해 상장회사는 이사회 구성원의 과반수를 스리랑카인으로 구성하여야 함. 신청 양식과 관련 가이드라인은 CIDA 정보 센터에서 제공받을 수 있음. 건설업자는 등록을 위하여 CIDA에 신청서 및 증빙서류를 제출하여야 하고, 처리 기간은 사안에 따라 7영업일 내지 2주 가량 소요됨.

건설산업법에 따라 등록된 시공자는 아래의 절차 및 표준을 준수하여 인증건설공사를 수행하여야 함⁴:

- i. 모든 인증건설공사는 계약 조건 및 사양에 명시된 품질, 기술관련 요구사항을 준수하여 이행되어야 함. 조건이나 사양이 명시되지 않은 경우, 당해 건설은 CIDA에서 승인하고 국제적으로 인정받는 조건이나 사양에 따라 수행되어야함;
- ii. 영구적 시설물의 건설에 사용되는 일체의 자재나 시설은 등록된 수입자, 공급자 또는 제조사가 제공하여야 하며, 요구되는 사양을 구비하여야 함;
- iii. 인증건설공사를 수행하는 동안 작업장 내의 안전과 건강을 보호할 수 있는 적절한 조치가 취해져야 함;
- iv. 공사현장 및 그 인근의 자연환경을 보호하고, 오염 및 소음 등의 피해를 예방하기 위하여 적절하고 합리적인 조치를 취하여야 함;
- v. 일체의 건설공사에 대하여, 재난에 대비하기 위하여 적절하고 합리적인 조치를 취하여야 함.

⁴ Construction Industry Development (Procedures and Standards for Identified Construction Work) Regulation of 2018 (*vide* Gazette Extraordinary No. 2085/20 dated 23.03.2018)

3) 해외시공자의 임시 등록

해외시공자는 인증건설공사의 시공계약을 체결하기 전에 시공자로 임시 등록하여야 함 (건설산업법 제39조).⁵ 단, 스리랑카 정부와 계약한 해외시공자는 임시등록이 요구되지 않지만, 해외시공자와 계약을 체결한 스리랑카 정부의 구매담당부처는 CIDA가 요구하는 건설공사 관련 자료를 CIDA에 제출하여야 함.

4) 건설산업국 표준입찰계약서(“CIDA SBDs”)

인증건설공사에서 유자격자를 컨설턴트 또는 등록시공자로 고용하는 자는 건설산업국 표준입찰계약서를 사용하여야함(건설산업법 제46조).

계약유형별 표준입찰계약서의 종류는 다음과 같음:

조달계약(SBD for procurement of works)	CIDA/SBD/01* ⁶	1억 스리랑카 루피 이상의 계약으로서, 자연적인 성질상 복잡하지 않고 중요도가 낮은 것
주요계약(Major contracts)	CIDA/SBD/02*	1억 스리랑카 루피 이상의 계약으로서, 자연적인 성질상 복잡하지만 중요도가 낮은 것
소규모계약(Procurement of works for minor contracts)	CIDA/SBD/03*	1천만 스리랑카 루피 이하의 계약
설계 및 건설계약(Procurement of work for design and build contracts)	CIDA/SBD/04*	시공자가 의뢰인의 승인을 얻어 설계 및 건설과정 전반에 책임을 지는 경우에 권장됨

⁵ 달리 관련법령에 규정이 없는 한, 시공사로 결정되기 전 정부발주입찰에 참여하는 단계에서는 임시 등록이 요구되지 않지만, 인증건설공사를 실시하기 전에 임시 등록을 마쳐야 함.

⁶ * 표시는 Procurement Guidelines of Goods & Works 2006에 따라 승인된 것을 의미함.

구매절차계약(Procurement of works for shopping procedure)	CIDQA/SBD/05	500만 스리랑카 루피 이하의 계약으로서, 구매절차가 포함되는 계약
건설 관련 시설계약(Procurement of works for construction related plant)	CIDA/SBD/06	에어컨, 승강기, 대형 발전기 등 대규모 설치공사가 필요한 건설 관련 시설공사 계약

건설산업국 표준입찰계약서는 입찰자 안내서(Instructions to bidders), 입찰 데이터(Bidding Data), 계약 조건(Conditions of Contract), 계약 데이터(Contract Data), 표준 양식(Standard Forms), 사양(Specifications) 및 작업량 측정서(Bills of Quantities)로 구성됨.

- i. 입찰자 안내서(Instructions to bidders) - 입찰자들을 위한 일반적인 지침을 제시함. 주요 내용으로는 입찰자의 자격과 자격 요건, 입찰 비용, 입찰 문서의 해설, 입찰서 작성 방법, 입찰서 제출, 입찰서 개봉 및 평가, 계약 수여 등이 있음.
- ii. 입찰 데이터(Bidding Data) - 입찰 데이터는 작업 범위, 완료 기간, 자금 출처, 입찰 유효 기간 등을 명시함.
- iii. 계약 조건(Conditions of Contract) 및 계약 데이터(Contract Data) - 계약 조건과 계약 데이터는 프로젝트를 관리하는 표준 조건으로 기능함.

4.2.2. 인증건설공사 외 건설공사

인증건설공사 외 건설공사에 있어서는 건설산업법에 따른 등록이 의무사항이 아님. 단, 입찰자가 등록을 희망하거나 계약상 등록이 요구되는 경우 다음의 사항을 유의하여야 함.

i. 해외투자자 명의로 입찰하는 경우

스리랑카 정부가 발주하는 인증건설공사 외 건설공사에 입찰하는 해외투자자는 계약상 요구되는 경우가 아닌 한 등록의무가 없음.

ii. 스리랑카 회사 명의로 입찰하는 경우

인증건설공사의 경우와 동일한 요건을 충족하여야 함.

4.3. 사업 단계별 주요 승인, 허가사항 주요 절차

건설산업법에 따른 시공사 및 유자격자 등록은 인증건설공사를 위한 전제조건으로, 등록을 거친 자만 인증건설공사에 참여할 수 있음. 건설산업법상 그 외 다른 자격증이나 허가는 요구되지 않음. 즉, 건설사업법상 그 외 다른 자격증이나 허가가 요구되는 것은 아니지만, 환경보호 등을 위해 건설공사 착수 이전 또는 공사 도중에 기타 관련 법률에 따라 유관기관으로부터 다른 허가나 승인을 얻어야 하는 경우가 있을 수 있음. 세부적인 사항은 이하 3.3.1. 기타 관련 법률 이하참조. 한편 유자격자, 시공사, 해외시공자의 등록에 관하여는 전술한 바와 같음.

4.3.1. 기타 관련 법률

건설산업법 외에, 건설공사의 특성, 시공방법, 시공장소 등에 따라 다양한 특별법률과 조례가 적용될 수 있음. 그러한 법률의 개요는 아래와 표와 같음.

프로젝트 단계	요구되는 허가	허가주체
건설공사 개시 전	초기환경평가/환경영향평가	중앙환경청(Central Environment Authority)
건설공사 개시 전	환경보호면허	중앙환경청(Central Environment Authority)
건설공사 개시 전	건축허가	도시개발국(Urban Development Authority)
건설공사 개시 전	연안지역에서 개발행위를 하기 위한 주요 허가	연안보호국(Coast Conservation Department)

건설공사 개시 전	국립 보호구역으로부터 1마일 이내의 거리에서 개발행위를 하기 위해서는 야생동물보호국장의 사전 서면허가가 필요함	야생동물보호국(Department of Wildlife Conservation)
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1) 국가환경법(National Environmental Act No.47 of 1980)

국가환경법은 환경보호활동에 관한 포괄적인 법률로, 중앙환경청(Central Environmental Authority; “CEA”)이 관할하고 있음. 국가환경법에 따른 환경보호 관련 인허가로는 (i) 환경보호라이선스(Environmental Protection License)를 발급하여 환경평가의 일반기준을 준수하도록 하는 방법, (ii) 프로젝트를 승인하기 전에 초기환경평가(Initial Environmental Examination; “IEE”)/환경영향평가(Environmental Impact Assessment; “EIA”)를 거치도록 하는 방법 등이 있음.

국가환경법 제IVC장 제23AA조에 따라 스리랑카의 정부 기관, 기업, 공공 기관, 지방 정부, 회사 또는 개인이 개발 프로젝트를 시행하기 위해서는 국가환경법에 따른 허가를 얻어야 함. 같은 법 제23BB조에 따르면, 해당 프로젝트에 대한 승인을 신청한 자는 관련 프로젝트에 대한 초기환경평가서 또는 환경영향평가서를 프로젝트 승인기관에 제출하여야 함. 이 때 프로젝트 승인 기관은 Extraordinary Gazette No. 859/14 dated 23.02.1995 및 No.1373 dated 29.12.2004에 기재된 기관을 의미함. Government Notification No.722/22 dated 18.06.2023는 국가환경법 제IVC장에 따른 허가가 필요한 프로젝트 목록을 명시하고 있음.

한편, 환경적으로 민감한 지역 내(가령 연안보존구역)에서 진행되는 프로젝트는 규모를 막론하고 환경영향평가를 거쳐야 함. 환경영향평가는 열람 및 의견청취를 위해 30영업일 이상 공표되어야 함.

환경영향평가의 절차는 다음과 같음.

- 중앙환경청이 당해 프로젝트가 환경영향평가의 대상인지 여부를 결정함.
- 중앙환경청이 당해 초기환경평가/환경영향평가를 감독할 승인기관을 결정함.
- 당해 프로젝트가 연안지역에 위치할 경우, 프로젝트 제안자는 환경보존국 국장(Director General)과 협의하여야 함.
- 만약 당해 프로젝트가 국립 보호구역(National reserves)로부터 1마일 이내에 있을 경우, 프로젝트 제안자는 야생동물보호국 국장과 협의하여야 함.
- 프로젝트 제안자는 프로젝트에 관한 사전 정보를 제출하여야 함.
- 승인기관은 관계부서, 프로젝트 제안자 및 기타 이해관계인을 소집하여 환경영향평가의 대상 범위를 결정함.
- 승인기관은 환경영향평가 대상 범위가 결정된 이후 환경영향평가에 관한 지침(Terms of Reference)을 발급함
- 프로젝트 제안자는 초기환경평가/환경영향평가를 준비하고, 준비사항을 승인기관에 제출하여 평가받음. 프로젝트 제안자는 이 과정에서 컨설턴트의 도움을 받을 수 있음. 컨설팅 회사의 목록은 중앙환경청으로부터 제공받을 수 있음. 프로젝트 제안자는 중앙환경청에 등록되지 않은 컨설턴트를 이용할 수도 있음.
- 승인기관은 환경영향평가 보고서를 제출받은 다음, 환경 관련 요구사항이 적절하게 충족되었는지 여부를 심사함. 심사 종료 후 환경영향평가 보고서는 열람 및 의견청취를 위해 30일 영업일 동안 공표됨. 프로젝트 제안자는 공중으로부터 제기된 의견에 대해 답변할 의무가 있음.
- 공표기간이 끝난 뒤, 승인기관은 기술평가위원회(Technical Evaluation Committee)로 하여금 환경영향평가 보고서를 심사하게 함.
- 한편, 초기환경평가 보고서는 공중에 공표되지 아니하고, 단지 기술평가위원회의 심의만을 받음.

- 기술 평가위원회의 심의가 끝난 뒤, 승인기관은 프로젝트를 승인할지 여부를 결정함.

그 밖에 해안가, 해양, 삼림 등 지역에 따라 다양한 환경보호법률이 있음(Coast Conservation and Coastal Resources Management Act No.57 of 1981 (as amended), Irrigation Ordinance No. 32 of 1946, the Forest Conservation Ordinance No. 16 of 1907 (as amended) and Marine Pollution Prevention Act No. 35 of 2008 등).

2) 환경보호면허(Environmental Protection License; EPL)

국가환경법에 따라, Extraordinary Gazette No. 1533/16 of 25.01.2008에 기재된 산업 또는 활동을 수행하고자 하는 프로젝트 제안자는 잠재적인 오염수준에 따라 환경보호면허를 취득하여야 함.

심각한 오염을 발생시키는 사항(List A) 및 보통 수준의 오염을 발생시키는 사항(List B)에 관하여는 중앙환경청의 지방 사무소로부터 환경보호면허를 취득하여야 함. 반면 낮은 수준의 오염을 발생시키는 사항(List C)에 관하여는 시청, 구청 또는 Pradeshiya Sabhas와 같은 지방 당국으로부터 환경보호면허를 취득할 수 있음.

3) 연안지역에서 건설공사를 수행하기 위해 필요한 승인

연안보호법(Coast Conservation Act No.57 of 1981)에 따라 다음의 개발행위는 연안보호국(Coast Conservation Department)의 주요 허가(Major Permit)를 얻어야 함. 단, 개발행위의 영향을 고려하여 특별히 면제된 경우에는 그러하지 아니함.

- 항만시설 및 항법 채널
- 준설, 토사, 어패류, 식물의 제거
- 간척
- 모래톱의 파괴

- 송유관의 설치
- 그 밖에 연안지역의 물리적 환경에 변화를 초래할 수 있는 개발행위

연안보호법에 따른 연안지역은 ‘평균 최고수위 선으로부터 내륙으로 300m에 이르기까지의 지점 및 평균 최저수위 선으로부터 바다로 2Km에 이르는 지점’을 의미함.

연안지역에서의 건설공사를 위한 허가를 취득하기 위해서는 측량서 및 건설계획을 첨부하여 신고서 양식을 제출하여야 함.

4) 동식물보호법(Fauna and Flora Protection Act, No.1 of 1970)

(i) 영구적 또는 일시적인 건축물을 건축하거나, 이미 세워진 건축물을 점유하고자 하는 자, 및 (ii) 도로를 건설하거나 이미 건설된 도로를 이용하고자 하는 자는 야생동물보호국 (Department of Wildlife Conservation)의 허가를 얻어야 함. 또한 국립 보호구역으로부터 1마일 이내의 범위에서 개발행위를 하려는 자는 야생동물보호국 국장의 사전 서면 허가를 얻어야 함.

국립 보호구역은 ‘당해 지역의 동물상 및 식물상을 보호 및 보존할 필요성이 인정되는 지역으로 환경부장관이 지정한 정부소유지의 특정 부분’을 의미함. 국립 보호구역에는 자연보호구역(Strict Natural Reserve), 국립공원(National Park), 보존구역(Nature Reserve), 정글회랑(Jungle Corridor), 보호구역(Refuge), 해양보호구역(Marine Reserve), 완충지대(Buffer Zone) 등이 포함됨(동식물보호법 전문 및 제2조 제1항).

5) 도시개발국법(Urban Development Authority Law No. 41 of 1978)

지정도시개발구역 내에서는 도시개발국의 서면 허가(1년간 유효) 없이는 어떠한 개발행위도 할 수 없음(도시개발국법 제8조 J호). 단, 개발행위가 예기치 못한 환경적 요인에

의해 허가기간 내 완공되지 못한 경우, 도시개발국은 2년을 초과하지 않는 기간 내에서 이를 연장할 수 있음.

지정도시개발구역 내에서 개발 프로젝트를 진행하기 위하여는 지방정부 및 도시개발국의 동의가 필요하며, 건설허가 및 개발행위허가가 요구될 수 있음.

개발행위 허가를 위해 요구되는 정보는 다음과 같음.

- (a) 적법하게 작성된 전자적 형태의 신청서
- (b) 지급전표 사본
- (c) 건설하고자 하는 건물 설계도의 스캔본 또는 pdf본
- (d) 토지에 관한 권리증서의 사본
- (e) 사업자등록증 사본(신청인이 회사나 기타 법인인 경우)
- (f) 도시개발국이 발급한 사전허가(Preliminary Planning Clearance) 사본(존재하는 경우에만)
- (g) 프로젝트 지역에 이미 건물이 존재하는 경우, 그 건물의 인증서(Certificate of Conformity) 사본
- (h) 신청인이 토지 소유주가 아닌 경우, 토지 소유주가 발급한 위임장 사본

만약 비거주용 건물(Non Residential Building)을 건설하고자 하는 경우, 관계당국과의 협의를 거쳐 다음의 허가를 추가로 취득하여야 함.

- (a) 소방청이 발급한 소방인증서(Fire Certificate)
- (b) 실론 전기 위원회(Ceylon Electricity Board)의 허가
- (c) 국가수도위원회(National Water Supply & Drainage Board; NWS&DB)의 허가
- (d) 폐기물 처리와 관련한 관계 지방정부의 허가
- (e) 오폐수 처리를 위한 관계 지방정부의 허가

정리하자면, 도시개발국이 특정 지역을 도시개발구역으로 지정한 경우, 당해 지역에서 개발행위나 건축을 하기 위해서는 도시개발국의 사전 서면 허가가 필요함. 상기 언급된 허가 및 승인 외에도, 구체적인 개발행위나 건설의 성격에 따라 추가적인 허가가 필요할 수 있음. 이는 각 프로젝트의 성격에 따라 다르므로 일률적으로 사전 정의하기는 어려움.

4.4. 설계, 시공방법 변경사항 발생시 승인, 허가사항 주요 절차

4.4.1. 개요

건설산업법은 설계, 시공방법 등 건설 관련 일체의 변경사항 발생시 승인, 허가사항 등 주요절차에 대한 규정을 두고 있지 아니하므로, 이에 관한 사항은 통상 관련 건설계약서의 조문에 따라 처리됨 (이하 5.3.2.절 참조).

한편, 허가받은 공사의 성격에 변경이 있는 경우, 그러한 변경은 발급기관의 사전 승인을 받아야 함. 예를 들어 환경보호허가가 중앙환경청으로부터 발급된 경우, 해당 허가에는 일반적으로 신청서에 명시된 내용 이외의 확장, 연장 또는 운영 변경에 대해서는 중앙환경청의 사전 승인이 필요하다는 조항이 포함되어 있음.

CIDA 표준입찰계약서에 따른 절차

CIDA 표준입찰계약서는 계약상 합의된 공사범위 내의 변경(variations)절차가 규정되어 있음. 이하 서술하는 변경절차는 “CIDA/SBD/02 – 주요계약(Major Contracts) 표준입찰계약서”에 기초하고 있지만, 다른 유형의 표준입찰계약서에도 이와 유사한 절차가 규정되어 있음.

엔지니어는 합의된 공사범위의 확인서를 발행하기 전에는 언제든지 변경을 요청할 수

있음. 작업자는 직접 변경사항을 제시할 수도 있고, 시공자로 하여금 변경사항에 관한 제안서를 제출하도록 요구할 수도 있음. 시공자는 변경사항에 필요한 재화를 쉽게 구할 수 없다는 사실을 신속히 통지하지 않는 한 변경사항에 따라야 함(제13.1조).

변경사항은 다음을 포함할 수 있음:

- i. 계약목적물의 수량 변경(그러나, 수량변경이 언제나 계약변경을 의미하는 것은 아님);
- ii. 계약목적물의 품질 또는 기타 특성의 변경;
- iii. 작업 일부의 수준(level), 지위(position), 차원(dimension)의 변경;
- iv. 작업 일부의 생략(제3자에 의해 수행되는 경우를 제외함);
- v. 준공검사 등 준공 후 건축물의 영구적인 사용을 위하여 필요한 일체의 추가작업;
- vi. 공사일정의 변경.

시공자는 엔지니어에게 언제든지 다음 사항의 변경을 서면으로 제안할 수 있음(제13.2조):

- i. 공사의 조기 완공;
- ii. 관리, 유지 및 보수비용의 절감;
- iii. 작업효율의 개선;
- iv. 기타 시공자에게 이익이 되는 사항.

만약 엔지니어가 승인한 제안에 포함된 내용 중 영구시설물의 일부 설계 변경이 있다면,

- i. 시공자는 그에 따라 설계를 변경하여야 함;
- ii. 만약 해당 변경으로 인해 계약 가액이 감소한다면, 엔지니어는 CIDA/SBD/02 제3.4항(Determinations)에 따라 수수료를 결정하여야 하며, 수수료는 계약 금액에 포함됨. 수수료는 다음 금액 간의 차액의 절반으로 설정되어야 함(A - B):

A: 변경으로 인해 계약 가치가 감소하는 양(13.6항(법률 변경으로 인한 조정))

및 13.7항(비용 변동으로 인한 조정)의 조정은 제외)

B: 작업 변경으로 인한 의뢰자(employer)의 가치 감소(품질감소, 예상수명 감소, 운영 효율성 저하).

법령의 개폐에 따른 조정

스리랑카 법령의 개폐로 인해 비용의 증감이 발생한다면 당해 변동액을 고려하여 계약 가격이 조정될 수 있음(제13.6조). 이러한 조정은 입찰 마감일로부터 28일 이전부터 계약 완료 또는 종료 인증서 발급일까지 가능함.

법령의 개폐란 스리랑카에서의 법률의 제정, 변경, 폐지 및 하위 규정의 발효, 판례의 변경 등을 의미함. 이는 시공자의 통제범위를 벗어나는 것으로 계약 이행에 중대한 영향을 미치는 것으로 간주됨.

가격변동에 따른 조정

제13.7조는 노동비, 재료비, 장비비 및 기타 가격변동에 관한 공식을 규정하고 있음. 이에 따른 가격변동이 있을 시, 위 공식을 통하여 산출된 금액은 최종가격에 반영되어야 함.

4.5. 변경사항 관련 분쟁 발생시 처리 관련 주요 절차

스리랑카 법 상 변경사항 관련 분쟁 발생시 처리 절차에 관한 특정한 규정은 없으며 이러한 분쟁은 통상 관련 계약서의 조문에 따라 처리됨.

CIDA 표준입찰계약서에 따르면, 일체의 분쟁은 판정(adjudication) 과정을 통해 우선 해결을 시도해야 함. 판정 절차는 CIDA/SBD/02 제19.3조에 규정되어 있음. 당사자의 권리, 의무, 위반, 계약의 해제 등에 관한 판정결과의 해석에 이의가 있을 시 일방 당사자는 중재법에 따른 중재를 신청하여 최종적인 판단을 구할 수 있음(CIDA/SBD/02 제19.5조).

반면, 건설계약상 분쟁해결 방법이 지정되지 않은 경우, 당해 계약을 둘러싼 일체의 분쟁은 건설산업국의 조정이나 중재로 해결될 수 있음(건설산업법 제50조). 즉, 당사자는 계약을 통하여, 분쟁을 법원의 판결로 해결하기로 합의할 수도 있고, 조정 또는 중재를 통해 해결하기로 합의할 수도 있음. 건설산업국을 통한 조정 또는 중재로 분쟁을 해결할 수 없는 경우, 해당 분쟁을 판정(adjudication)에 이관할 수 있음. 건설산업국은 건설산업국의 규칙에 의해 결정될 수 있는 형식과 방법으로 공사계약 관련 분쟁을 판정할 수 있는 판정관들의 명단을 보유하고 있으며, 그 명단은 건설산업국에서 무상으로 열람할 수 있음(건설산업법 제51조). 물론 당사자들은 분쟁을 바로 판정(adjudication)절차에 의해 결정하는 것으로 합의할 수도 있음. 다만, 일반적으로 조정-중재-판정의 절차에 따라 분쟁이 해결된다는 것임.

4.6. 건설법 등 위반시 벌칙규정 내용

건설산업법을 위반한 자는 100,000 스리랑카 루피 또는 2년 미만의 징역에 처해질 수 있으며, 벌금과 징역형은 병과될 수 있음(건설산업법 제56조). 법인이 건설산업법을 위반한 경우 이사 전원이 형사책임을 질 수 있음. 단, 건설산업법 위반을 방지하기 위하여 주의의무를 다하였다고 인정되는 이사는 형사책임을 지지 아니함. 그 밖의 벌칙규정은 존재하지 아니함. 단, ODA사업에서 허가/승인 등 절차위반으로 처벌받은 실제 사례는 찾아보기 어려움.

5. 구매법

5.1. 구매법 총괄 체계

스리랑카의 정부구매계약은 법률에 의해 규율되지 아니하고, 내각이 작성한 가이드라인 및 매뉴얼에 의해 규율됨. 가이드라인 및 매뉴얼의 위법성은 법원이 심사함. 그러나 스리랑카 대법원의 판례에 따르면(Noble Resources International 사건 판결문, 155페이지 및 161페이지 등)⁷, 그러한 가이드라인 및 매뉴얼이 스리랑카 정부를 구속하는 효력을 지닌다고 함. 근래에는 Sunway International (Private) Limited v. Airport and Aviation Services (Sri Lanka) Limited 사건(SC (F/R) No.147/2017)에서 국가 및 국가기관은 (가이드라인 상의) 입찰절차를 엄격하게 준수해야 하며 그에 구속된다고 판시, 기존의 입장을 재확인하였음. 즉, 스리랑카에는 정부구매계약을 규율하는 법률이 부재하므로, 아래에 언급되는 각종 정부 가이드라인 등이 그러한 법률의 부재를 메우고 있는 것임.

스리랑카 정부기금 외의 자가 출자하는 인프라 사업(민간영역 인프라 사업)에 관한 가이드라인으로는 Guidelines on Private Sector Infrastructure Projects 1998(Public Finance Circular No. 02/2019로 개정; “PSIP 가이드라인”)⁸이 존재함. 이에 따르면 민간영역 인프라 사업방

⁷ it is essential to the maintenance of the rule of law that every organ of the State must act within the limits of its power. When specific provisions are laid down in the Government Procurement Guidelines- 2006 and in the Bid Documents, the rule of law will imply that the requirements of those provisions are not violated

⁸ <https://www.treasury.gov.lk/web/procurement-guidelines-and-manuals/section/guidelines%20on%20private%20sector%20infrastructure%20projects>

법으로는 Build, Own and Operate(“BOO”), Build, Own and Transfer(“BOT”), Build, Own, Operate and Transfer(“BOOT”) 모델, 또는 기타 변형들이 존재함.

반면, 스리랑카 정부 또는 국외투자기관의 재화 및 용역 구매계약에 관한 가이드라인으로는 Procurement Guidelines of Goods & Works 2006(“2006 가이드라인”)⁹이 존재하는데, 이는 스리랑카의 정부구매 관련 정책을 구성하는 중요한 지침임. 2006 가이드라인의 목적은 스리랑카 정부 또는 외국 자금 기관이 전체 또는 부분적으로 자금을 지원하는 조달 활동을 수행할 때에 조달기관이 준수해야 하는 절차를 제시하는 것임¹⁰.

국외투자기관의 경우, 투자를 위해 준수해야할 고유의 가이드라인이 있다면 그러한 가이드라인이 2006 가이드라인에 우선하여 적용됨¹¹. 2006년 가이드라인에 따르면 국외투자자를 스리랑카 정부와 계약을 체결하는 일체의 다자기구 또는 양자기구를 의미하며, 세계은행, 아시아개발은행, 일본국제협력은행에 국한되는 것은 아님¹².

아울러 위 가이드라인들을 폐지하고 재화, 스리랑카 정부의 용역, 서비스, 정보시스템, 컨설턴트 자문 계약을 포괄하는 새 가이드라인이 제안되었음(Extraordinary Gazette No. 2144/68 dated 12.10.2019.; 이하 “신규 가이드라인”).

2006 가이드라인의 대부분의 내용은 신규 가이드라인에도 여전히 존속하고 있음. 단, 신규 가이드라인은 조달기관이 반드시 준수해야하는 조달 절차를 일부 개정한 바, 그 주요 내용은 다음과 같음:

⁹ <https://www.treasury.gov.lk/web/procurement-guidelines-andmanuals/section/procurement%20guidelines>

¹⁰ Section 1.1

¹¹ Section 1.3.3.

¹² “Defenitions”

- i. 2006 가이드라인에 따르면 National Procurement Agency가 조달 지침을 개폐, 매뉴얼 발행, 표준 입찰 문서, 표준 계약서 등을 작성할 수 있었음. 반면, 신규 가이드라인에 따르면 스리랑카 헌법 제 XIXB장에 따라 설치된 국가 조달 위원회(National Procurement Commission; NPC)가 조달 정책 개발, 조달절차 감독 등 일체의 조달행정을 집행하는 유일한 기관으로 됨.
- ii. 2006 가이드라인에 따르면 국제경쟁입찰에 현지 기업의 참여를 불허하였으나, 신규 가이드라인에 따르면 현지 기업의 참여도 허용됨.
- iii. 2006 가이드라인은 1단계 입찰만 다루었으나, 신규 가이드라인은 다단계 입찰도 다루고 있음.
- iv. 신규 가이드라인 제 9장에 따르면, 일체의 계약 변경 요청은 관계 당국의 사전 허가를 얻어야 하며, 계약 변경으로 인한 일체의 지출에 앞서 관계 당국의 사전 승인 및 총 비용의 검토가 필요함.
- v. 신규 가이드라인 제5.16조에 따르면, 대규모 토목공사를 비롯한 장기 계약의 경우 조달 문서에 가격 조정 조항을 포함하여야 한다고 규정하고 있음(2006 가이드라인에는 이러한 요구사항이 존재하지 아니하였음).
- vi. 재화 및 용역 구매계약에 국한된 2006 가이드라인과 달리, 신규 가이드라인은 정보시스템, 컨설턴트 자문 계약 등을 포함하여 규율하고 있다는 점 등의 차이점은 있으나 구체적인 내용은 아직 확인하기 어려우며, 시행 시기도 확정할 수 없음.
- vii. 신규 가이드라인에 따르면 조달기관은 자체적으로 또는 다른 조달 기관을 대신하여 공급업체와 프레임워크 계약을 체결할 수 있음. 프레임워크 계약은 조달 기관이 일반적으로 사용하는 물품, 서비스 등이 적시에 공급되도록 하고, 안정적인 품질관리 및 대량구매를 통한 단가 인하를 가능케 함.

- viii. 신규 가이드라인은 전자 조달에 관한 사항을 추가하였음. 전자 정부 조달은 인터넷을 이용하여 조달 절차의 모든 단계를 지원하는 프로세스임.

신규 가이드라인은 스리랑카 정부 조달 시스템을 현대화하여 투명성, 효율성을 제고하고 조달 비용을 절약하며 더 많은 공급 업체에게 조달절차에 참여할 기회를 제공할 것이라고 기대됨. 단, 신규 가이드라인은 아직 시행되지 아니하였고 구체적인 시행예정일도 미정인 상태임.

5.2. EDCF 사업 관련 주요조항 정리

EDCF 사업은 스리랑카의 정부기관이 체결하는 건설 프로젝트로 보이는 바, 2006 가이드라인이 이와 가장 밀접한 관련이 있음. 2006 가이드라인은 건물의 건설, 재건축, 해체, 수리, 또는 이에 수반하는 굴착, 장비의 설치 등 일체의 작업을 규율함.

조달 방법

일반적으로 사용되는 구매 방법에는 국제경쟁입찰(International Competitive Bidding; “ICB”), 경쟁입찰(National Competitive Bidding; “NCB”), 제한된 국제입찰 등이 있음. 스리랑카 정부 구매사업의 경우 2006 가이드라인의 규율을 받음이 원칙이나, 참가 국외투자기관이 투자를 위해 의무적으로 준수하여야 하는 고유의 가이드라인을 정하였다면, 해당 가이드라인이 2006 가이드라인에 우선하여 효력이 있음은 앞서 설명한 바와 같음.

국제경쟁입찰은 다음의 경우에 사용됨.

- i. 국내 시공자의 역량이 부족하고 국제경쟁입찰의 이점이 현저한 때;
- ii. 국외투자프로젝트에 있어 국외투자기관이 국제경쟁입찰을 요구하는 때.

경쟁입찰은 통상 대부분의 스리랑카 정부 프로젝트에 적용되고 있음. 단, 국외투자프로젝트의 경우 (i) 국외투자기관이 동의 하에, (ii) 국외 시공자가 국내 시공자와 동일한 조건으로 입찰하는 것이 허용되고, (iii) 국유기업에 우선권을 부여하지 아니하며, (iv) 건설산업국의 국가등록시스템에 적절한 등록이 이루어지는 경우에 적용될 수 있음(2006 가이드라인).

2006 가이드라인은 구체적인 입찰자의 자격기준을 규정하고 있지 않음. 단, 스리랑카에서 블랙리스트로 지정된 시공자나, 당해 건설계약의 설계나 준비과정에 컨설팅 서비스를 제공한 시공자는 입찰할 수 없음.

2006 가이드라인에 따르면 스리랑카 법인을 통하여 입찰하는 외국인이나 외국법인의 사후 자격기준(post qualification) 중 하나는 건설산업법에 따라 적법하게 등록하는 것임. 그러한 등록은 입찰서 제출 시점에 유효하여야 함. 그러나 위 등록은 사후 자격기준에 불과하므로 등록을 거친 이후에만 입찰할 수 있는 것은 아님.

또한 시공자는 인재(人災), 자연재해 및 기타 스리랑카 정부가 선언하는 비상사태와 같은 긴급상황에서 긴급 구매계약을 체결할 수 있음. 이러한 경우 2006 가이드라인에 따른 통상의 계약절차를 따르지 아니함.

민간기업과의 계약체결

2006년 가이드라인 따르면 조달기관은 입찰준비에 충분한 기간을 명시한 입찰 서류를 발행하여야 함. 입찰서를 수령한 후에는 2006년 가이드라인에 따라 지정된 프로젝트 위원회가 입찰서를 검토함이 원칙이나, 입찰위원회(Bid Opening Committee)에 위 권한을 위임할 수도 있음.

이후에는 기술평가위원회(Technical Evaluation Comittee; “TEC”)가 해당 입찰서를 살펴 입찰이 적법한지, 최저입찰자가 누구인지, 그러한 입찰이 현실성이 있는지 여부 등을 평가하는데, 이 과정에서 외부 컨설턴트의 도움을 받을 수도 있음.

2006 가이드라인에 따라, 기술평가위원회는 다음과 같이 구성됨.

- (a) 기술평가위원회는 당해 분야에 대한 전문가 및 전문가 및 조달 절차에 대한 충분한 지식을 가진 적어도 한 명 이상의 구성원을 포함하여야 함.
- (b) 필요한 경우 기술평가위원회는 특정 주제에 대한 외부 구성원 또는 기관으로부터 전문적인 조언을 얻을 수 있음
- (c) 기술평가위원회는 입찰 문서 작성 및 입찰 평가에 대한 외부 컨설턴트의 지원을 얻을 수도 있으며, 이러한 컨설턴트는 기술평가위원회의 지침과 지도를 받아야 함.
- (d) 그러나 기술평가위원회는 평가에 대한 책임을 단독으로 짐.

평가 기간 동안 조달기관은 기술평가위원회의 요청에 따라 입찰자에게 명확화를 요청할 수 있으나, 이 경우에도 (i) 입찰자의 초기 응답에 대한 실질적인 변경, (ii) 단순한 산술적 오류를 제외한 입찰 가격의 변경은 허용되지 않음. 최저입찰자가 확인된 이후에는 입찰자의 신뢰도, 역량, 자원 등을 평가하기 위해 사후자격심사가 이루어짐.

프로젝트 위원회는 기술평가위원회가 제공한 보고서를 검토한 뒤 관계부서의 장 또는 프로젝트 매니저에게 계약체결에 관한 의견을 전달함. 프로젝트 위원회란 아래 표에 명시된 각 기관을 의미하며, 어떤 프로젝트 위원회가 보고서를 검토할지는 조달총액에 따라 달라짐.

기관	금액
Standing Cabinet Appointed Procurement Committee (SCAPC)	10억 스리랑카 루피 초과
Cabinet Appointed Procurement Committee	
MPC(Ministry Procurement Committee)	10억 스리랑카 루피 이하
Department Procurement Committee (DPC)/Project Procurement Committee (PPC)	5억 스리랑카 루피 이하
Regional Procurement Committee (RPC)	5,000만 스리랑카 루피 이하

SCAPC(Standing Cabinet Appointed Procurement Committee)는 (i) 조달 절차를 신속하게 진행해야 하는 경우, (ii) 조달 대상 품목이 즉시 필요한 경우, (iii) 신속한 결정이 필요한 경우, (iv) 국가 안보상 필요한 경우 등 일반 조달 절차로 조달을 진행하기 곤란한 경우 내각의 승인을 받아 구성됨. 반면 MPC(Ministry Procurement Committee), DPC(Department Procurement Committee), PPC(Project Procurement Committee), RPC(Regional Procurement Committee)는 관계부서의 장이 지명하여 구성함¹³.

조달기관은 예산을 검토한 뒤 승낙서를 발급하여 최저가입찰자와 계약을 체결함.

¹³ RPC의 경우, 경우에 따라서는 상급 부서의 승인이 요구될 수도 있음.

공공계약법(Public Contracts Act, No. 3 of 1987; “PCA”) 에 따른 규율

모든 입찰자 및 그 대리인(복대리인 포함)은 공공계약법에 따른 등록절차를 거쳐야 하며, 등록 없이는 공공계약(정부 프로젝트와 관련된 모든 계약)에 어떠한 형태로든 참여할 수 없음. 만약 제안서에서 등록을 의무사항으로 요구하고 있지 아니하더라도 실무상 등록절차를 거치는 것이 권장됨. 공공계약이 최종적으로 체결된 경우에도 공공계약법에 따른 등록절차가 요구됨.

그 외에 공공계약법상 요구되는 다른 허가 절차는 없음.

5.3. 기승인 구매계약 변경사항 발생시 승인, 허가사항 주요 절차

스리랑카 정부가 법적 의무를 부담하는 일체의 계약을 체결하기 위해서는 법무부 장관의 검토를 거쳐 내각의 승인을 얻어야 함. 내각의 장관 또는 법무부장관은 계약 검토 절차를 위임하지 아니하므로, 스리랑카 정부 또는 공공기관이 체결한 일체의 계약 및 그 변경은 계약금액을 막론하고 법무부장관의 검토를 거치게 됨.

2020년 8월 스리랑카 내각이 발행한 Guidelines on Submission of Cabinet Memoranda/Notes 에 따르면, 스리랑카를 대표하여 외국 정부/국제 기관/외국 기관과의 협정/양해각서 등의 체결은 내각 장관의 승인을 필요로 함. 그리고 스리랑카가 외국 정부/국제 기관/외국 기관과 체결한 협정/양해각서의 지불 조건이나 의무와 같은 본질적인 조항을 수정하고자 하는 경우에는 법무부장관의 검토를 거쳐 내각의 승인을 얻어야 함. 외국 자금 조달 기관(Foreign Funding Agency)으로부터 자금 지원을 받은 프로젝트를 수정/연장하기 위하여 내각의 승인을 요청할 때는 이에 앞서 재무부의 대외 자원 부서(Department of External Resources of the General Treasury) 및 관련 자금 기관의 동의를 얻어야 함.

한편 2006 가이드라인에 따르면 프로젝트의 실행단계에서 계약에 대한 변동을 최소화하기 위해 최대한의 노력을 다해야 함. 구체적으로, 입찰 개시 전에 설계에 참여한 사람으로부터 종합 브리핑을 받아야하며, 변동액이 예비비를 초과하여 이에 대한 승인이 요구되는 경우 조달기관은 위와 같은 브리핑을 받았으며, 변경이 계약 체결 이후에 식별되었는지 또는 디자인에 참여한 사람들이 사전에 예측할 수 있었는지를 입증하여야 함.

반면, 변동액이 예비비를 초과하지 아니한다면 조달기관은 상기 언급된 방식으로 브리핑을 받았음을 입증할 필요가 없음.

부정확한 수량으로 인한 변동을 최소화하기 위하여 2006년 가이드라인은 다음과 같은 사항을 권장함:

- i. 입찰서 작성 전에, BOQ 작성자는 작성자 외 다른 사람이 BOQ의 정확성과 완결성을 점검하였음을 입증하는 인증서를 조달기관에게 제출하여야 함
- ii. 전형적인 건물을 건축하고자 하는 경우, BOQ 완성 전에 BOQ를 그러한 전형적인 건물과 비교해 볼 것;

2006 가이드라인에 따르면, 계약 변경으로 증액된 금액이 예비비(통상 계약금액의 10% 미만)를 초과하지 않는 경우에는, 부서장/프로젝트 책임자가 단독으로 증액을 승인할 수 있음. 단순히 계약 변경으로 금액에 변경이 있는 경우에는 구매계약의 지불 조건이나 의무와 같은 본질적인 조항이 수정되는 것이 아니므로 법무부장관의 검토를 거쳐 내각의 승인을 얻어야 하는 것이 아니기 때문임. 그리고 이와 같이 부서장/프로젝트 책임자가 증액을 승인하는 절차는 주로 물품 및 공사의 조달 계약과 관련하여 적용됨. 2006 가이드라인의 8.13조에 따르면, 계약 조건은 일반적으로 고용주에게 작업 진행 중에 작업의 형태, 품질 및 양을 언제든지 변경할 수 있는 권한을 부여하게 되며, 변경

사항은 본질적인 조항을 수정하는 것이 아니므로 내각의 승인을 필요로 하지 않음. 이와 같이 경미한 변경에 관한 규정은 일반적으로 관련 계약서에 명시되어 있음.

예비비를 초과하거나 예비비가 없는 경우, 계약 변경을 위해서는 조달 매뉴얼(Procurement Manual)에서 규정된 적절한 권한을 지닌 자에게 승인을 요청하여야 함. 조달 매뉴얼에 따르면, 변경 사항의 총 금액(수량 변경 및 추가 작업 명령으로 인한)이 예비비를 초과하는 경우, 계약 변경 전에 조달기관 회계 책임자의 승인을 받아야 함. 이 때, 증액된 공사비가 당초 총공사비의 5% 미만인 경우 회계 책임자는 단독으로 또는 기술평가위원회와 협의를 거쳐 증액을 승인할 수 있음. 반면 증액된 공사비가 당초 총공사비의 5% 이상인 경우 회계 책임자는 기술평가위원회의 지원을 받는 조달위원회의 승인을 거쳐 증액을 승인해야 함¹⁴.

또한, CIDA 표준입찰계약서를 사용하는 경우, 계약내용의 변경은 별도의 문서로 이루어져야 하며, 표준입찰계약서의 문언을 변경하여서는 안 됨.

3개월을 초과하는 계약의 스리랑카 루피 환율 변동에 따른 가격조정은 입찰서와 계약서에 포함되어야 함. 2006 가이드라인은 건설산업국 표준입찰계약서 상 가격변동공식 사용을 허용함. 단, 국외투자기관과의 계약에서 환율변동에 따른 가격조정이 필요한 경우 외국 기금 기관이 제안한 공식에 따를 수 있음.

예외적인 상황이나 불가항력적인 상황이 발생한 경우, 시공자는 자신이 통제할 수 없는 사유로 발생했다는 사실로 인하여 기일이 연장되었다는 점을 증명하여 기일을 연장할 수 있음.

¹⁴ 조달위원회는 본 보고서 5.2절의 프로젝트 위원회(SCAPC)를 의미함. 기술평가위원회 또한 본 보고서 5.2절에 명시된 바와 같음.

5.4. 변경사항 관련 분쟁 발생시 처리 관련 주요 절차

변경사항 관련 분쟁은 스리랑카 정부와 체결한 계약의 관련 조항에 따라 해결됨. 통상 재화 및 용역의 구매계약과 관련한 분쟁은 중재법에 따른 중재를 통하여 해결됨. 단, 낙찰자가 국외투자기관인 경우 낙찰자가 달리 요구하는 경우에는 그러지 아니함.

구체적인 분쟁 처리 방법은 관련 계약서의 조항에 따라 결정됨. 사실관계 여하에 따라 기타 다른 법률이 적용될 수 있음. 실무적으로 ODA 프로젝트 관련하여 어떤 분쟁해결 절차가 적용되고 있는지는 확인하기 어려움.

5.5. 구매법 등 위반시 벌칙규정 내용

앞서 언급된 바와 같이 스리랑카에서는 구매에 관한 법률이 존재하지 않음. 그러나 스리랑카 정부의 수요기관이 위 가이드라인에 규정된 절차를 위반하였다고 생각하는 사람은 항소법원(Court of Appeal)에 서면으로 제소할 수 있음. 항소법원은 스리랑카 정부에게 금지명령, 의무이행명령 등을 발령할 수 있음(헌법 제140조).

6. 정부 발주사업 예산집행 절차

6.1. 정부 발주사업 예산집행 절차 개요

국가예산과 관련 공적 지출 관리는 재무부의 국가예산처에서 행함. 국가예산처는 거시적 재정 틀을 마련하고, 이해관계자 협의와 정부의 기존 계획을 바탕으로 예산 배분을 결정하고 대통령과 내각의 권한에 의거하여 예산을 최종 편성함. 국회에서 예산안을 통과시켜야 하는 시간적 제한은 존재하지 않음. 이후 재무부장관이 국회에서 예산안을 발표하고, 의회는 예산안을 다음과 같이 세 번 검토하여 최종 승인함. 예산안은 매년 통과되고, 이를 통해 배분된 자금은 기반시설 프로젝트를 포함한 스리랑카 정부 프로젝트에 사용됨:

- i. 제1회독 – 모든 법안은 의회에서 제1회독이 이루어지는 날로부터 최소한 7일 전에 공표되어야 함(헌법 제78조). 의안의 검토를 위해 26일이 할당됨(의사규칙 제75조);
- ii. 제2회독 – 제2회독은 예산안 연설로 시작되며, 의회에서 7일동안 토론이 이루어짐. 7일이 경과한 이후에는 예산안에 대한 투표가 이루어짐(의사규칙 제47조). 투표가 끝나면 예산안은 본회의(committee of the House)에 회부됨.
- iii. 예산위원회 – 예산안은 국회 본회의에 회부되어, 예산안에 대한 수정안과 함께 모든 조항, 항목, 일정 등에 관한 검토를 거침(의사규칙 제130조). 본회의를 통과한 예산안은 제3회독을 거쳐, 의회에서 표결절차를 거침(의사규칙 제47조).
- iv. 예산안이 통과되면 의장은 의회에서 예산안이 정식으로 통과되었음을 증명하는 인증서를 발급함(헌법 제79조).

한편 2023년 스리랑카의 회계연도는 2023년 1월 1일에 시작하여 같은 해 12월 31일에 끝나며, 예산법(Appropriation Act No.43 of 2022)에서 정해진 1차 계획안(First Schedule)에 정한 바에 따라 실행됨. 1차 계획안은 정부의 각 부서에 할당된 예산의 집행 방법 시기 및 어떠한 용도로 이를 실행해야 하는지 규정하고 있음. 1차 계획안은 예산법에 대한 수정안을 발의하는 형식으로 변경될 수 있음.

공공지출 통제를 위한 정부 정책

스리랑카 재무부는 현재의 경제 위기 상황을 고려하여 정부 지출을 통제하고 있음 (National Budget Circular No.03/2022 dated 26.04.2022). 구체적인 내용은 다음과 같음:

- i. 입찰 단계이건 이미 진행중이건 불문하고, 일체의 공하나 물품의 조달 등 프로젝트를 일시적으로 중단함;
- ii. 아직 공하나 물품조달에 관한 계약이 확정되지 않은 경우, 계약의 잠정중단 가능성을 모색하고 이에 따른 조치를 취함;
- iii. 원자재의 부족, 현재의 시장상황 또는 기타 이유로 중단되었거나 작업이 덜 진행된 재화 및 서비스의 조달계약의 연기, 건설/조달계약의 선택적 이행 또는 중지;
- iv. 예산안에 따라 예산이 할당되었으나 아직 공사가 개시되지 않은 프로젝트의 일시적 중단;

외환대출법(Foreign Loans Act No.29 of 1957)

대통령. 또는 대통령이 특별히 권한을 수여한 자는 스리랑카 정부를 대신하여 다음의 행위를 할 수 있음(외환대출법 제2조):

- i. 스리랑카 정부에 대한 외환대출과 관련된 협정;
- ii. 공기업에 대한 외환대출에 대하여 스리랑카 정부가 행하는 보증;
- iii. 외환대출계약이나 스리랑카 정부가 이행하여야 하는 보증에 관련한 일체의 계약, 채권, 약속어음, 또는 기타 문서의 발행.

외환대출과 관련된 협정 또는 그 협정이나 보증에 따라 체결된 계약, 채권 또는 약속어음에 따라 스리랑카 정부가 지급하여야 하는 모든 금원은 통합기금(Consolidated Fund)로부터 지급됨(제4조).

외환대출법은 ‘외환대출’을, 어떠한 통화로 이루어지던 간에, 스리랑카 정부 또는 공기업에 대해 이루어지는 대출 또는 일체의 신용공여로서 이하를 의미하는 것으로 정의됨:

- i. 해외 정부 또는 해외 정부기관에 의한 것;
- ii. 국제기구에 의한 것;
- iii. 스리랑카 국외의 개인 또는 단체에 의하여 이루어지는 것으로, 회사, 법인 아닌 기업 등에 의하여 이루어지는 것

6.2. 예산집행 신청 및 처리 주체

각 기관들이 수행하는 역할에 관하여는 이하의 설명 참조. 한편, 개별 ODA 프로젝트를 수행함에 있어 일반적으로 이하에 명시된 기관들로부터 얻어야 하는 허가나 승인은 존재하지 않음.

국가기획부(National Planning Department)

정부의 전반적인 정책 방향 및 공공투자계획에 부합하는 정책을 관할함. 구체적인 재정 집행은 국가기획부에 신고를 해서 수리를 받아야 함.

재정정책부(Fiscal Policy Department)

거시적 재정 프레임워크 설정, 정부 재정 전략의 성과 평가 및 공표를 관할함.

통상, 관세 및 투자정책부(Trade, Tariff and Investment Policy Department)

국제무역, 관세 및 조세 관련 정책 수립 및 관세청의 감독, 무역 및 투자 정책을 관할함.

공기업부(Public Enterprises Department)

공기업의 수익 및 배당금을 통하여 정부의 수입 확충, 공기업의 성과 감독을 관할함.

재무부(National Budget Department)

국가의 예산 및 관련 공공지출의 편성을 관할하고, 예산이 목적에 맞게 사용되고 있는지 여부를 감독함.

관리서비스부(Management Services Department)

공공 부문 및 공기업의 인적자원 관리를 관할함.

대외자원부(External Resources Department)

외부 자금의 조달을 통한 국가예산 확충을 관할함.

개발금융부(Development Finance Department)

중소기업의 금융 지원을 관할함.

공공기금부(Public Finance Department)

공공기금, 구매계약, 공공자산의 관리를 관할함.

법무부(Legal Affairs Department)

예산 편성에 관한 법적 절차를 관할하고, 적시에 예산이 편성될 수 있도록 입법을 지원함.

해외원조 및 예산 감독국(Foreign Aid and Budget Monitoring Department)

정부의 개발정책을 감독함.

재정운영부(Treasury Operations Department)

국가예산의 집행, 감독을 관할함.

국가회계부(State Accounts Department)

정부의 세입/세출에 관한 기록 등 공적 장부를 작성하고 공표함.

관리감독부(Management Audit Department)

내부감사 기능을 수행함.

6.3. 사업계획 변경시 기재정 예산 변경(증감) 절차

어떤 활동에 관하여 정부의 수입이 예정된 지출에 비추어 부족한 경우, 관계 장관은 회계연도 중 어느 때라도 필요하다고 생각하는 금액을 정부의 통합기금이나 기타 기금 또는 정부가 보유하는 현금으로부터 전용(轉用)할 수 있음. 단, 그와 같이 전용된 금액의 합은 예산법에 따른 지출의 최대한도를 초과할 수 없음(예산법 제4조).

즉, 정부 지출의 총합은 예산법에 따른 지출의 최대한도를 초과할 수 없음. 그러므로 지출의 최대한도 내에서 전용(轉用)이 이루어지는 경우 재무부 장관의 별도 승인이 필요 없는 것임.

프로젝트의 변경의 유형에 따라 별도의 절차가 존재하는 것은 아님. 스리랑카 정부 또는 기타 공공기관과 체결된 모든 계약의 변경에 동일한 사항이 적용됨.

6.4. 현재 스리랑카의 경제 환경과 IMF 조건

스리랑카 의회는 최근 국내 재조정 계획을 승인하였음. 이는 국제 채권자들과 양자간 주요 채권자들과의 협상을 가속화하는 데 매우 중요함. 재조정 과정이 완료되면 스리랑카로의 해외직접투자가 증가하고 현재 재정 상황이 개선될 것으로 기대됨.

2023년 3월 20일, 국제통화기금(IMF)은 약 30억 달러에 이르는 48개월의 확대금융(extended fund facility)을 승인, 스리랑카는 즉시 약 3억 3천만 달러를 초기 지급 받음. Press Release No.23/79 dated 20th March 2023에 따르면, 확대금융 프로그램의 목표는 건전한 거시경제 안정과 채무의 지속가능성을 회복하고, 금융안정을 보장하며, 스리랑카의 성장 잠재력을 확대하기 위해 구조개혁을 강화하는 것임.

국제통화기금이 부과한 주요 조건 중 하나는, 정부 운영의 안정적인 자금 조달을 보장하고 공공부채의 지속가능성을 회복하기 위한 채무 재조정을 통하여 공공부채를 안정화하는 것임. IMF는 브리핑에서 2022년 말 기준으로 스리랑카의 공공부채가 GDP 대비 128%로 지속 가능하지 않으며 국외 채권자들에 대해 이행지체 상태에 빠져있다고 언급하였음. 따라서, 스리랑카에 대한 IMF 이사회의 지원 승인을 위해서는 (i) 채무 경감 또는 채무 지속가능성 회복을 위한 자금 지원에 대한 채권자들의 확약 확약, (ii) 관계당국이 채권자들과의 합의에 도달하기 위해 성실한 노력을 기울이고 있는지 여부 등이 평가되어야 함. IMF Country Report No.23/116 (2023년 3월)에 따르면, 스리랑카 정부의 주요 목표는 다음과 같이 공공부채의 지속가능성을 회복하는 것임:

- i. 2023년까지 국가 총생산(GDP) 대비 공공부채 수준을 95% 이하로 줄이기;

- ii. 2027-2032년 기간의 평균 중앙정부 총 재정 필요액을 포함하여 우발부채 규모를 GDP의 13% 이하로 줄이기;
- iii. 2027-2032년 기간 중 어떠한 연도에서도 중앙정부의 외환 부채 비용을 GDP의 4.5% 이하로 유지하기;
- iv. 재정 및 외부 자금 조달 격차의 해소.

국회에서 승인한 국가 예산은 주요 재정 균형, 수입 및 비-이자 지출(non-interest expenditure)에 대한 IMF 프로그램 기준과 일치해야 함. 국회에 제출된 2023년 예산안은 IMF 프로그램과 일치함.

IMF의 조건에 따라 관련 기관들은 핵심 공공 재무 관리 기능을 강화해야 함. 취약한 공공 재무 관리를 근본적으로 개선하기 위해 IMF 프로그램은 (a) 예산 프로세스를 명확히 하고, 정부 기관의 역할을 명시하며, 개편된 재정 규칙 구조를 포함하는 새로운 공공 재무 관리법을 제정하는 것; (b) 지속 가능한 중기 재정 프레임워크를 개발하여 다년간의 재정 정책 지침을 제공하는 것; (c) 2023년 9월까지 통합 재무 관리 정보 시스템의 전개를 완료하는 것; (d) 최근 재무부(Ministry of Finance) 산하에 설립된 거시 재정부서를 강화하여 공공 투자 효율성을 개선하는 것; (e) 프로젝트 평가 및 선택 프로세스를 강화하여 공공 투자 효율성을 개선하는 것을 포함함.

스리랑카의 현재 경제적 상황을 고려하여, 재정부는 국내 자금을 이용하여 프로젝트를 실행할 때 지출을 통제하는 일부 방법을 National Budget Circular No.03/2022 dated 26.04.2022에 따라 도입하였음(본 보고서 5.1절 참조).

공표된 자료에 의하면 스리랑카 정부의 부채를 조절하기 위한 절차는 존재하지 않음.

한편, 법정 예산 절차를 준수하지 아니함에 따른 패널티는 존재하지 아니함. 단, 정부 기관은 National Budget Circulars에 정해진 조건을 준수하여야 함. 만약 공공기관이 그러한 절차에서 벗어나 행동하는 경우 소송을 통하여 다투어질 수 있음.

7. 결론

스리랑카에는 정부구매사업을 규율하는 법이 없고, 2006 가이드라인을 비롯한 정부 가이드라인이 정부구매사업을 규율하는 지침으로 기능하고 있음. 그러나 ODA 사업의 경우 개별 협약이 가이드라인에 우선하도록 정할 수 있어 스리랑카 정부 발간 가이드라인의 역할은 제한적이라 생각 됨. 뿐만 아니라 스리랑카에는 ODA 사업에 참여하는 기업을 감시, 감독하는 법령이 없고, 실무적으로 개별 협약 내용이 참가기업을 통제하고 있는 실정임. 따라서, ODA 사업을 감독하기 위해서는 스리랑카 법령에 의지하기는 어렵고, 개별 ODA 협정을 체결하는 단계에서 참가 기업을 규제할 수 있는 시스템을 확보하는 것이 중요해 보임.

이와 같이 일반적인 ODA 사업 관련 법령이 없다는 측면에서 사업자로서는 법적 안정성 예측 가능성이 사실상 없기 때문에 사업을 하는데 있어 매우 신중하게 접근해야 할 뿐만 아니라 개별 사업별로 해당 사업에 적용되는 규제 내용을 검토를 받지 않는다면 불측의 손해를 입을 수 있다는 점이 중요함. 따라서 해당 사업별로 법률 검토를 받는 것은 필수적인 조치라고 할 것임.

국제투명성기구(Transparency International)는 2022년 스리랑카의 부패 인식 지수(Corruption Perceptions Index)를 36점으로 평가하였는데, 이는 평가대상국 180개국 중 101등의 저조한 수치임. 앞서 언급한 바와 같이 스리랑카는 ODA 사업을 모니터링 하는 시스템을 갖추고 있지 못할 뿐 만 아니라, 위 부패 인식 지수에 비추어 스리랑카 정부의 청렴도나 집행능력도 의문스러운 바, 스리랑카의 행정력만으로 EDCF 사업을 모니터링 하기는 어려우리라 생각됨.

결국, 개별 EDCF사업의 원활한 추진을 위해서는 스리랑카 관련 법령에 의존하기는 어렵고, 개별 프로젝트 마다 협정의 세부적인 내용을 재검토 할 필요성이 있는 것으로 사료됨.

8. 별첨자료

1. Guidelines on Private Sector Infrastructure Projects 1998
2. Public Finance Circular No. 02/2019
3. Procurement Guidelines of Goods & Works 2006
4. 공공계약법(Public Contracts Act, No. 3 of 1987)

PART II

PRIVATE SECTOR INFRASTRUCTURE PROJECTS

CHAPTER XIV

BOO/BOT/BOOT PROJECTS*

225. Introduction:

Infrastructure projects which are not identified to be financed under the Consolidated Fund, may be identified to be financed/developed by private investors. Projects financed by the private sector will be considered on a Build, Own and Operate, Build, Own and Transfer, Build, Own, Operate and Transfer (BOO/BOT/BOOT)* and other variants would be built, owned and operated by the investor or transferred or leased to the public sector after a concession period.

226. Co-ordination:

The Bureau of Infrastructure Investment (BII) of the Board of Investment of Sri Lanka (BOI) will function as the promoting, facilitating and co-ordinating agency for servicing the Line Ministries/Line Agencies in this regard under the overall supervision of the Ministry of Finance. However, the final responsibility and authority of selection and approval will lie with the relevant line Ministry and the Cabinet of Ministers respectively.

227. Preliminary Screening:

All priority projects identified by the respective line Ministries should be discussed informally with the BII and a financial and technical viability report to screen such projects need to be prepared jointly by the proposing agency and vetted by the BII for clearance by the Ministry of Finance and Planning. Once the clearance from the Ministry of Finance and Planning is obtained the line Ministry should present a Cabinet Memorandum including formal Project Proposal seeking approval of the Cabinet to proceed with the Project.

228. The procedure laid down in this Part should be adopted in processing BOO/BOT/BOOT* and similar proposals. In the following sections, the reference to BOO/BOT* Projects should be interpreted as a reference to all variants of private sector funded Infrastructure Development Projects.

229. Infrastructure Projects

Infrastructure Development Projects managed by the Private Sector on Build-Own-Operate (BOO), Build-Own-Transfer (BOT) or other variant basis, which will be wholly or partly implemented by the private sector include, but are not limited to:

- power plants
- highways
- ports
- airports
- telecommunications
- railways
- transport systems
- industrial parks
- solid waste management
- water supply and drainage
- warehouses, housing, markets etc.
- Land reclamation
- Other economic infrastructure

230. Steering The Project Proposals

All matters pertaining to BOO/BOT Projects should be channeled through a Cabinet Appointed Negotiating Committee (CANC) assisted by a Project Committee (PC). The approving authority for award of a BOO/BOT project is the Cabinet. Therefore, final recommendation of CANC on the award as well as recommendations at various important stages should also be submitted to the Cabinet for approval. i.e. pre-qualified list, issue of LOI, etc.

-
- * - **Build Own and Operate**
 - * - **Build Own and Transfer**
 - * - **Build Own/Operate and Transfer**
- Note: Project Company denotes Bidder/Sponsor/Proponent**

CHAPTER XV

PROCEDURE FOR PROCESSING OF PROPOSALS

231. **Formal approval for the Project:**

Priority projects considered by the Government of Sri Lanka (GOSL) for development through the private sector, once identified and screened by the relevant line Ministry with the assistance of the BII (in regard to the economic and financial viability of the project), should be submitted to the Ministry of Finance and Planning for preliminary clearance. On the determination of the Ministry of Finance and Planning that the project should be proceeded with, the relevant line Ministry should submit a Cabinet Memorandum including the outline of the project proposal seeking:

- (a) The formal approval for the project in principle.
- (b) The appointment of a Negotiating Committee by the Cabinet with authority to develop the proposal.

The relevant line Ministry should thereafter, request the Ministry of Finance and Planning to appoint a Project Committee.

232. **Cabinet Appointed Negotiating Committee**

The Cabinet will appoint a Negotiating Committee to handle all matters pertaining to BOO/BOT projects and make recommendations on the selection of a proponent.

The composition of CANC shall be determined by the Cabinet. Generally the Chairman of CANC may be Secretary to the Treasury or Deputy Secretary to the Treasury. The Secretary of the relevant line Ministry/Ministries and Chairman/BOI may be the other members.

233. **Project Committee (PC)**

The Project Committee will be constituted once the Cabinet in principle approves the project. The Project Committee will be appointed by the Secretary to the Treasury at the request of the Secretary of the line Ministry in liaison with BII. Its membership will include representatives of the following Ministries/Departments:

- I. Line Ministry
- II. Ministry of Finance & Planning
- III. BOI/BII

- IV. Relevant State Agency/ies
- V. Attorney-General's Department
- VI. Any other Ministry/Department/Agency as appropriate:
- VII. Central Environmental Authority

The PC may co-opt consultants/experts from time to time to obtain expert advice.

A representative of BII will function as the Secretary/Convener to the Project Committee. The Committee will service project development and will also be responsible for guiding the project through its various stages of implementation.

234. Terms of Reference of Project Committee (TOR of PC):

The Project Committee will be mainly responsible for steering the preparation of the Request for Proposal (RFP) documents and submit them for the approval of the CANC. The RFP would include the following:

- (i) Criteria of assessment of technical and financial viability of the project.
- (ii) Details of specifications
- (iii) Models of relevant Agreements as decided on a case by case basis.
- (iv) Environmental data and information.
- (v) Any other relevant information.

The other responsibilities of the PC are as follows:

- (i) Schedule bids and evaluate same for consideration of the CANC.
- (ii) Monitor the progress during project development phase and report to CANC periodically.
- (iii) Co-ordinate all activities including scheduling meetings, correspondence, etc., relating to the project.

235. Legal Obligations

Since negotiations on project proposals may result in legal obligations on the part of the Government, recommendation for any contractual commitments and Government guarantees, if any should be made by the relevant line Ministry/BII in consultation with the Treasury and Attorney-General and be approved by the Cabinet prior to entering into any formal contractual commitment.

236. Time Frame:

The period of time from invitation to conclusion viz. The issue of a Request for Proposals (RFP) to signing of an Implementation Agreement) (IA) should be

limited to one year (12 months). However, the time frame may be extended with Cabinet approval depending on the complexities of the project proposal on a case by case basis.

237. Unsolicited Proposals:

- (a) Line Ministries, Agencies and BOI/BII receiving unsolicited proposals should have them processed according to the procedures applicable to solicited proposals.
- (b) An unsolicited proposal may contain all basic information required by the GOSL/Line Ministry/BII to ascertain the economic and financial viability of the project, including the following:
 - (i) Outline technical details of the project.
 - (ii) Financial details to demonstrate the justification of the total cost/premium requested.
 - (iii) Letters from financial institutions and consortium members agreeing to commit funds if the project is accepted by GOSL and to proceed with construction.

Once the need is determined the relevant line Ministry should, by advertisement, call for proposals on the same generalised lines, incorporating the actual goals sought to be achieved as per Guidelines stated in Chapter XV. The party which made the original offer should be given a chance to improve on it in the invitation for bids/offers where the proposal has been significantly changed to suit the needs and objectives of the agency involved. This would apply in the case of all BOO/BOT proposals, sale of public assets or for the grant of exclusive rights for any State sponsored venture. No decision should be taken solely on the basis of unsolicited offers without inviting proposals/bids through public advertisement.

When owing to urgent and exceptional circumstances, it becomes necessary to deviate from the above-prescribed procedure, specific Cabinet approval should be obtained for such deviation.

CHAPTER XVI

PROCEDURES FOR ISSUING REQUEST FOR PROPOSALS (RFP) AND ASSISTING BIDDERS

238. Request For Proposals (RFP):

Once the approval of the Cabinet of the Ministers is obtained to proceed with the project as per Guide line 231, the Line Ministry will solicit proposals from the private sector on the basis of International Competitive Bidding (ICB) for the award of the project through a Request For Proposals.

239. Method for calling of Proposals:

The CANC should ensure that the **RFP** carries sufficient information to solicit a complete proposal from potential bidders. The method for issuing of **RFP** shall be by advertisement and solicitation of responses from interested bidders on the basis of International Competitive Bidding.

240. Pre-qualification of Proponents:

The CANC may decide to whether the pre-qualification of proponents should be done. However all large scale projects (estimated cost US\$ 100 Mn. Or more), and/or in the case of technically complex projects, the solicitation of bids should be preceded by a pre-qualification of proponents.

241. Invitation for Expression Of Interest (EOI)

If CANC decides to follow the process of pre-qualification of proponents, it should be initiated by the issue of an invitation for Expression Of Interest (EOI). This invitation of EOI should be given the widest publicity in the international media.

242. Evaluation of EOI:

The EOI will be evaluated by the Project Committee and will make its recommendations to the CANC for approval. Only the pre-qualified firms will be eligible for the issuance of the RFP.

243. Publication of RFP:

The RFP will be given wide publicity, through foreign and local news papers and electronic media and through Sri Lanka missions abroad in accordance with Guide line 249.

244. **Contents of RFP:**

The RFP will contain:

- (i) all relevant information on the Project;
- (ii) specific information required from the bidders to evaluate the proposal;
- (iii) a defined format for the bidders to follow in submitting their proposals.

Accordingly the RFP shall consist of the following components:

(i) **Introduction:**

This part will outline the Government's policy on private sector investment in infrastructure projects.

(ii) **Summary of the Project:**

This part will provide a summary of the project and the main responsibilities of the project bidders during the construction and operation phases.

(iii) **Technical and Financial proposals:**

This part will provide information for the bidders on preparation of technical and financial proposals.

(iv) **Evaluation and Selection Process:**

This part will provide the main information required from the bidders, including the technical parameters of the project, the basis for screening and scheme of evaluation of the proposals, and subsequent steps.

The information provided in this section must be set out in sufficient detail so that the selection is unambiguous and process is clearly understood by the potential investors or bidders.

(v) **Contractual, Financial and Legal Framework:**

This part will describe;

- (a) drafts of the contracts and agreements which will need to be entered into between the private and public sector agencies involved;
- (b) financial requirements;
- (c) fiscal and regulatory issues and the relevant laws; and

(d) The Bid/Performance Bonds required to be entered into.

(vi) **Private Sector Infrastructure Development Company (PSIDC):**

It should be noted that financing could be obtained from the PSIDC. This organization has been set up with the support from the World Bank (WB) and other multilateral Agencies for the purpose of disbursing long term subordinated debt to qualifying Private Sector Infrastructure Projects. If these funds are to be used for projects, WB procurement regulations for the portion of the procurement to be financed by the Fund have to be followed.

245. Schedules and Appendices:

In addition to the above components, the RFP will be supported by “Schedules and Appendices” containing supplementary descriptive information relating to the project and the procedures and formats for the submission of proposals, as stated below:

Schedule 1 – Further Information for Bidders:

This schedule will give detailed supporting information on aspects of the project which are not fully covered by the RFP as stated in Guideline 244.

Schedule 2 – Proposal Contents:

This schedule will provide detailed formats and structures for the submission of proposals by the bidders. The structures will be designed to meet the particular needs of the various parties involved in the screening and evaluation of the proposals. The information to be provided by bidders should be made to cover:

- (a) general information on the consortium of parties to the proposal;
- (b) technical and environmental information;
- (c) implementation schedule;
- (d) cost and pricing structure;
- (e) financing the project and related issues.

246. Responsibility for Preparation of the RFP:

The Project Committee, which includes representatives from the relevant Ministry or Agency, supported by technical consultants, if necessary, will bear the responsibility for the preparation of the RFP documents.

247. Clarifications:

The RFP will have instructions inviting bidders to seek clarifications or supplementary information in writing, within the time stipulated but not exceeding two months following the date of issue of the RFP. The Project Committee in consultation with the relevant Ministry, will supply written answers to all questions, and send copies of these to all parties which have purchased the RFP, provided such answers will not amend or add to the RFP in any way. If the answer will materially affect the RFP then the Project Committee should obtain approval from the CANC. CANC may convene a bidder's conference on their own or if requested by at least two bidders within a specified period of time not exceeding two months from the date of publication of the RFP.

248. Amendments to the RFP:

If necessary and up to thirty days before the date of submission of proposals, the Project Committee may, with the approval of the CANC amend or add to the RFP through issuing formal addenda to all who have purchased copies of the RFP. If a major change is made, the time given for submission of proposals should be extended accordingly.

249. Announcement of Proposal:

The Secretary, Ministry of Finance and Planning will invite proposals in the international and national press and give publicity through local diplomatic representatives as well as through Sri Lankan Missions abroad and the electronic media. The press notice may also be sent to all potentially interested firms that have been in contact with the line Ministry/line Agency/BO/BII or otherwise expressed an interest.

The announcement will provide a brief description of the project, and indicate:

- (a) the Company profile and experience of the bidders, if required.
- (b) the address at which the RFP can be obtained.
- (c) Any payment required for purchasing the documents.
- (d) Closing date for collection of documents.

250. Issuing of RFP:

The RFP should be issued by the Executing Agency or by the relevant Line Ministry after collecting the required non refundable form fee.

251. Proposal Guarantee:

The proposal should be accompanied by a Proposal Guarantee for a sum as requested in the RFP. Guarantees issued by the following institutions are acceptable guarantees:

- I. A bank operating in Sri Lanka approved by the Central Bank of Sri Lanka;
- II. A bank based in another country but the security or guarantee “confirmed” by a bank operating in Sri Lanka
- III. A reputed Insurance Company operating in Sri Lanka accepted by the Treasury for acceptance of guarantees.
- IV. A letter of credit issued by a foreign bank, but “confirmed” by a bank operating in Sri Lanka.
- V. A fixed deposit or a pass book of a bank operating in Sri Lanka, deposits made in the name of the executing agency.
- VI. Any other Agency approved by the Treasury from time to time.

252. Time for submission of proposals:

The period for submitting proposals will normally be three months. This may be increased to six months depending on the nature of the project. Proposals received after the stipulated closing date and time or due to the reasons of critically non-conformity with the RFP, (e.g. non submission of a proposal guarantee) should be rejected by the CANC.

253. Opening of Proposals:

The proposals received including Technical and Financial Proposals should be opened by the CANC or Proposal Opening Committee (POC) authorized by the CANC, immediately after the closing of bids. All project proponents are eligible to be present at the opening of proposals. The membership of the POC shall include representatives nominated by the following Ministries/Departments/Agencies.

- (i.) Line Ministry/Ministries
- (ii.) Ministry of Finance & Planning
- (iii.) BOI/BII
- (iv.) Relevant State Agency/ies

254. Announcement at the Proposal Opening:

The following details should be recorded in a book meant for the purpose and announced immediately after the opening of proposals.

- (a) the names of the proponents.
- (b) Value of the proposal guarantee and the name of the issuing agency.
- (c) Whether both technical and financial proposals are submitted.

255. Revival of Project:

If any proposal for which RFP has been issued previously is revived after the lapse of one year from the closing date for proposals, the RFP should be revised accordingly and new approvals should be obtained from the Cabinet before proceeding with the proposal.

CHAPTER XVII

PRELIMINARY EVALUATION OF PROPOSALS

256. **The Responsibilities of PC in relation to Evaluation of Proposals:**

The proposals received by the deadline specified in the RFP will be evaluated by the PC in three stages:

- (i) Assessment of the adequacy of the proposal – whether all the identified key requirements, such as the bid bond etc., have been met in the stipulated.
- (ii) Assessment of the responsiveness to the requirements of the RFP and disqualification of non-responsive RFP documents;
- (iii) Evaluation of proposals in order to rank the competing bids, on a clear and objectively verifiable criterion and in all cases where possible based on the tariff structure adjusted for any costs to be borne by the Government.

The members of the Project Committee (PC) should, where possible, be assigned the evaluation responsibility on a full time basis.

The PC will assign Sectoral and Sectional responsibilities to the experienced members for evaluating the various components of the proposal with reference to the feasibility studies, where available.

During the evaluation process extreme confidentiality shall be maintained.

257. **Screening of Proposals:**

All proposals received by the closing date will be included in the screening process and the final evaluation will be confined to the proposals, which pass the screening tests.

The PC should ensure that all proposals selected for consideration are:

- (i) technically sound in terms of meeting the functional requirements of the project within the necessary time scale,
- (ii) environmentally acceptable, subject to Environmental Impact Assessment (EIA) clearance, and
- (iii) financially viable.

Evaluation of the proposals will strictly adhere to the criteria specified in the RFP. The evaluation will be completed within three months from the date of receipt of proposals.

258. Information Screening:

When copies of the proposals are provided to the PC, it will assess whether the information provided is sufficient to enable them to complete the evaluation. Bidders shall be notified of all cases of inadequate, unclear or inconsistent information within a specified period following closing of the proposals and clarifications should be obtained in writing.

259. Report of Responsiveness:

The Project Committee will assess the general qualifications and experience of the bidders, contractors and suppliers if they have been nominated. If they have not been nominated, the successful bidders should be required to submit the names of the associated companies to the PC for submission to the CANC.

260. Non-responsive proposals to be rejected by the CANC:

Following receipt of all the requested additional information from the bidders, the PC will prepare a report on the completeness of the information supplied for each proposal. This report will include recommendations on any proposal which should be rejected for being incomplete or unresponsive. The decision to reject on the basis of non-responsiveness should be made by the CANC.

261. Technical Screening

Only the proposals determined to be responsive as above should be examined through a Technical Screening to ensure whether the given proposals:

- (i) are capable of meeting the key technical performance criteria as required in the RFP.
- (ii) will perform within the key environmental standards set out in the RFP.
- (iii) Complies with health and safety standards in force in Sri Lanka;

262. Financial Screening:

Financial Screening should establish that:

- (i) the proposal is financially acceptable;
- (ii) the bidders and their financial partners have a high financial standing and reputation and are capable of raising the required financial resources; and,
- (iii) the outline of the Financing Plan prepared in response to the RFP is fundamentally sound and meets the requirements of project investments bridging any period of negative cash flow.

The financial screening carried out by the PC will assess whether the financing plan is realistic, focussing on the credit-worthiness and the financial strength of the bidders and also their bankers' and financial managers' experience.

263. Cost Screening:

Cost Screening should be carried out by the PC to ensure that:

- (i) the bidders have included in their estimates all relevant capital and operating costs of the project;
- (ii) the cost estimates have been clearly set out on the basis of current prices of equipment and other inputs;
- (iii) the cost estimates which form the basis for the tariff, are reasonable.

264. Basis for Cost Screening:

In preparation for the cost screening, the Project Committee shall develop their own capital and operating Cost Estimates for the Project, drawing on the experience gained elsewhere in Government for like projects, with possible inputs from the World Bank and Asian Development Bank. These estimates should have been prepared before the bidders finalized their proposals, so that they are available when proposals are opened. The Estimates should be produced on a basis comparable with the Cost Estimate Structure specified in the RFP. The Project Committee will identify relevant capital or operating costs which have been omitted or cost estimates which are significantly out of line with what the Committee considers to be reasonable estimates.

265. Clarifications and Modifications to Cost Structure:

All apparent discrepancies in relation to cost structure, should be raised with the bidders during the clarification process and explanations obtained. However during this process, no modifications that will alter the amounts of the estimate so as to materially affect the outcome of the evaluation should be introduced.

Cost Estimates, which are considered to be completed and clearly set out, should be screened for their reasonableness and judged against the estimate of the costs compiled by the Project Committee. For this comparison, suitable adjustments will be made to place all competing cost estimates on a uniform basis.

All the estimates should be exclusive of financing costs.

The original estimates of the Project Committee may be suitably adjusted if so indicated by the clarification process with the bidders, where all bidders had

adopted costing patterns significantly similar and deviating from the estimate of the PC.

266. Financial Evaluation of Competing Proposals:

The RFP would include a financial template or a 'critical factor test' (100 or more in number) which the project proponent is expected to meet on a self-assessment basis. The table will enable the proponent to assess himself by answering "Yes/No". He should be able to answer up to a minimum of 80% "Yes" to qualify for the final round, i.e. the Financial Evaluation. At this stage the price per unit will be determined.

Please refer Appendix IX for a specimen point system.

After all proposals have been screened fully, the proposals should be ranked on the basis of points system specified in the RFP. The weightage should be higher for principal considerations relevant to the project.

CHAPTER XVIII

EVALUATION CRITERIA

267. **Key Factors of Evaluation**

The key factor in the comparative evaluation of different proposals will be;

- (i) the price offered, eg. The cost per KWh for power, the proposed toll for a toll road, the rent for a facility, sale price per unit etc. The “base price” includes the fixed and variable components of the unit costs to the public sector entity purchasing the product on the basic assumptions stated in the RFP with regard to inflation, exchange rate, fuel prices for power, etc. Where the project envisages Government participation, the relative costs of such participation shall be factored into the evaluation.
- (ii) Duration of operation period.
- (iii) The tariff structure – the most favourable tariff structure adjusted for any costs to be borne by the Government.

The Project Committee would have prepared a financial model of the project, which will enable the necessary comparisons and analyses to be made. The evaluation will also have to allow for differences between proposals such as type and size of equipment, construction period and operating life of the project. The calculations should initially be based on the general assumptions in the RFP. This is the base price component of the price evaluation.

268. **Indexation Risk:**

Indexation risk should be assessed using the criteria in the RFP by testing each proposal by the sensitivity assumptions. The sensitivity of the bidder's prices to the changes in the basic assumptions, given the individual profiles of cost and indexation arrangements, should be analysed. The Indexation risk will vary from one proposal to another due to different financing plans, cost structures or price profiles over the time.

269. **Evaluation of Price Escalations: (Escalation Formula)**

The RFP will have an indication of the cost items for price negotiation which might be considered reasonable, but bidders will probably have some of their own cost items, which will have to be recognized. The factors taken into account

in assessing price negotiation risk and allocating points will be noted in the evaluation report. If possible, the assessment of the risk will be combined with the comparison of the base prices to yield the expected base prices after the price negotiations have been closed.

270. Evaluation of Technical Aspects

The main criteria applied to the technical evaluation are:

- (i) the technical capability and organisation of the sponsor, and their experience with similar projects in similar environments;
- (ii) for power plants, an assessment of operational flexibility and the reliability of plant performance;
- (iii) the sponsor's implementation plan, including the length of the construction period and the planned commissioning/opening date,
- (iv) the extent to which the proposal gives regard to the environmental impact of the project;
- (v) the procedures to be adopted for matters such as quality assurance, testing, commissioning and training of personnel.

The relative importance of these factors should be identified at the time of the preparation of documents.

271. Evaluation of Financing Plan

This is the primary responsibility of the financial experts. The main criteria are:

- (i) the financial standing and resources of the sponsor and its bankers in relation to the size of the project;
- (ii) the soundness and flexibility of the financing plan in terms of the Project Company's liquidity position throughout the life of the project, and its ability to survive adverse events which could result in a loss or reduction of cash flow;
- (iii) the quality and clarity of the financial model.

272. General Responsiveness

The Project Committee will point out any major deviations from RFP and the overall obligations of Government in supporting the project and any legal, financial and fiscal implications.

CHAPTER XIX

FINAL REPORT OF THE PROJECT COMMITTEE

273. The Project Committee's Final Report:

The Project Committee will issue a final report to the CANC, which will consist of the interim reports issued during the evaluation phase (Pricing, Technical, Financing Plan and General). A comprehensive executive summary will be prepared to include the following:

1. **Introduction:** Summary of the process from the issuance of the RFP to the selection of Finalists and clarifications with Finalists;
2. **Technical:** Summary of the technical review compared to the RFP requirements and comparing each proposal;
3. **Commercial:** Summary of Bid Bond and proposed Letters of Association from prospective project company members;
4. **Financial:** Summary of capital cost and price of product (power, water, tolls, etc.) presented in detail comparing each proposal;
5. **Price Negotiations:** Summary of each sponsor's price negotiations and an evaluation of the impact of each price negotiation on the cost of the product;
6. **Conclusions:** Summary of PC's overall ranking and recommendations.

CHAPTER XX

NEGOTIATIONS AND AWARD OF CONTRACT

274. **Negotiations**

The CANC will conduct the final negotiations with the selected bidder. If necessary, the assistance of PC may be obtained for negotiations. In BOO/BOT projects price negotiation and risk-allocation are the crucial factors.

275. **Letter of Intent (LOI):**

After the negotiations are successfully completed, the PC with the relevant Line Ministry will prepare a draft Letter of Intent (LOI) for approval by the CANC and finally by the Cabinet. Attorney-General's concurrence for draft Letter of Intent (LOI) should be obtained before the approval by the CANC and the Cabinet.

276. The purpose of the LOI is to grant to the bidder exclusivity in relation to the project for an agreed period to enable the sponsor to complete all activities and preparations leading up to signing of the final contracts and agreements. The LOI is signed by the Secretary of the line Ministry and the Head of the Line Agency involved and is countersigned by the bidder accepting the LOI.

277. The LOI will typically be a letter with necessary annexes and will contain the following information:

- (i) a statement of the period for which project exclusivity is conferred;
- (ii) a summary of the sponsor's Bank Guarantee as required on acceptance of the LOI;
- (iii) a completion of all amendments to the proposal as agreed with the PC/CANC;
- (iv) a statement setting out all the price negotiations agreed upon;
- (v) a statement of the project sponsor's obligations during the period of exclusivity;
- (vi) a summary of the relevant guaranteed technical performance criteria upon which the LOI is based.
- (vii) Requirements of the EIA
- (viii) Any extensions to the LOI may be granted only after receipt of approval from CANC.

278. Sponsor's Obligations:

The project sponsor will:

- (i) conduct detailed investigations sufficient to confirm the accuracy of the RFPs information, and undertake other studies necessary to close the price negotiations set out in the LOI;
- (ii) Agree to negotiate with PC and the line Ministry on any adjustment in tariff permitted by the price negotiations;
- (iii) Establish the project company;
- (iv) Apply for and obtain all required permissions and consents;
- (v) Conclude negotiations on all relevant contracts and agreements including financing.

279. Performance Guarantee:

Within two weeks of the receipt of the LOI the sponsor shall furnish a Performance Guarantee for fulfilling his obligations, valid for an agreed period and encashable without recourse to the sponsor in the form of an irrevocable Bank Guarantee to the value of 5% of the project cost. If the Guarantee is not furnished within six weeks, the LOI will automatically lapse and neither the sponsor nor the Project Company shall have any claim for compensation or damages against the Government of Sri Lanka or any other Governmental agency on any grounds. The period of six weeks may be extended under exceptional circumstances by the CANC upon a maximum period of eight weeks.

280. The Period of Exclusivity:

The period of exclusivity granted in the LOI should be sufficient to allow the sponsor to complete the tasks required by the LOI. The period should not usually extend beyond six months, but a longer period may be allowed for complicated projects by the CANC on the recommendation of the PC.

281. Extension to Exclusivity:

The agreed extensions to the proposal's exclusivity not exceeding one year may be authorised by the CANC. Extensions for longer periods than one year, where absolutely necessary should be granted with the approval of the Cabinet.

282. Price Negotiations Leading to a Final Fixing of Prices:

Major subject for final negotiations should be the price. Price negotiations should:

- (I) take into account the allocation of risks between GOSL and the Bidder;
- (II) be restricted to a minimum in terms of both number and cost;
- (III) give the reasons for the particular costs clearly;
- (iv) establish clearly the relationships between the results of further investigations and the consequent price changes;
- (v) define the limits on the price changes which will be permitted.

CHAPTER XXI

FINALISING THE PROJECT (SOLICITED & UNSOLICITED)

283. **Period covered:**

At the finalization stage common procedures should be adopted for both solicited and unsolicited proposals. This covers the period from the issuance and acceptance of the LOI for solicited proposals and approval of pre-feasibility and feasibility studies for unsolicited proposals, up to the signing of agreements and the contracts. Unsolicited proposals will have to follow from the stage of the approval of feasibility studies the same procedure as solicited proposals.

284. **Major Activities:**

The Major activities, which will take place during the finalization stage, include:

- (i) the establishment of a Project Company;
- (ii) preparation of an implementation plan by the project bidders (or GOSL appointed consultants) and its appraisal by the Project Committee;
- (iii) finalization of the price negotiations,
- (iv) application for, and where possible, obtaining of consents and approval by the project sponsor;
- (v) negotiation and completion of all other agreements and contracts,
- (vi) finalization of the financing plan (which may include funds from the PSIDC);

285. **Agreements:**

A typical list of agreements is given below:

- (i) the Implementation Agreement between the Government and the Project Company;
- (ii) the Service or Product Purchase Agreement authorizing the sponsor to charge and collect reasonable tolls, fees and rentals for use of the project facility. These will not exceed those incorporated in the relevant contracts based on a pre-determined formula using official price indices and as agreed by contract for unsolicited proposals;
- (iii) for thermal power plants or similar projects, a Fuel Supply, Sale/Purchase Agreement with price;

- (iv) if applicable, a Turnkey Contract;
- (v) an Operation and Maintenance Contract;
- (vi) the Shareholders Agreement or Joint Venture Agreement between project Bidders;
- (vii) Loan Agreement and other documents necessary for the financial obligations of the Project Company;
- (viii) Escrow Agreements;
- (ix) Land Lease or Purchase Agreements;
- (x) Insurance policies;
- (xi) Trust Deeds;
- (xii) All approvals and licenses required.

286. The Product Purchase Agreement (PPA):

The RFP and the LOI will include a draft PPA which will include:

- (i) the date of commencement and duration of the PPA;
- (ii) the obligations of the Project Company to design, construct, operate and maintain the project;
- (iii) the arrangement for commissioning and testing the project at completion;
- (iv) the target performance levels and the procedure for meeting them during the life of the project;
- (v) payment obligations to the project company by the Government or other Agency purchasing the product, including all details of charges and arrangements for indexation;
- (vi) the respective obligations of the Government entity and the Project Company to install any facilities required to put the project into operation, i.e. interconnection facilities for power, feeder roads for highways etc.;
- (vii) The Project Company's obligations to operate the project to meet minimum accepted international standards,
- (viii) The Project Company's obligations to maintain the project and the arrangements for advance scheduling of planned maintenance;
- (ix) The arrangements for establishing an Operating Committee to deal with technical and operational issues;
- (x) The arrangement for dealing with disputes, arbitration and force majeure events;
- (xi) Bonus and penalty clauses.

287. Fuel Supply Agreement (FSA):

In the case of projects such as gas-fired and oil-fired power plants there may be usually a FSA between the Project Company and a public sector body such as the Ceylon Petroleum Corporation. This is a straightforward document, which sets forth the fuel supplier's obligations to supply and the Project Company's obligation to receive fuel over the life of the project or any other specified period.

288. The Implementation Agreement (IA):

The contents of the IA will be negotiated by the BII, the line Ministry or Agency involved and the Project Company who may be assisted by their legal advisors and will be submitted to the CANC for approval.

289. Cabinet Approval:

Before signature of the IA, the final proposal with the agreed draft agreements should be submitted to the Cabinet for approval. The line Ministry shall submit the Cabinet Memorandum and the CANC recommendations along with a report compiled by the BII, which will include:

- (i) the results of the appraisal of the PC summarized by BII, its consultants and the relevant State Agency involved;
- (ii) the final price and other major features negotiated;
- (iii) the major features of the negotiated IA.

290. Signing of Agreement:

After approval is granted by the Cabinet of Ministers and when all agreements and contracts have been finalized, the Ministry of Finance and Planning, Line Ministry and the Project Company should sign the IA. All agreements should be signed at the same time.



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Date }

Public Finance Circular No. 02/2019

Secretaries to Ministries
Chief Secretaries of Provincial Councils
Heads of Departments
Chairmen of Public Corporations, Statutory Bodies and Government Owned Companies
Heads of Local Authorities

Amendment to Part II of Government Tender Procedure on Private Sector Infrastructure Projects Related to Public Private Partnership (PPP) basis

Your kind reference is drawn to the “Government Tender Procedure – Part II of 1998 on Private Sector Infrastructure Projects (BOO/BOT/BOOT Projects)”.

02. The Government of Sri Lanka (GOSL) has recognized PPPs as a practical mechanism to procure and implement public infrastructure projects and/or services, using the resources and expertise of the private sector while providing them the opportunity to participate in the development initiatives of the country, ensuring appropriate risk sharing. In many sectors PPPs can be considered as a better alternative to bridge the infrastructure gap through proper planning with the objective of mobilizing private sector investment, management and technology.

03. In order to ensure such PPP transactions are carried out through open and transparent procedure, the General Treasury, in consultation with the National Procurement Commission (NPC), is in the process of preparing new PPP guidelines addressing the present day requirements, based on the international best practices.

04. Until the new PPP Guidelines, which are currently under review by the NPC, are finalized and published, existing guidelines on Tender Procedure Part-II of 1998 on Private Sector Infrastructure Projects are the applicable set of guidelines for such PPP transactions and hence, it is mandatory to follow the Government Tender Procedure - Part II of 1998 by all GOSL Institutions with respect to procurement of private sector infrastructure projects and/or services.

It has been recognized that some of the PPP projects are being carried out within the provisions of the Government Procurement Guidelines – 2006 (Goods and Works), where the procurements are handled by a Cabinet Appointed Procurement Committee (CAPC) assisted by a Technical Evaluation Committee (TEC). In future, GOSL institutions should refrain from utilizing such provisions and the PPP procurement process should be carried out by a Cabinet Appointed Negotiating Committee (CANC) and a Project Committee (PC), in terms of the Government Tender Procedure – Part II of 1998 as amended by this circular.

05. The recent significant institutional change in this regard is the creation of the National Agency for Public Private Partnership (NAPPP) under the Ministry of Finance, which functions as the single facilitation point for all stakeholders with following functions.

- a) Act as a facilitator in implementing PPP projects by government institutions.
- b) Identify and structure suitable PPP projects for government institutions.
- c) Assist Line Ministries and Government Agencies to invite bids, evaluate, negotiate and select investors.
- d) Assist Line Ministries to procure required local and international experts to carry out pre-feasibility studies and procurement of transaction advisors for PPPs through funding from the World Bank made available to the NAPPP.

06. The objective of this circular is to make GOSL Institutions aware of the issues identified by the General Treasury requiring further clarifications and amendments to the Government Tender Procedure-Part II of 1998, applicable to Private Sector Infrastructure Projects to facilitate GOSL Institutions in implementing PPP projects.

07. **Amendment to Government Tender Procedure - Part II on Private Sector Infrastructure Projects**

➤ **General**

- a) Guidelines on Government Tender Procedure – Part II on Private Sector Infrastructure Projects, shall be deleted and substituted with “**Private Sector infrastructure Projects on Public Private Partnership basis**”.
- b) All places in Government Tender Procedure - Part II on Private Sector Infrastructure Projects where references are made to BOI/BII would be deleted and substituted with ***National Agency for Public Private Partnership (NAPPP)***.
- c) All the places where BOO/BOT/BOOT projects are referred to in the said guidelines are deleted and replaced with ***Public Private Partnership Projects (PPP Projects)***.

- Guideline 225, on “**Introduction**” shall be repealed and substituted with the following title and paragraph.

“ 225. Introduction and Definition of a PPP Project:

225.1 *A PPP is a special contractual arrangement between a GOSL Entity and a private investor, for providing a public infrastructure asset or service, in which there is an appropriate transfer of risk to the private investor and where the private investor bears investment and management responsibility on a long-term basis.*

225.2 *In a PPP, the private investor is typically tasked with the design, construction, financing, operation and management of a capital asset to deliver a service to the GOSL Entity or directly to private end users. The private investor will receive either a stream of payments from the GOSL Entity or through charges levied directly on the private end users, or both, for its efforts in undertaking the investment and management.*

225.3 *Unlike in the case of a typical procurement of goods or services, in a PPP, there is a continuing role for the public and private sector entities. In a PPP, the private investor is expected to be a long-term project participant in the development, construction, management and operation of the project. As a result, the “partnership” between the public and private can last for 10-35 years, which is considered as the concession period (the “Concession Period”), depending on the envisaged investment and the projected revenue streams. In many cases, after the Concession Period, the asset created by private investment is transferred back to the GOSL.*

225.4 *In the same way, the following projects should not be considered under PPPs:*

- a) Any project where the GOSL Provides a direct sovereign guarantee to the lending institution of the private investor’s debt;*
- b) Projects where the GOSL Entity is managing or operating the infrastructure facility;*
- c) Projects where the GOSL procures and infrastructure asset under traditional procurement methods using public funds, loans, grants, gifts, donations, contributions or similar receipts. (In a PPP, the GOSL procures the infrastructure services and not the asset, which typically will be transferred after the expiry of the long-term concession period);*
- d) Sale or long-term lease of any GOSL asset unless such sale or lease is governed by a long-term concession agreement with specific performance criteria by the parties to such agreement. A land lease agreement is therefore not a concessionary agreement.*
- e) Short-term design and construction contracts (Typically two to four years), paid for by the GOSL or via financing arrangement guaranteed by the State;*
- f) Projects where the GOSL is liable for construction time and cost overruns. (In a PPP, it is the private investor that is responsible for construction time and cost overruns);*

- g) *Projects where there are no on-going performance standards to be met by the private investor;*
- h) *Projects where the GOSL has to pay the private investor for the capital costs of the project up-front and low on-going maintenance payments via a management contract with the private investor once the project is commissioned. (In PPPs, the payment profile is relatively even, reflecting the level of service provision over the longer term of the contract)."*

➤ Guideline 226 on "**Co-ordination**" shall be repealed and substituted with following paragraph.

" 226. Co-ordination

226.1 *National Agency for Public Private Partnership (NAPPP) shall function as the promoting, formulating, facilitating, and coordinating agency for serving the Line Ministries/Line agencies in Public Private Partnership Project implementation under the overall supervision of the Ministry of Finance. However, the final responsibility and authority of selection and approval will lie with the relevant line ministry and the Cabinet of Ministers respectively.*

226.2 *Functions of NAPPP shall be;*

- a) *Act as a facilitator in implementing PPP projects by government institutions*
- b) *Identify and structure suitable PPP projects for government institutions*
- c) *Prepare required guidelines for PPP projects with the concurrence of NPC*
- d) *Assist Line Ministries, and Government Agencies to invite bids, evaluate, negotiate and select investors*
- e) *Assist Line Ministries to procure required local and international experts to carry out pre-feasibility studies and procurement of transaction advisors for PPPs through funding from the World Bank made available to the NAPPP".*

➤ Guideline 232, paragraph on "**Cabinet Appointed Negotiating Committee**" content shall be repealed and substituted with following content.

" 232. Cabinet Appointed Negotiating Committee (CANC)

The Cabinet of Ministers will appoint a Negotiating Committee to handle all matters pertaining to Public Private Partnership projects and make recommendation/s on selection of a proponent. However, Chairman to CANC necessarily may not be the Secretary to the Treasury or Deputy Secretary to the Treasury and a Secretary to any other Line Ministry can be appointed as Chairperson of CANC. When the Secretary to the Treasury is not the Chairperson, a nominee of the Secretary to the Treasury and Secretary to the Line Ministry may be other members. Chairperson of NAPPP or his nominee may be an observer to the CANC."

- Guideline 233 on “**Project Committee**” shall be repealed and substituted with following paragraph.

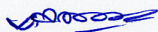
“ 233. Project Committee (PC)

233.1 The Project Committee will be constituted once the project is approved by the Cabinet of Ministers in principle. The Project Committee will be appointed by the Secretary to the Treasury at the request of the Secretary of the line ministry. Its membership will include representatives of the following Ministries/Departments/Agencies.

- i. Line Ministry*
- ii. Ministry of Finance*
- iii. NAPPP*
- iv. Relevant State Agency/ies*
- v. Attorney General’s Department: In lieu of AG’s department representative, a legal officer of NAPPP shall coordinate with AG and the line ministry*
- vi. Any other Ministry/Department/Agency as appropriate*
- vii. Central Environmental Authority (CEA)*

233.2 The representative from the NAPPP shall function as the Convener/Secretary of the Project Committee.”

08. Any clarification in this regard may be sought from the Director General of the Department of Public Finance (011-2484614) or Chairman/Acting CEO of the NAPPP (Tel. No.011-2151454).
09. Apart from these amendments other guidelines of the Government Tender Procedure Part II of 1998 will remain unchanged.
10. This Circular is issued with the concurrence of the National Procurement Commission.



R.H.S. Samaratunga
Secretary to the Treasury

Copies: Secretary to the President
Secretary to the Prime Minister
Secretary to the Cabinet of Ministers
Auditor General



Democratic Socialist Republic of Sri Lanka

PROCUREMENT GUIDELINES

2006

GOODS & WORKS

NATIONAL PROCUREMENT AGENCY

PREFACE

President of Sri Lanka

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

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

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

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



Mahinda Rajapaksa,
President.

January 27, 2006

NPA Circular No: (08)

My No: NPA/CEO/18

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

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

Government Procurement Guidelines - 2006

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

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

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

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

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

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

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

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

Daya Liyanage
Chairman/CEO
National Procurement Agency

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DEFINITIONS

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

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

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

INTERPRETATIONS

- * Headings are for convenience only and do not limit, alter or affect the interpretations of these Guidelines.
- * Words importing the singular include the plural and vice-versa.

ACRONYMS

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

CHAPTER I

GENERAL

1.1 Purpose

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

1.2 Objectives

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

1.3 Scope of Application

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

Guidelines of Foreign Funding Agencies

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

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

1.4 Ethics in Procurement

Confidentiality

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

1.4.2 Corruption

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

Conflict of Interest

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

No gifts or inducement to be accepted

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

1.5 Laws applicable to Procurement Actions

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

CHAPTER 2

INSTITUTIONS, PROCUREMENT COMMITTEES AND THEIR FUNCTIONS

2.1 National Procurement Agency (NPA)

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

2.2 Secretaries to the Line Ministries

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

2.3 Responsibilities of the Procuring Entity

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

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

2.4 Joint responsibilities of Procurement Committees and Technical Evaluation Committees

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

Authority of Procurement Committees is given in Procurement Manual 2.14.1

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

Details given in Procurement Manual 2.4

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

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

2.5 Responsibilities and Duties of Procurement Committees

2.5.1 The members of the PCs are jointly and severally responsible for the following:

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

2.6 Responsibilities and Duties of Technical Evaluation Committees (TEC)

2.6.1 (a) The members of the TECs are jointly and severally responsible for the following activities:

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

See also
Procurement
Manual 2.4

- (iv) to review and to approve the pre-qualification documents/ bidding documents prepared by the PE to ensure that the requirements of these Guidelines and accepted principles of Procurement are complied with;
 - (v) to direct the PE to obtain clarifications from bidders in writing, where appropriate;
 - (vi) to approve and issue addenda to the bidding documents where necessary;
 - (vii) to agree upon the Bid opening procedure with the PE;
 - (viii) to participate in negotiations, if directed by the PC; and
 - (ix) to review the draft contract prepared by the PE to ensure that it complies with the determination of the PC;
- (b) The TEC may get assistance from any external consultant (if any). However, any services performed by the consultant during the Procurement process should be under the guidance and supervision of the TEC.
- (c) The Chairperson of TEC or his nominee selected from amongst the members of the TEC shall participate at the pre-bid meeting.

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

Composition of CAPC is given in Procurement Manual 2.7.1

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

Standing Cabinet Appointed Procurement Committee (SCAPC)

- 2.7.2 (a) In extraordinary situations, a ministry may submit a Cabinet memorandum, specifying the special circumstances, which require a deviation from the general procurement procedures in order to meet such situation, and shall seek Cabinet approval to appoint a SCAPC indicating the limits of Procurement.
- (b) The TEC for such SCAPC shall be appointed by the NPA.
- 2.7.3 SCAPC may be justified where;
- (a) expeditious processing of Procurement is necessary;

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

Ministry Procurement Committee (MPC)

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

Composition of MPC is given in Procurement Manual 2.7.4

Department Procurement Committee

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

Composition of DPC is given in Procurement Manual 2.7.5

Project Procurement Committee (PPC)

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

Composition of PPC is given in Procurement Manual 2.7.6

Regional Procurement Committee (RPC)

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

Composition of RPC is given in Procurement Manual 2.7.7

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

- 2.7.8 (a) *Ex-officio Member:*

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

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

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

(b) *Nominee Member:*

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

(c) *Alternate Member:*

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

(d) Chairperson:

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

(e) Absence of Members:

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

2.8 Composition of Technical Evaluation Committees (TEC)

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

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

Composition of TEC for CAPC is given in Procurement Manual 2.8.2 2.8.2 The NPA shall appoint the TEC for the CAPC giving due consideration to the recommendations made by the Secretary to the Line Ministry.

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

Composition of TEC for MPC is given in Procurement Manual 2.8.3 2.8.3 Secretary to the Line Ministry shall appoint the TEC giving due consideration to the recommendations made by the Head of Department/Project Director.

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

Composition of TEC for DPC and PPC are given in Procurement Manual 2.8.4 2.8.4 Head of Department/Project Director shall appoint the TEC.

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

Composition of TEC for RPC is given in Procurement Manual 2.8.5 2.8.5 (a) The Head of Department shall decide on the requirement of a TEC.

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

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

The applicable fees structure is given in Procurement Manual 2.9.1 2.9.1 Members of the PCs, TECs and alternate members shall be paid for participation at such meetings.

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

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

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

- 2.10.1 (a) The provisions of this Guideline 2.10 do not apply to members of CAPCs and MPCs.
- (b) Members of PCs and TECs shall make every possible effort to attend all the meetings.
- (c) In the event a member of a PC or a member of a TEC is unable to attend a scheduled meeting for whatever reason and perform all such functions as are required of him/her, then such member is required to communicate his inability to attend such meeting in writing to the secretary of that committee.
- (d) In the absence of such member, the members present may decide to proceed with the meeting as scheduled. The secretary shall circulate the observations of the absent member, if any, to other members of the committee.
- (e) The secretary to that committee shall despatch minutes of the meeting to the absent member at the earliest possible time.
- 2.10.2 In the event the Chairperson of a PC or TEC is unable to attend a scheduled meeting for any reason whatsoever, and perform his functions as Chairperson, the most senior attending member of that committee shall act as an interim Chairperson so that the meeting can proceed as scheduled.
- 2.10.3 If a member of a PC or a TEC is absent from three consecutively scheduled meetings, without a valid reason, then such member is liable to be removed from being a member of such committee in addition to payment provision made under Guideline 2.9.2.

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

Scheduling of Meetings

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

Register of Attendance

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

Minutes of the Meetings

The prescribed format is given in Procurement Manual 2.11.3

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

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

The prescribed format is given in Procurement Manual 2.12

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

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

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

2.13.1 The NPA shall:

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

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

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

2.14 Limits of Authority for Contract Awards

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

The applicable limits are given in Procurement Manual 2.14.1

CHAPTER 3

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

ICB shall be used:

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

For details see
Procurement
Manual 3.1

International Publicity

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

3.2 National Competitive Bidding (NCB)

For details see
Procurement
Manual 3.2

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

When NCB is used the procurement notice:

- 3.2.2
- (a) should be advertised at least in one widely circulated national newspaper, NPA website and other relevant websites where possible;
 - (b) any supplier, service provider or contractor who desires to obtain the bidding document should be allowed to purchase same, provided the bidder is prepared to pay any specified fees;
 - (c) the contractors/suppliers/service providers should be allowed to purchase the bidding document up to a day prior to the bid closing date; and
 - (d) in the case of contract for Works, to be eligible for contract award, the domestic contractors shall have a valid and appropriate registration at the time of submitting the Bid, under the National Registration System of ICTAD. However, ICTAD registration should not be an eligibility criterion for purchasing the bidding document or submitting a Bid.

The ICTAD
equivalent
registration
parameters are
given in
Procurement
Manual 3.2.3

- 3.2.3 NCB in Foreign Funded Project shall be used:

- (a) with the agreement of the Foreign Funding Agency;
- (b) by allowing foreign contractors or suppliers to bid on same terms with the domestic contractors or suppliers;
- (c) by not giving preference to the state owned agencies or approved societies etc; and
- (d) by considering registration in appropriate category under the national registration system of ICTAD, as equivalent to the experience and qualification criteria described in the bidding document.

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

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

For details see
Procurement
Manual 3.3

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

3.4 Shopping

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

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

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

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

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

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

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

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

Registration of Suppliers

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

Yellow Pages and Rainbow Pages

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

3.5 Direct Contracting

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

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

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

3.6 Repeat Orders

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

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

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

3.7 Force Account

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

3.8 Emergency Procurement

Details of emergency procurement is given in Procurement Manual 3.8.1

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

Provisions available to meet Emergency Procurement needs

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

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

3.9 Community participation in Procurement

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

Direct Contracting for GOSL funded Projects

- 3.9.2 Subject to the above Guidelines and on the recommendation of a committee comprising two members nominated by the Head of Department and the Divisional Secretary of the location, the PE may entrust Works to approved societies, subject to the conditions specified in the Procurement Manual.
- Acceptable societies and conditions are given in Procurement Manual 3.9.1

Direct Contracting for communities under Foreign Funded Projects

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

Award of District/Divisional level Construction Contracts

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

3.10 Two Stage Bidding

For details see
Procurement
Manual 3.10

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

3.11 Two Envelope System

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

3.12 Pre-qualification of Bidders

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

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

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

3.12.2 Pre-qualification Criteria

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

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

CHAPTER 4

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

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

4.2 Master Procurement Plan (MPP)

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

Procurement Time Schedule (PTS)

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

4.2.3 Stage 1 –

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

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

Stage 2 –

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

4.3 Total Cost Estimate (TCE)

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

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

4.3.2 Sanctioning of Total Cost Estimate (TCE)

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

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

Revision of Total Cost Estimate (TCE)

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

4.4 Packaging and Slicing of Contracts

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

For details see Procurement Manual 4.4

4.4.2 Bids may be invited under alternative contract options:

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

CHAPTER 5

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

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

5.2 Contents of Bidding Documents

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

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

5.3 Standard Bidding Document (SBD)

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

A list of approved SBDs available in NPA website

Invitation to Bid

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

Instructions to Bidders

- The details are given in Procurement Manual 5.3.3
- 5.3.3 Instructions to bidders shall contain all relevant information as provided in the Procurement Manual.

Eligibility of Bidders

- Names of Blacklisted contractors/suppliers available in NPA web site
- 5.3.4
- (a) No contract shall be awarded to any contractor or supplier who is blacklisted by NPA.
 - (b) A list of blacklisted contractors/suppliers, updated periodically, will be circulated by the NPA to the PEs from time to time and will also be published in the NPA web site.
 - (c) No contract shall be awarded to any contractor or supplier who has been engaged by the PE to provide consulting services for the design or preparation of bidding documents for the same contract.
- The details of ICTAD registration categories are given in Procurement Manual 5.3.5
- 5.3.5
- (a) In the case of Procurement of Works one of the post qualification criteria for domestic contractors shall be the appropriate ICTAD registration.
 - (b) Such contractors should have a valid registration at the time of submission of bid, and must submit proof of such registration with bid submission.
 - (c) ICTAD registration should not be criteria for purchasing bidding documents.
- 5.3.6
- (a) In ICB or NCB Procurements under Foreign Funded Projects both foreign and domestic bidders shall have equal opportunity of participating in the bidding process.

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

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

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

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

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

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

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

Bid Validity period

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

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

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

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

Bid Security

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

Option 1 – Bid Declaration

Format for Bid security declaration is given in Procurement Manual 5.3.12

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

Option 2 – Bid Guarantee/Cash Deposit

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

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

- (i) to obtain a bid security in the form of guarantees only generally for a fixed lump sum amount equivalent to one percent to two percent (1% to 2%) of the estimated contract value; or
 - (ii) to obtain a cash deposit for a fixed lump sum amount generally of point five percent to one percent (0.5% to 1%) of the estimated contract amount.
- (b) Requesting guarantees/cash deposits by a mere reference to a percentage of the bid price, is strongly discouraged.
- (c) If a bid security has been submitted in the form of a guarantee it shall be irrevocable and unconditionally en-cashable upon the first written request from the PE and shall incorporate all the conditions stated in Guideline 5.3.11 (b).
- (d) If a Bidder fails to agree with any of the conditions stipulated in Guideline 5.3.11 (b) above, the bid guarantee/cash deposit shall be forfeited by the PE.

Clarity of Documents

- 5.3.14 (a) All prospective bidders shall be provided with the same information and shall be assured of equal opportunities to obtain additional information.
- (b) PE shall provide reasonable opportunity of access to the project sites for visits by prospective bidders.
- (c) In the case of Works or complex Goods contracts a pre-bid meeting may be arranged whereby potential bidders have the opportunity of seeking clarifications from the PE's representative/s.
- (d) Minutes of such pre-bid meetings shall be circulated to all prospective bidders.

Clarifications

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

Alternative Bids

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

Value Added Tax

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

Evaluation Criteria

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

Details are provided in the Procurement Manual 5.3.19

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

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

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

5.4 Conditions of Contract

Draft Contract to be issued

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

(b) The draft contract document shall:

For details see
Procurement
Manual 5.4.1

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

Terminology
detailed in the
Procurement
Manual 5.3.19

Price Adjustment

ICTAD
formulae are
given in
Procurement
Manual 5.4.2

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

Advance Payment for Works Contracts

The
acceptable
securities are
given in
Procurement
Manual 5.4.4

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

Advance Payment for Import of Goods/Equipment and Machinery

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

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

Retention for Construction Works contracts

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

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

Performance Security

5.4.8 Works

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

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

5.4.9 Waiver of Performance Security

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

5.4.10 Goods

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

The acceptable performance securities are given in Procurement Manual 5.4.10

Payment of Value Added Tax

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

The Detailed procedure is given in Procurement Manual 5.4.11

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

Liquidated Damages

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

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

Dispute Resolution

The Details are given in Procurement Manual 5.4.14

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

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

5.5 The Law of Contract

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

5.6 Specifications

- 5.6.1 (a) The specification for the Goods or Works to be procured shall not be defined more narrowly than it is necessary to achieve the relevant Procurement objective.
- (b) All the specifications included in the bidding documents should be of generic nature which shall reflect functional aspects than the technical aspects.
- (c) It shall not be related with brand names, catalog numbers or country of manufacture.
- (d) If it is necessary to quote a brand name or catalog number of a particular manufacturer to clarify an otherwise incomplete specification, the words “or equivalent” shall be added after such reference.
- 5.6.2 The specification shall permit the acceptance of offers for Goods which have similar characteristics and which provide performance at least substantially equivalent to those specified.
- 5.6.3 (a) To the maximum extent possible, the standards adopted by Sri Lanka Standard Institution (SLSI) should be used.
- (b) Where the SLSI standards are not available, acceptable international standards shall be used.
- 5.6.4 (a) Specifications for Works would be those which are recommended by ICTAD.
- (b) NPA will issue specifications for a limited category of Goods which would be periodically updated.
- (c) PEs shall use specifications recommended by ICTAD and NPA as far as possible and practicable.

For details see
Procurement
Manual 5.6

CHAPTER 6

INVITATION TO BID AND CLOSING/OPENING OF BIDS

6.1 Issuance of Bidding Documents

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

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

6.2 Bidding Period

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

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

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

6.3 Submission/Receipt of Bids

- 6.3.1 (a) The bids shall be received only at one location by;
- (i) mail under registered post; or
 - (ii) personal delivery against receipt, to the officer authorized by the PE to receive such bids at the specified location; or
 - (iii) depositing in the sealed tender box identified for such purpose by the PE, if so specified in the bidding documents.
- (b) All bids must be submitted only under sealed cover and the bidding documents should stipulate a condition to this effect.
- (c) Bids shall be submitted in one original and such number of copies as stipulated in the “Instruction to Bidders” sealed separately and clearly marked as “Original” or “Copy”. All these envelopes shall together be enclosed in one envelope and delivered as per (a) above.

Rejection of Late Bids

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

Public Bid Opening

Further details are provided in Procurement Manual 6.3.3

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

- (b) Bids shall be opened in the presence of the bidders or their representative/s who wish to attend, soon after the closing of Bids.
 - (c) Any Bid received on or before the deadline for submission of Bids shall not be rejected at the Bid opening.
- 6.3.4 (a) Only the Bids marked as “Original” shall be opened at the Bid opening. The “Copy” shall not be opened.
- (b) If any envelope is marked “Withdrawal” of bid is received on or before the deadline for submission, that letter should be opened first. If the Bid Opening Committee is satisfied beyond doubt with the contents of the letter, the bidder’s original Bid should not be opened. If in doubt the original bid should be opened with other bids. Any envelope marked “modification” should be opened with the original bid.
- 6.3.5 The Bid Opening Committee shall read out the following to those present:
- (a) the names of each bidder and the bid amount in the form of bid. If not available the total of the price schedule or schedule of requirements;
 - (b) whether or not a bid security/bid security declaration is submitted;
 - (c) any discounts offered; and
 - (d) any other relevant information at the Bid Opening Committee’s discretion.
- 6.3.6 The proceedings of the bid opening shall be recorded in the prescribed format and should be signed by all members of the Bid Opening Committee.
- 6.3.7 The original Bids together with the minutes pertaining to bid opening shall be handed over to the Chairperson of the TEC.

The format for Bid opening minutes is given in Procurement Manual 6.3.6

CHAPTER 7

BID EVALUATION

7.1 Meetings of Technical Evaluation Committees (TEC)

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

7.2 Confidentiality

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

7.3 Services of Consultant/s for Evaluation of Bids

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

7.4 Time Frame for Bid Evaluation

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

The Details are given in Procurement Manual 7.4

7.5 Extension of Bid Validity

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

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

7.6 Original Bid to be Evaluated

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

7.7 Purpose and Stages of Bid Evaluation

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

7.8 Bid Examination

General Principles

Bid examination may be carried out in two stages:

(a) Stage 1:

To ascertain whether the:

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

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

(b) Stage 2

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

Ascertain the deviations from the provisions of bidding documents

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

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

Categorization to major and minor deviations

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

Minor deviations

- 7.8.3 Minor Deviations would be one which:
- (a) has no effect on the validity or legality of the Bid, or
 - (b) has no effect on the functionability, quality or delivery of the Goods or Services offered or the execution of Works; or

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

Major deviations

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

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

Debatable deviation

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

The following are situations of such deviations:

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

Determination of Substantially Responsive Bids

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

All Substantially Responsive Bids to be Evaluated

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

7.9 Detailed Bid Evaluation

General Principles

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

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

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

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

Omissions/Missing Items

Methodology is provided in Procurement Manual 7.9.3

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

Domestic Preference

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

Domestic Preference for Works contracts:

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

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

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

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

Preference for domestically manufactured Goods:

7.9.6

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

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

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

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

Clarifications from Bidders

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

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

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

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

Lowest Evaluated Substantial Responsive Bid**General Principles:**

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

Unrealistic Rates

7.9.11 Upon selection of the lowest substantially responsive Bid:

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

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

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

7.10 Post Qualification

The details of post qualification are given in Procurement Manual 7.10.1

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

7.11 Bid Evaluation Report

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

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

7.12 Rejection of all Bids Received

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

CHAPTER 8

AWARD OF CONTRACT

8.1 Recommendation/Determination of Contract Award

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

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

8.2 Communication to all Bidders of the Intention to Award Contract

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

8.3 Appeals against Contract Awards recommended by the CAPC

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

8.4 Appeal Board

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

8.5 Contract Award in relation to MPC

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

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

8.5.2 If no such representations are received, the Secretary to the Line Ministry shall promptly award the contract to the successful bidder.

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

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

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

8.7 Award of Contract

Standard
Letter of
acceptance is
given in
Procurement
Manual 8.7.1

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

8.8 Debriefing

- 8.8.1 The Purposes of debriefing are to:
- (a) Inform the aggrieved bidder of the reasons for lack of success, pointing out the specific shortcomings in its bid without disclosing contents of other bids, with the overall objective of educating the bidder to submit more responsive and competitive bids in future.
- (b) minimize the level of complaints and to demonstrate clearly the principle and practice of probity and transparency.
- 8.8.2 After the notification of contract award, a bidder who wishes to ascertain the grounds on which its Bid was not selected should address its request to the PE. In such situation the PE should discuss only such Bid and not the bids of other competitors.

8.9 Execution of Contract

- 8.9.1 Following the acceptance of a bid submitted by a bidder, a formal letter of acceptance shall be issued forthwith to the bidder by the Procuring Entity. This shall be followed by the execution of a formal contract for the following:
- (a) any contract for Works exceeding SLR 250,000 (Sri Lanka Rupees Two hundred and Fifty thousand); and

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

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

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

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

8.10 Publication of Contract Award

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

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

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

8.11 Default

8.11.1 Data Base of Defaulting Contractors/Suppliers - NPA.

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

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

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

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

8.11.2 **Default on Bid Security Declaration**

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

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

Default on Implementation

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

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

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

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

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

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

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

- (ii) will be published in the NPA website.

Departmental Data Base of Defaulting Contractors/Suppliers

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

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

8.12 Contract Administration

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

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

Certification of Completion of Works

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

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

Certification for Receipt of Goods

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

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

Certification of Services Completed

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

8.13 Variation Orders – Works

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

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

Approving Authority for Aggregate Variations not exceeding the contingency provision

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

Approving Authority when Contingency Provision is Exceeded

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

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

8.14 Extension of Time

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

CHAPTER 9

SPECIAL PROCUREMENTS

9.1 Procurement of Commodities

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

9.2 Procurement of Spare parts

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

9.3 Repairs to Motor Vehicles and Equipment

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

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

9.4 Periodicals and Publications

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

9.5 Purchasing of Fuel

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

9.6 Procurement of Pharmaceuticals and Medical Equipment

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

9.7 Information Systems

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

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

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

9.8 E-Procurement

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

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

Public Contracts

AN ACT TO PROVIDE FOR THE REGISTRATION OF PUBLIC CONTRACTS AND PERSONS WHO TENDER OR ENTER INTO PUBLIC CONTRACTS WITH ANY PUBLIC BODY; FOR THE APPOINTMENT OF A PANEL OF INQUIRY AND THE NOMINATION OF MEMBERS TO CONSTITUTE A TRIBUNAL TO INVESTIGATE INTO MATTERS CONNECTED WITH PUBLIC CONTRACTS; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:

[30th January , 1987]

Short title and
date of
operation.

1. This Act may be cited as the Public Contracts Act, No.3 of 1987, and shall come into operation 'on such date as the Minister may appoint by Order published in the Gazette.

Application of
the Act to public
contracts.

2.

(1) Subject to subsection (2), the provisions of this Act shall apply to every public contract where the contract cost exceeds five million rupees.

In this subsection " contract cost" means the anticipated or estimated consideration for such contract and where such contract has been concluded by acceptance of tender, the agreed consideration for such contract, and accordingly, where the contract is for the performance in instalments, the consideration shall be the aggregate of the amounts payable in respect of such instalments.

(2) The provisions of this Act shall not apply-
(a) to any public contract or any class of public contracts that the President may in the interest of national economy, exempt by general or special order;

(b) to a sale by public auction by any public body.

PART I

APPOINTMENT OF PANEL OF INQUIRY AND NOMINATION OF MEMBERS OF TRIBUNAL.

Appointment of
Panel and
nomination of
members of
Tribunal

3.

(1) The President may from time to time appoint from among persons who appear to the President to have had experience and shown capacity in industrial, commercial, legal or financial and administrative matters, a Panel of inquiry of not less than ten persons.

(2) The provisions of the First Schedule hereto shall have effect in relation to the members of the Panel.

(3) For the purpose of carrying out any investigation under this Act, the President may nominate one or more members of the Panel to constitute a tribunal of inquiry (in this Act referred to as the "Tribunal")

(4) Where more than one member of the Panel have been nominated to the Tribunal, the President may nominate one of them as the Chairman of the Tribunal.

(5) Where a Tribunal is constituted under this section, the Registrar of Public Contracts appointed under section 1 shall function as the Secretary to the Tribunal.

Powers and
duties of the
Tribunal.

4.

(1) The Tribunal shall have and may exercise and discharge the powers and duties conferred or imposed upon it by this Act, and in particular the following:

(a) to investigate and report to the President subject to such directions as may be given by him on any matter relating to any public contract;

(b) to summon any person before the Tribunal and to direct any person to disclose any information within his knowledge or produce any book or document in his possession or under his control in relation to any investigation under paragraph

(c) to require by notice in writing the chief executive officer or the person in charge of any public body or any public or private company to produce or furnish, any document or certified copy of any document, as may be specified in such notice, which is or may be in his possession or under his control;

(d) to give general or special directions in writing requiring any person to comply with all or any of the provisions of this Act; and

(e) to do all other things, necessary to facilitate the carrying out of any investigation under this Act.

(2) Notwithstanding anything contained in any other law, it shall be the duty of any person to whom a request, summons or directive is made or given under this section, to forthwith or within the time specified therein to comply with the same, and if he fails to do so without reasonable excuse he shall be guilty of the offence of contempt against, or in disrespect of the authority of the Tribunal.

Appointment of Registrar. **5.**

(1) For the purpose of this Act, the President shall appoint a person to be known as the Registrar of Public Contracts (hereinafter referred to as the "Registrar") and such other persons as Assistant Registrars as may be deemed necessary.

(2) Any person appointed as an Assistant Registrar may perform and discharge any power, duty or function expressly conferred or imposed upon the Registrar under this Act.

Duties of the Registrar. **6.**

(1) The duties of the Registrar shall be-

(a) to register-

(i) every tenderer or every person who acts as an agent, sub-agent,

representative or nominee, for and on behalf of such tenderer,

(ii) every public contract; and

(b) to require any person referred to in sub-paragraph (i) of paragraph (a) to furnish such particulars as specified in the Second Schedule hereto accompanied by a duly sworn affidavit;

(c) to maintain one or more registers which shall contain the particulars furnished under paragraph (b) ;

(d) to require any person registered under sub-paragraph (i) of paragraph (a)

(i) to maintain such books and records as the Registrar considers necessary for the proper enforcement and administration of this Act and the regulations made thereunder; and

(ii) to file with the Registrar returns, with respect to their financial position, and the nature of the proposed public contract and such other matters as the Registrar may consider necessary.

(2) The Registrar shall from time to time, make all such corrections, additions or alterations as may be necessary, to the registers maintained by him under paragraph (c) of subsection (1).

Register to be evidence.

7. The particulars entered in the register maintained by the Registrar shall be prima facie evidence, of any matters by this Act directed or authorized to be inserted therein

PART II

REGISTRATION

Persons
required to
register with the
Registrar.

8.

(1) Any person who acts as an agent or sub-agent, representative or nominee for or on behalf of any tenderer, shall register himself and such public contract in accordance with section 10 and shall furnish to the Registrar the particulars required to be furnished under section 6.

(2) Where any person is an agent, sub-agent, representative or nominee for or on behalf of a tenderer he shall first produce a certificate of his appointment as agent, sub-agent, representative or nominee to the Registrar before he registers himself and the public contract under this section,

Contravention of
provisions of
section 8 an
offence.

9,

(1) Every person who contravenes or fails to comply with the provisions of section 8 shall be guilty of an offence and shall be liable on conviction to a fine of one hundred thousand rupees and to imprisonment for a term not exceeding two years.

(2) No person required to be registered under section 8 shall have any dealing directly or indirectly relating to a public contract-

(a) with the Registrar except for the purpose of registration ; or

(b) with any member of a public body, a technical committee, tender board or evaluation board of such body or any officer or employee thereof or any State officer,

without first producing a valid certificate of registration under this Act and if such person has any dealings or attempt to have any dealings he shall be guilty of an offence and liable, on conviction thereof, to a fine not exceeding one hundred thousand rupees or to imprisonment for a term not exceeding two years.

Application for
registration.

10.

(1) Every application for registration under section 8 shall be made in the prescribed form and shall contain a declaration by the applicant that the particulars stated therein are to the best of his knowledge true and accurate,

(2) The Registrar, shall, upon being satisfied that the applicant has not contravened any of the provisions of this Act, and the particular stated in the application are true and accurate, register the applicant and the public contract to which such application relates.

(3) No person shall be registered or issued with a certificate under section 11 until he has paid to the Registrar the prescribed fee,

Certificate of
registration.

11.

(1) Pursuant to a registration under section 10 the Registrar shall issue to such applicant a certificate in the prescribed form.

(2) The Registrar may, at any time, require the attendance before him of the persons applying to be registered, or who has been registered, and may require the attendance of any other person to ascertain any information the Registrar considers necessary for the proper enforcement of the provisions of this Act and examine such person upon oath or affirmation.

(3) A certificate issued under this section, shall, subject to the provisions of section 14 remain in force for a period of one year from the grant of such certificate and may from time to time be renewed for a period of one year on payment of the prescribed fee.

Prohibition of
members and
officers from
dealing with

12. Any member of a public body, a technical committee, tender board or evaluation board of such body or any officer or employee thereof or any State

contractors and agents.

officer or the Registrar, except for the purposes of registration, shall not have any dealing with any person referred to in section 8 in regard to any matter arising out of or in relation to any public contract unless the persons referred to in section 8 first produce a valid certificate of registration issued under this Act. Any person who contravenes the provisions of this Act shall be guilty of an offence.

Notification of changes of particulars furnished under section 6.

13. Whenever there is any change in the particulars furnished to the Registrar under section 6, it shall be the duty of any person registered under section 10 to inform the Registrar of such change within a period of -sixty days of the occurrence of such change.

Cancellation of registration for fraud or on other grounds.

14.

(1) The registration of any person registered under this Act may be cancelled or suspended by the Registrar on his own motion-

(a) where registration has been obtained by fraud or misrepresentation;

(b) where such person has committed deceit or malpractice in relation to any public contract or the fulfillment of any terms or conditions of such contract;

(c) where such person has been convicted of any offence under this Act or any regulation made thereunder;

(d) where such person had contravened any terms or conditions specified in the certificate; or

(e) where such person fails to inform of any change in the particulars furnished under section 13.

(2) Where the registration of any person has been cancelled or suspended by the Registrar under subsection (1), that person shall thereupon cease to be registered and the Registrar shall inform such person in writing of such cancellation or suspension as the case may be.

(3) Before canceling or suspending the registration of any person under this section, the Registrar shall-

(a) send to such person by registered post to the address stated in the register notice in writing of the complaint against him; and

(b) hold an inquiry into the matter of the complaint and afford that person an opportunity of giving an explanation personally or in writing and of calling evidence.

Appeal from the decision of the Registrar. **15.**

(1) Any person aggrieved by a decision of the Registrar in respect of any cancellation or suspension under section 14, may appeal against such decision to the Court of Appeal, within fourteen days of his being informed by the Registrar of such cancellation and suspension.

(2) Until rules are made under Article 136 of the Constitution pertaining to appeals under this section, the rules made under that Article pertaining to applications by way of revision to the Court of Appeal shall apply to every appeal made under this section.

(3) The Court of Appeal may on an appeal made to it under this section, confirm, revise, modify or set aside the decision against which the appeal is made and make any other order as the interest of justice may require.

Fulfilling obligations under a contract notwithstanding its cancellation or suspension.

16. Notwithstanding the cancellation or suspension of a registration of one of the parties to a public contract, the other party to such contract may require the party whose registration is cancelled or suspended to fulfill his obligations under the subsisting contract, and such person shall notwithstanding the provisions of this Act be entitled to do all such acts as may be necessary for the purpose of fulfilling his obligations under that contract.

PART III
INDUCEMENTS, GRATIFICATIONS, &C OR THE GRANT OF PUBLIC CONTRACTS OR
FOR THE AWARD OF TENDERS

Inducements,
gratifications or
misrepresentations
made or offered to
any person to
obtain benefits in
the award of
tenders and public
contracts.

17.

(1) Any person who, in the course of any transaction relating to. a public contract or at any stage in the duration of such contract-

(a) offers or gives any gratification of any form whatsoever;

(b) intentionally makes any misrepresentation;

(c) makes over, gives or transfers any movable or immovable property;

(d) offers or gives any scholarship, reward or any other form of benefit or consideration whether in Sri Lanka or elsewhere,

to the Registrar or to any member of the Panel or Tribunal, public body or a technical committee, tender board or evaluation board of such body or any employee or officer thereof, or to any State officer or any other person for the purpose of causing or inducing the Registrar or any such member, employee, officer or State officer or other person to enter into any public contract or to award any tender or to show or give any favour or privilege to any person for or in connection with any public contract, shall be guilty of an offence and shall be liable on conviction to a penalty of not less than one hundred thousand rupees and to imprisonment for a term not less than two years and not exceeding five years.

(2) Where a person convicted of an offence under subsection (1) is a person registered under this Act, such person in addition to any penalty imposed under subsection (1), shall be liable to a further penalty equal to an amount imposed under that subsection.

(3) Where in the course of any transaction relating to a public contract the Registrar or any member of the Panel or a Tribunal or any member of a public body or of a technical committee, tender board or evaluation board of such body, or any officer or employee thereof, or any State officer or any other person has accepted any inducement or gratification of any form whatsoever, or has accepted or received any movable or immovable property or has accepted or received any scholarship, reward or any other form of benefit or consideration offered, made or given in contravention of subsection (1) whether in Sri Lanka or elsewhere such Registrar, member, officer, employee, State officer or any other person shall be guilty of an offence and be liable on conviction to a penalty of not less than one hundred thousand rupees and to imprisonment for a term not less than two years and not exceeding five years.

(4) Where in any proceeding under this section evidence has been adduced that an inducement, gratification, transfer of movable or immovable property or a scholarship, reward or any other form of benefit or consideration has acted as a material factor in the award of a public contract and in consequence thereof the Registrar or any member of the Panel or a Tribunal, a public body or of a technical committee, tender board or evaluation board of such body or any employee or officer thereof or any State officer or any other person derived any direct or indirect material advantage or benefit it shall be presumed in the absence of proof to the contrary that an inducement, gratification, transfer of movable or immovable property or award of a scholarship or any other form of benefit or consideration was offered or made or given for the purpose of inducing the person to whom it was made to enter into such public contract.

Interference with
the Registrar, or
member of a
Panel or

18.

(1) Every person who, otherwise than in the course of his duty, directly or indirectly, by

Tribunal or
public body.

himself or by any other person, in any manner whatsoever, influences or attempts to influence whether in Sri Lanka or elsewhere-

(a) the Registrar or any member of the Panel or a Tribunal ;

(b) a member of a public body, technical committee, tender board or evaluation board of such body or any officer or employee thereof;

(c) any state officer; or

(d) any other person,

in the exercise, performance and discharge of his powers, functions and duties under this Act or in connection with any public contract or at any stage in the duration of such contract, shall be guilty of an offence and shall be liable on conviction to a fine of rupees one hundred thousand or to imprisonment for a term not exceeding two years.

(2) Any offence committed in any place referred to in subsection (1) shall be triable by the High Court holden in the judicial zone nominated by the President of the Court of Appeal by a direction in writing under his hand.

Duty to report. **19.**

(1) It shall be the duty of -

(a) the Registrar or any member, officer or an employee of a public body, technical committee, tender board or evaluation board of such body;

(b) any State officer; or

(c) any other person,

in the exercise, performance and discharge of his powers, function and duties, to report

forthwith to the President the commission or attempted commission of any act or acts by any person in contravention of any of the provisions of this Act or any regulations made thereunder.

(2) Upon the receipt of a report under subsection (1) the President may, under subsection (3) of section 3, nominate a Tribunal to carry out an investigation.

(3) Any person referred to in subsection (1) who fails to comply with the provisions of that subsection shall be guilty of an offence and shall be liable on conviction to a fine of one hundred thousand rupees or of imprisonment, not exceeding two years.

(4) No suit or prosecution shall lie against any person in respect of a report submitted by such person under subsection (1).

(5) No person shall print or publish any report or statement which directly or indirectly refers to the contents of any report made under subsection (1), except with the written approval of the President.

(6) A person who contravenes the provisions of subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine of one hundred thousand rupees or to imprisonment for a term not exceeding two years.

Leave to
appeal to the
Tribunal.

20.

(1) Where it is alleged that any public contract has been entered into contrary to the specifications or pre-qualifications required in relation thereto or where restrictive specifications have been set out for the award of a tender or contrary to the provisions of this Act, any person aggrieved by the award of such contract may, by petition in writing accompanied by a duly sworn affidavit, request the President to appoint a Tribunal under subsection (3) of section 3 to carry out an investigation with regard to such contract.

(2) For the purpose of section 6, and this section "duly sworn affidavit" means an affidavit sworn or affirmed to, before a justice of the peace or a judicial officer that sets out the facts and circumstances within the personal knowledge of the deponent.

(3) On receipt of a petition under subsection (1) the President may nominate, under subsection (3) of section 3 a Tribunal to carry out an investigation.

Tribunal to
report to
President.

21. The Tribunal shall upon the conclusion of an investigation conducted under this Act, forthwith submit a report of its finding to the President.

Tribunal to
forward report
to Attorney
General

22.

(1) Where it appears to the Tribunal that in the course of an investigation under this Act, any person has been guilty of an offence, the Tribunal may of its own motion, report the matter to the Attorney-General and shall furnish him" such information and give him such access to, and facilities for inspecting and taking copies of any statement, information or documents as are in the possession or under the control of the Tribunal.

(2) If on any report submitted to the Attorney-General under subsection (1) it appears to him that it is a case where a prosecution ought to be instituted, he shall within one month of the receipt of such report inform the Tribunal accordingly, and shall institute proceedings within two months thereafter, and it shall accordingly be the duty of the Tribunal to render him all assistance in connection with the prosecution or proceedings:

Provided that where the Attorney-General is of the opinion having regard to the circumstances of the case that proceedings cannot be instituted within the period of two months, he shall inform the Tribunal accordingly and such proceeding shall not be deemed to be invalid by reason only that it had not been instituted within the period of two months.

(3) Where a person convicted under this section is a contractor, tenderer or any other person registered under this Act, the Court shall give notice of such conviction to the Registrar who shall thereupon-

(a) strike out the name of the person from the register; and

(b) debar him from registering as a tenderer or in any other capacity whatsoever with the Registrar for a period of seven years.

Persons who
disclose
classified
information.

23.

(1) Any person while being employed in any capacity by any public body has occasion to acquire or obtain cognizance of any classified information, and communicates such information to any person other than to a person to whom he has a duty to disclose such information, whether in Sri Lanka or elsewhere, and before or after the award of any tender relating to a public contract, then such person shall be guilty of an offence, and on conviction be liable to a fine of one hundred thousand rupees or to imprisonment for a term not exceeding two years.

(2) In this section "classified information" means any facts, information or knowledge, documents or objects that relate to any public contract.

PART IV GENERAL

Power to
summon
witnesses.

24.

(1) The Tribunal shall have power to summon and examine all witnesses at any investigation conducted by the Tribunal. Every summons shall be under the hand of the Chairman of the Tribunal.

(2) A summons may be served by delivering it to the person named therein, or if that is not

practicable, by leaving it at the last known place of abode of ,that person.

(3) Every person on whom a summons is served ,shall attend before the Tribunal at the time and place mentioned therein, and shall give evidence or produce such documents or other thing as are required of him and are in his possession or power, according to the tenor of the summons.

Evidence.

25.

(1) The Tribunal shall have power for the purpose' Evidence of any inquiry or any investigation under this Act-

(a) to procure and receive all such evidence, written or oral, and to examine; all such persons as witnesses, as it may think necessary .or desirable to procedure receive or examine;

(b) to require the evidence, whether written or oral of any witness to be given on oath or affirmation; such oath or affirmation to be that which would be required of that witness if he were giving evidence in court, and to administer an oath or affirmation to every such witness.

(2) All such evidence whether written or oral as may be obtained by the Tribunal in the course of an investigation under this Act certified by the Chairman as having been so obtained shall subject to the provisions of the Evidence Ordinance and notwithstanding the provisions of any other law to the contrary, be admissible in evidence against an accused person in any prosecution for an offence or in any proceedings under this Act.

Failure to obey
summon or to
give evidence
&c.

26. If any person upon whom a summons is served under this Act-

(a) fails without cause, which in the opinion of the Tribunal is reasonable, to appear before the Tribunal at the time and place mentioned in the summons; or

(b) refuses to be sworn or affirmed or, having been duly sworn or affirmed, refuses or fails without cause, which in the opinion of the Tribunal is reasonable, to answer any question put to him relating to the matters directed to be inquired or investigated into by the Tribunal; or

(c) refuse or fails without cause, which in the opinion of the Tribunal is reasonable, to produce to the Tribunal any document or other thing which is in possession or power and which is in the opinion of the Tribunal necessary for arriving at the truth of the matters to be inquired into, such person shall be guilty of the offence of contempt against, or in disrespect of, the Tribunal.

Punishment of
offence of
contempt.

27.

(1) Any act or omission in contravention of the provisions of section 26, shall constitute an offence of contempt against, or in disrespect of, the Tribunal if such act or omission would, if, done or omitted to be done in relation to the Court of Appeal have constituted an offence of contempt against, or in disrespect of, the authority of such Court.

(2)

(a) where the Tribunal determines that a person has committed an offence of contempt against, or in disrespect of, its authority, the Tribunal may cause its Chairman to transmit to the Court of Appeal a certificate setting out such determination. Every such certificate shall be signed by the Chairman of the Tribunal.

(b) In any proceeding for the punishment of an offence of contempt which the Court of Appeal may think fit to take cognizance of as provided in this section, any document purporting to be a certificate signed and transmitted to the Court under the preceding provisions of this subsection shall-

(i) be received in evidence, and be deemed to be such a certificate without further proof unless the contrary is proved; and

(ii) be evidence that the determination set out in the certificate was made by the Tribunal on the facts stated in the determination.

(c) In any proceeding taken as provided in this section for the punishment of any alleged offence of contempt against or in disrespect of the Tribunal no member of the Tribunal shall, except with his own consent, be summoned or examined as a witness and any such proceeding shall be heard and disposed of within three months on receipt of the certificate referred to in paragraph (a).

Privileges of witnesses.

28. Every person who gives evidence before the Tribunal shall, in respect of such evidence, be entitled to all the privileges to which a witness giving evidence before a court is entitled to in respect of evidence given by him before such court.

Secrecy.

29. Every member of the Panel, a Tribunal and the Registrar, and every member of the staff of such Tribunal or of the Registrar shall, before entering upon his duties, sign a declaration pledging himself to observe strict secrecy respecting his duties and shall by such declaration pledge himself not to reveal any matter except-

(a) when required to do so by the Tribunal, a court, or the person to whom the transaction or matter relates;

(b) in the performance of his duties; and

(c) in order to comply with any of the provisions of this Act or any other written law.

Protection
against suit or
prosecution.

30.

(1) No suit or prosecution shall lie against the Registrar, the members of the Tribunal or any officer or employee thereof, for any act which in good faith is done or purported to be done by the Registrar, a member of the Tribunal or any officer or employee thereof under this Act.

(2) No action, prosecution or other proceeding civil or criminal, shall be instituted in any court or tribunal against any person referred to in subsection (1) in respect of any report made by him under this Act.

Persons
committing
offences under
this Act to be
triable before a
Judge of the
High Court.

31. Any person who has committed any offence under this Act shall, notwithstanding the provisions of any other law to the contrary, be triable without preliminary inquiry, on an indictment before a Judge of the High Court sitting alone without a jury and such court shall give priority to any such trial before any other work of such Court.

Attorney General
to institute
prosecutions.

32. No prosecution for an offence under this Act shall be instituted except by the Attorney-General.

Service of
documents.

33. For the purposes of this Act or any regulations made thereunder, any notice, or other communication sent by mail under registered post shall be presumed until the contrary is proved, to have been received by the addressee within three days of the posting thereof, and a certificate of such posting signed by the Registrar shall be prima facie proof thereof.

Offence by
body of
persons &c.

34. Where an offence under this Act is committed-

(a) by a body of persons then-

(i) if that body is a body corporate, every person who at the time of the commission of the offence was a director, secretary or other similar officer of that body; or

(ii) if that body is not a body corporate, every person who at the time of the commission of that offence was a member or a partner of that body, or its chief executive officer; or

(b) by any person acting for or 'on behalf of a person registered under this Act then the registered person.

shall be liable for the commission of that offence unless he proves that the 'Offence was committed without his consent or connivance, and that he exercised all due diligence to prevent the commission of that 'Offence as he ought to have exercised, having regard to the nature of his functions and all other circumstances.

Act to apply to public contracts which have not reached finality &c.

35.

(1) Where negotiations in relation, to any public contract have not reached finality by the execution 'of a contract or where any public contract has been entered into and the performance of such contract has not been completed 'or where the final payments in respect 'Of the performance 'of any public contract have not been made on the date of commencement of this Act, the provisions 'of this Act shall apply, mutatis mutandis, in respect 'Of such contract.

(2) where after the date 'of commencement of this Act final payment has been made in respect of the performance of all the obligations in a public contract and the Tribunal is of the opinion after investigation that there have been irregularities in the procedure adopted by any public body in the awarding 'of such contract or that there has been a contravention 'of the terms and conditions specified in such contract, the Tribunal may make such inquiries as it may deem necessary and may report the result 'Of that inquiry to the President and to the Attorney-General, and the provisions of section 22 shall apply, mutatis mutandis, to any such report.

Regulations.

36.

(1) The President or where the subject 'or function is assigned to a Minister, such

Minister, acting with the concurrence 'of the President may make regulation for all matters in respect 'of which regulations are authorized to be made under this Act.

(2) Without prejudice to the generality 'Of the powers conferred by subsection (1), where the subject or function has been assigned to a Minister, such Minister may with the concurrence of the President make regulations in respect 'or all of any of the following matters:

(a) the form and manner 'of registration and the fees payable in respect 'of such registration;

(b) the form and manner of renewal 'of registration 'or re-registration and fees payable for such renewal or re-registration;

(c) the conditions subject to which certificates are issued;

(d) the inspection of books, records or accounts kept by registered persons; and

(e) reports or other information to be supplied by persons to whom certificates have been issued.

(3) Every regulation made by the Minister under this Act, shall be published in the Gazette and shall come into operation on the date of the publication or on such later date, as may be specified in the regulation.

(4) Every regulation made by the Minister shall, as soon as convenient after the date of its publication, be brought before Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of disapproval but without prejudice to anything previously done thereunder.

(5) Notification of the date on which any regulation is deemed to be rescinded shall be published in the Gazette.

Officers and servants of the Tribunal and Registrar deemed to be public officers.

Tribunal to furnish reports to the President.

37. All officers and servants of the Tribunal, and the Registrar shall be deemed to be public officers within the meaning and for the purposes of the Penal Code.

38.

(1) The Chairman of the Tribunal shall submit to the President in such form and detail as the Tribunal may determine the report of the Tribunal's work during the year completed.

(2) The Tribunal may, in addition to the report furnished under subsection (1), submit to the President such other reports on such matters as it deems necessary and shall furnish to the President such information as the President may call from time to time in respect of the activities and affairs of the Tribunal.

Acts and decisions of the Tribunal.

39. No act or decision of the Tribunal shall be called in question in any court by writ or otherwise.

Proceedings of Tribunal.

40. Unless the President otherwise directs all proceedings before a Tribunal shall be held in camera.

Powers of Registrar to give general or special directions.

41. The Registrar may from time to time with the prior written approval of the President give general or special directions in writing to any person registered under this Act in respect of any matter which such person is required to do or perform under this Act.

Oath or affirmation.

42. The Chairman of the Tribunal shall take oath or make an affirmation on entering upon the duties of his office before the President and the other members of the Tribunal, and the Registrar shall take oath 'or make an affirmation before the Secretary to the President. The officers and staff of the Registrar shall take oath or make an affirmation before the Registrar.

Contravention of provision of an offence.

43. Every person who contravenes any of the provisions of this Act or any regulation made thereunder shall be guilty of an offence under this Act.

Penalty for offence for which no penalty is prescribed.

44. Every person guilty of an offence under this Act for which no penalty is prescribed shall be liable to a fine not exceeding one hundred thousand rupees or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

Interpretation.

45. In this Act, unless the context otherwise requires-
"Chief executive officer" means

(a) in the case of a government department the head of such department;

(b) in the case of a public corporation its Chairman; or

(c) in the case of a local authority the Mayor or Chairman as the case may be ;

"contract" means any contract, agreement, undertaking or an invitation to tender which is intended to be, or is or has been, entered into in pursuance of tenders called for by, 'Or on behalf of any public body;

"duration of contract" with its grammatical variations and cognate expressions means the time from the commencement of the preparation of specifications upto the completion and discharge of all obligation" of all contracting parties in respect of any public contract;

"local authority" means any Municipal Council or Urban Council, and includes any authority created and established by or under any law to exercise, perform and discharge power, duties and functions corresponding to or similar to the powers, duties and functions exercised, performed and discharged by any such Council;

" peace Officers" includes police Officers and Grama Seva Niladharis appointed by a Government Agent in writing to perform police duties;

"prescribed" means prescribed by this Act or regulations made thereunder;

"public body" means any department, office or establishment of the Government, public corporation or local authority and includes any undertaking vested in the Government under any written Law;

"public contract" means any contract for the performance of any work or services or for the supply or sale of any goods, materials or property to any public body which is intended to be, or is or has been, entered into in pursuance of tenders by or on behalf of that public body and includes any contract for the sale or disposal by that public body of any goods, materials or property in its possession, power or control;

"public corporation" means any corporation, board or other body which was or is established by or under any written law other than the Companies Act, No. 17 of 1982, with funds or capital wholly or partly provided by the Government by way of grant, loan or otherwise;

"Registrar" includes an Assistant Registrar;

"restrictive specification" means any specification framed in relation to a subject matter of a tender that has been wilfully framed so as to benefit a particular tenderer in the award of a public contract;

"State officer" means a person who holds any paid office under the Republic of Sri Lanka other than a judicial officer and does not include

(a) the President;

(b) the Speaker;

(c) a member of the Judicial Services Commission;

(d) a member of the Public Service Commission;

"technical committee" means any person or body of persons entrusted with the responsibility of preparing specifications in connection with any public contract;

" tenderer" means

(a) any consortium of persons any one or more of whom is not a citizen of Sri Lanka. or not ordinarily resident in Sri Lanka; or

(b) a company or firm incorporated or registered or has its principal place of business outside Sri Lanka;

(c) any individual ordinarily resident in Sri Lanka or if not so resident is or has been a citizen of Sri Lanka; or

(d) any company, firm or public body incorporated in or which has its principal place 'Of business in Sri Lanka; or

(e) any company or firm not incorporated in Sri Lanka or not having its principal place of business in Sri Lanka, in which any Director partner or any shareholder holds more than twenty-five per centum of its share is, or has been a citizen of Sri Lanka

and who enters into any public contract with any public body or is a prospective tenderer, contractor or supplier in respect of any such contract with a public body.

" tender" includes any bid, offer, quotation or proposal.

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FIRST SCHEDULE

Provisions relating to members of the Panel

1. A person shall be disqualified for being appointed or being a member of the Panel if he is a Member of Parliament.
2. Before appointing a person to be a member of the Panel the President shall satisfy himself that such person will have no financial or other interest as is likely to affect prejudicially the discharge by such person of his functions as a member of the Panel. Any person who is appointed by the President shall whenever requested by the President so to do furnish to the President such information as the President considers necessary for the performance of his duties under this Act.
3. A member of the Panel who is in any way directly or indirectly interested in a public contract made or proposed to be made, shall disclose the nature of his interest to the President.
4. Every member of the Panel shall—
 - (a) subject to the provisions of paragraph 6, hold office for such period not exceeding three years as the President shall specify in the instrument by which that member is appointed; and
 - (b) be eligible for re-appointment.
5. Any member of the Panel may without any reason being assigned therefor, be removed from office by the President.
6. A member of the Panel who is not a public officer may resign from the panel of which he is a member, by letter in that behalf addressed to the President.
7. Where the office of a member of the panel becomes vacant or such member becomes, by reason of illness or other infirmity, or absence from Sri Lanka, temporarily unable to perform the duties of his office, the President may appoint another person in place of such member.
8. The members of the Panel shall be remunerated in such manner and at such rates and shall be subject to such conditions of service as may be determined by the President.

SECOND SCHEDULE

The particulars required to be entered in the register maintained by the Registrar under section 6 of this Act, shall be—

- (a) in the case of a public company the name, address and nationality of each director;
- (b) in the case of a private company the name, address and nationality of each director and shareholder;
- (c) in the case of a firm the name, address and nationality of its partners and the percentages of financial interest of each partner in such firm;

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- (d) in the case of an individual the name, address and nationality of such individual;
- (e) the name, address and nationality of every person who acts as an agent, sub-agent, representative or nominee on behalf of a tenderer;
- (f) where a tender is awarded—
 - (i) the name, address and nationality of the successful tenderer;
 - (ii) the amount accepted for the award of such tender;
 - (iii) the name address and nationality of every person who acts as an agent, sub-agent, representative or nominee on behalf of a successful tenderer;
- (g) Any other particulars as may be required to ensure due compliance with the provisions of this Act.