



FINANCE [Salaries] DEPARTMENT

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TAMIL NADU TRANSPARENCY IN TENDERS RULES, 2000.1

In exercise of the powers conferred by sub-section (1) of section 22 of the Tamil Nadu Transparency in Tenders Act, 1998 (Tamil Nadu Act 43 of 1998), the Governor of Tamil Nadu hereby makes the following rules, namely.-

CHAPTER-I.

PRELIMINARY.

1. Short title and commencement.-

(a) These rules may be called the Tamil Nadu Transparency in Tenders Rules, 2000.

(b) They shall come into force on the date 1st October, 2000.

²(c) These rules shall apply to all types of procurement except the procurement of Projects under the Public Private Partnerships.]

2. Definitions.- In these rules, unless there is anything repugnant in the subject or context,-

(a) **“Act”** means the Tamil Nadu Transparency in Tenders Act, 1998 (Tamil Nadu Act 43 of 1998);

(b) **“Supply and Installation Contract”** means a contract under which the tenderer is required to supply, erect, test and commission the equipment at the place specified by the Procuring Entity;

¹ Published in Part-III – Section 1(a) of Tamil Nadu Government Gazette, Extraordinary No.700, Dated 1st October 2000. [(No.SRO.A-81 (c) / 2000 - G.O.Ms.No.446 / 26th September, 2000].

² Added. (c). [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

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(c) “**Fixed Rate Contract** ” means a contract where a set of rates and terms and conditions are fixed for the supply of unit quantities of goods or certain standardized services;

(d) “**Pre-qualification**” means the process by which the tenderers are first screened for their capability and resources to implement the contract before they are permitted to offer their tenders;

(e) “**Two-cover System** ” means a procedure under which the tenderers are required to simultaneously submit two separate sealed covers, one containing the Earnest Money Deposit and the details of their capability to undertake the tender which will be opened first and the second cover containing the 3 [financial] quotation which will be opened only if the tenderer is found qualified to execute the tender;

(f) “**Earnest Money Deposit (EMD)** ” means the amount required to be remitted by a tenderer along with his tender indicating his willingness to implement the contract;

⁴[(g) “**Lump-sum Contract** ” means a contract under which a tenderer is engaged to carry out a work or effect supply as specified within a given period and for a fixed total price and the tenderer is paid depending on the completion of work or supply to specification and adherence to the time schedule:

Provided that where appropriate, unit rates or prices for each of the various items comprising such work or supply may also be specified to facilitate interim payments depending on the actual quantities of work executed or supplies effected.

³Substituted. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

⁴

Substituted. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

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(h) “**Multi-Stage Tender**” means a tender in which there are atleast two stages including an initial stage of short-listing based on the fulfillment of eligibility criteria based on experience and financial or technical parameters or both and a final stage in which only the qualified, short-listed tenderers are invited to submit their financial bids;

(i) “**Piece-Work Contract**” means a contract under which only unit rates or prices for various kinds of work or materials are agreed upon for a given period of time without reference to the total quantity of work to be done or the material to be supplied and the time period within which the work or supply is to be completed;

(j) “**Turn-key Contract**” is a contract under which the tenderer is required to undertake within the framework specified by the Procuring Entity the entire responsibility for detailed investigation, planning, design, construction and commissioning of the total project.]

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CHAPTER-II.

GENERAL.

Categories of Procurement.-(1) For the purposes of the application of these rules, procurement is categorized as follows, namely:-

- (i) Construction; and
- (ii) Supply of goods and services.

(2) While the provisions of these rules shall apply in general to each of the categories of procurement in sub-rule (1), where a specific provision has been made in the rules regarding any specific category, that specific provision shall prevail as against any general provision in so far as that category of procurement is concerned.

4. **Methods of Tendering.-** (1) Procurement of different categories shall be effected by the following methods of tendering, namely:-

- (i) Piece-work Contract
- (ii) Lump-sum Contract
- (iii) Turn-key Contract
- (iv) Multi-stage contracting including pre-qualification and two cover system; and
- (v) Fixed Rate Contract

(2) The Tender Inviting Authority shall decide the method of tendering to be followed in each case having regard to the category, size and complexity of the procurement.

(3) While the provisions of these rules shall apply to each of the methods of procurement indicated in sub-rule (1) generally where a specific provision has been made in these rules regarding a particular method of tendering, such specific provision shall prevail as against any general provision in so far as that particular method of tendering is concerned.

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CHAPTER-III.

PUBLICITY.

5. **Publication of Tender Bulletin.-**

(1) The District Tender Bulletin shall be published by the District Tender Bulletin Officer at least once in every week.

(2) The State Tender Bulletin shall be published by the State Tender Bulletin Officer at least once in every week.

(3) The Tender Bulletin Officer shall cause to be published all Notices Inviting Tenders and intimations of acceptance of tenders received upto twenty four hours prior to the actual publication of the bulletin.

(4) In case a Notice Inviting Tender or information relating to acceptance of the tender needs to be published urgently, then the Secretary to Government of the concerned administrative department in the case of the State Tender Bulletin or the District Collector in the case of the District Tender Bulletin can for reasons to be recorded in writing, direct the respective Tender Bulletin Officers to publish an extraordinary issue of the Tender Bulletin.

6. **Distribution of Tender Bulletins.-**

(1) The Tender Bulletin Officer shall make the Tender Bulletin available at any office of a Government Department, Local Authority, Statutory Board, Public Sector Undertaking, Local Body, University or Co-operative Institution.

(2) The Tender Bulletin Officer shall make available adequate copies of the tender bulletin at the office of the Tender Inviting Authority whose Notice Inviting Tenders and intimation of tender acceptance finds place in the bulletin.

(3) Any person or institution can be enrolled as a regular subscriber to the tender bulletin on payment of a fixed fee annually, half-yearly or quarterly, as the case may be.

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7.

Tender Bulletin to

contain information only.-

(1) The tender bulletin shall contain only information of the Notice Inviting Tenders and the orders accepting a tender and does not in itself create a legal right or liability.

(2) A Notice Inviting Tender will not be invalidated merely on the grounds that the notice although published in newspapers has not been published in one or the other of the District Tender Bulletins or State Tender Bulletins or when published in the State Tender Bulletin could not be published in a District Tender Bulletin or vice versa.

8. Information to be published in the District

Tender Bulletin.- Subject to the provisions of rule 10, Notices Inviting Tenders and decisions on tenders in all cases where the value of the procurement exceeds rupees 5 [ten lakhs and is] below rupees twenty five lakhs shall be published in the District Tender Bulletin of the district where the headquarters of the Tender Inviting Authority is located and in the district where the work is to be executed or the goods and services supplied.

9. Information to be published in the State Tender

Bulletin.- The Notice Inviting Tenders and decisions on tenders shall be published in the State Tender Bulletin in cases where.-

(a) The value of procurement exceeds rupees twenty five lakhs;

(b) The Tender Inviting Authority is a Secretary to Government, or a head of a Government department, or Local Authority or the Chief Executive of a Public Sector Undertaking, Statutory Board, Apex Cooperative Institution, University or State Level Society formed by the Government.

(c) In any other case, where the Tender Inviting Authority deems it fit.

⁵Substituted. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

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10. Details to be mentioned in Notice Inviting Tenders.- The Notice Inviting Tenders shall contain the following details, namely:-

- (a) The name and address of the Procuring Entity and the designation and address of the Tender Inviting Authority;
- (b) Name of the scheme, project or programme for which the procurement is to be effected;
- (c) The date upto which and places from where the tender documents can be obtained;
- (d) The amount of Earnest Money Deposit (EMD) payable;
- (e) The last date and time for receipt of tenders;
- (f) The date, time and place for opening of tenders received; and
- (g) Any other information the Tender Inviting Authority considers relevant.

11. Publication of Notice Inviting Tenders in Newspapers.- (1) The Tender Inviting Authority shall have the Notice Inviting Tenders published in the Indian Trade Journal in all cases where the value of procurement exceeds rupees ⁶[fifty crores].

(2) The number, editions and language of the newspapers in which the Notice Inviting Tenders shall be published will be based on the value of procurement.

(3) In cases where publication of Tender Inviting Notice is to be done only in Newspapers with circulation within the District, the Information and Public Relations Officer attached to the District Collectorate shall be the competent authority to release the advertisement and in all other cases the competent authority to release the advertisement shall be the Director of Information and Public Relations, Chennai.

⁶Substituted . [TNGGE No.212 / 18-08-2009 (No.SRO A-22(a)/2009) - G.O.Ms.No.392 /18th August, 2009]

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(4) The Notice Inviting Tender shall be given due publicity in Newspapers and also on notice boards in the District Offices. For tenders above rupees fifty lakhs, Director of Information and Public Relations will publish the Notice Inviting Tenders as per instructions of the 7 [Procuring Entity]. For other tenders, Director of Information and Public Relations will publish keeping in mind the request of the department. There should not be any additional insertion and no publication of Notice Inviting Tenders in newspapers not requested by the 7 [Procuring Entity] for tenders above rupees fifty lakhs.

12. Sending Notice Inviting Tenders to all possible tenderers.- The Tender Inviting Authority may if considers necessary, send the Notice Inviting Tenders to all possible tenderers including registered contractor, past supplier, any potential supplier and any other well known company or firm directly.

⁷Substituted. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

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CHAPTER IV.

NOTICE INVITING TENDERS AND TENDER DOCUMENTS.

13. Technical specifications contained in the Tender Documents.- (1) The technical specifications contained in the tender documents shall include a detailed description of what is proposed to be procured.

(2) Unbiased technical specifications shall be prepared by observing the following safeguards, namely:-

(a) use of brand names and catalogue numbers shall be avoided and where it becomes unavoidable, along with the brand name the expression “or equivalent” shall be added;

⁸[Provided that such specifications should as far as practicable specify the output or service levels to be delivered.]

(b) wherever possible the appropriate Indian Standards with the number shall be incorporated;

(c) in the case of construction tenders, detailed estimates shall be prepared by the competent technical authorities based on the schedule of rates and standard data as revised from time to time.

Provided that for large and prestigious projects, the Government shall permit any Procuring Entity to engage a qualified private architect or consultant to prepare the design and estimates; and

(d) in case alternative designs or materials are permitted, the conditions for their acceptability and the method of their evaluation shall be clearly stated.

⁸Added. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

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14. **Commercial Conditions.-** (1) The tender documents shall require all tenderers without exception to pay an Earnest Money Deposit (EMD) ordinarily not exceeding one per cent of the value of the procurement by means of a demand draft, bankers cheque, specified small savings instruments or where the Procuring Entity deems fit, irrevocable bank guarantee in a prescribed form. The tender documents shall clearly state that any tender submitted without the Earnest Money Deposit (EMD) in the approved form be summarily rejected

Provided that any category of tenderers specifically exempted by the Government from the payment of Earnest Money Deposit (EMD) will not be required to make such a deposit.

(2) The tender documents shall specify the period for which the tenderer should hold the 9 [financial bids] offered in the tender valid:

¹⁰[Provided that the initial period of validity shall ordinarily be ninety days.]

(3) The tender documents shall require that as a guarantee of the tenderer's performance of the contract, a security deposit be taken from the successful tenderer subject to the conditions that.-

(a) the amount of the deposit not exceeding five per cent of the value of the orders placed: and

(b) the deposit being in the form of demand draft or bankers' cheque or specified small savings instruments or where the Procuring Entity deems fit, irrevocable bank guarantee in a prescribed form.

⁹Substituted. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

¹⁰Substituted [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

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(4) The tender documents shall clearly indicate the payment terms conforming to the following requirements.-

¹¹[(a) Payment shall ordinarily be effected only on completion of delivery against the orders placed:

Provided that payment of advance may be made in the following cases for sufficient reasons to be recorded by the Procuring Entity:-

(i) in cases where goods, commodities and services are procured through imports requiring opening of Letter of Credit;

(ii) in cases where there is single source of supply only and where the practice of paying advance is already in vogue as a standard practice;

(iii) in cases of purchase during natural calamities and emergencies declared by the Government under clause (a) of section 16 of the Act;

(iv) in cases of purchase of life saving drugs; and

(v) in cases where the standard commercial terms of supply require payment of advance by the Procuring Entity, such as the machinery and equipment manufacturers for sugar and cement plants.]

(b) Mobilization advances may be paid in the case of construction or supply and installation contracts of a large and complex nature, for a value exceeding rupees one crore:

¹¹Substituted. [TNGG No.14 / 14-04-2004 (No.SRO A-12/2004) - G.O.Ms.No.107 / 23rd March, 2004]

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Provided that such mobilization advances shall not ordinarily exceed ten per cent of the value of the contract, shall be secured against irrevocable bank guarantee and shall be recovered in the subsequent bills payable along with interest as per specific terms set in the tender documents provided that in case of mobilisation advances for plant machinery and equipment, they are also hypothecated to the Governor of Tamil Nadu in addition to other requirements;

(c) Percentage of payment to be withheld for the effective performance of the contract.

Provided that withheld amounts do not exceed ten per cent of the total value of contract;

(d) Payment terms for imports shall be based on standard terms of international trade and the payment may be effected through irrevocable Letters of Credit drawn on banks;

(5) The tender documents shall clearly indicate whether any variations in the commercial terms prescribed in the documents will be permitted and if so to what extent such variations would be considered.

(6) The tender documents and the contract shall include a clause for payment of liquidated damages and penalty payable by the tenderer in the event of non-fulfillment of any or whole of the contract.

(7) The tender documents shall clearly indicate the terms on which the tenderers will be required to quote their ¹²[financial bid] which should be inclusive of all costs of delivery at the final destination such as transportation, payment of duties and taxes leviable, insurance and any incidental services and giving the break up thereof.

¹²Substituted. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

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¹³(7-A) 14

[...]

(8) The tender documents shall include a price adjustment clause to reflect any changes either upward or downward in major cost components such as labour, equipment, material and fuel, based on a prescribed formula in the case of large contracts where the period of execution is likely to exceed eighteen months.

(9) The tender documents shall indicate the quantity proposed to be procured in the tender, and the Tender Accepting Authority shall be ordinarily permitted to vary the quantity finally ordered only to the extent of twenty five percent either way of the requirement indicated in the tender documents.

15. Tender documents to clearly specify evaluation criteria.- (1) The tender documents shall clearly indicate the criteria 15 [including financial bid] which are to be adopted for evaluating the tenders and how such criteria will be quantified or evaluated; and

¹⁶[(2) The qualification criteria in terms of the registration of contractors in the cases where the Procuring Entity has a system of registration of contractors, the required experience, available manufacturing and construction capacity, technical and other manpower and financial status shall be clearly stated in the tender documents.]

¹ Inserted. [TNGG No.44 / 21-11-2001 (No.SRO A-72(m-a)/2001) - G.O.Ms.No.452 / 16th November, 2001].

³ (w.e.f. 1-12-2001)

¹ Omitted. [TNGG No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

¹ Substituted. [TNGG No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

¹ Substituted. [TNGG No.127 / 22-05-2001 (No.SRO A-19(c))/2007) - G.O.Ms.No.177 / 22nd May, 2007].

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16.

Supply of Tender Documents.- (1)

The Tender

Inviting Authority shall make available the tender documents¹⁷ [from the date of publication of the Notice Inviting Tenders].

¹⁸

[(2) The Tender Inviting Authority shall ensure that the tender documents are made available to any person who is willing to remit the cost of such documents.]

¹⁹[(3) (a) The tender documents shall be made available at:-

- (i) the office of the Tender Inviting Authority;
- (ii) any other office or place indicated by the Procuring Entity.

²⁰[(b) In respect of procurement where the estimated value of procurement is Rupees Twenty Five Lakhs and above in value for construction and Rupees Ten Lakhs and above in value for other categories of procurement inclusive of consultancies for construction, the tender document shall be made available for downloading free of cost at the website designated for this purpose by the Government. Tender documents may also be made available free of cost at such other websites as may be indicated by the Tender Inviting Authority.]]

(4) The Tender Inviting Authority shall send by registered post or courier the tender documents to any prospective tenderer who makes a request for the documents on payment of cost along with postal charges at the risk and responsibility of the prospective tenderer.

¹ Substituted. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

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Substituted. [TNGGE No.127 / 22-05-2001 (No.SRO A-19(c))/2007) - G.O.Ms.No.177 / 22nd May, 2007].

¹ Substituted. [TNGGE No.127 / 22-05-2001 (No.SRO A-19(c))/2007) - G.O.Ms.No.177 / 22nd May, 2007].

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Substituted. [TNGGE No.127 / 22-05-2001 (No.SRO A-19(c))/2007) - G.O.Ms.No.177 / 22nd May, 2007].

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17.

Tender Documents.- 21

Clarification to

[(1) At any

time after the issue of the tender documents and before the opening of the tender, the Tender Inviting Authority may make any changes, modifications or amendments to the tender documents and shall send intimation of such change to all those who have purchased the original tender documents and upload corrigendum for the information of those who have downloaded the tender documents from the website.]

²²[(2) In case any tenderer asks for a clarification on the tender documents before 48 hours of the opening of the tender, the Tender Inviting Authority shall ensure that a reply is sent and copies of the reply to the clarification sought shall be communicated to all those who have purchased the tender documents without identifying the source of the query and upload such clarification to the designated website for the information of those who have downloaded the tender documents from the website, without identifying the source of the query.]

²¹Substituted. [TNGGE No.272A / 30-09-2007 (No.SRO A-44(a-1)/2007) - G.O.Ms.No.471 / 30th Sept., 2007].

²²Substituted. [TNGGE No.272A / 30-09-2007 (No.SRO A-44(a-1)/2007) - G.O.Ms.No.471 / 30th Sept., 2007].

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CHAPTER-V.

**RECEIPT OF TENDERS AND TENDER
OPENING.**

18. **Place and time for receipt of tenders.-** 23[(1) The

Tender Inviting Authority shall ensure that adequate arrangements are made for the proper receipt and safe custody of the tenders at the place indicated for the receipt of tenders. Such of the tenders that are received through electronic mail shall be kept electronically locked.]

(2) The Tender Inviting Authority shall take all measures to ensure that no intending tenderer is hindered in submitting his tender.

²⁴[(3) The Tender Inviting Authority shall permit the submission of tenders by post or courier or by electronic submission through the designated website, wherever applicable.

Provided that the Tender Inviting Authority shall not be responsible for any delay in transit in such cases.]

(4) The Tender Inviting Authority shall not accept any tenders submitted by facsimile (fax) 25 [...].

(5) The Tender Inviting Authority may extend the last date and time for receiving tenders 26 [which shall be published on the designated website also] after giving adequate notice to all intending tenderers in cases where: -

(a) the publication of the tender notice has been delayed;

² Substituted. [TNGGE No.272A / 30-09-2007 (No.SRO A-44(a-1)/2007) - G.O.Ms.No.471 / 30th Sept., 2007].

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Substituted. [TNGGE No.272A / 30-09-2007 (No.SRO A-44(a-1)/2007) - G.O.Ms.No.471 / 30th Sept., 2007].

² Omitted. [TNGGE No.272A / 30-09-2007 (No.SRO A-44(a-1)/2007) - G.O.Ms.No.471 / 30th Sept., 2007].

² Inserted. [TNGGE No.272A / 30-09-2007 (No.SRO A-44(a-1)/2007) - G.O.Ms.No.471 / 30th Sept., 2007].

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(b) the communication of changes, in the tender documents to the prospective tenderers under sub-rule (1) of rule 17 took time;

(c) any of the tenderers requested clarifications, the communication of which took time to all the tenderers; and

(d) any other reasonable grounds exist, for such extension which shall be recorded in writing by the Tender Inviting Authority.

²⁷[(e) in the case of tenders not submitted electronically, the tenderer shall ensure that all the pages are serially numbered and the submitted tender documents are properly stitched and bound.]

19. Marking of covers in which the tender is submitted.- The tenderer shall be responsible for properly superscribing and sealing the cover in which the tender is submitted and the Tender Inviting Authority shall not be responsible for accidental opening of the covers that are not properly superscripted and sealed as required in the tender documents before the time appointed for tender opening.

20.

Minimum time for submission of tenders.- (1)

The Tender Inviting Authority shall ensure that adequate time is provided for the submission of tenders and a minimum time is allowed between date of publication of the Notice Inviting Tenders in the relevant Tender Bulletin or in the newspapers whichever is later and the last date for submission of tenders. This minimum period shall be as follows.-

(a) for tenders upto rupees two crores in value, fifteen days; and

²⁷ Added. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

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(b) for tenders in excess of rupees two crores in value, thirty days.

(2) Any reduction in the time stipulated as per sub-rule (1) has to be specifically authorized by an authority superior to the Tender Inviting Authority for reasons to be recorded in writing.

²⁸ [**20-A. Withdrawal of Tenders Before Opening:-** (1) No tenderer shall be allowed to withdraw the tenders after submitting the tender.

(2) A Tenderer may submit a modified tender before the last date for receipt of tender:

Provided that where more than one tender is submitted by the same tenderer, the lowest eligible financial tender shall be considered for evaluation.]

21. **Opening of Tenders.-** (1) All the tenders received by the 29 [Tender Inviting Authority] shall be 30 [opened at the time and venue] specified in the Notice Inviting Tenders and in cases where an extension of time for the submission of tenders has been given subsequent to the original Notice Inviting Tenders in accordance with sub-rule (5) of rule 18 at the time so specified subsequently. ³¹[The e-submitted tenders may be permitted to be opened by a Tender Inviting Authority or a member of the Tender Scrutiny Committee from their new location if they are transferred after the issue of Notice Inviting Tender and before tender opening and where the new incumbent is yet to obtain his digital signature certified.]

² Added. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

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Substituted. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

³ Substituted. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

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Added. [TNGGE No.272A / 30-09-2007 (No.SRO A-44(a-1)/2007) - G.O.Ms.No.471 / 30th September, 2007].

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(2) The time specified for the opening of tenders shall be immediately after the closing time specified for the receipt of tenders allowing a reasonable period, not exceeding one hour, for the transportation of the tenders received to the place they are to be opened in the presence of the tenderers who choose to be present.

(3) The tenders will be opened in the presence of the tenderers or one representative of the tenderer who chooses to be present.

22. **Procedure to be followed at tender opening.**- The following procedure shall be followed at the tender opening.-

³²[(a) All the envelopes containing tenders and the tenders received through the electronic mail in the designated website shall be counted.]

(b) All the tenders received in time shall be opened.

³³[(c) Any tender received subsequently shall not be opened and shall be returned unopened to the tenderer and in the case of tenders submitted through electronic mail in the designated website, a report on the late submission of tenders shall be generated and the same shall be sent to the tenderers concerned.];

(d) On opening of the tender, the members of the Tender Scrutiny Committee shall initial the main bid including the prices and any corrections;

(e) A record of the corrections noticed at the time of the bid opening shall be maintained;

³²Substituted. [TNGGE No.272A / 30-09-2007 (No.SRO A-44(a-1)/2007) - G.O.Ms.No.471 / 30th Sept., 2007].

³³Substituted. [TNGGE No.272A / 30-09-2007 (No.SRO A-44(a-1)/2007) - G.O.Ms.No.471 / 30th Sept., 2007].

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(f) The name of the tenderers and the quoted prices should be read out aloud.

(g) the fact whether earnest money deposit has been submitted and other documents required produced may be indicated, but this shall be merely an examination of the documents and not an evaluation;

(h) Minutes of the tender opening shall be recorded.³⁴ [...]

³⁵[(i) The signatures of all the tenderers present shall be obtained and if any of the tenderers or his representative refuses to sign the minutes, the same shall be recorded.]

23. Changes and alterations not to be permitted after tender opening.- No changes, amendments which materially alter the tendered prices shall be permitted after the opening of the tender, except as per the procedure prescribed in sub-section (3) of section 10 of the Act.

24. **Tender Scrutiny Committee.-** (1) A Tender Scrutiny Committee may be constituted to scrutinize the tender documents, supervise opening of tenders, to carry out the preliminary examination and detailed evaluation of the tenders received and to prepare an evaluation report for the consideration of the Tender Accepting Authority.

(2) The constitution of a Tender Scrutiny Committee will be obligatory in all cases where the value of the procurement exceeds limit as may be specified.

³ Omitted. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

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Added. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

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CHAPTER-VI.

TENDER EVALUATION.

25. Tender evaluation to be in accordance with evaluation criteria.- The Tender Accepting Authority shall cause the evaluation of tenders to be carried out strictly in accordance with the evaluation criteria indicated in the tender documents.

26. Time taken for evaluation and extension of tender validity.- (1) The evaluation of tenders and award of contract shall be completed, as far as may be practicable, within the period for which the tenders are held valid.

(2) The Tender Accepting Authority ³⁶ [may] seek extension of the validity of tenders for the completion of evaluation.

³⁷[Provided that sum total of all extensions shall ordinarily not exceed 180 (one hundred and eighty) days.]

(3) In case the evaluation of tenders and award of contract is not completed within extended validity period, all the tenders shall be deemed to have become invalid and fresh tenders may be called for.

27. Process of tender evaluation to be confidential until the award of the contract is notified.- (1) Subject to the provision of 38 [sections 13 and 14 of the Act], the Tender Inviting Authority shall ensure the confidentiality of the process of tender evaluation until orders on the tenders are passed.

³ Substituted. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

³ Added. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

³ Substituted. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

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(2) The Tender Accepting Authority shall cause the information on orders passed on the tenders published in the Tender Bulletin.

(3) Tenderers shall not make attempts to establish unsolicited and unauthorised contact with the Tender Accepting Authority, Tender Inviting Authority or Tender Scrutiny Committee after the opening of the Tender and prior to the notification of the Award and any attempt by any tenderer to bring to bear extraneous pressures on the Tender Accepting Authority shall be sufficient reason to disqualify the tenderer.

(4) Notwithstanding anything contained in sub-rule (3), the Tender Inviting Authority or the Tender Accepting Authority may seek bonafide clarifications from tenderers relating to the tenders submitted by them during the evaluation of tenders.

28. Initial examination to determine substantial responsiveness.- (1) The Tender Inviting Authority shall cause an initial examination of the tenders submitted to be carried out in order to determine their substantial responsiveness.

(2) The initial examination shall consider the following factors, namely:-

(a) Whether the tenderer meets the eligibility criteria laid down in the tender documents;

³⁹(b)(i) whether the crucial documents have been duly signed;

(ii) whether the documents have been authenticated by digital signature, in the case of tenders submitted through electronic mail in the designated website.]

(c) Whether the requisite Earnest Money Deposit (EMD) has been furnished;

³⁹Substituted. [TNGGE No.272A / 30-09-2007 (No.SRO A-44(a-1)/2007) - G.O.Ms.No.471 / 30th Sept., 2007]

TAMIL NADU TRANSPARENCY IN TENDERS RULES, 2000.

(d) Whether the tender is substantially responsive to the technical specifications, commercial conditions set out in the bidding documents including the testing of samples where required.

(3) Tenders which on initial examination are found not to be substantially responsive under any of the clauses under sub-rule (2) may be rejected by the Tender Accepting Authority.

29.

Determination of the lowest evaluated price.-

(1) Out of the tenders found to be substantially responsive after the initial examination, the tenderers who has bid the lowest evaluated price in accordance with the evaluation criteria or the tenderers scoring the highest on the evaluation criteria specified as the case may be shall be determined.

(2) In determining the lowest evaluated price, the following factors shall be considered, namely:-

(a) the quoted price shall be corrected for arithmetical errors;

(b) in cases of discrepancy between the prices quoted in words and in figures, lower of the two shall be considered;

(c) adjustments to the price quoted shall be made for deviations in the commercial conditions such as the delivery schedules and minor variations in the payment terms which are quantifiable but deemed to be non-material in the context of the particular tender;

⁴⁰[(d) the evaluation shall include all central duties such as customs duty and central excise duty and sales tax as a part of the price, as detailed below: -

(i) in evaluation of the price of an imported item, the price has to be determined inclusive of the customs duty;

⁴⁰Substituted. [TNGGE No.281 / 09-10-2003 (No.SRO A-42(e)/2003) - G.O.Ms.No.412 / 09th October, 2003]

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(ii) in evaluation of the price of articles which are subject to excise duty, the price has to be determined inclusive of such excise duty;

(iii) in a tender where all the tenderers are from within the State of Tamil Nadu, or where all the tenderers are from outside the State of Tamil Nadu, the 41 [Value Added Tax] shall be included for the evaluation of the price; and

(iv) In a tender where the tenderers are both from the State of Tamil Nadu as well as from outside the State of Tamil Nadu, 42 [the Value Added Tax levied under Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)] shall be excluded for the evaluation of the price.]

(e) in the case of purchase of equipment, the operation and maintenance and spare part costs for appropriate periods as may be specified in bid documents may be quantified, where practicable and considered.

⁴³(f) 44

[...]

(3) In order to secure the best possible procurement price, negotiations with tenderer determined as per ⁴⁵[sub-rules (1) and (2) of this rule] are permissible subject to provisions in section 10 of the Act.

⁴⁶[(4) In the event that two or more tenderers have made the same financial bid and the splitting of the tender is not possible in accordance with sub-section (5) of section 10 of the Act, the Tender Accepting Authority shall identify the lowest tenderer by adopting one of the following approaches, which shall be pre-specified in the Tender Documents:

⁴ Substituted. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

⁴

Substituted.[TNGG No.44 / 21-11-2001 (No.SRO A-72 (m-a)/2001) - G.O.Ms.No.452 / 16th November, 2001].
(w.e.f. 1-12-2001).

⁴ Added. [TNGG No.44 / 21-11-2001 (No.SRO A-72(m-a)/2001) - G.O.Ms.No.452 / 16th November, 2001].

³ (w.e.f. 1-12-2001)

⁴

Omitted. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

⁴ Substituted. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

⁴

Added. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

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(a) In case of multi-stage tenders, by taking into account the qualification score of each tenderer from the first stage and the tenderer with higher score shall be adjudged the Lowest Tenderer; or

(b) By asking the two tenderers to provide their best and final offer of the financial bid in a sealed cover and the tenderer offering the most advantageous financial bid shall be adjudged the Lowest Tenderer.

(c) In case, a tie still persists after the procedure contained in clause (a) or (b) of this sub-rule has been followed, the selected tenderer shall be identified by draw of lots, which shall be conducted, with prior notice, in the presence of the tied tenderers or their representatives who choose to be present.]

⁴⁷[**29-A. Treatment of Speculative Tenders.-** (1) The Tender Accepting Authority may reject a tender, if it has determined that the financial bid in combination with other constituent elements of the tender is abnormally low or abnormally high in relation to the subject matter of the procurement and raises concerns with such authority as to the ability of the tenderer to perform the contract.

(2) Before arriving at a determination under sub-rule (1), the Tender Accepting Authority may in writing seek such other information from the tenderers as it considers relevant.

(3) The decision of the Tender Accepting Authority to reject a submission in accordance with this rule and the reasons for that decision, and all communications with the tenderer under this rule shall be included in the record of the Tender Proceedings.

(4) The decision of the Tender Accepting Authority and the reasons therefor shall be promptly communicated to the tenderer concerned.]

⁴⁷Added. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

TAMIL NADU TRANSPARENCY IN TENDERS RULES, 2000.

30. Preparation of Evaluation Report and Award of

Tenders.- (1) The Tender Scrutiny Committee or the officer evaluating the tender shall prepare detailed evaluation report which shall be considered by the Tender Accepting Authority before taking a final decision on the tender.

(2) The evaluation report shall be prepared in the standardized format as may be prescribed.

(3) As soon as the tenderer qualified to perform the contract is identified, in accordance with section 10(6) of the Act, the Tender Accepting Authority shall pass orders accepting the tender and communicate the order of acceptance to the successful tenderer. The Tender Accepting Authority will also send to the Tender Bulletin Officer a statement of evaluation of the tenders with a comparative statement of tenders received and decision thereon for publication in the Tender Bulletin.

(4) Within such reasonable time as may be indicated in the tender documents, the tenderer whose tender has been accepted will be required to execute the contract agreement in the prescribed format.

(5) In case the successful tenderer fails to execute necessary agreements as prescribed within the period specified, then his Earnest Money Deposit (EMD) shall be forfeited and his tender held as non-responsive.

TAMIL NADU TRANSPARENCY IN TENDERS RULES, 2000.

CHAPTER-VII.

EVALUATION AND AWARD OF TENDERS IN SPECIAL CASES.

31. **Procurement in Special Cases.-** In the case of purchase of goods where the quantity offered at the lowest price is less than the total quantity required, the Tender Accepting Authority may, after placing orders with the lowest evaluated tenderer for the entire quantity offered by such tenderer subject to his ability to supply, adopt either or both of the following procedures to procure the balance quantity.-

(1) Negotiate with the next lowest tenderers in strict ascending order of evaluated price and require them to match the price offered by the lowest evaluated tenderer and place orders until the entire quantity required is ordered; or

(2) Require all the other eligible tenderers who participated in the tender and offered a price higher than that offered by the lowest evaluated tenderer, to submit sealed offers of the quantity they would be willing to supply at the price quoted by the lowest evaluated tenderer, and thereafter place orders for the remaining required quantity with all those who match the lowest evaluated price such that those who bid lower prices in the original tender get a higher priority for supply.

(3) In case the bidders other than the lowest evaluated bidder fail to agree to accept the lowest price or the total quantity offered by them at the price quoted by the tenderer with lowest evaluated price is less than the required quantity the Tender Accepting Authority may place orders for remaining required quantity at different rates with different suppliers in the ascending order of evaluated price until the entire quantity required is covered:

Provided that, where different quantities have to be procured at more than one price from one or more tenderers, the Tender Accepting Authority may decide not to procure beyond a price considered economical although the entire quantity originally stated to be required in the tender documents is not ordered.

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(4) In cases where, the Tender Accepting Authority such as Tamil Nadu Electricity Board, Tamil Nadu Civil Supplies Corporation, Project Director, Integrated Child Development Scheme (ICDS) ⁴⁸[and Tamil Nadu State Transport Corporations] is of the view that the commodity to be purchased is so vital in nature and the failure in supply would affect the public interest and that it is necessary to have more than one supplier, the Authority may place orders on the tenderer quoting the lowest evaluated price for not less than 60% of the quantity covered in the tender at the price quoted by him and place orders for the remaining quantity on the tenderers quoting the next lowest evaluated prices at the lowest evaluated price and shall specify this in the tender documents.

⁴⁹[Provided that the commodity to be purchased by the Tamil Nadu State Transport Corporations shall be restricted to bus chassis only].

⁵⁰ [**31-A. Fixed Rate Contract.-** (1) In cases where the prices offered by the Lowest Tenderer are in the opinion of the Tender Accepting Authority higher than the schedule of rates or the prevailing market price and the quantity of goods or services to be procured are of such volume or are required to be delivered at different locations or at different points in time such that it is not practical for the entire supply to be effected by only one or a few suppliers, such authority may for reasons to be recorded in writing and after obtaining the prior approval of Government, follow the fixed rate contract procedure.

⁴ Inserted. [TNGGE No.183 / 23-03-2002 (No.SRO A-17(b)/2002) - G.O.Ms.No.107 / 23rd March, 2002].

⁴

Added. [TNGG No.40 / 09-10-2007 (No.SRO A-52/2002) - G.O.Ms.No.286 / 13th August, 2002].

⁵⁰ Inserted. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

TAMIL NADU TRANSPARENCY IN TENDERS RULES, 2000.

(2) The rates for the supply of the goods or services will be determined through a process which shall include the following steps:-:

- (a) Open tenders shall be or shall have been called from all eligible tenderers and the rates quoted shall be taken into consideration;
- (b) The rates quoted by the eligible Lowest Tenderer in the open tender shall be compared with the prevailing market rate and the rates of the previous period and if the Tender Accepting Authority is of the view that the quoted rates are too high, the Authority may negotiate with the Lowest Tenderer to ascertain whether further reduction in rates is possible;
- (c) If after negotiations, the Tender Accepting Authority is of the view that the rates are still too high with reference to rates of the previous period or prevailing market rates, the Tender Accepting Authority may after considering relevant factors, determine and notify an appropriate rate, as the fixed rate.
- (d) All eligible suppliers who accept the fixed rate shall be enlisted by the Procuring Entity for delivery of services.
- (e) Where the Procuring Entity deems fit, it may issue an advertisement indicating the rates fixed and call for enrollment of more suppliers at these rates subject to such suppliers fulfilling the eligibility criteria.
- (f) Orders for supply of goods or services from the enlisted suppliers shall be placed on the basis of transparent criteria to be indicated in the tender documents or advertisement as the case may be, and shall *inter alia*, include the capacity to supply, past performance of the suppliers where applicable, and giving due priority to the supplier or suppliers who participated in the initial tender and offered the lowest rate.]

TAMIL NADU TRANSPARENCY IN TENDERS RULES, 2000.

32. 51[Pre-qualification Procedure in a single stage, two cover system].- (1) The Tender Inviting Authority shall for reasons to be recorded in writing provide for pre-qualification of tenderers on the basis of,-

- (a) experience and past performance in the execution of similar contracts;
- (b) capabilities of the tenderer with respect to personnel, equipment and construction or manufacturing facilities;
- (c) financial status and capacity

(2) Only the bids of pre-qualified bidders shall be considered for evaluation.

⁵²[32-A. Pre-qualification with Multi-stage Tendering.- (1) A Procuring Entity may invoke the multi-stage tendering process in cases where:

- (a) The Procuring Entity assesses that discussions with tenderers are needed to refine aspects of the description of the subject matter of the procurement and to formulate them with precision in order to allow the Procuring Entity to obtain the most satisfactory solution to its procurement needs; or
- (b) the successful tenderer is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement; and
- (c) in any other case for reasons to be recorded in writing.

⁵ Substituted. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December,

⁵

Inserted. [TNGGE No.345 / 11-12-2012 (No.SRO.A-36(a)/2012) - G.O.Ms.No.425 / 11th December, 2012].

TAMIL NADU TRANSPARENCY IN TENDERS RULES, 2000.

(2) Where the Procuring Entity invokes the multi-stage tendering process, the Tender Inviting Authority shall call for initial submissions containing their applications or proposals without a financial bid, containing the following items, namely:-

(a) proposals relating to the technical, quality or performance characteristics of the subject matter of the procurement;

(b) contractual terms and conditions of supply:

(c) where relevant, the professional and technical competence, experience and qualifications of the tenderers.

(3) The Tender Accepting Authority may, in the first stage, engage in discussions with eligible tenderers concerning any aspect of their initial proposals:

Provided that when the Tender Accepting Authority engages in discussions with any tenderer, it shall extend equal opportunity to all eligible tenderers to participate in discussions.

(4) At the conclusion of the first stage, the Tender Accepting Authority shall pre-qualify the tenderers that fulfill the eligibility criteria, and promptly notify each tenderer whether or not it has been pre-qualified and shall upon request communicate to the tenderers that have not been pre-qualified the reasons therefor:

Provided that if the Tender Accepting Authority is of the view that the number of pre-qualified Tenderers is too small to have an effective competition, the authority may decide not to proceed further with the Tender.

(5) In the second stage, the Tender Accepting Authority shall invite financial tenders from the pre-qualified and short-listed tenderers.

(6) The final tenders received under sub-rule (5) shall be evaluated in order to ascertain the lowest evaluated tenderer in accordance with these rules.]

TAMIL NADU TRANSPARENCY IN TENDERS RULES, 2000.

33. **Low Value Procurement.**- 53[For the purposes of

clause (d) of section 16 of the Act, ‘ **Low Value Procurement** ’ means any procurement, which is less than **rupees twenty five lakhs in value for construction** and which is less than **rupees ten lakhs in value for all other categories** of procurement inclusive of consultancies for construction.]

⁵³Substituted. [TNGGE No.212 / 18-08-2009 (No.SRO A-22(a)/2009) - G.O.Ms.No.392 / 18th August, 2009]

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(PUBLIC PRIVATE PARTNERSHIP
PROCUREMENT)RULES, 2012.**

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TAMIL NADU TRANSPARENCY IN TENDERS (PUBLIC PRIVATE PARTNERSHIP PROCUREMENT) RULES, 2012.1

In exercise of the powers conferred by sub-section (1) of section 22 of the Tamil Nadu Transparency in Tenders Act, 1998 (Tamil Nadu Act 43 of 1998), the Governor of Tamil Nadu hereby makes the following rules, namely.-

CHAPTER-I.

PRELIMINARY.

1. **Short title, commencement and extent.**- (1) These rules shall be called the Tamil Nadu Transparency in Tenders (Public Private Partnership Procurement) Rules, 2012.

(2) These rules shall come into force on the 26th day of November, 2012.

(3) These rules will apply to all procurement for Public Private Partnership (PPP) Projects of a value of more than rupees twenty five lakhs by any Procuring Entity.

2. **Definitions.**- In these rules, unless there is anything repugnant in the subject or context.-

(a) “**Act**” means the Tamil Nadu Transparency in Tenders Act, 1998 (Tamil Nadu Act 43 of 1998);

(b) “**Applicant**” means an entity which has submitted or is likely to submit a response to the Request for Expression of Interest (REOI) or Request for Qualification (RFQ), as the case may be;

¹ Published in Part-III – Section 1(a) of Tamil Nadu Government Gazette, Extraordinary No.328, Dated 26th November 2012. [(No.SRO.A-35 (a) / 2012 - G.O.Ms.No.409 / 26th November, 2012].

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(c) “**Application**” means the submission made in response to a Request for Qualification (RFQ);

(d) “**Appointed Date** ” means the date on which the Concession Agreement comes into force and effect in accordance with the terms outlined therein;

(e) “**Concessionaire**” means the private sector participant which has entered into a Public-Private Partnership;

(f) “**Concession Agreement** ” means an agreement entered into between a Procuring Entity and a private sector participant for and in respect of a Public-Private Partnership;

(g) “**Conditions Precedent** ” means the obligations which the Procuring Entity or the Concessionaire or both may be required to fulfill prior to the financial closure of the Public Private Partnership (PPP) Project, unless waived in writing by the relevant party in accordance with the terms of the Concession Agreement;

(h) “**Consortium**” means a tenderer comprising of two or more entities for the purpose of responding to a Tender Document, such that if the consortium includes a public sector entity or entities, such public sector entity or entities do not have a controlling stake in the consortium;

(i) “**Contingent Liability**” means a liability accruing to a Procuring Entity through the Concession Agreement or Public Private Partnership (PPP) Project on the occurrence or non-occurrence of an uncertain future event;

(j) “**Due Date** ” means the date on which a tender submission is due in response to a Request for Expression of Interest (REOI) or a Request for Qualifications (RFQ) or a Request for Technical Proposals (RTP) or a Request for Proposals (RFP);

**TAMIL NADU TRANSPARENCY IN TENDERS (PUBLIC
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(k) “**Expression of Interest (EOI)** ” means the submission made in response to a Request for Expression of Interest (REOI);

(l) “**Final Offer**” means the commercial offer made by a tenderer on the basis of the single criterion specified in the Request for Proposal (RFP);

(m) “**Feasibility Study**” means a preliminary study made for investment decision-making, to assess the technical, social, economic and financial viability and the social and environmental impact of a Project including the demand for the services, appropriate technology to be adopted, capital cost, time required for implementation, and such other information as may be prescribed;

(n) “**Independent Auditor** ” means an auditor appointed under rule 45;

(o) “**Independent Engineer** ” means an Engineer appointed under rule 46;

(p) “**Lead Member of Consortium**” means a member of a consortium who has been designated as the lead member by the Consortium and shall possess such qualifications as may be prescribed in the tender documents;

(q) “**Letter of Award (LOA)** ” means the Letter of Award issued by the Procuring Entity to the Lowest Tenderer in accordance with rule 56;

(r) “**Minimum Technical Requirements (MTR)**” means the minimum technical requirements as described in rule 37;

(s) “**Notice Inviting Tenders** ” means for the purposes of these rules, the Notice of Request for Qualification (RFQ) in all cases where rules 4, 5 and 6 apply and to the Notice of Request for Proposal (RFP) in cases where sub-rule (2) of rule 3 is invoked.

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(t) “**Performance Security** ” means a financial guarantee in the appropriate form including a security deposit or bank guarantee or both furnished by the Concessionaire to the Procuring Entity for the performance of its obligations under the Concession Agreement;

(u) “**Public Private Partnership (PPP)** ” means an arrangement between a public agency and a private sector participant for the provision of infrastructure through investment made or through design, development, construction, maintenance or operation undertaken by the private sector participant, where risks are allocated between them such that the private sector participant takes on the risk beyond the stage of design and construction and the payment for the services are performance linked, in the form of user charges, annuities or unitary payments;

(v) “**Project Value**” means:- (i) in case of Public Private Partnership (PPP) Projects where the private entity is expected to make capital investments, the value of the asset or facility to be constructed including the cost of land, if the cost of land is to be borne by the private entity; or

(ii) in case of Public Private Partnership (PPP) Projects where the private entity is not expected to make substantial capital investments, the current replacement value of the asset or facility, whose operation and maintenance is proposed to be the responsibility of private entity;

(w) “**Public Sector Comparator** ” means the estimated hypothetical risk-adjusted life cycle cost of a project if it were to be financed, owned and implemented solely by the government or its agency;

(x) “**Qualified Applicant**” means an Applicant that has been qualified in the Request for Qualification (RFQ) stage;

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(y) “**Request for Expression of Interest (REOI)**” means the Tender Document prepared and issued in accordance with Chapter-III;

(z) “**Request for Proposal (RFP)**” means the Tender Document prepared and issued in accordance with Chapter-VI;

(aa) “**Request for Qualification (RFQ)**” means the Tender Document prepared and issued in accordance with Chapter-IV;

(ab) “**Request for Technical Proposal (RTP)**” means the Tender Document prepared and issued in accordance with Chapter-V;

(ac) “**Response**” means any submission required to be made to the Tender Inviting Authority as per the Tender Documents;

(ad) “**Respondent**” means any entity or consortium that has submitted or is likely to submit a Response to the Tender Documents;

(ae) “**Total Project Cost**” means the lowest of the total project cost mentioned in the tender documents or actual capital cost of the project upon completion of the Project as certified by the Independent Engineer; or total project cost as set forth in the financing documents;

(af) “**Value for Money Assessment**” means the quantitative and qualitative assessment of the costs and benefits associated with a project. Value for Money Assessment is used to establish whether implementing a project in the Public Private Partnership (PPP) mode is an economically optimal proposition for the Government or the public agency and it takes into account direct and indirect project execution costs, financing costs, transaction costs, cost of asset transfer on project completion, project monitoring costs and a cost estimation of the possible risks thereof;

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(ag) “**Variation**” means changes which occur during the course of project development and delivery and shall be classified into the following forms:

(i) Day-to-day operational variations;

(ii) Known-variations that are likely to arise and whose nature is known, but time of occurrence and impact are unknown;

(ah) “**Viability Gap Funding**” means a capital grant or subsidy or equity from the Central or State Governments to render a Public Private Partnership (PPP) project financially viable and bankable.

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**TAMIL NADU TRANSPARENCY IN TENDERS (PUBLIC
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CHAPTER-II.

**PUBLIC PRIVATE PARTNERSHIP (PPP) -
PROJECT PROCUREMENT PLANNING.**

3. Identifying the procurement method for Public Private Partnership (PPP) Project.- (1) Save as provided for under these rules, a two-stage, open competitive tendering under rule 4 shall be the mode of procurement for a Public Private Partnership (PPP) Project.

(2) For Public Private Partnership (PPP) Projects with a value less than Rs.10 crore (Rupees Ten Crore), a single stage, two cover, open and competitive tendering may be adopted where the qualification information and technical proposal are received in one cover and the final offer is received in a separate cover.

(3) Under certain circumstances specified under these rules, the Procuring Entity may in addition to the two stages prescribed in sub-rule (1) issue a Request for Expression of Interest (REOI) or a Request for Technical Proposal (RTP) or both prior to the Request for Proposal (RFP).

(4) The Final Offer shall be in the form of a single objective criterion which shall be specified in the Request for Proposal (RFP).

4. **Two Stage Open Competitive Tendering.-** The two stage open competitive tendering shall include the following stages:

(a) Request for Qualification (RFQ) stage for short-listing Qualified Applicants, in accordance with Chapter-IV: and

(b) Request for Proposal (RFP) stage for selection of the most Lowest Tenderer, in accordance with Chapter-VI.

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5. Open Competitive Tendering with Request for Technical Proposal(RTP).- (1) Subject to the provisions of rule 4, in case of exceptionally complex Public Private Partnership (PPP) Projects, where the Procuring Entity seeks to assure itself that the Qualified Applicants completely understand its requirements, the Tender Inviting Authority may require that the Qualified Applicants to submit Technical Proposals prior to the Request for Proposal (RFP) stage.

(2) The Request for Technical Proposal stage shall be conducted as per the provisions of Chapter-V.

(3) In cases not covered under sub-rule (1), the Request for Technical Proposal (RTP) and Request for Proposal (RFP) stages shall be combined as per the provisions of rule 41.

6. Open Competitive Tendering with Request for Expressions of Interest (REOI).- In Projects where the Procuring Entity is unsure of the likely interest from private entities in the Project, or where it seeks to explore alternatives on how best to design the project scope or other parameters of the Project, the Procuring Entity may adopt multi-stage open competitive tendering involving a Request for Expressions of Interest, followed by a two or three-stage processes as per rule 4 or rule 5, as the case may be.

7. Formation of Tender Scrutiny and Evaluation Committee.- (1) For each stage of procurement under these rules, the Procuring Entity shall form a Tender Scrutiny and Evaluation Committee to evaluate the Responses received as part of the Tender Proceedings.

Provided that the same committee may be retained for all stages of the procurement.

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(2) The membership of the Tender Scrutiny and Evaluation Committee shall consist of:

- (a) The head of the Procuring Entity or his nominee, who shall serve as the Chairman of the Committee;
- (b) Secretary to Government of the Administrative Department concerned or his nominee;
- (c) Secretary to Government, Law Department or his nominee when considered essential;
- (d) Secretary to Government, Finance Department or his nominee;
- (e) Representative of the Tamil Nadu Infrastructure Development Board (TNIDB) for projects covered under the Act;

Provided that the same person may represent both Finance Department and the Tamil Nadu Infrastructure Development Board (TNIDB).

(f) Such other experts or persons not exceeding three in number with relevant experience that the Procuring Entity or the Government by general or specific order may include.

(3) The Tender Scrutiny and Evaluation Committee shall perform the following functions:-

- (a) Scrutinize and approve the tender documents prior to their issue and recommend any changes;
- (b) Supervise the conduct of pre-submission meetings and conferences with prospective tenderers;
- (c) Supervise the opening of tenders;
- (d) Carry out the preliminary examination and detailed evaluation of the tenders received; and

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(e) Prepare an evaluation report for the consideration of the Tender Accepting Authority.

8. **Engaging Consultants or Advisors.-** Where the Procuring Entity deems fit, it may engage the services of a consultant or advisor to assist the Tender Inviting Authority, the Tender Scrutiny and Evaluation Committee and the Tender Accepting Authority with the entire tender process or any stage thereof including the preparation of tender documents and the evaluation of tenders.

9. Information to be published in the State Tender Bulletin.- All Notices Inviting Tenders and decisions on tenders in respect of Public Private Partnership (PPP) projects shall be published in the State Tender Bulletin.

10. Details to be mentioned in Notice Inviting Tenders.- The Notice Inviting Tenders shall contain the following details, namely:-

- (a) The name, address and other contact details of the Procuring Entity and the designation and address of the Tender Inviting Authority;
- (b) Name of the project for which the procurement is to be effected;
- (c) The date upto which and places including websites from where the tender documents can be obtained;
- (d) The amount of Earnest Money Deposit (EMD), if any payable;
- (e) The last date, time and place for receipt of tenders;
- (f) The date, time and place for opening of tenders received; and
- (g) Any other information the Tender Inviting Authority considers relevant.

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11. Publication of Notice Inviting Tenders in Newspapers.- (1) The Tender Inviting Authority shall have the Notice Inviting Tenders published in the Indian Trade Journal in all cases where the project value exceeds rupees fifty crores.

(2) The competent authority to release the advertisement shall be the Director of Information and Public Relations, Chennai.

(3) The number, editions and language of the newspapers in which the Notice Inviting Tenders shall be published will be based on the value of procurement and adequate publication will be ensured in the Districts where the projects are to be implemented.

(4) For tenders for a project value above rupees fifty lakhs, the Director of Information and Public Relations, Chennai will publish the Notice Inviting Tenders as per instructions of the Procuring Entity and publication of Notice Inviting Tenders for an additional insertion shall not be made in newspapers not requested by the Procuring Entity for tenders above rupees fifty lakhs.

(5) Notwithstanding anything contained in sub-rule (4) for projects of a value exceeding rupees two hundred crores, the Notice Inviting Tenders shall be published, once every week for three consecutive weeks, in atleast two national level newspapers out of which, one will be a financial or business newspaper; and in one local newspaper, which is circulated in the district or city in which the project is to be implemented.

12. Publication in Notice Board, Website and sending Notice Inviting Tenders to all possible tenderers.-

(1) The Notice Inviting Tenders shall be published on the Notice Board of the offices of the concerned Public Agency, District Collectorate and other Public Offices.

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(2) The Notice Inviting Tenders shall be published on the website of the Procuring Entities, the Government of Tamil Nadu website and any other website as may be indicated by the Government.

(3) The Tender Inviting Authority may, if considers necessary, send the Notice Inviting Tenders to all possible tenderers including registered contractors, potential suppliers and any other well known company or firm directly.

13.

Supply of Tender Documents.- (1)

The Tender

Inviting Authority shall make available the tender documents from the date of publication of the Notice Inviting Tenders.

(2) The tender documents shall be made available for downloading from the website designated for this purpose by the Government and from such other websites as may be indicated by the Tender Inviting Authority on payment of such fees and in such manner as may be determined.

(3) The tender documents shall also be made available on payment of such fees as may be determined, including a service fee to cover the cost of printing at:-

(a) the office of the Tender Inviting Authority;

(b) any other office or place indicated by the Procuring Entity.

(4) The Tender Inviting Authority shall send by registered post or courier the tender documents to any prospective tenderer who makes a request for the documents on payment of fees along with postal charges at the risk and responsibility of the prospective tenderer.

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14. **Security.**- (1) The tenderers shall be required to provide an Earnest Money Deposit (EMD) ordinarily not exceeding two percent of the estimated total project cost, which shall be in the form of a demand draft, banker's cheque, specified small saving instrument or where the Procuring Entity deems fit, unconditional, irrevocable bank guarantee.

Provided that in case of operation and maintenance contracts, the Earnest Money Deposit (EMD) may be determined at a level not less than ten percent of the likely annual payments or two percent of the project value, whichever is less.

(2) The Earnest Money Deposit (EMD) shall be forfeited if the tenderer.-

(a) withdraws his tender after submission but before opening of the tender, or

(b) following the opening of tender, withdraws its tender

before expiration of the period of effectiveness of the tender; or

(c) fails to furnish the required Performance Security at the stage, the tenderer is required to do so as per the tender documents.

(3) The Earnest Money Deposit (EMD) shall remain valid for a period of not less than 30 (thirty) days beyond the period for validity of the tender specified in the tender documents in order to provide the Procuring Entity sufficient time to act if the security is to be called:

Provided that the Procuring Entity may seek extension of the period of validity of the tenders and of the Earnest Money Deposit (EMD).

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(4) The Earnest Money Deposit (EMD) of tenderers who have not been selected will be released not later than 60 (sixty) days after the expiration of the tender validity period, including any extension thereof, or 60 (sixty) days after the issue of the letter of award, whichever is earlier.

(5) The Earnest Money Deposit (EMD) of the Lowest Tenderer shall be discharged when that tenderer furnishes the required Performance Security.

(6) The Concessionaire shall be required as a condition precedent to provide Performance Security, ordinarily not exceeding 5% (five percent) of the Project Value and subject to any increase or decrease in the Project Value that may occur during contract performance:

Provided that in case of Operation and Maintenance contracts, the Performance Security may be determined at a level not more than 50% (fifty percent) of the likely annual payments due.

(7) The Performance Security shall be in the form of a demand draft, banker's cheque, specified small saving instrument, unconditional and irrevocable bank guarantee or where the Procuring Entity deems fit, in form of an escrow account or a combination of the different forms.

15. **Conflict of Interest.**- (1) It shall be the responsibility of Tender Inviting Authority and Tender Accepting Authority to ensure that the prospective tenderers do not have a conflict of interest that affects the Tender Proceedings.

(2) An Applicant or prospective tenderer shall be deemed to have a Conflict of Interest, if,-

(a) any other prospective tenderer or a member of consortium or any associate or constituent thereof have common controlling shareholders or other ownership interest; or

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(b) a constituent of such prospective tenderer is also a constituent of another prospective tenderer.

Provided that 'constituent' in such cases will not include the provider of a proprietary technology to more than one applicant; or

(c) such prospective tenderer, or any associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Applicant or Respondent, or any associate thereof has provided any such subsidy, grant, concessional loan or subordinated debt to any other Applicant or Respondent, its member or any associate thereof; or

(d) such prospective tenderer has the same legal representative for purposes of the Tender Proceedings as any other prospective tenderer; or

(e) such prospective tenderer, its member or any associate thereof, has a relationship with another prospective tenderer, or any associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Response of either or each other; or

(f) such prospective tenderer, its member or any associate thereof, has participated as a consultant to the Tender Inviting Authority and Tender Accepting Authority in the preparation of any documents, design or technical specifications of the Public Private Partnership (PPP) Project; or

(g) if any legal, financial or technical advisor of the Tender Inviting Authority and Tender Accepting Authority in relation to the Project is engaged by the prospective tenderer, its member or any associate thereof, as the case may be, in any manner for matters related to or incidental to the Project:

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Provided that this clause shall not apply where such advisor was engaged by the Applicant or Respondent, its member or associate in the past but such engagement expired or was terminated 6 (six) months prior to the date of issue of concerned Tender Document or where such advisor is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

16.

Clarifications on Tender

Documents.-

(1) The

Procuring Entity shall permit Respondents to seek clarifications on the Tender Documents and shall specify a last date for the submission of such clarifications in the Tender Documents.

Provided that the clarifications may be sought from the Tender Inviting Authority only in writing.

(2) The Tender Inviting Authorities shall specify in the Tender Documents the e-mail address, postal address and fax number to which the clarifications may be sent.

(3) The Tender Inviting Authority shall respond to any queries or requests for clarification received from a Respondent within the time as mentioned in sub-rule (1) that Respondent can make his response in a timely fashion.

(4) The Tender Inviting Authority shall, without disclosing the name of the Respondent seeking the clarification, communicate the clarification to all Respondents to whom it has provided the Tender Documents and shall also ensure that the clarifications are uploaded on the appropriate website.

17.

Pre-submission Meeting.- (1) After issue of the

Request for Qualification (RFQ) or Request for Technical Proposal (RTP) or Request for Proposal (RFP), as the case may be, the Tender Inviting Authority may, at its discretion, organize one or more pre-submission meetings for the purpose of clarifying the queries and understanding the concerns of the Respondents.

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(2) The Tender Inviting Authority shall consider comments and suggestions provided by the Respondents in the pre-submission meetings and, if required, revise the Tender Documents.

(3) The pre-submission meetings shall not be a substitute for any other manner of communication of queries by the Respondents.

(4) The Tender Inviting Authority shall maintain minutes and the list of attendees of the pre-submission meetings and circulate them to all attendees.

18. Modification of Tender Documents and Responses.- (1) Subject to specific provisions contained in these rules, at any time prior to the due date, the Procuring Entity may, whether on its own initiative or as a result of a query, suggestion or comment of an Applicant or a Respondent, modify the Tender Documents by issuing an addendum or a corrigendum.

(2) Any such addendum or corrigendum shall be communicated and will be binding on all Applicants or Respondents or Tenderers, as the case may be.

19. Manner, Place and Due Date for Submission of Responses.- (1) The Tender Inviting Authority shall ensure that adequate arrangements are made for the proper receipt and safe custody of the tenders at the place indicated for the receipt of tenders:

Provided that such of the tenders that are received through electronic mail shall be kept electronically locked.

(2) The Tender Inviting Authority shall take all measures to ensure that no intending tenderer is hindered in submitting his tender.

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(3) The Tender Inviting Authority shall permit the submission of tenders by post or courier or by electronic submission through the designated website, wherever applicable:

Provided that the Tender Inviting Authority shall not be responsible for any delay in transit in such cases.

(4) In the case of tenders not submitted electronically, the tenderer shall ensure that all the pages are serially numbered and the submitted tender documents are properly stitched and bound.

(5) The tenderer shall be responsible for properly superscribing and sealing the cover in which the tender is submitted and the Tender Inviting Authority shall not be responsible for accidental opening of covers that are not properly superscripted and sealed as required in the tender documents before the time appointed for opening of tenders.

(6) The Tender Inviting Authority shall not accept any tenders submitted by facsimile (fax).

(7) The Tender Inviting Authority may extend the last date and time for receiving tenders which shall be published on the designated website also after giving adequate notice to all intending tenderers in cases where: -

- (a) the publication of the tender notice has been delayed;
- (b) the communication of changes, in the tender documents to the prospective tenderers under sub-rule (1) of rule 18 took time;
- (c) any of the tenderers requested clarifications the communication of which to all the tenderers took time; and
- (d) any other reasonable grounds, for such extension exist, which shall be recorded in writing by the Tender Inviting Authority.

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20.

Tenders Before Opening.-

Withdrawal of

(1) No

tenderer shall be allowed to withdraw the tenders after submitting the tender.

(2) A Tenderer may submit a modified tender before the last date for receipt of tender.

Provided that where more than one tender is submitted by the same tenderer, the lowest eligible financial tender shall be considered for evaluation.

21.

Opening of Tenders.- (1) All the

tenders received

by the Tender Inviting Authority shall be opened at the time and the venue specified in the Notice Inviting Tenders and in cases where an extension of time for the submission of tenders has been given subsequent to the original Notice Inviting Tenders in accordance with sub-rule (7) of rule 19 at the time, so specified subsequently:

Provided that the e-tenders submitted may be permitted to be opened by a Tender Inviting Authority or a member of the Tender Scrutiny and Evaluation Committee from their new location, if they are transferred after the issue of Notice Inviting Tender and before opening of tenders and where the new incumbent is yet to obtain his digital signature certified.

(2) The time specified for the opening of tenders shall be immediately after the closing time specified for the receipt of tenders allowing a reasonable period, not exceeding one hour, for the transportation of the tenders received to the place they are to be opened.

(3) The tenders will be opened in the presence of the tenderers or their representative who choose to be present:

Provided that the Tender Inviting Authority may specify the number of representatives for each tenderer who may be permitted to be present.

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22. Procedure to be followed at Opening of Tenders.- The following procedure shall be followed at the opening of tenders.-

(a) All the envelopes containing tenders and the tenders received through the electronic mail in the designated website shall be counted;

(b) All the tenders received in time shall be opened;

(c) Any tender received subsequent to the time specified for receipt of tenders shall not be opened and shall be returned unopened to the tenderer and in the case of tenders submitted through electronic mail in the designated website, a report on the late submission of tenders shall be generated and the same shall be sent to the tenderer concerned;

(d) On opening of the tender, the members of the Tender Scrutiny and Evaluation Committee shall initial the main tender including the prices and any corrections;

(e) A record of the corrections noticed at the time of the opening of tenders shall be maintained;

(f) The name of the tenderers and the quoted prices should be read out aloud;

(g) The fact whether Earnest Money Deposit (EMD) has been submitted and the other required documents have been produced may be indicated, but this shall not constitute an initial examination under rule 24;

(h) Minutes of the opening of tenders shall be recorded;

(i) The signatures of all the tenderers present shall be obtained and if any of the tenderers or his representative refuses to sign that fact shall be recorded.

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23. Changes and alterations not to be permitted after Opening of Tenders.- No changes or amendments which materially alter the final submissions shall be permitted after the opening of tenders, except as laid down in sub-section (3) of section 10 of the Act and prescribed in rule 24.

24. Initial Examination to determine substantial responsiveness.- (1) The Tender Inviting Authority shall cause an initial examination of the tenders submitted to be carried out by the Tender Scrutiny and Evaluation Committee in order to determine their substantial responsiveness.

(2) The initial examination shall consider the following factors, namely:-

(a) Whether the tenderer meets the eligibility criteria laid down in the tender documents;

(b) (i) Whether the crucial documents have been duly signed;

(ii) Whether the documents have been authenticated by digital signature, in the case of tenders submitted through electronic mail in the designated website.

(c) Whether the requisite Earnest Money Deposit (EMD) with appropriate validity has been furnished;

(d) Whether the tender is substantially responsive to the technical specifications and commercial conditions set out in the tender documents.

(3) Tenders which on initial examination are found not to be substantially responsive under any of the clauses under sub-rule (2) shall be rejected by the Tender Accepting Authority and not taken up for further scrutiny.

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25.

qualification information.-

Clarifications on

The

Procuring Entity may, at any stage of the Tender Proceedings, ask any Applicant or Respondent for clarifications on its submission, in order to assist in the evaluation of such submission.

Provided that the Procuring Entity shall.-

(a) not seek or permit any substantive change to the submission, including changes aimed at qualifying an Applicant or a Respondent.

(b) not engage in negotiations with an Applicant or a Respondent with respect to the submission, pursuant to a clarification that is sought under this rule; and

(c) maintain in the record of Tender Proceedings, all communications generated under this rule.

26. **Confidentiality.-** (1) Subject to the provisions of sections 13 and 14 of the Act, the Tender Inviting Authority shall ensure the confidentiality of the process of tender evaluation until orders on the tenders are passed.

(2) The Tender Inviting Authority shall treat all information submitted as part of a Response, in confidence and will require all those who have access to such material to treat the same in confidence and shall not disclose any such information unless.-

(a) directed to do so by any statutory entity that has the power under law to require such disclosure; or

(b) such disclosure is to enforce or assert any right or privilege of the statutory entity or the Procuring Entity; or

(c) required to do so by law or in connection with any legal process.

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27.

Record of Tender

Proceedings.-

(1) The Procuring

Entity shall cause to be maintained a record of the Tender Proceedings.

(2) Such record shall, *inter-alia*, contain the following; namely:-

- (a) Subject matter of the procurement process;
- (b) Basic information, including names and addresses of the authorized representatives of Respondents;
- (c) The submissions made by the Respondents at each stage of the process;
- (d) The report or reports of the Tender Scrutiny and Evaluation Committee;
- (e) Statement of the reasons and circumstances relied upon by the Tender Inviting Authority and Tender Accepting Authority for decisions as part of the procurement process;
- (f) The requests for clarification and the responses thereof;
 - (g) Statement of reasons for rejection of tender;
 - (h) Principal terms of the Concession Agreement; and
- (i) The deviations, if any from the model tender documents where applicable.

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CHAPTER-III.

REQUEST FOR EXPRESSION OF INTEREST.

28. **Request for Expression of Interest (REOI).**- (1) In cases where the Procuring Entity decides to proceed under rule 6, the Tender Inviting Authority shall prepare the Request for Expression of Interest (REOI).

(2) The Request for Expression of Interest (REOI) shall, *inter-alia*, contain,-

- (a) the description of the Project;
- (b) the request for expressions of interest; (c)
- a closing date for seeking clarifications.

(3) The Request for Expression of Interest (REOI) shall be published in accordance with the provisions of rules 9, 10, 11 and 12.

(4) The Expression of Interest (EOI) shall not be used to either shortlist or disqualify tenderers and any entity which has not submitted an Expression of Interest (EOI) shall also be allowed to participate in the Request for Qualification (RFQ) stage as per terms and conditions that may be specified thereof.

(5) The Tender Inviting Authority may convene meetings to interact with Applicants, so as to facilitate greater interest and understanding of the proposed Project among potential private partners.

(6) The Tender Inviting Authority shall provide for the following minimum time periods in the schedule of the Request for Expression of Interest (REOI) stage:

- (a) The due date shall ordinarily be not less than 30 (thirty) days from the date of advertisement or notification of the Request for Expression of Interest (REOI) whichever is later;

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(b) Pre-submission meetings convened under sub-rule
(5) shall be held at least 7 (seven) days before the due date; (c)

The clarifications on the queries of Applicants shall
be issued not less than 4 (four) days before the due date; and

(d) Corrigenda or notifications of amendments in the Request for
Expression of Interest (REOI) shall be issued not less than 4
(four) days before the due date.

(7) In exceptional cases, the Tender Inviting Authority may at the
time of issuing Request for Expression of Interest (REOI) reduce
the minimum time limits prescribed in sub-rule (6) for reasons
to be recorded in writing and with the prior permission of the
authority superior to the Tender Inviting Authority:

Provided that in no case shall the due date be advanced after the
publication of the notification or advertisement of the Request
for Expression of Interest (REOI):

Provided further that in cases where the tender documents
require the clearance of the Tamil Nadu Infrastructure
Development Board under the Tamil Nadu Infrastructure
Development Act (Tamil Nadu Act 22 of 2012), such reduction
of time would have to be specifically authorized by the Board.

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CHAPTER-IV.

REQUEST FOR QUALIFICATION.

29. **Request for Qualification (RFQ).- (1)**

The Request

for Qualification (RFQ) called for under rule 4 is intended for the following purposes, namely:-

(a) publicise the information on the Public Private Partnership (PPP) Project and the services or infrastructure or both that the Procuring Entity seeks to obtain;

(b) communicate the proposed timeframes and the qualification criteria;

(c) ascertain the level of interest in the Project;

(d) provide an avenue through which prospective tenderers can comment on the proposed Project; and

(e) allow the Procuring Entity to qualify Applicants who are most capable of meeting project objectives over the project term for the Request for Technical Proposal (RTP) stage or Request for Proposal (RFP) stage or both.

(2) The Tender Inviting Authority preparing the Request for Qualification (RFQ) shall ensure that,-

(a) the Request for Qualification (RFQ) contains sufficient information to allow potential tenderers to form a view on whether they have sufficient capabilities and to identify potential partners for the Project; and

(b) the information requested from the Applicants is such that the Procuring Entity is enabled to qualify the Applicants on that basis.

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30. Contents of Request for Qualification (RFQ).-

The Request for Qualification (RFQ) document shall contain the following:

- (a) a description of the Project and the estimated Total Project Cost;
- (b) a description of the stages of the tender process and the proposed schedule of the Tender Proceedings;
- (c) the conditions of eligibility of Applicants, the information sought from Applicants for qualification and the form and procedure of the Application;
- (d) a description of the parameters and method of evaluating qualification of Applicants in order to identify Qualified Applicants that have the requisite capability to take up the Project; and
- (e) the criteria or conditions, if any, for the disqualification of Applicants, such as, Conflicts of Interest and other relevant considerations.

31.

Eligibility of Applicants.-

In addition to any other criteria for eligibility that may be prescribed in the Request for Qualification (RFQ) tender documents, in all cases, the following shall apply, whether or not they have been specifically provided for in the documents: -

- (a) the Applicant may be a single entity or a consortium. However, no Applicant applying individually or as a member of a consortium, as the case may be, can be member of another Applicant;
- (b) an Applicant may be a natural person, or a private entity, or a combination thereof, or a combination with a public agency.

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Provided that the public agency does not have a controlling interest in such combination, either with an existing agreement or the formal intent to enter into an agreement to form a consortium;

(c) no Applicant shall submit more than one application for the same Project and an Applicant applying individually or as a member of a consortium shall not be entitled to submit another application either individually or as a member of any consortium, as the case may be.

32. **Qualifying Criteria.-** (1) The qualifying criteria used by the Procuring Entity to evaluate the responses to the Request for Qualification (RFQ) shall be objective, equitable, unambiguous, and shall be clearly stated in the Request for Qualification (RFQ).

(2) The qualifying criteria shall cover the following aspects of the Applicant:

(a) the Applicant's experience and track record in delivering projects of similar nature;

(b) the Applicant's ability to deliver against the physical aspects of the Project including its ability and track record in delivering services under long-term contractual arrangements.

(c) the capability of the Applicant to invest the capital that would be needed for the Project:

(d) the ability of the Applicants to secure adequate funds on competitive terms, since Projects normally requires the Concessionaire to finance a substantial part of the Total Project Cost, if not the whole;

(e) the ability of the Applicant to support the contractual arrangements over the contract term.

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(3) Criteria for evaluation of financial capability shall be defined in terms of any or all of the following,-

(a) net worth of the Applicant as described in the tender documents;

(b) average annual turnover for a period not less than the immediately preceding three years derived from audited financial statements;

(c) average net cash accrual for a period not less than the immediately preceding three years derived from audited financial statements; and

(d) any other criteria relevant in the context of a particular Project.

(4) Based on the nature of the Project, the Procuring Entity may, in addition to the criteria prescribed in sub-rules (2) and (3), specify qualifying criteria in relation to the following areas, namely:-

(a) Existing commitment of the Applicant and capacity to deliver on the Project in addition to the existing commitments;

(b) Proposed team of experts, if the Project requires specialised technical expertise; and

(c) Experience of Applicant or the proposed team for working in local conditions where in the opinion of the Procuring Entity such conditions are expected to have a material impact on the development or operation of the proposed facility or service.

(d) Any other criteria relevant in the context of a particular Project.

(5) As far as may be practicable, the qualification criteria will be specified on a pass or fail basis to enable objective evaluation of the tenders.

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Explanation:- For the purpose of sub-rule (5), a pass or fail test would includes a test based on a marking system with a minimum score requirement.

33.

Schedule of Request

for Qualification (RFQ).-

(1) The following minimum periods shall be allowed by the Tender Inviting Authority while determining the schedule of Request for Qualification stage:

(a) The due date shall ordinarily be not earlier than 8 (eight) weeks from the date of advertisement or notification of the Request for Qualification (RFQ) whichever is later;

(b) Pre-submission meeting, if any, shall be held at least 3 (three) weeks before the due date;

(c) The clarifications on the queries of Applicants shall be issued not less than 1 (one) week before the due date; and

(d) Corrigenda or notifications of amendments in the Request for Qualification (RFQ) shall be issued not less than 1 (one) week before the due date.

(2) In exceptional cases, the Tender Inviting Authority may at the time of issuing the Request for Qualifications (RFQ) reduce the minimum time limits prescribed in sub-rule (1) for reasons to be recorded in writing and with the prior permission of the authority superior to the Tender Inviting Authority:

Provided that in no case shall the due date be advanced after the publication of the notification or advertisement of the Request for Qualification (RFQ):

Provided further that in cases where the tender documents require the clearance of the Tamil Nadu Infrastructure Development Board under the Tamil Nadu Infrastructure Development Act (Tamil Nadu Act 22 of 2012), such reduction of time would have to be specifically authorized by the Board.

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34. **Removal of Conflict of Interest.-** The Procuring Entity may allow an Applicant, within 10 (ten) days after the due date, to remove from its consortium any member who suffers from a Conflict of Interest under rule 15, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof.

35. **Evaluation of Applications.-** (1) The submitted Request for Qualification (RFQ) Applications shall be evaluated by the Tender Scrutiny and Evaluation Committee by using the qualifying criteria as specified in the Request for Qualification (RFQ).

(2) The Applicants shall be assessed on the basis of whether they achieve the pre-specified minimum pass or fail threshold.

Explanation:- For the purpose of sub-rule (2), a pass or fail test would include a test based on a marking system with a minimum score requirement.

(3) Only those applicants who clear the threshold shall be qualified for the next stage of the Tender Proceedings, as the case may be.

36. **Notification of Qualification.-** (1) The Procuring Entity shall promptly notify each Applicant in writing whether or not it has been qualified.

(2) The Procuring Entity shall make available to any person, the names of all Applicants that have been qualified.

(3) Only Applicants who have qualified are entitled to participate further in the Tender Proceedings.

(4) The Tender Accepting Authority may decide not to proceed further with the tender if the said authority is of the view that an adequate number of applicants have not qualified to have a competitive tender.

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CHAPTER-V.

REQUEST FOR TECHNICAL PROPOSAL.

37.

Proposal(RTP).-

to the provisions of rule 5, where the Procuring Entity determines that a Request for Technical Proposals (RTP) should be made prior to the Request for Proposals, the Tender Inviting Authority shall issue a Request for Technical Proposals to all qualified applicants.

(2) The Request for Technical Proposals (RTP) shall involve a technical evaluation in the form of a pass or fail test, and only submissions that pass the minimum technical criteria will be invited to submit a Final Offer at the Request for Proposal (RFP) stage.

Explanation:- For the purpose of sub-rule (2), a pass or fail test would includes a test based on a marking system with a minimum score requirement.

(3) The Request for Technical Proposals (RTP) shall specify the Minimum Technical Requirements (MTR), formulated based on the Feasibility Study or detailed project study or such other study.

(4) The Minimum Technical Requirements (MTR) shall be a description of outcomes that are sought to be achieved and not necessarily the means by which they are to be achieved and to the extent possible the Minimum Technical Requirements (MTR) shall be technology and brand neutral.

(5) The Minimum Technical Requirements (MTR) shall necessarily include the following:

(a) description of the scope of the Project; which shall mean the physical facilities that need to be constructed, the capacity of each such facility or its component and related aspects;

Request for Technical

(1) Subject

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(b) output specifications; which shall include a description of the target users, levels of service, quality standards and performance parameters;

(c) the design and safety codes or standards that the facility must comply to, including for management of social and environmental impacts;

(d) the operation requirements including the standards to be followed for operations of the facility and provision of service including standards for safety, security, labour relations, quality, monitoring, reporting and dissemination, service levels to be offered to customers including waiting times and standards for grievance redressal;

(e) maintenance requirements including the maintenance standards and schedule for compliance; and

(f) testing and performance monitoring requirements specifying the tests that would be carried out for performance monitoring and the key performance indicators that would be monitored.

(6) The Request for Technical Proposal (RTP) shall ordinarily require the Qualified Applicants to submit responses on the technical solution, business solution and financial plan for implementing the Project. The Procuring Entity shall define and document the specific requirements for Technical Proposal for each Project in the Request for Technical Proposal (RTP), which have not already been assessed at the Request for Qualification (RFQ) stage and shall ordinarily include:

(a) Basic information about the Qualified Applicant:

(i) Corporate information about the Qualified Applicant;

(ii) Constitutional documents of the Qualified Applicant;

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- (iii) Annual reports (if required);
 - (iv) Details about business activities including number of years of operation, certifications, tie ups and similar arrangements; and
 - (v) Any other documents considered relevant.
- (b) Experience of the Applicant, relevant to the Project:
- (i) Details of the project experience; and
 - (ii) Certificates and other documentation supporting the project experience;
- (c) Approach and methodology for implementation of the Project, including:
- (i) Understanding of the scope of work;
 - (ii) Technical solution proposed or the approach for implementation of the Project;
 - (iii) Activity plan and schedule;
 - (iv) Details of the facility or service proposed;
 - (v) Brief construction plan; and
 - (vi) Brief operations and maintenance plan;
- (d) Business plan for implementation of the Project, including.-
- (i) Organisation structure of the Concessionaire;
 - (ii) Marketing plan;
 - (iii) Environmental and social impact management plan;

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- (iv) Tie-ups and associations; and
 - (v) Identification of risks and risk management plan.
- (e) Financial plan for implementation of the Project, including.-
- (i) Sources of finances and their expected boundary conditions;
 - (ii) Plan for financial sustainability of the Public Private Partnership (PPP) Project; and
 - (iii) Projected financial assessments and key assumptions.
- (7) Each of the parameters shall be clearly defined for evaluation of the Technical Proposal and assigned a maximum score.
- (8) The threshold or cut-off score for the pass or fail test based on Minimum Technical Requirements shall be pre-determined and specified in the Request for Technical Proposal (RTP).

38. Schedule of Request for Technical Proposal (RTP).- (1) The following minimum period shall be allowed by the Tender Inviting Authority while determining the schedule of the Request for Technical Proposal (RTP) stage:

- (a) The due date shall not be less than 6 (six) weeks from the date of issue of the Request for Technical Proposal (RTP);
- (b) Pre-submission meeting shall be held at least 3 (three) weeks before the due date;

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(c) The clarifications on the queries of Qualified Applicants shall be issued not less than 1 (one) week before the due date; and

(d) Corrigenda or notifications of amendments in the Request for Technical Proposal (RTP) shall be issued not less than 1 (one) week before the due date.

(2) In exceptional cases, the Tender Inviting Authority may at the time of issuing the Request for Technical Proposal (RTP) reduce the minimum time limits prescribed in sub-rule (1) for reasons to be recorded in writing and with the prior permission of the authority superior to the Tender Inviting Authority:

Provided that in no case shall the due date be advanced after the issue of invitation of the Request for Technical Proposal (RTP).

Provided further that in cases where the tender documents require the clearance of the Tamil Nadu Infrastructure Development Board under the Tamil Nadu Infrastructure Development Act (Tamil Nadu Act 22 of 2012), such reduction of time would have to be specifically authorized by the Board.

39. **Technical Evaluation.**-(1) The submitted Technical Proposals shall be evaluated by the Tender Scrutiny and Evaluation Committee as per the criteria laid down in the Request for Technical Proposals (RTP).

(2) The Technical Proposals shall be evaluated on the basis of whether they achieve the minimum threshold or cut-off score specified in accordance with sub-rule (7) of rule 37.

40. Notification of passed Technical Proposals to Qualified Applicants.- (1) The Procuring Entity shall promptly notify each Qualified Applicant whether or not the Technical Proposal submitted by it has passed.

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(2) Only Qualified Applicants whose Technical Proposals have passed shall be entitled to participate further in the Tender Proceedings.

41. Combining Request for Technical Proposal with Request for Proposal.- (1) For cases not covered under sub-rule (1) of rule 37 to optimize cost and effort when the Project does not merit a separate stage of Request for Technical Proposal (RTP), the Procuring Entity may combine the Request for Technical Proposal (RTP) stage with the Request for Proposal (RFP) stage to ensure price competition through adequate number of tenders.

(2) For cases covered under sub-rule (1), the Technical Proposal and the Final Offer shall be submitted in separate sealed envelopes.

(3) The Tender Inviting Authority shall open only the Technical Proposal for evaluation on the due date and time. (4)

The Technical Proposal shall be evaluated based on the technical parameters announced in the Request for Proposal (RFP) and list of technically qualified tenderers announced.

(5) The Final Offers of only the technically qualified tenderers shall be opened, after due intimation of the time and place of opening and evaluated.

(6) In the event that Request for Technical Proposal (RTP) stage is proposed to be combined with the Request for Proposal (RFP) stage, the Procuring Entity shall ensure that the relevant provisions of rule 37 are reflected in the Request for Proposal (RFP).

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CHAPTER-VI.

REQUEST FOR PROPOSAL.

42. **Request for Proposal (RFP).**- (1) The
Tender

Inviting Authority shall prepare the Request for Proposal (RFP) and the Draft Concession Agreement and issue it to all the qualified applicants.

(2) The Request for Proposal (RFP) shall solicit the binding Final Offer from tenderers in a separate sealed cover.

(3) The Request for Proposal (RFP) shall contain the following.-

(a) Feasibility Report or Project Information Memorandum or both which will provide such information to tenderers as is required to evaluate the Project and estimate their Final Offer including:

- (i) Project objectives and rationale;
- (ii) Site details;
- (iii) Role of the public agency and stakeholders;
- (iv) Project scope in accordance with rule 43; and
- (v) Output specifications;

(b) Instruction to Tenderers which would define the process of tender submission and evaluation. This section shall include all procedures, terms and conditions which should be followed by the Tenderers for submission of their tenders and which would be followed by the Procuring Entity in accepting and evaluating the Tenders;

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(c) The draft Concession Agreement which shall govern the contractual relations between the Concessionaire and the Procuring Entity detailing the rights and obligations of both the parties, definition of the subject matter of the agreement, payment terms, performance obligations, defaults and their consequences, events of termination and other ancillary clauses as provided in Schedule-I of this rule.

(4) In case of any discrepancy between the Project Information Memorandum or the Feasibility Study Report and the Draft Concession Agreement, the Draft Concession Agreement shall prevail.

43. **Project Scope.-** (1) The Procuring Entity shall set out the detailed description of the Public Private Partnership (PPP) Project and the project scope in the Request for Proposal (RFP).

(2) To the extent practicable, the description of the Project and project scope shall be objective, functional and generic, and shall set out the relevant technical, quality and performance characteristics expected.

(3) There shall be no requirement for or reference to a particular trademark or trade name, patent, design or type, specific origin or producer unless there is no sufficiently precise or intelligible way of describing the characteristics of the project scope and specifications and provided that words such as “or equivalent” are included.

44. Revenue Sharing or Revenue Support Mechanisms.- (1) While preparing the draft Concession Agreement for any project, the Procuring Entity taking note of the monopoly nature of the public service to be provided by the Concessionaire under a Public Private Partnership (PPP) Project shall specifically consider whether to provide for revenue sharing or revenue support mechanisms within the Concession Agreement and if considered necessary, include necessary provisions in the Agreement.

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(2) The revenue-sharing or revenue support mechanism for the Project should be designed in such a way as to ensure that:

(a) the Concessionaire does not enjoy super-normal or wind fall profits and at the same time does not suffer due to unforeseen revenue-side risks.

(b) the mechanism does not curtail private efficiency and at the same time does not compensate the Concessionaire for risks rightfully meant to borne by the Concessionaire under the Concession Agreement.

45. Appointment and Role of Independent Auditor.-

(1) While preparing the draft Concession Agreement for any project, the Procuring Entity shall specifically consider the need to appoint an Independent Auditor for the project and if considered necessary, include necessary provisions in the Agreement.

(2) An Independent Auditor shall be appointed with the specific prior concurrence of the Procuring Entity and shall not be removed or replaced without the approval of the Procuring Entity.

(3) The Independent Auditor's scope of work shall be specified in the Concession Agreement and shall *inter-alia* include certifying the accuracy and correctness of any financial calculations or claims required to be made by Concessionaire under the Concession Agreement.

(4) The Independent Auditor shall prepare and submit to the Procuring Entity a quarterly report and such other special reports as the Procuring Entity may seek.

(5) An indicative scope of work for the Independent Auditor is provided for guidance in Schedule-II of this rule.

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46. Appointment and Role of Independent

Engineer.- (1) While preparing the draft Concession Agreement for any project, the Procuring Entity shall specifically consider the need to appoint an Independent Engineer for the project and if considered necessary, include necessary provisions in the Agreement.

(2) The Independent Engineer's scope of work shall be specified in the Concession Agreement and shall *inter-alia* include:

- (a) Review, inspection and monitoring of construction works, examination of the designs / drawings and conduct of tests;
- (b) Issue of progress reports and completion certificates during and after completion of the construction period;
- (c) Review and inspection of the operations and maintenance arrangements and monitoring compliance with the performance and maintenance standards, during the operations period;
- (d) Identifying delays and lapses that require action on part of the Procuring Entity for enforcing the agreement terms;
- (e) Determining the reasonableness of costs for any works or services, as required under the Concession Agreement;
- (f) Determining the period or extension thereof, for performing any duty or obligations, as required under the Concession Agreement;
- (g) Carrying out such responsibilities as are assigned by the Procuring Entity.

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(3) The Independent Engineer shall prepare and submit to the Procuring Entity a monthly progress report.

(4) An indicative scope of work for the Independent Engineer is provided for guidance in Schedule-III of this rule.

(5) The Independent Engineer shall, at the close of the Concession Agreement, take stock of the asset to be reverted to the Procuring Entity and submit a report on the same in comparison to the asset handed over for operation at commercial operations date and the value addition made thereon.

47.

Institution.-

Role of Lead Financial

(1) While

preparing the draft Concession Agreement for any project, the Procuring Entity shall specifically consider the need to include a provision to require the Concessionaire to identify a Lead Financial Institution and if considered necessary, include necessary provisions in the Agreement.

(2) Subject to sub rule (1), the Concession Agreement shall have provisions requiring the submission of quarterly reports by Lead Financial Institution to the Procuring Entity on the following aspects,- namely:-

(a) Financial progress,

(b) Statement of debt and equity contribution, and

(c) Any other relevant financial information, as required.

48.

Concession

Treatment of Variation.- (1) The

Agreement shall provide that day-to-day operational variations which have no material impact on the project variables should be managed by the Concessionaire.

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(2) The Concession Agreement may provide for the procedure for amending the Agreement as a consequence for known variations, and day-to-day operational variations that are likely to have a material impact on the Project.

(3) Such procedures for amendment shall take note of the nature of variation and its impact on contract terms and in case of material variations in contract terms, require an additional value for money assessment to be undertaken.

49 . Evaluation Criteria.- (1) The Request for Proposal (RFP) shall specify the commercial conditions of the Tender and the single criterion for the Final Offer which would be used to determine the Lowest Tenderer.

(2) The single criterion specified in the Request for Proposal (RFP) for the Final Offer may be any one or a combination of the following:

(a) state support sought;

(b) expected revenue including from sources such as property development and advertisement;

(c) tariff;

(d) present value of lifecycle cost;

(e) period of the concession;

(f) upfront premium;

(g) equity stake;

(h) share of subsidized facilities to the Procuring Entity; (i) revenue share;

(j) lease rent;

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(k) annuity payment;

(l) any other financial criterion relevant to the project;

(3) The Request for Proposal (RFP) shall clearly and specifically define the form and content of the Final Offer and state that the Lowest Tenderer shall be selected on the basis of the most advantageous Final Offer.

50.

Schedule of Request for

Proposal (RFP).-

(1) The

following minimum periods shall be followed by the Tender Inviting Authority while determining the schedule of the Request for Proposal (RFP) stage:

(a) The due date shall be no later than 8 (eight) weeks from the date of advertisement or notification of the Request for Proposal (RFP) whichever is later;

(b) Pre-submission meeting shall be held not less than 4 (four) weeks before the due date;

(c) The clarifications on the queries of Qualified Applicants shall be issued not less than 2 (two) weeks before the due date; and

(d) Corrigenda or notifications of amendments in the Request for Proposal (RFP) or Draft Concession Agreement

shall be issued not less than 1 (one) week before the due date.

(2) In exceptional cases, the Tender Inviting Authority may at the time of issuing the Request for Proposal (RFQ) reduce the minimum time limits prescribed in sub-rule (1) for reasons to be recorded in writing and with the prior permission of the authority superior to the Tender Inviting Authority.

Provided that in no case shall the due date be advanced after such date and time has been notified to the Qualified Applicants or Tenderers.

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Provided further that in cases where the tender documents require the clearance of the Tamil Nadu Infrastructure Development Board under the Tamil Nadu Infrastructure Development Act (Tamil Nadu Act 22 of 2012), such reduction of time would have to be specifically authorized by the Board.

51. **Data Room.-** (1) In cases where the Procuring

Entity is of the view that the Project requires substantial project related data to be made available to the prospective tenderers, the Procuring Entity shall maintain either a physical or a virtual data room or both where project-specific information shall be maintained.

(2) The data room shall be maintained in a single physical location or website, for a limited period of time, where the Tenderers shall be permitted only to review such documents, which are otherwise not distributed.

(3) All qualified applicants or prospective tenderers, as the case may be, shall be allowed to access the data room.

(4) The data room will be maintained by the Procuring Entity until the completion of the Request for Proposal (RFP) stage.

(5) The location and rules for accessing the data room shall be stated in the Request for Proposal (RFP).

52. **Site Visit.-** (1) If the Public Private Partnership (PPP) Project involves important site-related issues, a site visit shall be organised early in the Request for Proposal (RFP) stage.

(2) All qualified applicants or prospective tenderers, as the case may be, shall be invited to undertake the site visit.

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(3) Non-discriminatory access to the site facilities based on prior requests by the qualified applicants or prospective tenderers may also be allowed by the Tender Inviting Authority to the extent practicable and considered necessary.

53.

Consortium.-

Change in Composition of

(1)

Where the Tenderer is a consortium, change in the composition of a consortium may be permitted by the Procuring Entity prior to the due date, only where:

- (a) The application for such change is made not later than 15 (fifteen) days prior to the due date;
- (b) The lead member of the consortium remains unchanged;
- (c) Based on requirement, a substitute is proposed at least equal, in terms of financial or technical capacity or both, to the consortium member who is sought to be substituted;
- (d) The modified consortium continues to meet the pre-qualification and short-listing criteria for the Tender Proceedings;
- (e) The new member or members expressly adopt the Responses already made on behalf of the consortium as if party to it originally; and
- (f) The new member or members do not have a Conflict of Interest in terms of rule 15.

(2) Approval for change in the composition of a consortium shall be at the sole discretion of the Procuring Entity and shall be communicated by the Procuring Entity to the Tenderer in writing.

(3) The reconstituted consortium shall submit a revised agreement before the due date.

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54. **Effectiveness of Tenders.-** (1)

Tenders shall be in effect during the period of time specified in the Request for Proposal (RFP).

(2) Prior to the expiry of the period of validity of Tenders, the Procuring Entity may request Tenderers to extend the period for an additional specified period of time. A Tenderer may refuse the request without forfeiting its Earnest Money Deposit (EMD).

(3) If a Tenderer agrees to extend the period of validity of its Tender, the Procuring Entity shall procure an extension of the period of effectiveness of Earnest Money Deposit (EMD) as provided by such Tenderer or call for new Earnest Money Deposit (EMD) for the additional specified period of time.

(4) If a Tenderer has not extended the Earnest Money Deposit (EMD), or has not provided a fresh Earnest Money Deposit (EMD), it shall be considered as refusal of the request to extend the period of effectiveness of its Tender.

55. **Evaluation of Tenders.-** (1)

Evaluation of submitted Tenders shall be carried out by the Tender Scrutiny and Evaluation Committee.

(2) The Tender evaluation shall follow the pre-determined criteria as specified in the Request for Proposal (RFP).

56. **Selection of the Lowest Tenderer.-** (1)

All qualified tenders adjudged responsive shall be ranked in accordance with the evaluation criterion specified in Request for Proposal (RFP) and the Tenderer with the financially most advantageous Final Offer shall be the Lowest Tenderer.

(2) Subject to the provisions of sub section (3) of section 10 of the Act, the Tender Accepting Authority may negotiate with the Lowest Tenderer for a further improvement of the Final Offer.

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Provided that there shall be no negotiation on or changes to the provisions of the draft Concession Agreement.

(3) In the event that the Lowest Tenderer identified in accordance with sub-rule (1) is rejected in accordance with sub-section (4) of section 10 of the Act or withdraws, the Tender Accepting Authority may, in the second round of bidding invite all the remaining Tenderers to revalidate or extend their respective Earnest Money Deposit (EMD), as necessary, and match the Tender of the aforesaid Lowest Tenderer.

(4) If in the second round of bidding, only one Tenderer matches the aforesaid Lowest Tenderer, such Tenderer shall be selected the Lowest Tenderer. If in the second round of bidding, two or more Tenderers match the said Lowest Tenderer then the Tenderer whose Tender was lower or more advantageous as compared to other Tenderers in the first round of bidding shall be selected as the Lowest Tenderer.

Illustration: If the third and fifth ranked Tenderers in the first round of bidding offer to match the said first ranked Tenderer in the second round of bidding, the said third rank Tenderer shall be the Lowest Tenderer.

(5) In the event that no Tenderer offers to match the Lowest Tenderer in the second round of bidding as specified under this rule, the Tender Accepting Authority may for reasons to be recorded in writing, initiate a third round of bidding in which the said authority invites from all tenderers except the Lowest Tenderer of the first round of bidding or annul the tender process, as the case may be.

(6) In case, the Tenderers are invited for the third round of bidding, they will be required to revalidate or extend their tender security, as necessary, and offer fresh offers.

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Provided, however, that in such third round of bidding only such offers shall be eligible for consideration which are lower than the tender of the second Lowest Tenderer in the first round of bidding.

57. **Treatment of Two Equal Tenders** .- In the event that two or more Tenderers have quoted the same Final Offer, the Lowest Tenderer shall be identified by adopting one of the following approaches, which shall be pre-specified in the Tender Documents:

(a) by taking into account the aggregate experience score of each such tenderer from the Request for Qualification (RFQ) stage, wherein the Tenderer with higher score shall be adjudged the Lowest Tenderer; or

(b) by asking the Tenderers who have quoted the same Final Offer to provide their best and final offer. The Tenderer offering the most advantageous Final Offer at this stage shall be adjudged the Lowest Tenderer.

58. **Treatment of Speculative Tenders.-** (1) The Tender Accepting Authority may reject a tender if it has determined that the financial bid in combination with other constituent elements of the tender is abnormally low or abnormally high in relation to the subject matter of the procurement and raises concerns with such authority as to the ability of the Tenderer to perform the Public Private Partnership (PPP) contract.

(2) Before arriving at a determination under sub-rule (1), the Tender Accepting Authority may in writing seek such other information from the Tenderers as it considers relevant:

(3) The decision of the Tender Accepting Authority to reject a submission in accordance with this rule and the reasons for that decision, and all communications with the Tenderer under this rule shall be included in the record of the Tender Proceedings.

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(4) The decision of the Tender Accepting Authority and the reasons therefor shall be promptly communicated to the Tenderer concerned.

59.

Tender Finalization and Award.- (1)

The results of evaluation of tenders shall be submitted to the Tender Accepting Authority for approval.

(2) The Lowest Tenderer shall be notified by the Tender Inviting Authority after obtaining approval of the Tender Accepting Authority.

(3) On receipt of approval of the Tender Accepting Authority, the Tender Inviting Authority shall communicate to other Tenderers about the selection of the Lowest Tenderer, and its intention to execute the Concession Agreement with the Lowest Tenderer.

(4) After selection, a Letter of Award (LOA) shall be issued, in duplicate, by the Procuring Entity to the Lowest Tenderer with the condition that the Lowest Tenderer shall, within 7 (seven) days of the receipt of the Letter of Award (LOA), sign and return a duplicate copy of the Letter of Award (LOA) in acknowledgement thereof.

(5) Subject to fulfilment of the requirements specified in the Request for Proposal (RFP) and of the Letter of Award (LOA) the Lowest Tenderer will be required to enter into a Concession Agreement with the Procuring Entity and the Procuring Entity shall execute the Concession Agreement with the Lowest Tenderer.

60.

Monitoring of Concession Agreement.

- (1)

Procuring Entity that enters into a Concession Agreement shall make adequate institutional arrangements to monitor the performance of the Concessionaire under such agreement.

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(2) Such arrangements shall include the receipt, study and corrective action based on the reports of the Independent Engineer and Independent Auditor.

61. **Change in Ownership.-** (1) In the event that the Lowest Tenderer is a consortium, the members of such consortium shall collectively hold such proportion of the issued and paid up share capital of the Concessionaire for the term of the Concession and at stages as may be specified in the Concession Agreement:

Provided that such proportion shall not be less than 51. (fifty one percent).

(2) In the event of a change of a member of a consortium or an Associate whose technical capacity or financial capacity or both was taken into consideration for the purposes of pre-qualifying the Tenderer, prior to the signing of the Concession Agreement, the tenderer shall inform the authority forthwith along with all relevant particulars about the same and the Procuring Entity may, at its sole discretion, disqualify the tenderer or terminate the Letter of Award (LOA), as the case may be, and also forfeit the Earnest Money Deposits (EMD) or the performance security. (3)

In the event of a change as described in sub-rule (2) occurs after signing of the Concession Agreement but prior to Financial Closure of the Public Private Partnership (PPP) Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach thereof, and the Concession Agreement shall be liable to be terminated without the Procuring Entity being liable in any manner whatsoever to the Concessionaire.

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SCHEDULE-I.

[see rule 42(3)(c)]

PROVISIONS OF THE DRAFT CONCESSION AGREEMENT.

The provisions of the draft Concession Agreement shall *inter-alia* necessarily cover:

- (i) Recitals- identifying the parties to the contract, offer and acceptance;
- (ii) Definitions- defining the key terms of the contract to ensure uniformity of usage and interpretation throughout the document;
- (iii) Scope of the Public Private Partnership (PPP) Project;
- (iv) Grant of concession, whereby the Procuring Entity grants the concession to the Concessionaire subject to the terms and conditions of the Concession Agreement;
 - (v) Conditions precedent;
 - (vi) Obligations of the Concessionaire;
 - (vii) Obligations of the Procuring Entity;
- (viii) Representations and warranties of both the parties;
- (ix) Form and value of Performance Security to be submitted by the Concessionaire;
 - (x) Matters related to the site;
- (xi) The construction of the facility including Minimum Technical Requirements thereof, date for completion of construction etc.;

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(xii) Performance monitoring during construction including key performance indicators, monitoring responsibilities and related provisions;

(xiii) Completion of construction including provisions for testing, approval and certification;

(xiv) Change in scope during the contract period;

(xv) Operation and maintenance of the facility and provision of service including minimum technical requirements;

(xvi) Performance monitoring during operations and maintenance including key performance indicators, monitoring and reporting responsibilities and related provisions;

(xvii) Appointment, role and functions, remuneration and reporting requirements of Independent Engineer and Independent Auditor;

(xviii) Financial close;

(xix) State support, grant expected or revenue share or premium to be paid;

(xx) Payments by users, authority for tariff fixation, procedure of revision of tariff and related provisions;

(xxi) Collection of user charges, including allocation of the authority to collect and retain user charges;

(xxii) Financial aspects of the contract including escrow account, other payments between the parties to the contract;

(xxiii) Maintenance of books of accounts and audit requirements;

(xxiv) Insurance;

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(xxv) Force Majeure – definition, procedure for recognition under the contract, consequences and compensation on termination due to occurrence of Force Majeure events;

(xxvi) Events of default and consequences of default;

(xxvii) Termination of the contract and consequences of termination;

(xxviii) Assignments and charges;

(xxix) Change in law including consequences for change in law;

(xxx) Liability and indemnity; and

(xxxi) Dispute resolution.

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SCHEDULE-II.

[see rule 45(5)]

SCOPE OF WORK FOR INDEPENDENT AUDITOR.

- (1) The role of the Independent Auditor would encompass:
- (a) Advising Procuring Entity in the calculation of all financial parameters of the Project including the Total Cost of the Project, Returns and Recovery accounting and shall provide, at the end of each financial year, a certificate confirming the accuracy of all calculations made during the relevant financial year.
 - (b) Verification of the records and invoices provided by the Concessionaire and shall advise the Procuring Entity of the results of his quarterly audit within one month after the end of the relevant quarter.
- (2) The scope of work as envisaged will be carried out during two different stages of the project.
- Construction Stage.
 - Operation Stage.
- (3) The Independent Auditor would carry out the work specified as scheduled above and would employ qualified and experienced person of the type and nature as desirable to carry out the assignment.
- (4) the appointment of the Independent Auditor would be for a period of three years initially and could be extendable as mutually agreed between the parties concerned.

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(5) The Independent Auditor would employ a team of qualified Chartered Accountants / Cost Accountants / other professions as may be relevant to carry out the assignment besides other support personnel as may be desirable.

(6) The Concessionaire will be required to provide all the necessary information as may be required by the Independent Auditor and will provide access to all the records as may be necessary to enable the Independent Auditor to carry out their responsibilities.

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SCHEDULE-III.

[see rule 46(4)]

**SCOPE OF WORK FOR INDEPENDENT
ENGINEER.**

1 . **Scope.-** (1) Indicative Terms of Reference for the Independent Engineer [the “Indicative Terms of Reference (TOR)”] for development of the [.....] Public Private Partnership (PPP) Project. The Public Private Partnership (PPP) Project is contemplated for [....].

(2) Terms of Reference (TOR) shall apply to construction, operation and maintenance of the Public Private Partnership (PPP) Project and Project Assets (Civil Structures, Plant and Machinery, any other as defined in Concession Agreement).

2 . Role and functions of the Independent Engineer.- (1) The role and functions of the Independent Engineer shall include the following:

- (a) Review of the Drawings and Documents;
- (b) Review, inspection and monitoring of Construction Works;
- (c) Review, inspection and testing of Civil Works, Plant and Machinery;
- (d) Conducting Tests on completion of construction and issuing Completion / Provisional Certificate;
- (e) Review, inspection and monitoring of Operation and Maintenance (O&M);
- (f) Determining the costs of any works or services and / or their reasonableness;

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(h) Determining the period or any extension thereof, for performing any duty or obligation; and

(i) Assisting the Parties in resolution of disputes.

(2) The Independent Engineer shall discharge his duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

3 . Termination.- The Independent Engineer shall inspect the Project Assets in accordance with the Exit Strategy.

4 . Reporting Requirement.- The Independent Engineer shall prepare and submit to the Project Management Facility (PMF) of Procuring Entity 3 (three) copies and Concessionaire 2 (two) copies each of the following reports:

(a) Design Review Phase: Monthly Progress Report.

(b) Construction Phase: Monthly and Quarterly Inspection Report covering all aspects such as Progress Monitoring, Quality Assurance (QA) / Quality Control (QC) etc.

(c) Operation and Maintenance Phase:

(i) Monthly and Quarterly report on existing condition of facility including advise on all aspects of Operation and Maintenance, Toll Booths, Bridges or other Structures, Traffic Management and Safety, Telephone, Ambulance, etc.; and

(ii) Monthly report on audit of the traffic using the Public Private Partnership (PPP) Project Highway at least once a month;

(d) Various other reports as provided in the Concession Agreement such as Completion Report.

**GUIDELINES TO BE FOLLOWED
WHILE PUBLISHING ADVERTISEMENTS
IN NEWSPAPERS, ETC.**

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**GUIDELINES TO BE FOLLOWED WHILE PUBLISHING
ADVERTISEMENTS IN NEWSPAPERS, ETC.**

Financial Limits for advertising Tender Notices in various Newspapers will be as follows:

Sl. No.	Number of Dailies and Editions in which Advertisements are to be issued.	Estimated Value of Construction Work.	All other categories of Procurement inclusive of Materials, Equipments, Food Items and Consultancies for Construction.
1.	District Level Advertisement: Two Tamil Dailies (District Level Editions only)	Above Rs.10 Lakhs and Upto Rs.25 Lakhs	Above Rs.5 Lakhs and Upto Rs.10 Lakhs
2.	State Level Advertisement: One English Daily (Tamil Nadu Edition) and One Tamil Daily (All Editions in Tamil Nadu)	Above Rs.25 Lakhs and Upto Rs.1 Crore	Above Rs.10 Lakhs and Upto Rs.25 Lakhs
3.	One English Daily (South India Edition) and One Tamil Daily (All Editions in Tamil Nadu)	Above Rs.1 Crore and Upto Rs.5 Crores	Above Rs.25 Lakhs and Upto Rs.1 Crore
4.	One English Daily (All India Edition) and One Tamil Daily (All Editions in Tamil Nadu)	Above Rs.5 Crores	Above Rs.1 Crore
5.	Publication in Indian Trade Journal	Above Rs.50 Crores	Above Rs.50 Crore

[G.O.Ms.No.307, Finance (Salaries) Department, Dated 1st November, 2011]

The aforesaid norms will be subject to the following conditions:

- (a) In addition to the publication of the tender notices in newspapers, it shall also be published in the dedicated government website for tenders in accordance with rules already in force. All tender notices shall include the web address of this dedicated website, which at present is www.tenders.tn.gov.in.

**GUIDELINES TO BE FOLLOWED WHILE PUBLISHING
ADVERTISEMENTS IN NEWSPAPERS, ETC.**

- (b) When more than one tender is bunched in a tender notice, the highest value among the individual tenders should be considered to determine the applicable norm. The sum total of values of all individual tenders cannot be considered.
- (c) Tender Inviting Authorities, in their communication to the Director of Information and Public Relations (DIPR) for publishing the Tender Notice, should clearly specify the size of the required advertisement and the Director of Information and Public Relations(DIPR) should not place advertisements in excess of the required space. The maximum size of the advertisement of the tender notice shall be 50 sq.cm for all procurements up to Rs.5 crores and shall be 100 sq.cm for all procurements above Rs.5 crores but up to Rs.50 crores. For procurements above Rs.50 crores, there shall be no size restriction, but Tender Inviting Authorities may, as far as possible, restrict the same to 100 sq.cm.
- (d) Tender Inviting Authorities, in their communication to the Director of Information and Public Relations(DIPR) for publishing the Tender Notice, should clearly specify the estimated value of procurement. In the case of civil works, value as per the detailed estimate should be adopted. In the case of other procurements, the cost projected while obtaining the administrative sanction should be adopted. In rare cases, where this is not possible like routine procurement for ongoing schemes like Noon-Meals, Public Distribution System (PDS), etc, the per unit price obtained in the previous tender multiplied by the quantity sought to be procured can be taken as the basis of the estimated cost.
- (e) In the case of international competitive biddings, it would be open for the Tender Inviting Authority to give additional advertisements in more number of newspapers.

**GUIDELINES TO BE FOLLOWED WHILE PUBLISHING
ADVERTISEMENTS IN NEWSPAPERS, ETC.**

- (f) In case of procurement under externally funded projects or other funded projects, if the norms insisted upon by the funding agency require publication in more number of newspapers or a bigger size for the Tender Notice, the same is permissible.
- (g) The aforesaid conditions will be in addition to all other mandatory conditions under the Tamil Nadu Transparency in Tenders Act, 1998 (Tamil Nadu Act 43 of 1998) and the Tamil Nadu Transparency in Tenders Rules, 2000.
- (h) The aforesaid conditions apply only for procurement of goods and services and shall not apply for advertisements like those regarding regular recruitment into government service, publicity for government programmes, etc.
- (i) The expression 'Construction' in this Government Order will have the same meaning as the expression 'Construction' in Section 2(a) of the Tamil Nadu Transparency in Tenders Act, 1998 (Tamil Nadu Act 43 of 1998) and shall cover all civil works including maintenance or renovation of existing structures.

[G.O.Ms.No.392, Finance (Salaries) Department, Dated 18th August, 2009]

Clarification

Rule 33 of the Tamil Nadu Transparency in Tenders Rules, 2000 prescribes the limit for low value procurement. If the Tender Inviting Authority chooses to follow the Open Tender procedure for more than Rs.5 lakhs and within Rs.10 lakhs and for all procurement in excess of Rs.10 lakhs, they have to follow the guidelines as ordered in the G.O.Ms.No.307, Finance (Salaries) Department, Dated 1st November, 2011.

[Govt. Lr. No.11746/ Finance (Salaries)/2012, Dated 1st March, 2012]
