



GOVERNMENT OF KARNATAKA

DEPARTMENT OF HEALTH AND FAMILY WELFARE

MANUAL

FOR

**PROCUREMENT OF GOODS AND EQUIPMENTS (EXCLUDING
DRUGS, PHARMACEUTICALS, AND VACCINES)**

Volume I – Manual

JULY 2011

Abbreviations and Acronyms

ACT	Karnataka Transparency in Public Procurement Act
AMC	Annual Maintenance Contract
BG	Bank Guarantee
CHC	Community Health Centre
DGS&D	Director General of Supplies and Disposals
DTB	District Tender Bulletin
EMD	Earnest Money Deposit
GCC	General Conditions of Contract
GoK	Government of Karnataka
GoI	Government of India
IFT	Invitation for Tender
ITT	Instructions to Tenderers
KHSDRP	Karnataka Health Systems Development and Reform Project
KSDL&WS	Karnataka State Drug logistics and Warehousing Society
KTPP	Karnataka Transparency in Public Procurement
LD	Liquidated damages
MOA	Memorandum of Association
NIT	Notice Inviting Tender
PHC	Public Health Centre
PHU	Public Health Unit
SCC	Special Conditions of Contract
STB	State Tender Bulletin
TAA	Tender Acceptance Authority
TB	Tender Bulletin
TBO	Tender Bulletin Officer
TEC	Tender Evaluation Committee
TIA	Tender Inviting Authority
TSC	Tender Scrutiny Committee

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FOREWORD

The key objective of the Department of Health and Family Welfare is to provide comprehensive health care services, especially to the poor and vulnerable sections of the society. The Government of Karnataka is committed to increase public expenditure on health, reduce regional imbalances in health infrastructure, optimize health manpower and decentralize with focus on district health programmes and ownership by the community. The National Rural Health Mission (NRHM) launched by Government of India is committed to provide quality health care that is accessible, affordable and accountable. Karnataka is receiving a good share of NRHM funds in addition to its own budgetary allocations for health care. Sound and transparent systems of procurement of goods and equipment are essential for the achievement of NRHM goals.

Government of Karnataka has promulgated Karnataka Transparency in Public Procurement (KTPP) Act in 1999 and issued the Rules in October 2000. It is applicable for all the procurement entities of the State. Further, Government of Karnataka has issued a number of circulars, amendments, notifications and orders from time to time. Government of Karnataka has also issued documents for procurement of goods and equipments, & computers estimated to cost less than Rs.50 lakhs by open tenders and documents for procurement of goods and equipment (estimated to cost less than Rs.1 lakh) by inviting quotations. These documents have been mandated for use by all procurement entities from September 1, 2005. KHSDRP has prepared standard tender documents for procurement of medical equipment and medical supplies for manual as well as e-procurements and these have been issued on 22.06.2009. Government of Karnataka has established an Equipment Procurement and Maintenance wing in Karnataka State Drug Logistics and Warehouse Society (KSDL&WS) which will eventually be the centralized agency for procurement by open tender of all goods and equipment in addition to drugs and pharmaceuticals. Action is being taken to suitably strengthen KSDL&WS and enhance its procurement capacity.

KHSDRP has taken the initiative in preparing a comprehensive manual for procurement of Goods and equipment, which is intended to be a single source reference point by incorporating the provisions of the KTPP Act and Rules, tender documents to be used and step by step procedure for procurement as well as formats for preparation of evaluation reports and other records to be maintained. I am sure the Manual will be an excellent reference and resource material and will go a long way in streamlining the procurement procedure and cut down procurement delays.

Suggestions and comments if any for improvement of the Manual are welcome.

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21	Operational Guidelines for state level procurement issued by KHSDRP on 5/6/2008;	
22	Operational Guidelines for state level procurement issued by KSDL&WS issued by KHSDRP on 23/7/2008;	
23	Corrigendum issued by KHSDRP on 9/9/2008	

Chapter I

Introduction

1.1 Definitions:

Contract:	Is the contract between the Purchaser and the Supplier to supply the goods and services;
Department:	Means the Department of Health and Family Welfare, GoK
Earnest Money Deposit:	Means the amount deposited by a tenderer along with his tender indicating his willingness to implement the contract; It is also referred to as Tender Security or Bid security;
E- procurement	Submission/uploading of tenders electronically into an electronic tender box as opposed to the physical submission of the tender and dropping the tenders in a physical tender box.
Goods:	Means machinery, motor vehicles, equipment, furniture, articles of stationary, textiles, raw materials, drugs, pharmaceuticals, vaccines, condoms, scientific instruments, chemicals, food grain, POL, Oil and Oil seeds or other commodity required by the Department for consumption, use or distribution by a Procurement Entity in charge of its public duties;
Government:	Means the State Government, GoK;
Pre-qualification:	An assessment made by the Purchaser of the appropriate level of experience and capacity of the Manufacturer expressing interest in undertaking a particular supply contract, before inviting them to submit tenders;
Post-qualification:	An assessment by the Purchaser after the evaluation of tenders and immediately prior to award of contract, to ensure that the lowest evaluated, responsive, eligible tenderer is qualified to perform the contract in accordance with previously specified qualification requirements;
Procurement:	Means purchase of goods and services by the Procurement entities;
Procurement Entity:	Means any government department, a state government undertaking, local authority, or Board, body of corporation established by or under any law and owned or controlled by the Government and any other body or authority owned or controlled by the Government and as may be specified by it;
Services;	Means the action of serving, attending upon, helping or benefitting the Procurement entity in the course of discharging its contract obligations; the terminology could refer as to include inter alia services such as insurance, installation, training and initial maintenance of the procured goods.
Society:	Means the Karnataka State Drug logistics and Warehousing Society;

Specified goods and services	Means the goods or services as the case may be specified in a tender and identified in the contract resulting from acceptance of a tender on account of a procurement entity;
Tender:	Means the formal offer made for supply of goods or services in response to an invitation for tender published in a Tender Bulletin or press notification; Tender and bid are synonymous;
Tender Acceptance Authority (TAA)	An officer or a Committee delegated the powers to accept tenders;
Tender Bulletin: (TB)	Means a bulletin published for the State as a whole or for any district or districts within the State containing the details of invitation, processing and acceptance of tenders;
Tender Bulletin Officer (TBO)	Means a State or District Tender Bulletin Officer;
Tender Document:	Means a set of papers detailing the schedule of requirements, calendar of events, technical specifications, qualification criteria, and such other particulars as may be prescribed for evaluation and comparison of tenders as well as terms and conditions of contract;
Tender Inviting Authority (TIA)	An officer or a Committee delegated the powers to invite Tenders; It could be an officer from KSDL&WS or an officer of the Health Department.
Tender Scrutiny Committee (TSC)	Means a Committee of officers of the Department to scrutinize tenders, evaluate the tenders and prepare the evaluation report and make recommendations for award of the contract;
Third Party Inspection	Inspection of the goods to check conformity to the laid out specifications in the tender document by an entity other than the Purchaser;
Two Cover system	Means a procedure under which the tenders are required to simultaneously submit two separate sealed covers, one containing the EMD and the details of their capability to undertake the tender which will be opened first and the second cover containing the price quotation which will be opened only if the tenderer is found to be qualified to execute the tender;

1.2 Department of Health & Family Welfare – Organization:

Health being the state subject under the constitution, the GoK is responsible for the promotion and protection of health of the citizens. The health of the people in any area depends upon:

- Environmental conditions;
- Disease prevalent in the area;
- Socio-economic status of the people;
- Nutrition;
- Availability, accessibility, affordability and acceptability of health care services

The State Government has the responsibility of providing the comprehensive health care services especially to the poor and vulnerable sections of the Society. The Government of Karnataka is committed to increase public expenditure on health, reduce regional imbalances in health infrastructure, optimize health manpower and decentralize with focus on district health programs and ownership by the community. The National Rural Health Mission (NRHM) is committed to provide quality health care that is accessible, affordable and accountable.

To provide the comprehensive health care services, Department of Health & Family Welfare has to have an organization from State headquarters to community level.

The health care services provided in the State is classified as:

- Primary Health Care Services – At Sub-centre and PHCs
- Secondary Health Care Services – At CHCs, Sub-divisional hospitals, Taluk Level Hospitals and District Hospitals
- Tertiary Health Care Services – At major hospitals and super specialty hospitals

In addition to the above, the various national health and family welfare programs are to be implemented as per guidelines of Government of India.

Accordingly, the organization of the Health & Family welfare department is set up in the State to achieve the above. The organization set up at different level is given in Volume II - Annexure 1.

1.3 Health Institutions in the State (position as on June 2010):

Sl. No.	Particulars of Institutions	No. of institutions
01	District Level Hospitals	17
02	Sub-divisional Hospitals / Taluk Level Hospitals	148
03	Community Health Centres	176
04	Primary Health Centres	2310
05	Sub-centers	8870
06	Urban Primary Health Centres	17
07	Maternity Annex	304
08	Govt. Medical Colleges	10
09	Private Medical Colleges	28
10	Central Government Hospital and Dispensaries	26
11	ESI Hospital and Dispensaries	136
13	Local Body Hospital and Dispensary	53
14	Rural Family Welfare Centres	269
15	Urban Family Welfare Centres	87
16	Urban Health Centres	124
17	MTP Centres	517
18	Health & Family Welfare Training Centre	4
	TOTAL	13096

1.4 Purpose of this Manual:

1.4.1 The Department of Health and Family Welfare spends a sizeable amount of its budget for purchasing various types of goods and services to discharge the duties and responsibilities assigned to it. It is imperative that these procurements are made following a uniform, systematic, efficient and cost effective procedure in accordance with the relevant rules and regulations of the Government. Sound and transparent systems of procurement and logistics are essential for successful implementation of NRHM and other programs and for the achievement of NRHM goals.

1.4.2 The purpose of the manual is to provide detailed procurement guidelines for procurement of health sector goods and services (excluding drugs, pharmaceuticals and vaccines) being undertaken by the Department of Health and Family Welfare. For the purpose of this manual procurement is defined as the acquisition of goods or services at the best possible total cost of ownership, in the right quantity and quality at the right time, in the right place for the direct benefit or use of the population.

1.5 Items covered under this Manual:

The policies and procedures outlined in this manual may be used to undertake the procurement of various types of goods and services (other than professional services). The broad categories of goods for which procurements are made are as follows:

- Hospital/Medical equipment and supplies;
- Dental equipment and supplies;
- Laboratory equipment and supplies
- Hospital furniture;
- Vehicles;
- Office furniture;
- Office equipment including computers and communication equipment, software;
- Audio visual equipment;
- Printing of training documents and IEC materials;
- Services ancillary to the procurement of goods such as logistics, annual maintenance contracts (when procured separately);

1.6 Applicability of this Manual:

The policies and procedures outlined in this Manual are applicable for procurement of goods made by the Karnataka State Drug Logistics and Warehousing Society and other health care institutions of the Department of Health and Family Welfare for NRHM and other state funded health programs. It is also applicable for projects funded by International Financial Agencies or Projects covered under International Agreements to the extent that they are consistent with the procurement procedure specified in those projects.

1.7 Objectives of this Manual:

The policies and procedures outlined in this manual intend to achieve the following objectives:

- Take into account principles of efficiency, economy and transparency to attain the best value for money; Best value for money implies the use of optimum criteria which incorporates total life cost of the goods and services necessary to satisfy the long term goals of the health sector, along with satisfactory performance in use;
- Procurement process is transparent and fair;
- The tendering process, wherever feasible, is thrown open to maximum competition possible to ensure the best terms and prices for the Department;
- The tendering process ensures that there is sufficient notice and opportunity to tender and hence provide equal opportunity to the citizens to do business with the Government;
- The tendering process ensures proper accountability in procurement decisions;
- The procurement process is uniform, systematic, efficient and cost effective and also in accordance with the various rules and regulations of the Government;
- Ensure robust contract monitoring and control mechanisms to ensure effective assessment of all options in each set of circumstances throughout the life of the contract;

1.8 Laws governing public procurement in Karnataka:

Karnataka has promulgated an Act entitled “The Karnataka Transparency in Public Procurements(KTPP) Act, 1999” to provide for ensuring transparency in public procurement of goods and services by streamlining the procedure for inviting, processing and acceptance of tenders by Procurement entities and for matters related thereto. A copy of the Act is given in Volume II - Annexure 2.

In exercise of the powers conferred by Sub Section (1) of Section 23 of the KTPP Act, the Government of Karnataka issued the “The Karnataka Transparency in Public Procurements Rules, 2000” vide No. PWD/154/FC-III/ 2000 dated 24-10-2000. The Act and the Rules has come into force on 24-10-2000. A copy of the Rules is given in Volume II - Annexure 3.

Subsequent to the issuance of the Act and Rules, the Government of Karnataka has issued a number Amendments to the Act and has also issued a number of Circulars and orders. These have been compiled and given in Volume II - Annexure 4.

This Manual takes into account the provisions of the KTPP Act and Rules as amended from time to time and the provisions of the Circulars and Orders issued as on date. The KTPP Act and Rules and the amendments, circulars and orders issued thereof all deal with manual tendering. GoK has recently established e-platform and permitted e-procurement. Copy of Government Order is included in Annexure 4 of Volume II

In case of conflict between the provisions of this manual and the provisions in the KTPP Act and Rules as amended from time to time, circulars/orders issued by Government from time to time, the provisions of the KTPP Act, Rules shall apply. Similarly in case of conflict with the Guidelines of externally aided projects, the provisions in the legal agreements with the external financing agencies, and the Guidelines issued by them shall prevail unless it is mutually agreed.

1.9 Procurement arrangements in the Health and Family Welfare Department:

- 1.9.1** The Government Medical Stores, Bangalore, which was charged with the responsibility of procurement of drugs, pharmaceuticals and other medical supplies was converted into Karnataka State Drug Logistics and Warehouse Society with Registration number 172/2003-2004 dated 28/3/2003 with Registered Office at Government Medical Stores, Magadi Road, Basaveshwarnagar Main Road, Housing Board Colony, Bangalore 560079. This is the Primary Organization involved in the procurement of Drugs and Pharmaceuticals. It is headed by an Additional Director (KAS Officer) under the administrative control of Department of Health and Family Welfare GOK. The Organization Chart of the Society is attached (Annexure 5). The area of operation of the Society is the whole of Karnataka State. The overall objectives of the organization is to implement the Logistics of Drugs and Warehouse Management through professionalized and IT intensive management to ensure that drugs of assured quality are made available at all levels up to the sub-centres and used rationally with due monitoring.
- 1.9.2** The GOK vide its Order No. HFW 90 HPC 2005 dated 20/4/2006 (Cope included in Annexure 4 of Volume II) has centralized the procurement of equipment and other hospital accessories pertaining to Health and Family Welfare Department, World Bank/externally aided projects, Drugs Controller Department at KSDL&WS. In order to implement this, an equipment procurement and maintenance wing has been established in KSDL&WS by

shifting the posts from KHSDRP and Health and Family Welfare Department to KSDL&WS and the staff who are at present working against these posts with suitable technical qualification/engineers, trained and experienced persons in procurement aspects are also ordered to be transferred along with the posts, Thus KSDL&WS is the state level procurement organization for the Health and Family Welfare Department for procurement of drugs, pharmaceuticals, medical supplies, medical equipment and hospital furniture by open tender procedures (Contracts of value more than Rs. 1 lakh) following e-procurement procedures. The Departmental Officers at state level shall be responsible for the state level procurement of vehicles, office furniture, office equipment including computers, software, communication equipment, audio visual equipment, printing of documents, training materials and IEC materials by open tenders following e-procurement or manual tendering procedure. The departmental officers shall continue to procure all goods and equipment by following limited tender enquiry (quotations) – Contracts of value less than Rs.1 lakh.

1.9.3 The Department of Health and Family Welfare has further decided that District level procurement of goods and equipment of value usually less than Rs.10 lakh would be procured by the District level units by open tenders following manual tendering procedure. District level procurement of goods and equipment of value less than Rs.1lakh would be made by district level officers by limited tender enquiry (quotations).

1.9.4 Thus the procurement arrangement for open tenders in the Department of Health and Family Welfare is shown in the Table here under.

Procurement arrangements in Department of Health and Family Welfare

Category of Goods	State level procurement (Open tenders)	District level procurement(Open tenders)
	Value more than Rs. 1 lakh	Value less than Rs.10 lakhs
Hospital/ Medical Equipment, Hospital furniture/Dental equipment/laboratory equipment	KSDL&WS following e-procurement procedure or through DGS&D rate contracts	District level procurement entities following manual tendering procedure or through DGS&D rate contracts
Vehicles	State level Department officers following e-procurement/ manual tendering procedures/or through DGS&D rate contracts	District level procurement entities following manual tendering procedure or through DGS&D rate contracts
Office furniture	State level Department officers following e-procurement/ manual tendering procedures/or through DGS&D rate contracts	District level procurement entities following manual tendering procedure or through DGS&D rate contracts

Office equipment including computers, software, and communication equipment	State level Department officers following e-procurement/ manual tendering procedures/or through DGS&D rate contracts	District level procurement entities following manual tendering procedure or through DGS&D rate contracts
Audio Visual equipment	State level Department officers following e-procurement/ manual tendering procedures/or through DGS&D rate contracts	District level procurement entities following manual tendering procedure or through DGS&D rate contracts
Printing of documents, training materials and IEC materials	State level Department officers following e-procurement/ manual tendering procedures	District level procurement entities following manual tendering procedure.

Chapter II

Modes of procurement and typical procurement activities involved in the procurement of goods and services

2.1 Manual /Electronic Procurement:

2.1.1 KTPP Act and Rules describe the steps and procedures to be followed in respect of manual tendering where in the tenders are prepared in physical form and deposited into a physical tender box, which is opened at a specified time and evaluated thereafter. GoK mandated documents also deal with manual procurement only.

2.1.2 GoK has recently established an e-platform (Copy of the GO is given in Annexure 4 of Volume II) and a few departments/organizations have been selected to adopt e-procurement procedures. KSDL&WS is one of such organizations. The Department of Health and Family has also proposed the adoption of e-procurement for high value (usually more than Rs.10 lakhs) goods.

2.1.3 As of now there is not much of difference between manual tendering and e-procurement. Some of the areas where there is marked difference between manual tendering and e-procurement are stated hereunder.

- IFT/NIT for e-procurement is brief and reference is given to the website where further details could be seen;
- The prospective tenderers have to get themselves registered with the service provider before they are able to access the website, wherein the IFT/NIT, tender documents have been uploaded and they can submit/upload their tender;
- The prospective tenderers have to pay a certain amount of service fees (depending on the estimated cost of the tender) to the service provider;
- The tender document is placed in the website which could be down loaded either free of cost or after electronic payment of the cost of tender document; Where there is provision of free down loading of tender document, the cost of the tender document will have to be paid along with the tender; Thus there is no physical issue/sale of document;
- The Earnest money deposit has to be made by the tenderer electronically or paid into the account of Government in designated branches of Axis Bank and the information thereof will have to be uploaded along with the tender;
- The electronic tender box will not accept tenders after the stipulated time and thus there is no question of late tenders;
- All the necessary support documents as well as the price tender will have to be uploaded before the stipulated time;
- When once the price is written in figures it will automatically convert into words and the total amount would also be computed automatically, thus there is no question of differences in figures and words and correction of arithmetical errors;
- There is no physical opening of the tenders as the Purchaser will be able to access the electronic tender box after the dead line for opening of tenders and the tenders could be read out publicly;
- As of now the evaluation has to be done manually by down loading of the uploaded documents and tender, verification of originals, check for meeting the stipulated criteria etc. There after there is no difference between manual and e-procurement.

2.2 The following activities depict the typical procurement activities involved in the procurement of goods and services. They refer to manual tendering:

- Preparation of needs assessment (by taking into account the goods already available in the Department) and its approval by competent authority;
- Preparation of cost estimates based on market surveys;

- Obtaining administrative and financial approval (including arrangement of funds) for the procurement from competent authority;
- Preparation of procurement plan showing the packages, method of procurement, type of contract, schedule of procurement activities and its approval by competent authority;
- Drawing specifications for the various items of goods proposed to be procured and its approval by competent authority;
- Selection and preparation of appropriate tender document and its approval by competent authority;
- Invitation of tenders; Notification and advertising;
- Issue of tender documents to prospective tenderers;
- Pretender conference if applicable;
- Submission of tenders;
- Tender opening procedures;
- Evaluation and comparison of tenders;
- Negotiations if warranted;
- Award of contract;
- Signing of contract;
- Notification of delivery to consignees;
- Inspection and testing; Third Party inspection;
- Monitoring and quality assurance;
- Change orders if any;
- Receipt of consignment;
- Acceptance of consignment

The activities are discussed in the following Chapters in respect of manual tendering.

Chapter III

Needs assessment, preparation of cost estimates and obtaining necessary approvals

3.1 Needs Assessment:¹

¹ Based on the Operational Guidelines issued by KHSDRP Circular No. HFW/KHSDRP/NRHM/Proc/OG/02/08-09 dated 5/6/2008

- 3.1.1 The first task in procurement process is the assessment of the needs of the goods and equipment and related services to be procured. The procedure to be followed for assessment of the needs of equipment and goods is described hereunder.
- 3.1.2 The indents of the various health care units under the Department of Health and Family Welfare would be prepared by the various Program Officers, Project Officers, District Health Officers, District Surgeons, Heads of Institutions, and Heads of Offices etc. The indents should contain the type and quantity required, when required, and brief specification (with estimated cost) if available;
- 3.1.3 The indents as received would be forwarded to the Needs Assessment Standing Committee at the state level or district level depending on whether the procurement is at the State Level or District Level. When sending to the state level standing committee, the facility wise details will be aggregated at the district level and then sent to the state level standing committee;
- 3.1.4 Sometimes if getting institutional level details becomes really difficult and is likely to delay activities, estimation based on some acceptable techniques (such as average of previous three years consumption etc.) would be done;
- 3.1.5 The Needs Assessment Committee (NAC) at the state and district level would be as under:

State Level	District Level
<ul style="list-style-type: none"> • Joint Director, Planning- Chairman; • DD (Equipment) – Member; • Equipment Officer – Member; • Officer in charge of Equipment wing of KSDL&WS – Member; • Concerned State Program Officer – Member Secretary 	<ul style="list-style-type: none"> • The District Health officer – Chairman; • DPMO – Member; • Store Officer – Member; • Concerned District Program Officer- Member Secretary;

- 3.1.6 The Chairman of the above Committee may co-opt one or more members/special invitees for better functioning.
- 3.1.7 The Committee shall keep in view the following while determining the need assessment and finalizing the type, number of equipment/goods and the schedule for procurement;
 - The number and type of equipment as available (the inventory) with the indenter or the opening balance of goods already available;
 - The present condition of the available equipment with regard to life, working condition, usage, need for replacement for present day needs etc;
 - The availability and usefulness of surplus equipment procured under different programs/projects;
 - Any other relevant information;
- 3.1.8 After finalizing the assessment, the Committee shall forward the type and number of equipment/goods to be procured along with brief specification to the appropriate Technical Standing Committee for framing the specifications;

3.2 Preparation of Cost Estimates:

Once the need assessment has been completed as detailed in paragraph 3.1 above, indenting officers shall prepare the cost estimate of the procurement based on the market surveys/procurement already

made/price catalogues etc. The cost estimate is necessary to obtain administrative approval from competent authority for the procurement, determine the method of procurement, arrange for requisite funds and also work out the requirement of earnest money for the procurement.

3.3 Administrative Approval:

After the need assessment has been completed and cost estimates for the procurement has been worked as detailed in paragraph 3.2 above, the indenting officer shall obtain the administrative approval from the competent authority for the procurement and also make arrangements for provision of funds for the procurement.

Chapter IV

Procurement Plan

4.1 Preparation of Procurement Plan:²

After finalizing the needs and obtaining necessary approvals from competent authority, the next step is the preparation of the Procurement Plan. For this a packaging plan needs to be prepared, which details the packages for procurement. The method of procurement will depend on the items of goods to be procured and the value of the packages. The pros and cons of small versus big packages (to attract small and large firms) are to be thoroughly examined keeping in view the

² Based on the GOK circular No.PWD/1359 SO/FC 2001(P-2) dated 25/10/2002

implementation plan of the project. After the packages are decided and approved by competent authority, the appropriate method of procurement based on the value of the package shall be determined. A Procurement Schedule shall then be prepared showing the timings of the various procurement activities to match with the requirement/ implementation schedule of a project (In some cases the Implementation Schedule of a project may have to be revised to match with the Procurement Schedule). The Procurement Schedule will depend on the method of procurement, type of contract, single or two cover system, (since the activities and their duration will vary). Procurement Plan should form the basis for the preparation of designs, specifications and estimates to match with the proposed date for invitation of tenders. (In some cases the Procurement Schedule may have to be revised to take into account the time required for the preparation of designs, specifications and estimates, which is a pre-requisite for invitation of tenders).

The format of the Procurement Plan showing the details as prepared for a hypothetical project is given in Volume II – Annexure 6 for guidance.

The finalized Procurement Plan taking all the above factors into consideration shall be used:

- For monitoring of the Project thus helping with timely recognition of problems and also in taking timely corrective action;
- To help all participants to the procurement process to understand the sequence and timing of the procurement actions (stages), their contributions and responsibilities at each stage and identify the official responsible for the next stage;
- To record the progress of planned actions thus supporting monitoring of performance of the responsible unit and the staff; For working out the requirement of funds;

Chapter V

Procurement Methods

5.1 As per KTPP Act, Goods and equipment required for the Department of Health and family Welfare could be procured by the following methods:

- (a) Procurement of items of goods reserved by the Government of Karnataka;
- (b) Procurement of goods directly without obtaining competitive quotations/ tenders;
- (c) Procurement of goods directly under rate contract;
- (d) Procurement of goods by limited enquiry by inviting written and sealed quotations;
- (e) Procurement of goods by open tenders;

5.2. Procurement of items of goods reserved by Government of

Karnataka³:

The procurement of the following items has been reserved for procurement from the organizations noted against them. Hence the procurement of these items as may be required and approved by competent authority may be made directly from these organizations, irrespective of the value. Neither open tenders nor invitation of quotations are required for procurement of these items.

Sl. No.	Item	Organization from whom to be procured
1	Cloth for liveries and other purposes	Karnataka Handloom Development Corporation and its units
2	Silk and silk cloth	Karnataka Silk Industries Development Corporation and its units
3	Milk	Karnataka Milk Producers Co-operative Federation and its units
4	Any other material as may be notified by Government from time to time	From the Organization as may be notified by Government

Steps involved:

- Obtain quotations from the organization for the goods to be procured;
- Place supply order;
- Receive materials, inspect and make payment for accepted goods at the rates stipulated in the supply order;

5.3 Procurement of goods directly without obtaining competitive quotations /tenders:⁴

This could be done in the following cases:

- During the period of natural calamity or emergency declared by the Government;
- Where the goods or services are available from a single source or where a particular supplier or contractor has exclusive rights in respect of the goods or services and no reasonable alternatives or substitutes exist: Provided that for this, there shall be a committee of experts consisting of one technical representative of the Health Department dealing with similar procurement and one representative from a reputed Academic or Research Institution or Non-Commercial Institution having expertise in such line to examine and declare that the goods or services are available from a single source;
- Where the procuring entity having procured goods, services or technology from a supplier or contractor determines that additional supplies must be procured from the same supplier or contractor for reasons of standardization and compatibility with the existing goods, service or technology;

³ Based on Paragraph (h) of Section 4 of KTPP Act, 1999

⁴ Based on Section 4 of the KTPP Act, 1999

- In respect of specific procurement as may be notified by the Government from time to time;

Steps involved:

- Obtain quotations from the organization for the goods to be procured;
- Place supply order;
- Receive materials, inspect and make payment for accepted goods at the rates stipulated in the supply order;

5.4 Procurement of goods covered under DGS&D Rate contracts of GOI:⁵

The goods and services, which are covered under the Rate Contracts concluded by the Director General of Supplies and Disposals, Government of India, could be procured directly without inviting competitive quotations/ tenders irrespective of the value subject approval from competent authority.

For large value procurement direct order should be placed on DGS&D on Form 131 as per terms and conditions stipulated by DGS&D (A copy of the terms and conditions can be obtained from DGS&D on payment of Rs.50/-), as all officers of the Government Departments are Direct Demanding Officers. DGS&D requires the amount of the contract to be placed with them in advance before taking any action. DGS&D also undertakes inspection of the goods by Directorate of Inspection of DGS&D on payment of certain fees.

For small value procurement, to expedite procurement, direct order could be placed with the Rate Contract holder at the rate contract prices and terms and conditions. Payment shall be made after getting the inspection made by Directorate of Inspection DGS&D at the prescribed rates.

5.5 Procurement of goods by limited enquiry by inviting written and sealed quotations, also known as shopping;⁶

Goods or services the value of which does not exceed rupees one lakh per contract could be procured by limited enquiry by inviting written and sealed quotations from selected vendors. It is an appropriate method of procuring readily off the shelf goods or standard specification commodities of small value (less than Rs.1 lakh). It should be ensured that the procurement is not split wantonly to bring it under this method of procurement.

Request for quotations shall indicate description and quantity of goods, specifications of desired goods, delivery period and place of delivery and method of evaluation.

- (i) ***Preparation of the shortlist of suppliers:⁷***

⁵ Based on Paragraph (f) of Section 4 of KTPP Act, 1999

⁶ Based on Paragraph 3 of GOK notification No. PWD/513/FC-III/2001 dated 29/10/2001

⁷ Based on the Operational Guidelines issued by KHSDRP Circular No. HFW/KHSDRP/NRHM/ Proc/ OG/02/08-09 dated 5-6-2008

At the beginning of each calendar year, an officer authorized by the State level Procurement Committee headed by the Chief Administrative Officer, KHSDRP shall invite applications (by wide press publicity) from manufacturers or their authorized agents/dealers to register themselves in the Health Department for supply of the following categories of equipment/goods to the various program officers at the State level and various districts, during the calendar year by following the shopping procedure.

- Hospital/Medical equipment and Supplies;
- Dental equipment and supplies;
- Laboratory equipment and supplies;
- Hospital furniture;
- Vehicles;
- Office furniture;
- Office equipment including computers and communication equipment;
- Audio visual equipment;
- Printing of documents and IEC materials;

The applicants could register themselves in one or more categories for the State level and various districts. The applicants shall be asked to submit the following details.

- Name of the manufacturer with address;
- Location of manufacturing facilities;
- Year of incorporation of the company;
- Range of products manufactured with catalogues and specifications;
- Licensed capacities for the various products;
- Copy of VAT, PAN, TAN registrations;
- Annual turnover for the last three years;
- Profit and loss statement for the last three years;
- Annual report for the last three years;
- Year wise manufacture of the products for the last three years;
- Quantum of sale of various products for the last three years and to whom supplied;
- Copies of the representative performance reports from the Purchasers, especially Government Health Departments;
- Name and address of agents/authorized dealers in Karnataka;
Service network in Karnataka;
- DGS&D Rate contracts if any for the products manufactured by them;
- ISO certification if any; BIS marking or products conforming to BIS;
- Any other relevant information relating to their products and their capacity to supply quality goods;

The details as received shall be scrutinized by the Procurement Committee and a short list of 6 to 10 approved manufacturers/authorized dealers of repute shall be drawn for each category of equipment/goods for the State level as well as various district levels for each calendar year. No additional names shall be added during the year. The process would be repeated each year and short list reviewed. This shortlist would be used by all the program officers at the State and district levels.

(ii) *Threshold for shopping:*

The approved procurement plan would show the items which are approved for procurement following shopping procedures.

As KTPP Act, equipment/goods costing more than **Rs.1 lakh** are to be procured by tenders and hence equipment/goods costing less than **Rs.1 lakh** are to be procured by shopping i.e. invitation of quotations from suppliers.

Under most of the World Bank projects the threshold for shopping is the equivalent of **US \$ 50,000/-** (This is to be ascertained by the program officers for their project) which works out to about **Rs.20 lakh** under the present day exchange rate.

(iii) Procedure for shopping: (Common for procurement both under KTPP Act and World Bank):

Step 1: As and when procurement under shopping is approved, the program officers shall invite quotations only from manufacturers (or their authorized dealers) of approved shortlist only;

Step 2: The sealed envelopes containing the quotations should not be accepted in office tappal. It should necessarily be dropped by the tenderers in the tender drop box to be kept in the office and its record kept in register. Proper acknowledgement must be obtained in the register from persons who dropped the sealed quotation in the Tender box;

Step 3: At the appointed hour the Tender box must be sealed and a line drawn to close the register and register duly filled. Then at the appointed hour the tender box must be opened before the committee members and the bidders or their authorized representative who choose to be present;

Step 4: The sealed financial quotations should be opened before the committee and such bidders or their authorized representatives who choose to be present and then a comparative statement should be prepared. Evaluation of the quotations shall be made as per provisions in the Invitation for quotations. The bidder who quotes the least (L1) amongst the responsive tenderers should be declared as the preferred bidder. The entire proceedings of the bid opening should be video graphed and detailed proceedings drawn.

Step 5: The order must be placed with the preferred bidder i.e. L1 bidder with instructions for pre dispatch inspection (if required) and delivery to the consignee.

5.6 Procurement of goods and services by open tenders:

Open tenders shall be invited for all procurement of goods and services of value more than **Rs.1 lakh** per contract. Open tenders could be national or Global (International) depending on the value, nature and complexity of the item of goods to be procured. Open tenders could be either Single cover tender system (in which the EMD, information regarding meeting the qualification requirement, price quotation are all contained in one cover only) or two cover system as detailed in paragraph 5.7 hereunder shall be followed. The time schedule for the procurement will vary with the tender system adopted. The procedures to be followed shall be as detailed in his Manual.

(i) **International Competitive Bidding:** This method of procurement affords opportunity to all eligible bidders across the globe. It is generally adopted for high value packages, where

supplies need import and entail payment in foreign currency. It is generally adopted for all contracts in which foreign firms can be expected to participate.

Steps involved:

- Notification and advertising (global);
- Issue of bidding documents;
- Submission of bid;
- Public opening of bid;
- Evaluation;
- Selection of lowest evaluated responsive bid based on post qualification;
- Contract award and performance;

(ii) ***National Competitive Bidding (NCB)***: It is competitive bidding advertised nationally for procuring goods which are unlikely to attract foreign competition. The currency of bidding and payment shall be in Indian Rupees.

NCB is adopted (a) where contract values are small; (b) goods are available locally at prices below that in the international market; (c) foreign firms are not likely to be interested; and (d) where the advantages of ICB are clearly outweighed by the administrative and financial burden involved.

Steps involved: Are the same as of ICB.

5.7 Two-cover tender system:⁸

In the case of supply of goods or supply and installation of equipment tenders estimated to cost more than **Rs.50 lakhs⁹**, the TIA shall follow the two-cover tender system. The rationale being that the tender requirement will be strictly enforced and the possibility to consider a tender, which has failed to meet the tender requirements, but has offered an attractive price, will be eliminated. The second cover containing the price quotations of only those tenderers found qualified as per tender requirements shall be opened by the TIA.

The first-cover shall contain the following:

The earnest money deposit as required in the tender document; Information about the tenderer to enable the tender evaluating officer to judge the capacity of the tenderer to satisfactorily perform the contract in the forms and detail as prescribed in the tender document giving:

- Experience and past performance in the execution of similar contracts;
- Capabilities with respect to personnel, equipment and manufacturing facilities;
- Financial status and capacity;
- Documentary evidence that the offered goods conform to the technical specifications and standards specified in the corresponding Section of the tender documents. The documentary

⁸ Based on Rule 28 of KTPP Rules 2000.

⁹ KTPP Rules 2000 specifies Rs.50 lakhs.

evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the goods and related services, demonstrating substantial responsiveness of the goods and related services to the technical specification and if applicable, a statement of deviations and exceptions to the provisions of the Schedule of Requirements.

- Any other relevant information as detailed in the tender document;

The TIA shall cause the first cover to be opened first. At this time the second covers containing the price quotations shall be placed in a large cover and securely sealed in the presence of the tenderers or their representatives, who are present and also get the same signed by all those tenderers or their representatives.¹⁰ This large cover containing the second covers shall be opened on a pre-determined time and date. This will instill confidence in the minds of Supplier community. On the basis of the information contained in the first covers, the evaluating officer shall evaluate the responsiveness of the tenders with reference to the tender requirements and also evaluate the tenderer's capacity on the basis of the criteria specified in the tender document and on this basis prepare the list of responsive and qualified tenderers. The evaluation shall be completed within a maximum period of 45 days. In exceptional cases approval of the Chairman of the Executive Committee shall be obtained, where the period is more than 45 but less than 60 days. If it exceeds 60 days, the tenders shall be reinvited.

Thereafter, the second cover containing the price quotations of only those tenderers found qualified shall be opened by the TIA. Evaluation and award of the contract shall be done as per provisions in Chapter XII.

Chapter VI

Types of Contracts

6.1 Types of Contracts:

The most common type of supply contract is Item rate. However need may arise for the use of other alternative forms/types of contracts.

6.2 Types of contracts and their choice:¹¹

In the preliminary planning stages of procurement, procurement personnel have a choice of procurement method and/or the types of contracts to be used, depending on prevailing circumstances. The type of contract chosen will affect the subsequent stages of procurement, the content of the tender document, and to some extent the degree of influence, which the Purchaser can exert during contract implementation. It is important, therefore, at an early stage in the planning process to consider carefully the types of contract that might be suitable for use and the factors affecting the choice of type of contract.

Some of the general factors, which may affect / influence the choice of contract type by a procurement entity, are:

- Nature and complexity of the procurement;

¹⁰ Based on GOK FD Circular No. PWD/1359 SO/FC 2001 (P-2) dated 30/6/2003

¹¹ Based on GOK Circular No. FD57 Pro-Cell 2004 dated 20/1/2005

- The size and duration of the contract;
- The degree of the definition of the procurement and the element of risk/uncertainty;
- The status of design (preliminary or final);
- The technical capability, design and supervisory resources of the Purchaser;
- The financial resources available and/or budget constraints;
- The previous experience of the Purchaser in a particular type of contract;

6.3 Types of Contracts:

The following is a list of common types/kinds of goods and services contracts, their features, the advantages and disadvantages and the circumstances/ situations in which they can be best used.

Sl. No.	Type/ Kind of contract	Features	Advantages/ Disadvantages	Circumstances/ Areas in which to be used.
1	2	3	4	5
1	Item Rate Supply Contract	<p>1. The tenderers are invited to quote unit rates for supplying the Purchaser's estimated quantities of different items of goods to be supplied.</p> <p>2. The unit rates are inclusive of all related inputs and taxes (labour, materials, equipment usage and a proportion of overheads and profit)</p> <p>3. The tender price comprises the summation of required quantities of each items of goods multiplied by the respective unit rates for all items of goods</p> <p>4. The tender could be evaluated for each item/ Schedule of goods or for all the items put together and contract concluded accordingly</p>	<p>Advantages:</p> <p>1. Tenderers are competing on the most equitable basis, against the same quantities of supply of each of the items of goods;</p> <p>2. The comparison and evaluation of tenders is normally straight forward and objective;</p> <p>3. It provides flexibility for the contracting parties in handling variations and extra items of supply;</p> <p>4. Regular delivery of supplies completed help the Supplier's cash flow;</p> <p>Disadvantages:</p> <p>1. Documentation is more;</p> <p>2. Evaluation takes time</p>	<p>Supply of various types of standalone equipment which do not need civil works for foundation.</p>
2	Supply and Erect/ Install, Commission and Test	<p>1. This type of contract provides for the supply of major items of manufactured or pre-fabricated goods including relatively minor works involved in their erection or installation and commissioning at a site or sites.</p> <p>2. The goods would normally be the subject of performance specifications, or fabricated to the design of the Employer on an LS basis. Minor works might be</p>	<p>Advantages:</p> <p>1. Single responsibility for the supply of goods and the execution of related works in order to avoid conflicts and delays in the event of non-compatibility;</p> <p>2. Management is simple</p> <p>Disadvantages:</p>	<p>Appropriate for CT Scan and other complex Health Equipment</p>

		<p>quoted LS based on the design of the Supplier, but major works should normally be undertaken to the design of the Employer on a Item Rate/Unit Rate basis.</p> <p>3. Commissioning and/or testing of the completed work is a normal requirement before acceptance.</p>	<p>1. Direct Cost is likely to be more</p>	
3	Turnkey	<p>1. Tenders invited for Alternative systems and processes to provide satisfactory end product requirements and therefore undesirable or impracticable to prepare definitive designs and complete technical specifications in advance.</p> <p>2. Two stage tendering procedure is followed, first inviting unpriced technical proposals and outline designs which are subject to clarification and adjustment by the Employer followed by the submission of detailed technical proposals and priced tenders in the second stage</p> <p>3. The turnkey contractor undertakes to provide detailed designs, production process plant and equipment, related construction, procurement, licenses, guarantees, recruitment and training of operating staff, commissioning, start-up, initial operation and maintenance and final hand over of the “key” to the Employer for him to “Turn”</p> <p>4. The contract price is normally quoted LS with periodic payments against specified stages of partial completion.</p> <p>5. Price Adjustment may also be provided for contracts of longer duration than about two years.</p>	<p>Advantages:</p> <p>1. The Employer is able to choose the best available processes and thus effect economy.</p>	<p>Appropriate for procurement of complex Health care equipment and communication systems</p>

6.4 Use of appropriate type of contract and tender documents:

Keeping the above Guidelines in view, the Procurement Officer (Equipment) of KSDL&WS /TIA shall submit proposals to the Competent Authority, which shall, review the recommendations and accord approval to the proposals. The Procurement Officer (Equipment)/TIA shall then use the tender documents appropriate for the type of contract approved.

Chapter VII

Preparation of Specifications

7.1 After finalizing the items of goods, equipment and services to be procured, the packaging and procurement plan, the next step is the preparation of the specifications for the items of goods, equipment and services to be procured.

7.2 *General guidelines for drafting of specifications:*¹²

7.2.1 The specifications of the goods to be procured should be drafted to meet only the actual and essential needs of the user because “over-specification” will unnecessarily increase the cost and may stifle competition.

7.2.2 The specifications should present a clear statement of the required standards of workmanship, materials and performances of the goods to be procured. Specifications should aim at procuring the latest technology and avoid procuring of obsolete goods.

7.2.3 Specifications should have emphasis on factors like efficiency, optimum fuel/power consumption, use of environmental friendly materials, reduced noise and emission levels, low maintenance costs etc.

7.2.4 Minimum functional specifications should be given as not to make it restrictive and attract reasonable number of competitive tenders.

7.2.5 Wherever Indian Standards exists for the required goods, the same should be adopted. Preference should be given to procure the goods, which carry BIS (Bureau of Indian Standards)

¹² Based on Rule 11 of KTPP Rules 2000 and provisions contained in STD for goods mandated by GOK and Manual for procurement of goods issued by GOI in August 2006.

mark. For any deviations from Indian Standards or for any additional parameters for better performance specific reasons for deviations/modifications should be duly recorded with the approval of the competent authority

- 7.2.6** Except in case of proprietary purchase from a selected single source, the specifications must not contain any brand name, make or catalogue number of a particular manufacturer and if the same is unavoidable due to some compelling reasons, it should be followed by the words “or equivalent”.
- 7.2.7** All dimensions incorporated in the specifications shall be indicated in metric units. If due to some unavoidable reasons, dimensions in FPS units are to be mentioned, the corresponding equivalents in the metric system must also be stated. The specifications should use the words not less than or not more than rather than fixed parameters.
- 7.2.8** The specifications and the technical details should be expressed with proper clarity without any ambiguity or double meaning. Wherever necessary, the written specifications should be supplemented with drawings for additional clarity.
- 7.2.9** Deciding tender on the basis of tendered sample is too subjective. Therefore, unless specifically decided due to some reasons duly recorded with the approval of competent authority, tender sample clause shall not be incorporated in the specifications. If necessary suitable stipulations for submission of advance sample (before starting bulk production) by the successful bidder may be incorporated in the specifications.
- 7.2.10** When a contract is concluded on the basis of approved sample the same shall bear seals and signatures of the approving authority (ies) as appropriate. Various types of samples like standard sample, tender sample, advance sample, bulk supply sample, complaint sample, quality, audit sample, reference sample etc. may be encountered during the procurement process. All the samples shall be drawn, retained, classified and disposed in accordance with the instructions of Department/ Society. A register of samples shall be maintained. An official shall be made the in-charge of the sample room and shall be responsible for all activities in the sample room. There shall be system of physical verification of samples, which shall be done at prescribed intervals and certificates to this effect shall be recorded in the sample register. Samples, which have completed the retention period and no longer required, shall be set aside for public auction periodically.

7.3 *Drafting and approval of specifications:*¹³ The specifications would be drafted and approved by the State Level/District Level Standing Committees constituted as hereunder for various types of goods, equipment and services:

(a) *Standing Committees for Hospital/Medical equipment:*

State Level	District Level
<ul style="list-style-type: none"> ● Joint Director Medical – Chairman; ● Concerned Specialist from Victoria Hospital/BMC – Member; ● Concerned Specialist from a private 	<ul style="list-style-type: none"> ● District Surgeon- Chairman; ● Concerned Subject Matter Specialist – Member; ● Subject Matter Specialist from

¹³ Based on the Operational Guidelines issued by KHS DRP vide its circular Nos HFW/KHS DRP/NRHM/ Proc/OG/02/08-09 dated 5/6/2008 and HFW/KHS DRP/NRHM/Proc/OG/01/08-09 dated 26/5/2008 and HFW/KHS DRP/NRHM/Proc/ OG/03/08-09 dated 23/7/2008 and HFW/KHS DRP/OG/23/2008-09 dated 9/9/2008

Medical College and Hospital – Member; <ul style="list-style-type: none"> • Additional Director, KSDL&WS; • Deputy Director, Procurement – Member; • Concerned State Program Officer – Member Secretary; 	local/nearby Medical Colleges, Private/ Government –Member; <ul style="list-style-type: none"> • DPMO- Member; • Concerned District Program Officer – Member Secretary
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(b) Standing Committees for Hospital Furniture:

State Level	District Level
<ul style="list-style-type: none"> • Joint Director Medical – Chairman; • Superintendent of Victoria Hospital – Member; • Representative from a private Medical College and Hospital – Member; • Deputy Director, Procurement – Member; • Concerned State Program Officer – Member Secretary; 	<ul style="list-style-type: none"> • District Surgeon- Chairman; • Superintendent of the Hospital attached to local/nearby Medical Colleges, Private/ Government –Member; • DPMO- Member; • Concerned District Program Officer – Member Secretary

(c) Standing Committees for Office Furniture:

State Level	District Level
<ul style="list-style-type: none"> • Chief Administrative Officer, KHSDRP– Chairman; • Deputy Director, Procurement – Member; • Deputy Director from Industries and Commerce Department- Member; • Concerned State Program Officer – Member Secretary; 	<ul style="list-style-type: none"> • District Health Officer- Chairman; • DPMO- Member; • Concerned District Program Officer – Member Secretary

(d) Standing Committees for Office equipment including Computers, Communication equipment, audio visual equipment:

State Level	District Level
<ul style="list-style-type: none"> • Chief Administrative Officer, KHSDRP– Chairman; • Deputy Director, Procurement – Member; • Senior Programmer, Office of the Commissioner – Member; • Representative from National Informatics Centre- Member; • Concerned State Program Officer – 	<ul style="list-style-type: none"> • District Health Officer- Chairman; • DPMO- Member; • District NIC officer- Member; • Representative from IT wing of local Private/Government Engineering College- Member; • Concerned District Program Officer – Member Secretary

Member Secretary;	
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(e) *Standing Committees for Vehicles:*

State Level	District Level
<ul style="list-style-type: none"> • Chief Administrative Officer, KHSDRP– Chairman; • Deputy Director, Procurement – Member; • Chief Transport Officer - Member; • Representative from Transport Commissioner – Member; • Concerned State Program Officer – Member Secretary; 	<ul style="list-style-type: none"> • District Health Officer- Chairman; • DPMO- Member; • Concerned District Program Officer – Member Secretary

(f) *Standing Committees for printing of documents, IEC materials, training materials:*

State Level	District Level
<ul style="list-style-type: none"> • Chief Administrative Officer, KHSDRP– Chairman; • Deputy Director, Procurement – Member; • Deputy Director from Printing Department- Member; • Joint Director IEC, Office of Commissioner- Member; • Deputy Director , State Training Institute – Member; • Concerned State Program Officer – Member Secretary; 	<ul style="list-style-type: none"> • District Health Officer- Chairman; • DPMO- Member; • Officer in charge of District level training Institute – Member; • Concerned District Program Officer – Member Secretary

The Chairmen of the above Committees may co-opt one or more members/special Invitees for better functioning.

7.4 The Committees shall frame the specifications by following the procedure as given hereunder:

- Wherever possible the appropriate Indian Standards with the number shall be incorporated;
- The availability of the specification should be checked from the website of GoI Health Ministry (MOHFW) as well as the websites of the Tamil Nadu, Medical Services Corporation, and DGS&D Rate Contracts. The Specifications if available should be reviewed with reference to its suitability and appropriateness and modified to suit the specific needs of the indenter;
- Warranty and AMC requirements;
- If Specification is not available on these websites, specifications followed in previous procurements if any should be taken out and reviewed for its suitability and appropriateness;

- If not available unbiased specifications should be drawn by keeping in view the guidelines as given in paragraph 7.2 above and also that it meets the actual and essential needs of the user (minimum functional specification) because over specification will unnecessarily increase the cost and may stifle competition;

7.5 These Standing Committees shall also act as the Technical Evaluation Committees for technical evaluation of bids where technical bids are opened before the financial bids opening or as may be requested by the Procurement Committees.

Chapter VIII

Preparation and approval of tender documents

- 8.1 When once the Procurement Plan is prepared and approved by competent authority, and technical specifications have been finalized by the Standing Technical Specification Committees, action shall be initiated by the TIA as per the Procurement Schedule for preparation of the tender document.
- 8.2 The TIA shall prepare the tender documents based on the standard tender document issued by GoK for goods vide GO No. FD 9 PCL 2004 dated 6-8-2005 (Copy enclosed in Annexure 4 of Volume II) and GoK , Department of Health and Family Welfare GO. No. dated (Copy enclosed in Annexure 4 of Volume II)

(a) Procurement by open tenders:

Document Identification	Description of the document	Value of the contract
K/G-1 (Annexure 7 of Volume II)	Procurement of goods and equipment (other than medical equipment, drugs and pharmaceuticals, vaccines) by inviting open tenders –manual, single cover tender system	Aggregate value less than Rs. 10 lakh
K/G-2 (Annexure 8 of Volume II)	Procurement of goods and equipment (other than medical equipment, drugs and pharmaceuticals, vaccines) by inviting open tenders –manual, single cover tender system.	More than Rs.10 lakh, but less than Rs. 50 lakh
K/G-3 (Annexure 9 of Volume II)	Procurement of computer systems and allied equipment by inviting open tenders – manual, single cover tender system.	Aggregate value less than Rs.50 lakh
K/ME-1 (Annexure 10 of Volume II)	Procurement of medical equipment – manual, single cover tender system	Aggregate value less than Rs.10 lakh

K/ME-2 (Annexure 11 of Volume II)	Procurement of medical equipment- e-procurement, single cover tender system	Aggregate value less than Rs.50 lakh
K/ME-3 (Annexure 12 of Volume II)	Procurement of medical equipment- e-procurement, two cover tender system	Aggregate value more than Rs.50 lakh

(b) Procurement by limited tender enquiry (shopping):

Document Identification	Description of the document	Value of the contract
K/Q-1 (Annexure 13 of Volume II)	Procurement of Goods and Equipment by inviting quotations from selected vendors – Evaluation to be done for all items put together.	Less than Rs. 1 lakh
K/Q-2 (Annexure 14 of Volume II)	Procurement of Goods and Equipment by inviting quotations from selected vendors – Evaluation to be done for each item separately.	Less than Rs. 1 lakh per contract
K/S.O (Annexure 15 of Volume II)	Format of supply order when quotations are invited on Formats K/Q-1 and K/Q-2	

8.3 Approval for the needs assessment, specifications, procurement procedure to be followed and decisions to be taken on the various issues/points to be taken into consideration for filling the blanks and preparation of the tender document and final approval of the tender documents will be taken by the State and District level Committees constituted as here under:

(i) **State Level Procurement Committees:**¹⁴

Up to Rs.25 lakhs in each case:	Beyond Rs.25 lakhs and Up to Rs.50 lakhs in each case:	From Rs.50 lakhs to Rs.1 crore in each case:	Above Rs.1 crore in each case:	
Chief Administrative Officer	Director of Health Services	Mission Director	Commissioner, H&FW	Chairman.
Chief Finance Officer	Chief Administrative Officer	Director of Health Services	Mission Director	Member.
Deputy Director, Procurement	Chief Finance Officer	Chief Administrative Officer	Chief Administrative Officer	Member.
Additional Director, KSDL&WS	Deputy Director, Procurement	Chief Finance Officer	Chief Finance Officer	Member.

¹⁴ Based on the Operational Guidelines issued by KHSDRP vide its circular Nos HFW/KHSDRP/NRHM/ Proc/OG/02/08-09 dated 5/6/2008 and HFW/KHSDRP/NRHM/Proc/OG/01/08-09 dated 26/5/2008 and HFW/KHSDRP/NRHM/Proc/ OG/03/08-09 dated 23/7/2008 and HFW/KHSDRP/OG/23/2008-09 dated 9/9/2008

	Additional Director, KSDL&WS	Deputy Director, Procurement	Deputy Director, Procurement	Member.
		Additional Director, KSDL&WS	Additional Director, KSDL&WS	Member.
Concerned State Program officer	Concerned State program officer	Concerned State Program officer	Concerned State Program Officer	Member Secretary.

The Chairmen of the above Committees may co-opt one or more members/special invitees for better functioning.

(ii) ***District Level Procurement Committees:***

Up to Rs.25 lakhs in each case:	Above Rs.25 lakhs in each case:	
District Health Officer	Chief Executive Officer	Chairman.
Chief Accounts Officer (ZP)	District Health Officer	Member.
Concerned District Program Officer	Chief Accounts Officer (ZP)	Member.
	Concerned District Program Officer	Member.
DPMO	DPMO	Member Secretary.

The Chairmen of the above Committees may co-opt one or more members/special invitees for better functioning.

8.4 The Procurement Committees shall take decision on the following points/issues with regard to the preparation, finalization and approval of the tender documents.¹⁵

- Review the Need Assessment and take appropriate decision; (Refer paragraph 3.1)
- Review the availability of funds and the budget Program and Project head under which the procurement would be made;
- Decide on the procurement procedure to be followed such as State Procedures (KTPP Act) World Bank Procedures, DGS&D, other RCs of State Government (If approved Procurement Plan exists, it shall be followed unless changes are warranted);
- Decide on the package, estimated value of package, applicable method of procurement and schedule of procurement (If approved Procurement Plan exists, it shall be followed unless changes are warranted); (Refer Chapter IV)
- Check whether DGS&D rate contract is available for the item for which shopping method is proposed (for World Bank financed Project). In respect of procurement under KTPP, there is no limit on the cost of procurement on DGS&D rate contract;

¹⁵ Based on the Operational Guidelines issued by KHSDRP vide its circular Nos HFW/KHSDRP/NRHM/ Proc/OG/02/08-09 dated 5/6/2008 and HFW/KHSDRP/NRHM/Proc/OG/01/08-09 dated 26/5/2008 and HFW/KHSDRP/NRHM/Proc/ OG/03/08-09 dated 23/7/2008 and HFW/KHSDRP/OG/23/2008-09 dated 9/9/2008

- Decide and finalize the qualification requirements for the various packages in respect of NCB, ICB;(Conforming to GOK FD Circular PWD 1359 SO/FC 2001(P-2) Bangalore dated 3/12/2002; (Refer paragraph 8.6.1)
- Finalize the Delivery period;(Refer paragraph 8.6.5)
- Decide on the need or otherwise of AMC, if needed for what period and rate of discount to be adopted for calculation of bid amount that will be evaluated; (Refer paragraph 8.6.14)
- Finalize the additional factors which need to be taken for evaluation of bids, such as deviation in Delivery Period, deviation in Payment Schedule, and cost of Spare Parts for Specific Period of Operation; Availability of after sales service facility; Cost of AMC etc.:(Refer paragraph 8.6.13)
- Finalize the method of evaluation- for each item separately or for all items put together; Schedule wise etc.:(Refer paragraph 8.6.4)
- Decide on the cost of document to be Specified; EMD to be provided;(Refer paragraphs 10.2 and 8.6.2)
- Decide on the warranty requirement (Period or hours of operation); (Refer paragraph 8.6.10)
- Decide on the incidental services such as installation requirement, trainings to be provided, supply of operation manuals etc.) to be provided by the bidders;(Refer paragraph 8.6.12)
- Decide whether two cover systems is to be adopted, if the estimated cost of the intended procurement is less than Rs.50 lakhs.; (refer paragraph 5.7)
- Decide on the Security Deposit to be furnished by the bidder for supply of equipment and AMC; (Refer paragraphs 8.6.6 and 8.6.14)
- Decide on the inspection procedures; (Refer paragraph 8.6.18)
- Decide on the payment schedule; (Refer paragraph 8.6.15)
- Decide on the quantum of liquidated damages to be imposed for delayed delivery; (Refer 8.6.7)
- Decide on the other special conditions if any to be stipulated in the tender documents; (Refer 8.6.19)
- Scrutinize and approve the tender documents along with NIT as finalized by TIA;

8.5 The TIA shall:

- Prepare the tender document conforming to the decisions taken by the Procurement Committee by using the appropriate standard tender document;
- Seek and obtain the approval of the Procurement Committee for the tender document after making modifications if any as per suggestions of the Procurement Committee;

8.6 The standard tender documents have a number of blanks which need to be filled up appropriately. These have to be decided and approved by the Procurement Committees.

The KTPP Act, Rules and standard tender documents detail the procedure and methodology to be adopted with reference to the various steps in the procurement process. The following paragraphs elaborates on some of the issues/topics/steps and also gives guidance to the TIAs for finalization of the various procurement processes as detailed in Chapter II and for members of the Procurement Committees to review and take decisions on the various topics/issues involved in the procurement process as detailed in Chapter II above.

The following paragraphs provide the necessary additional guidance to enable the Committees to take appropriate and correct decisions.

8.6.1 Qualification Criteria:¹⁶

In order to ensure (i) the timely completion of projects; or (ii) satisfactory implementation of various health programs, it is very essential that contracts have to be awarded to Suppliers who have the resources, qualification and capability and can be expected to perform the contract satisfactorily. It is therefore very necessary to check the resources, qualification and capability of the lowest evaluated tenderer before award of the contract. This determination cannot be subjective and has to be a transparent process pre-disclosed in the tender documents. Hence the qualification criteria to check the requisite resources required for the satisfactory performance of the contract shall be appropriately incorporated in the tender document for supplies.

The model clause for goods/equipment contract could be as follows:

- (a) The tenderer should be a manufacturer who must have manufactured, tested and supplied the equipment similar to the type, size and complexity as specified in the schedule of requirements up to at least% (*indicate the percentage as considered appropriate usually not less than 80% of the requirement*) of the quantity required in any one of the last three years;
- (b) The equipment offered for supply must be the most recent series model incorporating the latest improvement in design and must have been in satisfactory operation for a period of not less than months (*usually 12 months, which needs to be checked*) on the date of tender opening;
- (c) Tenders of tenderers as authorized representatives/agent of manufacturer meeting with the above requirements in full can also be considered provided:
 - (i) The manufacturer furnishes authorization in the prescribed format assuring full guarantee and warranty obligations as per GCC and SCC; and
 - (ii) The tenderer as authorized representative has supplied, installed and commissioned satisfactorily at least% (*indicate the percentage as considered appropriate usually not less than 30% of the requirement*) of the quantity similar to the type, size and complexity specified in the schedule of requirements in any one of the last three years and which must be in satisfactory operation for at least months (*usually 12 months, which needs to be checked*) on the date of tender opening;

The tender document should have the stipulation to check the aggregate of the qualification criteria of the individual packages /items when the tenderer is lowest in more than one package (when tenders are invited for a number of packages/items in the same IFT) and also check the Available Tender Capacity of the tenderer before award of the tender. The model clause to check the aggregate qualification criteria could be as follows:

“To qualify for multiple packages/items made up of this and other packages/items for which tenders are invited in this Invitation for Tenders (IFT), the tenderer must demonstrate having experience and resources sufficient to meet the aggregate of the qualifying criteria for the individual packages/items”

The model clause to check the Available Tender Capacity of a tenderer could be as follows:

¹⁶ Based on the GOK Circular No.PWD/1359/SO/FC2001 (P-2) dated 3/12/2002

“Tenderers who meet the minimum qualification criteria will be qualified only if their Available Tender Capacity is more than the tender quantity. The Available Tender Capacity shall be calculated as under:

$$\text{Available Tender Capacity} = (A * N - B)$$

Where:

A= Licensed capacity for the item of supply;

N= Number of years prescribed for completion of supplies for which the tenders are invited;

B= Number of existing commitments to be supplied during the next years (period of completion of the supplies/Delivery period for which the tenders are invited)

Example:

Open tenders have been invited for supply of 500 units of an X-ray machine. Delivery period is 6 months. The licensed capacity of the manufacturer is 1000 units of X-ray machine per annum. The manufacturer has commitments to supply 600 units during the next six months which coincides with the desired delivery period. Check whether the tenderer satisfies the available tender capacity criteria.

A= 1000 units per annum

N= Delivery period – 6 months i.e. 0.5 year

B= Existing commitments to be supplied during the next six months i.e delivery period = 600 units

Available tender capacity = $1000 \times 0.5 - 600 = -100$ units.

This means that even if the tender is awarded to the lowest evaluated responsive bidder who satisfies the other criteria, he will not be able to make the supplies in the desired delivery period.

The tender documents for supply estimated to cost more than Rs.1 lakh, but less than Rs.50 lakhs (the threshold for Two Cover system of tenders) should have post-qualification criteria, which have to be satisfied by the lowest evaluated responsive tenderer both for aggregate qualification criteria as well as available tender capacity to be eligible for award of the contract.

In case of two cover system tenders; these will be checked first and the financial tenders of those tenderers who satisfy the qualification criteria will only be opened.

It is not necessary to incorporate separate qualification criteria in tender documents for supply packages estimated to cost Rs.1 lakh and less. Registration in the Department of Health and Family Welfare would be sufficient.

8.6.2 Earnest Money Deposit (Tender Security):¹⁷

The tender documents shall require that all tenders shall be accompanied by a specified EMD amount (fixed sum) The EMD amount shall be about 2% of the estimated cost of the supply

¹⁷ Based on Rule 12 (1) of the KTPP Rules 2000;

estimated to cost up to Rs.5 crores and for supplies estimated cost more than Rs.5 crores it shall be Rs.10 lakhs plus 1% of excess of estimated cost over Rs.5 crores.¹⁸ The tender security amount shall be specified as a fixed amount to the nearest thousand rupees. The tender security shall be in the form of Demand draft, banker's cheque in favour of TIA or any other specified officer and payable at Bangalore and specified Small savings instruments (National Savings Certificates, Kisan Vikas Patra etc.). It could also be in the form of irrevocable unconditional bank guarantee issued by a nationalized/scheduled Indian bank in the format as prescribed in the tender document, if the EMD is more than Rs. 2 lakhs.¹⁹ The DD/banker's cheque/bank guarantee shall be valid for 45 days²⁰ beyond the stipulated validity (original or extended) of the tenders. **The tender documents shall clearly state that the tenders not accompanied by tender security of the specified amount and in the specified form and secured up to the specified period/date shall be determined as non-responsive and rejected.**

The above procedure is in respect of manual tenders. In respect of e-procurement, the earnest money shall be made electronically as per procedure outlined in the standard tender document.

Any category of tenderers specifically exempted by GOK from the payment of EMD will not be required to make such a deposit.²¹

On receipt of BG and independent reference along with a copy of the BG so issued shall be made by TIA to the issuing bank for confirming the issue of the BG. ²²The BG's shall be kept under safe custody and periodically monitored for validity and timely renewal.

The tender security shall be forfeited:²³

- If the tenderer withdraws his tender after tender opening during the period of validity of the tender;
- If the tenderer does not accept the correction of the tender prices pursuant to any arithmetical mistakes as per provisions contained in the tender document;
- In the case of a successful tenderer, if the tenderer fails within the specified time limit to:
 - Sign the contract;
 - Furnish the required Performance Security ;

The tender security shall be returned to the unsuccessful tenderers once the contract has been signed with the successful tenderer.

8.6.3 Tender validity period:²⁴

¹⁸ Rule 12 of the KTPP Rules 2000 specifies that the EMD shall be at the rates as per departmental rules. However there does not appear to be any departmental rule. The amount of EMD has been proposed for consideration and approval;

¹⁹ There is no such stipulation in the KTPP Act and Rules. It is a proposal to safeguard the interests of the Department and guard against fake issues;

²⁰ As per STDs for Goods mandated by GOK;

²¹ Rule 12 (1) of the KTPP Rules 2000

²² There is no such stipulation in the KTPP Act and Rules. It is a proposal to safeguard the interests of the Department and guard against fake issues;

²³ There are no such stipulations in the KTPP Act and Rules. It is as per the provisions contained in the STD for goods mandated by GOK.

²⁴ Based on Rule 12 (3) of KTPP Rules, 2000 and provisions contained in STD for goods mandated by GOK

The tender documents shall specify the period for which the tenders should hold the prices offered in the tender as valid. The period should be sufficient to enable the KSDL&WS/Departmental officers to complete the comparison and evaluation of tenders, review the recommendations of award by the competent authority, obtain all the necessary approvals from competent authority, within the specified validity period. The initial validity period may be specified ranging from 90 to 180 days²⁵ depending on the value, complexity and levels of review and approval required for the evaluation, levels of review of recommendations and approval period. **The tender documents shall clearly state that the tenders not valid for the specified period shall be determined as non-responsive and rejected.**

8.6.4 Method of evaluation:

For procurement of medical equipment and other medical supplies, usually tenders are invited for a number of items in the same tender. In such cases decision has to be taken by the TIA/Procurement Committees whether the tenders for the various items would be evaluated together or separately for each item. If the tenders for each item are to be evaluated separately, earnest money will have to be specified separately for each item. Contract will have to be awarded to the lowest responsive and qualified tenderer of each item separately (one tenderer may get the contract for more than one item). There can be different manufacturers for each item separately, which may result in compatibility problems, finish being different for each item etc. These will have to be discussed and decision taken. Clubbing of tenders for a group of items (which are called as Schedule) which are usually manufactured by all the manufacturers will result in less number of contracts and also ensure goods of one manufacturer for the group of items. The EMD in that case will be for the group/schedule as a whole. The method of evaluation will then have to be appropriately specified (schedule of group of items or each item separately) in the tender document. This will be stated in the Instructions to the tenderers (ITT) and shown appropriately in the Schedule of requirements.

8.6.5 Delivery period:

The delivery period should be reasonable depending on the quantity to be supplied. This should depend on the manufacturing capacities of the prospective suppliers and market conditions/survey and the actual needs of the Department. Fixing an unreasonably short delivery period may result in unreasonably high rates or result in the failure of the supplier to adhere to the delivery period and consequent levy of liquidated damages and possible disputes. The tender document should clearly specify the date from which the delivery period would be reckoned, i.e. from the date of issue of supply order or from the date of making advance payment, or from the date of opening of letter of credit etc.

8.6.6 Performance Security:²⁶

The tender documents shall require that the successful tenderer submit performance security of an amount equal to 10% of the amount of tender within 21 days of notification of award as a guarantee of the tenderer's performance of the contract. The performance security shall be in

²⁵ Rule 12 (2) of the KTPP Rule 2000 specifies that the initial period of validity shall not be less than 90 days.

²⁶ Rule 12 (3) of KTPP Rule 2000 states that the tender documents shall require that as a guarantee of the tenderer's performance of the contract, security deposit be taken from the successful tenderer as per departmental rules, However there does not appear to be any departmental rules. The provisions as given here are as per the STDs for goods mandated by GOK

the form of DD/banker's cheque issued in favour of TIA or any other officer payable at Bangalore or specified small savings instruments (National Savings Certificates, Kisan Vikas Patra etc.) pledged to the Purchaser, or unconditional bank guarantee in the format included in the tender document and valid up to 30 days after the warranty period in respect of goods contracts.

On receipt of BG an independent reference along with a copy of the BG so issued shall be made by TIA to the issuing bank for confirming the issue of the BG. The BG's shall be kept under safe custody and periodically monitored for validity and renewal.

The procedure and the conditions to be satisfied for refund of the performance guarantee shall be as detailed in the tender documents.

8.6.7 Liquidated Damages:²⁷

The tender documents for supply of goods and services, there shall be provision for levy and recovery of liquidated damages, if the supplier fails to deliver any or all of the goods within the period specified in the contract. The liquidated damages shall be an equivalent of 0.5% of the delivered price of the delayed items of equipment or unperformed services for each week or part thereof of delay until actual delivery or performance up to a maximum deduction of 10% of the contract price. Once the maximum is reached, the Purchaser may consider termination of the contract.

Example:

<i>Total value of the Contract</i>	<i>Rs.20, 00,000/-</i>
<i>Delivered price of delayed items</i>	<i>Rs.4, 00,000/-</i>
<i>Stipulated delivery period</i>	<i>20 weeks</i>
<i>Actual delivery period</i>	<i>30 weeks</i>
<i>Delay</i>	<i>10 weeks</i>

Liquidated damages to be levied and recovered:

$$4, 00,000 \times 0.5/100 \times 10 = \mathbf{Rs.20,000/-}$$

8.6.8 Insurance:²⁸

The tender documents for goods shall have provision for fully insuring the goods to be supplied under the contract in Indian Rupees (unless the goods are being procured under Global/International Competitive tenders) against loss or damage incidental to the manufacture or acquisition, transportation, storage and delivery of goods at site. The insurance shall be obtained by the Supplier in an amount sufficient to take care of the overall expenditure to be

²⁷ Rule 12 (4) of the KTPP Rules states that 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 of the terms or whole of the contract. The amount of liquidated damages and the ceiling are as per provisions in the STD for goods mandated by GOK.

²⁸ No such stipulation in the KTPP Act and Rules. The provision is as per the STD for goods mandated by GOK.

incurred by the Purchaser for receiving the goods at the destination (say equal to 110% of the value of the goods from “warehouse to warehouse” -final destination) on “All Risks” basis including War risks and strikes.

8.6.9 Quantity variation:²⁹

The tender documents for goods shall indicate the quantity of goods and services proposed to be procured in the tender. The TIA shall be ordinarily permitted to vary the quantity finally ordered only to the extent of 25% either way of the requirement indicated in the tender documents, without any change in the unit price or other terms and conditions. This limit of variation is not to be exercised once the contract is concluded. Repeat orders are not permissible.

8.6.10 Warranty:³⁰

The tender documents for goods have an appropriate warranty clause to ensure that the goods supplied under the contract are new, unused, of the most recent or current models and that they incorporate all recent improvements in design and materials provided otherwise in the tender documents. The Supplier should warrant that all goods supplied under the contract shall have no defect arising from design, materials or workmanship (except when the design and/or material is required by the Purchaser’s specification) or from any act or omission of the Supplier, that may develop under normal use of the supplied goods in the conditions prevailing in Karnataka State.

The tender document should specify validity of the warranty as the number of hours of operation or period from the date of delivery and acceptance at the final destination (*The warranty period varies for different categories of equipment and should be commercially acceptable. Stipulating a long warranty period may stifle competition. It should be fixed in such a manner as will be provided by most of the manufacturers*) or for a period after the date of shipment from the place of loading which ever period concludes earlier and in addition comply with the performance and/or consumption guarantees specified in the Specifications. If for reasons attributable to the Supplier, these guarantees are not attained in whole or in part, the Supplier shall at its discretion either:

- (a) Make such changes, modifications, and/or additions to the goods or any part thereof as may be necessary in order to attain the contractual guarantees specified in the specifications at its own cost and expense and carry out the further performance tests as specified;
- (b) Pay liquidated damages to the purchaser with respect to the failure to meet the contractual guarantees. The rate of these liquidated damages shall be as specified in the technical specifications.

The tender documents lay down the procedure for communication of notices by the purchaser of any defects and the periods by which the supplier has to remedy the defects and action to be taken in case of failure by the Supplier.

²⁹ Based on Rule 12 (5) of the KTPP Rule 2000 and provisions contained in STD for goods mandated by GOK

³⁰ No such provision in KTPP Act and Rules 2000. The provision is as per the STD for goods mandated by GOK.

8.6.11 Manufacturer's Authorization:³¹

The tender for goods should be invited from Manufacturers/Producers only to ensure that the manufacturer is able to furnish full guarantee and warranty for the goods and services offered by him. However in the case of a tenderer offering to supply goods which the tenderer did not manufacture or produce, the tenderer should submit along with the tender an authorization from the goods' manufacturer or producer stating that:

- (i) No company or firm or individual other than the Supplier who has offered the tender is authorized to tender and conclude the contract for the goods manufactured/ produced by them;
- (ii) The Manufacturer/Producer hereby extend full guarantee and warranty as required in the tender document for supply of goods and services as per the tender;

The format of the Manufacturers' Authorization Form is given in the tender document. The letter of authority should be on the letter head of the manufacturer and should be signed by a person competent and having the power of attorney to legally bind the manufacturer. This should be submitted along with the tender. **Tenders from suppliers without the Manufacturer's Authorization in the prescribed format shall be considered as non-responsive and rejected.**

In case of certain items of goods which are of common nature and is distributed by a number of dealers, the manufacturer may not issue the letter of authority in the format as given in the tender document. In such cases, the tender document should specify for which items of equipment the letter of authority is required in the prescribed format and for which items is not required. Insisting on Manufacturer's Authorization Form in respect of all items may result in rejection of tenders and vitiating of the procurement process.

8.6.12 Incidental Services:³²

The suppliers of goods may be required to provide any or all of the following services including additional services if any to be incorporated in the SCC of the tender document:

- (a) Performance or supervision of the on-site assembly and/or start up of the supplied goods;
- (b) Furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) Furnishing of detailed operation and maintenance manual for each appropriate unit of the supplied goods;
- (d) Performance or supervision or maintenance and/or repair of the supplied goods for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under the contract;

³¹ No such provision in KTPP Act and Rules 2000. The provision is as per the STD for goods mandated by GOK.

³² No such provision in KTPP Act and Rules 2000. The provision is as per the STD for goods mandated by GOK.

- (e) Training of the purchaser's personnel, at the Supplier's plant and/or on-site, in assembly, start up, operation, maintenance and/or repair of the supplied goods;(the number of people to be trained and the period for which they are to be trained shall be specified)

8.6.13. Additional factors to be taken into account for evaluation of tender prices:

For arriving at the evaluated cost of an equipment, the following factors may be taken into consideration in addition to the tendered rates:

(a) Variation in the delivery period:

The delivery period is stipulated in the schedule of requirement. In some cases a tenderer offering a lower tender price may offer a longer delivery period due to his commitments. Such tenders cannot be accepted as such, as it does not conform to the requirements of the tender, nor it can be rejected because it is a lower tender. In such cases need arises for stipulation of a pre-disclosed scientific method in the tender document for arriving at an evaluated price for purposes of comparison of tenders.

The method stipulated in the STD is for delivery adjustment, which is calculated at the rate of 2% of the ex-factory price including excise duty for each month of delay beyond the required delivery period.

Example:

The stipulated delivery period for an medical equipment is 6 months.

Tenderer A has quoted Rs.40 lakh (ex-factory price plus excise duty) with a delivery period of 8 months.

Tenderer B has quoted Rs.41 lakh (ex-factory price plus excise duty) with the delivery period of 6 months.

Rate of adjustment 2% per month of delay beyond stipulated delivery period.

*Adjusted tender price of Tenderer A is = $40,00,000 + 2/100 * 2 * 40,00,000$*

= 41,60,000/-

Hence the adjusted tender of Tenderer A is Rs.41.6 lakhs as against the tender price of Tenderer B i.e. Rs.41 lakh.

The lowest evaluated tender is that of Tenderer B.

(b) Variation in payment schedule:

The payment schedule is stipulated in the tender document. In some cases a tenderer offering a lower tender price may require a payment schedule, which results in some extra payment to the Supplier. Such tenders cannot be accepted as such, as it does not conform to the requirements of the tender, nor it can be rejected because it is a lower tender and the requested payment schedule is accepted. In such cases need arises for stipulation of a pre-disclosed scientific method in the tender document for arriving at an evaluated price for purposes of comparison of tenders.

The method stipulated in the STD is for payment schedule adjustment, by calculating interest earned for any earlier payments involved in the terms which is calculated at the market rate.

Example:

The stipulated payment schedule for some medical equipment is 100% on delivery and final acceptance. The delivery period is 6 months.

Tenderer A has quoted Rs.40 lakh with 100% payment on issue of supply order.

Tenderer B has quoted Rs.41 lakh with the payment schedule as given in the tender document.

Bank rate of interest is 10% per annum.

*Adjusted tender price of Tenderer A is =40,00,000+10/100*6/12*40,00,000
= 42, 00,000/-*

Hence the adjusted tender of Tenderer A is Rs.42 lakh as against the tender price of Tenderer B i.e. Rs.41 lakh.

The lowest evaluated tender is that of Tenderer B.

(c) Cost of spare parts required for a specified period:

In case of certain equipment, it may be necessary to procure fast moving spare parts required for a specified period along with the equipment to ensure satisfactory performance of the equipment. The TIA may prepare a list of spare parts and ask the tenderers to submit the rates for these spare parts. The TIA or TSC may then add the cost of these parts to the cost of the equipment for purposes of evaluation and comparison of tenders. Alternatively the TIA may ask the tenderers to give the list of spare parts which is required for satisfactory performance of the equipment for a specified period. The costs of these spare parts are then added to the cost of the equipment for evaluation and comparison of tenders. The basic idea being that a robust built and well designed equipment may have higher capital cost and may not require many spare parts during the specified period. Alternatively an ill designed and poorly manufactured equipment may require replacement of many spare parts in the specified period and would thus result in higher owning costs and higher down time over a period of time.

(d) Cost of operation and maintenance of equipment over the life of the equipment:

In case of procurement of some equipment, which need POL/electricity for its operation, it may be necessary to take into account the cost of operation and maintenance of the equipment over its life period and add it to the capital cost while evaluating the tenders. Here also the idea is that though an equipment may cost low on the capital cost, it may need higher operation and maintenance cost, which will result in higher overall cost to the Purchaser. It would not be prudent in such cases to evaluate the tenders only on capital cost and take award decision.

8.6.14 Annual Maintenance Contract:³³

Some goods, especially computer systems, sophisticated medical equipment and machinery need proper maintenance for trouble free service. For this purpose, the Department/Society may

³³ No such provision in KTPP Act and Rules 2000. The provision is as per the STD for goods mandated by GOK and provisions contained in the Manual for procurement of goods issued by GOI in August 2006. AMC for four years has been stipulated in the STD for medical equipment.

enter into maintenance contract, which will start after the expiry of the warranty period, during which period the goods are to be maintained free of cost by the Supplier.

Maintenance contract may be entered into either with the Manufacturer/ Supplier of the goods or with a competent and eligible firm not necessarily the manufacturer/supplier of the goods in question. Decision has to be taken on a case by case basis on merit.

If the maintenance contract is to be entered into with the Supplier of the goods, then suitable clauses for this purpose are to be incorporated in the tender documents itself and evaluation has to be done on an overall basis goods cost plus maintenance cost to decide the inter se ranking of the responsive tenderers. The period for which AMC would be required would have to be decided by the TIA/Procurement Committee

However if the maintenance contract is to be entered into with a competent and eligible supplier separately, then a separate tender enquiry is to be floated for this purpose and tenders evaluated and ranked accordingly for award of maintenance contract. Here the Supplier of the goods may also quote and its quotation, if received should be considered along with other quotations received.

While evaluating the tenders for maintenance of goods covering a period more than a year, the quoted prices of future years are to be discounted at a pre-disclosed rate (rate to be decided by the TIA/ Procurement Committee) to arrive at the net present value (NPV) for comparing the tenders on equitable basis and deciding the lowest evaluated responsive tender.

Example:

The manufacturer of medical equipment has quoted the following as the AMC cost for four years after the Warranty period. The rate of discount as pre-disclosed in the tender document is 10% per annum.

<i>First year after warranty period:</i>	<i>Rs.2,00,000/-</i>
<i>Second year after warranty period:</i>	<i>Rs.2,50,000/-</i>
<i>Third year after warranty period:</i>	<i>Rs.3,00,000/-</i>
<i>Fourth year after warranty period:</i>	<i>Rs.3,50,000/-</i>

Net present value of the AMC quoted shall be as under:

$200000 + 250000/1.1 + 300000/1.21 + 350000/1.331 = 200000 + 227272.73 + 247933.88 + 262960.18 = \text{Rs.}938166.79$ against *Rs.11,00,000/-*

The details of the services required for maintenance of goods, the required period of maintenance and other relevant terms and conditions including payment terms are to be incorporated in the tender document. The terms of payment for maintenance service will depend on the nature of goods to be maintained as well as the nature of the services required. Generally payment for maintenance is made on half yearly or quarterly basis up front.

If the goods to be maintained are sophisticated and costly the tender document should also have a provision for obtaining performance security. The amount of performance security will

depend on the nature of the goods, period of maintenance etc. It generally varies from 2.5 to 5% of the value of the equipment to be maintained.

Some times the maintenance contractor may have to take the goods or some components of the goods to its factory for repair etc. On such occasions before handing over the goods or components, suitable bank guarantee is to be obtained from the firm to safeguard purchaser's interest.

Appropriate provisions should also be made in the contract for termination of maintenance contracts and payments thereof, should such contingency arise.

8.6.15. Payment Terms:³⁴

The method of proposed payment shall be specified in the tender document. The usual method which is commercially accepted is as follows:

On Delivery: Eighty percent of the contract price shall be paid on receipt of goods and upon submission of the goods as stipulated in the tender documents;

On Final Acceptance: The remaining twenty percent of the contract price shall be paid to the supplier within 15 days after the date of the acceptance certificate issued by the Purchaser's representative for the respective delivery;

The payment terms can be changed depending on the value and complexity of the equipment to be procured. For small value procurement, full payment can be made after delivery and final acceptance.

The Supplier's request for payment shall be made to the Purchaser in writing accompanied by an invoice describing as appropriate, the goods delivered and services performed and by documents submitted as required in the tender documents and upon fulfillment of the obligations stipulated in the contract. This shall be checked and inspected by the Purchaser's representative and accounted as per normal accounting procedure prescribed by the Company. Payments shall be made promptly by the Purchaser within 30 days after submission of invoice or claim by the Supplier.

8.6.16 Price Adjustment:³⁵

There shall be no provision for price adjustment. The prices shall be fixed and firm during the period of the contract.

8.6.17 Settlement of Disputes:³⁶

Normally there should not be any scope for dispute between the Purchaser and the Supplier after into a mutually agreed valid contract. However due to various unforeseen reasons, problems may arise during the progress of the contract leading to disagreement between the Purchaser and the Supplier. Therefore the tender documents (for procurement of value more

³⁴ No such provision in KTPP Act and Rules 2000. The provision is as per the STD for goods mandated by GOK.

³⁵ As per paragraph 1(a) of GOK Order No. FD 59 Pro.cell 2004 dated 26/11/2004

³⁶ No such provision in KTPP Act and Rules 2000. The provision is as per the STD for goods mandated by GOK.

than Rs. 10 lakhs) shall contain suitable provisions for settlement of such disputes/differences binding on both the parties

When a dispute/differences arises both the Purchaser and Supplier shall first try to resolve the same amicably by mutual consultation. If the parties fail to resolve the dispute by such mutual consultation within 30 days, then depending on the position of the case, either of the party shall give notice to the other party of its intention to refer the matter for Arbitration. The Arbitration shall be conducted in accordance with the procedures as contained in the Indian Arbitration and Conciliation Act, 1996. The procedure for selection and appointment of arbitrators, place of conducting the arbitration shall be specified in the tender documents.

Arbitration may be commenced unless such notice is given. Notwithstanding any reference to arbitration:

- The parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- The Purchaser shall pay the Supplier any monies due to the Supplier;

8.6.18 Inspection and tests:³⁷

Before accepting the ordered goods, it must be ensured that the goods have been manufactured as per the required specifications and are capable of performing the functions as specified in the tender documents. To achieve the same, the tender document and the subsequent contract shall specify the details of the inspection and tests to be carried out and the stages and manner of carrying out the same. The details of the inspecting officers shall also be incorporated in the tender documents. The required inspections and tests shall be carried out by technically qualified and competent personnel. The Department/Society may also adopt third party inspection.

The stages and modes of inspection shall depend on the nature of the goods and total value of the contract, location of supplier, location of the user etc. Usually the following types of inspection shall be adopted:

- Pre-dispatch Inspection: This type of inspection is conducted during the manufacturing process (which is known as Stage Inspection) and on the finished products before dispatch of the goods from supplier's premises;
- Inspection of goods on receipt at consignee's/user's site: Such inspection is done on receipt of goods at site before accepting the same;
- Inspection after installation and commissioning of the equipment at site: This method is adopted to check the performance and output of the equipment/machinery after the same is commissioned at site.

The inspection procedure as required for a particular procurement should be detailed in the tender document

Third Party Inspection of goods and equipment:³⁸

³⁷ No such provision in KTPP Act and Rules 2000. The provision is as per the STD for goods mandated by GOK as also the provisions contained in the Manual for procurement of goods issued by GOI in August 2006.

The appointment of independent Third Party Inspectors/ designated Quality Supervision Consultants would go a long way in assisting the Departmental officers to ensure adherence to quality standards in procurement of goods and equipment.

Third party inspection shall be mandatory in respect of all goods and equipment contracts of value more than Rs.25 lakhs for an item of goods and equipment.

Reputed Quality Supervision Consultants (either individual or firm) known for integrity and professionalism shall be appointed by following the procedures for procurement of consultants. The Terms of Reference shall be well defined. Detailed checklists, to be completed by the Quality Supervision Consultants shall be prepared (with the assistance of experts, if need be) to ensure that the consultants perform their obligations satisfactorily.

The employment of the Quality Supervision Consultants could be either for one or more contracts for procurement of goods and equipment or for procurement made in a term or stipulated period. The expenditure on the employment of the Quality Supervision Consultants shall be charged to the cost of goods and equipment under procurement.

The Quality Supervision Consultant shall inspect the goods and equipment during manufacture/before dispatch, after receipt, assembly and commissioning as per the terms of the contract and submit reports along with prescribed checklists duly completed to the Purchaser with a copy to the Commissioner, Department of Health and Family Welfare who will be responsible for review of the Action Taken Reports.

The employment of the Quality Supervision Consultant and the inspections conducted by them shall not absolve the primary responsibility of the Purchasers for procurement of goods and equipment of good quality as per stipulations in the specifications. The Quality Supervision Consultants are there to assist the Purchaser in discharging their primary responsibility.

8.6.19 Special Conditions of Contract:

The Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC) and should be included in the tender document to take care of the special need of the contract. However it must be borne in mind that whenever there is conflict, the provisions in the SCC shall prevail over the GCC. Hence it should be ensured that the SCC does not undo the basic characteristics of GCC. If any of the provisions of the GCC are required to be changed, the changes should not be made in the GCC. The changes should be shown in the SCC.

Chapter IX

Invitation of Tenders; Notification and Advertising:

³⁸ Based on GOK order No.FD55 Pro.Cell 2004 dated 17/2/2005.

9.1 Invitation for Tender (IFT) by advertisement shall be used for procurement goods and equipment of estimated value Rs.1 (One lakh) and above³⁹. The advertisement in all cases where the value of procurement exceeds Rs.10 crores shall be given in the Indian Trade Journal (ITJ), published by the Director General of Commercial Intelligence and Statistics, Kolkata and at least in one national news paper (daily) having its publication in Delhi, Mumbai, Chennai, Kolkata and Bangalore. The IFT shall also be published in the website of KSDL&WS and Department of Health. The web site address shall be given in the advertisements published in ITJ and newspapers. The IFT shall contain the following details:⁴⁰

- The name and address of the procuring entity and the designation and address of the officer inviting tenders;
- Name of the scheme, project or program for which the procurement is to be made;
- The date up to which and places from where the tender documents can be obtained;
- The amount of earnest money deposit (tender security) payable;
- The last date and time for the receipt of tenders;
- The date, time and place for opening of tenders received;
- Any other information, which the officer inviting tenders considers relevant.

In respect of e-tenders, the IFT could be brief and give reference to the web site and the detailed IFT shall be given in the website.

9.2 Scale of Newspaper publicity:⁴¹

The number, editions and language of the newspapers in which the NIT/IFT shall be published will be as under:

Value of Procurement (Rs.lakhs)	Number of Newspapers	Insertions	Edition	Language	Competent authority to release the advertisement
Up to Rs. 10 lakhs	Two	One	Karnataka state	One English and One Kannada	District Information and Publicity Officer
Rs.10 to 50 lakhs	Two	Two	Karnataka State	One English and One Kannada	Director of Information and Publicity, Bangalore
More than Rs.50 lakhs	Two	Two	All Metros and Karnataka State	Two English and One Kannada	Director of Information and Publicity, Bangalore
More than Rs 10 crores	Two and Indian trade Journal	Two	All Metros and Karnataka State Indian trade Journal	Two English and one Kannada	Director of Information and Publicity, Bangalore in respect of News papers and Head of the office in respect of Indian trade Journal

³⁹ KTPP Act 1999 specifies that open tenders be invited for procurement of goods estimated to cost more than Rs.1 lakh.

⁴⁰ Rule 9 of KTPP Rules 2000.

⁴¹ KTPP Rules 2000 prescribes in Rule 10 (2) that the number, edition and language of newspapers for publication of NIT shall be based on the value of procurement as per department rules. .

Global/International open tenders	Two, dg Market, UNDB and Indian Trade Journal. In addition copy of the IFB be sent to Commercial Attache of Foreign Embassies of countries who are likely to be interested in supply, located in India.	Two for News Papers	All Metros and Karnataka State dg Market and UNDB	Director of Information and Publicity, Bangalore in respect of News Papers and Head of Office in respect of dg Market and UNDB
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In addition to the news paper publicity, the IFT should also be published in the State and District Tender Bulletins as per provisions of the KTPP Act as detailed below.

9.3 Publication of the Tender Bulletin:⁴²

Timely notification of tendering opportunities is essential in competitive tendering. Invitation to Tender shall be forwarded to the Tender Bulletin Officers (TBOs) for publication in the District and State Tender Bulletins. The District Tender Bulletin (DTB) shall be published by the District Tender Bulletin Officer (DTBO) and the State Tender Bulletin (STB) shall be published by the State Bulletin Officer (an Officer designated by the Secretary Health and Family Welfare Department). DTBs and STBs shall be published at least once every week. The TBOs shall cause to be published all IFT/NIT received up to forty-eight hours prior to the actual publication of the bulletin.

In case NIT needs to be published urgently then the Secretary to Government, Health Department in the case of STB or the Deputy Commissioner in the case of DTB may for the reasons to be recorded in writing, direct the respective TBOs to publish an extraordinary issue of the TB.

9.4 Distribution of the TB:

The TBO shall make available copies of the TB at the office of Tender Inviting Authority (TIA) whose NIT/IFT finds place in the bulletin. Any person or institution can be enrolled as a regular subscriber to the TB on payment of a fixed fee annually, half-yearly or quarterly as the case may be.

The TB shall contain only information of the NIT/IFT. A NIT/IFT will not be invalidated merely on the grounds that the notice has not been published in the News papers.

NIT shall be published in the STB in cases where the TIA is a Secretary to Government or Head of a Department and the value of the procurement is Rs. One crore and above. NIT shall be published in

⁴² Based on the provisions of Chapter II of KTPP Act, 1999 and Chapter III of KTPP Rules, 2000

the DTB of the district where the headquarters of the TIA is located, Provided that where the value of procurement is Rs. One crore and above it shall also be published in the STB.

9.5 The Procurement Committees shall:

- Finalize the publicity requirements for the various packages keeping in view the importance and value of the procurement as per guidelines given in paragraph 9.2 above.

9.6 The TIA shall:

- Take out notice inviting tenders/invitation for quotation in the prescribed manner and format and shall contain the information as detailed in paragraph 9.1 above;
- Communicate the NIT/IFT by marking a copy to the concerned State/District Tender Bulletin Officer (TBO) immediately after issue of the notice (in respect of tenders estimated to cost more than Rs.1 crore the Nit shall be sent to State Bulletin Officer in addition to the District Tender Bulletin Officer);
- Cause publication of the NIT/IFT in the prescribed manner as given in paragraph 9.2 above;

Chapter X

Issue/Sale of tender documents to prospective tenderers, Pre-tender conference and submission of tenders

10.1 Issue/sale of tender documents to prospective tenderers:

The TIA shall issue/sell to any person who is willing to remit the cost of the documents. The tender documents should be made available from the date of publication of the notice inviting tenders to the pre-declared time on the working day previous to the day fixed for the submission of the tenders (either original or extended). The tender documents shall be sent by registered post or by courier to any prospective tenderer who makes a request for the documents on payment of the cost along with postal or courier charges at the risk and responsibility of the prospective tenderer.

10.2 Cost of tender documents:

The cost of the tender documents shall be reasonable and cover only the cost of their printing/making copies and delivery to prospective tenderers. It shall not be so high as to discourage qualified tenderers. The cost shall be inclusive of the applicable sales tax. Cost of sending the tender documents by registered post/courier shall also be indicated in the IFT/NIT.

10.3 Clarification to tender document and issue of amendments:⁴³

At any time after the issue of the tender documents and before opening of the tender, the TIA may make any changes, modifications or amendments to the tender documents and shall send intimation of such changes to all those who have purchased the original tender documents.

10.4 Pre-tender conference:⁴⁴

In the case of goods packages where pre-tender conference is determined to be necessary) a pre-tender conference may be held after a lapse of about half of the tender period. During the conference the officer inviting tender shall explain the qualification criteria and other tender requirements to the prospective tenderers and try to clarify any issues brought out by the prospective tenderers. The minutes of the pre-tender conference shall be prepared and issued to the prospective tenderers who have already purchased the tender documents and shall be affixed to the tender documents sold after the pre-tender conference date. Any modifications required to the tender documents as a result of the deliberations of the pre-tender conference, shall be issued as amendments to the tender documents and not through the minutes of the pre-tender conference. A minimum period of 10 days (from the date of issue of minutes of pre-tender conference and amendments thereof) shall be allowed for submission of the tenders, by extending the date of submission of tenders if need be by issue of an amendment.

10.5 Submission of tenders

10.5.1 Time for preparation and submission:⁴⁵

The time to be allowed for the preparation and submission of the tenders shall be determined with due consideration of the particular circumstances of the project and the magnitude and complexity of the work/supply for which tenders are invited. A minimum period of 30 days reckoned from the date of publication of the notice inviting tenders (NIT) or from the date of making available the tender documents for issue/sale of tender document to the last day fixed for the submission of tenders shall be allowed in respect of packages of value equal to or less than Rs.2 crores. The period shall be a minimum of 60 days in respect of packages of value more than Rs.2 crores to enable the prospective tenderers to conduct necessary investigations

⁴³ Rule 14 of KTPP Rules 2000

⁴⁴ No such provision in KTPP Act and Rules 2000. The provision is as per the STD for goods mandated by GOK.

⁴⁵ Based on Rule 15 and 17 of the KTPP Rules 2000

before submission of tenders. Any reduction in the time stipulated above has to be specifically authorized by an authority superior to the TIA for reasons to be recorded in writing. However, it shall not be less than 15 days under any circumstances.⁴⁶

10.5.2 The TIA shall ensure that adequate arrangements are made for the proper receipt and safe custody of the tenders at the place indicated for receipt of tenders. The tenderers shall be permitted to submit tenders by mail (post or courier) or hand provided, the Department /Society shall not be responsible for any delay in transit in such cases. The Department/ Society may also permit tenderers to submit the tenders by electronic means. The last date and time as well as the place for submission of the tenders shall be specified in the NIT. The Officer inviting Tenders may extend the last date and time for submission of tenders in cases after giving adequate notice to all intending tenderers, where:

- (a) The publication of tender notice has been delayed;
- (b) The communication of changes in the tender documents to the prospective tenderers as per provisions of paragraph 2.14 and 2.15 took time;
- (c) Any other reasonable grounds exist for such extension which shall be recorded in writing by the TIA;

10.5.3 Marking of covers in which the tenders are submitted:⁴⁷

The tenderers shall be responsible for properly superscribing and sealing the cover in which the tenders shall be submitted and the Company shall not be responsible for accidental opening of the covers that are not properly superscribed and sealed as required in the tender documents before the time fixed for the tender opening.

10.6 The Procurement Committees shall:

- Scrutinize and approve any amendment, modifications to the approved tender documents;
- Recommend/approve the reduction of tender submission time from the prescribed 30 and 60 days;
- Scrutinize and approve the pre-bid minutes and the modifications to the specifications and conditions in the tender documents if any in the approved tender documents;
- Scrutinize and approve the extension of tender submission and opening dates, times and venue;

10.7 The TIA shall:

- Make available the tender documents from the date indicated in the NIT/IFT;
- Supply copies of the tender document to every intending tenderer who has applied to get such documents and is willing to remit the cost of the documents;
- 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;
- Make any changes, modifications or amendments to the tender documents (with the approval of the Procurement Committee) and shall send timely intimation of such changes

⁴⁶ KTPP Rules 2000 does not prescribe a minimum period. It is proposed to specify the minimum period to check any abuse of the provision.

⁴⁷ Rule 16 of KTPP Rules 2000

to all those who have purchased the documents and incorporate the changes in the documents to be issued/sold thereafter;

- Hold pre-tender meeting at the time and venue as may be provided in the tender documents and issue minutes of the meeting along with the proposed changes, modifications or amendments (with the approval of the Procurement Committee) to all those who have purchased the tender documents and attach the same in the tender documents to be sold/issued thereafter;
- Make adequate arrangements for the proper receipt and safe custody of the tenders and other communications at the time and place indicated for the receipt of the tenders as specified in the tender documents;
- Permit the submission of tenders by post or courier, without taking responsibility for any delay in transit of such documents;
 - Extend the last date and time for receiving tenders (with the approval of the Procurement Committee) after giving adequate notice to all intending tenderers in cases as detailed in paragraph 10.5.2 above;

Chapter XI

Opening of Tender

11.1 Tender opening procedures- Single Cover System:⁴⁸

All the tenders received by the TIA shall be opened at the pre-disclosed date, time and venue (in the NIT or extension thereof) within 30 minutes of the last time stipulated in the NIT or extension thereof for the submission of the tenders. The tenders shall be opened in the presence of the tenderers

⁴⁸ Based on Rules 18 and 19 of KTPP Rules 2000

or their authorized representative, who choose to be present (in person or online, when electronic tendering is used). The following procedure shall be followed at the time of manual tender opening:⁴⁹

- (a) All the envelopes received containing tenders shall be counted;
- (b) All the tenders received in time shall be opened; late tenders shall be returned unopened;
- (c) A record of the corrections noticed at the time of opening of tenders shall be maintained;
- (d) The name of the tenderers and the tender prices (and in case of item rate tenders the rates for the various items in words and figures) shall be read out and recorded;
- (e) The fact whether EMD has been submitted, amount, form, validity in case of bank guarantee shall be announced and recorded;
- (f) The discounts offered (conditional or otherwise) shall be announced and recorded;
- (g) The documents produced shall be listed and announced. This shall be merely an examination of the documents and not an evaluation;

Minutes of the tender opening shall be recorded. The signatures of the tenderers or their representatives present shall be obtained unless any of the tenderers or his representatives refuses to sign the minutes; A copy of the minutes shall be promptly forwarded to the tenderers who submitted the tenders.

11.2 Two Cover System:

The first cover which shall contain the following information will be opened first:

- Experience and past performance in the execution of similar contracts;
- Capabilities with respect to personnel, equipment or manufacturing facilities;
- Financial status and capacity;
- Earnest money deposit as required;
- Documentary evidence that the offered goods conform to the technical specifications and standards specified in the corresponding Section of the tender documents. The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the goods and related services, demonstrating substantial responsiveness of the goods and related services to the technical specification and if applicable, a statement of deviations and exceptions to the provisions of the Schedule of Requirements.
- Any other information considered relevant;

The second cover shall contain the prices quoted by the tenderer;

At the time of opening of the first covers, the second covers containing the price quotations shall be placed in a large cover and securely sealed in the presence of the tenderers or their representatives, who are present and also get the same signed by all those tenderers or their representatives. This large cover containing the price quotations shall be opened on a pre-determined time and date as per procedure given hereunder;

11.3 The Procurement Committee shall:

- Supervise opening of tenders, if need be;
- Scrutinize the tender opening minutes before issue;

11.4 The TIA shall:

⁴⁹ Based on Rule 19 of the KTPP Rules 2000.

- Open or cause to be opened by an authorized official all tenders and communications as received at the time and venue specified in the NIT or modifications, amendments issued subsequently in the manner prescribed in the tender documents, in the presence of the tenderers or one of their authorized representatives, who choose to be present, by following the procedure as given below or other procedure as may be given in the tender documents;
- Follow the procedures as given in paragraph 11.2 above in respect of Two Cover tender system;
- Count all envelopes containing the tenders, irrespective of any deficiency;
- Open all tenders received in time; delayed tenders (on whatever account) shall not be opened;
- Maintain a record of the corrections noticed at the time of tender opening;
- Read out and record the names of the tenderers and the rates quoted by them for each of the item(s) in figures and words;
- Read out and record the details of EMD deposited such as amount, form and validity;
- Read out and record the validity of the bids, warranty, and any other conditions/ reservations given;
- Read out and record discounts offered if any;
- Record the minutes of the tender opening by incorporating the above details and obtain the signatures of the tenderers unless any of the tenderers refuses to sign the minutes;

Chapter XII

Evaluation and Comparison of Tender:

12.1 Tender Scrutiny Committee:⁵⁰

In respect of tenders whose estimated value is less than Rs. 1 crore. The evaluation may be done by the TIA himself. However, The Department/Society shall constitute a Tender Scrutiny committee (TSC) (in respect of tenders of estimated value more than Rs. 1 crore) consisting of such officers as it considers fit to supervise opening of tenders, scrutinize the tenders and carry out preliminary and detailed evaluation of the tenders received and prepare an evaluation report for consideration of the

⁵⁰ Rule 20 of the KPPP Rules

TAA. The TSC may ask tenderers for clarification needed if need be, to evaluate their tenders. The requests for clarification needed and the tenderer's response shall be made in writing in hard copy or by a satisfactory electronic system.

12.2 Tender Evaluation:

The tenders shall be evaluated by TIA/TSC strictly as per the provisions of the tender documents as issued/sold to the tenderers.⁵¹

12.3 Initial examination to determine substantial responsiveness:⁵²

The TIA shall make/cause an initial examination (with reference to the following factors) of the tenders submitted in order to determine the substantial responsiveness:

- Whether the tenderer meets the eligibility criteria laid down in the tender document;
- Whether the crucial documents (such as Tender Form, Price schedule, Manufacturer's Authorization, Power of Attorney) have been duly signed by authorized persons;
- Whether the EMD of the required amount in the required form and secured up to the stipulated period has been submitted;
- Whether the tender is valid as per requirement in the tender documents;
- Whether the tender is substantially responsive to the technical specifications set out in the tender document including the testing of samples where require;
- Whether the tender is substantially responsive to the terms and conditions of the tender document; A substantially responsive tender is one which conforms to all the terms and conditions of the tender documents without material deviations; Deviations from or objections or reservation to critical provisions such as those concerning, Performance Security, Warranty, Force Majeure, Limitations of Liability, Applicable Law, Taxes and Duties shall be deemed to be material deviation; The determination of a tender's responsiveness shall be based on the contents of the tender itself without recourse to extrinsic evidence;

The tenders, which on initial examination are found not to be substantially responsive under any of the above shall not be considered further. The tenderer shall not be permitted to correct or withdraw material deviations, after the public opening of the tenders.

12.4 Detailed evaluation and comparison of tenders and determination of the lowest evaluated price:⁵³

The purpose of tender evaluation is to determine the cost to the Department/ Society of each tender in a manner that permits a comparison on the basis of their evaluated cost. Subject to satisfying the stipulated qualification criteria, the tender with the lowest evaluated cost, but not necessarily the lowest cost shall be selected for award. In determining the lowest evaluated cost the following factors shall be considered:

- The tender amount read out at the bid opening shall be adjusted to correct any arithmetical errors;

⁵¹ Based on Rule 21 of the KTPP Rules 2000

⁵² Based on Rule 24 of the KTPP Rules 2000 and provisions of STD for goods mandated by GOK

⁵³ Based on Rule 25 of the KTPP Rules 2000 and provisions in STD for goods mandated by GOK.

- In case of discrepancy between the rates quoted in words and figures, the lowest of the two shall be considered;
- In case of discrepancy between the rates quoted in original and duplicate tenders, the rates quoted in the original shall prevail;
- The tender amount to include all duties, taxes and other local levies;
- Adjustments to the tender amount shall be made for deviations in commercial conditions, such as delivery schedules and minor variations in payment terms, (if provided in the tender document and in the manner in which they are to be considered) which are quantifiable but are deemed to be non-material in the context of the particular tender;
- Compute the present value of future AMC payments at the specified discount rate and added to the cost of equipment if stipulated in the tender document;
- Compute the cost of incidental services and add the same to the cost of equipment;
- For procurement of equipment other factors may be taken into consideration including among others operating and maintenance costs, spare parts costs for a period specified in the tender document, availability of spares and service facilities, efficiency and compatibility of equipment, performance and productivity of the equipment, training, safety and environmental benefits in the manner as specified and detailed in the tender documents;
- Tender evaluation shall be strictly in monetary terms;

12.5 Post-Qualification:⁵⁴

If the tenderers have not been pre-qualified, the TSC or the TIA shall identify the lowest evaluated responsive bidder, and check, whether he/it satisfies the stipulated qualification criteria. If he/it satisfies the stipulated criteria, award would be made to it. If he/it fails to meet the stipulated qualification criteria, the tender shall be rejected. In such an event similar check would be made to the next lowest evaluated responsive tender till the responsive tenderer who satisfies the stipulated criteria is identified. In case the lowest evaluated responsive tenderer is lowest in more than one package, check would be made whether he/it satisfies the aggregate qualification criteria for the packages for which he/it is the lowest evaluated responsive tenderer. If he/it satisfies the aggregate qualification criteria, for all the packages for which he/it is lowest, award would be made for all the packages. Otherwise award would be made for the packages/ combination of packages for which he/it satisfies the stipulated aggregate qualification criteria. In doing so the best economic combination, keeping in view the interest of the Department/Society would be selected and award decision would be made.

12.6 Negotiations:⁵⁵

12.6.1 The Tender Accepting Authority (TAA) may before passing order accepting a tender negotiate with the lowest evaluated responsive tenderer. Negotiations solely for the purpose of obtaining lower prices would be appropriate only in exceptional circumstances such as lack of competition (less than three), single tender, suspected collusion, or where the lowest evaluated responsive tender is substantially above the estimated cost. In such cases also the first choice is for rejection of all tenders and reinviting fresh tenders. The following guidelines shall be followed while resorting to negotiations

⁵⁴ Based on the provisions of the STD for goods mandated by GOK

⁵⁵ Based on the last sub para of Section 13 of the KTPP Act 1999 and GOK Circular No.PWD 1359 SO/FC 2001 (P-2) dated 3/12/2002.

- 12.6.2 In respect of procurement of goods, since there are no Schedule of Rates and rates for equipment/goods satisfying the minimum functional requirements vary widely, depending on the quality, specifications of the material input, award should generally be made to the tenderer who is technically and commercially responsive and meets the stipulated qualification criteria and who is determined to perform the contract satisfactorily. If the tendered rate is considered unreasonable (one of the method of determining the reasonableness being the comparison with the market rate for the same brand and specification of equipment) negotiations shall be conducted only with the lowest evaluated responsive and qualified tenderer. The procedure as outlined under shall be followed scrupulously
- 12.6.3 In respect of tenders which are determined to be high, the TEC or TIA as the case may be, depending on the value of the contract, shall (i) identify the item (s) for which the rates are considered high and are contributing to the increase; (ii) get the breakup of rate (s) from the lowest evaluated responsive and qualified tenderer and make a thorough examination of the reasonableness. If the TEC or TIA is satisfied with the explanation by the tenderer, it shall make its recommendation to TAA for acceptance of the tender;
- 12.6.4 In case where the TEC or TIA decides in favour of negotiation (in exceptional cases) he shall seek the permission of the TAA detailing the reasons and the points on which negotiations are proposed to be conducted. The TAA shall after careful examination of the proposals approve the points on which negotiations are to be held, appoint a Negotiating Committee consisting of TIA a representative of TSC or evaluating officer and TAA. The Committee shall conduct negotiations on the approved points and make a record of the proceedings of the negotiations. The Committee shall submit the proceedings to the TAA for taking decision. If the negotiations are successful and the TAA accepts the recommendations of the Negotiating Committee, the tender is accepted at the negotiated rates/terms and conditions and contract is concluded;
- 12.6.5 If the negotiations fail the TAA shall issue orders on the future course of action to be taken by TIA, which may include adoption of revised procurement strategy (to include repackaging, revision of specification etc.) Here also the first choice would be to reject and reinvoke the tenders after analyzing the causes leading to the rejection of the tenders.

12.7 Time taken for evaluation and extension of validity of tenders:⁵⁶

The TSC or TIA shall complete evaluation of tenders and award the contract within the initial validity period to avoid the risk of the lowest evaluated responsive tenderer not extending the validity and losing out the lowest evaluated responsive tender. An extension of tender validity if justified by exceptional circumstances, shall be requested by TAA in writing from all tenderers (found responsive on initial examination) before the expiration of the validity of the tenders. The extension shall be for the minimum period required to complete the evaluation and obtain necessary approvals and award of the contract. Whenever an extension of tender validity is requested, the tenderers shall not be requested or permitted to change the tender amount or other conditions of the tender. The tenderers shall have the right to refuse the extension of tender validity without forfeiting

⁵⁶ Based on Rule 22 of the KTPP Rules 2000

their tender security. But those who are willing to extend the tender validity shall be required to provide a suitable extension of the validity of the tender security.

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

12.8 Process of tender evaluation to be confidential until the award of contract is notified:⁵⁷

The TIA shall ensure after public opening of tenders, information relating to the examination, clarification, and evaluation of tenders and recommendations concerning awards shall not be disclosed to tenderers or other persons not officially concerned with this process until the publication of contract award.

Tenderers shall not make attempts to establish unsolicited and unauthorized contact with the TAA, TIA or TSC after opening of the tenders and prior to the notification of the award and if any attempt by the tenderer to bring to bear extraneous pressures on the TAA shall be sufficient reason to disqualify the tenderer.

Notwithstanding anything contained above, the TIA or the TSC or the TAA may seek bonafide clarifications in writing from tenderers relating to the tenders submitted by them during the evaluation of tenders.

12.9 Preparation of the evaluation report and award of tender:⁵⁸

TSC or the TIA shall prepare detailed evaluation report, which shall be considered by the TAA before taking a final decision on the tender; The TAA shall award the contract to the lowest evaluated responsive tenderer who meets the specified qualification criteria and communicate the order of acceptance through Letter of Acceptance (LOA) to the successful tenderer, *provided that where the TAA consists of a single officer who is due to retire within the next six months, from the date fixed for acceptance for tender, he shall not act to accept the tender without obtaining prior approval of the Commissioner Department of Health and Family Welfare/Chairman of Governing Council.*

12.10 The Procurement Committee shall:

- Have the technical evaluation done first by the Standing Technical Committee as constituted vide paragraph 7.3 in respect of two cover system tenders;
- Have the initial examination of the tenders done by the TIA or TSC as described in paragraph 12.3 to determine the substantial responsiveness of the tenders;
- In respect of single cover system tenders, have the detailed evaluation done of only those tenders, which on initial examination are found to be substantially responsive strictly in accordance with the provisions of tender document and as per procedure outlined in paragraph 12.4 above and check whether the lowest evaluated tenderer selected for award meets the stipulated minimum qualification criteria;

⁵⁷ Based on Rule 23 of the KTPP Rules 2000.

⁵⁸ Based on Rule 26 of the KTPP Rules 2000.

- In respect of two cover system, have the detailed evaluation done for all the tenders which on initial examination are found to be substantially responsive as per procedure outlined in paragraph 12.4 above and have satisfied the stipulated minimum qualification criteria as per procedure stipulated in the tender documents;
- Have the detailed evaluation report prepared by TIA/TSC, scrutinize the same and forward the evaluation report and the documents to the Tender Acceptance Authority (TAA) who has the financial powers to accept the tenders of particular value as per delegation of powers issued by the Department of Health and Family Welfare from time to time;

12.11 The TIA/TSC shall:

- Evaluate the tenders strictly as per provisions contained in the tender document, under the guidance of the Procurement Committee and prepare and submit the evaluation report as discussed in paragraph 12.9 above.;
- On receipt of acceptance of the tenders by the TAA, communicate acceptance of the tender to the successful tenderer (as approved by the Procurement Committee and TAA) as per procedure given in the tender document, in the prescribed format as given in the tender document or any other approved format and request the successful tenderer to deposit the prescribed performance security amount in the prescribed form and valid as per requirement;
- Send to the appropriate TBO a statement of evaluation of the tenders, with a comparative statement of the tenders received and decision thereon for publication in the TB. In case the successful tenderer fails to deposit the required performance security and execute the necessary agreement, within the specified period (as stipulated in the tender document), then EMD shall be forfeited and his tender is held as non-responsive. In such an event TIA shall forward the file to TAA through Procurement Committee to make award to the next lowest evaluated responsive and qualified tenderer, **provided the offered rates are considered reasonable and acceptable.**
- Enter into agreement with the successful tenderer in the prescribed format;
- Arrange for inspection of the supplies as per provisions in the agreement and conditions of contract;
- Arrange for taking delivery of the goods/equipment at the designated delivery point;
- Arrange for payments to be made to the suppliers as per provisions in the contract and due stock taking and accounting procedures;

12.12 The Tender Acceptance Authority shall:

- Review the evaluation report and the recommendations for award. If acceptable he shall pass orders and send the file to the TIA for taking further action in the matter.
- In case the TAA feels that the recommended rates are high and negotiations need to be conducted, he shall take action as per guidelines given in paragraphs 12.6, above.
- In case the TAA feels that prescribed procedures have not been followed or that the rates offered are unreasonably high he shall take action as detailed in paragraph 13.1

Chapter XIII

Other procurement issues

13.1 General rejection of tenders:⁵⁹

The TAA may at any time before passing an order of acceptance of tender reject all the tenders on the ground of changes in the scope of procurement, failure of anticipated financial resource, accidents, calamities or any other ground as may be prescribed, which would render the procurement unnecessary or impossible and report the same to the Commissioner/Chairman GC. The TIA shall thereafter communicate the fact of the rejection to all the tenderers who had submitted the tenders and cause the same to be published on the web site of the Department/Society.

13.2 Publication of award decision:⁶⁰

Simultaneously with the award of contract (after signing of the contract) to the successful tenderer, the TIA shall take action to publish the following information in the website of the Department /Society (a) Name of tender and names of each tenderer who submitted the tender; (b) the tender amount read out at the time of opening of tenders; (c) name and evaluated amount of each tender

⁵⁹ Section 14 of the KTPP Act 1999

⁶⁰ Based on Rule 26 of the KTPP Rules 2000

that was evaluated; (d) name of tenderers whose tenders were rejected and reasons for their rejection; and (e) name of the successful tenderer and the tender amount.

13.3 Appeal:⁶¹

13.3.1 Any tenderer aggrieved by an order passed by the TAA other than Government may appeal to the prescribed authority within 30 days of the receipt of the order. The prescribed authority may in its discretion allow further time not exceeding 30 days for filing any such appeal, if it is satisfied that the appellant had sufficient cause for not filing the appeal in time. The prescribed authority may after giving opportunity of being heard to both the parties pass such order thereon as it deems fit and such order shall be final. The prescribed authority shall as far as possible dispose of the appeal within 30 days from the date of filing thereof.

13.3.2 The prescribed authority shall be as follows:

Department: The Commissioner, Department of Health and Family Welfare;
Society: The Chairman, Governing Council;

Chapter XIV

Quality Assurance and Contract Monitoring

14.1 Inspection and Tests:

14.1.1 The Purchaser or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications at no extra cost to the Purchaser. SCC and the Technical Specifications shall specify what inspections and tests the Purchaser requires and where they are to be conducted. The Purchaser shall notify the Supplier in writing in a timely manner of the identity of any representatives retained for these purposes.

14.1.2 The inspections and tests may be conducted on the premises of the Supplier or its subcontractor(s), at point of delivery and/or at the Goods final destination. If conducted on the premises of the Supplier or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data - shall be furnished to the inspectors at no charge to the Purchaser.

14.1.3 Should any inspected or tested Goods fail to conform to the specifications, the Purchaser may reject the goods and the Supplier shall either replace the rejected Goods or make alterations necessary to meet specification requirements free of cost to the Purchaser.

⁶¹ Based on Section 16 of the KTPP Act and Rule 29 of the KTPP Rules 2000

14.1.4The Purchaser's right to inspect, test and, where necessary, reject the Goods after the Goods' arrival at Project Site shall in no way be limited or waived by reason of the Goods having previously been inspected, tested and passed by the Purchaser or its representative prior to the Goods shipment.

14.1.5After satisfactory inspection and tests, the acceptable goods shall be stamped, labeled, marked or sealed, according to the circumstances in such a way as to make subsequent identification of accepted lots easy for consignee/user. For goods not meeting the contract requirements the rejection inspection notes shall be issued immediately. A time limit shall be fixed for issue of inspection documents. Facsimile of the inspection stamps and their position should be put on the Inspection notes to help identifying the inspected goods at the consignee's end.

14.1.6The Inspection notes in the form prescribed by the Department/Society shall be issued in significance of the acceptance of the goods. Inspection note should have provision for entering consignee's receipt certificate (confirming receipt of goods) on it. Consignee's receipt certificate portion of the inspection notes shall be filled by the consignee after receipt of the goods, verification of quantity and inspection marks on the accepted goods and taking the supplies in its stocks, signifying its (consignee's) acceptance. Inspection note shall also indicate the validity period, by which period the Supplier must dispatch the accepted goods to the consignee in terms of the contract. The number of copies of the inspection notes and their distribution for different types of inspections will be prescribed by the Department/ Society. Each inspection note issued shall invariably bear the name, stamp with designation and code number of the Officer authorized to sign and issue inspection documents.

14.1.7*Tests at outside laboratories:* In some cases it may be necessary for the Purchaser to conduct type tests, acceptance tests or special tests at outside laboratories, when facilities for these tests are not available in-house with the Supplier or carrying out confirmatory tests is considered desirable before accepting the goods. The Department/Society shall draw up a list of approved laboratories for this purpose, to whom the samples drawn from the lots offered by the Supplier can be sent for tests. The lists shall also contain approved laboratories, which can be used as referral/ appellate laboratories for retest, when samples tested at one laboratory are decided to be re-tested.

14.1.8In cases where the samples are to be tested at Supplier's cost on account of non-availability of their own testing arrangements, the responsibility of depositing the testing fee, etc. would rest with the Supplier;

14.1.9The inspections and tests conducted by the Purchaser shall not in any way release the Supplier from any warranty or other obligations under this Contract.

14.1.10**Manuals and Drawings**

- (a) Before the goods and equipment are taken over by the Purchaser, the Supplier shall supply operation and maintenance manuals together with drawings of the goods and equipment. These shall be in such detail as will enable the Purchaser to operate, maintain, adjust and repair all parts of the equipment as stated in the specifications.
- (b) The manuals and drawings shall be in the ruling language (English) and in such form and numbers as stated in the contract.

- (c) Unless and otherwise agreed, the goods and equipment shall not be considered to be completed for the purpose of taking over until such manuals and drawings have been supplied to the Purchaser.

14.2 Packing

14.2.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of heavy handling facilities at all points in transit.

14.2.2 The packing, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be provided for in the Contract including additional requirements, if any, specified in SCC and in any subsequent instructions ordered by the Purchaser.

14.2.3 Packing Instructions: The Supplier will be required to make separate packages for each Consignee. Each Package will be marked on three sides with proper paint/indelible ink the following:

- i) Project ii) Contract No iii) Suppliers Name and iv) Packing List Reference number.

14.3 Change Orders:⁶²

14.3.1 The Purchaser may at any time by written order given to the Supplier make changes within the general scope of the contract in any one or more of the following:

- Drawings, designs, or specifications, where goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
- The method of shipping or packing;
- The place of delivery; and/or
- The Services to be provided by the Supplier;

14.3.2 If at any such change causes an increase or decrease in the cost of , or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract price or delivery schedule, or both and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment on this account must be asserted within 30 days from the date of the Supplier's receipt of the Purchaser's change order.

14.4 Assignment:⁶³

The Supplier shall not assign, in whole or in part, its obligations to perform under the Contract awarded to him, except with the Purchaser's prior written consent.

⁶² Based on the provision in the STD for goods mandated by GOK

⁶³ Based on the provision in the STD for goods mandated by GOK

14.5 Subcontracts:⁶⁴

The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the contract, which has been awarded to him, if not already specified in the tender. Such notification in his original tender or later, shall not relieve the Supplier from any liability or obligations under the Contract. Subcontracts shall be only for the bought out items and sub-assemblies.

14.6 Delays in the Supplier's performance:⁶⁵

14.6.1 Delivery of the goods and performance of the services shall be made by the Supplier in accordance with the time schedule specified by the Purchaser in the tender under Schedule of Requirements;

14.6.2 If at any time during the performance of the Contract, the Supplier or its sub-contractor (s) should encounter conditions impeding timely delivery of the goods and performance of services, the Supplier shall promptly notify the Purchaser in writing of the fact of the delay, its likely duration and its cause (s). As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion, extend the Supplier's time for performance with or without liquidated damages, in which case, the extension shall be ratified by the parties by amendment of the Contract;

14.6.3 Except as provided under Force Majeure, a delay by the Supplier in the performance of its delivery obligations shall render the Supplier liable to the imposition of liquidated damages, unless an extension of time is agreed upon without the application of liquidated damages;

14.7 Liquidated Damages:⁶⁶

Subject to Force Majeure, if the Supplier fails to deliver any or all of the goods or to perform the services within the period (s) specified in the Contract, the Purchaser shall, without prejudice to its other remedies under the Contract, deduct from the contract price, as liquidated damages, a sum equivalent to 0.5% of the delivered price of the delayed goods or unperformed services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of 10% of the Contract price. Once the maximum is reached, the Purchaser may consider termination of the Contract.

14.8 Termination for default:⁶⁷

14.8.1 The Purchaser may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Supplier, terminate the Contract in whole or part:

(a) If the Supplier fails to deliver any or all of the Goods within the period(s) specified in the Contract, or within any extension thereof granted by the Purchaser; or

(b) If the Supplier fails to perform any other obligation(s) under the Contract.

⁶⁴ Based on the provision in the STD for goods mandated by GOK

⁶⁵ Based on the provision in the STD for goods mandated by GOK

⁶⁶ Based on the provision in the STD for goods mandated by GOK

⁶⁷ Based on the provision in the STD for goods mandated by GOK

(b) If the Supplier, in the judgment of the Purchaser has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

14.8.2 In the event the Purchaser terminates the Contract in whole or in part, the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Supplier shall be liable to the Purchaser for any excess costs for such similar Goods or Services. However, the Supplier shall continue the performance of the Contract to the extent not terminated.

14.9 Force Majeure:⁶⁸

14.9.1 The Supplier shall not be liable for forfeiture of its performance security, liquidated damages or termination for default, if and to the extent that, its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

14.9.2 "Force Majeure" means an event beyond the control of the Supplier and not involving the Supplier's fault or negligence and not foreseeable. Such events may include, but are not limited to, acts of the Purchaser either in its sovereign or contractual capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

14.9.3 If a Force Majeure situation arises; the Supplier shall promptly notify the Purchaser in writing of such conditions and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

14.10 Termination for Insolvency:⁶⁹

The Purchaser may at any time terminate the Contract by giving written notice to the Supplier, if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy, which has accrued or will accrue thereafter to the Purchaser.

14.11 Termination for Convenience:⁷⁰

The Purchaser, by written notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience⁷¹. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.

The Goods that are complete and ready for shipment within 30 days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:

⁶⁸ Based on the provision in the STD for goods mandated by GOK

⁶⁹ Based on the provision in the STD for goods mandated by GOK

⁷⁰ Based on the provision in the STD for goods mandated by GOK

⁷¹ There should be strong justifiable grounds for using this provision. It should stand the test of law and natural justice. This is mostly an enabling provision.

- (a) To have any portion completed and delivered at the Contract terms and prices; and/or
- (b) To cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and for materials and parts previously procured by the Supplier.

14.12 Limitation of Liability:⁷²

Except in cases of criminal negligence or willful misconduct, and in the case of infringement,

- (a) The Supplier shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser; and
- (b) The aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

⁷² Based on the provision in the STD for goods mandated by GOK